

FILED
San Francisco County Superior Court

JAN 18 2024

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

16 RICHARD DANIELE, RICHARD GOSS
and STEVE LANDI, individually, and on
17 behalf of a class of similarly situated persons,

18 Plaintiffs,

19 v.

20 10UP, INC., a California Corporation; and
21 DOES 1-50 inclusive,

22 Defendants.

Case No. CGC-20-586506
Hon. Richard B. Ulmer Jr., Dept. 302
CLASS ACTION

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND AWARDED
LITIGATION FEES, LITIGATION
COSTS, AND CLASS REPRESENTATIVE
ENHANCEMENTS**

Date: January 18, 2024
Time: 9:30 a.m.
Dept: 302

Case Filed: September 11, 2020
Trial Date: None

1 Plaintiffs Richard Daniele, Richard Goss, and Steve Landi’s (“Plaintiffs”) Motion for
2 Final Approval of Class Action Settlement (“Motion for Final Approval”) came on for hearing
3 before this Court on January 18, 2024. The Court—having considered the Motion for Final
4 Approval, the concurrently filed Motion in Support of Request for Attorney Fees, Litigation
5 Costs and Class Representative Enhancements (the “Fee Motion”), the documents submitted in
6 support of both motions, and any argument—hereby GRANTS final approval of the Class
7 Action Settlement and FINDS, CONCLUDES, and ORDERS as follows:

8 Good cause appearing therefore, IT IS HEREBY ORDERED as follows:

9 1. Capitalized terms not otherwise defined herein shall have the same meanings as
10 set forth in the Class Action Settlement Agreement and Release (“Settlement Agreement”). (See
11 Barenfeld Decl. ISO Preliminary Approval, Ex. 7).

12 2. The Court has jurisdiction over Plaintiffs, 10UP, Inc. (“10UP” or “Defendant”),
13 and all Settlement Class Members.

14 3. This Order does not constitute a finding of the validity of any allegations or of
15 any wrongdoing by Defendant.

16 4. The Court has jurisdiction to approve the Settlement, the Settlement Agreement
17 and all exhibits thereto, as well as the Amendment to Class Action Settlement Agreement and
18 Release. (See Barenfeld Decl. ISO Preliminary Approval, Ex. 14).

19 5. The Court, having reviewed the terms of the Settlement Agreement and the
20 Amendment, as well as the documents filed in support of the Motion for Preliminary Approval
21 and in support of the Motion for Final Approval describing Plaintiffs’ investigation into the
22 claims and defenses in this matter; the information exchanged between the Parties; and the
23 process of reaching the Settlement, finds that the Settlement is the product of informed, non-
24 collusive, and arm’s length negotiations, and is within the range of approval as fair, reasonable,
25 and adequate.

26 6. The Court has certified a Settlement Class, for purposes of this Settlement only,
27 defined as follows:

28 All San Francisco Employees Retirement System (“SFERS”) Members to whom
SFERS sent its Notice of Data Breach disclosing that on March 21, 2020, 10up

1 Inc. learned that a test server had been accessed by an outside party on February
2 24, 2020.

3 7. The Court deems this definition sufficient for the purpose of the California Rules
4 of Court, rule 3.765(a), and solely for the purpose of effectuating the Settlement.

5 8. The Court finds that the applicable requirements of Code of Civil Procedure
6 section 382 have been satisfied with respect to the Settlement Class and the proposed
7 Settlement. The Court hereby makes final its earlier provisional certification of the Settlement
8 Class, as set forth in the Preliminary Approval Order.

9 9. This Final Approval Order shall be binding on and have res judicata and
10 preclusive effect in all pending and future lawsuits or other proceedings maintained by or on
11 behalf of Plaintiffs and all Settlement Class Members arising from the Notice of Data Breach
12 disclosing that on March 21, 2020, 10up Inc. learned that a test server had been accessed by an
13 outside party on February 24, 2020.

14 10. Section XIV of the Settlement Agreement contains the following release
15 language, which the Court adopts by this Order:

16 A. Plaintiffs and Class Members who do not submit a timely Request for
17 Exclusion hereby release Defendant and Released Parties from any and all
18 claims actually alleged in the Litigation and all potential claims reasonably
arising out of the same set of operative facts, under the laws of any jurisdiction,
including federal law, state law, and common law, whether at law or equity.

19 B. Class Representatives, namely Plaintiffs Richard Daniele, Richard Goss and
20 Steve Landi, expressly waive and relinquish, to the fullest extent permitted by
21 law, the provisions, rights, and benefits of section 1542 of the California Civil
Code, and any similar federal or state law, all claims actually alleged in the
22 Litigation and all potential claims reasonably arising out of the same set of
operative facts.

23 C. Section 1542 of the California Civil Code provides:

24 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
25 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
26 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
27 HER SETTLEMENT WITH THE DEBTOR."

28 D. This Settlement Agreement does not affect the rights of Class Members who
timely and properly make a Request for Exclusion from the Settlement
Agreement.

1 E. Upon issuance of the Final Approval Order: (i) the Settlement Agreement
2 shall be the exclusive remedy for any and all Class Members, except those who
3 have submitted a Request for Exclusion in accordance with the terms and
4 provisions hereof; (ii) Defendant and Released Parties shall not be subject to
5 liability or expense of any kind to any Class Member(s) for reasons related to the
6 Litigation except as set forth herein; and (iii) Class Members shall be
7 permanently barred from initiating, asserting, or prosecuting any and all released
8 claims against Defendant and Released Parties.

9 11. The Court finds that the Notice sent to the Settlement Class: (i) constituted the
10 best practicable notice; (ii) constituted notice that was reasonably calculated under the
11 circumstances to apprise the Settlement Class of the pendency of the Lawsuit, of their right to
12 object to or to exclude themselves from the proposed Settlement, of their right to appear at the
13 Final Approval Hearing, and of their right to seek monetary and other relief; (iii) constituted
14 reasonable, due, adequate, and sufficient notice to all providers entitled to receive notice; and
15 (iv) met all requirements of due process and applicable law.

16 12. The Court finds that Class Counsel and Plaintiffs adequately represented the
17 Settlement Class for purposes of entering into and implementing the Settlement and the
18 Settlement Agreement and Amendment.

19 13. Without affecting the finality of the Final Approval Order for purposes of appeal,
20 the Court reserves jurisdiction over the Settlement Administrator, Defendant, Plaintiffs, and the
21 Settlement Class Members as to all matters relating to the administration, consummation,
22 enforcement, and interpretation of the terms of the Settlement, the Settlement Agreement and
23 Amendment, the Final Approval Order, and for any other necessary purpose.

24 14. As set forth in Section XIV of the Settlement Agreement, upon entry of the Final
25 Approval Order, the Releasing Parties shall be barred from asserting any Released Claims
26 against the Released Parties, and the Releasing Parties shall have released the Released Claims
27 as against the Released Parties.

28 15. No Settlement Class Members have objected to the Settlement and six
Settlement Class Members have opted out of the Settlement. The Court approves the Opt-Out
List, attached as Exhibit 1 hereto, and determines that the Opt-Out list identifies members of the
Settlement Class who have timely and effectively requested exclusion from the Settlement Class

1 and, accordingly, shall neither share in nor be bound by the Final Approval Order. After
2 removing the members who have opted out, there are 66,580 members of the Settlement Class.

3 16. The Court authorizes the Parties, without further approval from the Court, to
4 agree to and adopt such amendments, modifications, and expansions of the Settlement
5 Agreement and Amendment as (i) shall be consistent in all material respects with the Final
6 Approval Order; and (ii) do not limit the rights of the Parties or Settlement Class Members.

7 17. For the reasons stated herein, the Court hereby grants final approval of the
8 Settlement and hereby directs that the Settlement be effectuated in accordance with the
9 Settlement Agreement and Amendment, and this Order.

10 18. The Settlement Administrator shall establish a Qualified Settlement Fund (QSF),
11 for the deposit of the payment of Settlement Funds, as set forth in Section XI.B(14) of the
12 Settlement Agreement.¹

13 19. The Court grants the request for attorneys' fees and costs and awards the amount
14 of \$500,000 in attorneys' fees and costs ("Fee Award"). 10UP shall pay the Settlement
15 Administrator, by deposit into the QSF, an amount sufficient to pay the Fee Award within the
16 time frame set forth in Section VI.F(3) of the Settlement Agreement.

17 20. The Court also determines that Plaintiffs Richard Daniele, Richard Goss, and
18 Steve Landi are awarded an incentive award in the amount of \$10,000 each ("Incentive
19 Awards"), i.e., \$30,000 combined. 10UP shall pay the Settlement Administrator, by deposit into
20 the QSF, an amount sufficient to pay the Incentive Awards within the time frame set forth in
21 Section VI.F(2) of the Settlement Agreement.

22 21. The Settlement Administrator, Epiq, is awarded its reasonable fees, costs, and
23 expenses related to the administration of this Settlement ("Epiq's Costs of Administration).
24 Neither the Settlement Class Members nor Class Counsel are responsible for any expenses in
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28 ¹ All citations to the Settlement Agreement are to the original Class Action Settlement and Release.

1 providing the Notice or in administering the Settlement. 10UP shall pay Epiq's Costs of
2 Administration within a reasonable time of receiving Epiq's written invoices, as set forth in
3 Section VI.F(4) of the Settlement Agreement. Such fees, costs, and expenses are deemed Costs
4 of Administration under the Settlement Agreement.

5 22. SFERS is awarded its reasonable fees, costs, and expenses related to the assisting
6 with providing Notice of this Settlement in the amount of \$ \$27,062.28, with arrangements to be
7 made by Defendant to pay SFERS' respective fees, costs, and expenses directly, within a
8 reasonable time of receiving SFERS' invoices. Neither the Settlement Class Members nor
9 Class Counsel are responsible for any expenses in providing the Notice or in administering the
10 Settlement. Such fees, costs, and expenses are also deemed Costs of Administration under the
11 Settlement Agreement.


12 23. The Court approves the payment of all Settlement Benefits to Settlement Class
13 Members described in Section III of the Settlement Agreement that are approved by the
14 Settlement Administrator or, if a decision of the Settlement Administrator is challenged, by the
15 decision of the Settlement Umpire. The Court orders the payment of those amounts to be made
16 by 10UP to the Settlement Administrator, by deposit into the QSF, within the time frame set
17 forth in Section VI.F(1) of the Settlement Agreement.

18 24. The Court finds and determines that the Costs of Administration, Incentive
19 Awards, Attorneys' Fees and Costs, and Benefits to the Class Members, as provided for by the
20 Settlement Agreement, are fair and reasonable. The Court gives final approval to and orders the
21 payment of those amounts as required by the Settlement Agreement. The Settlement
22 Administrator shall make all payments to Settlement Class Members, Class Counsel, and the
23 Named Plaintiffs within the time frames required by the Settlement Agreement.

1 25. Pursuant to California Civil Procedure Code section 384(b), within 365 days of
2 the Effective Date, Class Counsel shall submit to the Court a final report that contains: (i) the
3 total amount of the checks cashed; and (ii) the total amount of any un-cashed checks that shall
4 be distributed to the Cy Pres Recipient.

5 **IT IS SO ORDERED.**

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7 Effective as of: January 18, 2024



Hon. Richard B. Ulmer Jr
Judge of the Superior Court

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