ROBBINS GELLER RUDMAN
& DOWD LLP
JASON A. FORGE (181542)
LAURA ANDRACCHIO (187773)
MICHAEL ALBERT (301120)
J. MARCO JANOSKI GRAY (306547)
TING H. LIU (307747)
KENNETH P. DOLITSKY (345400)
SARAH A. FALLON (345821)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
jforge@rgrdlaw.com
landracchio@rgrdlaw.com
malbert@rgrdlaw.com
mjanoski@rgrdlaw.com
tliu@rgrdlaw.com
kdolitsky@rgrdlaw.com
sfallon@rgrdlaw.com

Lead Counsel for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re ALPHABET, INC. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	Master File No. 3:18-cv-06245-TLT CLASS ACTION LEAD PLAINTIFF'S NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF DATE: March 5, 2024 TIME: 2:00 p.m. JUDGE: Honorable Trina L. Thompson CTRM: 9, 19th floor

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

Page

Page

Page

STATUTES, RULES, AND REGULATIONS

Page

NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 5, 2024, at 2:00 p.m., before the Honorable Trina L. Thompson, at the United States District Court, Northern District of California, Phillip Burton Federal Building & United States Courthouse, Courtroom 9 – 19th floor, 450 Golden Gate Avenue, San Francisco, CA 94102, lead plaintiff State of Rhode Island, Office of the Rhode Island Treasurer on behalf of the Employees' Retirement System of Rhode Island ("Rhode Island" or "Lead Plaintiff") will and hereby does move for an Order pursuant to Federal Rule of Civil Procedure ("Rule") 23: (1) certifying the proposed class ("Settlement Class") for purposes of effectuating the proposed settlement ("Settlement") of the above-captioned action ("Action"); (2) granting preliminary approval of the Settlement on the terms set forth in the Stipulation[1]; (3) authorizing the retention of Gilardi & Co. LLC ("Gilardi") as the administrator for the Settlement ("Claims Administrator"); (4) approving the form and manner of notice of the Settlement to the Settlement Class; and (5) setting a hearing date for final approval of the Settlement ("Final Approval Hearing"), as well as the schedule for various deadlines in connection with the Settlement.

This unopposed motion is supported by the below memorandum of points and authorities and Appendix A thereto, the Forge Declaration and exhibits attached thereto, the Stipulation and exhibits thereto, and the Declaration of Peter Crudo Regarding Notice and Administration ("Crudo Declaration" or "Crudo Decl."), filed herewith.

A proposed Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") with annexed exhibits is also submitted herewith.

[1] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed in the Stipulation of Settlement dated February 5, 2024 ("Stipulation"), a true and correct copy of which is attached as Exhibit 1 to the Declaration of Jason A. Forge in Support of Lead Plaintiff's Unopposed Motion for Preliminary Approval of Proposed Settlement (the "Forge Decl."), submitted herewith. Emphasis is added and citations are omitted throughout unless otherwise noted.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court will likely be able to certify the Settlement Class for purposes of effectuating the Settlement.

2. Whether the Court will likely be able to approve the proposed $350 million Settlement of the Action under Rule 23(e)(2) so that notice of the Settlement's terms and conditions may be provided to members of the Settlement Class ("Settlement Class Members").

3. Whether the proposed form and content of the Notice of Pendency and Proposed Settlement of Class Action ("Notice"), Proof of Claim and Release form ("Proof of Claim" or "Claim Form"), and Summary Notice of Proposed Settlement of Class Action ("Summary Notice"), and the plan for disseminating these materials to Settlement Class Members, should be approved.

4. Whether the Court should schedule a Final Approval Hearing in connection with the proposed Settlement, the proposed Plan of Allocation, and Lead Counsel's application for an award of attorneys' fees and expenses and an award to Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Settling Parties have reached a proposed Settlement of this securities class action in exchange for a payment of $350 million for the Settlement Class's benefit. Lead Plaintiff now requests the Court to preliminarily approve this proposed Settlement, which would represent the fourth largest securities class action recovery in this District's history.

As set forth below, the Settlement is the product of good-faith, arm's-length negotiations between experienced counsel, under the supervision of the Hon. Layn R. Phillips (Ret.) of Phillips ADR ("Judge Phillips"), a highly respected mediator with extensive experience in complex securities litigation. Lead Plaintiff reached the Settlement only after it had a thorough appreciation of the strengths and weaknesses of the case. As detailed herein, this case has been pending for over five years, throughout which the parties' litigation efforts have been extensive, including, *inter alia*, multiple motions to dismiss, a complete dismissal by the originally assigned

District Judge, a successful appeal resulting in a published opinion, a post-remand *sua sponte* discovery stay, numerous discovery disputes, multiple briefs concerning the scope of the case culminating in a supplement to the complaint, and two rounds of class certification briefing involving four different experts. Settlement was not reached until Lead Counsel had: (i) drafted and filed a detailed Consolidated Amended Complaint for Violation of the Federal Securities Laws (ECF 62) ("Complaint"); (ii) successfully appealed Judge White's decision to grant Defendants' motion to dismiss the Complaint in its entirety; (iii) filed and fully briefed motions for class certification on two separate occasions; (iv) engaged in extensive written discovery; (v) litigated multiple discovery disputes; (vi) been denied the opportunity to depose the primary individual defendants without unprecedented delays, restrictions, and conditions (including the six-month post-remand *sua sponte* discovery stay); (vii) denied the opportunity to conduct important discovery before moving for class certification; and (viii) participated in a mediation process with Judge Phillips for over a year, culminating in a mediator's proposal that both sides accepted. The Settlement is a tremendous result.

Lead Plaintiff also requests certification of a class of Persons who purchased or otherwise acquired Alphabet Class A and/or Class C stock during the period from April 23, 2018, through April 30, 2019, inclusive ("Settlement Class Period") for settlement purposes and approval of the Notice, Proof of Claim, and Summary Notice, appended as Exhibits A-1, A-2, and A-3, respectively, to the Stipulation. Lead Plaintiff also seeks the Court's approval of Gilardi as Claims Administrator and the means and methods for disseminating notice of the Settlement, and a finding that such notice comports with due process, the Federal Rules of Civil Procedure, and the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. §78u-4, *et seq*.

The Settlement meets the standards for preliminary approval because it is likely this Court will be able to find that the Settlement is fair, reasonable, and adequate under Rule 23(e). By granting preliminary approval, Lead Plaintiff will be able to notify the Settlement Class and solicit claims, requests for exclusion, and objections, at which point the Court will be able to consider whether to finally approve the Settlement.

II. OVERVIEW OF THE LITIGATION

On October 11, 2018, an initial complaint in the Action was filed in the United States District Court for the Northern District of California and a substantially similar complaint was filed in the United States District Court for the Eastern District of New York. *See* ECF 1; *Khaled El Mawardy v. Alphabet, Inc., et al.*, No. 1:18-cv-05704 (E.D.N.Y.). On November 7, 2018, the *El Mawardy* case was transferred to this District. ECF 14 at 5.

On January 25, 2019, Judge Jeffrey S. White consolidated the two related cases, appointed Rhode Island as Lead Plaintiff and approved Rhode Island's selection of Robbins Geller Rudman & Dowd LLP as Lead Counsel. ECF 44.

On April 26, 2019, Lead Plaintiff filed the Consolidated Amended Complaint for Violation of the Federal Securities Laws, alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act") and Rule 10b-5 promulgated thereunder against Defendants (the "Complaint"). ECF 62. Defendants moved to dismiss the Complaint on May 31, 2019. ECF 71. On February 5, 2020, Judge White granted Defendants' motion to dismiss the Complaint with leave to amend (the "Order"). ECF 82. Lead Plaintiff elected not to amend the Complaint so it could appeal the dismissal order, and on March 13, 2020, the Court entered judgment in Defendants' favor. ECF 84.

On April 9, 2020, Lead Plaintiff filed a notice of appeal of Judge White's Order and entry of judgment to the United States Court of Appeals for the Ninth Circuit (the "Appeal"). ECF 85. The Appeal was fully briefed on October 12, 2020 and oral argument was heard on February 4, 2021. *See In re State of Rhode Island v. Alphabet, Inc., et al.*, No. 20-15638 (9th Cir.). On June 16, 2021, the Ninth Circuit reversed Judge White's motion to dismiss order as to both counts and all defendants (while affirming the dismissal of certain standalone statements), vacated the judgment, and remanded for further proceedings. *In re Alphabet, Inc. Sec. Litig.*, 1 F.4th 687, 702 (9th Cir. 2021). On March 7, 2022, the Supreme Court denied Defendants' petition for *writ of certiorari*. *Alphabet, Inc., et al. v. Rhode Island*, 142 S. Ct. 1227, 212 L. Ed. 2d 233 (2022).

Over Rhode Island's objection (ECF 94 at 18), Judge White ordered Rhode Island to file its motion for class certification by June 21, 2022, against a backdrop of multiple open discovery

requests and disputes. ECF 95; ECF 101; ECF 103. Shortly thereafter, the Parties engaged the services of the Hon. Layn R. Phillips (Ret.), a nationally recognized mediator, to facilitate settlement negotiations. On August 5, 2022, the Parties engaged in an in-person mediation session. The mediation session was preceded by submission of mediation statements and exhibits by each party. The Parties engaged in arm's-length negotiations during the mediation session, but did not reach an agreement at that mediation, and litigation continued.

On August 22, 2022, Defendants filed their opposition to Rhode Island's motion for class certification, which argued, *inter alia*, that Rhode Island's damages theory improperly relied on allegations regarding a share price decline on April 30, 2019 that post-dated the Complaint and was not within its scope. ECF 130. On August 29, 2022, the Court ordered briefing regarding the scope of the Action on remand. ECF 134. The Court also *sua sponte* stayed all discovery. *Id*. On September 8, 2022, Rhode Island sought leave to supplement the Complaint pursuant to Fed. R. Civ. P. 15(d) to add damages claims for stock price drops on April 30 and May 1, 2019. ECF 136. Following months of extensive briefing in connection with Rhode Island's motion to certify (ECF 130-131, 145, 148-149), motion to supplement (ECF 136, 138-139, 141-143), and the parties' scope disputes (ECF 128-129, 137, 140, 144), Judge White entered an order on February 28, 2023, allowing Rhode Island to supplement the Complaint to include the April 2019 allegations in the Action and lifting the discovery stay. ECF 153. At that point, this case had been pending for 52 months, but Rhode Island had yet to have six consecutive months to take discovery. On February 28, 2023, Rhode Island filed the Supplement to the Consolidated Amended Complaint for Violations of the Federal Securities Laws and on March 14, 2023, Defendants filed their Answer to the Supplement. ECF 154-155.

Judge White again ordered Rhode Island to move for class certification with very little discovery and multiple open discovery requests and disputes. ECF 157 at 2-3 n.1; ECF 159. Accordingly, Rhode Island filed its renewed motion for class certification on May 2, 2023. ECF 165. Rhode Island's renewed motion for class certification gave rise to extensive and wide-ranging briefing, four expert reports, an attempted *amicus curiae* submission (and disputes related thereto) and the deposition of one of Rhode Island's experts.

On June 22, 2023, the assigned Magistrate Judge embraced "sort of a caste system" that "do[es]n't feel entirely fair" by giving automatic protective orders to current and former corporate executives, which significantly impeded Rhode Island's ability to depose the individual defendants in this Action. ECF 177 at 8:18-19. On July 6, 2023, Lead Plaintiff filed a motion for relief from the Magistrate Judge's "caste system" order. ECF 185 at 5 (citing *Synovus Trust Co., N.A. v. Honda Motor Co., Ltd.*, No. 4:03-cv-00140-CDL, Order (ECF 104) at 2 (M.D. Ga. Aug. 11, 2004) (rejecting "a 'caste' litigation system which divides witnesses into [two] classes – a privileged class that must be protected from the inconveniences associated with litigation and everyone else who must put aside private matters temporarily for the administration of justice"). Judge White denied this motion on July 20, 2023 – two business days before entering an Order of Recusal after "finding myself disqualified" for undisclosed reasons. ECF 187-188. On July 25, 2023, this Action was reassigned to the Honorable Trina L. Thompson, following Judge White's recusal. ECF 188-189. On July 31, 2023, Rhode Island sought to withdraw its motion for class certification, so it could re-file the motion after completing and resolving multiple open discovery requests and disputes. ECF 193. This request was denied on August 1, 2023, and Judge White's briefing schedule for class certification remained in effect. ECF 196 at 2.

The Parties continued their settlement discussion through the Mediator following their initial mediation session, without success. On October 20, 2023, the Parties accepted the Mediator's proposal to resolve the Action. The agreement included, among other things, the Settling Parties' agreement to settle and release all claims that were asserted or could have been asserted in the Action in return for a cash payment of $350,000,000.00 to be paid by Alphabet on behalf of Defendants, for the benefit of the Settlement Class, subject to the negotiation of the terms of a Stipulation of Settlement and approval by the Court. The Stipulation (together with the Exhibits thereto) reflects the final and binding agreement between the Settling Parties.

III. THE SETTLEMENT TERMS

This Settlement requires Defendants to pay, or cause to be paid, $350 million into the

Escrow Account, which amount, plus interest, comprises the Settlement Fund. Stipulation, ¶2.1.[2] Notice to the Settlement Class and the cost of settlement administration ("Notice and Administration Expenses") will be funded by the Settlement Fund. *Id.*, ¶2.8. Lead Plaintiff proposes a nationally recognized class action settlement administrator to be retained subject to the Court's approval. Gilardi was chosen following a competitive bidding process and careful review of proposals from several reputable settlement administrators. After reviewing the bids from each administrator, Lead Counsel concluded that Gilardi, because of its experience, the merits of the bid, and the quality of its work in prior engagements for Lead Counsel, is best suited to execute the claims administration in this Action. Lead Counsel respectfully requests that the Court approve its selection. Based on the estimates provided by the proposed Claims Administrator, and assuming that no unexpected or extraordinary issues arise, Gilardi expects notice and claims administration costs to be approximately $2,900,000 through the initial distribution. *See, e.g.*, Crudo Decl., ¶28. The proposed notice plan and plan for claims processing is discussed below in §§IV.C.5 and VI and in the Crudo Declaration.

The Notice and Summary Notice provide that Lead Counsel will move for final approval of the Settlement and: (a) an award of attorneys' fees in the amount of no more than 19% of the Settlement Amount; (b) payment of expenses or charges resulting from the prosecution of the Action not in excess of $1,750,000; (c) interest on such fees and expenses at the same rate and for the same period as is earned by the Settlement Fund; and (d) may request an award to Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4) for its time and expenses incurred in representing the Settlement Class. The Notice explains that such fees and expenses shall be paid from the Settlement Fund.

Once Notice and Administration Expenses, Taxes, Tax Expenses, and Court-approved attorneys' fees and expenses have been paid from the Settlement Fund, the remaining amount, the Net Settlement Fund, shall be distributed pursuant to the Court-approved Plan of Allocation (set forth in the Notice) to Authorized Claimants who are entitled to a distribution of at least

[2] The Settlement Amount was fully funded on January 4, 2024.

$10.00. Any amount remaining following the distribution shall be redistributed in an economically feasible manner. The Plan of Allocation treats all Settlement Class Members equitably based on the type of Alphabet stock (Class A and/or Class C) transacted and the timing and amount of such purchases, acquisitions, and any sales.

The Settling Parties have entered into a Supplemental Agreement, which provides that if prior to the Final Approval Hearing, requests for exclusion from the Settlement Class by Persons who would otherwise be Settlement Class Members, but who timely and validly request exclusion from the Settlement Class, exceeds a certain threshold, Defendants shall have the option (but not the obligation) to terminate the Settlement. Stipulation, ¶7.3. This type of agreement is standard in securities class actions and has no negative impact on the fairness of the Settlement. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 4207245, at *11 (N.D. Cal. Sept. 4, 2018) ("The existence of a termination option triggered by the number of class members who opt out of the Settlement does not by itself render the Settlement unfair.").

Next, in exchange for the benefits provided under the Stipulation, Settlement Class Members will release "any and all claims and causes of action of every nature and description, whether known or unknown, asserted or unasserted, accrued or unaccrued, fixed or contingent, liquidated or unliquidated, whether arising under federal, state, local, common or foreign law, or any other law, rule or regulation, whether class or individual in nature, based on, arising out of, or in connection with both: (i) the purchase or acquisition of Alphabet Class A and/or Class C common stock during the period from April 23, 2018 through April 30, 2019, inclusive, and (ii) the allegations, acts, facts, matters, occurrences, disclosures, filings, representations, statements, or omissions that were or could have been alleged by Lead Plaintiff and other members of the Settlement Class in the Action."[3] Stipulation, ¶1.25. As described in §V, *infra*, this release "is limited to claims that relate to both the complaint's factual allegations and to the purchase or ownership of" Alphabet stock and therefore "ensure[s] that 'the released claim[s] [are] based on the identical factual predicate as that underlying the claims in the settled class

[3] "Released Claims" includes, but is not limited to, "claims arising out of Alphabet's results in the fourth quarter of 2018 or the first quarter of 2019." *Id*.

action.'" *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2018 WL 6198311, at *5 (N.D. Cal. Nov. 28, 2018) ("*Volkswagen I*") (alterations in original) (quoting *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010)).

Lastly, under the terms of the Stipulation, there is no clear sailing agreement, and Defendants have no right to the return of the Settlement Fund for any reason upon the occurrence of the Effective Date. Stipulation, ¶5.10. *See also* N.D. Cal. Guid. 1(g) (requiring the disclosure of any reversions).

IV. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

Courts recognize that public policy strongly favors settlements to resolve disputes, "'particularly where complex class action litigation is concerned.'" *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019); *Young v. LG Chem Ltd.*, 2019 WL 4187396, at *1 (9th Cir. Sept. 4, 2019) (same). Moreover, courts should defer to "the private consensual decision of the parties" to settle and advance the "'overriding public interest in settling and quieting litigation.'" *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009); *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1976) (quoting *Van Brockhurst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976)).

Federal Rule of Civil Procedure 23(e) requires judicial approval for settlement of claims brought as a class action. Pursuant to Rule 23(e)(1), the issue at preliminary approval turns on whether the Court "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1). Rule 23(e)(2) provides that a proposed class settlement may be approved "after a hearing and only on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this assessment, the Court must consider whether Lead Plaintiff and Lead Counsel: (i) "have adequately represented the [Settlement] [C]lass;" (ii) "the proposal was negotiated at arm's length;" (iii) "the relief provided for the [Settlement] [C]lass is adequate;" and (iv) "the proposal treats [Settlement] [C]lass [M]embers equitably relative to each other." *Id.* In addition, the

Ninth Circuit uses the following factors for preliminary approval, several of which overlap with Rule 23(e)(2):

> [T]he strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement."

Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998).

As discussed below, the proposed Settlement easily satisfies each of the factors identified under Rule 23(e)(2), as well as the applicable Ninth Circuit factors, such that notice of the proposed Settlement should be sent to the Settlement Class in advance of the Final Approval Hearing.

A. Lead Plaintiff and Its Counsel Have Adequately Represented the Settlement Class

Rule 23(e)(2)'s first two factors look "to the conduct of the litigation and of the negotiations leading up to the proposed settlement." Rule 23(e)(2) Advisory Committee notes to 2018 amendment. This Settlement bears all of the hallmarks of a procedurally fair resolution under Rule 23(e)(2).

Rule 23(e)(2)(A) asks whether the plaintiff and its counsel have adequately represented the Settlement Class. This factor overlaps with the Ninth Circuit's factor regarding "the extent of discovery completed and the stage of the proceedings." *Hanlon*, 150 F.3d at 1026. As explained above, Lead Plaintiff and its counsel satisfy this factor as they have diligently prosecuted this Action for five years. *See supra*, §§I-II. Given Lead Plaintiff's and Lead Counsel's demonstrated prosecution of the Action, it is without question that they have adequately represented the Settlement Class. *See In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2019 WL 2077847, at *1 (N.D. Cal. May 10, 2019) ("*Volkswagen II*") (finding securities class settlement to be procedurally fair where "Lead Counsel vigorously litigated this action during motion practice and discovery, and the record supports the continuation of that effort during settlement negotiations"); *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *6 (N.D. Cal. Dec. 18, 2018), *aff'd sub nom. Hefler v. Pekoc*, 802 F. App'x 285

(9th Cir. 2020) (granting final approval and stating that at preliminary approval "the Court found that Class Counsel had vigorously prosecuted this action through dispositive motion practice, extensive initial discovery, and formal mediation" and that "given this prosecution of the action, counsel 'possessed "sufficient information to make an informed decision about settlement"'").

B. The Proposed Settlement Is the Result of Good Faith, Arm's-Length Negotiations by Informed, Experienced Counsel Who Were Aware of the Risks of the Action

The Rule 23(e)(2)(B) factor asks whether "the [settlement] proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). As noted above, the proposed Settlement follows extensive litigation over the course of over five years, during which Lead Counsel was successful in reviving the case following appeal to the Ninth Circuit after Judge White's dismissal of the Complaint. Lead Plaintiff also twice moved for class certification and engaged in numerous significant disputes with Defendants concerning the scope of discovery. *Supra*, §§I-II; *see also Volkswagen I*, 2018 WL 6198311, at *5 ("Having used discovery and motion practice to obtain information about the case, Plaintiffs were able to assess the merits of the claims and to determine whether Defendants' settlement offers were reasonable."). The Settlement was achieved only after the parties engaged in a protracted mediation process before former U.S. District Judge Layn Phillips of Phillips ADR, which included both in person mediation and conferences over the course of more than a year, resulting in a $350 million mediator's proposal. As part of the settlement discussions, Lead Counsel and Defendants' Counsel prepared and presented submissions concerning their respective views on the merits of the Action. *See Volkswagen II*, 2019 WL 2077847, at *1 ("Lead Counsel also attests that both sides engaged in a series of intensive, arm's-length negotiations before they reached an agreement in principle to settle. . . . There is no reason to doubt the veracity of Lead Counsel's representations."). The foregoing evinces that the Settlement is "the product of serious, informed, and noncollusive negotiations." *Volkswagen I*, 2018 WL 6198311, at *4-*5. *See also Hefler*, 2018 WL 6619983, at *6 ("[T]he Settlement was the product of arm's length negotiations through two full-day mediation sessions and multiple follow-up calls supervised by former U.S. District Judge Layn Phillips."); *In re Atmel Corp. Deriv. Litig.*, 2010 WL 9525643, at *13 (N.D.

Cal. Mar. 31, 2010) ("Judge Phillips' participation weighs considerably against any inference of a collusive settlement."); *Abadilla v. Precigen, Inc.*, 2023 WL 7305053, at *3 (N.D. Cal. Nov. 6, 2023) (noting that preliminary approval granted because, *inter alia*, "the [Settlement Agreement] resulted from good faith, arm's length negotiations conducted under the auspices of an independent mediator, the Hon. Layn Phillips (U.S.D.J., ret.), who has extensive experience in mediating class action litigations of this type").

C. The Relief Provided to the Settlement Class Is Adequate

1. The Substantial Benefits for the Settlement Class, Weighed Against the Costs, Risks, and Delay of Further Litigation, Support Preliminary Approval

Rule 23(e)(2)(C)(i) and the Ninth Circuit's factors concerning the "strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation"; and "the amount offered in settlement" (*Hanlon*, 150 F.3d at 1026) are also satisfied because the $350 million recovery provides a significant and immediate benefit to the Settlement Class, especially in light of the costs, risks, and delay posed by continued litigation. Securities cases, like the present one, "'are highly complex and . . . securities class litigation is notably difficult and notoriously uncertain.'" *Hefler*, 2018 WL 6619983, at *13.

While Lead Plaintiff remains confident in its ability to ultimately prove the alleged claims on a level playing field, further litigation – including a trial – is always a risky proposition, even more so here where Lead Plaintiff was unable to question the individual defendants without significant delays, restrictions, and conditions. *See, e.g.*, *Salazar v. Midwest Servicing Grp., Inc.*, 2018 WL 3031503, at *6 (C.D. Cal. June 4, 2018) (A "settlement agreement's elimination of risk, delay, and further expenses weighs in favor of approval."). Further, complex securities fraud class actions such as this one present myriad risks that a plaintiff must overcome in order to ultimately secure a recovery. *See, e.g.*, *Redwen v. Sino Clean Energy, Inc.*, 2013 WL 12129279, at *5 (C.D. Cal. Mar. 13, 2013) ("Various issues would require extensive discovery and motion and trial practice, including proof of material misrepresentations, scienter and loss causation. Courts experienced with securities fraud

litigation "'routinely recognize that securities class actions present hurdles to proving liability that are difficult for plaintiffs to clear.'"").

While Lead Plaintiff would be required to prove all elements of its claims to prevail, Defendants need only succeed on one defense to potentially defeat the entire Action. In fact, they successfully obtained full dismissal of the Complaint at the motion to dismiss stage. ECF 82. Risks of proving falsity, materiality, scienter, and recoverable damages on the remaining statements present significant obstacles to Lead Plaintiff's success at summary judgment or trial. *See, e.g.*, *In re Celera Corp. Sec. Litig.*, 2015 WL 1482303, at *5 (N.D. Cal. Mar. 31, 2015) ("As with any securities litigation case, it would be difficult for Lead Plaintiff to prove loss causation and damages at trial. . . . Lead Plaintiff would risk recovering nothing without a settlement."); *Luna v. Marvell Tech. Grp.*, 2018 WL 1900150, at *3 (N.D. Cal. Apr. 20, 2018) (noting the risks of proving scienter, loss causation, and damages at trial); *In re Tesla, Inc. Sec. Litig.*, No. 3:18-cv-04865-EMC (N.D. Cal.) (securities class action defendants obtaining 2023 jury verdict notwithstanding district judge granting plaintiffs' motion for summary judgment on falsity element). Given Defendants' arguments regarding the causes of the movements in Alphabet's stock price during and following the end of the Settlement Class Period, recoverable damages may have been severely limited, if not eliminated altogether.

Lead Plaintiff would also need to prevail at summary judgment, pretrial motions, trial, and subsequent appeals, a process that could possibly extend for years. Settlement is favored where, as here, the case is "'complex and likely to be expensive and lengthy to try,'" and presents numerous risks beyond the "'inherent risks of litigation.'" *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1301 (S.D. Cal. 2017), *aff'd*, 881 F.3d 1111 (9th Cir. 2018) (quoting *Rodriguez*, 563 F.3d at 966, and *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993)); *Volkswagen II*, 2019 WL 2077847, at *2 ("[E]ven if Plaintiffs had prevailed, their recovery – after class certification, trial, and appeals – would have come years in the future. Taking $48 million now, instead of holding out for the chance of $147 million at some point in the future, is a sensible decision.").

The $350 million Settlement balances the risks, costs, and delay inherent in complex cases evenly with respect to all parties. Lead Plaintiff secured the fourth largest settlement in the history of this District in a case where other plaintiffs' firms believed there to be no damages – a view supported by standard application of conventional damages thinking and methodologies. This is unheard of in securities cases, for which the median recovery is 5% of damages. *See Fleming v. Impax Lab'ys Inc.*, 2022 WL 2789496, at *6 (N.D. Cal. July 15, 2022) ("'the median settlement recovery from 2009 to 2017 was only five percent of damages in securities class actions'") (quoting *Volkswagen II*, 2019 WL 2077847, at *2 n.2); *see also Hefler*, 2018 WL 6619983, at *6 ("[C]ounsel's preliminary approval motion included information regarding the settlement outcomes of similar cases, further indicating that counsel 'had an adequate information base' when negotiating the settlement.").

Without any measurable damages using conventional thinking and methodologies, the proposed recovery is incalculably beneficial to shareholders. It is literally found money. Even if we stretch conventional norms to get some damages estimate, that would amount to $1.405 billion in total, and the $350 million recovery would amount to just under 25% of the stretch damages – exponentially greater than an average recovery percentage.

Thus, the benefits created by the Settlement weigh heavily in favor of granting the motion for preliminary approval. Considering the risks of continued litigation and the time and expense that would be incurred to prosecute the Action through a trial, the $350 million Settlement is a strong recovery that is in the Settlement Class's best interests.

2. The Proposed Method for Distributing Relief Is Effective

As demonstrated below in §VI and in the Crudo Declaration, the methods of proposed notice and claims administration process (Rule 23(e)(2)(C)(ii)) are effective. The notice plan includes direct mail notice to all those who can be identified with reasonable effort supplemented by publication of the Summary Notice in *The Wall Street Journal* and over a national newswire service. In addition, a Settlement-specific website will be created where key documents will be posted, including the Stipulation, Notice, Proof of Claim, and Preliminary Approval Order.

Crudo Decl., ¶¶6-14. This is similar to the notice plan proposed and approved in *Vataj v. Johnson*, 2021 WL 1550478, at *3, *11-*12 (N.D. Cal. Apr. 20, 2021).

The claims process is also effective and includes a standard Claim Form that requests the information necessary to calculate a Claimant's claim amount pursuant to the Plan of Allocation ("Plan"). The Plan will govern how Settlement Class Members' claims will be calculated and, ultimately, how money will be distributed to Authorized Claimants. The Plan was prepared with the assistance of Lead Plaintiff's consulting damages expert and is based primarily on the expert's controlled aggressive estimation of the amount of artificial inflation in the prices of Alphabet Class A and Class C stock during the Settlement Class Period. A thorough claim review process, including how deficiencies are addressed, is also explained in the Crudo Declaration. *Id.*, ¶¶24-26.

3. Attorneys' Fees

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). As discussed above (*supra* §III), Lead Counsel intends to seek an award of attorneys' fees not to exceed 19% of the Settlement Amount and expenses in an amount not to exceed $1,750,000, plus interest on both amounts. Lead Counsel's lodestar to date is approximately $13.9 million.[4] This fee request reflects the successful result achieved for the Settlement Class, and falls meaningfully below the 25% "benchmark award for attorney fees." *Hanlon*, 150 F.3d at 1029. In addition, Lead Counsel will request that any award of fees and expenses be paid at the time the Court makes its award. *See In re Vocera Commc'ns, Inc. Sec. Litig.*, 2016 WL 8201593, at *1 (N.D. Cal. July 29, 2016) (fees to be paid "immediately upon entry of this Order").

Finally, Lead Plaintiff may seek an award of up to $10,000 pursuant to 15 U.S.C. §78u-4(a)(4), as reimbursement for its costs and expenses related to its representation of the Settlement Class. "Under the PSLRA, a class representative may seek an award of reasonable

[4] If preliminary approval is granted, Lead Counsel will present its total lodestar in connection with its fee application at the final approval stage, after further detailed review and adjustment of its contemporaneous daily time entries to account for billing judgment.

costs and expenses, including lost wages, directly relating to the representation of the class." *Fleming*, 2022 WL 2789496, at *10; *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (holding that named plaintiffs are eligible for reasonable payments as part of a class action settlement). Lead Counsel believes this amount is fully supported by the time spent and work undertaken by Lead Plaintiff throughout the Action, which will be set forth in greater detail in connection with Lead Plaintiff's fee and expense motion.

Approval of the requested attorneys' fee and expense application is separate from approval of the Settlement, and the Settlement may not be terminated based on any ruling with respect to attorneys' fees. Stipulation, ¶6.3.

The Parties have entered into a standard supplemental agreement which provides that if Settlement Class Members opt out of the Settlement such that the requests for exclusion from the Settlement Class equals or exceeds an agreed-upon threshold, Defendants shall have the option to terminate the Settlement. Stipulation, ¶7.3. Such agreements are common and do not undermine the propriety of the Settlement. *See, e.g.*, *Hefler*, 2018 WL 6619983, at *7 ("The existence of a termination option triggered by the number of class members who opt out of the Settlement does not by itself render the Settlement unfair."). While the Supplemental Agreement is identified in the Stipulation, ¶7.3, and the nature of the agreement is explained in the Stipulation and here, the terms are properly kept confidential.[5]

5. The Proposed Plan of Allocation Is Designed to Treat Settlement Class Members Equitably

Rule 23(e)(2)(D) asks whether the proposal, here the Plan of Allocation, treats Settlement Class Members equitably relative to each other. Drafted with the assistance of Lead Plaintiff's consulting damages expert, the Plan is fair, reasonable, and adequate because it does not treat Lead Plaintiff or any other Settlement Class Member preferentially. *See Vataj*, 2021 WL

[5] *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015) (finding settlement was not rendered unfair by the inclusion of an opt-out provision where "[o]nly the exact threshold, for practical reasons, was kept confidential"); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 329-30 (C.D. Cal. 2016) (considering confidential supplemental agreement).

1550478, at *10; *In re Zynga Inc. Sec. Litig.*, 2015 WL 6471171, at *10 (N.D. Cal. Oct. 27, 2015).

The Plan, set forth in the Notice (Stipulation, Ex. A-1 at 12-19), is designed to equitably distribute the Net Settlement Fund (*see* Stipulation, ¶1.18) to those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. In developing the Plan, Lead Plaintiff's consulting damages expert calculated the potential amount of estimated alleged artificial inflation in Alphabet stock proximately caused by Defendants' alleged false and misleading statements and material omissions. Again, to calculate ***any*** damages, Lead Plaintiff's expert had to operate outside conventional approaches, but he did so while limiting the number of assumptions on which his estimate depended. To do this, Lead Plaintiff's consulting damages expert considered the market and industry adjusted price changes in Alphabet stock prices following certain corrective disclosures regarding Alphabet and the allegations in the Complaint. Based on the formula in the Plan, a "Recognized Loss Amount" will be calculated for each transaction in Alphabet Class A and Class C common stock. The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the class of stock transacted and the relative size of their Recognized Claims. The amount of the payment will depend on, among other factors, how many Settlement Class Members file valid claims and the aggregate value of the Recognized Claims represented by valid and acceptable Claim Forms.

Lead Plaintiff, just like all other Settlement Class Members, will be subject to the same formula for distribution of the Settlement. *See Ciuffitelli v. Deloitte & Touche LLP*, 2019 WL 1441634, at *18 (D. Or. Mar. 19, 2019) (finding "[t]he Proposed Settlement does not provide preferential treatment to Plaintiffs or segments of the class" where "the proposed Plan of Allocation compensates all Class Members and Class Representatives equally in that they will receive a *pro rata* distribution of the Settlement Fund based on their net losses"). Courts have previously found plans that award *pro rata* shares to each class member to be fair and reasonable. *See, e.g.*, *Vataj*, 2021 WL 1550478, at *10 ("The Settlement Fund will thus be distributed on a *pro rata* basis according to each class member's recognized loss."); *In re Resistors Antitrust Litig.*, 2020 WL 2791922, at *2 (N.D. Cal. Mar. 24, 2020) (approving plan of

allocation using *pro rata* basis of distribution). Accordingly, the Plan is fair, reasonable, and applies in an equitable manner to all Settlement Class Members.

D. The Remaining Ninth Circuit Factors Are Satisfied

1. Risk of Maintaining Class Action Status Through Trial

The issue of class certification had yet to be decided when the Settlement was reached, but Defendants have opposed Lead Plaintiff's renewed motion to certify the Settlement Class. ECF 181. While Lead Plaintiff had full confidence in the soundness of its class-wide damages model, as mentioned above, conventional thinking would support Defendants' argument against any damages, which posed a heightened risk of decertification. *See, e.g.*, *Fleming*, 2022 WL 2789496, at *6 ("[T]here is always a risk of decertification – especially when, as here, Plaintiffs must overcome causation and damages defenses."). Accordingly, this factor supports preliminary approval.

2. Experience and Views of Counsel

The opinion of experienced counsel supporting a class settlement after arm's-length negotiations is entitled to considerable weight. *Norris v. Mazzola*, 2017 WL 6493091, at *8 (N.D. Cal. Dec. 19, 2017). "[I]ndeed a presumption of fairness is usually appropriate if class counsel recommends the settlement after arm's-length bargaining." *Volkswagen I*, 2018 WL 6198311, at *5. Lead Counsel here has significant experience prosecuting and resolving significant securities and other complex class-action litigation. *See* www.rgrdlaw.com. And by the time settlement discussions began, Lead Counsel had a firm understanding of the strengths and weaknesses of the claims, both factually and legally. *Supra*, §§I-II. "There is nothing to counter the presumption that Lead Counsel's recommendation is reasonable." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008).

In sum, each factor identified under Rule 23(e)(2) and by the Ninth Circuit is satisfied. Given the litigation risks involved, the complexity of the underlying issues and the skill of defense counsel, the $350 million recovery is significant. It could not have been achieved without the full commitment by Lead Plaintiff and its counsel. The Settlement is fair, adequate, and reasonable, and such that notice should be sent to the Settlement Class.

V. CERTIFICATION OF THE SETTLEMENT CLASS FOR PURPOSES OF THE SETTLEMENT IS APPROPRIATE

Under the terms of the Settlement, Defendants have agreed, for purposes of settlement, to certification of the following Settlement Class: "all Persons that purchased or otherwise acquired Alphabet Class A and/or Class C stock during the period from between April 23, 2018, and April 30, 2019, inclusive." Stipulation, ¶1.32.[6] Whereas the class period alleged in the Complaint ended on October 7, 2018 (the trading day before the stock decline date explicitly alleged in the Complaint), the Settlement Class more closely conforms to the scope of the case following Judge White's February 28, 2023 Order, which granted Lead Plaintiff leave to supplement the Complaint to allege damages resulting from the revenue deceleration Alphabet announced on April 29, 2019, as well as the discovery obtained by Lead Plaintiff following the filing of the Supplement, which confirmed the viability of securities fraud claims stemming from purchases between October 8, 2018 and April 30, 2019. ECF 153.

At this stage, the Court should determine whether it "will likely be able" to grant certification to the proposed Settlement Class at final approval. Fed. R. Civ. P. 23(e)(1)(B). Lead Plaintiff submits that the Settlement Class satisfies the requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy of representation) as well as the requirements of Rule 23(b)(3). *See Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997).

A. The Requirements of Rule 23(a) Are Met

1. Numerosity Is Satisfied

The numerosity requirement is met where the party seeking certification shows the Settlement Class is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). This does not mean that joinder is impossible, but rather "'only that the court must find that the difficulty or inconvenience of joining all members of the class makes class litigation desirable.'" *McCulloch v. Baker Hughes Inteq Drilling Fluids, Inc.*, 2017 WL 2257130, at *7

[6] Excluded from the Settlement Class are Defendants and their families, the officers, directors, and affiliates of Defendants, at all relevant times, members of their immediate families, and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class will be any Person who timely and validly seeks exclusion from the Settlement Class.

(E.D. Cal. May 23, 2017) (quoting *Millan v. Cascade Water Servs., Inc.*, 310 F.R.D. 593, 603 (E.D. Cal. 2015)). "While no specific minimum number of potential class members exists, a 'proposed class of at least forty members presumptively satisfies the numerosity requirement.'" *Hatamian v. Advanced Micro Devices, Inc.*, 2016 WL 1042502, at *4 (N.D. Cal. Mar. 16, 2016). In assessing this requirement here, "'[t]he Court certainly may infer that, when a corporation has millions of shares trading on a national exchange,' the numerosity requirement is met." *Hayes v. Magnachip Semiconductor Corp.*, 2016 WL 7406418, at *3 (N.D. Cal. Dec. 22, 2016).

Alphabet common stock trades globally on the NASDAQ, and during the Settlement Class Period, had approximately 648 million shares outstanding. ECF 102 at 6. This easily establishes numerosity. *See SEB Inv. Mgmt. AB v. Symantec Corp.*, 335 F.R.D. 276, 282-83 (N.D. Cal. 2020) (numerosity satisfied with "over six-hundred thousand outstanding shares of Symantec common stock during the class period").

2. Commonality Is Satisfied

Rule 23(a)(2) requires a showing that there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Plaintiffs need not show . . . that 'every question in the case, or even a preponderance of questions, is capable of class wide resolution. So long as there is "even a single common question," a would-be class can satisfy the commonality requirement of Rule 23(a)(2).'" *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014). "Commonality exists where 'the circumstances of each particular class member vary but retain a common core of factual or legal issues with the rest of the class.'" *Fleming v. Impax Lab'ys*, 2021 WL 5447008, at *6 (N.D. Cal. Nov. 22, 2021). "Commonality, like numerosity, is a prerequisite which plaintiffs generally, and which Plaintiffs here, satisfy very easily." *In re VeriSign, Inc. Sec. Litig.*, 2005 WL 7877645, at *5 (N.D. Cal. Jan. 13, 2005).

Settlement Class Members have suffered a common injury – losses on their investments in Alphabet stock – and their claims depend upon numerous common issues capable of class-wide resolution, including: Did Defendants engage in a scheme to defraud? Did Defendants "omit[] 'to state a material fact necessary in order to make the statements made . . . not misleading?'" *Alphabet*, 1 F.4th at 699 (quoting 17 C.F.R. §240.10b-5(b)). Was "'there . . . "a

substantial likelihood that [the omitted information] would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available" for the purpose of decision-making by stockholders concerning their investments?'" *Id.* at 699-700. Did Defendants' omissions and scheme cause Settlement Class Members to suffer a compensable loss? And if so, what is the proper measure of those damages? "Although the amount to which each class member is entitled will differ, the issues described above are common to the proposed Settlement Class. Accordingly, the Court finds that the commonality requirement is met in this case." *Fleming*, 2021 WL 5447008, at *6.

3. Typicality Is Satisfied

Rule 23(a)(3) requires that the proposed class representative's claims be "typical" of the claims of the Settlement Class. The typicality requirement "imposes only a modest burden." *In re LendingClub Sec. Litig.*, 282 F. Supp. 3d 1171, 1182 (N.D. Cal. 2017). "The test of typicality is 'whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Parsons*, 754 F.3d at 685. "The purpose of the typicality requirement is to 'assure that the interest of the named representative aligns with the interests of the class.'" *In re Intuitive Surgical Sec. Litig.*, 2016 WL 7425926, at *5 (N.D. Cal. Dec. 22, 2016) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). "'Under the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical.'" *Parsons*, 754 F.3d at 685.

Here, Lead Plaintiff's claims are "typical" of other Settlement Class Members' claims because they arise out of the same alleged course of conduct and, like other Settlement Class Members, they all allege that they purchased Alphabet Class A and/or Class C stock during the Settlement Class Period at artificially inflated prices due to Defendants' material omissions, and were damaged when the truth emerged. Thus, Lead Plaintiff and the Settlement Class assert the same legal claims, which relate to the adequacy of such public statements and will rely on the same facts and legal theories to establish liability.

4. Lead Plaintiff and Lead Counsel Are Adequate

Under Rule 23(a)(4), the parties representing the Settlement Class must "fairly and adequately protect the interests of the class," which presents two questions: "'(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members[,] and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *SEB*, 335 F.R.D. at 284-85 (quoting *Hanlon*, 150 F.3d at 1020).

Lead Plaintiff and Lead Counsel readily satisfy adequacy. First, based upon its purchase of Alphabet stock during the Settlement Class Period and its losses suffered, Lead Plaintiff's interests are directly aligned with – rather than antagonistic to – the interests of other Settlement Class Members, who were injured by the same alleged materially false and misleading statements and omissions as Lead Plaintiff. Second, there are no conflicts between Lead Plaintiff and the Settlement Class. *See In re Juniper Networks, Inc. Sec. Litig.*, 264 F.R.D. 584, 590 (N.D. Cal. 2009) (finding that the class representatives were adequate because there was no evidence of conflicts of interest with the class).

Lead Plaintiff has also retained counsel who satisfy this adequacy requirement. "[Robbins Geller] have extensive experience with complex securities litigation, including as lead counsel in PSLRA cases litigated in this district, and have been praised by numerous judges for the quality of the firm's representation in class action litigation." *Fleming*, 2021 WL 5447008, at *7. Lead Plaintiff's chosen counsel have demonstrated their willingness to commit considerable resources to prosecuting this Action, and have vigorously represented the Settlement Class's interests. Thus, the adequacy requirement is satisfied.

B. The Requirements of Rule 23(b)(3) Are Also Met

Lead Plaintiff seeks to certify the Settlement Class pursuant to Rule 23(b)(3), under which certification is appropriate where: (1) questions of law or fact common to Settlement Class Members predominate over questions affecting only individual members; and (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. These requirements are readily satisfied here. The predominance inquiry of Rule 23(b)(3) asks whether "'proposed classes are sufficiently cohesive to warrant adjudication by representation.'"

Hatamian, 2016 WL 1042502, at *3. As the Supreme Court has explained, "[p]redominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Amchem*, 521 U.S. at 625.

Here, the common questions identified above clearly predominate over individual questions because Defendants' alleged scheme and misleadingly incomplete statements affected all Settlement Class Members in the same manner. *Vataj*, 2021 WL 1550478, at *6 (finding common questions predominate where same operative facts apply to each class member). Moreover, all the elements under §10(b) involve common questions of law and fact that predominate over individualized issues. *Fleming*, 2021 WL 5447008, at *6; *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 640 (C.D. Cal. 2009).

Finally, the superiority element of Rule 23(b)(3) tests whether class treatment is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In cases like this one, where "'recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis,'" a class action is the superior method of adjudication.[7] *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 585 (N.D. Cal. 2015); *VeriSign*, 2005 WL 7877645, at *9 ("Class actions are particularly well-suited in the context of securities litigation, wherein geographically dispersed shareholders with relatively small holdings would otherwise have difficulty in challenging wealthy corporate defendants."). Moreover, Lead Plaintiff is not aware of any other pending actions seeking similar relief.

In sum, all of the requirements of Rules 23(a) and (b)(3) are satisfied, and there are no issues that would prevent the Court from certifying the Settlement Class for Settlement purposes, appointing Lead Plaintiff as class representative, and appointing Lead Counsel as class counsel pursuant to Rule 23(g).

[7] When a class is seeking certification for purposes of settlement, "the superiority inquiry focuses '"on the efficiency and economy elements of the class action so that cases allowed under [Rule 23(b)(3)] are those that can be adjudicated must profitably on a representative basis."'" *Ford v. CEC Ent, Inc.*, 2015 WL 11439032, at *4 (S.D. Cal. July 7, 2015) (alteration in original); *Hyundai*, 926 F.3d at 556-57 ("[t]he criteria for class certification are applied differently in litigation classes and settlement classes" and "manageability is not a concern in certifying a settlement class").

VI. THE PROPOSED FORMS AND METHOD OF PROVIDING NOTICE TO THE SETTLEMENT CLASS ARE APPROPRIATE AND SATISFY FED. R. CIV. P. 23, THE PSLRA, AND DUE PROCESS

Rule 23(c)(2)(B) requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *See also* Fed. R. Civ. P. 23(e)(1). Courts evaluating proposed notice documents have held that "'[n]otice is satisfactory if it "generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Rodriguez*, 563 F.3d at 962.

Here, the Settling Parties propose to send, by email or first class mail, postage prepaid, individual copies of the Summary Notice to all potential Settlement Class Members who can reasonably be identified and located. Crudo Decl., ¶6; Preliminary Approval Order, ¶10. In addition, the Summary Notice will be published in *The Wall Street Journal* and over a national newswire service. Preliminary Approval Order, ¶11. The proposed methods of providing notice satisfy the requirements of Rule 23, the PSLRA, and due process. *See In re MGM Mirage Sec. Litig.*, 708 F. App'x 894, 896 (9th Cir. 2017). The proposed full-length Notice, which will be placed on the Settlement website, and will be available from the Claims Administrator upon request, provides detailed information in plain English.[8] The content of the proposed Notice and Summary Notice are "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Also, Rule 23(h)(1) requires that "[n]otice of the motion [for attorneys' fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." Fed. R. Civ. P. 23(h)(1). The proposed Notice and Summary Notice satisfy this

[8] The Notice describes the proposed Settlement and sets forth, among other things: (i) the nature, history, and status of the Action; (ii) the definition of the Settlement Class and who is excluded; (iii) the reasons the parties have proposed the Settlement; (iv) the amount of the Settlement Fund; (v) the estimated average distribution per damaged share; (vi) the Settlement Class's claims and issues; (vii) the parties' disagreement over damages and liability; (viii) the maximum amount of attorneys' fees and expenses that Lead Counsel intends to seek in connection with final Settlement approval; (ix) the plan for allocating the Settlement proceeds to the Settlement Class; and (x) the date, time, and place of the Final Approval Hearing.

requirement, as they notify Settlement Class Members that Lead Counsel will apply to the Court for an award of attorneys' fees not to exceed 19% of the Settlement Amount and litigation expenses not to exceed $1,750,000, to be paid from the Settlement Fund.

In sum, the notice program proposed in connection with the Settlement and the form and content of the Notice and Summary Notice satisfy all applicable requirements of both the Federal Rules of Civil Procedure and the PSLRA. Accordingly, the Court should also approve the proposed form and method of giving notice to the Settlement Class.

VII. NORTHERN DISTRICT OF CALIFORNIA PROCEDURAL GUIDANCE

The *Procedural Guidance* for class action settlements has been satisfied and weighs in favor of approving the Settlement. *See* Appendix A.

VIII. CONCLUSION

For each of the foregoing reasons, the Court should enter the [Proposed] Order Preliminarily Approving Settlement and Providing for Notice, which will: (i) preliminarily approve the Settlement; (ii) preliminarily certify the Settlement Class for settlement purposes; (iii) approve the form and manner of providing notice of pendency and Settlement to the Settlement Class; and (iv) set a Final Approval Hearing date to consider final approval of the Settlement and related matters.

DATED: February 5, 2024

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
JASON A. FORGE
LAURA ANDRACCHIO
MICHAEL ALBERT
J. MARCO JANOSKI GRAY
TING H. LIU
KENNETH P. DOLITSKY
SARAH A. FALLON

s/ Jason A. Forge
JASON A. FORGE

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
jforge@rgrdlaw.com
landracchio@rgrdlaw.com
malbert@rgrdlaw.com
mjanoski@rgrdlaw.com
tliu@rgrdlaw.com
kdolitsky@rgrdlaw.com
sfallon@rgrdlaw.com

Lead Counsel for Plaintiff

APPENDIX A

(Compliance with *Procedural Guidance* of Northern District of California)

A. Guidance 1: Information about the Settlement

1. Guidance 1(a): Any differences between the settlement class and the class proposed in the operative complaint (or, if a class has been certified, the certified class) and an explanation as to why the differences are appropriate.

The Complaint alleged a class period that began on April 23, 2018 and ended on October 7, 2018 (the trading day before the stock decline dates explicitly alleged in the Complaint). Lead Plaintiff filed its Supplement following Judge White's February 28, 2023 Order, which resolved the parties' disputes regarding the scope of the case and allowed Lead Plaintiff to allege damages resulting from the revenue deceleration Alphabet announced on April 29, 2019.

The Settlement Class Period end date of April 30, 2019 appropriately encompasses the full scope of the case following Judge White's Order, and is based on the same alleged scheme and omissions that have been the subject of over five years of litigation and extensive discovery.

2. Guidance 1(b): Any differences between the claims to be released and the claims in the operative complaint (or, if a class has been certified, the claims certified for class treatment) and an explanation as to why the differences are appropriate.

The claims being released closely track the claims alleged. The Complaint alleges federal securities law claims based on omissions and a scheme by Defendants in connection with the purchase or acquisition of Alphabet stock. The definition of "Released Claims" is properly limited to claims "in connection with both: (i) the purchase or acquisition of Alphabet Class A and/or Class C common stock during the period from April 23, 2018 through April 30, 2019, inclusive, and (ii) the allegations, acts, facts, matters, occurrences, disclosures, filings, representations, statements, or omissions that were or could have been alleged by Lead Plaintiff and other members of the Settlement Class in the Action." Stipulation, ¶1.25.

3. Guidance 1(c): The class recovery under the settlement (including details about and the value of injunctive relief), the potential class recovery if plaintiffs had fully prevailed on each of their claims, claim by claim, and a justification of the discount applied to the claims.

The Settlement Class will receive $350 million in cash, less approved fees and expenses, through the Settlement. As set forth in the attached supporting memorandum ("Preliminary Approval Memorandum"), had Lead Plaintiff fully prevailed on its claims, there would have been no damages under typical thinking and application of existing methodologies. A controlled aggressive estimate of recoverable damages, consistent with the methodology in the Plan of Allocation, would be approximately $1.405 billion. There are many factors that contributed to Lead Plaintiff's acceptance of a discount to that damages value, which are more fully explained in §IV.C.1 of the Preliminary Approval Memorandum.

4. Guidance 1(d): Any other cases that will be affected by the settlement, an explanation of what claims will be released in those cases if the settlement is approved, the class definitions in those cases, their procedural posture, whether plaintiffs' counsel in those cases participated in the settlement negotiations, a brief history of plaintiffs' counsel's discussions with counsel for plaintiffs in those other cases before and during the settlement negotiations, an explanation of the level of coordination between the two groups of plaintiffs' counsel, and an explanation of the significance of those factors on settlement approval. If there are no such cases, counsel should so state.

Counsel believes there are no other cases that will be affected by the Settlement.

5. Guidance 1(e): The proposed allocation plan for the settlement fund.

The proposed allocation plan is set forth in detail in the Notice of Pendency and Proposed Settlement of Class Action ("Notice") (Stipulation, Ex. A-1 at 12-19).

6. Guidance 1(f): If there is a claim form, an estimate of the expected claim rate in light of the experience of the selected claims administrator and/or counsel based on comparable settlements, the identity of the examples used for the estimate, and the reason for the selection of those examples.

This is a non-reversionary settlement in which the entire Settlement Fund will be paid out. Stipulation, ¶5.10. Once the Settlement becomes final, nothing is returned to Defendants. With respect to the number of class members, as well as their identities, these are unknown in

securities cases. *See Vataj v. Johnson*, 2021 WL 1550478, at *11 (N.D. Cal. Apr. 20. 2021) ("The Court understands that the majority of class members are likely beneficial purchasers whose securities were purchased by brokerage firms, banks, institutions, and other third-party nominees in the name of the nominee, on behalf of the beneficial purchaser."). Because the number and identity of class members is unknown, both the number and percentage of class members expected to file claims is unknown. Indeed, the number of claims varies widely from case to case as does the size of each claim. In a securities class action settlement, class member participation is determined by the number of damaged shares (shares affected by the inflation caused by the alleged omissions and scheme) represented by the claims submitted. This more accurately reflects how much of the Settlement Class is seeking to participate in the Settlement. Consistent with its experience in securities class actions, and based on the effectiveness of the proposed notice plan, Lead Counsel anticipates that the vast majority of damaged shares will be represented by the claims submitted in this Action.

7. Guidance 1(g): In light of Ninth Circuit case law disfavoring reversions, whether and under what circumstances money originally designated for class recovery will revert to any defendant, the expected and potential amount of any such reversion, and an explanation as to why a reversion is appropriate.

The Settlement is non-reversionary; there will be no reversions. Stipulation, ¶5.10.

B. Guidance 2: Settlement Administration

a. Guidance 2(a): Identify the proposed settlement administrator, the settlement administrator selection process, how many settlement administrators submitted proposals, what methods of notice and claims payment were proposed, and the lead class counsel's firms' history of engagements with the settlement administrator over the last two years.

Lead Plaintiff's request to appoint Gilardi to serve as the Claims Administrator, including the reasons for Lead Counsel's selection of Gilardi, is addressed in §III of the Preliminary Approval Memorandum. Lead Counsel states that Gilardi has been appointed as the notice or claims administrator in 49 matters where Robbins Geller was lead or co-lead counsel in the past

two years. Crudo Decl., ¶5. The proposed methods of notice are addressed in §IV.C.2 of the Preliminary Approval Memorandum.

b. Guidance 2(b): Address the settlement administrator's procedures for securely handling class member data (including technical, administrative, and physical controls; retention; destruction; audits; crisis response; etc.), the settlement administrator's acceptance of responsibility and maintenance of insurance in case of errors, the anticipated administrative costs, the reasonableness of those costs in relation to the value of the settlement, and who will pay the costs.

Gilardi's Information Security Policy Framework is aligned to ISO/IEC 27002:2013 which is reviewed on an annual basis and communicated to all employees through a comprehensive training program. Crudo Decl., ¶30. Gilardi maintains a number of corporate governance policies that reflect the manner in which it does business, including an employee Code of Conduct that outlines the professional, responsible, and ethical guidelines that govern employee conduct. These policies are available on Gilardi's website. *Id.*, ¶31.

C. Guidance 3: The Proposed Notices to the Settlement Class Are Adequate

As set forth in §IV.C.2 of the Preliminary Approval Memorandum, Lead Counsel believes that both the form of notice, which incorporates the substance of the suggested language from the *Procedural Guidance*, and the plan for disseminating the notice, satisfy Rule 23, the PSLRA, and due process.

D. Guidance 4 and 5: Opt-Outs and Objections

The proposed Notice complies with Rule 23(e)(5) in that it discusses the rights Settlement Class Members have concerning the Settlement. The proposed Notice includes information on a Settlement Class Member's right to: (i) request exclusion and the manner for submitting such a request; (ii) object to the Settlement, or any aspect thereof, and the manner for filing an objection; and (iii) participate in the Settlement and instructions on how to complete and submit a Claim Form to the Claims Administrator. With respect to exclusion requests, the Notice requires only the information needed to opt out – the securities purchased, acquired, or sold during the Settlement Class Period and the price of the securities at each event. The Notice

also provides contact information for Lead Counsel, as well as the postal address for the Court. Finally, the Notice incorporates the substance of the suggested language regarding objections from the *Procedural Guidance*.

E. Guidance 6: Attorneys' Fees and Expenses

Lead Counsel's intended request for attorneys' fees and expenses is set forth in §IV.C.3 of the Preliminary Approval Memorandum.

F. Guidance 7: Service Awards

Lead Plaintiff may seek an award not to exceed $10,000 for reimbursement of its time and expenses, pursuant to the provisions of 15 U.S.C. §78u-4(a)(4).

G. Guidance 8: *Cy Pres* Awardees

The Settling Parties have chosen the Investor Protection Trust as the designated recipient for any *de minimis* balance remaining after all reallocations are completed. *See* Stipulation, ¶5.10.

H. Guidance 9: Proposed Timeline

Lead Plaintiff proposes the following schedule for notice, Final Approval Hearing, and related dates:

Event	Deadline for Compliance
Deadline to commence mailing the Summary Notice to potential Settlement Class Members and posting of the Notice and Proof of Claim (the "Notice Date")	No later than 21 calendar days following entry of the Preliminary Approval Order (Preliminary Approval Order, ¶10)
Publication of the Summary Notice	No later than 7 calendar days following the Notice Date (Preliminary Approval Order, ¶11)
Deadline for filing papers in support of the Settlement, the Plan, and application for attorneys' fees and expenses	35 calendar days prior to the Final Approval Hearing (Preliminary Approval Order, ¶24)
Deadline for requests for exclusion or objections	21 calendar days prior to the Final Approval Hearing (Preliminary Approval Order, ¶¶19, 21)
Deadline for submission of reply papers in support of the Settlement, the Plan, and application for attorneys' fees and expenses	7 calendar days prior to the Final Approval Hearing (Preliminary Approval Order, ¶24)
Proof of Claim submission deadline	90 calendar days after the Notice Date (Preliminary Approval Order, ¶16)

Event	Deadline for Compliance
Date for the Final Approval Hearing	At least 100 days after entry of the Preliminary Approval Order (Preliminary Approval Order, ¶2)

I. Guidance 10: Class Action Fairness Act

Although the CAFA statute is unclear whether notice is required in a securities class action settlement, Defendants shall provide such notice in accordance with 28 U.S.C. §1715 at their own cost.

J. Guidance 11: Comparable Outcomes

HCA 11 *Karsten Schuh v. HCA Holdings, Inc., et al.* No. 3:11-cv-01033 (M.D. Tennessee, Nashville Division)	
Total Settlement Amount Total Interest Income	$215,000,000.00 $853,900.48
Notice and Claim Packets Mailed/Remailed	98,305
Number of Packets Returned Undeliverable/Unable to Forward	2,220 2.273%
Total Claims Submitted	87,071 89.147%
Total Valid Claims	31,528 36.210%
Opt-Outs Received	4 0.004%
Objections Received	1 0.001%
Mean Recovery per Claimant Median Recovery per Claimant	$4,728.91 $49.65
Largest Recovery per Claimant Smallest Recovery per Claimant	$4,986,673.51 $10.05
Method of Notice	Direct Mail; Published in Investor's Business Daily and PR Newswire; DTC Legal Notice System
Number of Checks Not Cashed Value of Checks Not Cashed and Included in Supplemental Distribution	3,506 $1,173,909.03
Administrative Costs (including taxes, tax prep., etc.)	$684,847.39

Attorney Costs	$2,016,508.52
Expert Fees	$1,159,395.07
Attorney Fees	$64,500,000.00
% of Settlement Amount	30%
Multiplier	4.32
Initial Distribution Date	04/17/2017
Residual Distribution Dates	11/08/2017; 12/21/2021
Cy Pres Distribution	$0.00
Charity	N/A
Distribution Completed	08/08/2022
Total Amount Distributed	$148,541,045.97
Percentage of Distribution Factor	20.299%
Number of Payments	33,746
Method of Payments	Checks and Wires
Reverter to Defendants	$0.00