

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAREN EHRET,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

Case No. [14-cv-00113-EMC](#)

**ORDER RE SUPPLEMENTAL
BRIEFING ON PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL**

Docket No. 134

The Court has reviewed Plaintiff's motion for preliminary approval, and hereby orders the parties to provide a joint supplemental brief regarding the following issues. The supplemental briefing should be filed no later than **September 8, 2016 at 12:00 PM PDT**.

1. Attorneys' Fees

Plaintiff's counsel intends to seek a fee award of \$431,138.54. Docket No. 134 at 10. Counsel characterizes this award as "separate from and in addition to the class relief," which totals \$343,861.46. *Id.* at 1, 3. The Court notes, however, that if it were to treat the total recovery of \$775,000.00 as a "constructive common fund," *see In re Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 943 (9th Cir. 2011), counsel's portion would come to nearly 56% of the whole. This is, of course, a substantial departure from the 25% figure typically used as a "benchmark" in this Circuit. *See id.* at 942. Plaintiff asserts that the proposed fee "will actually be significantly less than their lodestar amount without any multiplier." Docket No. 134 at 1. Plaintiff should explain in detail (legally and factually) why the use of the lodestar method – rather than the percentage-of-recovery method – to calculate counsel's fees is appropriate. *See Bluetooth*, 654 F.3d at 942 (noting that "courts have discretion to choose which calculation method they use").

Further, particularly because Plaintiff relies on the lodestar method, to assess the fee

1 request, even for the purposes of preliminary approval only, the Court is in need of information as
2 to the lodestar claimed – *i.e.*, the number of hours incurred in the case and the hourly rates
3 claimed. Plaintiff’s attorneys shall file with this Court, *ex parte* and under seal, one (1)
4 declaration that states the total number of hours worked on this litigation, and which breaks the
5 number of hours down by task (*e.g.*, “Initial Case Investigation,” “Settlement Negotiations and
6 Mediation,” etc.). Counsel shall attach their actual time records to the declaration. The
7 declaration and associated records shall be filed with the Court no later than **September 8, 2016** at
8 **12:00 PM PDT**. The parties should also ensure that that the fee motion is filed and available on
9 the Class Administrator’s website at least twenty-one (21) days before objections to the proposed
10 settlement are due.

11 2. Full Verdict Value of the Case

12 Plaintiff emphasizes that under the terms of the settlement, “Class Members will receive
13 essentially a full refund of the amounts at issue in this suit.” Docket No. 134 at 5. However,
14 Plaintiff does not appear to provide an estimate of the total potential recovery in the case, were it
15 to proceed to trial, which could be greater than the actual damages to the class. *See, e.g.*, Cal. Civ.
16 Code § 1780(a)(4) (providing for punitive damages for violations of the Consumers Legal
17 Remedies Act). Thus, the Court has no point of comparison to determine that this settlement is, in
18 fact, a significant recovery for the class. The parties must provide an estimate of the full aggregate
19 verdict value of each of Plaintiff’s claims.

20 3. Distribution of the Settlement Fund

21 The settlement provides that for those “Class Members who have an existing Uber account
22 and either fail to timely provide a valid mailing address or who fail to cash their settlement checks,
23 Uber will credit their Uber account in an amount equal to their individual Class Member
24 Payment.” Docket No. 134 at 3. The parties should explain why Class Members may not receive
25 direct payment – rather than Uber credits – *e.g.* by crediting the credit card Uber has on file.

26 4. Incentive Award

27 The settlement calls for an incentive award of \$10,000 to the named plaintiff. Docket No.
28 134 at 9. “Several courts in this District have indicated that incentive payments of \$10,000 or

1 \$25,000 are quite high and/or that, as a general matter, \$5,000 is a reasonable amount.” *Harris v.*
2 *Vector Mktg. Corp.*, No. C-08-5198 EMC, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012).
3 Plaintiff describes in general terms how the named plaintiff “stayed actively involved in the
4 litigation for several years,” but given the size of the requested award, the parties should provide
5 more detail as to why this extraordinary amount is warranted, particularly in view of the typical
6 per capita recovery in this case.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: September 2, 2016



EDWARD M. CHEN
United States District Judge