SHANNON LISS-RIORDAN (SBN 310719)
sliss@llrlaw.com
ANNE KRAMER (SBN 315131)
(akramer@llrlaw.com)
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
Telephone: (617) 994-5800
Facsimile: (617) 994-5801

Attorneys for Plaintiffs and the Settlement Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROBINA CONTRERAS, GABRIEL ETS-HOKIN,

Plaintiffs,

v.

ZŪM SERVICES, INC.,

Defendant.

Case No. 19STCV43062

NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARD

Hearing Date: March 25, 2022
Hearing Time: 9:00 am

Complaint Filed: November 27, 2019
TRIAL DATE: NONE SET

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. March 25, 2022, or as soon thereafter as the matter can be heard, in Department 51 of the Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles, CA 90012, Plaintiffs Robina Contreras and Gabriel Ets-Hoken will move for an order awarding attorneys' fees, litigation expenses, and the Plaintiffs' service awards.

This Motion is brought in accordance with the Court's Preliminary Approval Order, and said Motion will be based on this notice, the accompanying points and authorities, the Declarations filed herewith, the Class Action Settlement Agreement, and the complete files and records in this action.

Because all parties have agreed to the proposed class settlement, this motion is not opposed by Defendant.

Dated: February 21, 2022

LICHTEN & LISS-RIORDAN, P.C.

By: _____
Shannon Liss-Riordan

Attorney for Plaintiff ROBINA CONTRERAS, GABRIEL ETS-HOKEN and the Settlement Class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. INTRODUCTION

Pursuant to the terms of the Parties' Settlement Agreement, Plaintiffs seek 33% of the settlement fund for attorneys' fees and costs, as well as a class representative service award of $10,000 each for the two named plaintiffs, as described further below. To date, no class members have submitted objections or opted out of the settlement among a class of roughly 4,200 settlement class members, which weighs strongly in favor of the Court's approval.[1] Moreover, the California Supreme Court has approved a fee award of one-third in other multi-million dollar settlements, noting that "an award of one-third the common fund was in the range set by other class action lawsuits" and noting that contingency-based attorneys' fees in class action cases (with or without lodestar cross-check) are acceptable in California and are supported by public policy considerations. *See Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal. 5th 480, 488 (approving one-third fee request out of $19 million settlement).

Plaintiffs submit that their request for attorneys' fees here is further justified by the substantial monetary benefits conferred by the settlement, particularly given the uncertainty and risk as to whether this case could have proceeded as a class action due to Zum's arbitration provision, as well as Plaintiffs' counsel's efficiency in obtaining this settlement, which, as described in greater detail below, was made possible by their tremendous effort aggressively litigating against other gig economy companies for years in a host of very similar cases, including other ridesharing services like Uber and Lyft. *See* Liss-Riordan Decl. ISO Mot. for Attnys Fees at ¶¶ 8-15 (describing firm's extensive and cutting-edge litigation against a host of gig economy companies); *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2015) 82 F. Supp. 3d 1133 (denying motion for summary judgment in the first, high-profile case challenging "gig

[1] *See, e.g.*, *Thieriot v. Celtic Ins. Co.* (N.D. Cal., Apr. 21, 2011) 2011 WL 1522385, *6 ("that no members of the 390–person class objected to the proposed 33% fee award—which was also communicated in the notice—supports an increase in the benchmark rate."); *Kifafi v. Hilton Hotels Ret. Plan*, (D.D.C. 2013) 999 F. Supp. 2d 88, 101 (finding that the "small number of objections [five objections out of almost 23,000 class members] weighs in favor of the requested fee").

economy" company's classification of its workers as independent contractors); *see also Mazola v. The May Department Stores Co.* (D. Mass. Jan. 27, 1999) 1999 WL 1261312, *2 (noting that the "percentage of the common fund" approach "may be appropriate for the counsel that innovated the cause of action, and took all the risks," in contrast to "counsel that takes advantage of the efforts of others who have . . . done the 'spadework'") (citing *Conley v. Sears, Roebuck & Co.* (D. Mass. 1998) 222 B.R. 181, 188).

Indeed, Class Counsel submits that the very favorable terms reached here were made possible by counsel's tremendous efforts in other similar cases over the last eight years that have been closely watched throughout the "gig economy." Indeed, counsel believes it was due to their substantial experience and reputation in this area, and particular expertise (spanning more than a decade) in cases challenging independent contractor misclassification in a variety of industries, that led the defendant to agree to such a result at this point in the litigation. Moreover, Class Counsel are known for their willingness to take cases to trial, including a number of class action wage cases that they have successfully tried to judges and juries – a rarity in this area of law.[2] Due to counsel's extensive efforts and experience, class members will be receiving substantial relief in this case without significant delay or risk.

Plaintiff's fee request is also consistent with fee requests approved by California courts, including the California Supreme Court, *see Laffitte*, *supra* (approving one-third contingency fee request from $19 million settlement fund); *In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 457–58, 463 (upholding fee award of 33.3% of settlement); *Bickley v. Schneider Nat. Carriers, Inc.* (N.D. Cal. Oct. 13, 2016) 2016 WL 6910261 (awarding one-third of $28 million settlement fund); *Marshall v. Northrop Grumman Corporation* (C.D. Cal., Sept. 18, 2020) 2020 WL 5668935, *appeal dismissed* (9th Cir., Feb. 16, 2021) 2021 WL 1546069

[2] Indeed, counsel brought the first (and only, to date) misclassification case to trial against another "gig economy" company, GrubHub Inc. *See Lawson v. Grubhub, Inc.* (N.D. Cal. 2018) 302 F.Supp.3d 1071, *vacated and remanded* (9th Cir., Sept. 20, 2021, No. 18-15386) 2021 WL 4258826. That litigation is still ongoing as the Ninth Circuit recently reversed the verdict in GrubHub's favor.

(awarding one-third of $12.375 million settlement fund); *Waldbuesser v. Northrop Grumman Corp.* (C.D. Cal., Oct. 24, 2017) 2017 WL 9614818 (awarding one-third of $16.75 million settlement fund); *see also Marchbanks Truck Service, Inc. v. Comdata Network, Inc.* (E.D. Pa., July 14, 2014) 2014 WL 12738907 (awarding one-third of $130 million settlement fund plus costs); *Lusby v. GameStop Inc.* (N.D. Cal. Mar. 31, 2015) 2015 WL 1501095, *9 (in wage and hour action, awarding fees in the amount of one-third of common fund); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, *8 (same); *Burden v. SelectQuote Insurance Services* (N.D. Cal. Aug. 2, 2013) 2013 WL 3988771, *4 (same); *Barbosa v. Cargill Meat Solutions Corp.* (E.D. Cal. 2013) 297 F.R.D. 431, 450 (same); *Barnes et al., v. The Equinox Group*, (N.D. Cal. Aug 2, 2013) 2013 WL 3988804, *4; (same); *Hightower v. JPMorgan Chase Bank, N.A.* (C.D. Cal. 2015) 2015 WL 9664959, *11 (approving 30% fee request in part because "the risk of no recovery for Plaintiffs, as well as for Class Counsel, if they continued to litigate, were very real"); *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) 2010 WL 1687829, *2 (approving 30% fee request and emphasizing "Class Counsel prosecuted this case on a purely contingent basis, agreeing to advance all necessary expenses, knowing that they would only receive a fee if there were a recovery"); *In re Nuvelo, Inc. Sec. Litig.* (N.D. Cal. July 6, 2011) 2011 WL 2650592, *2 (approving 30% fee request and noting "[i]t is an established practice to reward attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all"); *Kanawi v. Bechtel Corp.* (N.D. Cal. Mar. 1, 2011) 2011 WL 782244, *2 (approving 30% fee request and reasoning "[s]uch a practice encourages the legal profession to assume such a risk and promotes competent representation for plaintiffs who could not otherwise hire an attorney").

Plaintiffs emphasize the importance of contingency fee awards in encouraging plaintiffs' attorneys to file and litigate – efficiently – cases of importance, particularly those on behalf of lower-wage workers, and particularly those cases that are risky and uncertain. Because not

every such case results in a fee award, fees that are awarded on a contingency basis from common fund settlements are essential for the continued prosecution of cases like this one and the ability of firms to maintain a practice representing low wage workers on contingency who are not able to afford paying attorneys' fees. *See Fleury v. Richemont N. Am., Inc.* (N.D. Cal. Apr. 14, 2009) 2009 WL 1010514, *3 ("Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.... [i]f this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing") (internal citation omitted). As set forth at length in the accompanying Declaration of Shannon Liss-Riordan, it is through the award of contingency fees from cases that have succeeded, or resolved at an early stage successfully, that have made possible Class Counsel's practice on behalf of low wage workers.

Plaintiff also requests a class representative service award of $10,000 each for the two named plaintiffs in this case. In addition to their important contributions to the case, the request is also justified because merely associating their names with a high-profile lawsuit such as this one, created risk of being black-balled in the "gig economy" industry and beyond. The requested service award is also reasonable and in line with incentive awards approved by California courts. *See*, *e.g.*, *Garner v. State Farm Mut. Auto. Ins. Co.,* (N.D. Cal. 2010) 2010 WL 1687832, at *17 n.8 ("Numerous courts in the Ninth Circuit and elsewhere have approved Service awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class") (collecting cases); *Meewes v. ICI Dulux Paints,* (L.A. Cnty. Super. Ct. Sept. 19, 2003) No. BC265880 (approving service awards of $50,000, $25,000 and $10,000 to the named Plaintiffs); *Hickcox-Huffman v. US Airways, Inc.* (N.D. Cal., Apr. 11, 2019) 2019 WL 1571877, at *2 (approving $10,000 incentive payment for class action

representative plaintiff as "fair and reasonable"); *Noroma v. Home Point Financial Corporation* (N.D. Cal., Nov. 6, 2019) 2019 WL 5788658, at *10 (awarding incentive payments of $10,000 and $5,000 respectively to named plaintiffs); *Pointer v. Bank of America, N.A.* (E.D. Cal., Dec. 21, 2016) 2016 WL 7404759, at *20 (approving $10,000 incentive payment); *Murillo v. Pacific Gas & Elec. Co.* (E.D. Cal., July 21, 2010) 2010 WL 2889728, at *12 (same); *Groves v. Maplebear dba Instacart* (Sept. 2, 2020 L.A. Sup. Ct.) BC695401 (approving incentive payments ranging from $20,000 to $1,000 for named plaintiffs).

II. LEGAL STANDARD

Many of the Labor Code sections asserted by Plaintiff contain mandatory payments of attorneys' fees and costs to successful plaintiffs.[3] Further, California has long recognized, as an exception to the general American rule that parties bear the costs of their own attorneys, the propriety of awarding attorneys' fees to a party who has recovered or preserved a monetary fund for the benefit of himself or herself and others. *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal. 5th 480, 488–89. In the context of class action litigation, attorneys' fees may properly be awarded pursuant to the common fund doctrine when a class settlement agreement establishes a relief fund from which the attorneys' fees are to be drawn. *Id.* Under the terms of this class action settlement agreement, Plaintiffs move for an award of attorneys' fees and costs in the amount of 33% of the settlement fund, or $633,333. *See* Agreement at ¶ 2.3. This request is in line with the historic benchmark for fees in common fund cases, and in line with the Supreme Court's decision in *Laffitte*, approving a one-third of common fund fee award. *See Laffitte, supra,* at 485. As set forth further below, this Court has significant discretion regarding whether

[3] For example, Labor Code section 1194 states: "[A]ny employee receiving less than the legal minimum wage or the legal overtime compensation… is entitled to recover...reasonable attorneys' fees, and costs of suit." Similarly, Labor Code section 2802 states: "All awards made by a court for reimbursement of necessary expenditures…shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Thus, some award of attorneys' fees is mandatory. *Kim v. Euromotors West* (2007) 149 Cal.App.4th 170, 177.

or not to use a lodestar cross-check at all in determining the reasonableness of a requested percentage fee. *Id.* at 506.

III. DISCUSSION

A. The California Supreme Court Has Endorsed the Use of a Percentage Approach to Award Attorneys' Fees in Class Action Wage and Hour Cases

In *Laffitte*, *supra*, the California Supreme Court joined the "overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Id* at 503. In so doing, the Court described the "recognized advantages of the percentage method," including "ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." *Id*

The vast majority of Ninth Circuit and other federal courts are in accord. *See Aichele v. City of Los Angeles* (C.D. Cal. Sept. 9, 2015) 2015 WL 5286028, *5 ("Many courts and commentators have recognized that the percentage of the available fund analysis is the preferred approach in class action fee requests because it more closely aligns the interests of the counsel and the class, *i.e.*, class counsel directly benefit from increasing the size of the class fund and working in the most efficient manner.").[4]

[4] *See also Knight v. Red Door Salons*, *Inc.* (N.D. Cal. Feb. 2, 2009) 2009 WL 248367, *5 ("use of the percentage method in common fund cases appears to be dominant") citing *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047; *In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1374–77 (collecting authority and describing benefits of the percentage method over the lodestar method); *Morales v. Conopco, Inc.* (E.D. Cal., 2016) 2016 WL 6094504, *7 ("Because of the ease of calculation and the pervasive use of the percentage of recovery method in common fund cases, the court thus adopts this method."); *Swedish Hospital Corp. v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1271 ("a percentage of the fund method is the appropriate mechanism for determining the attorney fees award in common fund cases"); *Camden I Condominium Association v. Dunkle* (11th Cir. 1991) 946 F.2d 768, 774 ("we believe that the percentage of the fund approach is the better reasoned in a common fund case").

One of the principle advantages of the percentage approach for awarding attorneys' fees in class action litigation is that it is result-oriented, thereby promoting the more efficient use of attorney time and resources, rather than encouraging attorneys to prolong litigation in order to inflate their recoverable hours. *See In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.* (1st Cir. 1995) 56 F.3d 295 ("[U]sing the [percentage of fund] method . . . enhances efficiency, or, put in the reverse, using the lodestar method in such a case encourages inefficiency. Under the latter approach, attorneys not only have a monetary incentive to spend as many hours as possible (and bill for them) but also face a strong disincentive to early settlement"). Similarly, the percentage method better approximates the workings of the marketplace by ensuring that attorneys receive compensation for the true value of their services and skills. *Id.* at 307 ("Another point is worth making: because the [percentage of fund] technique is result-oriented rather than process-oriented, it better approximates the workings of the marketplace . . . the market pays for the result achieved") (quoting *In re Continental Ill. Sec. Litig.* (7th Cir. 1992) 962 F.2d 566, 572).

Cases which result in *no* recovery also demonstrate why the percentage approach is essential to plaintiff-side firms that engage in contingency practice on behalf of low-wage workers: for every successful case, there are always others that will be vigorously pursued for years only to result in no recovery or diminished recovery for the class or counsel. *See* Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶¶ 19-20. Indeed, Plaintiffs' counsel has spent years litigating other cases on behalf of workers without compensation, at considerable expense. *Id.* In the practice of their contingency work, Plaintiffs' counsel's firm has also advanced millions of dollars in out-of-pocket expenses, much of which have not been repaid, to pursue litigation on behalf of workers in various types of employment cases, including wage, tips, misclassification, and discrimination cases. *Id.* at ¶ 19.

To name just a few examples:

- Plaintiffs' counsel has litigated many cases in the gig economy as described further below, sometimes over the course of many years and for thousands of hours, only to see their efforts erased with the stroke of a pen. In *O'Connor v. Uber Techs. Inc.*, Civ. A. No. 13-3826-ECM (N.D. Cal.), Class counsel Lichten & Liss-Riordan PC litigated a class action on behalf of Uber drivers for misclassification and related Labor Code violations, defeating Uber's two summary judgment motions and engaging in months of extensive briefing regarding arbitration issues and class certification, resulting in the certification of a class of hundreds of thousands of drivers. On the eve of trial, counsel reached a $100 million settlement to resolve the claims of the certified class as well as PAGA claims against the company. After a number of competing counsel filed objections to the settlement, the court did not approve it. Several months later, the Ninth Circuit decertified the class, leaving all but a tiny fraction of the proposed settlement class bound by individual arbitration agreements. Counsel eventually settled on behalf of a much smaller class of drivers, but the firm's lodestar in that settlement exceeded the fee award (and hundreds of thousands of Uber drivers missed out on a chance at recovery) because of the Ninth Circuit's decision, underscoring the incredible risk under which Plaintiffs' contingency practice operates.

- Over the last eight years, Plaintiffs' counsel has litigated many other cases against "gig economy" companies for misclassifying workers as independent contractors for which the firm has received, and are likely to receive, no or very little compensation. For example, in two such cases *Taranto, et al. v. Washio, Inc.*, (S.F. Super. Ct.) No. CGC-15-546584 and *Iglesias v. Homejoy, Inc.* (N.D. Cal.) No. 15-cv-01286-EMC, the companies shut down during the litigation, leaving the workers with no or little payment for their claims and Plaintiffs' counsel with no or little reimbursement for fees and expenses.

- Plaintiffs' counsel spent several years litigating on behalf of Boston and Chicago cab drivers, alleging that they have been misclassified as independent contractors under state law. In the litigation on behalf of the Boston cab drivers, the trial court ruled that the plaintiffs were likely to succeed on the merits of their claims and entered an injunction against the transfer of assets by the owner of Boston Cab Dispatch, an order that was worth more than $200 million, which was affirmed on appeal. *See Sebago v. Tutunjian* (2014) 85 Mass. App. Ct. 1119. That result was, however, unexpectedly reversed on appeal to the Massachusetts Supreme Judicial Court, *Sebago v. Boston Cab Dispatch, Inc.* (2015) 471 Mass. 321, and that entire litigation, including many hundreds of hours of attorney time, went uncompensated. Similarly, the litigation on behalf of Chicago cab drivers was unsuccessful, and the firm was not compensated for that work either. *See Enger v. Chicago Carriage Cab Co.* (N.D. Ill. 2014) 77 F. Supp. 3d 712, *aff'd*, (7th Cir. 2016) 812 F.3d 565.

- Likewise, Plaintiffs' counsel's firm has advanced many hundreds of thousands of dollars in expert expenses and incurred thousands of hours of unpaid attorney time for cases challenging discrimination in promotional exams for police officers in Massachusetts. Although the firm was successful at trial in an earlier case challenging entry level exams for firefighters and police officers, *see Bradley v. City of Lynn* (D.

Mass. 2006) 443 F. Supp. 2d 145, a follow-up case that spanned nearly a decade of work, *Lopez v. City of Lawrence, Massachusetts* (D. Mass. June 11, 2010) 2010 WL 2429708, *1, was lost, and the judgment against the plaintiffs was affirmed on appeal, *see* (1st Cir. May 18, 2016) 2016 WL 2897639.

Id. at ¶ 19.

These cases demonstrate why a percentage-of-the-fund approach is essential to plaintiff-side firms that engage in contingency practice on behalf of low-wage workers; for every successful case, there are always others that will be vigorously pursued for years only to result in no recovery for the class or counsel. In sum, a plaintiffs-side contingency practice on behalf of low wage workers who could not afford to pay out-of-pocket for counsel, such as Plaintiffs' counsel's firm, is made possible by the nature of contingency fee work. Thus, in considering the fairness and reasonableness of the proposed attorneys' fees in this case, the Court should consider the nature of Plaintiffs' counsel's practice, which is only made possible by this contingency fee structure.

B. Counsel's Request for one-third of the Fund for Attorneys' Fees is Presumptively Reasonable

As noted above, courts in California have consistently approved a request for one-third of the common fund. *See, e.g., In re Cal. Indirect Purchaser X-Ray Film Antitrust Litig.* (1998) (Sup. Cr. Alameda Cty.) 1998 WL 1031494, *9 (awarding 30 percent of common fund as attorneys' fee and collecting California cases where fee awards constituted 30 to 45 percent of common fund); *see also* cases cited *supra*, pp. 2-3. "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 65, n. 11 (citation omitted); *see also Cotchett, Pitre* & *McCarthy* v. *Universal Paragon Corp.* (2010) 187 Cal. App. 4th 1405, 1421 (contingency fees typically range from 33 to 40 percent of class benefit); *see also Laffitte, supra,* 1 Cal.5th at 485 (approving a one-third of common fund settlement.); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., 2007) 2007 WL 3492841, *4 (in wage and hour action, stating "fee awards in class actions average around one-third of the recovery" and awarding fees in that amount) (citing 4 Newberg and Conte, Newberg on Class

Actions § 14.6 (4th ed. 2007)); *In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 457–58, 463 (upholding fee award of 33.3% of settlement); *see also Lusby*, 2015 WL 1501095 at *9 (in wage and hour action, awarding fees in the amount of one-third of common fund); *Singer,* 2010 WL 2196104 at *8 (same); *Burden,* 2013 WL 3988771 at *4 (same); *Barbosa,* 297 F.R.D. at 450 (same); *Barnes*, 2013 WL 3988804 at *4 (same). Indeed, "a 33% contingent fee of the total recovery is on the low end of what is typically negotiated *ex ante* by plaintiffs' firms taking on large, complex cases analogous to [this one]." *Young v. Cty. of Cook* (N.D. Ill. Sept. 20, 2017) 2017 WL 4164238, at *6. As such, "one-third of the common fund is a reasonable reflection of the hypothetical market price of [class counsel's] services in this case…[and], there is no need to cross-check this percentage against the lodestar." Id. (awarding fees of one-third of $32.5 million common fund). Thus, Plaintiffs submit the request for attorneys' fees of one-third of the common fund is reasonable.

C. Other Factors Support Plaintiffs' Request for Fees

There is no definitive set of factors California courts require to be considered in determining the reasonableness of an attorneys' fees award; however, federal courts assessing fee requests under California standards have utilized factors including: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *See Hendricks v. Starkist Co*. (N.D. Cal., Sept. 29, 2016) 2016 WL 5462423, *11 *citing Vizcaino*, 290 F.3d at 1048-50. Other courts have additionally considered (6) reactions from the class; and, if it so chooses, (7) a lodestar cross-check. *See Barnes v. The Equinox Group, Inc.* (N.D. Cal. 2013) 2013 WL 3988804, *4.

1. The Monetary and Non-Monetary Results Achieved by this Settlement Support Plaintiffs' Request

"When determining the value of a settlement, courts consider the monetary and non-monetary benefits that the settlement confers." *Taylor v. Meadowbrook Meat Company, Inc.* (N.D. Cal., 2016) 2016 WL 4916955, *5

Here, the settlement provides $1,900,000 to the settlement class of approximately 4,200 drivers who contracted with Zum. After deductions for a payment to the Labor and Workforce Development Agency ("LWDA") ($112,500), the Settlement Administrator ($42,000), Class Counsel ($633,333), and a service awards to the named Plaintiffs ($20,000), the balance of the settlement will be distributed to class members in proportion to the total mileage driven during the class period (and PAGA period). *See* Agreement at ⁋⁋ 2.4, 2.20, 2.31, 2.33, 5.3. Importantly, *no funds will revert to Defendant* – any funds from uncashed checks will be redistributed to class members who cashed their checks and whose second share would be greater than $40, and any leftover funds following this residual distribution will go to *cy pres*, the Workers' Rights Clinic of Legal Aid at Work. *Id.* at ⁋⁋ 5.5, 10.5

Significantly, Plaintiffs and their counsel have achieved this substantial relief for Class Members relatively quickly, which would not have been possible without their significant experience litigating independent contractor misclassification cases, including their widely recognized work in cases against gig economy companies. *See* Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ⁋⁋ 8-15. As discussed herein and in counsel's declaration, counsel's extensive experience litigating wage and hour cases and particular specialization in misclassification cases in the gig economy, contributed to counsel's ability to leverage a favorable result in this case. *See Sproul v. Astrue* (S.D. Cal. Jan. 30, 2013) 2013 WL 394056, *2 ("Courts are loathe to penalize experienced counsel for efficient representation…"). *Id.* at ⁋⁋ 6-18.

2. The Risk of Litigating this Case Were Substantial

There are many risks inherent in litigating a class action – class certification, arbitration provisions, a decision on the merits, and potential appeals are all issues that can result in no recovery whatsoever to class members or class counsel. *See Parkinson v. Hyundai Motor Am.* (C.D. Cal. 2010) 796 F. Supp. 2d 1160, 1166 ("The most important factor is the risk of

nonpayment, which was significant in this contingency class action"). For this reason, courts routinely find that this factor supports a higher fee request.[5]

In this case, Plaintiff, class members, and their counsel faced all of these risks, every one of which could have resulted in no recovery whatsoever. Perhaps most notable was the risk that Plaintiffs' claims would be compelled to individual arbitration and they would therefore be unable to even attempt to represent a class, particularly in light of recent caselaw from the U.S. Supreme Court. *See Epic Systems Corp. v. Lewis* (2018) 138 S.Ct. 1612. While Plaintiffs would still have been able to pursue representative PAGA claims under *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 386, *cert. denied*, (2015) 135 S. Ct. 1155, Zum would have challenged that those claims were manageable on a representative basis. Additionally, given the Supreme Court's recent decision to grant certiorari in *Viking River Cruises, Inc. v. Moriana*, (U.S. Dec. 15, 2021) No. 20-1573, 2021 WL 5911481, at *1, it is possible that Plaintiffs' ability to bring even their PAGA cause of action would have been in doubt, and the action might have been stayed pending the outcome in *Moriana*, resulting in further indefinite delay for Zum drivers.

[5] *See Hightower v. JPMorgan Chase Bank, N.A.* (C.D. Cal. 2015) 2015 WL 9664959, *11 (approving 30% fee request in part because "the risk of no recovery for Plaintiffs, as well as for Class Counsel, if they continued to litigate, were very real"); *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) 2010 WL 1687829, *2 (approving 30% fee request and emphasizing "Class Counsel prosecuted this case on a purely contingent basis, agreeing to advance all necessary expenses, knowing that they would only receive a fee if there were a recovery"); *In re Nuvelo, Inc. Sec. Litig.* (N.D. Cal. July 6, 2011) 2011 WL 2650592, *2 (approving 30% fee request and noting "It is an established practice to reward attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all"); *Kanawi v. Bechtel Corp.* (N.D. Cal. Mar. 1, 2011) 2011 WL 782244, *2 (approving 30% fee request and reasoning "[s]uch a practice encourages the legal profession to assume such a risk and promotes competent representation for plaintiffs who could not otherwise hire an attorney"); *Bellinghausen v. Tractor Supply Company* (N.D. Cal. 2015) 306 F.R.D. 245, 261 (noting that "when counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award"); *Hensley v. Eckerhart* (1983) 461 U.S. 424, 448 (noting that "[a]ttorneys who take cases on contingency, thus deferring payment of their fees until the case has ended and taking upon themselves the risk that they will receive no payment at all, generally receive far more in winning cases than they would if they charged an hourly rate").

Furthermore, although the *Dynamex* decision was codified into statutory law through the legislature's enactment of Assembly Bill 5, there is still considerable ongoing litigation regarding issues pertaining to the *Dynamex* decision and its statutory codification that present substantial risk to Plaintiffs' and the class members' recovery in this case. These questions include what Labor Code claims *Dynamex* applies to (prior to January 1, 2020) as the decision specifically declined to address whether it applies to expense reimbursement claims. Instead, courts have noted that *Dynamex's* ABC test applies to "Wage Order" claims. Confusion regarding which claims constitute claims arising from the Wage Order was likely to be the subject of considerable debate between the parties in this case. There is also litigation regarding the "hiring entity" language in *Dynamex*, and Cal. Lab. Code § 2775. Many defendants have argued that they do not qualify as a "hiring entity" in an attempt to avoid application of the "ABC test" under Cal. Lab. Code § 2775. Here, Zum intended to argue that the parents of children being transported by drivers are the hiring entity of the settlement class members, not Zum. While Plaintiffs believe the claims here are strong under *Dynamex* and Lab. Code § 2775, it was possible that a Court would agree with Zum and conclude that the ABC test set forth in *Dynamex* and/or AB 5 did not apply or did not apply to certain claims brought by Plaintiffs.

Moreover, even if *Dynamex* did apply and the PAGA claim proceeded expeditiously (without an appeal), there would be the significant risk that any potential penalties would have been greatly reduced by the Court to a fraction of what might have been recovered as damages, given a potential finding that Zum classified class members as independent contractors in good faith or that the higher penalty amounts were confiscatory. Courts have abundant discretion to reduce PAGA penalties. *See* Cal. Lab. Code § 2699 (e)(2).[6] Even without the risks outlined above, absent this settlement, class members would run the risk of losing on the merits at trial or on appeal or of not being able to recover on a judgment.

[6] *See also Harris v. Radioshack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645, *3-4; *Fleming v. Covidien Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *3-4; *Makabi v. Gedalia* (Cal. Ct. App. Mar. 2, 2016) 2016 WL 815937, at *2 & n.3 (unpublished).

3. Counsel Have Unrivaled Background in this Field of Law

Prosecuting class actions requires an "extraordinary commitment of time, resources, and energy from Class Counsel," and, many times, settlements "simply [are not] possible but for the commitment and skill of Class Counsel." *Garner*, 2010 WL 1687829, at *2. This is particularly so where a "case was wholly without precedent, raised numerous novel and complex issues of both law and fact, and required a considerable effort from Class Counsel simply to be in a position to file suit, let alone to litigate this case successfully." *Id.*

Here, Counsel's work on the cutting edge of wage-hour class actions, with a specialty in cases involving independent contractor misclassification and arbitration clauses in the gig economy, made this settlement possible. *See* Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶¶ 6-18. As described in her Declaration, Attorney Shannon Liss-Riordan has been recognized as the preeminent plaintiff-side lawyer nationally challenging the gig economy for its misclassification of workers. She has been featured by many major publications and has received widespread recognition for her accomplishments representing low wage workers in a variety of industries.[7] Ms. Liss-Riordan's firm is well known as one of the preeminent employee-side firms engaged nationwide in this area of practice. For example, Plaintiffs' counsel, Shannon Liss-Riordan, was the *first* to challenge misclassification in the gig economy industry in the landmark case, *O'Connor v. Uber* (N.D. Cal.) Civ. A. No. 13-3826, filed in August 2013, more than eight years ago. There, Plaintiffs defeated two separate summary judgment motions filed by Uber, under the more difficult *Borello* standard for misclassification.

[7] These publications include San Francisco Magazine (Exhibit A to Liss-Riordan Declaration), the Los Angeles Times (Exhibit B), the Wall Street Journal (Exhibit C), the ABA Journal (Exhibit D), the Recorder (Exhibit E), Mother Jones (Exhibit F), Politico (Exhibit G), the Boston Globe (Exhibits H and I), and Law360 (Exhibit J). Last year she was selected by Benchmark Litigation as the national Labor & Employment Employee-Side Attorney of the Year. Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶ 7. San Francisco Magazine wrote a profile on her several years ago stating "Liss-Riordan has achieved a kind of celebrity unseen in the legal world since Ralph Nader sued General Motors." *See* Ex. A to Liss-Riordan Decl.

See O'Connor v. Uber Techs., Inc. (N.D. Cal. 2015) 82 F. Supp. 3d 1133 (denying summary judgment to Uber on misclassification issue; *O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2015) Civ. A. No. 13-3826, Dkt. 499 (denying partial summary judgment on Plaintiffs' claim under Cal. Lab. Code § 351). Counsel also litigated the enforceability of Uber's arbitration clause, winning a significant victory that Uber's arbitration clause was not enforceable and thereafter obtaining certification of a class of hundreds of thousands of drivers. *O'Connor v. Uber Technologies, Inc.* (N.D. Cal., Sept. 1, 2015) 2015 WL 5138097, at *1; *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2015) 311 F.R.D. 547. That ruling was overturned on appeal, *see O'Connor v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087, after the court declined to approve the $100 million settlement she had negotiated. *See* Liss-Riordan Decl. ISO Mot. for Attny's Fees at ¶¶ 8, 10, 19. More recently, the firm has litigated another class action on behalf of Uber drivers and obtained certification of a class of Uber drivers who opted out of arbitration. *See James v. Uber Technologies Inc.* (N.D. Cal. 2021) 338 F.R.D. 123, 129.

Plaintiffs' counsel, Lichten & Liss-Riordan PC, has also litigated dozens of high-profile cases against other gig economy companies like Lyft, GrubHub, Instacart, Postmates, Handy, Rev, and many others, both in California and across the country. *See* Liss-Riordan Decl. ISO Mot. for Attnys Fees at ¶¶ 8-16. The firm was the first, and only to date, to pursue the misclassification claims all the way to trial. *See Lawson v. Grubhub, Inc.* (N.D. Cal. 2018) 302 F.Supp.3d 1071, *vacated and remanded* (9th Cir., Sept. 20, 2021, No. 18-15386) 2021 WL 4258826. In September, the Ninth Circuit vacated the verdict in GrubHub's favor. *See* Liss-Riordan Decl. ISO Mot. for Attny's Fees at ¶ 10. This litigation in particular was illustrative of what alternative Zum faced if it opted not to settle these claims and to fight them out in court -- namely, a years-long battle against a tenacious firm that is not afraid to take these cases to trial or on appeal. In sum, counsel's skill and extensive experience in this area of law allowed her to leverage a relatively early settlement in this case. Counsel's extensive experience and work on

other cases against other gig economy companies, coupled with a willingness to take on and aggressively pursue risky cases like this one, justifies Plaintiffs' fee request.

4. Counsel Incurred a Financial Burden in Litigating this Case on a Contingency Fee Basis

The contingent nature of litigating a class action and the financial burden assumed typically justifies a higher percentage of the fund as well since counsel litigates with no payment and no guarantee that the time or money expended will result in any recovery.[8] As with virtually all work handled by Plaintiffs' counsel's firm, counsel accepted this case on a fully contingent arrangement, with no payment up front, and have borne the expenses, costs, and risks associated with litigating this case. Plaintiffs' attorneys who accept cases on contingency often spend years litigating cases (typically while incurring significant out-of-pocket expenses for experts, transcripts, document production, mediator fees, and so forth), without receiving any ongoing payment for their work. Sometimes fees and expenses are recovered; other times, nothing is recovered. As discussed *supra*, Plaintiffs' counsel has litigated many cases for years, at times winning in the trial court, only to lose on appeal and receive nothing for thousands of hours of work. As noted in *Vizcaino* and other cases, substantial fee awards encourage counsel to take on risky cases on behalf of clients who cannot pay hourly rates and would therefore not otherwise have realistic access to courts. That access is particularly important for the effective enforcement of public protection statutes, such as the wage laws at issue here. Thus, "private suits provide a significant supplement to the limited

[8] *See Bower v. Cycle Gear Inc.* (N.D. Cal. 2016) 2016 WL 4439875, *7 (awarding 30% of common fund for fees and noting that counsel had litigated the action for almost two years with no payment and no guarantee of recovery); *see also Hendricks*, 2016 WL 5462423, at *12 (finding that enhancement from 25% benchmark was warranted because class counsel carried a substantial financial burden both in advancing out-of-pocket costs and in representing plaintiff and the class members on a contingency basis); *see also Hightower v. JPMorgan Chase Bank, N.A.* (C.D. Cal. 2015) 2015 WL 9664959, *10 ("any law firm undertaking representation of a large number of affected employees in wage and hour actions inevitably must be prepared to make a tremendous investment of time, energy, and resources with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.") (internal quotations omitted) *citing Vizcaino*, 290 F.3d at 1051 ("attorneys whose compensation depends on their winning the case must make up in compensation in the cases they win for the lack of compensation in the cases they lose").

resources available to [government enforcement agencies] for enforcing [public protection] laws and deterring violations." *Reiter v. Sonotone Corp.* (1979) 442 U.S. 330, 344. By incentivizing plaintiffs' attorneys to take on risky, high-stakes, and important litigation, and devote themselves to it aggressively and fully, fee awards serve an important purpose and extend the access of top legal talent to constituencies such as low-wage workers who would otherwise never be able to confront large corporations such as Zum, who are themselves represented by top-rated and top-billing attorneys. The fees awarded in this case will be used to support future cases on behalf of workers in California, as well as providing compensation for counsel for past and future cases where the risks result in no reward.

5. The Reaction of the Class (or Lack Thereof) Supports Plaintiffs' Fee Request

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528–29.

Here, more than 4,177 Class Members were sent notice of the settlement, and to date, not a single class members has objected (or even requested exclusion from the settlement). While the deadline has not passed yet for class members to lodge objections, this factor to date weighs in favor of Plaintiffs' request. *See In re Cendant Corp., Derivative Action Litig.* (D.N.J. 2002) 232 F. Supp. 2d 327, 338 ("the extremely small number of complaints that have arisen regarding the proposed attorneys' fees in the Settlement Agreement [six objections out of more than 200,000 class members]…weighs in favor of approval of the requested attorneys' fees."); *Kifafi*, 999 F. Supp. 2d at 101 (the "small number of objections [five objections out of almost 23,000 class members] weighs in favor of the requested fee").

6. A Lodestar Cross-Check, if Applied, Supports Plaintiffs' Fee Request

California courts have the discretion to employ (or decline to employ) a "lodestar cross-check" on a request for a percentage of the fund fee award. *Laffitte*, 1 Cal. 5th at 505. However, as noted before, the California Supreme Court in *Laffitte* has now made clear that this cross-

check is not required. *Id.* Plaintiffs submit that a cross-check is not necessary in this case, as it is recognized that the lodestar cross-check can reward unnecessary overbilling, inflation of timekeeping records, and inefficient litigation. *See Albion Pac. Prop. Res., LLC v. Seligman* (N.D. Cal. 2004) 329 F. Supp. 2d 1163, 1170-71 (noting that "[a] fee applicant should neither be rewarded for hiring expensive legal counsel nor penalized for hiring more efficient legal counsel. Thus, if a fee applicant can demonstrate that its attorneys billed fewer hours than reasonably competent counsel would have billed, the fee applicant should be reimbursed at an above-average hourly rate"). In a case like this one, where counsel achieves a relatively early settlement, they should not be penalized for having efficiently litigated the case.[9]

Plaintiffs have submitted a declaration attesting to the estimated number of hours Lichten & Liss-Riordan PC have spent on this litigation and anticipate spending on the litigation in the coming months, including contemporaneous billing records for most of their attorneys. *See* Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶¶ 21-37 and Exhibits thereto.[10] As detailed in the Liss-Riordan Declaration, counsel spent substantial time investigating claims against Zum, drafting PAGA letters and the complaint and amended complaint, reviewing

---

[9] In any case, counsel calculate their combined lodestar at approximately $146,000 yielding a multiplier of approximately 4.3 that would be applied to reach the percentage of the fund requested. *See* Liss-Riordan Decl. ISO Mot. for Attnys' Fees at ¶¶ 37-38.

[10] In assessing counsel's lodestar (for cross-check purposes or otherwise), a court is permitted to "us[e] counsel declarations summarizing overall time spent, rather than demanding and scrutinizing daily time sheets in which the work performed was broken down by individual task." *Laffitte*, 1 Cal. 5th at 505 (also stating "detailed time sheets" are not required as part of a lodestar calculation – whether as a cross-check or otherwise); *In re Rossco Holdings, Inc.* (C.D. Cal. May 30, 2014) 2014 WL 2611385, *8 ("In California, an attorney need not submit contemporaneous time records in order to recover attorney fees"); *Rodgers v. Claim Jumper Rest., LLC* (N.D. Cal. Apr. 24, 2015) 2015 WL 1886708, *10 ("Plaintiff's counsel is not required to record in great detail how each minute of his time was expended" and can instead "meet his burden of justifying his fees by simply listing his hours and "identifying the general subject matter of his time expenditures"); *Rodriguez v. Cty. of Los Angeles* (C.D. Cal. 2014) 96 F. Supp. 3d 1012, 1023-24 ("Courts generally accept the reasonableness of hours supported by declarations of counsel.").

documents from the client, briefing Zum's Motion to Compel Arbitration (including filing a writ petition and appellate briefing, which resulted in a reversal of the trial court's order initially granting the motion), analyzing data and preparing for mediation, interviewing the named plaintiffs and other drivers, mediating the case, and guiding the case through the settlement approval process, including time spent working with the Settlement Administrator regarding settlement administration issues. *See* Liss-Riordan Decl. ISO of Mot. for Attnys' Fees at ¶ 21-23; Exhibit L. Additional time will be spent preparing for the final approval hearing and continuing to work with the Settlement Administrator to facilitate administration of the settlement. Because this case has been efficiently litigated, there is no need for the Court to comb through records to eliminate duplicative billing.[11]

Class Counsel have used the following hourly rates for counsel and staff: Shannon Liss-Riordan (partner) - $950; Adelaide Pagano (partner) - $600; Anne Kramer (associate) - $425; Michelle Cassorla (associate) - $475; Ana Doherty (associate) - $350; Law Clerks - $275; and

[11] To the extent that the hours set forth here may be lower than what has been billed in other similar cases, Plaintiffs' counsel submit that this fact further justifies a generous lodestar multiplier to reward their competence and proficiency in achieving an early settlement. Counsel should not be punished for their efficiency, where these efforts have led to an exceptional result for the class. *See Bayat v. Bank of the W.* (N.D. Cal. Apr. 15, 2015) 2015 WL 1744342, *9 ("The Court also believes that some positive multiplier is appropriate in this case given the efficiency with which class counsel litigated this action and the contingent nature of the recovery"); *Albion Pac. Prop. Res., LLC v. Seligman* 71 (N.D. Cal. 2004) 329 F. Supp. 2d 1163, 1170- (noting that "[a] fee applicant should neither be rewarded for hiring expensive legal counsel nor penalized for hiring more efficient legal counsel. Thus, if a fee applicant can demonstrate that its attorneys billed fewer hours than reasonably competent counsel would have billed, the fee applicant should be reimbursed at an above-average hourly rate"); *Sproul v. Astrue* (S.D. Cal. Jan. 30, 2013) 2013 WL 394056, *2 ("Courts are loathe to penalize experienced counsel for efficient representation under contingency agreements…"). Indeed, courts have recognized that "awarding compensation based on hours spent is likely to increase the time devoted." *In re First Fidelity Bancorporation Sec. Litig.* (D.N.J. 1990) 750 F. Supp. 160, 162; *see also Lealao v. Beneficial California, Inc.* (2000)82 Cal. App. 4th 19, 52 [97 Cal. Rptr. 2d 797, 823] ("Considering that our Supreme Court has placed an extraordinarily high value on … it would seem counsel should be rewarded, not punished, for helping to achieve that goal, as in federal courts.") (internal citations omitted). Thus, if Plaintiffs' counsel has achieved an excellent result for the class in an efficient manner, that should be rewarded with a substantial premium on their fees.

Paralegals and Staff - $225. *See* Liss-Riordan Decl. ISO of Mot. for Attnys' Fees at ¶¶ 24-35. Attorney Liss-Riordan's rate is in line with, if not lower, than the rates that have been approved for other top lawyers. *Id.* at ¶¶ 24-25. Ms. Liss-Riordan's work warrants this rate because of her exceptional qualifications and status as one of the nation's top litigators in wage and hour litigation. As described in her declaration, she pioneered misclassification litigation across the gig economy, and has relentlessly litigated these cases, creating the bulk of the caselaw in this area along the way. Last year, she was recognized by Benchmark Litigation as the nation's top Employment Attorney. *See* Liss-Riordan Decl. ISO Mot. for Attnys Fees at ¶ 7. In this litigation against Zum, Ms. Liss-Riordan, along with the other attorneys working with her and under her direction, were able to draw from the wealth of experience that she and her firm have developed over the last two decades in this area of wage law, and her particular expertise in independent contractor misclassification cases. The rates asserted for the firm's other attorneys and staff are likewise reasonable and in line with rates approved by other California courts. *Id.* at ¶¶ 26-35.

Based on the requested rates, Plaintiffs estimated their lodestar at $146,000. Thus, the multiplier that would apply to obtain the requested $633,333 fee would be approximately 4.3. Courts will often award higher multipliers where the circumstances warrant it because of the excellent results obtained, complexity of the case, and risks involved. *See, e.g., Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1123 (awarding 25% of common fund, equivalent to a 5.2 multiplier) (collecting cases); *see also Stevens v. SEI Investments Company* (E.D. Pa., Feb. 28, 2020) 2020 WL 996418, at *13 (holding that "multiples ranging from 1 to 8 are often used in common fund cases" and awarding fees equivalent to a multiplier of 6.16); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [110 Cal.Rptr.2d 145]. Indeed, multipliers in the range of 5x to 10x are not uncommon, and some courts have

even been known to award higher multipliers.[12] Indeed, many courts in the Ninth Circuit have awarded substantial multipliers in similar settlements.

In sum, the requested multiplier here is warranted, based on the excellent results obtained for the class. The $1.9 million Total Settlement Amount represents approximately 43% on the most valuable claim in the case, the expense reimbursement claim. *See* Liss-Riordan Decl. ISO Mot. for Prelim Approval at ⁋⁋ 14. Given the negligible value of the other claims in the case, *see id.* at ⁋⁋ 13, 16-24, the recovery of nearly half of Settlement Class Members' damages in the case is extremely robust. Indeed, the recovery achieved here exceeds the recovery in similar gig economy settlements, which were approved by other California courts. *Compare Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1039 (approving class action settlement of Lyft drivers' misclassification claims that provided 17% recovery on drivers' expense reimbursement claim); *Marciano v. DoorDash Inc.* ("*Marciano I*") (Cal. Sup. Ct. July 12, 2018) CGC-15-548102 (Kahn, J.) (approving settlement of between 21% and 31% of the estimated value of the most valuable expense reimbursement claim depending on whether contingency was triggered).

The cases cited above make clear that a generous multiplier is appropriate in view of the excellent results achieved for the class in this case in an efficient and timely manner.

---

[12] *See, e.g., In re Merry–Go–Round Enterprises, Inc.* (Bankr.D.Md.2000) 244 B.R. 327 (40% award for $71 million fund awarded, resulting in a cross-check multiplier of 19.6); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.* (E.D.Pa.) 2005 WL 1213926 ($100 million class fund in antitrust case, with fee award that amounted to a multiplier of 15.6); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, (D. Mass. Aug. 3, 2009) 2009 WL 2408560, *2 (allowing a 20% attorney's fees recovery on a $350 million settlement, equivalent to "a multiplier of about 8.3 times lodestar"); *Conley v. Sears, Roebuck & Co.*, (D. Mass. 1998) 222 B.R. 181 (approving lodestar multiplier of 8.9, even where plaintiffs' counsel were "piggybacking" on prior success by another plaintiffs' firm in a different case); *In re Rite Aid Corp. Securities Litig.*, (E.D. Pa. 2005) 362 F. Supp. 2d 587, 589-90 (awarding 25% of $126 million settlement fund, which was equal to a lodestar multiplier of 6.96); *In re Cardinal Health Inc. Sec. Litig.*, (S.D. Ohio 2007) 528 F.Supp.2d 752, 768 (allowing an 18% attorney's fees recovery on a $600 million settlement, even though that award resulted in a "lodestar multiplier of six").

Furthermore, there was substantial risk of no recovery in this case, as the Supreme Court's recent grant of certiorari in *Viking River* makes clear, which may undermine *Iskanian*, and for the many reasons described *supra*, pp. 11-13.

D. Plaintiffs' Request For Class Representative Service Enhancements Is Reasonable

Under California law, named plaintiffs are generally entitled to a service award for initiating litigation on behalf of absent class members, taking time to prosecute the case, and incurring financial and personal risk. *See Clark v. American Residential Services LLC* (2009) 175 Cal. App. 4th 785. Such awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393–94, *as modified* (July 27, 2010). "[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299 (internal citation omitted).

Here, these factors all weigh in favor of granting the requested service awards. The Named Plaintiffs, Robina Contreras and Gabriel Ets-Hoken, worked for Zum during the pendency of this litigation. Ms. Contreras depended upon Zum for her livelihood and was willing to risk retaliation to bring this case, which speaks to her dedication to achieving a result on behalf of her fellow drivers, to say nothing of the reputational risk of suing one's employer. *See* Contreras Decl. at ¶¶ 7-8. Likewise, having a high-profile case bearing one's name in the public eye and easily accessible by future employers, represents a substantial risk to both Ms. Contreras and Mr. Ets-Hoken. Additionally, both spent substantial time working with the

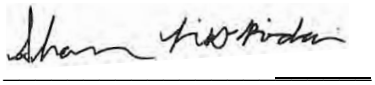
attorneys on this case, providing documents and information and reviewing the settlement papers on behalf of the class. *See* Contreras Decl. at ⁋ 5-6; Ets-Hoken Decl. at ⁋ 5-8. Likewise, Mr. Ets-Hoken is an advocate on behalf of gig economy workers and has spent many hours on outreach to drivers, including encouraging drivers to claim in the settlement and answering questions regarding the Notice of Class Action Settlement. *See* Ets-Hoken Decl. at ⁋ 5-8. Both Ms. Contreras and Mr. Ets-Hoken have attested to the amount of time they spent on the litigation and the work they performed in reviewing and approving the instant settlement. *See* Contreras Decl. at ⁋ 5-6; Ets-Hoken Decl. at ⁋ 6-8.

Numerous courts in California have approved incentive payments in line with and far exceeding the relatively modest $10,000 award requested here. *See, e.g., Ross v. U.S. Bank Nat. Ass'n* (N.D. Cal., Sept. 29, 2010) 2010 WL 3833922, at *2 (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Glass v. UBS Financial Services, Inc.*, (N.D. Cal. Jan. 26, 2007) 2007 WL 221862 at * 17 ("requested payment of $25,000 to each of the named plaintiffs is appropriate" in wage and hour settlement); *Garner,* 2010 WL 1687832, at *17 n.8 ("Numerous courts in the Ninth Circuit and elsewhere have approved Service awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class") (collecting cases); *Hasty v. Elec. Arts, Inc.,* (San Mateo Cnty. Super. Ct. Sept. 22, 2006) Case No. CIV 444821 (approving an award of $30,000 to the class representative in a wage and hour class action); *Meewes v. ICI Dulux Paints,* (L.A. Cnty. Super. Ct. Sept. 19, 2003) Case No. BC265880 (approving service awards of $50,000, $25,000 and $10,000 to the named Plaintiffs). Likewise, there is no "drastic disparity" in the size of these service awards relative to the settlement shares of class members, some of whom will be receiving thousands of dollars in their settlement payment. For these reasons, the requested service enhancement should be approved.

IV. CONCLUSION

Based upon the foregoing, and the papers filed in support of this Motion, Plaintiff respectfully requests that the Court grant their request for attorneys' fees and the class representative service award.

Dated: February 21, 2022

By: 
Shannon Liss-Riordan

Attorney for Plaintiffs ROBINA CONTRERAS, GABRIEL ETS-HOKIN and the Settlement Class