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

*In re Oracle Corporation Securities
Litigation*

CLASS ACTION

Case No. 18-cv-04844-BLF

**LEAD PLAINTIFF'S UNOPPOSED
MOTION FOR APPROVAL OF
DISTRIBUTION PLAN, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Dept.: Courtroom 3, 5th Floor
Judge: Honorable Beth Labson Freeman

Hearing Date: April 18, 2024

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**NOTICE OF UNOPPOSED MOTION
FOR APPROVAL OF DISTRIBUTION PLAN**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that in accordance with Federal Rule of Civil Procedure 23(e), Lead Plaintiff, Union Asset Management Holding AG (“Lead Plaintiff”), on behalf of itself and the Class, will and does hereby move this Court for entry of the accompanying [Proposed] Order Approving Distribution Plan (“Class Distribution Order”) that will, among other things: (i) approve the Claims Administrator A.B. Data’s administrative determinations accepting and rejecting Claims submitted in connection with the Settlement reached in the above-captioned Action; (ii) direct the Initial Distribution of the Net Settlement Fund to Claimants whose Claims are accepted by A.B. Data as valid and approved by the Court (“Authorized Claimants”); (iii) direct that distribution checks state that the check must be cashed within 90 days after the issue date; (iv) direct that Authorized Claimants will forfeit all recovery from the Settlement if they fail to cash their distribution checks in a timely manner; (v) approve the recommended plan for any funds remaining after the distribution; and (vi) approve A.B. Data’s fees and expenses in connection with the administration of the Settlement.

This motion is supported by the memorandum of points and authorities below, the attached Declaration of Jack Ewashko (“Ewashko Declaration” or “Ewashko Decl.”), submitted on behalf of the Court-approved Claims Administrator, A.B. Data, Ltd.’s Class Action Administration Company (“A.B. Data”), and its exhibits, the previous filings and orders in this case, and such other materials as the Court may consider.¹

There are no disputed Claims by any Class Member requiring Court review. Defendants take no position on this motion. As such, the motion is ripe for determination, and may be resolved

¹ Unless otherwise indicated in this memorandum, all terms with initial capitalization shall have the meanings ascribed to them in the Ewashko Declaration or the Stipulation and Agreement of Settlement dated as of June 23, 2022 (ECF No. 128-1) (“Stipulation”).

on the papers.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should enter the proposed Class Distribution Order, which will, among other things, approve the Claims Administrator’s administrative determinations accepting and rejecting Claims submitted in connection with the Settlement, direct the distribution of the Net Settlement Fund to eligible Claimants, approve the recommended plan for any funds remaining after the distribution, and approve the Claims Administrator’s fees and expenses.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On January 13, 2023, the Court entered the Judgment Approving Class Action Settlement (ECF No. 148) and entered an Order Approving the Plan of Allocation of Net Settlement Fund (ECF No. 146). The Settlement’s “Effective Date” under paragraph 37 of the Stipulation has now occurred, and accordingly the Net Settlement Fund may now be distributed to Authorized Claimants. In accordance with paragraph 32 of the Stipulation, Lead Plaintiff respectfully requests that the Court enter the Class Distribution Order and approve the Distribution Plan.

In accordance with the Court’s Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 134) (“Preliminary Approval Order”), A.B. Data mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (“Notice”) and the Proof of Claim and Release Form (“Claim Form” and, collectively with the Notice, the “Notice Packet”) to potential Class Members, as well as brokerage firms, banks, institutions, and other third-party nominees (collectively, “Nominees”). Ewashko Decl. ¶ 2. In total, A.B. Data disseminated 988,806 Notice Packets to potential Class Members and Nominees. *Id.* ¶ 4. The Notice informed Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit a properly executed Claim Form postmarked no later than February 3, 2023. *Id.* ¶ 7.

II. CLAIMS ADMINISTRATION

As set forth in the Ewashko Declaration, through February 9, 2024, A.B. Data received and processed 392,617 Claims. Ewashko Decl. ¶ 7. All Claims received through February 9, 2024, have been fully processed in accordance with the Stipulation and the Court-approved Plan of Allocation included in the Notice (*see id.*), and A.B. Data has worked with Claimants to help them perfect their Claims. *See id.* ¶¶ 19-32. Many of the Claims were initially deficient or ineligible for one or more reasons, including because they were incomplete, not signed, not properly documented, or otherwise deficient, which required substantial follow-up work by A.B. Data. *Id.* ¶¶ 19, 22.

If A.B. Data determined a Claim to be defective or ineligible, A.B. Data sent a letter (if the Claimant or filer filed a paper Claim) or an email (if the Claimant or filer filed an electronic Claim) to the Claimant or filer, as applicable, describing the defect(s) or condition(s) of ineligibility in the Claim and the steps necessary to cure any curable defect(s) in the Claim (“Deficiency Notices”). *Id.* ¶¶ 20, 22. The Deficiency Notices advised the Claimant or filer that the appropriate information or documentary evidence to complete the Claim had to be sent within twenty (20) days from the date of the Deficiency Notice or A.B. Data would recommend the Claim for rejection to the extent the deficiency or condition of ineligibility was not cured. *Id.* ¶¶ 20, 23. Examples of the Deficiency Notices are attached as Exhibits 1, 2, and 3 to the Ewashko Declaration.

Of the 392,617 Claims that are the subject of this motion, A.B. Data has determined that 216,299 Claims are acceptable in whole or in part, and that 176,318 Claims should be rejected because they are ineligible for payment from the Net Settlement Fund. Ewashko Decl. ¶¶ 37-41. Lead Plaintiff respectfully requests that the Court approve A.B. Data’s administrative determinations accepting and rejecting the Claims, as set forth in the Ewashko Declaration.

A. No Disputed Claims

A.B. Data carefully reviewed Claimants’ and filers’ responses to the Deficiency Notices and worked with them to resolve deficiencies where possible. *Id.* ¶¶ 21, 26. Consistent with paragraph 30(e) of the Stipulation, the Deficiency Notices specifically advised the Claimant or filer of the right, within twenty (20) days after the mailing or emailing of the Deficiency Notice,

1 to contest the rejection of the Claim and request Court review of A.B. Data's administrative
2 determination of the Claim. *See id.* ¶¶ 20, 23, and Exhibits 1 and 2.

3 With respect to the fully processed Claims, A.B. Data received seventeen requests for
4 Court review of its administrative determinations. To resolve these disputes without necessitating
5 the Court's intervention, A.B. Data contacted the Claimants that requested Court review to explain
6 A.B. Data's administrative determination of the Claim's status, to answer their questions, and to
7 facilitate the submission of missing information or documentation where applicable. *Id.* ¶ 32. As
8 a result of these efforts, all Claimants who had requested Court review withdrew their requests. *Id.*
9 Accordingly, there are no outstanding requests for Court review by any Claimants. *Id.*

10 **B. Late Claims and Final Cut-Off Date**

11 The 392,617 Claims received through February 9, 2024, include 23,794 Claims that were
12 postmarked or received after February 3, 2023, the Court-approved Claim submission deadline.
13 *Id.* ¶¶ 33, 39. Those late Claims have been fully processed, and 14,209 of them are, but for their
14 late submission, otherwise eligible to participate in the Settlement. *Id.* Although these 14,209
15 Claims were late, they were received while the processing of timely Claims was ongoing. *Id.* The
16 processing of these late Claims did not delay the completion of the Claims administration process
17 or the distribution of the Net Settlement Fund. *Id.* ¶ 33. The Court has discretion to accept Claims
18 received after the Claim submission deadline. *See* Preliminary Approval Order ¶ 7; Notice ¶ 65.
19 Lead Plaintiff respectfully submits that, when the equities are balanced, it would be unfair to
20 prevent an otherwise eligible Claim from participating in the distribution of the Net Settlement
21 Fund solely because it was received after the Court-approved Claim submission deadline if, as in
22 this case, it was submitted while timely Claims were still being processed.

23 To facilitate the efficient distribution of the Net Settlement Fund, however, there must be
24 a final cut-off date after which no other Claims may be accepted. Accordingly, Lead Plaintiff
25 respectfully requests that the Court order that any further late Claims (and any requested
26 adjustments to previously filed Claims that would result in an increased Recognized Claim
27 Amount) received after February 9, 2024, shall be barred (*see also* Ewashko Decl. ¶ 48(f))—
28 subject to the proviso that if Lead Counsel later determines that an additional distribution is not

1 cost-effective (*see* Ewashko Decl. ¶ 48(e)), then any post-February 9, 2024 Claimants may, at the
 2 discretion of Lead Counsel (and to the extent possible after paying remaining administrative fees
 3 and expenses owed), be paid on their new (or adjusted) Claims on a *pro rata* basis so as to bring
 4 them into parity with other Authorized Claimants who have cashed their distribution checks.

5 **III. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND**

6 **A. Initial Distribution of the Net Settlement Fund**

7 Under the proposed Distribution Plan, A.B. Data will distribute 100% of the Net Settlement
 8 Fund after deducting (i) all payments previously allowed, (ii) payments approved by the Court on
 9 this motion, and (iii) any estimated taxes, the costs of preparing appropriate tax returns, and any
 10 escrow fees (i.e., the Initial Distribution). *See* Ewashko Decl. ¶ 48(a). In the Initial Distribution,
 11 A.B. Data will first determine each Authorized Claimant's *pro rata* share of the total Net
 12 Settlement Fund based on the Authorized Claimant's Recognized Claim in comparison to the total
 13 Recognized Claims of all Authorized Claimants. *Id.* A.B. Data will eliminate from the Initial
 14 Distribution any Authorized Claimant whose *pro rata* share calculates to less than \$10.00, as these
 15 Claimants will not receive any payment from the Net Settlement Fund and will be so notified by
 16 A.B. Data. *Id.* ¶ 48(a)(2). A.B. Data will then recalculate the *pro rata* share of the Net Settlement
 17 Fund for Authorized Claimants who would have received \$10.00 or more based on the amount of
 18 the Authorized Claimant's Recognized Claim in comparison to the total Recognized Claims of all
 19 Authorized Claimants who would have received \$10.00 or more. *Id.* ¶ 48(a)(3). This *pro rata* share
 20 is the Authorized Claimant's Distribution Amount. *Id.*

21 To encourage Authorized Claimants to cash their checks promptly, Lead Plaintiff proposes
 22 that all distribution checks bear the notation, "CASH PROMPTLY. VOID AND SUBJECT TO
 23 REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE]." *Id.* ¶
 24 48(b). Authorized Claimants who do not cash their checks within the time allotted or on the
 25 conditions stated in paragraph 48(b) of the Ewashko Declaration will irrevocably forfeit all
 26 recovery from the Settlement, and the funds allocated to these stale-dated checks will be available
 27 to be redistributed to other Authorized Claimants in any subsequent distribution, as described
 28 below. *Id.* ¶ 48(c).

1 **B. Additional Distribution(s) of the Net Settlement Fund**

2 After A.B. Data has made reasonable and diligent efforts to have Authorized Claimants
3 cash their Initial Distribution checks, but not earlier than seven (7) months after the Initial
4 Distribution, A.B. Data will, if Lead Counsel, in consultation with A.B. Data, determines that it is
5 cost-effective to do so, conduct a second distribution of the Net Settlement Fund (the “Second
6 Distribution”). *Id.* ¶ 48(d). In the Second Distribution, any amount remaining in the Net Settlement
7 Fund, after deducting any unpaid fees and expenses incurred, will be distributed to all Authorized
8 Claimants who cashed their Initial Distribution checks and would receive at least \$10.00 from the
9 Second Distribution based on their *pro rata* share of the remaining funds. *Id.* If any funds remain
10 in the Net Settlement Fund after the Second Distribution, and if cost-effective, subsequent
11 distributions will take place at six-month intervals. *Id.*

12 When Lead Counsel, in consultation with A.B. Data, determines that a further distribution
13 is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after
14 February 9, 2024, A.B. Data will process those Claims. *Id.* ¶ 48(e). Any of these Claims that are
15 otherwise valid, as well as any earlier received Claims for which an upward adjustment was
16 received after February 9, 2024, may be paid in accordance with paragraph 48(f) of the Ewashko
17 Declaration. *Id.*

18 As provided in the Court-approved Plan of Allocation, if any funds remain in the Net
19 Settlement Fund after payment of those Claims received after February 9, 2024 and any unpaid
20 fees or expenses, those residual funds will be contributed to the Investor Protection Trust, a non-
21 sectarian, not-for-profit 501(c)(3) organization that provides investor education and protection
22 programs. *See* Notice ¶ 83.

23 **IV. RELEASE OF CLAIMS**

24 In order to allow the full and final distribution of the Net Settlement Fund, it is necessary
25 to (i) bar any further claims against the Net Settlement Fund beyond the amounts allocated to
26 Authorized Claimants, and (ii) provide that all persons involved in any aspect of Claims
27 processing, or who are involved in the administration or taxation of the Settlement Fund or the Net
28 Settlement Fund, be released and discharged from all claims arising out of that involvement. *See*

Stipulation ¶ 34. Accordingly, Lead Plaintiff respectfully requests that the Court release and discharge all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted in connection with the Settlement, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund from all claims arising out of that involvement, and bar all Class Members and other Claimants, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Lead Plaintiff, Lead Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiff or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund, or any other person released under the Settlement beyond the amounts allocated to Authorized Claimants.

In this District, courts have repeatedly approved similar releases in connection with the distribution of settlement proceeds. *See, e.g.*, Class Distribution Order, *Davis v. Yelp, Inc.*, No. 3:18-cv-00400 (N.D. Cal. Aug. 29, 2023), ECF No. 216, attached hereto as Exhibit 1 (approving substantially similar language in the order authorizing distribution of settlement proceeds); Order Granting Plaintiffs' Motion for Distribution of Class Action Settlement Funds, *Sanders v. The RealReal, Inc.*, No. 5:19-cv-07737 (N.D. Cal. June 8, 2023), ECF No. 79, attached hereto as Exhibit 2 (same); Order Granting Plaintiffs' Motion for Authorization to Distribute Net Settlement Fund, *In re Dropbox, Inc. Sec. Litig.*, No. 5:19-cv-06348 (N.D. Cal. May 18, 2023), ECF No. 138, attached hereto as Exhibit 3 (same); *In re Capstone Turbine Corp. Sec. Litig.*, No. CV 15-8914-DMG (RAOx), 2020 WL 7889062, at *2 (C.D. Cal. Aug. 26, 2020) (same).

V. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR

The Court-approved Claims Administrator for the Settlement, A.B. Data, was responsible for, among other things, disseminating notice of the Settlement to the Class, creating and maintaining a website and toll-free telephone helpline, processing Claims, and allocating and distributing the Net Settlement Fund to Authorized Claimants. Ewashko Decl. ¶ 2. A.B. Data's fees and expenses for its work performed through February 29, 2024, including amounts reimbursed to brokers and nominees, are \$1,901,525.44, and its estimated fees and expenses for

1 work to be performed in connection with the Initial Distribution are \$23,775.32, which together
2 total \$1,925,300.76. *Id.* ¶ 43. Should the estimate of fees and expenses to conduct the Initial
3 Distribution of the Net Settlement Fund exceed the actual cost, the excess will be returned to the
4 Net Settlement Fund and will be available for subsequent distribution to Authorized Claimants. *Id.*
5 To date, A.B. Data has received payment in the amount of \$800,000 for its fees and expenses. *Id.*
6 Accordingly, there is an outstanding balance of \$1,125,300.76 payable to A.B. Data, which amount
7 includes the estimated fees and expenses to be incurred by A.B. Data in connection with the Initial
8 Distribution. *Id.*

9 The total amount sought by A.B. Data for Notice and Administration Costs, \$1,925,300.76,
10 is higher than the \$1,577,000 estimated total that A.B. Data originally provided in July 2022. *See*
11 ECF. No. 128, at 21; ECF No. 128-3, at ¶ 12. The Court indicated at the hearing on preliminary
12 approval of the Settlement that it was then approving costs only up to the estimate, and that Lead
13 Plaintiff “would need to file a supplemental request with documentation” in the form of a
14 “declaration from A.B. Data” to support a higher request. *See* Transcript of Sept. 15, 2022 Hearing
15 (ECF No. 138), at 14-15. As discussed in the accompanying Ewashko Declaration, A.B. Data’s
16 higher costs are the result of (1) substantially more claims being filed than A.B. Data projected,
17 and (2) higher than projected costs charged by the brokers and nominees who forwarded Notice
18 Packets to potential Class Members.

19 In particular, A.B. Data’s original estimate was based on the assumption that it would
20 receive approximately 250,000 Claims, based on an anticipated 25% claim filing rate, which is
21 typical in cases of this nature. *See* ECF. No. 128, at 21; ECF No. 128-3, at ¶ 10. However, A.B.
22 Data, in fact, received 392,617 Claims (or 40% of the 988,806 Notice Packets mailed), which is
23 more than 140,000 additional claims than originally anticipated—and 157% of the Claims
24 Administrator’s original estimate. The substantially larger number of claims received necessarily
25 increased A.B. Data’s total fees and expenses due to A.B. Data’s per-claim processing fee, as well
26 as increases in various other costs, such call center costs and costs of mailing deficiency notices,
27 that generally rise in proportion to the number of claims received.

28 The greater-than-expected number of Claims received reflects the very robust participation

of the Class in the Settlement. Here, the eligible Claims received represent a total of 465,423,485 allegedly damaged Oracle shares (Ewashko Decl. ¶ 40), which represents 67% of the total number of allegedly damaged Oracle shares as estimated by Lead Plaintiff's damages expert. The estimated number of damaged shares is based on Lead Plaintiff's damages expert's analysis, which applies a trading model to publicly available data on trading in Oracle stock, and is the same analysis that was used in preparing the expert's damages estimates in this case.

Additionally, the Notice and Administration Costs were also higher than estimated because the costs charged by brokers or nominees—who either provided names and addresses of potential Class Member or who forwarded Notice Packets to potential Class Members—were higher than originally anticipated.

Notably, A.B. Data has agreed to a total of \$251,077.54 reductions in its fees, so that the total costs sought are more in line with the estimates provided to the Court. The total fees and costs of \$1,925,300.76 sought by A.B. Data reflect those reductions.

Lead Counsel has reviewed A.B. Data's invoices and believes that the fees and expenses requested are reasonable in light of the work performed and the substantially greater number of Claims received than had previously been estimated. Indeed, Lead Counsel notes that the total cost sought is just 22% above the estimated amount, even though the total of number of Claims received is 57% above the estimate. Accordingly, Lead Counsel respectfully requests, on behalf of Lead Plaintiff, that the Court approve payment of all of A.B. Data's fees and expenses.

VI. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court grant its Unopposed Motion for Approval of Distribution Plan and enter the [Proposed] Order Approving Distribution Plan.

Dated: March 14, 2024

Respectfully submitted,

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