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14 *Attorneys for Plaintiffs and Proposed Class and  
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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 OAKLAND DIVISION

18 ROXANA DEL TORO LOPEZ and  
ANA MEDINA, on behalf of themselves  
19 and all others similarly situated,

20 Plaintiffs,

21 v.

22 UBER TECHNOLOGIES, INC.,  
23 Defendant.  
24  
25  
26  
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28

Case No. 4:17-cv-06255 (YGR)

**NOTICE OF MOTION AND UNOPPOSED  
MOTION FOR ORDER CONDITIONALLY  
CERTIFYING SETTLEMENT CLASS AND  
COLLECTIVE ACTION, AND GRANTING  
PRELIMINARY APPROVAL**

Judge: Yvonne Gonzalez Rogers  
Hearing Date: May 1, 2018  
Hearing Time: 2:00 pm  
Courtroom: Courtroom 1, 4th Floor

**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on April 10, 2018, at 2 p.m., or as soon thereafter as the matter may be heard, in Courtroom 1 - 4th Floor of this Court's Oakland Courthouse, located at 1301 Clay Street, Oakland, California, Plaintiffs Roxana del Toro Lopez and Ana Medina, individually and on behalf of all others similarly situated ("Plaintiffs") will, and hereby do, move this Court for the following relief with respect to the Collective, Class Action and PAGA Representative Action Settlement Agreement (the "Settlement," attached as Exhibit A to the Declaration of Jahan C. Sagafi in Support of Unopposed Motion for Preliminary Approval of Settlement ("Sagafi Decl.)) with Defendant Uber Technologies, Inc. ("Uber"):

1. that the Court certify, for settlement purposes only, a settlement class pursuant to Federal Rule of Civil Procedure 23(b)(3);

2. that the Court designate, for settlement purposes only, a nationwide collective action pursuant to 29 U.S.C. § 216(b) for claims under the Equal Pay Act;

3. that the Court approve prospective relief under Federal Rule of Civil Procedure 23(b)(2);

4. that the Court appoint Plaintiffs as class representatives of the Class and as representative Plaintiffs for the nationwide collective action;

5. that the Court appoint Plaintiffs' attorneys as Class Counsel;

6. that the Court grant preliminary approval of the Settlement;

7. that the Court approve mailing to the Class Members the proposed Class Notice;

8. that the Court appoint JND Legal Administration as the Settlement Administrator;

and

9. that the Court schedule a hearing for final approval of the Settlement.

This motion is made on the grounds that the Settlement is the product of arms-length, good-faith negotiations; is fair, reasonable, and adequate to the Class; and should be preliminarily approved, as discussed in the attached memorandum.

1 The motion is based on this notice, the following memorandum in support of the motion,  
2 the Sagafi Decl. (which annexes a copy of the Settlement); the Court's record of this action; all  
3 matters of which the Court may take notice; and oral and documentary evidence presented at the  
4 hearing on the motion. This motion is unopposed by Uber.

5 Dated: March 26, 2018

Respectfully submitted,

6 By: /s/ Jahan C. Sagafi

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**TABLE OF CONTENTS**

1

2 I. INTRODUCTION ..... 1

3 II. BACKGROUND ..... 2

4 A. Plaintiffs’ Factual Allegations..... 2

5 B. Procedural Background ..... 3

6 C. Informal Discovery And Mediation ..... 4

7 D. The Settlement Classes..... 5

8 III. THE PROPOSED SETTLEMENT ..... 6

9 A. Settlement Overview ..... 6

10 B. Monetary Relief..... 7

11 C. Injunctive Relief ..... 8

12 D. Attorneys’ Fees and Costs and Service Awards..... 9

13 IV. ARGUMENT..... 10

14 A. Certification of the Rule 23 Class Is Proper..... 11

15 1. Rule 23(a) Is Satisfied. .... 11

16 2. Certification Is Proper Under Rule 23(b)(3). .... 14

17 3. Rule 23(b)(2) is Satisfied. .... 15

18 4. Plaintiffs’ Counsel Should Be Appointed as Class Counsel..... 16

19 B. Certification of the Federal EPA Collective Is Proper. .... 16

20 C. The Settlement Is Fair, Reasonable, And Adequate..... 16

21 1. Plaintiffs’ Case Faced Significant Hurdles on Liability,  
22 Certification, And Damages. .... 17

23 2. The Settlement Amount Is Appropriate. .... 18

24 3. The Extent of Discovery Supports Settlement. .... 20

25 4. Counsel’s Experience And Views Support Approval. .... 21

26 5. The Parties Participated in Arms-Length Negotiations Before  
27 An Experienced Neutral Mediator. .... 21

28 D. The Proposed Notice Is Clear And Adequate. .... 22

1 V. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED..... 22  
2 VI. CONCLUSION ..... 23

3  
4  
5  
6  
7  
8  
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12  
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16  
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**TABLE OF AUTHORITIES**

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No. 03-cv-3174-PJH, 2012 WL 950625 (N.D. Cal. Mar. 2, 2012) ..... 18

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 2 No. 15 Civ. 1868, 2017 WL 5177028 (S.D. Cal. Nov. 7, 2017) ..... 18

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 12 No. 06 Civ. 04149, 2008 WL 8150856 (C.D. Cal. July 21, 2008)..... 21

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 6 221 F.R.D. 523 (C.D. Cal. 2004) ..... 10, 21

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 14 No. 16 Civ. 1885, 2016 WL 9024896 (S.D. Cal. Dec. 5, 2016)..... 16

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 16 138 S.Ct. 556 (2017) ..... 17

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 18 563 F.3d 948 (9th Cir. 2009)..... 16, 21

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 No. 15-cv-02198-EMC, 2016 WL 5907869 (N.D. Cal. Oct. 11, 2016) ..... 19



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16 29 U.S.C. § 206(d)..... 2, 3, 8, 16

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**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION**

**I. INTRODUCTION**

Plaintiffs Roxana del Toro Lopez and Ana Medina (“Plaintiffs”), on behalf of themselves and the proposed Class and Collective Members,<sup>1</sup> and Defendant Uber Technologies, Inc. (“Uber”) (collectively, the “Parties”), have negotiated a Settlement of their gender, race, and national origin discrimination and harassment/hostile work environment claims on behalf of 420<sup>2</sup> female software engineers and software engineers of color<sup>3</sup> who work or worked for Uber during the relevant time period. Declaration of Jahan C. Sagafi in Support of Unopposed Motion for Preliminary Approval of Settlement (“Sagafi Decl.”) ¶ 42, Ex. 1 (Settlement Agreement). This Settlement provides both (a) a common fund of \$10,000,000 for the Class Members’ benefit (including payment of administration costs, a PAGA award, attorneys’ fees and costs, and Class Representative service award payments),<sup>4</sup> and (b) significant injunctive relief comprising reforms to Uber’s employment practices, which will be overseen by Class Counsel during a three-year monitoring period.

As part of the injunctive relief, Uber has committed to implementing and enhancing initiatives pertaining to its compensation and promotion practices. For example, Uber has agreed to develop minimum standards for each class position and implement a validated promotion assessment process. It has also agreed to provide mentorship and skill development for class members, to consider work done to advance diversity and inclusion in cash bonus calculations, and to monitor compensation for adverse impact based upon race (including Hispanic origin) and

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<sup>1</sup> For ease of reference, Class and Collective Members will be referred to as “Class Members.”

<sup>2</sup> This number is subject to minor modification as (i) the race and gender of recent hires is collected, and (ii) individuals who are two or more races currently included in this number are determined to be ineligible to participate because they are not in any part Latino, African American, American Indian or Alaskan Native.

<sup>3</sup> Herein, “of color” is defined as Latino, African American, American Indian, Alaskan Native or multiracial (who are in part one of the foregoing races).

<sup>4</sup> The Monitor’s fees, as well as the employer’s share of payroll taxes, will be borne by Uber separately, and not paid out of the common fund.

1 gender at the conclusion of each performance cycle. The specific terms of the proposed settlement  
2 are set forth in the Settlement Agreement.

3 The Settlement meets the requirements of Federal Rule of Civil Procedure 23(a), 23(b)(2)  
4 and (b)(3), which are applicable to class settlements, and section 16(b) of the Fair Labor Standards  
5 Act (“FLSA”), 29 U.S.C. § 216(b), which authorizes collective actions for claims under the  
6 federal Equal Pay Act (“Federal EPA”). It is the product of arms-length negotiations between the  
7 Parties and falls within the range of reasonableness. The proposed Notice provides Class  
8 Members with the best notice practicable under the circumstances and will allow each Class  
9 Member a full and fair opportunity to evaluate the Settlement before deciding whether to  
10 participate.

## 11 **II. BACKGROUND**

### 12 **A. Plaintiffs’ Factual Allegations**

13 Plaintiffs are both Latina software engineers. Ex. A to ECF No. 30 (First Amended  
14 Complaint (“FAC”)) ¶¶ 14-15. Plaintiff del Toro Lopez was employed at Uber as a Software  
15 Engineer 1 from May 2015 to March 2017, and as a Software Engineer 2 from March 2017 to  
16 August 2017. *Id.* ¶ 14. Plaintiff Medina has been employed at Uber as a Software Engineer 1  
17 from March 2016 through the negotiation of the Settlement. *Id.* ¶ 15.

18 Plaintiffs allege that Uber discriminated against them and other female software engineers  
19 and software engineers of color in the Software Engineer 1, Software Engineer 2, Senior Software  
20 Engineer 1, Senior Software Engineer 2, and Staff Software Engineer job positions (“Class  
21 Positions”) by providing them with less compensation for equal work, under-leveling them at hire,  
22 promoting them at a slower rate, and providing them with systematically biased performance  
23 evaluations, as compared with their white and Asian male counterparts. *Id.* ¶¶ 23-44. For  
24 example, Plaintiffs allege that Uber’s systems of “stack ranking” and calibration systematically  
25 disadvantaged female engineers and engineers of color, because they resulted in their receiving  
26 lower performance evaluations than their peers despite equal or better performance. *Id.* ¶¶ 23-29.  
27 In turn, lower performance evaluations dragged down employee compensation and made it more

1 difficult for employees to receive the promotions they need to develop. *Id.* ¶¶ 30-39. Plaintiffs  
2 allege that these practices violate the Equal Pay Act (“EPA”), 29 U.S.C. § 206(d); Title VII of the  
3 Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e *et seq.*; 42 U.S.C. § 1981 (“Section  
4 1981”); the California Fair Employment and Housing Act (“FEHA”), Cal. Gov’t Code § 12940;  
5 42 U.S.C. § 1981 (“Section 1981”); the California Private Attorneys General Act (“PAGA”), Cal.  
6 Lab. Code, § 2698 *et seq.*; the California Unfair Competition Law, Cal. Bus. & Prof. Code §  
7 17200 *et seq.* (“Section 17200”); California Labor Code §§ 201, 202, 203, 204, 558.1; and the  
8 California Equal Pay Act (“California EPA”), Cal. Lab. Code § 1197.5. *Id.* ¶¶ 64-129.

9 Plaintiffs also allege that Uber allowed a hostile work environment for female software  
10 engineers and software engineers of color in the Class Positions, condoned and even encouraged  
11 by the highest levels of executive leadership, in violation of Title VII and FEHA. *Id.* ¶¶ 83-88;  
12 97-102.

### 13 **B. Procedural Background**

14 This settlement arises out of two actions, one filed in this Court and another in California  
15 Superior Court. Prior to and after filing these actions, Plaintiffs’ counsel conducted an in-depth  
16 investigation into Plaintiffs’ claims. Sagafi Decl. ¶¶ 20, 24-26. This investigation included an  
17 exchange of data and other information with Uber, interviews with Class Members and other  
18 witnesses, and extensive legal research into the applicable liability, certification, damages, and  
19 other issues. *Id.*

20 On June 22, 2017, Class Member Ingrid Avendaño provided notice to the California Labor  
21 and Workforce Development Agency (“LWDA”) of her intent to pursue claims against Uber  
22 under the California EPA and PAGA for gender and race discrimination on behalf of all Uber  
23 software engineers. *Id.* ¶ 16. On July 19, 2017, Plaintiff del Toro Lopez filed a similar PAGA  
24 letter with the LWDA. *Id.*

25 On October 24, 2017, Plaintiffs del Toro Lopez and Medina filed an action in the San  
26 Francisco Superior Court (Case No. GCG-17-52663) alleging that Uber violated the California  
27 EPA and Section 17200 and seeking injunctive and declaratory relief and PAGA penalties. Three  
28

1 days later, on October 27, 2017, Plaintiff del Toro Lopez filed this action alleging classwide  
2 gender and race discrimination.

3 On November 20, 2017, Plaintiff del Toro Lopez filed a Charge of Discrimination with the  
4 Equal Employment Opportunity Commission (“EEOC”) on behalf of herself and other similarly  
5 situated female employees and employees of color. *Id.* ¶ 19.

6 On December 20, 2017, Uber filed a Motion to Compel Arbitration (“Arbitration  
7 Motion”). ECF No. 15. The parties stipulated to defer further briefing until after the Supreme  
8 Court issued a decision in *Ernst & Young LLP v. Morris*, No. 16-300 (U.S., argued Oct. 2, 2017).  
9 ECF No. 16.

10 On March 23, 2018, consistent with the parties’ settlement negotiations, Plaintiffs filed a  
11 proposed First Amended Complaint in this action, which added Ana Medina as a Plaintiff and  
12 clarified the scope of Plaintiffs’ lawsuit by adding claims for violation of the California EPA;  
13 Section 17200; PAGA; Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e  
14 *et seq.*; 42 U.S.C. § 1981 (“Section 1981”); the California Fair Employment and Housing Act  
15 (“FEHA”), Cal. Gov’t Code § 12940, and the California Labor Code §§ 201, 202, 203, 204 and  
16 558.1. FAC.

17 The state court action is stayed pending approval of this proposed Settlement and will be  
18 dismissed following final approval of this proposed Settlement. Sagafi Decl. ¶ 17.

19 **C. Informal Discovery And Mediation**

20 After Plaintiff del Toro Lopez filed her PAGA notice, Plaintiffs and Uber began exploring  
21 resolution of the claims on a classwide basis. Sagafi Decl. ¶ 22. The Parties entered into a tolling  
22 agreement and discussed an exchange of information and mediation process. *Id.* at ¶ 23.

23 In the months leading up to mediation, the Parties exchanged class discovery, including (1)  
24 Uber’s policies and procedures regarding compensation, performance reviews and promotions; (2)  
25 Uber’s practices regarding hiring of female engineers and engineers of color; (3) Uber’s process  
26 for handling complaints of harassment and discrimination, and harassment complaints received by  
27 Uber from Class Members during the Title VII and FEHA limitations period; (4) Uber’s

1 disciplinary process for employees accused of harassment and discrimination; and (5) diversity,  
2 fair pay, training, investigations, and other personnel process initiatives and enhancements  
3 implemented by Uber during calendar year 2017 and the first quarter of 2018 under new executive  
4 leadership. *Id.* ¶ 24. In all, Uber produced and Plaintiffs reviewed several thousand pages of  
5 documents. *Id.* Plaintiffs also contacted and interviewed many Class Members and potential  
6 witnesses to gather evidence to support the merits of their claims and class certification. *Id.* ¶ 20.

7 In addition, Uber produced data for every employee in the Class Positions (i.e., both Class  
8 Members and possible comparators) and predecessor titles, including race, gender, education,  
9 seniority, pay, performance reviews, and promotion timeline, among other data points. *Id.* ¶ 25.  
10 Plaintiffs retained an expert consultant, EconOne, to analyze the data. Plaintiffs posed questions  
11 of Uber and its expert directly and through EconOne, to understand the data and to probe Uber's  
12 analysis of the data. *Id.* ¶ 26. The Parties also exchanged several iterations of data analyses. *Id.*

13 On January 25, 2018, the Parties attended mediation with private mediator David A.  
14 Rotman. *Id.* ¶ 27. Mr. Rotman is a highly respected mediator with a wealth of experience  
15 mediating complex employment class actions. *Id.* Before the mediation, the parties exchanged  
16 detailed mediation statements supported by multiple pages of rigorous data analyses, along with  
17 multiple supplements. *Id.* ¶ 28. After a full day of negotiation, the parties agreed to a settlement  
18 in principle. *Id.* ¶ 29. The parties continued to negotiate the terms of the settlement and the scope  
19 of programmatic relief for the class over the next two months. *Id.*

#### 20 **D. The Settlement Classes**

21 For settlement purposes only, Uber agrees to certification of the following classes  
22 (collectively, the "Settlement Class"), defined as:

23 (1) all women and people of color in the Software Engineer 1 or 2, Senior  
24 Software Engineer 1 or 2, or Staff Software Engineer job titles (the  
25 "Covered Software Engineer Positions") who work or worked for Uber in  
26 the United States between July 31, 2013 and entry of the preliminary  
27 approval order ("PAO") (the "Nationwide Rule 23 Class");

1 (2) all women and people of color in the Covered Software Engineer  
2 Positions who work or worked for Uber in California between July 31,  
2013 and entry of the PAO (the “California Rule 23 Class”);

3 (3) all women who work or worked for Uber in a Covered Software  
4 Engineer Position in the United States between July 31, 2014 and entry of  
the PAO who opt in (the “Federal EPA Collective”); and

5 (4) all women and people of color who work or worked for Uber in a  
6 Covered Software Engineer Position in California between June 22, 2016  
7 and entry of the PAO (the “PAGA Representative Group”).

8 Settlement Agreement, §§ 5.3-5.4. Based on Uber’s records, there are approximately 285 women  
9 and 135 men of color within the Settlement Class definition, totaling 420 Class Members. Sagafi  
10 Decl. ¶ 30.

11 **III. THE PROPOSED SETTLEMENT**

12 **A. Settlement Overview**

13 The Settlement provides not only \$10,000,000 in compensation for the financial and  
14 emotional harms Class Members suffered from discrimination, harassment, and hostile work  
15 environment, but also programmatic relief to ensure that Uber implements or maintains long-term,  
16 systemic change to prevent these harms in the future. Uber has agreed to a series of reforms that  
17 change or enhance its systems for compensation, reviews, and promotions and build on diversity,  
18 fair pay, training, investigations, and other personnel process initiatives and enhancements it  
19 implemented during calendar year 2017 and the first quarter of 2018. The reforms will also ensure  
20 that Class Members will receive the institutional support and internal resources they need to thrive  
21 in the world of computer engineering. Moreover, the terms of the settlement provide for  
22 accountability both to Uber’s workforce and to the Court, in the form of the regular reporting of  
23 demographic data and a semiannual report to Class Counsel for two years, followed by a third-  
24 anniversary report, along with the appointment of experienced Special Master Fred Alvarez.



1           **B.       Monetary Relief**

2           The Settlement requires Uber to pay \$10,000,000 (the “Settlement Amount”). That  
 3 amount will cover: (a) Class Member payments; (b) a \$50,000 PAGA allocation, 75% of which  
 4 will be paid to the California Labor and Workforce Development Agency (the “LWDA”), and  
 5 25% of which will be paid to the PAGA Representative Group; (c) Class Representative Service  
 6 Awards of \$50,000 for Plaintiff del Toro Lopez and \$30,000 for Plaintiff Medina; (d) Class  
 7 Counsel’s fees up to 30% of the Settlement Amount and actual costs up to \$170,000; and (e)  
 8 settlement administration costs, expected to be approximately \$110,000. Settlement Agreement, §  
 9 5.2.

10           The plan of allocation devotes the bulk of the settlement amount for Fund A (to be paid out  
 11 formulaically based on weeks worked, job title, time period, geography, and whether the Class  
 12 Member has previously signed a release of claims), with \$1,900,000 set aside for Fund B (to be  
 13 paid out based on Claim Forms submitted by Class Members to capture non-monetary harms such  
 14 as harassment and emotional distress). Specifically, Fund A will be paid out automatically to all  
 15 Class Members who do not opt out (with no need to submit a Claim Form), in proportion to the  
 16 weeks they worked during the Covered Time Periods, adjusted as follows: (a) 1 point for  
 17 workweeks during the earliest one year of the liability period (to reflect the weaker claims with  
 18 four-year statutes of limitations), 2 points for workweeks outside of California during the three-  
 19 year limitations period, and 2.5 points for workweeks in California during the three-year  
 20 limitations period (to reflect the California EPA’s stronger liability standard relative to other  
 21 claims), and (b) job code multipliers ranging from 1.0 to 1.8 for the five job codes at issue (to  
 22 reflect the higher total compensation for higher job levels). Settlement Agreement, §§ 5.3-5.5.

23           Fund B will be paid out only to Class Members who file valid Claim Forms. The  
 24 Settlement Administrator, in consultation with the parties’ counsel, will score each Claim Form  
 25 based on objective criteria.<sup>5</sup> The Claim Form makes clear that Class Counsel are available to  
 26

27 <sup>5</sup> The parties are not publishing the scoring criteria, to prevent gaming of the system; however, the  
 28

1 assist Class Members in completing Claim Forms. Claim Forms can be submitted on paper, by  
2 email, or via a secure website maintained by the Settlement Administrator.

3 As part of the Settlement Class, Class Members who do not opt out will release the claims  
4 alleged in the Complaint under applicable state and federal law and those that are based on the  
5 same facts and circumstances as the claims brought in the Complaint (the “Released Claims”).  
6 Settlement Agreement, § 12.1. Each member of the Federal EPA Collective who cashes her  
7 settlement check will also release federal EPA claims by virtue of endorsing the check. *Id.*, §  
8 12.2. The Class Representatives, in exchange for their Service Award payments, will execute a  
9 general release of all claims.

10 The Notice Packet includes the Notice, the Claim Form, and a stamped envelope for  
11 returning the Claim Form. Notice will be sent by mail and email. Additionally, the Settlement  
12 Administrator and Class Counsel are authorized and intend to engage in supplemental efforts to  
13 ensure that Class Members receive and understand the Notice. Reminder postcards and emails  
14 will be sent 30 days after the Notice is distributed to anyone who has not submitted a Claim Form  
15 or opted out. *Id.*, § 10.2.8. Class Members will have 45 days to object and/or opt out, and 60 days  
16 to submit Claim Forms.

17 **C. Injunctive Relief**

18 In addition to monetary relief, Uber agrees to injunctive relief for a period of three years.  
19 Settlement Agreement, § 3.1. This relief includes regular reporting of diversity metrics; retaining  
20 an independent consultant to work with Uber on validation of job classifications and selection  
21 mechanisms; and evaluating compensation and promotions for class positions. *Id.* at §§ 3.2-3.7.  
22 Some of the key features of the injunctive relief provided for in the Settlement Agreement include:

- 23 a) **Diversity Objectives and Reporting:** Every member of Uber’s executive leadership  
24 team will participate in a twice-annual business review with Uber’s CEO relating to the  
25 organization’s diversity representation, pipeline, diversity growth process, and actions  
26 taken to increase the representation of women and of persons of color.

27 \_\_\_\_\_  
28 parties are happy to describe the scoring criteria with the Court for *in camera* review.

- 1           b) **Classification and Selection Processes:** Uber will retain an Independent Consultant  
2           to develop appropriate standards for each Class Position, including minimum standards  
3           and preferred qualifications for applicants and standards for setting new hire  
4           compensation.  
5           c) **Evaluations, Promotions, and Compensation:** With the help of the Independent  
6           Consultant, Uber will develop a validated promotion assessment process as well as  
7           forms and instructions to use during the performance review process. Managers  
8           involved in the performance evaluation and promotions process will be required to  
9           participate in diversity and bias training before being permitted to participate in the  
10          evaluation and promotion process.  
11          d) **Internal Monitoring:** Uber will monitor base salary, bonuses, and promotions for  
12          adverse impact based upon race, Hispanic status, and gender at the conclusion of each  
13          performance cycle.  
14          e) **Support and Mentoring:** A mentor will be made available to every interested class  
15          member, and all new Software Engineer 1 hires will receive a check-in approximately  
16          three months after hire, including an outline of steps the employee can take to address  
17          any skill gaps that have been identified.

18 *Id.*

19           The Settlement Agreement also provides for a three-year external monitoring period by  
20           Class Counsel. *Id.* at § 3.9. During that time, Uber will provide written reports to Class Counsel  
21           describing progress in implementing the programmatic relief (semiannually for the first two years,  
22           and then on the third anniversary). *Id.* In addition, the parties have agreed that Fred Alvarez of  
23           Jones Day shall serve as Special Master, to whom Class Counsel may raise concerns about the  
24           implementation of the programmatic relief. *Id.* at § 4.1. The Court will maintain continuing  
25           jurisdiction during the monitoring period. *Id.* at § 14.8.

26           **D. Attorneys' Fees and Costs and Service Awards**

27           The Settlement provides that Plaintiffs del Toro Lopez and Medina will receive Service  
28           Award payments of \$50,000 and \$30,000, respectively. Settlement Agreement § 7.1. These  
29           amounts will be separate and apart from any other recovery to which they will be entitled under  
30           the Settlement as Class Members. *Id.* at § 7.2. These payments are intended to compensate them  
31           for (a) the significant time and effort that Plaintiffs have spent on behalf of the Class with the  
32           prosecution of the claims, with the resulting value they have conferred to Class Members, (b) the  
33           exposure and risk they incurred by taking a leadership role in a lawsuit that has garnered broad

1 media coverage, along with the risk of retaliation in the employment marketplace by employers  
2 that do not wish to employ someone associated with a class action, and (c) the releases they are  
3 agreeing to in the Settlement, which are broader than those of other Class Members.

4 Class Counsel will also request attorneys' fees up to 30% of the settlement fund, and actual  
5 costs reasonably incurred up to \$170,000. Settlement Agreement, §§ 5.2.5-5.2.6. In litigating this  
6 matter, Class Counsel interviewed many potential witnesses, reviewed thousands of pages of  
7 documents produced by Uber, undertook a careful analysis of detailed pay and promotion data,  
8 conducted extensive legal and factual research of the claims at issue, zealously represented  
9 Plaintiffs during the mediation and post-mediation settlement discussions, and otherwise  
10 aggressively pursued the case to achieve an excellent result for Class Members. Class Counsel  
11 will submit their fee and cost request, along with the request for service payments, 14 days before  
12 the objection deadline. *Id.* at § 6.1.

#### 13 **IV. ARGUMENT**

14 Courts in the Ninth Circuit recognize a “strong judicial policy that favors settlements,  
15 particularly where complex class action litigation is concerned.” *Class Plaintiffs v. City of Seattle*,  
16 955 F.2d 1268, 1276 (9th Cir. 1992). This policy recognizes that “[p]arties represented by  
17 competent counsel are better positioned than courts to produce a settlement that fairly reflects each  
18 party’s expected outcome in litigation.” *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 378 (9th  
19 Cir. 1995).

20 Settlement approval “involves a two-step process in which the Court first determines  
21 whether a proposed class action settlement deserves preliminary approval and then, after notice is  
22 given to class members, whether final approval is warranted.” *Nat’l Rural Telecomm. Coop. v.*  
23 *DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004); *see also* Manual for Complex Litigation §§  
24 21.632-634 (4th ed. 2004). Preliminary approval requires two elements: First, the court must  
25 determine that the settlement class meets the requirements for class certification if it has not yet  
26 been certified (Fed. R. Civ. P. 23(a) and (b)); and second, the court must determine that the  
27 settlement is fair, reasonable, and adequate (Fed. R. Civ. P. 23(e)(2)). *Hanlon v. Chrysler Corp.*,

1 150 F.3d 1011, 1025-26 (9th Cir. 1998). Similarly, approval of a federal EPA settlement requires  
2 the Court to determine whether “the settlement represents a fair and reasonable resolution of a  
3 bona fide dispute.” *Selks v. Pioneers Mem’l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172 (S.D.  
4 Cal. 2016); *see also Coates v. Farmers Grp., Inc.*, No. 15-cv-01913-LHK, 2016 WL 8223347, at  
5 \*3 (N.D. Cal. June 27, 2016) (granting preliminary approval of a proposed settlement that  
6 included federal EPA claims).

7 **A. Certification of the Rule 23 Class Is Proper.**

8 For settlement purposes, the Parties agree to conditional certification of the class. “The  
9 validity of use of a temporary settlement class is not usually questioned.” Alba Conte & Herbert  
10 B. Newberg, 4 Newberg on Class Actions § 11:22 (4th ed. 2002).

11 Here, the relevant factors weigh in favor of conditional certification.

12 **1. Rule 23(a) Is Satisfied.**

13 First, numerosity is met because joinder of Class Members would be impractical. Fed. R.  
14 Civ. P. 23(a)(1). The class of 420 individuals readily meets this standard.

15 Second, commonality is met because “there are questions of law or fact common to the  
16 class.” Fed. R. Civ. P. 23(a)(2). In examining the commonality factor, the Supreme Court has  
17 stated that the focus is on whether there are common issues of fact among class members and  
18 whether class treatment will “generate common answers apt to drive the resolution of  
19 the litigation.” *Abdullah v. U.S. Sec. Associates*, 731 F.3d 952, 957 (9th Cir. 2013) (citing *Wal-*  
20 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Here, there are numerous common  
21 questions, such as whether Uber’s policies and practices discriminate against Class Members,  
22 whether they violate Title VII, Section 1981, the California EPA, the California Labor Code, the  
23 UCL, and FEHA, whether Uber’s performance evaluation, compensation, promotion, and job  
24 assignment systems are discriminatory, whether harassment and a hostile work environment  
25 existed, and what remedies are warranted.

26 Third, typicality is satisfied. Rule 23 typicality requires a finding that the “claims or  
27 defenses of the representative parties [be] typical of the claims or defenses of the class.” Fed. R.

1 Civ. P. 23(a)(3). Typicality “focuses on the similarity between the lead plaintiff’s legal theories  
2 and those of the people he or she purports to represent.” *Whiteway v. FedEx Kinko’s Office and*  
3 *Print Servs.*, No. 05-cv-2320-SBA, 2006 WL 2642528, at \*6 (N.D. Cal. Sept. 14, 2006); *Hanlon*,  
4 150 F.3d at 1020. Here, Plaintiffs’ claims are typical because they challenge the same policies and  
5 practices as the Class Members’ claims.

6 Fourth, Plaintiffs have fairly and adequately protected the interests of the class, and will  
7 continue to do so. Fed. R. Civ. P. 23(a)(4). The adequacy requirement is met where the class  
8 representative: (1) has common, and not antagonistic, interests with unnamed class members, and  
9 (2) will vigorously prosecute the interests of the class through qualified counsel. *Amchem Prods.,*  
10 *Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs, like the  
11 Class Members they seek to represent, share an interest in vigorous prosecution of the claims and  
12 in seeing Uber overhaul its pay and promotion practices.

13 As Latina women, Plaintiffs del Toro Lopez and Medina are adequate representatives of  
14 the race and gender classes and are dedicated to aggressively prosecuting those claims in equal  
15 measure. See *I.M.A.G.E. v. Bailar*, 78 F.R.D. 549, 558 (N.D. Cal. 1978) (Wollenberg, J.) (holding  
16 female Latina plaintiff was adequate class representative of both gender and race classes).  
17 Plaintiffs’ alleged harms, that female engineers and engineers of color were paid less and  
18 promoted at lower rates than their white or Asian male counterparts and subject to harassment  
19 because of their gender, race, and national origin, come from the same source—*i.e.*, Uber’s alleged  
20 culture of bias against engineers who are not white or Asian males, and its biased performance  
21 measures that systematically disadvantaged these groups. *Curtis-Bauer v. Morgan Stanley & Co.*,  
22 No. 06-cv-3903-TEH, 2008 WL 4667090, at \*7 (N.D. Cal. Oct. 22, 2008) (rejecting argument that  
23 a single class was inappropriate where “the central discriminatory practice at issue (account  
24 distribution) affected both groups in the same way, and there was no obvious conflict between the  
25 two”); *Adams v. Pinole Point Steel Co.*, No. 92-cv-1962-MHP, 1994 WL 515347, at \*8 (N.D. Cal.  
26 May 18, 1994) (holding African American female was an adequate representative of a race and  
27 gender class absent actual evidence of conflict); *Edmondson v. Simon*, 86 F.R.D. 375, 382 (N.D.

1 Ill. 1980) (same); *see also*, 1 *Newberg on Class Actions* § 3:58 (5th ed.) (“Conflicts that are  
 2 merely speculative or hypothetical will not affect the adequacy inquiry”); *Donaldson v. Pillsbury*  
 3 *Co.*, 554 F.2d 825, 830-31 (8th Cir. 1977) (holding class of women and African Americans was  
 4 appropriate where the class representative’s allegations of discrimination, “while factually  
 5 differing in detail from those of other employees . . . [were] plainly rooted in the same bias  
 6 asserted as the source of the discrimination”).<sup>6</sup>

7 The interests of Plaintiffs and Class Members in seeking compensation for and overhaul of  
 8 Uber’s compensation, promotions, and job assignment systems is the same. There is no inherent,  
 9 and indeed Defendant has not raised, a potential or actual conflict between the gender and race  
 10 classes.

11 In addition, Plaintiffs are represented by adequate counsel. Class Counsel are highly  
 12 experienced in prosecuting employment discrimination class actions. As detailed further in the  
 13 Sagafi Decl., Class Counsel specialize in representing employees in complex employment class  
 14 actions, with a track record of obtaining superior results for their clients. *See, e.g., Walsh v.*  
 15 *CorePower Yoga LLC*, No. 16-cv-05610-MEJ, 2017 WL 589199, at \*8 (N.D. Cal. Feb. 14, 2017)  
 16 (“Plaintiff’s counsel have a proven track record in the prosecution of class actions as they have  
 17 successfully litigated and tried many major class action cases.”); *Jaffe v. Morgan Stanley & Co.*,  
 18 No. 06-cv-3903-TEH, 2008 WL 346417, at \*8 (N.D. Cal. Feb. 7, 2008) (Class Counsel have  
 19 “extensive experience and expertise in prosecuting employment discrimination class action  
 20 cases”); *see also* Sagafi Decl. ¶¶ 4-15. There is no inherent or actual conflict in proposed Class  
 21 Counsel representing the entire class, since no one sub-group recovers at the expense of another. 1

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22  
 23 <sup>6</sup> In the event conflicts should arise between the race and gender classes, measures can be taken to  
 24 protect their relative interests, such as dividing the Class into subclasses. *See I.M.A.G.E.*, 78 F.R.D  
 25 at 558 (holding that conflicts were speculative in the present, and should any arise, “the class can  
 26 be subdivided”); *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of S.F.*, 688 F.2d 615,  
 27 621 (9th Cir. 1982) (dividing race and sex class case into two subclasses but determining that  
 “[n]o adversity between subclasses or between the various racial minority groups was perceived . .  
 . that would necessitate representation by separate legal counsel”); 1 *Newberg on Class Actions* §  
 3:58 (5th ed.).



1 Newberg on Class Actions § 3:75 (5th ed.) (“[i]n general, class counsel may represent multiple  
2 sets of litigants—whether in the same action or in a related proceeding—so long as the litigants’  
3 interests are not inherently opposed”).

4 For these reasons, Class Counsel satisfy the adequacy requirement of Rule 23(a).

5 **2. Certification Is Proper Under Rule 23(b)(3).**

6 Rule 23(b)(3) requires that common questions “predominate over any questions affecting  
7 only individual members, and that a class action is superior to other available methods for fairly  
8 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Both of these  
9 requirements are met here.

10 The proposed Rule 23 Class is sufficiently cohesive to satisfy predominance. *Amchem*,  
11 521 U.S. at 623. Predominance does not require “that each element of [a plaintiff’s] claim [is]  
12 susceptible to classwide proof.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469  
13 (2013) (internal quotation marks and citation omitted). Common questions may predominate  
14 “even though certain class members’ circumstances var[y] and some of the defendant’s practices  
15 would have to be proven by anecdotal testimony.” *Delagarza v. Tesoro Ref. & Mktg. Co.*, No. 09-  
16 cv-5803-EMC, 2011 WL 4017967, at \*12 (N.D. Cal. Sept. 8, 2011). Here, common issues  
17 predominate because Plaintiffs and the Class Members shared one of five related software  
18 engineer positions and were subject to common policies and practices regarding pay, performance  
19 reviews, and promotions. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th  
20 Cir. 2009) (citing cases) (focusing on “centralized control in the form of standardized hierarchy”  
21 and “standardized corporate policies and procedures governing employees”); *Ellis v. Costco*  
22 *Wholesale Corp.*, 285 F.R.D. 492, 538 (N.D. Cal. 2012) (Chen, J.) (noting “specific employment  
23 practices that have caused a disparity in promotions”). Superiority rests on factors like individual  
24 class members’ desire to bring individual actions and the utility of concentrating the litigation in  
25 one forum. Fed. R. Civ. P. 23(b)(3). Here, “there is no indication, that class members seek to  
26 individually control their cases, that individual litigation is already pending in other forums, or  
27 that this particular forum is undesirable for any reason.” *Tierno v. Rite Aid Corp.*, No. 05-cv-



1 02520-TEH, 2006 WL 2535056, at \*11 (N.D. Cal. Aug. 31, 2006); *Amchem*, 521 U.S. at 615.  
2 The Class Members likely lack the resources and certainly lack the incentives to secure  
3 experienced, qualified counsel, or to see litigation (or arbitration) through to completion on their  
4 own. It is generally not rational to invest hundreds of thousands of dollars in expert and other  
5 costs plus scores or hundreds of hours of time and the stress inherent in litigation for a chance to  
6 possibly recover money against a powerful corporation. In addition, hundreds of individual  
7 lawsuits or arbitrations would be wasteful and inefficient. *See, e.g., Whiteway*, 2006 WL  
8 2642528, at \*11. Because the class mechanism will achieve economies of scale for Class  
9 Members, conserve judicial resources, and preserve public confidence in the system by avoiding  
10 repetitive proceedings and preventing inconsistent adjudications, superiority is met.

### 11 3. Rule 23(b)(2) is Satisfied.

12 Under Rule 23(b)(2) class certification, “it is sufficient if class members complain of a  
13 pattern or practice that is generally applicable to the class,” even if not all class members have  
14 been injured by the challenged practice. *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998);  
15 *Civil Rights Educ. & Enf’t Ctr. v. RLJ Lodging Tr.*, No. 15-cv-0224-YGR, 2016 WL 314400, at \*9  
16 (N.D. Cal. 2016) (Rule 23(b)(2) settlement class certified); *Garcia v. Johnson*, No. 14-cv-01775-  
17 YGR, 2015 WL 13439762, at \*1 (N.D. Cal. Aug. 20, 2015) (same); *Bates v. United Parcel Serv.*,  
18 204 F.R.D. 440, 447-48 (N.D. Cal. 2001) (Henderson, J.).

19 Here, Plaintiffs seek classic 23(b)(2) injunctive relief to modify Uber’s employment  
20 practices and eradicate discrimination. *See Civil Rights Educ. & Enf’t Ctr.*, 2016 WL 314400, at \*  
21 9 (“The Supreme Court in *Wal-Mart* recognized that “[c]ivil rights cases against parties charged  
22 with unlawful, class-based discrimination are prime examples’ of what (b)(2) is meant to  
23 capture.”) (internal quotations omitted); *see also Garcia v. Johnson*, No. 14-cv-01775-YGR, 2015  
24 WL 13387594, at \*1 (N.D. Cal. Oct. 27, 2015) (approving prospective relief including defendant  
25 modifying practices, producing periodic implementation reports to class counsel and incorporating  
26 changes into training guides for employees); *Curtis-Bauer*, 2008 WL 4667090, at \*5  
27 (programmatic relief in race and gender disparate impact case approved).



1 “the risk of maintaining class action status throughout the trial,” (2) “the amount offered in  
 2 settlement,” (3) “the extent of discovery completed and the stage of the proceedings,” and (4) “the  
 3 experience and views of counsel.” *Hanlon*, 150 F.3d at 1026. In addition, courts review “the  
 4 presence of a governmental participant” and “the reaction of the class members to the proposed  
 5 settlement.” *Id.* The former is not relevant, and the latter cannot be gauged at this stage.

6 **1. Plaintiffs’ Case Faced Significant Hurdles on Liability, Certification,  
 7 And Damages.**

8 “Approval of a class settlement is appropriate when ‘there are significant barriers plaintiffs  
 9 must overcome in making their case.’” *Betancourt v. Advantage Human Resourcing, Inc.*, No. 14-  
 10 cv-01788-JST, 2016 WL 344532, at \*4 (N.D. Cal. Jan. 28, 2016). Plaintiffs face substantial  
 11 obstacles to full recovery.

12 First, forced individual arbitration of all non-PAGA claims would have been likely.  
 13 Experts believe that *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016), *cert. granted*,  
 14 137 S. Ct. 809 (2017) will be overturned, allowing companies like Uber to require employees to  
 15 “consent” to individual arbitration as a condition of employment.<sup>7</sup> A recent study reports that  
 16 arbitration leads to substantively worse outcomes for plaintiffs, especially in employment law  
 17 cases.<sup>8</sup> This slanted playing field is in part due to employers’ repeat-player advantage when they  
 18 regularly appear before the same arbitrators,<sup>9</sup> as the employer generally pays the arbitrator’s  
 19 earnings and is able to make use of the information asymmetry (different plaintiffs represented by  
 20 different counsel cannot collaborate due to confidentiality restrictions, but the single defendant  
 21 knows about all of its own arbitrations). Uber would benefit from these advantages in a series of  
 22 individual arbitrations.

23 \_\_\_\_\_  
 24 <sup>7</sup> In addition, the Supreme Court’s denials of certiorari regarding PAGA arbitrability create  
 uncertainty. *See, e.g., Prudential Overall Supply v. Betancourt*, 138 S.Ct. 556 (2017).

25 <sup>8</sup> “The arbitration epidemic,” Economic Policy Institute, [http://www.epi.org/publication/the-  
 26 arbitration-epidemic/#epi-toc-10](http://www.epi.org/publication/the-arbitration-epidemic/#epi-toc-10), last visited March 13, 2018 (quantifying lower chances of  
 prevailing (21% vs. 36% vs. 57%) and lower average damages (\$23,548 vs. \$143,497 vs.  
 27 \$328,008) between arbitration, federal court, and state court, respectively, in employment cases).

28 <sup>9</sup> *Id.*



1 offer.” *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (Chhabria, J.) (internal  
2 quotation marks omitted).

3 Here, the \$10 million settlement equates to approximately \$23,800 per class member,  
4 which is greater than comparable discrimination class action settlements. *See, e.g., Calibuso v.*  
5 *Bank of Am. Corp.*, 299 F.R.D. 359, 368 (E.D.N.Y. 2014) (\$7,800 per class member for female  
6 financial advisors); *Curtis-Bauer v. Morgan Stanley & Co.*, No. 06-cv-3903-TEH, 2008 WL  
7 4667090, at \*4 (N.D. Cal. Oct. 22, 2008) (\$12,000 per class member for female financial  
8 advisors); *Gonzalez v. Abercrombie* No. 03-cv-02817-SI (N.D. Cal.) ECF No. 125 (\$2,000 per  
9 class member for store salespeople and applicants).

10 Looked at another way, Plaintiffs calculated approximately \$2,100,000 in total possible  
11 PAGA penalties (only 25%, or \$525,000, of which would have gone to the individual Class  
12 Members), assuming the Court were to exercise its discretion to award maximum penalties. *See*  
13 *Cal. Lab. Code § 2699(e)(2)* (affording courts discretion to “award a lesser amount than the  
14 maximum”); *Sagafi Decl.* ¶ 34. The Settlement provides 19 times as much relief as would be  
15 recoverable via a PAGA-only action because it compensates Class Members for additional claims  
16 (e.g., Title VII, EPA, etc.). Therefore, the \$50,000 PAGA allocation represents 2.4% of the  
17 potential PAGA recovery and 0.5% of the total settlement amount, in line with applicable  
18 precedent. *See Vicerol v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 WL 5907869, at \*8  
19 (N.D. Cal. Oct. 11, 2016) (PAGA allocation of 0.15% of \$12,952,000 settlement); *Hopson v.*  
20 *Hanesbrands Inc.*, No. 08-cv-0844-EDL, 2009 WL 928133, \*9 (N.D. Cal. Apr. 3, 2009) (0.49% of  
21 \$408,420 settlement); *Moore v. PetSmart, Inc.*, No. 12-cv-03577-EJD, 2015 WL 5439000, \*8  
22 (N.D. Cal. Aug. 4, 2015) (0.5% of \$10,000,000 settlement); *Lusby v. Gamestop Inc.*, 297 F.R.D.  
23 400, 407 (N.D. Cal. 2013) (Lloyd, J.) (0.67% of \$750,000 settlement).

24 The \$10,000,000 settlement is a reasonable value in light of total potential damages,  
25 calculated by Plaintiffs to be \$46.9 million, excluding liquidated damages and compensatory and  
26 punitive damages for potential sexual harassment and hostile work environment claims. (This  
27 amount exceeds, by well over an order of magnitude, Uber’s estimate of potential exposure.



1 information on the performance and compensation review processes, emails, and internal  
2 complaints. *Id.* ¶ 24. They also worked closely with their experts to accurately calculate various  
3 types of potential discrimination in compensation and promotions. *Id.* ¶¶ 25-26. Class Counsel  
4 also probed Uber’s expert’s analyses through discussions involving counsel and both sets of  
5 experts. *Id.* ¶ 26. Thus, Plaintiffs adequately investigated the facts.

#### 6 **4. Counsel’s Experience And Views Support Approval.**

7 “Great weight is accorded to the recommendation of counsel, who are most closely  
8 acquainted with the facts of the underlying litigation.” *Nat’l Rural Telecomms. Coop. v.*  
9 *DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (internal quotations omitted). “Parties  
10 represented by competent counsel are better positioned than courts to produce a settlement that  
11 fairly reflects each party’s expected outcome in litigation.” *Rodriguez v. W. Publ’g Corp.*, 563  
12 F.3d 948, 967 (9th Cir. 2009) (internal quotations and modifications omitted).

13 Based on their extensive experience, Class Counsel believe that the Settlement is fair,  
14 reasonable, and adequate. Class Counsel specialize in prosecuting nationwide employment class  
15 actions, and over the past many years have successfully—and unsuccessfully—litigated many  
16 such cases, putting them in a strong position to weigh the strengths and weaknesses of Plaintiffs’  
17 claims. Sagafi Decl. ¶¶ 4-15.

#### 18 **5. The Parties Participated in Arms-Length Negotiations Before An** 19 **Experienced Neutral Mediator.**

20 A settlement reached “in good faith after a well-informed arms-length negotiation” is  
21 presumed to be fair. *Fernandez v. Victoria Secret Stores, LLC*, No. 06 Civ. 04149, 2008 WL  
22 8150856, at \*4 (C.D. Cal. July 21, 2008); *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778-  
23 JCS, 2011 WL 1230826, at \*6 (N.D. Cal. Apr. 1, 2011) ; *see also Tijero v. Aaron Bros., Inc.*, 301  
24 F.R.D. 314, 325 (N.D. Cal. 2013) (Armstrong, J.) (participation in private mediation “support[s]  
25 the conclusion that the settlement process was not collusive”). Here, Mr. Rotman’s oversight of  
26 the mediation is extremely telling; Class Counsel are aware of no mediator in the country with a  
27



1 stronger reputation for excellence, diligence, and care in settling complex employment class  
2 actions. Sagafi Decl. ¶ 27.

3 **D. The Proposed Notice Is Clear And Adequate.**

4 The proposed Notice is the “best notice that is practicable under the circumstances.” Fed.  
5 R. Civ. P. 23(c)(2)(B), and is “reasonable,” Fed. R. Civ. P. 23(e)(1). The Notice and Claim Form  
6 are consistent with modern best practices set forth by the Federal Judicial Center (based on  
7 examples at [www.fjc.gov](http://www.fjc.gov)). The Notice and Claim Form make clear that both the Settlement  
8 Administrator and Class Counsel are available to assist Class Members. The Notice explains that  
9 Class Members have 45 days to object or opt out, and 60 days to submit a Claim Form.  
10 Settlement Agreement, Ex. A; *see also Nitsch v. DreamWorks Animation SKG Inc.*, No. 14-cv-  
11 4062-LHK, 2017 WL 399221, at \*3 (N.D. Cal. Jan. 19, 2017) (approving 45-day opt-out period).

12 **V. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED.**

13 Plaintiffs, in consultation with Uber, propose the following schedule for finalizing and  
14 implementing the Settlement:

Event	Proposed Date
Preliminary Approval Hearing	April 10, 2018 <sup>10</sup>
Entry of Preliminary Approval Order (assumed for purposes of calculating subsequent dates)	April 17, 2018
Uber to provide class list data to Administrator	May 2, 2018
Notice disseminated by Settlement Administrator	May 22, 2018
Reminder notices	June 21, 2018
Fee and Service Award motions due	June 22, 2018
Deadline for Class Members to submit requests for exclusion and/or objections	July 6, 2018
Deadline for Class Members to submit Claim Forms	July 23, 2018
Settlement Administrator submits final report to Parties	July 30, 2018
Final Approval motion due	July 31, 2018

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<sup>10</sup> The parties are filing a stipulation today requesting that the Court hear this Motion on 15 days’ notice (as opposed to the alternative of 36 days’ notice), on the logic that there is no reason to expect opposition, and the sooner the Motion is heard, the sooner the monetary relief can be paid out.



Event	Proposed Date
Uber decides whether to rescind the Settlement	August 9, 2018
Final approval, Service Award fee reply briefs	August 21, 2018
Final Approval Hearing	September 4, 2018
Effective Date (assuming no appeals) (assumed for purposes of calculating subsequent dates)	September 11, 2018
Funding of Settlement	September 21, 2018
Checks mailed to Class Members	October 21, 2018
Approximate deadlines for Class Counsel to report to the Court regarding implementation of the Settlement (to be formally set at the Final Approval Hearing)	Approx. December 21, 2018 and approx. June 2019.

9 **VI. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) conditionally  
 11 certify the settlement classes; (2) preliminarily approve the Settlement pursuant to Fed. R. Civ. P.  
 12 23(c) and (e) and section 216(b) of the FLSA; (3) appoint Plaintiffs as the Class Representatives,  
 13 their counsel as Class Counsel, and JND Legal Administration as Settlement Administrator; (4) set  
 14 the deadlines for filing claims, written exclusions, or objections to the Settlement; (5) approve the  
 15 forms of notice to the class of the settlement and the Claim Form; and (6) schedule a hearing on  
 16 the final approval of the Settlement.

17  
 18 DATED: March 26, 2018

Respectfully submitted,

19 By: /s/ Jahan C. Sagafi

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27 Adam T. Klein (*pro hac vice* forthcoming)

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