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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In Re: Robinhood Outage Litigation

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

PLAINTIFFS' REPLY IN SUPPORT OF MOTIONS FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND ATTORNEYS' FEES, COSTS AND SERVICE AWARDS

Judge: Hon. James Donato
Ctrm: 11, 19th Floor
Date: June 15, 2023
Time: 10:00 a.m.

I. INTRODUCTION

Plaintiffs submit this consolidated Reply brief in support of their Motions for Final Approval of the Class Action Settlement and for Attorneys' Fees, Costs, and Service Awards. ECF Nos. 191 & 192. As set forth in their Motions, Plaintiffs have secured a non-reversionary $9.9 million settlement to compensate approximately 146,000 Class Members who experienced losses associated with the "Outages" of Robinhood's securities trading platform in March 2020. Plaintiffs addressed the pertinent factual and procedural background and legal criteria in their Motions filed March 27, 2023, and have since successfully completed the Notice Plan. The Settlement Class Members' response to the Settlement has been overwhelmingly positive, with only two objections to the Settlement and only fourteen (14) opt-outs. Accordingly, Plaintiffs' Reply will address the completion of the Notice Plan, the two objections, and the propriety of the fee, expense, and Service Award requests.

II. ARGUMENT

A. The Notice Plan Has Been Successfully Completed

Per the Court's Order Granting Preliminary Approval, ECF No. 186, the Notice Plan was executed beginning on March 2, 2023, and was completed on May 1, 2023. The Notice Plan was detailed in prior Declarations of Cameron R. Azari, Senior Vice-President of Epiq Class Action and Claims Solutions, Inc. ("Epiq"), and discussed in his Supplemental Declaration filed herewith.

Settlement Class Members were provided with notice multiple ways, including a personalized, long-form settlement notice via email that included a chart indicating each Settlement Class Member's Qualifying Trades, their estimated losses analyzed by Plaintiffs' economics expert from Robinhood's data, and their proposed Settlement Payment. Azari Supp. Decl., ¶ 12. After an original batch of 27,700 email notices remained undeliverable, Epiq issued a supplemental notice which left only 5,043 emails undeliverable. *Id.* Direct notice was also provided to Settlement Class Members via postcard notice in the U.S. Mail, of which all but 9,826 remained undeliverable. *Id.*, ¶ 14. As of May 24, 2023, an Email Notice and/or Postcard Notice were delivered to 146,043 of the 146,418 unique, identified Settlement Class members. *Id.*, ¶ 15. This means the combined direct individual notice efforts reached approximately 99% of the identified Settlement Class

members. *Id.*, ¶ 14.

Plaintiffs also successfully implemented the Court approved Internet Notice campaign. Epiq employed targeted Digital Notice, which was provided using a "list activation" strategy via the *Google Display Network*, *Facebook*, and *Instagram*. *Id.*, ¶ 17. This was accomplished by matching the actual email addresses of identified members of the Settlement Class with current consumer profiles. *Id.* This strategy ensured that specific individuals received direct notice and were provided reminder messaging online via Digital Notices. *Id.* The Digital Notices linked directly to the Settlement Website, thereby allowing visitors easy access to relevant information and documents. *Id.*, ¶ 18. All Digital Notices appeared on desktop, mobile, and tablet devices and were distributed to the selected targeted audiences nationwide. *Id.* Digital Notices were also targeted (remarketed) to people who clicked on a Digital Notice. *Id.* Combined, approximately 6.7 million impressions were generated by the Digital Notices, nationwide. *Id.*, ¶ 20.

Plaintiffs also employed sponsored search listings through the highly visited internet search engines Google, Yahoo!, and Bing. *Id.*, ¶ 21. When search engine visitors searched on common keyword combinations related to the Settlement, the sponsored search listings were generally displayed at the top of the page prior to the search results or in the upper right-hand column of the web-browser screen. *Id.* The sponsored search listings were displayed nationwide and all sponsored search listings were linked directly to the Settlement Website. *Id.* The sponsored listings were displayed 9,471 times, which resulted in 892 clicks that displayed the Settlement Website. *Id.*

The Notice Plan also included a Settlement Website, www.RobinhoodOutagesClassAction.com, that continues to be available 24 hours per day, 7 days per week. *Id.*, ¶ 22. Relevant case documents, including the Long Form Notice (in English and Spanish), Settlement Agreement, and the Plan of Allocation are available on the Settlement Website. *Id.* In addition, the Settlement Website includes relevant dates, answers to frequently asked questions ("FAQs"), contact information for the Settlement Administrator, and how to obtain other case-related information. *Id.* As of May 24, 2023, there have been 27,975 unique visitor sessions to the Settlement Website and 52,229 website pages presented. *Id.*, ¶ 23. Additionally, a toll-free number (877-283-6566) established for the Settlement continues to allow members of the

Settlement Class to call for additional information, listen to answers to FAQs, and request that a Long Form Notice be mailed to them. *Id.*, ¶ 24. As of May 24, 2023, there have been 694 calls to the toll-free telephone number representing 4,323 minutes of use, and live agents have handled 274 incoming calls representing 2,389 minutes and 51 outbound calls representing 140 minutes. *Id.*, ¶ 25.

Lastly, Settlement Class Members were able to request an alternative method of payment rather than a direct deposit into their Robinhood account. *Id.*, ¶ 28. To date, 1,931 Settlement Class Members have made an election to receive an alternative method of payment. *Id.*

Accordingly, Plaintiffs submit that the Notice Plan has been successfully implemented and warrants final approval by the Court. *See* Azari Supp. Decl., ¶¶ 29-33.

B. <u>The Reaction of the Class Has Been Positive</u>

By any measure, the response and reaction of the Settlement Class Members has been overwhelmingly positive. Only a small group of fourteen (14) opt-outs in a complex case involving over 146,000 active securities trading Settlement Class Members demonstrates near universal participation in the Settlement. Settlement Class Members will also receive their compensation directly into their Robinhood account if they still maintain one or by check if they do not—and they will receive payments *without* having to file any claim. The positive reaction is particularly notable in this matter because all Settlement Class Members were provided with detailed breakdowns of their Qualifying Trades and anticipated Settlement Payments directly in their Email Notice. The full disclosure of the anticipated Settlement Payments in their individualized notices shows that Settlement Class Members have considered their options and ultimately decided to participate. Additionally, the two objections received is a miniscule amount in a case of this size and as discussed below neither warrant denying final approval.

1. <u>The Clem Bolton Holding Boney, Jr. Objection Should Be Overruled</u>

The objection of Clem Bolton Holding Boney, Jr., ECF No. 189, states that his chief complaints are that his estimated Settlement Payment of $39.83 is both less than the $75 Robinhood offered to him after the Outages as part of its "Goodwill Program" and that it is less than the $1000 he claims to be owed. For reference, Mr. Boney, Jr.'s Notice included the following breakdown of

1 his Qualifying Trades and estimated Settlement Payment:

QUALIFYING TRADE(S)	VWAP LOSS TRADE(S)	SPY OPTIONS TRADE	FAILED TRADE(S)	TOTALS
TICKER(S)	SPY	N/A	N/A	N/A
CALCULATED LOSS	$131.26	$0.00	$0.00	$131.26
GOODWILL PROGRAM CREDIT				$0.00
CALCULATED LOSS MINUS GOODWILL PROGRAM CREDIT				$131.26
ESTIMATED SETTLEMENT PAYMENT AFTER PRO RATA REDUCTION				$39.83

First, Courts commonly hold that dissatisfaction with the amount of settlement offered does not warrant denial of approval, particularly when not raised by many class members. *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 626-27 (N.D. Cal. 2021) (granting final class settlement approval over objections to adequacy of relief to class members), *appeal dismissed*, No. 21-15555, 2021 WL 2660668 (9th Cir. June 22, 2021), *and aff'd*, No. 21-15553, 2022 WL 822923 (9th Cir. Mar. 17, 2022); *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 964-65 (9th Cir. 2009) (rejecting objections concerning the gross amount of the class settlement and affirming settlement approval). As set forth in Plaintiffs' Final Approval Motion, the total amount offered in Settlement is approximately 48% of the calculated losses before deductions for attorneys' fees and costs and compares favorably to other investor-based class action settlements approved by Courts in this District, particularly considering the risks specific to this case. *See* ECF No. 192 at 13-15; *inter alia*, *In re Zynga Inc. Sec. Litig.*, No. 12-CV-04007-JSC, 2015 WL 6471171, at *11 (N.D. Cal. Oct. 27, 2015) (approval of settlement granted where Class members received 10 percent of their total estimated losses, which was deemed to be "above the typical recovery in securities litigation"); *In re Celera Corp. Sec. Litig.*, No. 5:10-CV-02604-EJD, 2015 WL 7351449, at *6 (N.D. Cal. Nov. 20, 2015) (Class members were estimated to obtain 17% of their estimated damages). Moreover, it is hard to assess Mr. Boney Jr.'s request for $1000 because he does not provide any basis for that calculation.

Second, Mr. Boney, Jr.'s complaint that he could have already received $75 from Robinhood as part of its Goodwill Program is not something that warrants disproval because this

1 Settlement or litigation never prevented him from accepting a Goodwill payment. In one of the
2 lawsuits that was eventually consolidated with this litigation, plaintiffs suing Robinhood about the
3 Outages sought a temporary injunction preventing Robinhood from obtaining releases from
4 Robinhood users in exchange for $75 in Goodwill credit, which was denied by the Court in
5 significant part because Robinhood would enter a stipulation that they would not enforce any such
6 releases against the claims in a class action—a position Robinhood maintained. *Taaffe v.*
7 *Robinhood Markets, Inc.*, No. 8:20-CV-513-T-36SPF, 2020 WL 1531127 (M.D. Fla. Mar. 31,
8 2020). In other words, Settlement Class Members were always able to obtain their Goodwill credit
9 and still participate in any eventual class action settlement. Accordingly, Mr. Boney Jr., simply
10 could have taken his $75 and also obtained the balance of his estimated Settlement Payment as
11 other Settlement Class members did. Importantly, not a single Settlement Class Member who *did*
12 receive a Goodwill credit objected to the use of Goodwill credits in calculating Settlement
13 Payments.

14 Lastly, Mr. Boney, Jr. complains that "it appears that Robinhood is offering the same
15 settlement they offered before attorn[eys] got involved. The only difference is now 30% would go
16 to attorn[eys] instead of the claimants." This is simply untrue and unsupported by the record. As
17 set forth on this case docket and in the Joint Declaration of Class Counsel, ECF No. 192-1, Plaintiffs
18 have litigated this case diligently and extensively for over three years through contested motion to
19 dismiss proceedings, fact and expert discovery, and class certification before reaching a proposed
20 settlement after a year of negotiations with a neutral, well-respected mediator. If Robinhood was
21 prepared to have an early class resolution for $75 per person for *millions* of potential Robinhood
22 customers, it would have had to pay hundreds of millions of dollars that it clearly was not willing
23 to do as evidenced by how hard Robinhood fought before agreeing to pay a $9.9 million settlement.
24 Accordingly, his objection should be overruled.

25 **2. <u>The Ruiwen Pen Objection Should Be Overruled</u>**

26 The objection of Ruiwen Pen, ("Pen Objection"), ECF No. 194, is thoughtful and detailed
27 but it essentially boils down to the concern that certain attempted options trades Pen engaged in on
28 March 9, 2020, were not included in the Settlement and that "the settlement compensation in its

1 current form is inadequate." For reference, Pen's Notice included the following breakdown of
2 Qualifying Trades and estimated Settlement Payment:

QUALIFYING TRADE(S)	VWAP LOSS TRADE(S)	SPY OPTIONS TRADE	FAILED TRADE(S)	TOTALS
TICKER(S)	GILD	N/A	N/A	N/A
CALCULATED LOSS	$469.36	$0.00	$0.00	$469.36
GOODWILL PROGRAM CREDIT				$0.00
CALCULATED LOSS MINUS GOODWILL PROGRAM CREDIT				$469.36
ESTIMATED SETTLEMENT PAYMENT AFTER PRO RATA REDUCTION				$142.43

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10 First, the Pen Objection is predicated on the premise that the Settlement was intended to or
11 could have conceivably compensated each Settlement Class Member for any and all trading activity
12 that could have or would have occurred surrounding the time of the Outages. As set forth in the
13 detailed record of this case, most of the Settlement Class Members' trading data was not available
14 due to the Outages. For the trading data that was available, Plaintiffs honed in on the three most
15 common trading patterns among larger swaths of traders that provided enough commonality to
16 warrant class certification using common methodologies that could be applied fairly and uniformly
17 without Settlement Class Members having to file claims or provide documents, testimony, and
18 other substantiation of just the sort that Pen submitted with his objection. Plaintiffs have never
19 suggested nor proposed that each and every potential trading scenario could or would be included
20 in this case either at the class certification or settlement stages. What Plaintiffs did do was ensure
21 that Settlement Class Members like Pen would have all the pertinent information as to what trading
22 activity would be included in the Settlement in their individualized notices for exactly this reason—
23 so that traders like Pen who had attempted trading activity that was not covered by the Settlement
24 would be made aware of that fact and could exercise their rights accordingly, such as by opting out
25 altogether and pursing their claims individually such as in a FINRA arbitration.
26 Second, Pen is incorrect that the Settlement Agreement or Notices are "misleading" in any
27 way because options trades were not included in the "Failed Trades" category. Indeed, the Pen
28 Objection reveals that Pen actually did understand from the notice that his options trades were *not*

1 included in that category, and no other Settlement Class Member raised this concern—which also
2 dispatches his complaint that his concern is shared by or caused confusion among any other
3 Settlement Class Members. In fact, Section 5(3) of the Long Form Notice explains the definition
4 of "Failed Equity Trade" that is exactly the same as it is set forth in the Settlement Agreement, §
5 1.7. While there is a stray reference to options in Failed Equity Trade Section of the Section (9)(3)
6 in the Long Form Notice regarding the Plan of Allocation, the Settlement Agreement is the
7 controlling document and any reference to options in that section was an inadvertent drafting error.
8 More importantly, in order to avoid any ambiguity about what Failed Equity Trades or other
9 Qualifying Trades were eligible for this Settlement, each Settlement Class Member was provided
10 a chart with the tickers of their actual Qualifying Trades that were eligible. Accordingly, it was
11 clear that this information taken together informed Pen that attempted options trades were not
12 included.

13 Third, it should be noted that some options trades were included in the Settlement for the
14 VWAP Loss and the SPY Options categories pertaining to the March 2-3 Outage, but those
15 categories were *not* applied to the March 9 Outage because of key factual differences in the Outages
16 themselves. Among other things, the Outage on March 9, 2020, was relatively brief, lasting about
17 50 minutes from 9:23 a.m. to 10:13 a.m. Eastern. *See* Plaintiffs' Motion for Class Certification,
18 ECF No. 138 at 3-4. Unlike the full-day Outage the week prior on March 2 that extended into
19 March 3, the March 9, 2020 Outage was short and many equity traders who had Failed Equity
20 Trades promptly resubmitted them when the system was back online at less favorable prices, a
21 pattern widely and objectively observable in the data. Plaintiffs carefully categorized the three
22 types of Qualifying Trades for the Settlement tailored to the particulars of the facts surrounding
23 each Outage and that data that was available for those Outages.

24 Thus, while Plaintiffs are sympathetic that Pen would like to include attempted options
25 trading from the March 9 Outage, the Settlement was not intended to be inclusive of every trading
26 scenario for every Outage regardless of key factual and legal differences and data limitations
27 between the different Outages. Ultimately, for purposes of final approval, the key issue illustrated
28 by the Pen objection is that Pen was provided adequate notice that Pen's attempted options trades

on March 9 are excluded, and therefore the objection itself indicates that the notice worked exactly as intended. Pen's objection should be overruled.

C. Settlement Class Members Did Not Object to the Proposed Award of Attorneys' Fees, Expenses, and Service Awards Supporting Approval

Not a single Class Member objected to Plaintiffs' Counsel's request for attorneys' fees, expenses, or service awards. Such a positive reaction weighs strongly in favor of approving the requests. *In re Omnivision Technologies, Inc*., 559 F.Supp.2d 1036, 1048 (N.D. Cal. 2008) (where no objections to fee were raised in response to 57,630 copies of notice being sent, the court found that such a reaction favored approval); *see also Valentine v. NebuAd Inc*., 2011 WL 13244509, at *2 (N.D. Cal. Nov. 21, 2011) ("[s]hould no class members object to the fee award, such a fact would support an increase in the benchmark rate.")

The fact that there were no objections to the attorneys' fees is not surprising because the 30% fee request is indeed reasonable. The requested amount is fair because Plaintiffs' Counsel were able to obtain significant results. Specifically, the Settlement recovers 48% of the Settlement Class's potential damages, which were estimated at $20.55 million. Even if calculated after attorneys' fees and expenses are removed, the Settlement Class will recover 28% of their potential damages, which is a significant result in a complex securities or consumer class action. *See e.g., In re Heritage Bond Litig*., 2005 WL 1594403, at *8–9 (C.D. Cal. June 10, 2005) (awarding fees of 33 1/3% of the $27,783,000 Settlement Fund, which represented an "exceptional result" where settlement was 36% of the class's total net loss before fees and 23% after, while noting average recovery was between 2% to 3% of maximum damages).

The reasonableness of the requested amount is further supported by the lodestar cross-check, which results in a negative multiplier. In total, Plaintiffs' Counsel jointly devoted more than 9,281 hours on this novel matter from consolidation through June 30, 2022, and more in the nearly year since June 2022. ECF No. 192-1 at ¶ 48. Based on the reasonable and customary hourly rates, Plaintiffs' Counsel have a combined lodestar of $5,450,870, which equates to a negative multiplier of 0.54. ECF No. 191 at ¶ 7. That negative multiplier establishes the reasonableness of the requested fees. *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig*.,

2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) ("'Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation.'")

Similarly, the requested out-of-pocket expenses of $1,102,432.84 are reasonable. Those expenses include typical and necessary costs advanced in a class action like this, including costs associated with legal research, court reporting services, copying and mailing, and hiring consultants and experts. ECF No. 191 ¶10; Dkt. 192-1. ¶55. Courts frequently approve the recovery of such expenses. *See e.g., In re LendingClub Sec. Litig*., 2018 WL 4586669, at *3 (N.D. Cal. Sept. 24, 2018) (expenses such as expert and consultant fees, court fees, travel and lodging costs, legal research fees, and copying expenses were reasonable and recoverable); *Thomas v. MagnaChip Semiconductor Corp*., 2018 WL 2234598, at *4 (N.D. Cal. May 15, 2018) (granting requests for costs consisting of "court fees, online research fees, postage and copying, travel costs, electronic discovery expenses, deposition costs, mediation charges, and travel costs"). Additionally, the fact that no one objected supports approval of the expenses requested. *See In re Omnivision Techs., Inc*., 559 F. Supp. 2d at 1049 (court awarded reasonable costs and expenses in part because no one objected).

Lastly, the requested service awards of $2,500 for each of the Plaintiffs are reasonable. The awards are justified as each Plaintiff spent over three years prosecuting this Action. *See* Plaintiff Declarations at Dkt. 192-1 p. 110-159.[1] Many of the Plaintiffs sat for deposition and all Plaintiffs had their cell phones/devices backed up and/or submitted to vendors to obtain certain data that Robinhood requested, which required many hours, and in some cases, sending their cell phones to a vendor for several days to be imaged. *Id*. at ¶3(d). Accordingly, service awards of $2,500 are reasonable. *See Bellinghausen v. Tractor Supply Co*., 306 F.R.D. 245, 266 (N.D. Cal. 2015) (service awards of $5,000 are "presumptively reasonable" in this district); *see also In re Apple Inc. Device Performance Litig*., 2023 WL 2090981, at *18 (N.D. Cal. Feb. 17, 2023).

Plaintiffs' Counsel devoted thousands of hours to the litigation, and despite the risks presented, they successfully negotiated a beneficial $9.9 million non-reversionary cash Settlement

[1] At the time of filing for Plaintiffs' Motion for Service Awards on March 27, 2023, counsel had yet to receive the signature of Plaintiff Raghu Rao on his Declaration, which is dated March 28, 2023 and submitted herewith. All other Plaintiffs' Declarations were previously filed.

Fund. Consistent with the factors applied by the courts in the Northern District of California, Plaintiffs' Counsel respectfully requests that the Court award $2,970,000 in attorneys' fees, approve reimbursement of $1,102,432 in litigation expenses, and service awards of $2,500 to each of the Plaintiffs.

III. CONCLUSION

Based on the foregoing, Plaintiffs request that the Court grant Plaintiffs' Motions for Final Approval and for Attorneys' Fees, Expenses, and Service Awards.

Respectfully submitted,

COTCHETT, PITRE & MCCARTHY, LLP

DATED: May 31, 2023

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(h)(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 31st day of May, 2023, at San Jose, California.

By: /s/ *Matthew B. George*
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