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**FILED**  
San Francisco County Superior Court

JUN 27 2023

CLERK OF THE COURT  
BY: [Signature]  
Deputy Clerk

7 Attorneys for Plaintiffs and the Proposed Class

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

11 RICHARD DANIELE, RICHARD GOSS  
12 and STEVE LANDI, individually, and on  
13 behalf of a class of similarly situated persons,

13 Plaintiffs,

14 v.

16 10UP, INC., a California Corporation; and  
17 DOES 1-50 inclusive,

18 Defendants.

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

**~~PROPOSED~~ ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: June 27, 2023  
Time: 9:30 a.m.  
Dept: 302

Case Filed: September 11, 2020  
Trial Date: None

1 Plaintiffs Richard Daniele, Richard Goss and Steve Landi (“Plaintiffs”), brought a  
2 Motion for Preliminary Approval of Class Action Settlement (“Motion”), in which seeks an  
3 Order that (1) grants preliminary approval of the Settlement Agreement; (2) certifies the class  
4 for settlement purposes; (3) appoints class counsel as counsel for the provisionally certified  
5 settlement class; (4) approves the proposed plan of notice and notice to the Settlement Class; (5)  
6 appoints Epiq as the Settlement Administrator; (6) sets a schedule for disseminating notice to  
7 the Settlement Class as well as other deadlines related to the administration of the settlement,  
8 including deadlines to object to or opt out of the settlement; and (7) schedules a final approval  
9 hearing. Having considered all papers filed related to the Motion; any argument on the Motion;  
10 and other documents and pleadings on file, the Court hereby **FINDS** as follows:

11 a. Plaintiffs, through their counsel of record in this Lawsuit, have reached an  
12 agreement to settle all claims with Defendant 10UP, Inc. in the Lawsuit.

13 b. The Parties have agreed, for Settlement purposes only, that this Lawsuit may be  
14 maintained as a class action.

15 c. The Court, having reviewed the terms of the proposed Settlement, as well as  
16 Plaintiffs’ papers describing their investigation into the claims and defenses in this matter; the  
17 information exchanged between the Parties; the proceedings in this Lawsuit; and the process  
18 and procedures for the Settlement, preliminarily finds that the proposed Settlement is the  
19 product of informed, non-collusive, and arm’s length negotiations and is within the range of  
20 possible approval as fair, reasonable, and adequate, such that notice should be given to the  
21 Settlement Class.

22 d. The plan to provide notice to the proposed Settlement Class of the terms of the  
23 Class Action Settlement Agreement and Release (“SAR”) is approved as set forth in the moving  
24 papers and below. The proposed Notice and the notice plan is reasonably calculated, under the  
25 circumstances, to apprise the Settlement Class of the lawsuit and of their right to object to or to  
26 exclude themselves from the proposed Settlement; it is reasonable and constitutes due, adequate  
27 and sufficient notice to all providers entitled to receive notice; and it meets all requirements of  
28 applicable law.

1 Good cause appearing therefor, **IT IS HEREBY ORDERED** as follows:

2 1. The Court preliminarily approves the proposed Settlement.

3 2. The Settlement Class is provisionally certified for settlement purposes only,  
4 pursuant to section 382 of the Code of Civil Procedure. For settlement purposes only, the  
5 lawsuit may be maintained on behalf of a Settlement Class defined as follows: "All San  
6 Francisco Employees Retirement System ("SFERS") members to whom SFERS sent its Notice  
7 of Data Breach disclosing that on March 21, 2020, 10up Inc. learned that a test server had been  
8 accessed by an outside party on February 24, 2020."

9 3. Plaintiffs are appointed as the class representatives, and Plaintiffs' counsel,  
10 Gretchen M. Nelson and Gabriel S. Barenfeld of Nelson & Fraenkel LLP are appointed as Class  
11 Counsel for the Settlement Class Members.

12 4. Epiq Class Action and Mass Tort Solutions ("Epiq") is appointed as the  
13 Settlement Administrator and is tasked with undertaking the administrative tasks as set forth in  
14 this Order and the terms of the SAR.

15 5. SFERS and its designated agent, KCC, may participate in the Notice process as  
16 set forth in this Order, the terms of the SAR, and the agreement entered between 10UP and  
17 SFERS.

18 6. The Court hereby approves the form of the Notice of Proposed Settlement of  
19 Class Action, which is attached to the SAR as Exhibit A.

20 7. The Notice shall be sent by email to those members of the Settlement Class for  
21 whom SFERS has a valid and current email address to which notice may be sent; and by first-  
22 class United States mail to those members of the Settlement Class for whom SFERS does not  
23 have a valid and current email address, according to the terms set forth in the schedule set forth  
24 below. SFERS may conduct this mailing and emailing of notice.

25 8. Proof of compliance with the Notice provisions shall be filed no later than 7 days  
26 before the Final Approval hearing.

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1 9. Any member of the Settlement Class who wishes to exclude himself or herself  
2 from the Settlement Class shall submit an appropriate, timely request for exclusion to the  
3 Settlement Administrator, postmarked no later than the Opt-Out Date set forth below.

4 10. Any member of the Settlement Class who does not timely and validly Opt-Out of  
5 the Settlement Class will be bound by all proceedings and orders in the lawsuit.

6 11. Any Settlement Class Member who does not Opt-Out and who wishes to object  
7 to the fairness, reasonableness or adequacy of the Settlement may timely submit Objection to  
8 the Settlement Administrator, postmarked no later than the Objection Date set forth below.

9 12. Any responses to any Objection shall be included in the Motion for Final  
10 Approval.

11 13. The Settlement Administrator shall provide the Opt-Out List to Class Counsel  
12 and Defendant's Counsel by the deadline set forth below.

13 14. To the extent any of the dates or time schedules in the SAR conflict with this  
14 Order, the dates or time schedules in this Order shall supersede those of the SAR.

15 15. A hearing shall be held before this Court on 1/18, 2024 at 9:30 a.m. in  
16 Department 302 to consider whether the Settlement should be given final approval by the  
17 Court and to consider the request for fees, costs and, incentive awards. This hearing may be  
18 postponed by the Court without additional notice to members of the Settlement Class.

19 16. The Court issues the following schedule for further proceedings:  
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Event	Deadline
Claims Administrator will deliver to SFERS (1) the text of the email Notice and (2) 60,000 postcard Notices (4.25" x 6", pre-printed by Epiq with text of class notice, and return address of KCC administrator).	Within 21 calendar days after of entry of preliminary approval order.
Claims Administrator will establish a Settlement Website.	Within 45 calendar days of entry of preliminary approval order.

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SFERS sends email notices to the approximately 39,000 class members for whom it has email addresses.	Within 45 calendar days after of entry of preliminary approval order.
Completion of the initial mailing of approximately 29,000 postcards; sent by pre-sorted first class mail to enable return of undeliverable cards.	Within 45 days of receipt of entry of preliminary approval order.
Completion of the mailing of post-card Notice for those Class members to whom SFERS initially sent email notice and for whom SFERS receives (1) a bounce-back or (2) no notice that the email has been opened within 7 days of emailing (together, "Email Rejection").	Within 60 days of the entry of the preliminary approval order.
Completion by SFERS's vendor, KCC, of a single remailing of any postcard Notice returned as undeliverable. For any postcard returned as "undeliverable" and without a forwarding address, a skip trace will be performed to try to locate a current address.	Within 105 days of entry of preliminary approval order.
The City of San Francisco to provide a declaration regarding the tasks performed by SFERS and City staff, and KCC to provide a declaration regarding the processing of returned postcards and remailing performed by its staff.	The City and KCC will provide these declarations in a reasonably timely manner and will aim to complete them within 14 days of completion of all Notice functions to be undertaken by SFERS and KCC. Plaintiff's counsel will advise the Court should they become of any issue with this timing.
Request for Exclusion Deadline	120 days after entry of preliminary approval order.

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Objection to Final Approval	120 days after entry of preliminary approval order.
Deadline for claim form and evidence of Extraordinary Loss	120 days after entry of preliminary approval order.
Deadline for Settlement Administrator to approve claims that do not involve Extraordinary Loss	Within 150 days after entry of preliminary approval order.
Deadline to challenge Settlement Administrator's decision regarding claims that do not involve Extraordinary Loss	Within 157 days after entry of preliminary approval order.
Deadline for Settlement Administrator to resolve Extraordinary Loss claims	Within 165 days after entry of preliminary approval order.
Deadline to challenge Settlement Administrator's decision regarding Extraordinary Loss Claim	Within 172 days after entry of preliminary approval order.
The Settlement Administrator shall provide the Opt-Out List to Class Counsel and Defendant's Counsel.	Within 180 days after entry of preliminary approval order.
Deadline for Settlement Umpire to rule on disputed claims	Within 210 days after entry of preliminary approval order.
Filing deadline for Motion for Final Approval and Motion for Award of Attorney Fees, Expense Reimbursement, and Service Awards.	60 calendar days prior to the Final Approval Hearing
Objection to request for Award of Attorney Fees, Expense Reimbursement, and Service Awards	30 calendar days prior to the Final Approval Hearing.
Final written report concerning all Requests for Exclusion, all revocations of Requests for	7 days before Final Approval Hearing

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Exclusion, and all objections.

**IT IS SO ORDERED.**

Dated: 6/27/23

Ulmer (Ulmer)

Judge of the Superior Court

**RICHARD ULMER**