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Interim Co-Lead Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In Re: Robinhood Outage Litigation

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

**SUPPLEMENTAL BRIEF IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL**

Judge: Hon. James Donato
Ctrm: 11, 19th Floor

1 **I. Introduction**

2 Pursuant to the hearing on Plaintiffs’ Motion for Preliminary Approval, held on September
3 8, 2022, Plaintiffs submit this Supplemental Brief in Support of their Motion for Preliminary
4 Approval addressing: (1) the Court’s comments on how the notice and settlement payment
5 distribution plan can be improved; (2) compliance with the August 4, 2022 update to the Northern
6 District’s Procedural Guidance for Class Action Settlements (regarding settlement administrator
7 data security practices); (3) estimated recoveries for Plaintiffs; and (4) notification to the California
8 state court in *Withouski v. Robinhood, et al.*, San Mateo Superior Court, Case Number 20-CIV-
9 01730 (“*Withouski Action*”) of the pending settlement.

10 As discussed below, based on the Court’s guidance, the Parties were able to reduce the
11 estimated costs of notice by nearly 50% and provide the supplemental information requested below.

12 **II. Updated Class Notice Plan**

13 Attached as **Exhibit 1** is the Supplemental Declaration of Cameron R. Azari, Esq. (Epiq)
14 on Notice Plan and Notices, dated October 7, 2022 (“Azari Supplemental Decl.”), which
15 supplements Mr. Azari’s August 4, 2022 Declaration [ECF No. 173-2], which together describe the
16 Settlement Notice Plan (“Notice Program” or “Notice Plan”).

17 **A. Compliance with the N.D. Cal. Procedural Guidance for Class Action**
18 **Settlements, Preliminary Approval, Settlement Administration (2)(b)**
19 **Guidelines for Data Security**

20 Mr. Azari’s Supplemental Declaration describes in detail Epiq’s data security measures and
21 insurance coverage that are responsive to the new guidelines that went into effect on August 4,
22 2022. Azari Supplemental Decl. ¶¶ 6, 8-14.

23 **B. Improvements to Payment Protocol**

24 At the hearing on September 8, 2022, the Court asked whether it was possible to give
25 existing Robinhood account holders a credit to their account as the default payment option, instead
26 of a physical check sent by USPS first class mail. Tr. 8:3-19.¹ Following the hearing the Parties

27 _____
28 ¹ All “Tr.” references are references to the Transcript of the September 8, 2022 hearing on
Plaintiffs’ Motion for Preliminary Approval.

1 met and conferred, and Robinhood agreed to the revised payment plan which provides for default
2 payment to open Robinhood accounts. Changing the settlement plan to provide for a default
3 payment to an open Robinhood account is one way in which the estimated settlement administration
4 costs have been cut nearly in half. As stated in Mr. Azari's Supplemental Declaration, while the
5 default will now be account credits, Settlement Class Members will still have the option to receive
6 their Settlement Payment via digital methods (i.e., PayPal, Venmo), if they so choose. Azari
7 Supplemental Decl. ¶ 36. For Settlement Class Members where there is no open account and no
8 digital payment method is elected, the default will be payment via a physical check sent by USPS
9 first class mail. *Id.* In retrospect this change, made at the Court's suggestion, is a strong
10 improvement to the distribution plan, both because of the saved costs from less mailed checks, but
11 also because some Settlement Class Members are only entitled to modest payments because of their
12 individual trading scenarios. *See*, Section III. As the Court noted "For some reason, even getting
13 a check just seems to be an impediment to actually cashing it." Having the default method of
14 payment be account credits will also make a potential second round of distributions more feasible
15 because of expected cost savings because we have a high degree of confidence that over 80% of
16 Settlement Class Members will receive payments, which was the aspirational percentage noted by
17 the Court. Tr. 9:11-17.

18 C. Improvements to Notice Plan

19 The original proposal was to mail each Settlement Class Member a personalized Long Form
20 Notice. At the hearing the Court suggested that given the demographics of the Settlement Class a
21 simple notice to "Go to the website' or 'Check your e-mail'" should be considered. Tr. 10:12-14.
22 Mr. Azari agrees, stating:

23 I concur with the Court that sending a Postcard Notice instead of the lengthy Long Form
24 Notice will still achieve the best notice practicable, and at a fraction of the cost with the
25 reduced cost of postage alone. The Postcard Notice will provide important summary
26 information regarding the Settlement and will direct Settlement Class Members to the
Settlement Website where they can obtain more detailed information, including the Long
Form Notice.

27 Azari Supplemental Decl. ¶ 7. Attached as **Exhibit 2** is the proposed Postcard Notice that will be
28 used instead of the originally proposed Long Form Notice. Settlement Class Members will be able

1 to access the Long Form Notice using the Settlement Website address provided on the Postcard
2 Notice.

3 Further, identified members of the Settlement Class for whom a valid email address is
4 available (which should be nearly everyone) will be sent an individualized version of the Long
5 Form Notice (“Email Notice”) that provides each Settlement Class Member with access to their
6 anticipated Settlement Payment information. Azari Supplemental Decl. ¶ 22. The Mailed Notice
7 and Email Notice will clearly describe the case, the Settlement and Plan of Allocation, and the legal
8 rights of the members of the Settlement Class. In addition, the Notices will also direct the recipients
9 to the Settlement Website where they can access additional information. *Id.*

10 **D. Savings in Administration Costs**

11 At the hearing on September 8, 2022, the Court challenged the Parties to get the costs of
12 settlement administration down. Tr. 9:18-23; 10:11-12:4. The Motion for Preliminary Approval
13 stated that costs would not exceed \$400,000. ECF No. 173 at 6. That figure was a generous
14 estimate and after these modifications, Epiq revised its *estimate down to \$218,433*. Much of the
15 cost savings comes from default payment to Robinhood accounts (instead of checks) and from
16 mailed Postcard Notice (instead of mailed Long Form Notice). Plaintiffs are also submitting
17 herewith a slightly revised version of the Long Form Notice as **Exhibit 3** that reflects the change
18 in the default payment mechanism.

19 **III. Plaintiffs’ and Class Members’ Estimated Settlement Distributions**

20 After deductions for anticipated Attorneys’ Fees and Expenses, Plaintiffs’ expert estimates
21 that Settlement Class Members will recover **28.6%** of their estimated losses. As detailed in the
22 Motion for Preliminary Approval and Plan of Allocation, Settlement Class Members will have at
23 least one Qualifying Trade in the categories of: (1) VWAP (“Volume Weighted Average Price”)
24 Loss Trades; (2) SPY Options Trades; and (3) and Failed Marketable Trades. ECF No. 173 at 14-
25 15; ECF No. 173-3 (“Walster Decl.”, ¶ 4, Ex. 2). As set forth in the Plan of Allocation (Walster
26 Decl., Ex. 2):

- 27 1. For the **VWAP Loss Trades** for those who closed all or a portion of a position on March
28 3, 2020, the VWAP(s) for the corresponding security(s) on March 2-3, 2020 will be

1 determined from available market data. The Settlement Class Member's loss for each
2 security is calculated as the difference between the price of the trade and the VWAP
3 multiplied by the number of shares traded or the number of underlying shares
4 represented by the option contract(s) traded. See ECF No. 173-1, Ex. 1 ("Settlement
5 Agreement or "SA"); Walster Decl., Ex. 2. Plaintiffs' expert estimated 103,844
6 accounts experienced losses totaling \$12,148,378 in this category. Walster Decl., ¶ 4.

7 2. For the **SPY Options Trades** for those who held a SPDR S&P 500 ("SPY") option
8 Position expiring on March 2, 2020, the loss for each option is calculated as the value
9 of the investment based on the VWAP during the March 2, 2020 Outage less any gain
10 resulting from the difference between the strike price and the underlying SPY price for
11 in-the-money options at expiration on March 2, 2020. See SA, Ex. 1; Walster Decl. Ex.
12 2. Plaintiffs' expert estimated 6,022 accounts with this trading history experienced
13 losses totaling \$730,201 in this category. Walster Decl., ¶ 4.

14 3. For the **Failed Marketable Trades** for those who experienced a Failed Equity Trade of
15 a marketable order during the March 2 and 3 Outages, the loss is calculated as the
16 difference between the price obtained when executing the transaction once the Outage
17 ended through March 4, 2020 and the price of the failed transaction once it became
18 marketable multiplied by the number of shares traded or the number of underlying
19 shares represented by the option contract(s) traded. For Settlement Class Members who
20 experienced a Failed Equity Trade of a marketable order during the March 9 Outage the
21 loss is calculated as the difference between the price obtained when executing the
22 transaction once the Outage ended through March 10, 2020 and the price of the failed
23 transaction once it became marketable multiplied by the number of shares traded or the
24 number of underlying shares represented by the option contract(s) traded. If a new price
25 for the failed transaction was not obtained through March 4, 2020 or March 10, 2020,
26 respectively, the loss is determined as the difference between the price of the security
27 once the corresponding Outage ended and the price of the failed transaction multiplied
28 by the number of shares traded or the number of underlying shares represented by the

option contract(s) traded. *See* SA, Ex. 1; Walster Decl. Ex. 2. Plaintiffs' expert estimated 46,793 accounts with this trading history experienced losses totaling \$7,527,561 in this category. Walster Decl., ¶ 4.

Across the three categories, Plaintiffs' expert estimated the total losses of the Settlement Class Members at \$20.4 million. Walster Decl., ¶ 4. With a Settlement recovery of \$9.9 million Plaintiffs, are estimated to recoup just under 50% of their calculated losses before deductions for Attorneys' Fees and Expenses. Class Counsel do not intend to seek more than 30% of the Settlement Fund, or \$2,970,000 in Attorneys' Fees and no more than \$1,120,000 in Expenses. ECF No. 173-1, Joint Declaration of Anne Marie Murphy and Matthew B. George ("Joint Decl."), ¶ 30.² If these amounts are awarded, the Net Settlement Fund will be approximately \$5,810,000 to compensate the approximately \$20.4 million in total estimated losses.

Subsequent to the September 8, 2022 preliminary approval hearing, at the Court's request Plaintiffs' expert estimated the proposed settlement payments from the Net Settlement Fund per Plaintiff after these proposed deductions. After deductions, Plaintiffs' estimate that Settlement Class Members will receive payment for **28.6%** of their estimated loss.

As broken down below, the "Estimated Loss" category identifies the calculated loss set forth in Plaintiffs' damages report submitted with class certification proceedings, ECF No. 138-3, and the "Estimated Recovery" in the Net Settlement Fund after deductions for Attorneys' Fees and Expenses:

Plaintiff	Damages Category	Estimated Loss	Estimated Recovery (28.6%)
Daniel Beckman	SPY Options	\$1,119	\$320
M. Heidari Moghadam	Failed Trades	\$8,356	\$2,387
Emma Jones	SPY Options	\$724	\$207
Howard Morey	Failed Trades	\$2,496	\$713
Colin Prendergast	VWAP Loss	\$2,652	\$758

² Plaintiffs are also seeking Service Awards up to \$2,500 and costs of Notice Administration up to \$225,000 (the actual estimate provided by Epiq is \$218,433), which would cause these numbers to be slightly adjusted depending on whether the Court awards those additional costs and in what amounts.

1	Michael Riggs	VWAP Loss	\$4	\$1
2	Raghu Rao	VWAP Loss	\$1.16	\$0.33
3	Jason Steinberg	VWAP Loss	\$40	\$12
4	Total		\$15,392	\$4,398

5 As set forth in the Settlement Agreement and Preliminary Approval Motion, named Plaintiffs
6 Joseph Gwaltney, Leila Kuri, Jared Leith, Omeed Mahrouyan, Kevin Russell, Jared Ward, Mengni
7 Xia, as well as Plaintiff Stanley Withouski in the parallel state court proceeding, did not have a
8 Qualifying Trade, and are dismissing their putative class claims with a reservation of rights to
9 pursue their potential claims pertaining to the Outages individually. ECF No. 173 at 8:6-15, SA, §
10 7.1.

11 In order to show the estimated distribution of Settlement Payments across the Settlement
12 Class, after the preliminary approval hearing, Plaintiffs' expert has reviewed the sampled accounts
13 from the damages analysis and has identified the following distribution models that estimate the
14 amount of Settlement Payments at the 25th, 50th, 75th, and 95th percentiles for each category of
15 losses at a rate of payment of **28.6%** of their estimated losses:

	VWAP Losses		SPY Options		Failed Trades	
Percentile	Estimated Losses	Estimated Recovery	Estimated Losses	Estimated Recovery	Estimated Losses	Estimated Recovery
19 25 th	\$0.48	\$0.14	\$1.06	\$0.30	\$1.88	\$0.54
20 50 th	\$9.60	\$2.74	\$9.77	\$2.79	\$5.00	\$1.43
21 (Median)						
22 75 th	\$52.15	\$14.90	\$28.22	\$8.06	\$26.14	\$7.47
23 95 th	\$467.20	\$133.48	\$635.30	\$181.50	\$508.00	\$145.13
24 Total	\$12.148M³	\$3.471M	\$0.730M	\$0.209M	\$7.528M	\$2.151M

25 As indicated above, Plaintiffs' recoveries are representative of the Settlement Class
26 Members' estimated distributions. Two or more Plaintiffs experienced each category of losses, and
27

28 ³ "M" = \$1 million.

1 their anticipated payments range from \$0.33 on the low end to \$2,387 on the high end. Similarly,
2 the lowest quarter of payments to Settlement Class Members will be less than \$1, with the median
3 (50th percentile) payments of approximately ranging from \$1.43 to \$2.79. Settlement Class
4 Members with payments in the 75th percentile or higher will recover \$7.47 through \$14.90 or more,
5 and at the 95th percentile, the minimum Settlement Payments will be \$133.48 through \$181.50 or
6 higher.

7 Plaintiffs submit that this distribution is reflective of the overarching factual predicates to
8 the litigation, including that the significant majority of Robinhood investors skewed very young,
9 inexperienced, and had small accounts making trades involving relatively small amounts of shares.
10 Given that the Dow Jones Industrial Average was up a record setting 1,290 points on March 2,
11 2020,⁴ the day of the full day Outage most securities' prices were moving in investors favor,
12 minimizing potential losses attributable to the Outages—which is compounded by the relatively
13 few shares Robinhood investors had in holdings that did have adverse price movements. For
14 example, Plaintiff Riggs sold 100 shares of CRMO at a net loss of \$0.04 cents per share, making
15 his \$4 loss fairly minimal yet representative of many other investors that day. By contrast,
16 Settlement Class Members with larger investments on March 9, 2020, when the market dropped
17 precipitously, incurred larger losses.⁵ For example, Plaintiff Heidari Moghadam had attempted to
18 sell 820 shares of INO on March 9, 2020, but his order failed to execute because of the Outage and
19 the price had dropped from \$17.19 to \$7.00 by the time he did sell after the Outage, causing
20 substantial losses of \$8,356. Taken collectively, the outcomes per Settlement Class Member will
21 run the gamut but are generally reflective of compensating traders with greater losses for securities
22 with greater price movements and shares, while making smaller payments to investors with smaller
23 holdings and smaller price movements. Plaintiffs hope that this additional data is illustrative of the
24 outcomes for Settlement Class Members and submit that it weighs in favor of preliminary approval,
25

26 ⁴ See <https://www.yahoo.com/lifestyle/stock-market-news-live-updates-march-2-2020-003013975.html>, last accessed October 5, 2022.

27 ⁵ See <https://www.foxbusiness.com/markets/us-markets-march-9-2020>, last accessed October 5,
28 2022.

1 particularly since all of these outcomes will be individually calculated based on each Settlement
2 Class Member's unique trading activity.

3 **IV. Withouski Action**

4 Attached as **Exhibit 4** is a Stipulation and Order dated September 29, 2022, signed by the
5 Honorable Danny Y. Chou, reflecting that a copy of the settlement agreement was submitted to the
6 State Court, notifying the State Court of this Court's minute order dated September 21, 2022, and
7 reflecting that Judge Chou "does not object to the parties continuing to advance the settlement
8 proceedings in the United States District Court for the Northern District of California" and
9 continuing to stay the State Court proceeding "pending the Federal Court's approval of the
10 settlement in the Federal Consolidated Action." *Id.* at pg. 5.

11 **V. Conclusion**

12 Plaintiffs submit that this should address each of the issues raised at the preliminary
13 approval hearing and subsequent minute order, ECF No. 183. Plaintiffs are also submitting
14 herewith (and will email to chambers) a revised preliminary approval order as **Exhibit 5**, which
15 contains a slight modification at paragraph 12 reflecting the addition of the postcard Summary
16 Notice along with the Long Form Notice. Based on the foregoing, Plaintiffs request that the Court
17 grant preliminary approval.

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Respectfully submitted,

COTCHETT, PITRE & MCCARTHY, LLP

DATED: October 7, 2022

By: /s/ Anne Marie Murphy
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DATED: October 7, 2022

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Matthew B. George, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 7th day of October, 2022, at San Diego, California

By: /s/ Matthew B. George
Matthew B. George