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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

BOSTON RETIREMENT SYSTEM,	Case No.: 3:19-cv-06361-RS
Plaintiff,	**CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
v.	
UBER TECHNOLOGIES, INC., et al.,	
Defendants.	Hearing: December 4, 2024 at 9:30 a.m. Courtroom: No. 3 – 17th Floor Judge: Hon. Richard Seeborg Filed: Oct. 4, 2019

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NOTICE OF MOTION

PLEASE TAKE NOTICE that Lead Plaintiff Boston Retirement System ("BRS"), David Messinger ("Messinger"), Salvatore Toronto acting on behalf of the Ellie Marie Toronto ESA ("Toronto"), and Irving S. and Judith Braun (the "Brauns") (collectively, "Class Representatives"), on behalf of themselves and the other members of the certified Class, hereby move this Court for orders, pursuant to Federal Rule of Civil Procedure 23(e)(2): (i) granting final approval of the proposed Settlement of the above-captioned certified class action (the "Action"), as set forth in the Stipulation and Agreement of Settlement, dated July 19, 2024 (the "Stipulation," ECF No. 459-2); and (ii) approving the proposed plan for allocating the proceeds of the Settlement to the Class ("Plan of Allocation").[1]

The Motion is supported by the following memorandum of points and authorities, and the accompanying Declaration of Alfred L. Fatale III in Support of (I) Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, dated October 4, 2024 ("Fatale Declaration" or "Fatale Decl."), with annexed exhibits.

Pursuant to the Court's Order Granting Preliminary Approval of Class Action Settlement (ECF No. 468), any objections to the Settlement and/or the Plan of Allocation must be filed by November 14, 2024. A proposed Judgment, negotiated by the Parties, and a proposed order approving the Plan of Allocation, will be submitted with Class Representatives' reply submission on or before November 27, 2024, after the deadline for objecting to the Settlement has passed.

STATEMENT OF ISSUES TO BE DECIDED

1.   Whether the Court should approve the proposed Settlement of the Action as fair, reasonable, and adequate pursuant to Rule 23(e)(2).

2.   Whether the Court should approve the proposed Plan of Allocation as fair and reasonable.

---

[1] The terms of the Settlement are set forth in the Stipulation. All capitalized terms used herein are defined in the Stipulation and have the same meanings as set forth therein. Unless otherwise noted, citations and internal quotations have been omitted.

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MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

3   Class Representatives respectfully submit this memorandum, on behalf of themselves and

4 the certified Class, in support of final approval of the proposed Settlement in the amount of

5 $200,000,000, in cash, pursuant to the terms set forth in the Stipulation. The Settlement is with

6 all defendants: Uber Technologies, Inc. ("Uber" or the "Company"); the Individual Defendants

7 (together with Uber, the "Uber Defendants"); and the Underwriter Defendants (together with

8 Uber and the Individual Defendants, the "Defendants").

9   As described below and in the accompanying Fatale Declaration, the Settlement is an

10 outstanding result for the Class. Facing the risks of summary judgment and a quickly approaching

11 trial date, Class Representatives, being fully informed by substantial discovery involving over

12 200,000 documents and 46 depositions, negotiated an exception recovery for the Class that ranks

13 near the top of the lists of largest class settlements for IPO-related claims brought only under the

14 Securities Act of 1933 ("Securities Act").

15   The Settlement was reached after more than four years of vigorously contested litigation

16 in which all Parties strongly advanced their positions. During the course of the litigation, Class

17 Representatives, among other things: (i) drafted two detailed amended complaints; (ii) defeated

18 two extensive motions to dismiss; (iii) obtained class certification; (iv) researched, drafted,

19 propounded, and responded to document requests, interrogatories, and requests for admission; (v)

20 reviewed approximately 107,196 documents (893,997 pages) produced by Uber Defendants,

21 31,379 produced by third parties, and 86,280 produced by Underwriter Defendants; (vi) reviewed

22 at least 27 privilege logs, containing at least 50,442 entries; (vii) served at least 39 subpoenas and

23 at least 140 deposition notices (including amended notices); (viii) took 32 and defended 14

24 depositions; (ix) litigated numerous discovery disputes; (x) consulted with experts in the fields of

25 due diligence, negative causation and damages, and tracing; (xi) served five expert reports; and

26 (xii) participated in pre-mediation conferences, exchanged extensive mediation briefing, and

27 participated in two arm's length mediations overseen by a highly respected mediator. Indeed, at

28

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1   the time of settlement, the Parties had completed an arduous and thorough fact and expert

2   discovery process, contested class certification proceedings, and were preparing for summary

3   judgment and trial. *See generally* Fatale Declaration, filed herewith.[2]

4   As a result of these efforts, Class Representatives and Class Counsel had a well-developed

5   understanding of the strengths and weaknesses of the claims at issue in the Action. Class

6   Representatives litigated the Action with the utmost persistence and tenacity and were prepared

7   to litigate their claims to trial.

8   While Class Representatives believe the Class's claims are meritorious and strong, they

9   recognize there were substantial risks to continued litigation and trial. As discussed in detail in

10   the Fatale Declaration and below, among other things, Defendants would likely argue in future

11   dispositive motions and at trial that, for example, Class Representatives would be unable to prove

12   that each of their statements or alleged omissions were materially false and misleading at trial.

13   Further, Defendants would have likely continued to argue that certain allegations and theories,

14   which were the focus of subsequent discovery sought by Plaintiffs, were not explicitly pled in the

15   Second Amended Complaint and must be excluded from trial. Additionally, Defendants would

16   put forward facts and several highly qualified experts in support of numerous affirmative defenses

17   that could potentially absolve Defendants from liability or drastically reduce the size of the Class

18   and the amount of recoverable damages.

19   The Settlement avoids these risks (and others), as well as further delay and expense of

20   continued litigation – while providing a substantial and certain benefit to the Class. Furthermore,

21   Class Representatives were actively involved throughout the litigation, diligently representing the

22   Class, and have approved the Settlement. *See* Declaration of Timothy J. Smyth, Esq. on behalf of

23

24   [2] The Fatale Declaration is an integral part of this submission and, for the sake of brevity in

25   this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action; the nature of the claims asserted; the litigation efforts; the negotiations

26   leading to the Settlement; and the risks and uncertainties of continued litigation, among other things. Citations to "¶" in this memorandum refer to paragraphs in the Fatale Declaration.

27   All exhibits herein are annexed to the Fatale Declaration. For clarity, citations to exhibits that themselves have attached exhibits will be referenced as "Ex. __ -__." The first numerical

28   reference is to the designation of the entire exhibit attached to the Declaration and the second reference is to the exhibit designation within the exhibit itself.

1   Boston Retirement System, Ex. 1; Declaration of David Messinger, Ex. 2; Declaration of

2   Salvatore Toronto, Ex. 3; and Declaration of Irving S. and Judith Braun, Ex. 4. The Class's

3   reaction to date similarly reflects approval of the Settlement. Notice was provided to the Class

4   beginning on August 23, 2024. *See* Declaration of Adam D. Walter Regarding (A) Mailing of the

5   Settlement Postcard and (B) Publication of the Summary Notice, dated October 4, 2024 ("Mailing

6   Decl."), Ex. 6. While the November 14, 2024 deadline to object to the Settlement has not yet

7   passed, to date, no objections have been received by Class Counsel or docketed. Class

8   Representatives respectfully request that the Court approve the Settlement.

9   In addition, the Plan of Allocation for the distribution of the proceeds of the Settlement,

10 which was developed by Class Counsel with the assistance of Class Representatives' damages

11 expert, is a fair and reasonable method for distributing the Net Settlement Fund to eligible

12 claimants and should also be approved by the Court.

13   Given the foregoing considerations and the factors addressed below, Class

14 Representatives submit that: (i) the Settlement meets the standards for final approval under Rule

15 23 and is a fair, reasonable and adequate result for the Class; and (ii) the Plan of Allocation is a

16 fair and reasonable method for allocating the Net Settlement Fund to Class Members who submit

17 valid Claim Forms.

18   **PRELIMINARY APPROVAL AND THE NOTICE PROGRAM**

19   On August 9, 2024, the Court entered an order preliminarily approving the Settlement and

20 approving the proposed forms and methods of providing notice to the Class (the "Preliminary

21 Approval Order", ECF No. 468). Pursuant to and in compliance with the Preliminary Approval

22 Order, using names and addresses gathered in connection with the Class Notice, beginning on

23 August 23, 2024, the Court-appointed Claims Administrator A.B. Data, Ltd. ("A.B. Data"),

24 caused the Settlement Postcard to be mailed by first-class mail to potential Class Members. *See*

25 Mailing Decl., Ex. 6 at ¶¶8-11. The Claims Administrator also mailed or emailed Settlement

26 Postcards to Nominees, pursuant to the instructions set forth in the Preliminary Approval Order.

27 A total of 772,957 Settlement Postcards have been mailed or emailed to Class Members or

28

1 Nominees. *Id*. at ¶11. On September 6, 2024, the Summary Notice was published in *The Wall*

2 *Street Journal* and was disseminated over the internet using *PR Newswire*. *Id*. at ¶12 and Exhibit

3 C attached thereto. The Claim Form and the long-form Settlement Notice, along with other

4 Settlement related documents, were posted on the website maintained for the Action,

5 www.UberIPOSecuritiesLitigation.com, which was developed initially in connection with the

6 Class Notice and has been updated for the Settlement. In addition to containing the Settlement

7 Notice and Claim Form, the website provides information concerning the case and important dates

8 and deadlines in connection therewith, as well as access to downloadable copies of relevant

9 documents, including the Second Amended Complaint, the Stipulation, and the Preliminary

10 Approval Order. *Id*. at ¶13. Copies of the Settlement Notice and Claim Form are also available

11 on Class Counsel's website, www.labaton.com. ¶103.

12   The notices described, *inter alia*, the claims asserted in the Action, the contentions of the

13 Parties, the course of the litigation, the terms of the Settlement, the maximum amounts that would

14 be sought in attorneys' fees and expenses, the Plan of Allocation, the right to object to the

15 Settlement, and the opportunity to opt back into the Class. *See generally* Ex. 6-A through C. The

16 notices also gave the deadlines for objecting, opting back into the Class, submitting claims, and

17 advised potential Class Members of the scheduled Settlement Hearing before this Court. *Id*. To

18 date, the Class's reaction to the proposed Settlement has been positive. While the deadline

19 (November 14, 2024) for objecting to the Settlement has not yet passed, to date there have been

20 no objections to the proposed Settlement, and no objections to the Plan of Allocation.[3]

21   **ARGUMENT**

22 I.   **THE SETTLEMENT WARRANTS FINAL APPROVAL**

23   A.   **Standards Governing Approval of Class Action Settlements**

24   The Ninth Circuit recognizes a "'strong judicial policy that favors settlements, particularly

25 where complex class action litigation is concerned.'" *Campbell v. Facebook, Inc*., 951 F.3d 1106,

26 1121 (9th Cir. 2020); *In re Syncor ERISA Litig.,* 516 F.3d 1095, 1101 (9th Cir. 2008). It is well

27

28   [3] Should any objections be received, Class Representatives will address them in their reply
papers, which are due to be filed with the Court on November 27, 2024.

1   established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred

2   means of dispute resolution." *Officers for Justice v. Civil Serv. Comm'r*, 688 F.2d 615, 625 (9th

3   Cir. 1982). Settlements of complex cases, such as this one, greatly contribute to the efficient

4   utilization of scarce judicial resources and achieve the speedy resolution of claims. *See, e.g.*,

5   *Garner v. State Farm Mut. Auto Ins. Co.*, 2010 WL 1687832, at *10 (N.D. Cal. Apr. 22, 2010)

6   ("Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and

7   will produce a prompt, certain and substantial recovery for the Plaintiff class.").

8   Rule 23(e)(2) provides that a court may approve a proposed settlement that would bind

9   class members "only after a hearing and only on finding that it is fair, reasonable, and adequate"

10 after considering whether:

(A)	the class representatives and class counsel have adequately represented the class;
(B)	the proposal was negotiated at arm's length;
(C)	the relief provided for the class is adequate, taking into account:
	(i) the costs, risks, and delay of trial and appeal;
	(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
	(iii) the terms of any proposed award of attorney's fees, including timing of payment; and
	(iv) any agreement required to be identified under Rule 23(e)(3)[4]; and
(D)	the proposal treats class members equitably relative to each other.

17 Rule 23, as amended in December 2018, has not changed the established overall standard for

18 approving a proposed class settlement, *i.e.*, evaluating whether it is fair, adequate, and reasonable.

19 Fed. R. Civ. P. 23(e)(2).

20   In considering final approval, the Court may also consider the Ninth Circuit's long-

21 standing approval factors, many of which overlap with the Rule 23 considerations: "(1) the

22 strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further

---

[4] Rule 23(e)(2)(C)(iv) requires the disclosure of any agreement between the parties in connection with a proposed settlement. Here, in addition to the Stipulation, on July 17, 2024 the Parties executed a settlement term sheet and, on July 19, 2024, they entered into a confidential Supplemental Agreement Regarding Requests for Exclusion (the "Supplemental Agreement"). The Supplemental Agreement set forth the conditions under which Uber would have the option to terminate the Settlement in the event the Court required a second opt-out opportunity and requests for exclusion reached a certain threshold. However, the Court did not re-open the opt-out period and so the Supplemental Agreement is moot. The term sheet, Stipulation, and the Supplemental Agreement are the only agreements concerning the Settlement entered into by the Parties.

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1 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount

2 offered in settlement; (5) the extent of discovery completed and the stage of the proceedings;

3 (6) the experience and views of counsel; (7) the presence of a governmental participant; and

4 (8) the reaction of the class members of the proposed settlement." *Churchill Vill., L.L.C. v. Gen.*

5 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th

6 Cir. 1998); *see also In re Zynga Inc.*, *Sec. Litig.* 2015 WL 6471171, at *8 (N.D. Cal. Oct. 27,

7 2015). The Advisory Committee Notes to the 2018 amendments to Rule 23 explain that the four

8 Rule 23(e)(2) factors are not intended to "displace" any factor previously adopted by the courts,

9 but "rather to focus the court and the lawyers on the core concerns of procedure and substance

10 that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23 Advisory

11 Committee Notes to 2018 Amendments, Subdivision (e)(2).

12 　　　　All of these factors, whether in Rule 23 or Ninth Circuit jurisprudence, favor approval of

13 the Settlement.

14 　　　　**B.　　　Rule 23(e)(2)(A): The Class Has Been Adequately Represented**

15 　　　　In determining whether to approve a class action settlement, courts consider whether "the

16 class representative and class counsel have adequately represented the class." Fed. R. Civ. P.

17 23(e)(2)(A). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs

18 and their counsel have any conflicts of interest with other class members, and (2) will the named

19 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon* 150

20 F.3d at1027.

21 　　　　Class Representatives claims are based on the same common course of alleged conduct

22 by Defendants, are typical of all other Class Members, and Class Representatives have no interests

23 antagonistic to the Class. *See In re Stable Road Acquisition Corp.*, 2024 WL 3643393, at *6 (N.D.

24 Cal. Apr. 23, 2024) (finding lead plaintiff adequately represented the class where lead plaintiff's

25 claims are typical of and coextensive with the claims of the settlement class with no antagonistic

26 interests). Indeed, in granting class certification, the Court found Lead Plaintiff and Messinger,

27 Toronto, and the Brauns adequate to serve as Class Representatives, and Lead Counsel fit to serve

28

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1   as Class Counsel. *See* ECF No. 217.

2   Since their appointment, Class Representatives and Class Counsel have adequately

3 represented the Class in both their vigorous prosecution of the Action and in their negotiation of

4 the Settlement. Class Representatives and Class Counsel developed a deep understanding of the

5 facts of the case and merits of the claims by, *inter alia*: (i) conducting the extensive investigation

6 of the claims and defenses; (ii) drafting two detailed amended complaints; (iii) defeating two

7 extensive motions to dismiss; (iv) obtaining class certification; (v) researching, drafting,

8 propounding, and responding to document requests, interrogatories, and requests for admission;

9 (vi) reviewing approximately 107,196 documents (893,997 pages) produced by Uber Defendants,

10 31,379 produced by third parties, and 86,280 produced by Underwriter Defendants; (vii)

11 reviewing at least 27 privilege logs, containing at least 50,442 entries; (viii) serving at least 39

12 subpoenas and at least 140 deposition notices (including amended notices); (ix) taking 32 and

13 defending 14 depositions; (x) litigating numerous discovery disputes; (xi) consulting with experts

14 in the fields of due diligence, negative causation and damages, and tracing; (xii) serving five

15 expert reports; and (xiii) participating in pre-mediation conferences, exchanging extensive

16 mediation briefing, and participating in two mediations. *See generally* Fatale Decl. at §§III.-V.

17   Class Representatives regularly communicated with Plaintiffs' Counsel and reviewed

18 material filings in the case, such as the complaints, the briefing on Defendants' motions to

19 dismiss, and the motions for class certification. Plaintiffs also responded to discovery requests,

20 including searching for and producing potentially relevant information and preparing and sitting

21 for depositions. *See* Exs. 1-5. Furthermore, Class Representatives played active roles in the

22 settlement discussions through counsel and with a representative for BRS attending and actively

23 participating the mediation session on March 28, 2024. *See, e.*g., Ex. 1 at ¶6. Moreover, through

24 counsel, the Class Representatives participated in the ongoing negotiations after the final

25 mediation failed to achieve a settlement. With an informed understanding, Class Representatives

26 agreed to the Settlement.

27   Likewise, Plaintiffs' Counsel, which are highly experienced in prosecuting and trying

28

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1   complex class actions, had a clear view of the strengths and risks of the case and was equipped to

2   make an informed decision regarding the reasonableness of a potential settlement. *See Cheng*

3   *Jiangchen v. Rentech, Inc.,* 2019 WL 5173771, at *5 (C.D. Cal. Oct. 10, 2019) (finding this factor

4   satisfied where counsel "has significant experience in securities class action lawsuits"). Over the

5   course of the litigation, Class Counsel, with the assistance of Plaintiffs' Counsel, developed a

6   deep understanding of the facts of the case and the merits of the claims. *See generally* Fatale Decl.

7   at §§III.-V. Class Counsel is highly qualified and experienced in securities litigation, as set forth

8   in its firm resume (*see* Ex. 8-D) and was able to successfully conduct the litigation against skilled

9   opposing counsel from Allen Overy Shearman Sterling US LLP, Willkie Farr & Gallagher LLP,

10 Paul, Weiss Rifkind, Wharton & Garrison LLP, and White & Case LLP. Accordingly, the Class

11 has been, and remains, well represented.

12   Through their efforts on behalf of the Class, Class Counsel and Class Representatives have

13 concluded that the proposed Settlement is fair, reasonable, and adequate. As the Ninth Circuit

14 observed in *Rodriguez v. West Publishing Corporation,* Class Counsel's informed opinion

15 supports approval as "[t]his circuit has long deferred to the private consensual decision of the

16 parties" and their counsel in settling an action. 563 F.3d 948, 965 (9th Cir. 2009); *see also In re*

17 *NVIDIA Corp. Derivative Litig.,* 2008 WL 5382544, at *4 (N.D. Cal. Dec. 22, 2008)

18 ("[S]ignificant weight should be attributed to counsel's belief that settlement is in the best interest

19 of those affected by the settlement."); *Nat'l Rural Telecomm. Coop. v. DirectTV, Inc.,* 221 F.R.D.

20 523, 528 (C.D. Cal. 2004) ("'[g]reat weight' is accorded to the recommendation of counsel, who

21 are most closely acquainted with the facts of the underlying litigation.").

22   Accordingly, it is respectfully submitted that this factor supports approval of the

23 Settlement.

24   **C.   Rule 23(e)(2)(B): The Settlement Is the Product of Arm's-Length**
                  Negotiations Between Experienced Counsel
25
        Rule 23(e)(2)(B) asks whether "the [settlement] proposal was negotiated at arm's length."
26
    This consideration (and Rule 23(e)(2)(A) discussed above) "overlaps with certain *Hanlon* factors,
27

28

1   such as the non-collusive nature[5] of negotiations, the extent of discovery completed, and the stage

2   of proceedings." *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *7 (N.D. Cal.

3   July 22, 2019).

4   Courts have long recognized an initial presumption that a proposed settlement is fair and

5   reasonable when it is the "product of arms-length negotiations." *In re Portal Software, Inc. Sec.*

6   *Litig.*, 2007 WL 1991529, at *6 (N.D. Cal. June 30, 2007); *In re Netflix Privacy Litig.*, 2013 WL

7   1120801, at *4 (N.D. Cal. Mar. 18, 2013) (noting that courts afford "a presumption of fairness

8   and reasonableness" to settlements that were "the product of non-collusive, arms' length

9   negotiations conducted by capable and experienced counsel"); *cf Jiangchen*, 2019 WL 5173771,

10 at *6 (finding that the settlement was the product of "serious, informed, non-collusive

11 negotiations performed at arms-length" where it involved a mediator and vigorousness litigation).

12 Courts have also reasoned that "one important factor [to consider] is that the parties reached the

13 settlement … with a third-party mediator." *In re Banc of Cal. Sec. Litig.*, 2019 WL 6605884, at

14 *2 (C.D. Cal. Dec. 4, 2019); *see also Satchell v. Fed. Express Corp.*, 2007 WL 1114010, at *4

15 (N.D. Cal. Apr. 13, 2007) (finding "[t]he assistance of an experienced mediator in the settlement

16 process confirms that the settlement is non-collusive.").

17   As detailed in the Fatale Declaration, the Settlement was achieved only after two formal

18 mediation sessions over the course of three years, which included the exchange of robust

19 mediation materials and pre-mediation conferences, and additional negotiations with the

20 assistance of the Mediator. During the mediation sessions, the Uber Defendants, represented by a

21 well-regarded law firm with deep expertise in defense of securities class actions, vigorously

22 asserted arguments against liability and damages. With Class Representatives and the Uber

23 Defendants still meaningfully apart in their respective settlement positions after the final

24

25

---

26   [5] The Settlement has none of the indicia of possible collusion identified by the Ninth Circuit,
       see In re Bluetooth Headset Prod. Liab. Litig., 654 F.3d 935,947 (9th Cir. 2011), such as a "clear-
27   sailing" fee agreement or a provision that would allow settlement proceeds to revert to
       Defendants. *See* Stipulation at ¶12 ("The Settlement is not a claims-made settlement and there is
28   no reversion.).

---

1   mediation in March 2024, they agreed to continue negotiations through the Mediator.[6] On April

2   22, 2024, after several separate one-on-one discussions between the Mediator and counsel for

3   Class Representatives, on the one hand, and counsel for the Uber Defendants, on the other hand,

4   the Mediator issued a $200 million mediator's proposal to resolve all claims subject to the

5   negotiation of non-financial terms for the Settlement and Court approval, which Class

6   Representatives and the Uber Defendants accepted on April 23, 2024. *See* Fatale Decl. at §V.

7   These negotiations were at all times adversarial and at arm's length, and have produced a result

8   that is in the best interests of the Class.

9   Furthermore, Class Representatives and Class Counsel had a very deep understanding of

10   the strengths and weaknesses of the case before reaching the proposed Settlement. The Parties

11   were at an advanced stage of the litigation when they agreed to settle, after fact and expert

12   discovery was complete, as detailed in the Fatale Declaration. There can be no question that Class

13   Representatives and Class Counsel had sufficient information to evaluate the case and the merits

14   of the Settlement by the time it was reached. *See Destefano v. Zynga Inc.,* 2016 WL 537946, at

15   *12 (N.D. Cal. Feb. 11, 2016) (noting that the extent of discovery completed and stage of

16   proceedings supports final approval of settlement where plaintiffs engaged in a pre-filing

17   investigation, opposed defendants' motions to dismiss and a motion for reconsideration, worked

18   with consultants, propounded and responded to some discovery, and prepared and participated in

19   mediation session).

20   **D.   Rule 23(e)(2)(C): The Relief Provided by the Settlement Is Adequate**

21   In determining whether a class-action settlement is "fair, reasonable, and adequate," the

22   Court must consider whether "the relief provided for the class is adequate, taking into account . .

23   . the costs, risks, and delay of trial and appeal." Fed. R. Civ. P. 23(e)(2)(C). This factor overlaps

24   with the Ninth Circuit factors that consider "the strength of the plaintiffs' case", "amount offered

25   in the settlement", and "the risk, expense, complexity, and likely duration of further litigation"

26

27   [6] A mediation was also held in March 2021 with counsel for Lead Plaintiff, the *Messinger*
     Plaintiffs and the Uber Defendants. Prior to this mediation, the Uber Defendants produced 8,600

28   pages of documents, the Parties had separate and joint pre-mediation calls with the Mediator and
     exchanged thorough mediation statements.

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1   and the risk of maintaining class action status". *Churchill*, 361 F.3d at 575; *Hanlon*, 150 F.3d at

2   1026.

3   Here, the $200 million Settlement Amount presents an outstanding recovery for the Class.

4   As noted below and in the Fatale Declaration, the Settlement recovers at least 15% of the potential

5    $1.3 billion in estimated statutory damages, after accounting for various factors such as residual

6   price declines in Uber stock, and it recovers 47% of the Class Representatives' experts' likely

7   lower bound of estimated recoverable damages ($424 million). ¶8. The $200 million recovery is

8   almost 15 times greater than the median recovery of $13.5 million in securities class actions

9   settled in 2023 that, like this Action, alleged only Securities Act claims. *See* Laarni T. Bulan and

10   Laura E. Simmons, *Securities Class Action Settlements – 2023 Review and Analysis* (Cornerstone

11   Research 2024), Ex. 7 at 8; ¶7. In fact, the median settlement for class actions which allege only

12   Securities Act claims between 2014 and 2023 has only been $9.9 million. *Id*. In addition, based

13   on Class Counsel's research, the recovery in this Action is the second largest settlement of an

14   IPO-related securities class action not alleging fraud claims under the Securities Exchange Act of

15   1934.[7] While Class Representatives believe that the case against Defendants is strong, that

16   confidence must be tempered by the fact that the Settlement is certain and that every case involves

17   significant risk of no recovery, particularly in a complex securities case such as this one.

18   **1.   Rule 23(e)(2)(C)(i): Risks of Continued Litigation**

19   "It is well-recognized that securities actions in particular are often long, hard-fought,

20   complicated, and extremely difficult to win." *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL

21   3290770, at *8. Here, the "[d]ifficulties and risks in litigating weigh in favor of approving a class

22   action settlement." *In re Splunk Inc. Sec. Litig.*, 2024 WL 923777, at *5 (N.D. Cal. Mar. 4, 2024).

23   Although Class Representatives and Class Counsel believe that the claims asserted against

24   Defendants are strong, they recognize the significant challenges and risks they would face moving

25   forward, as well as the expense and length of continued litigation through summary judgment

26

27   [7] Based on Class Counsel's research, the largest settlement of only Securities Act claims in

28   connection with an IPO was in *Schuh v. HCA Holdings, Inc.*, No. 11-cv-1033 (M.D. Tenn), and
     only $15 million larger.

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1   motions, trial, and likely appeals. As set forth below, the benefits conferred on the Class by the

2   $200 million Settlement far outweigh the costs, risks, and delay of further litigation, and confirm

3   the adequacy of and reasonableness of the Settlement.

4   **Falsity, Materiality, and Investor Knowledge:** Regarding allegations of false and

5   misleading statements and omissions in the Offering Documents, Defendants would have likely

6   continued to argue that the disclosures within the Offering Documents, and discovery, showed

7   that there were no false and misleading statements or omissions. As Defendants have repeatedly

8   noted, the Prospectus contained in the Offering Documents spanned over 300 pages and included

9   a massive 49 pages of disclosed "Risk Factors" that covered highly relevant topics such as Uber's

10 business model, passenger safety, and financial condition. Thus, Defendants would continue to

11 argue that nothing material was omitted from the Offering Documents and any stock price

12 reaction to post-IPO news was merely the materialization of already warned of risks. ¶88.

13   Defendants also would have argued that, aside from relevant disclosures in the Offering

14 Documents, relevant information and reports about Uber also existed in the public domain. In

15 support of this argument, Defendants and their experts have already highlighted the scores of

16 purportedly relevant news articles and analyst reports that they argue defeat Class

17 Representatives' claims that any material information was allegedly omitted from the Offering

18 Documents. For example, pertaining to passenger safety, Defendants would likely argue that Uber

19 released a passenger safety report, as the Offering Documents indicated Uber would and which

20 Class Representatives did not challenge, and that no evidence of purposeful delay to release the

21 report until after the IPO existed. Regarding slowing growth and losses, Defendants would likely

22 argue that this issue was discussed by analysts and at road shows prior to the IPO, and metrics

23 were published for years leading up to the IPO and disclosed in the Offering Documents.

24 Moreover, Defendants would highlight for the jury that the unchallenged passenger safety report

25 demonstrated that only 0.01% of trips had any safety-related issues at all, and only 0.0003% of

26 trips had a report of a critical safety incident; facts which could prevent a jury from finding any

27 related misstatements or omissions were material to investors. ¶¶88, 89.

28

1   Likewise, regarding slowing growth and losses, Defendants would likely argue that this

2   issue was discussed by analysts and at road shows prior to the IPO, and metrics were published

3   for years leading up to the IPO and disclosed in the Offering Documents. ¶90. Defendants would

4   likely continue to advocate their position, as discussed below, that the Court has already held that

5   Uber was not required to disclose Q2 2019 financial results at the time of the IPO. *See* ECF No.

6   95 at 14.

7   Regarding driver classification, Defendants would likely argue that Uber's classification

8   of drivers as independent contractors was widely known and the subject of prior litigation.

9   Moreover, it is an unavoidable fact that in the five years since the IPO, Uber has not been required

10   to re-classify its drivers as employees under *Dynamex* (the California Supreme Court rule on the

11   test for independent contractors). ¶91.

12   Not only would these facts likely present challenges to Class Representatives from

13   proving to a jury that the alleged misstatements and omissions were both false and material, but

14   they also militate in favor of Defendants' asserted knowledge defense. Defendants have argued

15   that because much was known to the investing public – good and bad – about Uber's business

16   practices, passenger safety, and financial condition at the time of the IPO, even statements or

17   omissions proven to be false and misleading would nonetheless be insulated from liability because

18   they cannot be held liable for failing to disclose information that was otherwise actually or

19   imputably known to investor.

20   **Alleged Unpled Claims:** Additionally, Defendants would have likely continued to argue

21   that certain allegations and theories, which were the focus of subsequent discovery sought by

22   Plaintiffs, were not explicitly pled in the Second Amended Complaint. Defendants would have

23   likely moved for dismissal and preclusion based on this issue, creating uncertainty as to whether

24   Class Representatives would be allowed to proceed with such allegations. For example, regarding

25   segment reporting, Defendants would likely argue that Class Representatives never moved to

26   amend the Second Amended Complaint to include segment reporting as a pled allegation. If the

27   Court were to agree with Defendants' argument, it is possible that Class Representatives could no

28

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1   longer proceed with their theory of falsity based on segment reporting. ¶93.

2   **Due Diligence:** Each of the Individual Defendants and the Underwriter Defendants also

3   have asserted a due diligence defense as to their liability. While Class Representatives would have

4   worked extensively with their due diligence experts with a view towards presenting compelling

5   arguments to the jury to show that these Defendants were negligent in connection with the IPO,

6   these Defendants would also have put forth well-qualified experts of their own showing that they

7   conducted a reasonable investigation and had reasonable grounds for their belief in the Offering

8   Documents' truthfulness and completeness. ¶94.

9   **Trial**: Defendants would attempt to inform the trier of fact that Uber is now a profitable

10   company with a drastically improved reputation and a new CEO who has in fact created a "new

11   day at Uber." This could potentially affect jurors' views of Uber and the allegations. ¶95.

12   Moreover, given the nature of the claims and allegations focusing on internal conduct and

13   knowledge at Uber around the time of the IPO, Class Representatives faced a significant

14   challenged in proving their case through the testimony of former and current Uber employees

15   who would not readily admit mistakes were made in connection with preparing the Offering

16   Documents or view documentary evidence in the same light as Class Representatives.

17   **Damages:** Further, while the Class Representatives' consulting damages expert estimated

18   that statutory damages were approximately $1.3 billion after accounting for various factors,

19   including residual price declines in Uber stock, Defendants and their experts would have also

20   made several credible arguments that any recoverable damages should be much lower, if not zero.

21   ¶¶96-101.

22   Defendants would argue that evidence and data show that rather than dropping due to

23   post-IPO revelation of material negative information known by Uber at the time of the IPO,

24   Uber's stock price trended down starting the day of the IPO itself and largely continued to do so

25   for the next several months irrespective of what news entered the market. Defendants would likely

26   go on to argue that prior to the filing of the first complaint in this Action, Uber's stock price only

27   had three days of statistically significant negative residual returns. If some of these arguments

28

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1 with respect to focusing only on statistically significant price drops were successful, recover

2 damages, according to Class Representatives' consulting damages expert, could likely be as low

3 as $424 million. And if Defendants' arguments were further or fully accepted, *i.e.*, Defendants

4 were able to sever causality on statistically significant days, Defendants would claim that damages

5 should be significantly reduced further, potentially to zero. Indeed, on one of the statistically

6 significant days, August 9, 2019, which followed Uber's public release of its Q2 2019 earnings,

7 Defendants would argue that the Court has already found that the Defendants were "not required

8 to disclose [Uber's] Q2 2019 Financial Results at the time of the IPO," thus severing causality on

9 that day. ECF No. 95 at 14. Defendants would more broadly argue that any stock price declines

10 on all of the statistically significant days were caused, not by the revelation of the truth about

11 prior alleged misrepresentations, but rather by the materialization of disclosed risks, new

12 information about unchallenged aspects of Uber's business, and investors' evolving views on the

13 ridesharing industry in general. ¶¶98-99.

14   Furthermore, issues relating to damages would likely have come down to an unpredictable

15 and hotly disputed "battle of the experts." The uncertainty as to which side's expert's view might

16 be credited by the jury presents a substantial litigation risk in securities actions. *See, e.g., In re*

17 *Celera Corp. Sec. Litig.*, 2015 WL 7351449, at *6 (N.D. Cal. Nov. 20, 2015) (finding that risks

18 related to the "battle of experts" weighed in favor of settlement approval); *Nguyen v. Radient*

19 *Pharms. Corp.*, 2014 WL 1802293, at *2 (C.D. Cal. May 6, 2014) (approving settlement in

20 securities case where "[p]roving and calculating damages required a complex analysis, requiring

21 the jury to parse divergent positions of expert witnesses in a complex area of the law" and "[t]he

22 outcome of that analysis is inherently difficult to predict and risky").

23   **Maintaining Class Certification:** Although the Court certified a litigation class on July

24 26, 2022 and notice of certification was provided to Class Members, Defendants could move to

25 decertify the class. Rule 23(c)(1) provides that a class certification order may be altered or

26 amended at any time before decision on the merits, which is an "inescapable and weighty risk that

27 weighs in favor of a settlement." *In re Google Location History Litig.*, 2024 WL 1975462, at *6

28

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1   (N.D. Cal. May 3, 2024).

2   **Tracing:** Both damages and the size of the Class could also be significantly reduced by

3   the yet to be addressed question of tracing. Defendants would likely argue that in light of the U.S.

4   Supreme Court's recent decision in *Slack Technologies, LLC v. Pirani*, 598 U.S. 759 (2023),

5   which requires that Section 11 plaintiffs must plead and prove that they purchased securities

6   traceable to the registration statement at issue, at minimum no potential Class Member after May

7   14, 2019 (the date the IPO shares were distributed) could prove tracing. Defendants would likely

8   argue that on that date the IPO shares were deposited with the DTC and they were comingled

9   with non-IPO shares, thus, making tracing impossible.[8] ¶100. As a result, Defendants would likely

10 seek to decertify the Class and at minimum would seek to have it limited to investors who

11 purchased Uber's common stock between May 10, 2019 and May 13, 2019. *See In re The Honest*

12 *Company Sec. Litig.*, 2023 WL 3190506, at *5 (C.D. Cal. May 1, 2023) (limited Section 11 class

13 period to the date of the IPO to the date on which unregistered shares were comingled at the

14 DTC).

15   **Outstanding Settlement:** Even without considering Defendants' potential tracing

16 arguments, the Settlement recovers at least 15% of the potential $1.3 billion in damages. It also

17 recovers 47% of the Class Representatives' experts' likely lower bound of estimated recoverable

18 damages ($424 million). Courts regularly approve settlements with comparable or lower

19 percentage recoveries than obtained here. *See, e.g.*, *In re Aqua Metals, Inc. Sec. Litig.*, 2022 WL

20 612804, at *6 (N.D. Cal. Mar. 3, 2022) (approving settlement that recovers approximately 7.3%

21 of likely recoverable damages); *In re Omnivision Techs., Inc.,* 559 F. Supp. 2d 1036, 1042 (N.D.

22 Cal. 2008) (finding settlement yielding 6% of potential damages after deducting fees and costs

23 was "higher than the median percentage of investor losses recovered in recent shareholder class

24 action settlements"); *Hunt v. Bloom Energy Corp.*, 2024 WL 1995840, at *6 (N.D. Cal. May 6,

25 2024) (approving settlement that recovers "approximately 5.2% of the estimated maximum

26

27   [8] Damages under Section 12 could also be limited to a narrow class because Defendants would argue that Section 12 liability does not attach for sales in the aftermarket and damages are limited

28 to only those investors who can prove they purchased their shares from or were solicited by a specific defendant.

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1   damages potentially available").

2   Notably, the $200 million recovery is almost 15 times greater than the median recovery

3   of $13.5 million in securities class actions settled in 2023 that, like this Action, alleged only

4   Securities Act claims. *See* Laarni T. Bulan and Laura E. Simmons, *Securities Class Action*

5   *Settlements – 2023 Review and Analysis* (Cornerstone Research 2024), Ex. 7 at 8. In fact, the

6   median settlement for class actions which allege only Securities Act claims between 2014 and

7   2023 was only $9.9 million. *Id*. Finally, based on Class Counsel's research, the Settlement is the

8   second largest settlement of an IPO-related securities class action not alleging fraud claims under

9   the Securities Exchange Act of 1934.[9]

10   Lastly, the Settlement represents a prompt and substantial tangible recovery, without the

11   considerable risk, expense, and delay of summary judgment, trial, and post-trial litigation. *See,*

12   *e.g.*, *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) ("the cost, complexity

13   and time of fully litigating the case all suggest that this settlement was fair"); *In re LinkedIn User*

14   *Priv. Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015) ("Generally, unless the settlement is clearly

15   inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with

16   uncertain results."). At each of these stages, there would be significant risks attendant to the

17   Action's continued prosecution, and there was no guarantee that further litigation would have

18   resulted in a higher recovery, or any recovery at all.

19   Accordingly, in light of all the substantial risks and expense of continued litigation, and

20   compared to the certain and prompt recovery of $200,000,000, the Settlement is an outstanding

21   result.

22   **2.   Rule 23(e)(2)(C)(ii): Effective Process for Distributing**
                        Relief to the Class
23

24   Rule 23(e)(2)(C)(ii) instructs courts to consider whether the relief provided to the class is

25   adequate in light of the "effectiveness of any proposed method of distributing relief to the class,

     including the method of processing class-member claims."
26

27   _____

         [9] Based on Class Counsel's research, the largest settlement of only Securities Act claims in
28   connection with an IPO was in *Schuh v. HCA Holdings, Inc.*, No. 11-cv-1033 (M.D. Tenn), and
     only $15 million larger.

1   Here, the proceeds of the Settlement will be distributed with the assistance of an

2   experienced claims administrator, A.B. Data, Ltd., which was previously appointed by the Court

3   to disseminate the Class Notice. The Claims Administrator will employ a well-tested protocol for

4   the processing of claims in a securities class action. Specifically, a Claimant will submit, either

5   by mail or online using the case website, the Court-approved Claim Form. Based on the trade

6   information provided by Claimants, the Claims Administrator will determine each Claimant's

7   eligibility to recover by, among other things, calculating their respective "Recognized Claims"

8   based on the Court-approved Plan of Allocation, and ultimately determine each eligible

9   Claimant's *pro rata* portion of the Net Settlement Fund. *See* Stipulation at ¶¶21, 27. Plaintiffs'

10   claims will be reviewed in the same manner. Claimants will be notified of any defects or

11   conditions of ineligibility and be given the chance to contest the rejection of their claims.

12   Stipulation at ¶27(d)-(e). Any claim disputes that cannot be resolved will be presented to the

13   Court. *Id*.

14   After the Settlement reaches its Effective Date (*id*. at ¶36) and the claims process is

15   completed, Authorized Claimants will be issued payments. If there are un-claimed funds after the

16   initial distribution, and it would be feasible and economical to conduct a further distribution, the

17   Claims Administrator will conduct a further distribution of remaining funds (less the estimated

18   expenses for the additional distribution, Taxes, and unpaid Notice and Administration Expenses).

19   Additional distributions will proceed in the same manner until it is no longer economical to

20   conduct further distributions. Thereafter, Class Representatives recommend that any *de minimis*

21   balance that remains in the Net Settlement Fund, after payment of any outstanding Notice and

22   Administration Expenses, be donated to the Council of Institutional Investors, a non-profit, non-

23   sectarian organization, or such other organization approved by the Court.[10] *Id* at ¶24; Ex. 6-B at

24

25   [10] CII is a non-profit, non-partisan association of benefit funds, foundations, and endowments
     that seeks to educate its members, policymakers, and the public about corporate governance,
26   shareowner rights, and related investment issues. *See, e.g., Vancouver Alumni Asset Holdings Inc.
     v. Daimler AG,* No. 16-cv-02942, ECF No. 346 (C.D. Cal. Mar. 13, 2023) (designating CII as *cy
27   pres* recipient in securities class action); *In re Wells Fargo Sec. Litig*., 991 F.Supp. 1193, 1198
     (N.D. Cal. 1998) (recognizing CII as a potential proper recipient of cy pres distributions in
28   securities class actions). Neither the Parties nor their counsel have a relationship with CII.

1 ¶78.

2   **3.**   **Rule 23(2)(C)(iii): Anticipated Legal Fees and Expenses**

3   Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorneys' fees,

4 including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). As discussed in Class Counsel's

5 Memorandum of Points and Authorities in Support of an Award of Attorneys' Fees and Expenses,

6 submitted herewith, Class Counsel seek an award of attorneys' fees of 29% of the Settlement

7 Fund and Litigation Expenses of $2,810,672.75. Class Counsel's Fee Memorandum also includes

8 a request by the Class Representatives for $120,420 in connection with their work in the litigation,

9 pursuant to the PSLRA. Approval of attorneys' fees is entirely separate from approval of the

10 Settlement, is not part of any agreement with Defendants, and the Settlement cannot be terminated

11 based on any ruling on the fees or expenses.

12   **E.**   **Rule 23(e)(2)(D): Class Members Are Treated Equitably**
                       Relative to One Another

13

14   The Settlement does not improperly grant preferential treatment to either Plaintiffs or any

15 segment of the Class. Rather, all members of the Class, including Plaintiffs, will receive a

16 distribution from the Net Settlement Fund pursuant to the Plan of Allocation approved by the

17 Court, which is discussed below.[11] All Class Members that were allegedly harmed as a result of

18 the alleged violations of the Securities Act, and that submit an eligible claim pursuant to the Plan

19 of Allocation, will receive their *pro rata* share of the Net Settlement Fund based on their

20 "Recognized Claim" under the plan. *See generally* Settlement Notice at ¶¶61-79.

21 **II.**   **THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION**

22   In addition to seeking final approval of the Settlement, Class Representatives also seek

23 final approval of the Plan of Allocation. The Plan of Allocation, drafted with the assistance of

24 Class Representatives' damages expert, is a fair, reasonable, and adequate method for allocating

25

26   —————————————

27   [11] Plaintiffs request for reimbursement of their reasonable costs and expenses directly related to their participation in the Action, noted above, would not constitute preferential treatment. *See* 15 U.S.C. §15 U.S.C. § 77z-1(a)(4) (reimbursement of plaintiffs' costs explicitly contemplated

28 by the PSLRA in addition to receiving their *pro rata* recovery).

1   the proceeds of the Settlement among eligible claimants and treats all Class Members equitably,

2   as required by Rule 23(e)(2)(D). The standard for approval of a plan of allocation in a class action

3   under Rule 23 of the Federal Rules of Civil Procedure is the same as the standard applicable to

4   the settlement as a whole – the plan must be fair, reasonable, and adequate. *See Class Plaintiffs*

5   *v. City of Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992); *see also Vataj v. Johnson*, 2021 WL

6   1550478, at 10 (N.D. Cal. Apr. 20, 2021). An allocation formula need only have a "reasonable,

7   rational basis, particularly if recommended by experienced and competent class counsel." *Id*.

8   　　　　Each Authorized Claimant, including Class Representatives, will receive a distribution

9   pursuant to the Plan, and Class Representatives will be subject to the same formula for distribution

10   of the Settlement as other class members. *See Ciuffitelli v. Deloitte & Touche LLP*, 2019 WL

11   1441634, at *18 (D. Or. Mar. 19, 2019) ("[t]he Proposed Settlement does not provide preferential

12   treatment to Plaintiffs or segments of the class" where "the proposed Plan of Allocation

13   compensates all Class Members and Class Representatives equally in that they will receive a pro

14   rata distribution based [sic] of the Settlement Fund based on their net losses"). "[A] plan of

15   allocation . . . fairly treats class members by awarding a pro rata share to every Authorized

16   Claimant, even as it sensibly makes interclass distinctions based upon, *inter alia*, the relative

17   strengths and weaknesses of class members' individual claims and the timing of purchases of the

18   securities at issue." *Redwen v. Sino Clean Energy, Inc.*, 2013 WL 12303367, at *8 (C.D. Cal. July

19   9, 2013).

20   　　　　Claimants' Recognized Loss Amounts per share will be calculated using the transactional

21   information provided by Claimants in their Claim Forms. Authorized Claimants will recover their

22   proportional "*pro rata*" amount of the Net Settlement Fund based on the sum of their Recognized

23   Loss Amounts per share, *i.e.*, their total Recognized Claims.

24   　　　　Here, the objective of the Plan of Allocation is to distribute the Net Settlement Fund

25   equitably among those Class Members who suffered economic losses as a result of the alleged

26   violations of the federal securities law with respect to shares of Uber's publicly traded common

27   stock purchased or otherwise acquired pursuant and/or traceable to the Offering Documents for

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1   Uber's IPO. In general, the Recognized Loss Amounts per share calculated under the Plan are

2   based principally on the statutory formula for damages under Section 11(e) of the Securities Act,

3   15 U.S.C. §77k(e). As set forth in the Plan, a Claimant's total Recognized Claim will depend

4   upon several factors, including the date(s) when the Claimant purchased or acquired his, her, or

5   its shares of Uber common stock during the Traceability Period, and whether such shares were

6   sold (and if so, when and at what price) or held. The Plan applies a ninety-five percent (95%)

7   discount to claims of Class Members that purchased or otherwise acquired Uber's common stock

8   after September 25, 2019. This discount reflects the potential weakness of claims arising after the

9   State Court Action was filed by Plaintiff Messinger in California state court after the close of

10   trading on September 25, 2019. (The State Court Action was brought to remedy the same

11   violations of the Securities Act based upon many of the same factual allegations as this Action).

12   Defendants would have likely argued that purchasers of Uber's publicly traded common stock

13   after September 25, 2019 could have had actual or imputed knowledge of many, if not all, of the

14   allegedly false and misleading statements and omissions at issue in this Action, which would

15   disqualify those purchasers from recovery under the Securities Act. ¶¶106-117.

16   The Plan of Allocation was fully described in the Settlement Notice and, to date, there has

17   been no objection to the proposed plan. *See* Ex. 6-B at ¶¶61-79.

18   It is respectfully submitted that the proposed Plan of Allocation will result in a fair

19   distribution of the available proceeds among Class Members who submit valid claims.

20   **III.   THE NOTICE PROGRAM AND REACTION OF THE CLASS TO DATE**

21   Notice of a class action settlement must be directed "in a reasonable manner to all class

22   members who would be bound" by the Settlement. Fed. R. Civ. P. 23(e)(1)(B). In granting

23   preliminary approval of the Settlement, the Court approved Class Representatives' proposed

24   notice plan. *See* ECF No. 468. The notice program's combination of individually mailed

25   Settlement Postcards to all Class Members who could be identified with reasonable effort,

26   supplemented by the Summary Notice in a widely circulated publication, transmission over a

27   business newswire, and publication on internet websites, satisfied all requirements of Rule 23,

28

1   due process, the PSLRA, and the Northern District's Guidance. *See, e.g., Hunt v. Bloom Energy*

2   *Corp.*, 2024 WL 1995840, at *4 (N.D. Cal. May 6, 2024) (approving similar notice program that

3   included mailing postcard notices to potential class members and nominees followed by

4   publication notice and posting notice on a settlement website); *Zynga*, 2016 WL 537946, at *7

5   (similar notice program constituted "the best form of notice available under the circumstances").

6   As detailed in the accompanying Mailing Declaration of the Claims Administrator, as of

7   October 4, 2024, a total of 772,957 Settlement Postcards have been mailed potential Class

8   Members, brokers, and nominees. *See* Ex. 6 at ¶¶8-11. In addition, the Summary Notice was

9   published in *The Wall Street Journal* and transmitted over the *PR Newswire* on September 6,

10 2024. *Id*. at ¶12. The Claims Administrator also continued to maintain a dedicated case website,

11 www.UberIPOSecuritiesLitigation.com to provide potential Class Members with information

12 concerning the Action, the Settlement, and access to copies of the Settlement Postcard, Settlement

13 Notice, Claim Form, Stipulation, Preliminary Approval Order, and other case-related documents.

14 *Id*. at ¶13. Claim Forms can be submitted to the Claims Administrator by mail or using the case

15 website. *Id*. at ¶14.

16   Notice of a class action settlement "is satisfactory if it 'generally describes the terms of

17 the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come

18 forward and be heard.'" *Churchill*, 361 F.3d at 575. The contents of the notices here provided the

19 necessary information for Class Members to make an informed decision regarding the Settlement

20 and contained all of the information required by Rule 23(c)(2)(B); the PSLRA, 15 U.S.C. §77z-

21 1(a)(7); and Northern District's Guidance. The notices collectively informed Class Members of,

22 among other things, (1) the nature of the Action and the claims asserted; (2) the definition of the

23 Class; (3) the amount of the Settlement; (4) the Plan of Allocation; (5) the reasons why the Parties

24 are proposing the Settlement; (6) the estimated average recovery per affected share; (7) the

25 maximum amount of attorneys' fees and expenses that will be sought; (8) the identity and contact

26 information for the representatives of Class Counsel; (9) Class Members' right to object to the

27 Settlement, the Plan of Allocation, or the requested attorneys' fees or expenses as well as the right

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1 to opt back into the Class if they previously requested exclusion; (10) the binding effect of a

2 judgment on Class Members; and (11) the dates and deadlines for Settlement-related events.

3   While the objection deadline – November 14, 2024 – has not yet passed, to date, no

4 objections have been received by Class Counsel or docketed by the Court. The reaction to date

5 supports approval of the Settlement and the proposed Plan of Allocation. Class Representatives

6 will address any objections, if any, in their reply submission.

7 <div align="center">**CONCLUSION**</div>

8   For all the foregoing reasons, Class Representatives respectfully request that the Court

9 grant final approval to the proposed Settlement and approve the Plan of Allocation for the

10 distribution of the Net Settlement Fund. Proposed orders will be submitted with Class

11 Representatives' reply papers, after the deadline for objecting has passed.

12 Dated: October 4, 2024   **LABATON KELLER SUCHAROW LLP**

13

14   By: /s/ *Alfred L. Fatale III*

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CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
CASE NO. 3:19-CV-06361-RS

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CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
CASE NO. 3:19-CV-06361-RS

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CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2024, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List served via ECF on all registered participants only.

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

Executed on October 4, 2024

/s/ *Alfred L. Fatale III*
Alfred L. Fatale III