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10 and KNUDTSON, on behalf of themselves
and all others similarly situated
11

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
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15
16 PATRICK COTTER, ALEJANDRA MACIEL,
and JEFFREY KNUDTSON, on behalf of
17 themselves and all others similarly situated,

18
19 Plaintiffs,

20 v.

21 LYFT, INC.,

22 Defendant.
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Case No.: 3:13-cv-04065-VC

Hon. Vince Chhabria

DECLARATION OF MATTHEW D. CARLSON IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS AND FOR CLASS REPRESENTATIVE SERVICE AWARDS AND IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF REVISED CLASS ACTION SETTLEMENT

Hearing Date: December 1, 2016

Time: 10:00 a.m.

Courtroom: 4

DECLARATION OF MATTHEW D. CARLSON IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS AND FOR CLASS REPRESENTATIVE SERVICE AWARDS AND IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF REVISED CLASS ACTION

SETTLEMENT

CASE NO. 3:13-CV-04065-VC

1 I, Matthew D. Carlson, declare as follows:

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- 3 1. I am an attorney at the law firm of Lichten & Liss-Riordan, P.C. I am a member in good
- 4 standing of the bar of the State of California. I am admitted to practice in this Court.
- 5 2. I have personal knowledge of the facts set forth in this Declaration and could and would
- 6 testify competently to them.
- 7 3. This Declaration is submitted in support of Plaintiffs' Motion for Attorneys' Fees and
- 8 Costs and for Class Representative Service Awards.

9 **EXPERIENCE AND BACKGROUND**

- 10 4. I received my undergraduate degree from Yale University in 2005, and my J.D. from
- 11 the University of San Francisco in 2010.
- 12 5. In my approximately six years as a California-licensed attorney, I have litigated
- 13 numerous employment-based class actions.
- 14 6. While an attorney for Hersh & Hersh, APC in San Francisco, CA, from approximately
- 15 December 2010 until February 2013, I worked extensively on the following class
- 16 actions, all of which were certified, at least in part, as settlement classes:
- 17
- 18 • *Ruben Pablo et al, v. ServiceMaster Global Holdings Inc. et al.*, Case No. 3:08-
19 cv-03894 (N.D. Cal.) – class action involving misclassification of outside
20 salespersons and attendant California Labor Code violations.
 - 21 • *Tiffanie Lopez v. Marcus & Millichap Real Estate Investment Services, Inc., et*
22 *al.*, Case No. CGC-09-493705 (Sf. Sup. Ct.) – class action involving
23 misclassification of independent contractors and attendant California Labor
24 Code violations.
 - 25 • *Maribel Cedeno, v. Omnex Group, Inc.*, Case No. 3:11-cv-05521 (N.D. Cal.) –
26 class action brought on behalf of branch tellers for Giromex's violations of the
27 Federal Labor and Standards Act, the California Labor Code and the California
28 Business and Professions Code.
7. While an attorney for Schneider Wallace Cottrell Konecky, LLP (“SWCK”), from
- approximately February 2013 through September 2013, I worked extensively on a class
- action titled *Isidro Baricuatro, Jr., et al. v. Industrial Personnel and Management*

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Services, Inc., et al., Case No. 2:11-cv-02777-KDE-JCW (E.D. Louisiana.). SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour class actions and has acted or is acting as class counsel in numerous cases. I was the lone associate for SWCK partner Guy B. Wallace, who, during his many years in practice, has specialized in complex litigation, including employment class actions. Mr. Wallace and I worked closely on the *Baricuatro* matter and, to a lesser extent, other class actions, and he passed along to me a great depth of knowledge, which added to my ability to effectively litigate complex matters like this one.

8. While sole proprietor of Carlson Legal Services (“CLS”), from approximately late August 2013 until April 2016, I litigated or helped litigate many employment cases, including:

- *Arce et al. v. Valley Prune, LLC, et al.*, Case No. 2:12-cv-02772-JAM-CMK (E.D. Cal.) (class action settlement finally approved November 5, 2014);
- *Ristie v. Open Top Sightseeing San Francisco, LLC*, Case No. 4:15-cv-01185-DMR (N.D. Cal.);
- *Martinez, et al. v. [confidential]*, JAMS No. 1100079068; and
- Numerous cases against other “gig economy” companies, including *O’Connor, et al. v. Uber Technologies, Inc.*, Case No. 3:13-cv-03826-EMC (N.D. Cal.); *Tan, et al. v. GrubHub Inc.*, Case No. 3:15-cv-05128-JSC (N.D. Cal.); *Marciano, et al. v. DoorDash, Inc.*, Case No. CGC-15-548101 (SF. Sup. Ct.); *Taranto, et al. v. Washio, Inc.*, Case No. CGC-15-546584 (SF. Sup. Ct.); *Lawson v. Jolt Delivery, LLC*, Case No. BC632935 (LA Sup. Ct.); *Sims v. Lugg, Inc.*, Case No. CGC-16-550654 (SF Sup. Ct.); *Quigley v. Eaze Solutions, Inc.*, Case No. CGC-16-550805 (SF. Sup. Ct.); and *Levin v. Caviar, Inc.*, Case No. 3:15-cv-01285-EDL (N.D. Cal.).

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9. In April 2016, I joined Lichten & Liss-Riordan as an employee and helped open the firm’s San Francisco office, where I currently work. In addition to my work on this case, I continue to work on the cases described in subsection (d) of the above paragraph as

1 well as a number of other independent contractor misclassification and other wage cases
2 that are currently in progress or under investigation.
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4 **THE ORIGINS OF THIS CASE**

5 10. I initiated this case in early August 2013, after hearing from Plaintiff Cotter about his
6 new part time job driving for a fledgling company called "Lyft." Following that
7 conversation, I spent a substantial amount of time investigating a potential claim that
8 drivers for Lyft should be classified as employees. After some intensive research and
9 follow up investigation, I left my job at SWCK in order to devote myself primarily to
10 this case. I opened a sole proprietorship, with the plan to support myself while pursuing
11 this case on a contingency basis with savings and potential referrals of more minor
12 cases, and if necessary additional part time work.

13 11. I opened Carlson Legal Services at the end of August 2013 and filed this case on
14 September 3, 2013.

15 12. While working for myself at CLS, I had no staff. Indeed, until I formally joined Lichten
16 & Liss-Riordan as an employee in April 2016, I did the majority of clerical work in this
17 case, from printing courtesy copies and taking them to the Court to taking discovery to
18 the post office for service. However, as described below, I am not including time from
19 my non-clerical work in my calculation of hours worked on this case.

20 13. While I did end up with a successful short-term practice built primarily on smaller-
21 value referrals, I had to turn away potential cases because of the time I had to commit to
22 this case. I estimate that I spent approximately 75% of my time on this case while at
23 CLS. Not a single day went by that I did not, or do not, think about this case. While
24 much of that time is captured in my time records, a substantial amount of strategizing is
25 not included in those records.
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DESCRIPTION OF MY TIME SPENT ON THIS LITIGATION

14. Throughout the course of this litigation, I have worked on all manner of tasks necessary to litigate the case, including:

- Client and witness communication: approximately 31 hours. I was the point of contact with the named Plaintiffs, and was responsible for all communications with them, including obtaining documents, responses to interrogatories and requests for admission, verifications, and the like. I also had many discussions about the case with other Lyft drivers.
- Discovery: approximately 273 hours. I was responsible for the initial drafting of 87 document requests, 76 interrogatories, 13 requests for admission, multiple Rule 30(b)(6) notices of deposition, and a third-party deposition subpoena. I was also responsible for negotiating with defense counsel a “keyword” search list of multiple custodians’ emails, which resulted in substantial documentary evidence necessary to defeat Lyft’s motion for summary judgment. All discovery drafted by me was original, *i.e.*, not modified from previous written discovery, and the discovery was designed to be narrowly tailored to elicit information relevant to both class certification and liability issues. I personally reviewed all Lyft’s discovery responses, including every page of its thousands of documents produced, and took the Rule 30(b)(6) deposition of three of Lyft’s persons most knowledgeable regarding eight different topics and 25 subtopics. Ms. Liss-Riordan assisted me with the first Rule 30(b)(6) deposition by providing feedback and ideas for further questioning or areas of clarification during breaks and by assisting with the use of documents during the deposition. This discovery elicited information necessary to defeat Lyft’s motion for summary judgment and likely would have been sufficient to successfully move for class certification. I also assisted Ms. Liss-Riordan with her review of Lyft’s data pertaining to damages and penalties produced in connection with the parties’ settlement conferences. I was also responsible for drafting objections and responses to written discovery served on Plaintiffs Cotter (185 document requests, 35 interrogatories, 38 requests for admission), Maciel (181 document requests, 35 interrogatories, 38 requests for admission), and Knudtson (23 document requests, 20 interrogatories, 36 requests for admission). I also reviewed all documents produced by Plaintiffs. (250 by Cotter, 275 by Maciel, and 1,202 by Knudtson). I also prepared Plaintiffs Cotter and Maciel for their depositions and defended their depositions.
- Court submissions: approximately 700 hours. I have been responsible for the initial drafting of documents filed in this case and the legal research necessary in support thereof. Among the most significant projects in this regard were Plaintiffs’ filings with respect to the parties’ cross motions for summary judgment, responses to objections to the parties’ settlement, related responses to

1 motions to intervene, a motion for leave to file a fourth amended complaint, the
2 parties' settlement papers, settlement conference briefs, a motion to enjoin or
3 stay the *Price* litigation, a nearly-complete motion for class certification, case
4 management statements, stipulations, and all complaints. None of the documents
5 filed in this case were "cookie-cutter" – most, if not all, required substantial
6 legal research and "ground-up," original writing. Indeed, as this case was
7 premised on the application of law to a developing industry, there was really no
8 such thing as a simple issue.

- 9 • Communications with co-counsel: approximately 98 hours. Co-Counsel and I
10 have regularly conferred regarding strategy and regarding specific issues
11 relating to discovery, motion practice, and settlement, among other things. All
12 calls or, very infrequently, in-person meetings in San Francisco, were necessary
13 and did not take any more time than required.
- 14 • Communications with opposing counsel: approximately 42 hours. I have
15 communicated extensively with Lyft's counsel throughout this litigation,
16 including in regards to stipulations, scheduling and, most significantly,
17 settlement.
- 18 • Court hearings, settlement conferences, and preparation therefore:
19 approximately 59 hours. Up to and including the hearing on the parties' cross-
20 motions for summary judgment, I had primary responsibility for Court hearings.
21 Ms. Liss-Riordan assisted me in preparing for these hearings, and, as necessary,
22 at the hearings. As a secondary attorney at subsequent hearings, I assisted Ms.
23 Liss-Riordan in preparing for the hearings and strategizing following the hearing.
24 At settlement conferences, I worked with Ms. Liss-Riordan to assess the various
25 settlement proposals made.
- 26 • Settlement administration: approximately 18 hours. While Ms. Liss-Riordan has
27 had primary responsibility for responding to substantive inquiries from the
28 Claims Administrator, my job has been to monitor opt-outs and objections, and
discuss with Ms. Liss-Riordan the issues that have arisen with respect to the
administration process.
- General research: approximately 68 hours. I have spent a significant amount of
time performing research and reviewing various court orders separate and apart
from that done in connection with specific Court filings made in this case. Much
of this time was incurred pre-filing, including research regarding the
misclassification issue and the impact of Lyft's arbitration provision on the
potential litigation. There has also been significant research performed on issues
that might have arisen in this case, but did not do so either because of the
parties' settlement or because they simply were not raised.

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2 15. All told, I have, as of November 13, 2016, spent approximately 1,290 hours of attorney
3 work¹ on this action.² Of course, these figures do not take into account future work on
4 this case, including future time spent on finishing these final approval papers, assisting
5 with settlement administration, and potential legal briefing, if the settlement needs to be
6 defended on appeal.

7 16. I worked with Ms. Liss-Riordan to ensure that this case would be litigated efficiently.
8 We rarely if ever duplicated tasks. Rather, we had in place a simple system whereby I
9 would create initial drafts of documents, Ms. Liss-Riordan would review the document
10 and make edits and suggestions for further research and review, which I would work on,
11 and the process would repeat until finished. We communicated when necessary about
12 the case and never expended more time than we needed in doing so. In fact, I had no
13 option but to litigate this case efficiently, as, while a sole proprietor, I had other cases to
14 work on and no one to assist with my professional responsibilities.

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18 ¹ These hours also do not include administrative work that I performed as a solo
19 practitioner. As a sole proprietor with no staff, I was responsible for every aspect of my
20 practice, including electronic filing, mailings, creating pleading templates, and filing
21 documents in my own database. Where an attorney is a sole proprietor without any staff, time
22 spent on these tasks is recoverable as attorneys' fees at the reasonable rate for a paralegal.
23 *Sierra Club v. U.S. E.P.A.*, 625 F. Supp. 2d 863, 869 (N.D. Cal. 2007); *see also Betancourt v.*
Advantage Human Resourcing, Inc., 2016 WL 344532, *8 (N.D. Cal. Jan. 28, 2016).
Nonetheless, I have excluded these hours from my lodestar calculation.

24 ² If the Court deems it necessary, I can make available for review my detailed time
25 records, kept as contemporaneously as reasonably possible with the work performed. These
26 records are the basis for my estimates of hours worked set forth herein. However, I note that
27 these records contain a significant amount of privileged information and information protected
by the attorney work-product doctrine. If the Court believes it must be produced, I request that
it review the document *in camera*, or, at minimum, permit appropriate redactions.

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MY HOURLY RATE

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3 17. I believe an hourly rate of \$500 for my services rendered in class action litigation in the
4 Northern District of California is a reasonable rate. My rate is based on (1) my
5 knowledge of fees awarded in other cases to attorneys of my experience; (2) hourly
6 rates charged by defense counsel with similar experience; and (3) my rate previously
7 approved pursuant to the lodestar method of attorneys' fee calculations, including in an
8 action entitled *Marrero v. Fifth Third Bank*, Case No. 11 CH 38111, in which a Cook
9 County (Illinois) judge found that \$425 per hour was a reasonable rate for my services
10 approximately three years ago.
- 11 18. The \$425 hourly rate approved in *Marrero* was for my services in 2013, and since then
12 I have obtained significant experience in class action litigation, both in this case and in
13 the other class actions that I have litigated.
- 14 19. According to court filings cited in Plaintiffs' Motion, an attorney with four years of
15 experience for a Bay Area plaintiffs-side wage and hour firm charged a \$500 hourly rate,
16 and an attorney who similarly became licensed in 2010 at defense counsel's firm
17 charges a \$500 hourly rate.
- 18 20. Decisions from other courts also show that my hourly rate is reasonable. *Betancourt*,
19 2016 WL 344532, *8 (reasonable rates for associates in the Bay Area range from \$285
20 to \$510).
- 21 21. Pursuant to the above figures, my total lodestar for this action to date is \$645,000 (\$500
22 x 1,290). Again, this figure does not take into account future work on this case,
23 including future time spent on finishing these papers, assisting with settlement
24 administration, and potential legal briefing, if the settlement needs to be defended on
25 appeal. Nor does it include hours I personally spent on clerical work while operating as
26 a sole practitioner, or many hours spent strategizing about the case.

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LEAD PLAINTIFFS' PARTICIPATION IN THIS ACTION

22. Both Plaintiffs Cotter and Maciel sat for full day depositions at defense counsel's firm; Plaintiff Maciel flew to San Francisco from Mexico specifically for her deposition and paid out of her pocket to do so and has not yet been reimbursed.

23. Plaintiff Cotter responded to 185 document requests, 35 interrogatories, and 38 requests for admission, and ultimately produced 250 pages of documents. I worked closely with Mr. Cotter in responding to each of these discovery requests.

24. Plaintiff Maciel responded to 181 document requests, 35 interrogatories, and 38 requests for admission, and ultimately produced 275 pages of documents. I also worked closely with Ms. Maciel in responding to each of these discovery requests.

25. While Mr. Knudtson was not deposed, he responded to 23 document requests, 20 interrogatories, and 36 requests for admission, and ultimately produced 1,202 pages of documents. I also worked closely with Mr. Knudtson in responding to each of these discovery requests.

26. Just like I took a risk in filing this case, so too did the named Plaintiffs, in particular Mr. Cotter, whose name has been attached to this case since it was filed. This is, of course, a high-profile case, and anyone who searches for Plaintiffs' names and "Lyft" are sent immediately to links to case documents. Potential employers who have done their due diligence on Plaintiffs have undoubtedly seen this information, and undoubtedly do not look favorably on individuals who have sued their employers (alleged or otherwise).

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 16, 2016, in San Francisco, California.

By: /s/ Matthew D. Carlson
Matthew D. Carlson

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