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Interim Co-Lead Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

In Re: Robinhood Outage Litigation

Master File No. 3:20-cv-01626-JD

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
APPROVAL OF PROPOSED CLASS  
ACTION SETTLEMENT; MEMORADUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: September 22, 2022  
Time: 10:00 a.m.  
Judge: Hon. James Donato  
Ctrm: 11, 19th Floor

**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on September 22, 2022 at 10:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable James Donato, United States District Judge for the Northern District of California, at the San Francisco Courthouse, 450 Golden Gate Avenue, Courtroom 11, 19th Floor, San Francisco, CA 94102, Plaintiffs will and hereby do move for an Order pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Rule”):

- (i) preliminarily approving the proposed Class Action Settlement Agreement and Release dated August 4, 2022 (attached as Exhibit A to the Joint Declaration of Anne Marie Murphy and Matthew B. George in Support of Plaintiffs’ Motion for Preliminary Approval of Proposed Class Action Settlement (“Joint Decl.”), filed concurrently herewith);
- (ii) finding that, for purposes of effectuating the proposed Settlement, the prerequisites for class certification under Federal Rule of Civil Procedure 23(a) are likely to be found satisfied;
- (iii) approving the form and manner of notice to the Settlement Class;
- (iv) approving the selection of the Settlement Administrator;
- (v) appointing Cotchett, Pitre & McCarthy (“CPM”) and Kaplan Fox & Kilsheimer LLP (“Kaplan Fox”) as Co-Lead Class Counsel for purposes of the settlement;
- (vi) appointing Plaintiffs Daniel Beckman, Emma Jones, Mahdi Heidari Moghadam, Howard Morey, Colin Prendergast, Raghu Rao, Michael Riggs, and Jason Steinberg as Class Representatives for purpose of the settlement; and
- (vii) scheduling a Fairness Hearing before the Court.

Plaintiffs’ motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below, the Joint Declaration, the Settlement Agreement, the Declaration of Cameron R. Azari, Esq. on Notice Plan and Notices (“Azari Decl.”), Declaration of Scott Walster (“Walster Decl.”), all exhibits attached thereto, the pleadings and records on file in

1 this Action, and other such matters and argument as the Court may consider at the hearing of this  
2 motion.

3 **STATEMENT OF ISSUES TO BE DECIDED**

- 4 1. Whether the Court should grant conditional certification of the Settlement Class; and  
5 2. Whether the Court should grant preliminary approval of the Settlement.

6 Respectfully submitted,

7 Dated: August 5, 2022

*/s/ Anne Marie Murphy*

---

8 **COTCHETT, PITRE & MCCARTHY, LLP**

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16 Dated: August 5, 2022

*/s/ Matthew B. George*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After two years of contentious litigation, followed by months of settlement negotiations,  
4 Plaintiffs request preliminary approval of a \$9.9 million non-reversionary cash settlement on behalf  
5 of approximately 150,000 Robinhood investors who experienced losses associated with the March  
6 2020 Outages of Robinhood’s trading platform. The Settlement provides for direct distribution of  
7 payments to Settlement Class Members, without requiring claims forms. Settlement Class Members  
8 will be apprised of their estimated recovery from this Settlement in their individualized Long Form  
9 Notice.

10 The Settlement is the product of well-informed, arms’-length settlement negotiations—  
11 between experienced counsel facilitated by an experienced mediator. It arrives at a fully informed,  
12 critical juncture in the litigation, after the completion of discovery and extensive motions, but before  
13 the Plaintiffs and Settlement Class Members must face the risks of pending class certification,  
14 *Daubert* challenges, and summary judgment proceedings. The Settlement presents a strong recovery  
15 and delivers tangible and immediate compensation to the Settlement Class, particularly considering  
16 the substantial risks protracted litigation would present. The Court should grant preliminary  
17 approval.

18 **II. BACKGROUND**

19 **A. The Litigation and Class Counsel’s Efforts**

20 Between March 2 and 3, 2020, Robinhood experienced an Outage of its securities trading  
21 app and website that began just after Monday’s market open and extended well into Tuesday,  
22 rendering systems nonfunctional or inaccessible to Robinhood’s millions of customers. On March  
23 9, users again found themselves unable to access their accounts or transact on the markets due to an  
24 outage of Robinhood’s systems throughout the morning. Beginning March 5, 2020, a series of  
25 putative class actions were filed against Robinhood in state and federal court asserting claims arising  
26 from the Outages. Joint Decl. ¶¶ 4-5. Over a dozen subsequent related actions were filed in,  
27 removed to, or transferred to this District, and they were eventually consolidated on July 14, 2020.  
28 ECF No. 59.

1 After appointment of interim co-lead class counsel, ECF No. 65, Plaintiffs filed a  
2 consolidated amended complaint (“Complaint”) on August 21, 2020. ECF No. 74. On October 5,  
3 2020, Robinhood moved to dismiss the complaint, strike the Plaintiffs’ class allegations, and stay  
4 discovery. ECF Nos. 76-77. On November 5, 2020, the Court denied Robinhood’s Motion to Stay.  
5 At the February 18, 2021, Motion to Dismiss hearing, the Court gave its findings on the record,  
6 largely denying Robinhood’s Motion with the exception of dismissing Defendant Robinhood  
7 Markets, Inc., without prejudice. ECF No. 95. At the Court’s direction to select a mediator, the  
8 parties chose David Geronemus of JAMS. ECF No. 100. The parties attended a mediation with Mr.  
9 Geronemus on July 27, 2021, although the matter did not settle.

10 On October 22, 2021, Plaintiffs filed a motion for class certification, supported by over 50  
11 documentary exhibits and deposition excerpts, the Declarations of Plaintiffs, and their expert reports.  
12 ECF No. 138-40. Robinhood opposed Plaintiffs’ Motion on December 3, 2021, and also filed a  
13 *Daubert* motion to exclude the testimony and report of Plaintiffs’ damages expert, Scott E. Walster  
14 of Global Economics Group. ECF Nos. 145-46. Each motion was fully briefed and heard by the  
15 Court in-person on February 24, 2022. At the hearing, the Court had multiple questions about  
16 Plaintiffs’ damages theories and requested a “hot tub” hearing featuring the parties’ respective  
17 economist experts that was set for June 9, 2022. ECF Nos. 161, 167-68.

18 On February 18, 2022, prior to the class certification hearing, Robinhood filed a Motion for  
19 Summary Judgment on all of Plaintiffs’ claims, relying heavily on the terms of Robinhood’s  
20 Customer Agreement and a recent federal court decision in a separate multi-district litigation against  
21 Robinhood that dismissed those Plaintiffs’ claims in *In re January 2021 Short Squeeze Trading*  
22 *Litigation*, No. 21-02989-MDL, 2022 WL 255350 (S.D. Fla. Jan. 27, 2022). ECF No. 160.  
23 Robinhood filed a *Daubert* Motion to Exclude the opinions and testimony of Plaintiffs’ brokerage  
24 operations expert, Peter Vinella. ECF No. 159. At the class certification hearing, the Court stayed  
25 briefing on those Motions pending the “hot tub” hearing with the parties’ economists.

26 While these Motions were pending, the parties continued efforts to resolve the matter,  
27 facilitated by Mr. Geronemus, over the course of many months. Joint Decl. ¶¶ 28-29. On May 10,  
28 2022, the parties reached a settlement in principle that was then commemorated into a written

1 memorandum of understanding and a notice of settlement was filed with the Court on May 26, 2022.  
2 *Id.* at ¶ 29. The Parties engaged in several rounds of negotiations before finalizing the terms of the  
3 Settlement Agreement now submitted for the Court's approval.

4 **B. Fact and Expert Discovery**

5 Discovery in this case was thorough and robust. The parties engaged in extensive  
6 negotiations over the production of Robinhood's documents and customer account and trading  
7 information. Joint Decl. ¶¶ 12-13. Robinhood produced over 50,000 documents and Plaintiffs took  
8 ten depositions of key Robinhood executives and engineers. *Id.* at ¶¶ 14-16. Given that the Outages  
9 prevented Robinhood's systems from being able to receive and execute most orders, the bulk of the  
10 account information available included: (1) account and trading history information for the months  
11 preceding the Outages; and (2) some limited trade information before and during the Outages as well  
12 as trading activity that occurred once Robinhood's systems were back online. In consultation with  
13 Plaintiffs' damages expert, Plaintiffs negotiated a sampling protocol that eventually led to the  
14 production of account and trading information for approximately 40,000 Robinhood active users.  
15 *Id.* at ¶ 13.

16 Robinhood took extensive discovery of the Plaintiffs, serving document requests and  
17 interrogatories and deposing nine of them. *Id.* at ¶ 18. Additionally, Robinhood requested  
18 inspections of Plaintiffs' cell phones/devices that were used to access and/or trade on Robinhood's  
19 app, which all Plaintiffs provided through data extractions. *Id.* Even with a compressed discovery  
20 schedule, the parties completed discovery prior to the April 7, 2021 cutoff by completing multiple  
21 depositions simultaneously. *Id.* at ¶ 19.

22 The Parties exchanged initial expert reports on June 25, 2021, with Plaintiffs producing three  
23 experts on regulatory issues, securities brokerage operations, and Plaintiffs' proposed damages  
24 models. *Id.* at ¶ 22. Robinhood submitted an initial expert report and then submitted three rebuttal  
25 reports challenging each of Plaintiffs' experts' opinions. The Parties engaged in expert discovery  
26 and deposed each expert. *Id.* at ¶¶ 23-24.

1 **III. PROPOSED SETTLEMENT**

2 **A. The Settlement Class and Release**

3 The proposed Settlement Class Members are a subset of Robinhood customers in March of  
4 2020 who fall within one or more of three categories and were originally proposed as the “VWAP  
5 Subclass,” the “SPY Option Subclass,” and the “Failed Trade Subclass” in Plaintiffs’ Class  
6 Certification Motion. The Class Members are identified by Plaintiffs’ damages expert based on the  
7 Customer Trading Information, using the “Ex Post” methodologies described in the Expert Report  
8 of Scott E. Walster (“Walster Report”). Walster Decl. ¶ 4. Based on the sampled data produced by  
9 Robinhood, Plaintiffs anticipate that there will be approximately 150,000 Settlement Class Members  
10 incurring approximately \$20.4 million in losses under Plaintiffs’ damages methodologies. Joint  
11 Decl. ¶ 36; Walster Decl. ¶ 4. Given that sampling was used to determine these estimates, Plaintiffs  
12 submit these figures as close estimates but anticipate that the final numbers may differ. *Id.*

13 Settlement Class Members have one or more Qualifying Trades in the following groups:

- 14 1. **VWAP Loss Trades** includes any person who closed one or more position(s) on March 3,  
15 2020, at a loss relative to the Volume Weighted Average Price (“VWAP”) of those positions  
16 during the March 2 and 3, 2020 Outages.
- 17 2. **SPY Options Trades** includes any person who held a SPDR S&P 500 (“SPY”) option  
18 position expiring on March 2, 2020, and experienced a loss relative to the VWAP of those  
19 options during the March 2, 2020 Outage.
- 20 3. **Failed Marketable Trades** includes any person who experienced a Failed Equity Trade that  
21 became marketable during the March 2 and 3 Outages at a loss relative to the price at the end  
22 of the March 2 and 3 Outages and/or the transaction price obtained through March 4, 2020;  
23 or who experienced a Failed Equity Trade that became marketable during the March 9  
24 Outage at a loss relative to the price at the end of the March 9 Outage and/or the transaction  
25 price obtained through March 10, 2020.

26 Joint Decl. ¶ 35; Walster Decl. ¶ 4. All Settlement Class Members will be identified through  
27 Robinhood’s Customer Trading Information and Settlement Payment will be determined by  
28 Plaintiffs’ damages expert pursuant to the Plan of Allocation. Walster Decl. ¶¶ 5-6. Importantly,

1 Settlement Class Members will **not** have to file a claim to obtain their Settlement Payment. SA § 2;  
2 Joint Decl. ¶ 31.

3 **B. The Settlement's Monetary Benefits**

4 The Settlement provides substantial monetary relief in the form of a non-reversionary \$9.9  
5 million Settlement Fund that will be fully distributed to Class Members according to the proposed  
6 Plan of Allocation. With a recovery of \$9.9 million on the \$20.4 million in estimated losses, Class  
7 Members will recover just under 50% of their calculated losses (before deductions for Notice  
8 Administration, Attorneys' Fees and Costs). Joint Decl. ¶ 43; Walster Decl. ¶ 4.

9 **C. The Settlement's Notice Plan**

10 The Notice Plan includes sending the Long Form Notice via mail *and* email to all Class  
11 Members using the Settlement Class Contact Information. Because Robinhood is a financial firm  
12 that conducts business electronically, current mailing and email addresses should be available for  
13 virtually all Settlement Class Members, ensuring direct notice will reach nearly everyone. The  
14 Notice Plan also establishes a Settlement Website, [www.RobinhoodOutagesClassAction.com](http://www.RobinhoodOutagesClassAction.com),  
15 where Settlement Class Members can access the Settlement Agreement, the operative complaint, the  
16 Attorneys' Fees and Expense Motion, and other important information. SA § 4.1; Azari Decl. ¶¶  
17 17-22. In addition to providing general information regarding the settlement, the Long Form Notice  
18 is tailored to inform each Settlement Class Member of their estimated *pro rata* Settlement Payment  
19 and include the symbol of the qualifying trade(s), the estimated loss under each of the three  
20 categories, and the deduction for any credits or payments already made under Robinhood's Goodwill  
21 program. SA, Ex. 1. The Long Form Notice also includes the Plan of Allocation, which informs  
22 the Settlement Class of the methodology for the Settlement Payment calculations. Joint Decl. ¶¶ 37-  
23 38.

24 Notice will also be disseminated via a social media campaign specifically designed to reach  
25 Class Members by placing ads in their social media channels that direct them to the Settlement  
26 Website. Azari Decl. ¶¶ 23-29; SA § 4.1(c). Additionally, a toll-free telephone number monitored  
27 by live agents, email address, and physical mailing address will be made available for Class  
28 Members to contact the Settlement Administrator or Class Counsel directly. SA § 4.3; Azari Decl.

1 ¶¶ 30-31. The costs of Notice will be paid out of the Settlement Fund. *Id.* § 3.4. The Notice Plan  
2 is the best practicable notice under the circumstances and meets all due process requirements. Azari  
3 Decl. ¶ 10.

4 **D. Service Awards**

5 Plaintiffs will seek Service Awards for their work on behalf of the Settlement Class.  
6 Plaintiffs intend to request no more than \$2,500 per Plaintiff in this case, which amounts to \$37,500  
7 for all Service Awards. Joint Decl. ¶ 53. Each Plaintiff has dutifully performed their duties in this  
8 case, including retaining counsel, providing documents and information to counsel for investigatory  
9 and discovery purposes, and timely responding to inquiries from counsel. *Id.* Per Northern District  
10 Guidelines, Plaintiffs will submit further evidence supporting proposed Service Awards at the final  
11 approval stage.

12 **E. Attorneys' Fees and Expenses**

13 The Settlement Agreement permits Plaintiffs to seek an award of Attorneys' Fees and  
14 Expenses. Plaintiffs intend to file a Motion for Attorneys' Fees and Expenses in connection with  
15 final approval proceedings that will seek no more than 30% of the Settlement Fund (or no more  
16 than \$2,970,000) in Attorneys' Fees and up to \$1,120,000 in unreimbursed expenses. Joint Decl.  
17 ¶¶ 45-52.

18 **F. Settlement Administrator**

19 Plaintiffs engaged in a competitive bid process to select the proposed Settlement  
20 Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq"). Plaintiffs prepared a written  
21 RFP that was submitted to seven experienced class action notice providers. Plaintiffs ultimately  
22 selected Epiq, who presented one of the two most cost-effective bids that also implemented the notice  
23 procedures that would be appropriate in this matter. As the Settlement Administrator, Epiq will  
24 provide notice, administer the claims process, and provide other services necessary to implement the  
25 Settlement. SA § 3; *see generally* Azari Decl. The Settlement Administration Expenses shall not  
26 exceed \$400,000 (Joint Decl. ¶ 55) and will be paid out of the Settlement Fund. SA § 2.1(d).

1 **IV. ARGUMENT**

2 **A. The Court Should Grant Preliminary Approval of the Settlement Because It is Fair,**  
 3 **Reasonable, and Adequate**

4 The Court may approve settlements shown to be fair, reasonable, and adequate. Fed. R. Civ.  
 5 Proc. Rule 23(e)(2). To assess the fairness of a class settlement, Ninth Circuit courts consider factors  
 6 including:

7 (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely  
 8 duration of future litigation; (3) the risk of maintaining class action status throughout  
 9 the trial; (4) the amount offered in settlement; (5) the extent of discovery completed  
 10 and the stage of the proceedings; (6) the experience and views of counsel; (7) the  
 11 presence of a governmental participant; and (8) the reaction of class members to the  
 12 proposed settlement.

13 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015).

14 Prior to class certification, class settlements must withstand a “higher level of scrutiny for  
 15 evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before  
 16 securing the court’s approval as fair.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,  
 17 946 (9th Cir. 2011). The Court must be satisfied that “the settlement is not the product of collusion  
 18 among the negotiating parties.” *Id.* at 946-47. The Ninth Circuit has identified three indicia of  
 19 possible collusion:

20 (1) “when counsel receive[s] a disproportionate distribution of the settlement”; (2)  
 21 “when the parties negotiate a ‘clear sailing arrangement,’” under which the  
 22 defendant agrees not to challenge a request for an agreed-upon attorney’s fee; and  
 23 (3) when the agreement contains a “kicker” or “reverter” clause that returns  
 24 unawarded fees to the defendant, rather than the class.

25 *Briseno v. Henderson*, 998 F.3d 1014, 1023 (9th Cir. 2021)

26 “Courts may preliminarily approve a settlement and notice plan to the class if the proposed  
 27 settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) does  
 28 not grant improper preferential treatment to class representatives or other segments of the class; (3)  
 falls within the range of possible approval; and (4) has no obvious deficiencies.” *Hampton v. Aqua*  
*Metals, Inc.*, No. 17-CV-07142-HSG, 2021 WL 4553578, at \*7 (N.D. Cal. Oct. 5, 2021).

The Settlement deserves approval because the Class was adequately represented, the  
 Settlement was negotiated at arm’s length based on a complete record of fact and expert discovery,



1 the relief is adequate, and the proposal treats Class Members equitably relative to each other. Under  
2 the heightened fairness inquiry applied to settlements prior to class certification, the Settlement  
3 contains no signs of collusion. The Settlement Agreement does not provide Class Counsel with a  
4 disproportionate distribution, there is no “clear sailing” arrangement, and there is no reversion of  
5 unclaimed funds to Robinhood.

6 **i. The Proposed Class Representatives Adequately Represent the Class**

7 Plaintiffs respectfully ask this Court to provisionally designate Daniel Beckman, Emma  
8 Jones, Mahdi Heidari Moghadam, Howard Morey, Colin Prendergast, Raghu Rao, Michael Riggs,  
9 and Jason Steinberg as Class Representatives for purpose of this settlement. They are members of  
10 the class they seek to represent, they have intimate knowledge of this case, they understand their  
11 duties as a class representative, and they have no conflicts of interest with other Class Members.  
12 Rule 23(e)(2)(A). The remaining Plaintiffs in this case – Gwaltney, Kuri, Leith, Mahrouyan,  
13 Russell, Ward, and Xia – are not members of the Settlement Class and are dismissing their claims  
14 without prejudice but have preserved their rights to pursue their claims against Robinhood in their  
15 individual capacity. SA § 7.1.

16 **ii. The Parties Negotiated the Settlement at Arm’s Length**

17 None of the signs of collusion identified by the Ninth Circuit are present here. *See In re*  
18 *Bluetooth*, 654 F.3d at 947. Counsel is not seeking a disproportionate distribution of the Settlement  
19 (seeking no more than 30%); the Settlement does not contain a “clear sailing provision”. and there  
20 is no reversion of any Settlement Funds— rather the Settlement makes every effort to distribute any  
21 residual funds to the Class. Joint Decl. ¶¶ 30, 45; *see also* SA § 2; *compare Roes, 1-2 v. SFBSC*  
22 *Mgmt., LLC*, 944 F.3d 1035, 1060 (9<sup>th</sup> Cir. 2019) (reversal of the district court’s approval of the  
23 settlement based on the existence of a clear sailing agreement, the disproportionate cash distribution  
24 to attorneys’ fees, and reversionary funds.)

25 Moreover, Class Counsel engaged in extensive, adverse negotiations with Robinhood, and  
26 fully considered and evaluated the fairness of the Settlement. The protracted and hard-fought  
27 negotiations included the assistance of an experienced mediator, David Geronemus of JAMS. At  
28 his direction, Plaintiffs and Defendants submitted comprehensive mediation briefs and attended a

1 full-day mediation. Joint Decl. ¶ 28. After nearly a year of negotiations, the Parties ultimately  
2 reached an agreement. Throughout the Action and settlement negotiations, Robinhood has been  
3 vigorously represented by Debevoise & Plimpton LLP and Farella Braun + Martel LLP. Such  
4 indicia of non-collusive negotiations (and terms) further establishes, under heightened scrutiny, that  
5 the Settlement is fair. *See In re Bluetooth.*, 654 F.3d at 946-47, and *Briseno*, 998 F.3d at 1023 (“[i]n  
6 reviewing settlements struck before class certification, district courts must apply these so-called  
7 *Bluetooth* factors to smoke out potential collusion.”) *See also Saucillo v. Peck*, 25 F.4th 1118, 1130  
8 (9th Cir. 2022).

9 **iii. The Advanced Stage of Litigation and Completed Discovery Support the**  
10 **Settlement**

11 In a class action setting, courts look for indications that the parties carefully investigated the  
12 claims before reaching a resolution, including propounding and reviewing discovery. *In re*  
13 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 09-00261 SBA, 2016  
14 WL 6248426, at \*14 (N.D. Cal. Oct. 25, 2016) (“extensive review of discovery materials indicates  
15 [Plaintiffs have] sufficient information to make an informed decision about the Settlement.”); *see*  
16 *also In re Portal Software Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at \*4 (N.D. Cal.  
17 Nov. 26, 2007). As discussed above, Class Counsel engaged in extensive investigation, research,  
18 and analysis of the Settlement Class’s claims, which resulted in the Court upholding the FAC in its  
19 entirety other than dismissing defendant Robinhood Markets, Inc. ECF No. 95. Class Counsel  
20 thereafter aggressively pursued discovery through multiple requests for production of documents,  
21 intensive meet and confers, and taking and defending twenty-four depositions. Robinhood produced  
22 over 50,000 documents of fact-related material for review. In addition, Class Counsel consulted  
23 with experts, engaged in *Daubert* motions, and served subpoenas on several non-parties. This  
24 discovery allowed Class Counsel to adequately evaluate the merits of Plaintiff’s claims and  
25 Robinhood’s defenses.

1 **B. The Settlement Satisfies the Northern District’s Procedural Guidance for Class**  
 2 **Action Settlements**

3 **i. Guidance 1(a) and 1(b): Differences between Class Definitions, Claims**

4 The proposed Settlement Class is the subset of approximately 150,000 Robinhood customers  
 5 in March of 2020 who fall within one or more of three categories and were originally proposed as  
 6 the “VWAP Subclass,” the “SPY Option Subclass,” and the “Failed Trade Subclass” in Plaintiffs’  
 7 Class Certification Motion. ECF No. 138 at 23. *See also* Joint Decl. ¶ 34. Although Plaintiffs  
 8 previously sought to certify a broader class of over six million Robinhood customers, ECF No. 138,  
 9 Courts routinely approve such changes. *See, e.g., Hampton v. Aqua Metals, Inc.*, No. 17-CV-07142-  
 10 HSG, 2021 WL 4553578, at \*2 (N.D. Cal. Oct. 5, 2021) (granting preliminary approval to class  
 11 action settlement where the class definition in the settlement agreement is different from the one in  
 12 the amended complaint); *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2012 WL 2598819,  
 13 at \*1 (N.D. Cal. July 5, 2012) (different settlement class definition than that in the complaint);  
 14 *Schneider v. Chipotle Mexican Grill, Inc.*, No. 16-CV-02200-HSG, 2020 WL 511953, at \*5-6 (N.D.  
 15 Cal. Jan. 31, 2020) (approving modified settlement class definition from classes certified). The  
 16 proposed Settlement Class is defined as follows:

17 [A]ll Robinhood accountholders in the United States who: (i) closed a position on  
 18 March 3, 2020, at a loss relative to the Volume Weighted Average Price (“VWAP”)  
 19 during the March 2 and 3, 2020 Outages; (ii) held SPDR S&P 500 options expiring  
 20 on March 2, 2020 and experienced a loss relative to the VWAP during the March 2,  
 21 2020 Outage; (iii) who experienced a Failed Equity Trade during the March 2 and 3  
 22 Outages at a loss relative to the price at the end of the March 2 and 3 Outages  
 23 and/or the transaction price obtained through March 4, 2020; or (iv) who  
 24 experienced a Failed Equity Trade during the March 9 Outage at a loss relative to  
 the price at the end of the March 9 Outage and/or the transaction price obtained  
 through March 10, 2020. Excluded from the Settlement Class are Defendants and  
 their legal representatives, heirs, successors or assigns. Also excluded from the  
 Settlement Class are Persons who have entered into settlement agreements with  
 Robinhood, outside of the Goodwill Program, that include a release of claims  
 related to the Outages.

25 SA § 1.32.

26 Plaintiffs narrow the scope of the proposed class for settlement purposes after considering a  
 27 number of important factors. Because of the severity of the Outages resulting in the failure of  
 28 Robinhood’s trading platform, Robinhood does not possess trading data for most accountholders or

1 documentation of the actions they attempted to undertake during the Outages. Joint Decl. ¶ 40. At  
2 class certification, Plaintiffs’ theory of recovery for the broader class was based on a “Discount for  
3 Lack of Marketability” (or “DLOM”) analysis under the theory that Plaintiffs incurred monetary  
4 losses associated with the lack of ability to sell or change positions. Though used in other legal  
5 contexts, the DLOM model had never been employed in litigation for an unprecedented Outage such  
6 as this. *Id.* While Plaintiffs still submit that the DLOM model is an appropriate way to measure one  
7 theory of loss associated with the Outages, Robinhood, its economics expert Allen Ferrell, and the  
8 Court raised questions about whether there may be legal issues such as Article III standing that  
9 would render the analysis unsuitable to support class certification. *Id.*

10 The revised and narrowed Settlement Class is defined based on the limited trading  
11 information available, making class membership an objective determination, and permits their  
12 proposed losses and estimated Settlements Payments to be determined efficiently using the models  
13 already developed in the course of the litigation. Joint Decl. ¶ 43; Walster Decl., ¶¶ 4-6, Ex. 2.  
14 Under these methods, Plaintiffs are able to identify, calculate, and notice Settlement Class Members  
15 with the precise data used to determine their proposed losses attributable to the Outages. This  
16 smaller Settlement Class has exhibited common trading patterns that are objectively identifiable and  
17 supported by many of the Plaintiffs’ actual experiences. Joint Decl. ¶ 43.

18 Importantly, Robinhood accountholders excluded from the Settlement are **not** releasing any  
19 claims in this settlement against Robinhood in connection with the Outages. All of those individuals  
20 can still file their own claim if they choose to do so, such as via a FINRA arbitration, which we are  
21 informed and understand that some Robinhood accountholders have been pursuing.

22 The claims to be released are congruent with the claims asserted in the Complaint on behalf  
23 of the Settlement Class.

24 **ii. Guidance 1(c): Settlement Value v. Potential Recovery at Trial**

25 With a recovery of \$9.9 million on the \$20.4 million in estimated losses, Plaintiffs will  
26 recover just under 50% of their calculated losses (before deductions for Notice Administration,  
27 Service Awards, and Attorneys’ Fees and Expenses). Plaintiffs submit that a 50% recovery in a  
28 complex case involving an unprecedented Outage is a significant recovery that will meaningfully

1 compensate Settlement Class Members for their proposed losses. The Settlement further allows  
2 Settlement Class Member that have initiated other legal proceedings against Robinhood or is  
3 unhappy with the Settlement Payment, to opt-out and preserve their rights. There is no opt-out  
4 threshold by which the Settlement will fail if it is exceeded. Joint Decl. ¶ 43; *see generally*, SA.

5 In the alternative, there are significant legal issues that were not typical and that presented  
6 real risks to Plaintiffs to continue litigating the Action. First, the scope and magnitude of the Outages  
7 is unprecedented. There is no putative class action that has laid a blueprint for litigation and  
8 resolution, which differentiates this case from those arising from typical consumer or securities fraud  
9 cases predicated on a failure to disclose. Joint Decl. ¶ 58. Second, given that the Outages prevented  
10 documentation for most of the trading records, Robinhood has argued extensively that its own  
11 alleged misconduct precluded Plaintiffs' ability to determine issues of Article III standing and  
12 damages on a class-wide basis. *Id.* The Court raised similar concerns to Plaintiffs, particularly at  
13 the hearing on Plaintiffs' Motion for Class Certification. *Id.* Third, Robinhood filed for summary  
14 judgment alleging that its operative customer agreement exculpated it from any claims alleged in  
15 this case, an argument that was successful at obtaining dismissal of other Robinhood investors'  
16 claims in a putative class action concurrently litigated in multidistrict litigation in Florida. *See In re*  
17 *January 2021 Short Squeeze Trading Litigation*, 2022 WL 255350 (S.D. Fla. Jan. 27, 2022). Fourth,  
18 this case raised a number of legal questions of first impression (that are inherently risky), such as  
19 whether Robinhood had common law or regulatory obligations to maintain contingency plans for  
20 traders on an online-only securities trading platform and whether Plaintiffs' theories of liability  
21 under California law would withstand Robinhood's contrary arguments. Joint Decl. ¶ 43. For  
22 example, does Robinhood owe its customers a fiduciary duty to maintain an operable online  
23 platform? Does the economic loss doctrine bar Plaintiffs' common law claims? Does the customer  
24 agreement exculpate Robinhood from liability?

25 After careful consideration of these issues and weighing the risks of proceeding with the  
26 Action, Class Counsel determined that the Settlement Agreement, providing a \$9.9 million non-  
27 reversionary fund, was the best course of action. Given the serious risks involved in continuing the  
28 case, chief among them—obtaining class certification, defending the inevitable Rule 23(f) petition

1 if class certification was granted, defeating summary judgment, defeating multiple *Daubert* motions,  
2 and prevailing at trial—all in a relatively untrodden area of the law. And, even if Plaintiffs  
3 successfully proved their case at trial, the amount of recovery, if any, could vary widely depending  
4 on other factors, including the Court’s discretion. Crucially, even if anything were recovered, it  
5 would take years to secure, as Robinhood undoubtedly would appeal any adverse judgment. In  
6 comparison, the Settlement provides a guaranteed, immediate, and substantial cash recovery of \$9.9  
7 million.

8 **iii. Guideline 1(d): Other Cases Affected by the Settlement**

9 On April 16, 2020, Stanley Withouski filed a putative class action in the Superior Court of  
10 California, County of San Mateo under the caption *Withouski v. Robinhood Financial LLC et al*, No.  
11 20-CIV-01730 (the “*Withouski Action*”), alleging liability based on the same theories of alleged  
12 conduct by Robinhood as alleged in this Action. Mr. Withouski sought to represent a class of  
13 Robinhood users residing in California. After this Court remanded the Withouski Action to state  
14 court, ECF No. 78, Class Counsel coordinated with Mr. Withouski and his counsel to stay that case  
15 and provided Mr. Withouski’s counsel opportunities for involvement in this Action. Joint Decl. ¶ 9.  
16 On December 17, 2020, the state court approved the stipulation between Mr. Withouski and  
17 Robinhood to stay that case pending resolution of this Action. Mr. Withouski’s counsel performed  
18 work in the Federal Consolidated Action under the direction of Interim Lead Class Counsel. Joint  
19 Decl. ¶ 9. Mr. Withouski’s counsel joined Class Counsel in participating in arms’ length settlement  
20 discussions, including the mediation session before Mr. Geronemus on July 27, 2021, and numerous  
21 other individual and joint conversations with Mr. Geronemus and Robinhood. Mr. Withouski is a  
22 named party in the Settlement Agreement. As part of the Settlement, Mr. Withouski agreed to an  
23 efficient global resolution of his case. A copy of his request for dismissal in the state court is  
24 included in the Settlement Agreement as Exhibit 5.

25 **iv. Guidance 1(e): The Proposed Plan of Allocation for the Settlement Fund**

26 The proposed Plan of Allocation is Exhibit 2 to the Walster Declaration and is fully set forth  
27 in the Long Form Notice and summarized here. Class Members are eligible for payment if they  
28 experienced a loss pertaining to a Qualifying Trade described in the Plan of Allocation during the

1 Outages. *See* SA, Ex. 1; Walster Decl. Ex. 2. Class Members will receive direct payment based on  
2 a *pro rata* adjustment. *Id.* Class Members have the option to select digital forms of payment such  
3 as Paypal, Venmo, or digital payment card. SA § 2.3(c); Azari Decl. ¶ 32. The default payment  
4 method will be by check. *Id.*

5 To determine each Settlement Class Members' Settlement Payment, Plaintiffs' expert, Scott  
6 Walster of Global Economics Group, will use the Customer Trading Information to calculate  
7 Settlement Payments in accordance with the Plan of Allocation. SA, Ex. 4. Where the Settlement  
8 Class Members' eligibility satisfies more than one category, they will only receive the highest  
9 payment they're entitled to. *See* SA, Ex. 1; Walster Decl. Ex. 2. All Settlement Payments will be  
10 offset by any payments made to the Settlement Class Member paid by Robinhood as a result of its  
11 Goodwill Program pertaining to the March 2020 Outages. *Id.* The offset may extinguish some  
12 Settlement Class Members' Settlement Payment. *Id.* All Settlement Payments will be reduced *pro*  
13 *rata* relative to the estimated Net Settlement Fund. *Id.*

14 For the **VWAP Loss Trades** for those who closed all or a portion of a position on March 3,  
15 2020, the VWAP(s) for the corresponding security(s) on March 2-3, 2020 will be determined from  
16 available market data. The Settlement Class Member's loss for each security is calculated as the  
17 difference between the price of the trade and the VWAP multiplied by the number of shares traded  
18 or the number of underlying shares represented by the option contract(s) traded. *See* SA, Ex. 1;  
19 Walster Decl. Ex. 2.

20 For the **SPY Options Trades** for those who held a SPDR S&P 500 ("SPY") option Position  
21 expiring on March 2, 2020, the loss for each option is calculated as the value of the investment based  
22 on the VWAP during the March 2, 2020 Outage less any gain resulting from the difference between  
23 the strike price and the underlying SPY price for in-the-money options at expiration on March 2,  
24 2020. *See* SA, Ex. 1; Walster Decl. Ex. 2.

25 For the **Failed Marketable Trades** for those who experienced a Failed Equity Trade of a  
26 marketable order during the March 2 and 3 Outages the loss is calculated as the difference between  
27 the price obtained when executing the transaction once the Outage ended through March 4, 2020  
28 and the price of the failed transaction once it became marketable multiplied by the number of shares

1 traded or the number of underlying shares represented by the option contract(s) traded. For  
2 Settlement Class Members who experienced a Failed Equity Trade of a marketable order during the  
3 March 9 Outage the loss is calculated as the difference between the price obtained when executing  
4 the transaction once the Outage ended through March 10, 2020 and the price of the failed transaction  
5 once it became marketable multiplied by the number of shares traded or the number of underlying  
6 shares represented by the option contract(s) traded. If a new price for the failed transaction was not  
7 obtained through March 4, 2020 or March 10, 2020, respectively, the loss is determined as the  
8 difference between the price of the security once the corresponding Outage ended and the price of  
9 the failed transaction multiplied by the number of shares traded or the number of underlying shares  
10 represented by the option contract(s) traded. *See* SA, Ex. 1; Walster Decl. Ex. 2.

11 In the event that minute-by-minute market pricing data is not available for a particular  
12 security, including over-the-counter securities (“OTC Securities”), the Settlement Payment shall be  
13 determined using the daily VWAP price for March 2, 2020. *See* SA, Ex. 1; Walster Decl. Ex. 2.

14 The Settlement is designed so that any residual funds are distributed to Class Members if  
15 economically feasible. *Id.* ¶ 2.3(f). If not so feasible, however, any residual funds will be distributed  
16 to the selected *cy pres* recipient, Howard University School of Law Investor Justice. SA § 1.13,  
17 2.3(g); *see also* Joint Decl. ¶ 56.

18 **v. Guidance 1(f): Estimate of Number of Claims**

19 There will not be a claim form. Class Counsel estimates there will be approximately 150,000  
20 Class Members. Joint Decl. ¶ 36. Class Members will receive their *pro rata* share of the Settlement  
21 Fund either through digital payment or by check. Any uncashed funds after 90 days will be re-  
22 distributed to the Settlement Class or allocated to the *Cy Pres* Recipient if it is not economically  
23 feasible for a second distribution to the Settlement Class. SA § 2.3(g).

24 **vi. Guidance 1(g): Reversions**

25 Under no circumstances will any portion of the Settlement Fund revert back to Robinhood.  
26 SA § 2.1(c); *see also* Joint Decl. ¶ 30.

27  
28



1                   **vii. Guidance 3: Notice**

2                   Rule 23(c)(2)(B) requires that settlement notice be “the best notice that is practicable under  
3 the circumstances, including individual notice to all members who can be identified through  
4 reasonable effort.” Fed. R. Civ. P. 23(c); *see also* Fed. R. Civ. P. 23(e)(1)(B) (“The court must direct  
5 notice in a reasonable manner to all class members who would be bound by the propos[ed  
6 settlement].”).

7                   The Notice Plan has been thoughtfully designed to reach Class Members and is the best  
8 notice practicable. Settlement Class Members will receive notice of the settlement through mail and  
9 email. Plaintiffs anticipate a near complete direct notice campaign as Robinhood provides financial  
10 accounts for Settlement Class Members and should have current contact information for them except  
11 perhaps those that have closed accounts. Azari Decl. ¶¶ 12, 18-22, 34.

12                   Settlement Class Members will further be notified of the Settlement via ads that link to the  
13 Settlement Website directly into their social media channels. Azari Decl. ¶¶ 23-26. There will also  
14 be a Settlement Website and toll-free phone number to provide all the information Settlement Class  
15 Members possibly might require to make an informed decision regarding the lawsuit. *Id.* at ¶¶ 29-  
16 31. The Notice program therefore satisfies the requirements of Rule 23. *Accord Noll et al. v. eBay,*  
17 *Inc.*, 309 F.R.D. 593, 604-5 (N.D. Cal. 2015). Courts routinely find that comparable notice  
18 procedures meet the requirements of due process and Rule 23. *See id.*; *Williamson v. McAfee, Inc.*,  
19 No. 5:14-cv-00158-EJD, 2016 WL 4524307, at \*7-8 (N.D. Cal. Aug. 30, 2016); *Russell v. Kohl’s*  
20 *Dept. Stores, Inc.*, No. ED CV 15-1143 RGK, 2016 WL 6694958, at \*5 (C.D. Cal. Apr. 11, 2016).

21                   **viii. Guidance 4 and 5: Requests for Exclusion and Objections**

22                   The proposed Notice complies with Rule 23(e)(5) in that it discusses the rights of Settlement  
23 Class Members. The proposed Notice includes information on a Settlement Class Member’s right  
24 to: (1) request exclusion and the manner for submitting such a request (SA § 5.2) and (2) object to  
25 the Settlement, or any aspect thereof, and the manner for filing and serving an objection (SA § 5.1).

26                   **ix. Guidance 6: Attorneys’ Fees and Expenses**

27                   As set forth in the proposed Notice, Class Counsel anticipate seeking attorneys’ fees up to  
28 30% of the Settlement Fund (i.e., \$2,970,000). As of June 30, 2022, Class Counsel and Executive

1 Committee members report a lodestar of approximately \$5,136,662.75 in hours incurred after  
2 consolidation. Joint Decl. ¶ 47. The lodestar represents a 0.58 multiplier. This is well below the  
3 normal range awarded in class actions. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6  
4 (9th Cir. 2002 (noting multipliers of between 1.0 and 4.0 are “frequently awarded”); *Smith v. CRST*  
5 *Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 WL 163293, at \*5 (S.D. Cal. Jan. 14,  
6 2013) (“Under the percentage method, California has recognized that most fee awards based on  
7 either a lodestar or percentage calculation are 33 percent.”) (citing *In re Consumer Privacy Cases*,  
8 175 Cal. App. 4th 545, 556 n.13 (2009)). Pursuant to the Settlement, any Fee and Expense Award  
9 to Class Counsel will be paid from the Settlement Fund within five (5) days after entry of the Court’s  
10 order providing for an award of attorneys’ fees and/or expenses. *See* SA § 9.1.a.; *see also* Fed. R.  
11 Civ. P. 23(2)(c)(iii).

12 Class Counsel anticipate seeking reimbursement for out-of-pocket expenses up to  
13 \$1,120,000. As of June 30, 2022, Class Counsel and Executive Committee members report  
14 \$970,234.31 in expenses, the bulk of which are expert witness fees, deposition costs, and ESI  
15 vendors. Joint Decl. ¶ 50. Class Counsel anticipates up to \$100,000 in additional costs to be paid  
16 to Scott E. Walster for his work to determine the Settlement Payments. Walster Decl. ¶ 6. The  
17 balance of the expenses include, among others, court fees, service of process, mediation costs, online  
18 legal and factual research, minimal travel costs, database expenses, and messenger, courier, and  
19 overnight mail expenses. Joint Decl. ¶ 52. Class Counsel will detail their work, hours, lodestar and  
20 expenses in their fee and expense motion to be filed 35 days prior to the Objection Deadline.

21 **x. Guidance 7: Service Awards**

22 Class Counsel intend to seek a Service Payment of \$2,500 for the fifteen Plaintiffs in the  
23 Action. SA § 9.2. Service Awards “have long been approved in the Ninth Circuit.” *In re Apple Inc.*  
24 *Device Performance Litig.*, No. 5:18-md-02827-EJD, 2021 WL 1022866, at \*11 (N.D. Cal. Mar. 17,  
25 2021).

26 The proposed Service Awards requested here are reasonable. “Incentive awards typically  
27 range from \$2,000 to \$10,000.” *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267 (N.D.  
28 Cal. 2015) (collecting cases). Courts in this District have found that a \$5,000 incentive award is

1 presumptively reasonable. *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 592 (N.D. Cal. 2015);  
2 *Rosado v. Ebay Inc.*, No. 5:12-cv-04005-EJD, 2016 WL 3401987, at \*9 (N.D. Cal. June 21, 2016).  
3 And, because the Settlement is not conditioned on the Court's approval of any Service Award, the  
4 Settlement does not grant preferential treatment to Class Representatives or Plaintiffs. SA § 9.3.  
5 The Service Awards include Plaintiffs who are not part of the Settlement Class. However, their  
6 efforts were key to the Parties settling this case. Several of these Plaintiffs took part in depositions.  
7 Joint Decl. ¶ 18. All participated in responding to discovery requests from Robinhood and document  
8 production. Joint Decl. ¶ 18.

9 Plaintiffs' interests do not conflict with or diverge from the interests of the Settlement Class.  
10 *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1161 (9th Cir. 2013). Accordingly, the  
11 Court should preliminarily approve the request for Service Awards.

12 **xi. Guidance 8: Cy Pres**

13 Based on the manner in which payments will be made, including potentially a *pro rata*  
14 increase of payments for each Class Member, the Parties do not anticipate any residual funds  
15 remaining in the otherwise non-reversionary Class Settlement Amount. In the event residual funds  
16 do remain after payment of Settlement Payments to Settlement Class Members, Settlement  
17 Administrative Expenses, Taxes, Fee and Expense Award, and Service Payments, they will be  
18 distributed to the Non-Profit *Cy Pres* Recipients. SA § 2.3(g). Plaintiffs propose Howard University  
19 School of Law Investor Justice and Education Clinic ("IJE") as the Non-Profit *Cy Pres* Recipient.  
20 The IJE provides education and legal services to investors as well as training to law students and  
21 their work relates directly to the subject matter of the Action and benefits Class Members. Class  
22 Counsel have no relationship with the Non-Profit *Cy Pres* Recipient.

23 **xii. Guidance 10: CAFA Notice**

24 Robinhood will serve the notice required by the Class Action Fairness Act, 28 U.S.C. §  
25 1715, no later than 10 days after this filing. SA § 4.7.

26 **xiii. Guidance 11: Comparable Outcomes with Past Distributions**

27 Class Counsel submits that the Settlement here compares favorably to these and other class  
28 action settlements seeking recovery for investors in securities cases. *See e.g. In re Zynga Inc. Sec.*

1 *Litig.*, No. 12-CV-04007-JSC, 2015 WL 6471171 (N.D. Cal. Oct. 27, 2015) (Preliminary approval  
 2 of settlement where Class members received 10 percent of their total estimated losses, which was  
 3 deemed to be “above the typical recovery in securities litigation”); *In re Celera Corp. Sec. Litig.*,  
 4 No. 5:10-CV-02604-EJD, 2015 WL 7351449 (N.D. Cal. Nov. 20, 2015) (Class members were  
 5 estimated to obtain 17% of their estimated damages); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d  
 6 1036, 1042 (N.D. Cal. 2008) (the court, in preliminarily approving a settlement where Plaintiffs  
 7 received just over 9% of the maximum potential recovery asserted by either party, held that “while  
 8 this percentage may seem small compared to the potential maximum, that alone is not sufficient  
 9 reason to reject the Settlement”); *In re LDK Solar Sec. Litig.*, No. C 07-5182 WHA, 2010 WL  
 10 3001384 (N.D. Cal. July 29, 2010) (the court approved settlement preliminarily despite plaintiffs  
 11 only recovering 5% of their estimated damages before fee and costs). Below is a chart summarizing  
 12 these cases:

Case Name	Settlement Fund	Average Percent Recovery of Potential Damages
<i>In re Zynga Inc. Sec. Litig.</i> , No. 12-CV-04007-JSC, 2015 WL 6471171 (N.D. Cal. Oct. 27, 2015)	\$23 million	10%
<i>In re Celera Corp. Sec. Litig.</i> , No. 5:10-CV-02604-EJD, 2015 WL 7351449 (N.D. Cal. Nov. 20, 2015)	\$24 million	17%
<i>In re Omnivision Techs., Inc.</i> , 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008)	\$13.75 million	9%
<i>In re LDK Solar Sec. Litig.</i> , No. C 07-5182 WHA, 2010 WL 3001384 (N.D. Cal. July 29, 2010)	\$16 million	5%

24 **C. The Court Should Conditionally Certify the Class for Settlement Purposes**

25 Parties seeking class certification for settlement purposes must satisfy the requirements of  
 26 Fed. R. Civ. P. 23. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). “A court considering  
 27 such a request should give the Rule 23 certification factors ‘undiluted, even heightened, attention in  
 28 the settlement context.’” *Sandoval v. Roadlink USA Pac., Inc.*, No. EDCV 10-00973, 2011 WL

1 5443777, at \*2 (C.D. Cal. Oct. 9, 2011) (quoting *Amchem*, 521 U.S. at 621). At the preliminary  
 2 approval stage, “if a class has not [yet] been certified, the parties must ensure that the court has a  
 3 basis for concluding that it likely will be able, after the final hearing, to certify the class.” Fed. R.  
 4 Civ. P. 23, Adv. Comm. Notes to 2018 Amendment. All the requirements of Rule 23(a) must be  
 5 met, and “at least one of the three requirements listed in Rule 23(b).” *Wal-Mart Stores, Inc. v. Dukes*,  
 6 564 U.S. 338, 345 (2011).

7 **i. This Settlement Meets the Prerequisites of Subdivision (a) of Rule 23**

8 **ii. Numerosity Rule 23(a)(1)**

9 The Settlement Class contains approximately 150,000 members. Joint Decl. ¶ 36.

10 **iii. Commonality**

11 “Commonality requires the plaintiff to demonstrate that the class members ‘have suffered  
 12 the same injury.’” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011) (quoting *Gen. Tel.  
 13 Co. of Southwest v. Falcon*, 457 U.S. 147, 157 (1982)). This requires that the “claims must depend  
 14 upon a common contention” that is “capable of classwide resolution—which means that  
 15 determination of its truth or falsity will resolve an issue that is central to the validity of each one of  
 16 the claims in one stroke.” *Id.* at 350. Commonality is satisfied by “existence of shared legal issues  
 17 with divergent factual predicates” or a “common core of salient facts coupled with disparate legal  
 18 remedies within the class.” *Hanlon*, 150 F.3d at 1019. All questions of fact and law need not be  
 19 common to satisfy the rule. *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010).

20 For purposes of Rule 23(a)(2), even a single common question is satisfactory. *Wal-Mart*, 564  
 21 U.S. at 359; *see also Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012)  
 22 (characterizing commonality as a “limited burden,” which “only requires a single significant  
 23 question of law or fact”). At a minimum, Robinhood’s platform experienced Outages on March 2-  
 24 3, 2020 and March 9, 2020, causing harm to its accountholders.

25 **iv. Typicality**

26 Typicality ensures that “the interest[s] of the named representative[s] align with the interests  
 27 of the class.” *Wolin v. Jaguar Land Rover N. Am. LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). The  
 28 typicality requirement is “permissive” and requires only that the representative’s claims “are

1 reasonably coextensive with those of the absent class members; they need not be substantially  
 2 identical.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (internal quotation omitted). Class  
 3 Representatives are typical of the Settlement Class they seek to represent. *Hanon v. Dataproducts*  
 4 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Each alleges that he or she “is a customer of Robinhood”  
 5 and “attempted to trade” during the Outages. As a result of the Outages, Class Representatives<sup>1</sup>  
 6 suffered losses. SAC ¶¶ 86-90; 98-102; 122-148; 153-158. Class Representatives’ and Class  
 7 Members’ claims arise from the same nucleus of facts, pertain to a common defendant, and are based  
 8 on the same legal theories. As such, Class Representatives are typical of other Class Members.

#### 9 v. Adequacy of Representation

10 The Class Representatives are adequate representatives of the class with claims that readily  
 11 satisfy the typicality standards of Rule 23. Fed. R. Civ. P. 23(a). Rule 23(a)(4) requires the  
 12 representative parties to “fairly and adequately protect the interests of the class.” *Staton v. Boeing*  
 13 *Co.*, 327 F.3d 938, 957 (9th Cir. 2003). The Ninth Circuit set a two-prong test for this requirement:  
 14 “(1) do the representative plaintiffs and their counsel have any conflicts of interest with other class  
 15 members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously  
 16 on behalf of the class?” *Id.* (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

17 Each of the Class Representatives has submitted a declaration attesting to their experiences  
 18 with the Outages and their work performed on the case, which has included the production of  
 19 documents, responding to interrogatories, and staying current on case related developments. *See*  
 20 ECF No. 138-4. Several Class Representatives also sat for depositions and subjected their personal  
 21 electronic devices for the collection of data. *See, e.g.*, ECF No. 138-4, A-1, A-3; A-4, A-6; A-7; A-  
 22 8, A-9, A-10, A-11, A-13.

23 Each of the Class Representatives experienced a calculable loss under the Plan of Allocation  
 24 for the Settlement Class Members at the time of the Outages, rendering them adequate  
 25 representatives of the Class. Similarly, proposed Class Counsel of CPM and Kaplan Fox have  
 26 demonstrated their adequacy by vigorously litigating this case on behalf of the Settlement Class

27 \_\_\_\_\_  
 28 <sup>1</sup> Daniel Beckman, Emma Jones, Mahdi Heidari Moghadam, Howard Morey, Colin Prendergast, Raghu Rao, Michael Riggs, and Jason Steinberg.

1 against well-resourced defendants and highly competent opposing counsel and they have a strong  
2 track record of success in prior matters.

3 **vi. This Settlement Meets the Requirements of Subdivision (b)(3) of Rule 23**

4 Class Representatives seek conditional certification under Rule 23(b)(3), which provides that  
5 a class action can be maintained where: (1) the questions of law and fact common to members of the  
6 class predominate over any questions affecting only individuals; and (2) the class action mechanism  
7 is superior to the other available methods for the fair and efficient adjudication of the controversy.  
8 Fed. R. Civ. P. 23(b)(3); *eBay*, 309 F.R.D. at 604.

9 **vii. Common Liability Questions Predominate Over Individual Damages**  
10 **Questions**

11 “Rule 23(b)(3) focuses on the relationship between the common and individual issues.”  
12 *Hanlon*, 150 F.3d at 1022. Predominance “tests whether proposed classes are sufficiently cohesive  
13 to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623-24 (1997). “Rule 23(b)(3)  
14 permits certification when one or more of the central issues in the action are common to the class  
15 and can be said to predominate ... even though other important matters will have to be tried  
16 separately, such as damages or some affirmative defenses peculiar to some individual class  
17 members.” *Meek v. SkyWest, Inc.*, 562 F. Supp. 3d 488, 495 (N.D. Cal. 2021) (citing *Tyson Foods,*  
18 *Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016)) (internal quotations omitted).

19 Here, every Settlement Class Member alleged that they were subject to the same Outages  
20 and Robinhood’s conduct that caused the harms suffered by Settlement Class Members regarding  
21 Robinhood’s negligence and gross negligence (gross negligence is not necessarily a separate claim  
22 but rather the degree of negligence based on egregiousness of the conduct), Robinhood’s breach of  
23 its fiduciary duties to the Class, Robinhood’s breach of its contractual obligations under the operative  
24 Customer Agreement of February 5, 2020 (“Customer Agreement”), and Plaintiffs’ restitutionary  
25 claims. These common questions can be resolved for all members of the proposed Settlement Class  
26 in a single adjudication. *See, e.g., Abante Rooter & Plumbing, Inc. v. Pivotal Payments Inc.*, No.  
27 3:16-CV-05486, 2018 WL 8949777, at \*5 (N.D. Cal. Oct. 15, 2018); *In re Anthem, Inc. Data Breach*  
28 *Litig.*, 327 F.R.D. 299, 312 (N.D. Cal. 2018).2018).

1                   **viii. Class Action is Superior to Other Available Methods for Fairly and**  
 2                   **Efficiently Adjudicating the Controversy**

3                   Where, as here, a court is deciding the certification question in a settlement context, it need  
 4 not consider manageability issues because “the proposal is that there be no trial,” and hence  
 5 manageability considerations are no hurdle to certification for purposes of settlement. *Amchem*, 521  
 6 U.S. at 620. Here, a class action is the only reasonable method to fairly and efficiently adjudicate  
 7 Class Members’ claims against Robinhood. *See, e.g., Phillips Co. v. Shutts*, 472 U.S. 797, 809  
 8 (1985) (“Class actions . . . permit the plaintiffs to pool claims which would be uneconomical to  
 9 litigate individually . . . [In such a case,] most of the plaintiffs would have no realistic day in court  
 10 if a class action were not available.”). Resolution of the predominant issues of fact and law through  
 11 individual actions is impracticable: the amount in dispute for individual class members is too small,  
 12 the technical issues involved are too complex, and the required expert testimony and document  
 13 review too costly. *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1123 (9th Cir. 2017). Fed. R. Civ. P.  
 14 23(b)(3).

15                   **D. The Court Should Appoint CPM and Kaplan Fox as Co-Lead Class Counsel for**  
 16                   **Purposes of Settlement**

17                   Class Counsel were previously appointed interim co-lead class counsel. ECF No. 65.  
 18 Considering counsel’s work in this Action, their collective expertise and experience in handling  
 19 similar actions, and the resources they have committed to representing the class, they should be  
 20 appointed as Class Counsel for the proposed settlement class under Rule 23(g)(3) and confirmed  
 21 under Rule 23(g)(1).

22                   **E. The Court Should Appoint Plaintiffs as Class Representatives for Purposes of**  
 23                   **Settlement**

24                   The Court should appoint the specified Plaintiffs as Settlement Class Representatives  
 25 because they have no conflicts with the class and are represented by qualified counsel who will  
 26 vigorously prosecute the class’s interests. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 943.  
 27  
 28



**V. PROPOSED SCHEDULE FOR PROCEEDINGS**

The Parties propose the following timeline for events following this Court's Order preliminarily approving the settlement:

<b>Event / Deadline</b>	<b>Proposed Time for Compliance</b>
Settlement Administrator to complete Notice Plan ("Notice Date")	Ninety (90) days after entry of the Preliminary Approval Order. SA § 1.16.
Objection and Exclusion (Opt-Out) Deadline	Sixty (60) days after the Notice Date. SA § 1.17.
Deadline to file Motion for Final Approval, Motion for Service Award, Motion for Approval of the Plan of Allocation, and Motion for Attorneys' Fees and Expenses	Thirty-Five (35) days prior to the Objection and Exclusion Deadline. SA §§ 9.1-9.2.
Deadline to object to Motions for Service Award and for Attorneys' Fees and Expenses	Sixty (60) days after the Notice Date.
Deadline to file respond to Objections to the Motion for Final Approval of the Settlement, Motion for Approval of the Plan of Allocation, and Motion for Attorneys' Fees and Expenses and Service Awards	Thirty (30) days following the Objection and Exclusion Deadline.
Final Hearing	The Court's discretion, but no sooner than sixty (60) after the Objection and Exclusion Deadline

**VI. CONCLUSION**

For the reasons discussed herein, Plaintiffs respectfully request the Court certify a Class for settlement purposes, preliminarily approve the proposed Settlement, approve Notice and the selection of the Settlement Administrator, and set a hearing for final approval.

DATED:

Respectfully submitted,

**COTCHETT, PITRE & MCCARTHY,  
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**SIGNATURE ATTESTATION**

I am the ECF User whose identification and password are being used to file the foregoing Notice of Motion and Motion for Preliminary Approval of Proposed Class Action Settlement; Memorandum of Points and Authorities in Support Thereof. Pursuant to L.R 5-1(i)(3) regarding signatures, I, Anne Marie Murphy attest that concurrence in the filing of this document has been obtained.

DATED: August 5, 2022

*/s/Anne Marie Murphy*  
\_\_\_\_\_  
Anne Marie Murphy