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11 Counsel for Plaintiffs Chuck Congdon, *et al.*

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

Case No. 4:16-cv-02499-YGR

15 CHUCK CONGDON, RYAN
16 COWDEN, ANTHONY MARTINEZ,
17 JASON ROSENBERG, and JORGE
18 ZUNIGA, on behalf of themselves and
all others similarly situated,

19 *Plaintiffs,*

20 *vs.*

21 UBER TECHNOLOGIES, INC.,
a Delaware corporation, RASIER,
22 LLC, a Delaware corporation, and
RASIER-CA, LLC, a Delaware corporation,

23 *Defendants.*
24 _____
25
26
27 _____
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CLASS ACTION

PLAINTIFFS' UNOPPOSED
MOTION TO APPROVE CLASS
NOTICE

Notice of Motion and Motion

PLEASE TAKE NOTICE that Plaintiffs hereby move the Court for an Order of Approval of Class Notice as described herein. As explained below, the proposed direct notice plan comports with Rule 23 of the Federal Rules of Civil Procedure and protects Class members' due process rights. This motion, which is not opposed by Uber, is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the pleadings and papers on file in this action, and on such other written and oral argument as may be presented to the Court.

Memorandum of Points and Authorities

I. Legal Standard

On March 8, 2018, the Court certified this action as a class action under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and appointed Crabtree & Auslander, Browne George Ross, and Morrison and Associates as class counsel. (Dkt. 133 at 19). The Court certified the following class:

All persons in the United States who (A) entered the 2013 Agreement, the June 2014 Agreement, or the November 2014 Agreement, or a combination of those agreements; (B) opted out of arbitration under the last Uber driver contract the person executed; and (C) provided at least one minimum fare ride on the UberX platform for which a Safe Rides Fee applied before November 16, 2015.

(Dkt. 133 at 18-19).

Rule 23(c)(2) governs notice requirements for a class certified under Rule 23(b)(3) and states that “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (“Individual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort.”). In addition, Rule 23(c)(2) states that “[t]he notice must clearly and concisely state in plain, easily understood language” the following information:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;

1 (vi) the time and manner for requesting exclusion; and

2 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

3 Fed. R. Civ. P. 23(c)(2)(B).

4 For class members whose names and addresses cannot be reasonably ascertained, “courts
5 may use alternative means such as notice through third parties, paid advertising, and/or posting
6 in places frequented by class members, all without offending due process.” *Mullins v. Direct Digital,
7 LLC*, 795 F.3d 654, 665 (7th Cir. 2015); *see also Lilly v. Jamba Juice Co.*, 308 F.R.D. 231, 239 (N.D.
8 Cal. 2014) (noting that “an extensive but targeted internet and print media campaign . . . aimed
9 at providing notice to other potential class members,” whose contact information was not on file,
10 did not present due process concerns).

11 **II. Proposed Notice Plan**

12 Uber has identified each member of the class and is in possession of each class member’s
13 contact information, including his or her email address and cellular telephone number. Uber will
14 provide this information to a third-party claims administrator, who will then send direct notice to
15 each class member, using the attached notice form. (Exhibit A). A similar notice plan was
16 approved in *McKnight v. Uber Techs., Inc.*, No. 14-cv-05615-JST, 2017 U.S. Dist. LEXIS 124534, at
17 *5. There, class members received the Notice at the email addresses associated with their Uber
18 Rider Accounts, which the Court determined was “the best practicable notice possible.” *Id.*

19 As required by Rule 23(c)(2), the notice describes the nature of the litigation; sets forth the
20 definition of the class; states the class’ claims; and discloses the right of class members to exclude
21 themselves from the class, as well as the deadline and procedure for doing so, and warns of the
22 binding effect on class members who do not exclude themselves. *See* Fed. R. Civ. P. 23(c)(2)(B)(i)-
23 (vii). In addition, the notice provides contact information for Class Counsel and includes a website
24 where information related to the class will be posted. The contents of the notice therefore satisfy
25 all applicable requirements.

26 **III. Proposed Notice Schedule**

27 - No later than 10 days after the Court’s approval of the proposed notice plan, the parties will
28 post the notice to the case website.

- No later than 15 days after the Court’s approval of the proposed notice plan, a third-party
claims administrator will send the proposed notice to each class member.

- 1 - Once the notice has been sent to the class members, the class members will have 45 days to
2 submit a valid request for exclusion from the class by mail.
- 3 - The third-party claims administrator will track all requests for exclusion from the class and
4 report those requests to counsel for the parties on a weekly basis.
- 5 - No later than 20 days following the deadline for requesting exclusion, the third-party claims
6 administrator will submit a declaration to the Court describing its notification efforts and
7 summarizing all exclusion requests received.
8

9 **Conclusion**

10 Plaintiffs respectfully request that the Court enter an order approving the class notice
11 provided alongside this motion and the proposed schedule set forth above.

12 Dated: February 25, 2018

Respectfully submitted,

13 /s/ John G. Crabtree

14 John G. Crabtree

15 John G. Crabtree
16 Florida Bar No. 886270
17 Charles M. Auslander
18 Florida Bar No. 349747
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*Counsel for Plaintiffs Clark, Cowden, Rooijackers, and Rosenberg,
individually and on behalf of all others similarly situated*

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing was filed electronically via CM/ECF on February 25, 2019 and served by the same means on all counsel of record.

/s/ John G. Crabtree

John G. Crabtree

NOTICE OF PENDENCY OF CLASS ACTION

To: All drivers who have used the Uber App to transport riders and are members of the class defined in section 3, below.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

This Notice is given pursuant to Federal Rule of Civil Procedure 23 and by Order of the District Court of the Northern District of California (the “Court”). You are receiving this Notice because your rights may be affected by a class action lawsuit regarding your use of the UberX option in the Uber App as a Driver. If you are a Class Member, your rights will be affected by this lawsuit, which is referred to as *Congdon, et al. v. Uber Technologies, Inc., et al.*, Case No. 4:16-cv-02499-YGR (the “Action”), which is now pending in this Court. The Court has ordered this notice to be sent to you. Judge Yvonne Gonzalez Rogers of the Northern District of California is overseeing this case.

1. Why did I get this Notice?

On March 8, 2018, the Court determined that the Action may proceed as a class action pursuant to Federal Rule of Civil Procedure 23. You are receiving this notice because Uber’s records show that you are a member of a class of Drivers whose claims are covered in the Action. You have legal rights and options that you may exercise before the case proceeds further.

2. What is the Action about?

The Plaintiffs claimed that Uber improperly extracted an amount equal to a fee—which Uber called a “Safe Rides Fee”—on minimum-fare rides. Plaintiffs further contended that by improperly taking an amount equal to such a fee from Drivers’ fares, Uber breached its contract with Drivers and caused them financial harm. Uber denied that its implementation of the Safe Rides Fee was improper or caused Drivers any financial harm.

On March 8, 2018, the Court granted summary judgment in favor of the Drivers, determining that Uber’s acts amounted to a breach of the parties’ contracts and conversion under California law. Accordingly, each member of the class is now entitled to recover the difference between the minimum fare and the actual fare due to the application of the “Safe Rides Fees,” minus Uber’s then-prevailing percentage service fee that Drivers would have owed to Uber under the parties’ contracts for those fares once final judgment is entered.

On September 10, 2018, the parties filed a stipulation whereby the parties agreed that the certified class would be entitled to damages in an amount consistent with the Court’s previous orders, as well as 10% simple interest starting to run as of the date of each Safe Rides Fee and ending upon entry of judgment.

3. Who is a Class Member?

The Court has decided that the following people are members of the Class:

(A) All persons in the United States who (B) entered the 2013 Agreement, the June 2014 Agreement, or the November 2014 Agreement,¹ or a combination of those agreements; (C) opted-out of arbitration under the last Uber driver contract the person executed; and (D) provided at least one UberX minimum fare ride before November 16, 2015.

4. Who represents the Class?

Plaintiffs' counsel, who have been appointed to represent the class in this lawsuit, are the law firms of Crabtree & Auslander, LLC, Browne George Ross, LLP, and Morrison and Associates. Class counsel may be contacted at the address and phone number listed below.

5. How to participate in this class action?

If you fall within the definition of the Class set forth above, you are a member of the Class. **IF YOU WISH TO REMAIN A MEMBER OF THE CLASS, YOU DO NOT NEED TO DO ANYTHING AT THIS TIME.** As a Class Member, you will be bound by the judgment, whether favorable or unfavorable, in this Action. Thus, you may participate in any monetary settlement or judgment rendered in favor of the Class. At this time, although summary judgment has been entered in favor of the Class, no enforceable judgment has yet been entered in favor of the class.

You will not have the further opportunity to seek exclusion from the Class at any other time. In other words, this may be your only chance to opt out of the lawsuit. Any Class Member who does not request exclusion from the Class may enter an appearance through his or her own counsel at her or his own expense.

Appointed Class Counsel represent the Class and all of its members. Class Counsel have pursued this action on a contingent-fee basis subject to approval by the Court. Class Counsel have filed a motion seeking to be paid attorney's fees, and reimbursed costs, in an amount that is approved and ordered by the Court. Class Counsel also seek \$5,000 incentive awards on behalf of each class representative to compensate them for their time spent in this case. Uber opposed Plaintiff's motion and, as of the date hereof, the motion is under submission. In no event will individual Class Members be obligated to pay any judgment, court costs, or lawyer's fees for participating in this Action except as ordered by the Court. Unless the Court orders otherwise, all attorney's fees will be payable only by Uber—that is, the class members' recovery will not be affected by an award of attorney's fees by the Court.

¹ Part (b) refers to Uber's 2013 Transportation Provider Service Agreement, Uber's June 2014 Rasier Software Sublicense & Online Services Agreement, and Uber's November 2014 Software License and Online Services Agreement.

6. How to be excluded from the Class?

If you wish to be excluded from the Class, meaning to opt-out of the lawsuit, you must submit a request for exclusion in accordance with the instructions in the next paragraph. If you choose to be excluded: (1) you will NOT be entitled to share in any recovery from any settlement or judgment that may be paid to members of the Class; (2) you will NOT be bound by any judgment or release entered in this lawsuit; and (3) at your own expense, you MAY pursue any claims that you have by filing your own lawsuit or taking other action.

To be excluded, you must send a written request for exclusion from the Class addressed to _____. Your request must be received by _____. After that date, you may not have the right to be excluded from the Class. In order to be valid, any request for exclusion must (1) include your full name, address, and email and telephone number associated with your Driver account with Uber; (2) explicitly state your desire to be excluded from the Class in the Uber Safe Rides Fee Litigation; and (3) be signed by you.

Only request exclusion if you do NOT wish to participate in the Class Action and do NOT wish to share in any recovery that the Class may obtain.

7. How to get more information?

This notice contains only a summary of the litigation and your rights as a potential Class Member. For more detailed information regarding the matters involved in this litigation, please refer to the papers on file in this Action, which may be inspected, during business hours, at the Office of the Clerk of Court, 1301 Clay Street, Oakland, CA 94612. In addition, important documents in the case have been posted on the following website: uberdriversrfclassaction.com. Inquiries regarding this litigation may be addressed to the following Class Counsel:

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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 Case No. 4:16-cv-02499-YGR

16 CLASS ACTION

17 CHUCK CONGDON, RYAN
18 COWDEN, ANTHONY MARTINEZ,
19 JASON ROSENBERG, and JORGE
20 ZUNIGA, on behalf of themselves and
all others similarly situated,

[PROPOSED] ORDER
GRANTING PLAINTIFFS'
UNOPPOSED MOTION TO
APPROVE CLASS NOTICE

21 *Plaintiffs,*

22 *vs.*

23 UBER TECHNOLOGIES, INC.,
24 a Delaware corporation, RASIER,
25 LLC, a Delaware corporation, and
26 RASIER-CA, LLC, a Delaware corporation,

27 *Defendants.*
28

1 Plaintiffs Chuck Congdon, Ryan Cowden, Anthony Martinez, Jason Rosenberg, and Jorge
2 Zuniga, on behalf of themselves and all others similarly situated, have moved for approval of class
3 notice. On March 8, 2018, the Court certified this action as a class action under Rule 23(a) and
4 23(b)(3) of the Federal Rules of Civil Procedure and appointed Crabtree & Auslander, Browne George
5 Ross, and Morrison and Associates as class counsel. (Dkt. 133 at 19). The Court certified the
6 following class:

7 All persons in the United States who (A) entered the 2013 Agreement, the June 2014
8 Agreement, or the November 2014 Agreement, or a combination of those
9 agreements; (B) opted out of arbitration under the last Uber driver contract the
10 person executed; and (C) provided at least one minimum fare ride on the UberX
11 platform for which a Safe Rides Fee applied before November 16, 2015.

12 (Dkt. 133 at 18-19).

13 Uber has identified each member of the class and is in possession of each class member's
14 contact information, including his or her email address and cellular telephone number. Uber will
15 provide this information to a third-party claims administrator, who will then send direct notice to
16 each class member, using the notice form attached to their motion. A similar notice plan was
17 approved in *McKnight v. Uber Techs., Inc.*, No. 14-cv-05615-JST, 2017 U.S. Dist. LEXIS 124534, at
18 *5. There, class members received the Notice at the email addresses associated with their Uber
19 Rider Accounts, which the Court determined was "the best practicable notice possible." *Id.* A
20 class member may opt out of the class by sending a written request to the claims administrator
21 postmarked no later than 45 days from the date the claims administrator sends notice to each
22 class member.

23 Having considered all of the papers filed by the parties in connection with this request, the
24 papers and records on file in this action, and other matters of which the Court may properly take
25 judicial notice, the Court HEREBY ORDERS:

26 The Plaintiffs' unopposed motion to approve notice place is granted and the Court approves
27 the form of notice submitted with the motion. The notice describes the nature of the litigation;
28 sets forth the definition of the class; states the class' claims; and discloses the right of class
members to exclude themselves from the class, as well as the deadline and procedure for doing so,
and warns of the binding effect on class members who do not exclude themselves. The Court also
approves the procedure for Class Members to exclude themselves from the class.

The Court sets the following schedule:

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Event	Date
Deadline for Publishing Notice	[15 days after the Court’s approval of the proposed notice plan]
Deadline for Class Members to Request Exclusion from the Class	[45 days from date that notice is provided to the class members]
Deadline for Claims Administrator to Submit Declaration to the Court Describing Notification Efforts and All Exclusion Requests	[20 days from the final day that class members can seek exclusion from the class]

IT IS SO ORDERED.

Dated:

 HON. YVONNE GONZALEZ ROGERS
 United States District Court Judge