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12 **UNITED STATES BANKRUPTCY COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 In re:  
16 ANTHONY SCOTT LEVANDOWSKI,  
17 Debtor.

18 Bankruptcy Case  
19 No. 20-30242 (HLB)

20 Chapter 11

21 **MOTION PURSUANT TO 11 U.S.C.**  
22 **§§ 105(a) AND 363(b) AND FED. R.**  
23 **BANKR. P. 9019 FOR ENTRY OF**  
24 **ORDERS APPROVING (I) THE**  
25 **SETTLEMENT BETWEEN THE**  
26 **DEBTOR, UBER TECHNOLOGIES,**  
27 **INC., AND GOOGLE LLC; (II) THE**  
28 **CLAT SETTLEMENT; (III) THE**  
**PLAN SUPPORT AGREEMENT**  
**BETWEEN THE DEBTOR AND**  
**GOOGLE; AND (IV) GRANTING**  
**RELATED RELIEF**

Date: March 3, 2022

Time: 10:00 a.m. (Pacific Time)

Place: (Tele/Videoconference Only)

United States Bankruptcy Court

Courtroom 17, 16th Floor

San Francisco, CA 94102

Objection Deadline: February 24, 2022

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1 Anthony Scott Levandowski, as debtor and debtor in possession (the “Debtor”) in the  
2 above-captioned chapter 11 case (the “Chapter 11 Case”), hereby moves (the “Motion”) pursuant  
3 to sections 105 and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and  
4 Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of  
5 orders (i) approving the Settlement Agreement dated February 10, 2022, between the Debtor,  
6 individually and on behalf of his estate, Uber Technologies, Inc. (“Uber”), and Google LLC  
7 (“Google”), attached hereto as **Exhibit A** (the “Uber Settlement”), which includes, among other  
8 things, a Plan Term Sheet (the “Plan Term Sheet”); (ii) approving a settlement between the  
9 Debtor and the Anthony Levandowski Charitable Lead Annuity Trust (the “CLAT”) dated  
10 December 18, 2016, attached hereto as **Exhibit B** (the “CLAT Settlement”); and (iii) approving  
11 the Plan Support Agreement between the Debtor and Google, attached hereto as **Exhibit C** (the  
12 “Plan Support Agreement”); and (iv) granting related relief. The Settlement Agreement along  
13 with its attachments, the CLAT Settlement, and the Plan Support Agreement collectively are  
14 referred to as the “Global Settlement.” In support of this Motion, the Debtor respectfully  
15 submits the Declarations of Anthony S. Levandowski and Allen Soong filed contemporaneously  
16 herewith. Proposed orders granting the relief requested herein are collectively attached hereto as  
17 **Exhibit D**.

## 18 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 19 **I. PRELIMINARY STATEMENT**

20 The Global Settlement resolves the lengthy, complex, and costly dispute between the  
21 Debtor, Uber, and Google regarding the Debtor’s obligations to Google pursuant to a judgment  
22 confirming an arbitration award, Uber’s alleged responsibility to indemnify the Debtor for  
23 amounts adjudged payable to Google, and simmering disputes regarding exempt assets and the  
24 Debtor’s pursuit of potentially avoidable transfers. In addition, the Global Settlement sets the  
25 ground for final resolution of this Chapter 11 Case. But for the Global Settlement, these issues  
26 would be first litigated before this Court in a ten-day trial set to begin on February 14, 2022, and  
27 thereafter in connection with objections to the Debtor’s exemptions, adversary proceedings  
28 regarding prepetition transfers, and a contested confirmation hearing. Trial necessarily includes

1 significant risks and costs and the Debtor believes that the Global Settlement will obviate those  
2 risks and best serve the interests of the estate and its creditors. As more fully described below,  
3 the agreements comprising the Global Settlement provide for immediate payments from Uber to  
4 Google and from Uber to the estate; dismissal of the Adversary Proceeding (as defined herein);  
5 and releases among the Debtor, his estate, Google, and Uber. Under the Global Settlement and  
6 the Plan Term Sheet, all unsecured creditors will be treated equally. Further, the Global  
7 Settlement contemplates, through the Plan Term Sheet and the Plan Support Agreement, a  
8 timeline for the filing, solicitation, and confirmation of a Plan (through which unsecured  
9 creditors' claims will be satisfied from the estate on terms equal to or better than Google)  
10 and settlement of a potential avoidance claim with the CLAT, the recovery from which will fund  
11 the Plan and the Residual Trust created thereunder. Significantly, the two largest creditors of the  
12 estate by multiples – Google and, according to its claim, Uber – are parties to the Global  
13 Settlement which provides a path for satisfaction of all administrative, priority, and general  
14 unsecured claims. The Debtor submits that the Global Settlement and its constituent parts fall  
15 well within the range of reasonableness, provide clear benefits to the Debtor's estate, and, as a  
16 result, should be approved.

## 17 **II. JURISDICTION**

18 This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334,  
19 the Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges, General Order 24  
20 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District for  
21 the Northern District of California (the "Bankruptcy Local Rules"). This is a core proceeding  
22 pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408  
23 and 1409.

## 24 **III. BACKGROUND**

25 On April 11, 2016, the Debtor, Apparate International C.V., Uber, and certain other  
26 persons entered into an Agreement and Plan of Merger for Ottomotto LLC and an Agreement  
27 and Plan of Merger for Otto Trucking LLC (the "Otto Transactions"). Also on April 11, 2016, as  
28 an integrated part of the Otto Transactions, the Debtor, Apparate, Uber, and certain other

1 individuals and entities entered into an Indemnification Agreement, whereby Apparate promised  
2 that, as a material inducement, Apparate would (subject to certain conditions) indemnify the  
3 Debtor for certain claims. Uber provided a limited guaranty of Apparate’s obligations. The  
4 Debtor, a former employee of Google, had left Google in January 2016, and joined Uber as an  
5 Uber employee in connection with the Otto Transactions later that year.

6 The Debtor formed the CLAT on December 18, 2016, and shortly thereafter made  
7 transfers in the aggregate amount of \$7 Million to fund it.

8 On October 28, 2016, Google filed two arbitration demands against the Debtor that were  
9 later consolidated and docketed as JAMS Arbitration Case Reference No. 1100086069 (the  
10 “Google Arbitration”). On December 23, 2019, the arbitration panel entered its Final Corrected  
11 Award (“Award”) for the Google Arbitration. On March 4, 2020, the Superior Court of the State  
12 of California in and for the County of San Francisco (the “State Court”) confirmed the Award  
13 and entered a judgment in favor Google and against Debtor in the amount of \$179,047,998.64  
14 (the “Judgment”). On March 4, 2020, the Debtor filed a voluntary chapter 11 petition,  
15 commencing this Chapter 11 Case.

16 On May 1, 2020, the Debtor filed a notice of appeal in the First Appellate District from  
17 the Judgment which was docketed as Case No. A160491 (the “Appeal”). The Appeal is still  
18 pending but will be dismissed as part of the Global Settlement.

19 The Debtor contends that Uber is obligated under the Indemnification Agreement to  
20 indemnify him and his estate for the Judgment. On July 16, 2020, the Debtor filed an adversary  
21 proceeding against Uber docketed as Adv. Pro. 20-03050 (HLB) (the “Adversary Proceeding”)  
22 seeking to enforce the Indemnification Agreement and alleging other claims related to the Otto  
23 Transactions. Uber disputes all of the allegations contained in the Adversary Proceeding and has  
24 asserted counterclaims against Debtor and his estate for certain declaratory judgments,  
25 contribution, equitable indemnity, set-off, fraud, and non-dischargeability; it filed a proof of  
26 claim against the Debtor docketed as Claim No. 8-1. By order of the Court on September 3,  
27 2020, Google intervened in the Adversary Proceeding. *See* Dkt. No. 35; *see also* Dkt. No. 299  
28 (subsequent order clarifying scope of intervention).

1 Google has also filed Claim No. 9-1 based on the Judgment (the “Google Claim”). The  
2 Google Claim comprises over 98% of the filed claims, after which there is one claim for  
3 \$3.65 million and the remaining five liquidated claims seek less than \$250,000 in the aggregate.

4 The Parties participated in a mediation settlement conference on January 11, 2022, with  
5 Robert A. Meyer acting as a mediator and subsequently reached an agreement in principle to  
6 resolve all disputes between them.

7 **IV. MATERIAL AGREEMENTS COMPRISING THE GLOBAL SETTLEMENT**

8 The principal agreements<sup>1</sup> comprising the Global Settlement are described below.

9 **A. The Uber Settlement<sup>2</sup>**

<b>Settlement Payment</b>	On the Settlement Effective Date, Uber will make the Uber Settlement Payment as follows: (i) by wire transfer to Google in an amount agreed to between Uber and Google (“Main Uber Payment”); and (ii) by wire transfer to the Debtor in the amount of Two Million Dollars (\$2,000,000.00). In exchange for the Main Uber Payment, Google has agreed to the other terms of this agreement including the reduction of its claim against the Bankruptcy Estate. The Debtor shall deposit its portion of the Uber Settlement Payment in a blocked account to be accessed only to pay claims pursuant to a confirmed plan of reorganization.
<b>Dismissal of Adversary Proceeding; Withdrawal of Claim; Releases</b>	On the Settlement Effective Date, the parties will dismiss the Adversary Proceeding with prejudice, and Uber will file a notice with the Bankruptcy Court withdrawing its Proof of Claim with prejudice.  Detailed releases will be provided as summarized below (the precise scope and breadth of the releases are described in the Uber Settlement):  <b>Debtor Releasers General Release of Uber Releasees.</b> Effective as of the Effective Date, the Debtor Releasers (as defined in the Uber Settlement) will give general releases to the Uber Releasees (as defined in the Uber Settlement).  <b>Uber Releasees General Release of Debtor Releasers.</b> Effective as of the Settlement Effective Date, the Uber Releasees will give general releases to the Debtor Releasers  <b>Google Releasees Limited General Release of Uber Releasees.</b> Effective as of the Settlement Effective Date, the Google Releasees (as defined in the Uber Settlement) will give limited releases to the Uber

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25 <sup>1</sup> The terms set forth herein are by way of summary only and have no force and effect  
26 whatsoever on the agreements between the parties which are set forth solely in the written  
27 agreements comprising the Global Settlement. In addition, until approved by final and  
28 nonappealable order of the Bankruptcy Court, none of the agreements constituting the Global  
Settlement shall have any force or effect.

<sup>2</sup> Capitalized terms used in this section but not herein defined have the meanings ascribed to such terms in the Uber Settlement.



	<p>Releasees.</p> <p><b>Uber Releasees Limited General Release of Google Releasees.</b> Effective as of the Settlement Effective Date, the Uber Releasees will give limited releases to the Google Releasees.</p> <p>For the avoidance of doubt, the Uber Settlement defines the scope of the releases and carves out certain continuing obligations between and among the parties.</p> <p>The releases generally include a waiver of rights under section 1542 of the California Civil Code and any similar law of any state or territory of the United States.</p>
<p><b>Representations and Warranties</b></p>	<p>Each of the Parties makes standard representations and warranties regarding authority and related issues; the Debtor and Uber agree that all of Uber's and Apparate's obligations under the Indemnification Agreement have been terminated (and the Debtor and the Bankruptcy Estate covenant that neither of them will make any claims or bring any actions based upon the agreements that comprise the Otto Transactions); Google represents and warrants that it will support and vote in favor of a plan of reorganization containing the terms set forth in the Plan Term Sheet; and the Debtor represents and warrants that he will promptly file and prosecute a plan of reorganization consistent with the terms set forth in the Plan Term Sheet.</p>

**B. The CLAT Settlement Agreement<sup>3</sup>**

Uber and Google have asserted that the CLAT transfers are avoidable under sections 544 and 548 of the Bankruptcy Code and have demanded that the Debtor avoid them. In order to avoid the cost and uncertainty associated with discovery and trial, the Debtor seeks authority to enter into the CLAT Settlement Agreement, the principal terms of which are outlined below.

<p><b>Avoidance</b></p>	<p>The CLAT agrees to the avoidance of the \$7 Million contributed by the Debtor to the CLAT in December 2016, and any proceeds thereunder.</p>
<p><b>Use of Recovered Assets</b></p>	<p>Assets recovered from the CLAT shall be used first to provide liquidity to fund the Plan, with unused cash to be transferred to the Residual Trust.</p>

**C. The Plan Term Sheet<sup>4</sup>**

<p><b>Treatment of Classes of Claims and Interests Under the Plan</b></p>	<p><b>Unclassified Claims</b></p>	<p><b>Treatment</b></p>
	<p>DIP Facility Claims</p>	<p>Paid in full in cash, with interest.</p>
	<p>Administrative Expense Claims</p>	<p>Holders of Allowed Administrative Expense Claims shall be paid in full in cash.</p>
	<p>Fee Claims</p>	<p>Holders of Allowed Fee Claims shall be paid</p>

<sup>3</sup> Capitalized terms used in this section but not herein defined have the meanings ascribed to such terms in the CLAT Settlement Agreement.

<sup>4</sup> Capitalized terms used in this section but not herein defined have the meanings ascribed to such terms in the Plan Term Sheet.

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		in full in cash.
	Priority Tax Claims	Holders of Allowed Priority Tax Claims shall be paid in full in cash (or paid over not more than 5 years as permitted by the Bankruptcy Code).
	<b>Classified Claims and Equity Interests</b>	<b>Treatment</b>
	Class 1 – Other Priority Claims	Holders of Allowed Other Priority Claims shall be paid in full in cash. The total Allowed Other Priority Claims, if any, shall be capped in an amount to be agreed upon by Google and the Debtor.
	Class 2 – Google Claim	<p>The holder of the Google Claim shall receive (a) the Main Uber Payment, which shall be received directly from Uber upon Bankruptcy Court approval of the 9019 Motion, plus (b) net proceeds received from the Residual Trust in the amount of \$25 Million. The \$25 Million amount shall increase by each dollar or dollar of value that the Residual Trust is liquidated, or holds for liquidation, for net (after payment of costs and expenses) proceeds in excess of \$25 Million, up to a maximum of \$30 Million. The net, after-tax value of the Roth IRA, Pronto.ai SAFE Note and any Deferred Action shall be included in the liquidation value of the Residual Trust, to determine the total amount of the Individual Commitment.</p> <p>The holder of the Google Claim shall also be the beneficiary of the Individual Commitment, a nondischargeable commitment of Levandowski to assure that such holder receives payment of between \$25 Million and \$30 Million, as more fully described in the Plan Term Sheet</p>
	Class 3 – General Unsecured Claims	Holders of Allowed General Unsecured Claims shall receive (a) an equalizing payment making payment on their Allowed Claims in proportion to the Main Uber Payment received on the Google Claim, plus (b) their pro rata shares, to be distributed pro rata with distributions to the holder of the Class 2 Google Claim, of the net proceeds received from the Residual Trust. If the proceeds paid from the Residual Trust to the holder of the Class 2 Google Claim exceeds \$25 Million, all additional net (after payment of costs and expenses) proceeds from the Residual Trust shall be paid to Google and holders of Allowed General Unsecured

1		Claims on a prorated basis until such claims are paid in full, without interest and, as to Google, up to the amount of \$30 Million.
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3	Class 4 – Convenience Class Claims	<p>Holders of Allowed Convenience Class Claims may elect to (a) be treated as a holder of an Allowed General Unsecured Claim, or (b) receive payment of fifty percent (50%) of the Allowed amount of such holder’s claim on the Plan Effective Date. Failure to elect shall result in treatment (b).</p> <p>Convenience class claims will likely encompass all claims other than the Google Claim.</p>
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8	Class 5 – Levandowski Claims and Rights	The Debtor shall receive net proceeds received from the Residual Trust if and after all required distributions are made to holders of Allowed Claims in Classes 2, 3 and 4.
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11	<b>Residual Trust</b>	<p>All Trust Assets shall be transferred to the Residual Trust on the Plan Effective Date for administration by the Trustee. Details regarding administration are included in the Plan Term Sheet. The “Trust Assets” shall include all of the Debtor’s physical assets and investments listed (or that could have been listed) in Schedules A/B, except for (a) the Roth IRA, and (b) personal items at the Debtor’s residence (provided that the fair market value of such items will not exceed \$40,000). It will also contain a schedule of Litigation Claims, which the Debtor will represent as a full and complete list of all known claims for relief and causes of action of the Levandowski estate.</p> <p>Levandowski shall be permitted to direct the Trustee not to prosecute or take, as the case may be, certain Deferred Actions (actions with respect to the Pronto.ai SAFE Note and litigation involving related person) while his Individual Commitment is outstanding, subject to certain terms set forth in the Plan Term Sheet.</p>
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19	<b>Uber Settlement Payment</b>	As set forth in the Uber Settlement.
20	<b>Releases</b>	<p>Releases between the Debtor and the estate and Uber are as set forth in the Uber Settlement. Releases between Uber and Google are as set forth in the Uber Settlement.</p> <p>The estate, the Debtor in his individual capacity, Google and certain of its affiliates shall execute releases (including waivers of California Civ. Code § 1542) releasing each of the other Parties, and their respective Affiliates, of any and all claims as follows:</p> <ul style="list-style-type: none"> <li>(a) With respect to the Levandowski Release Parties (as defined in the Plan Term Sheet), the Google Releasees (as defined in the Plan Term Sheet) shall give broad releases as set forth in the Plan Term Sheet, subject to the limitations contained therein;</li> <li>(b) with respect to the Google Releasees, each of the Levandowski Release Parties and their Affiliates shall give broad releases as set forth in the Plan Term Sheet, subject to the limitations contained therein; and</li> </ul>
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<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p>	<p>(c) with respect to the Debtor, Google and the Google Releasees shall provide releases related to other litigation as set forth in the Plan Term Sheet, subject to the limitations contained therein.</p> <p>Notwithstanding the foregoing, the Plan Term Sheet has a detailed list of limitations and continuing obligations further defining the scope of the releases that the Levandowski Release Parties and the Google Releasees will grant and the Levandowski Release Parties and the Google Releasees acknowledge that the releases are being granted in reliance upon the representations and warranties provided in the Plan Term Sheet.</p>
<p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p><b>Roth IRA</b></p> <p>(a) Google agrees that, in the event that it exercises rights against the Roth IRA, the Agreed Exempt Amount shall not be subject to exercise of its remedies. The Plan will contain a finding sustaining the Debtor's claim of exemption to the extent of the Agreed Exempt Amount. The Agreed Exempt Amount is \$1 Million in gross value, before taxes, plus an additional \$1 Million for every \$10 Million in distributions that Google receives from the Trust or the Roth IRA.</p> <p>(b) The Roth IRA shall not be included among the assets transferred to the Residual Trust and will continue to exist for the benefit of the Debtor; provided that, as set forth above, the Roth IRA shall be available to fulfill Levandowski's obligations under the Individual Commitment and Google may exercise any and all remedies against the Roth IRA if the Debtor defaults on the Individual Commitment, except to the extent of the Agreed Exempt Amount. Other than the Agreed Exempt Amount, in the event of a default under the Individual Commitment, Levandowski and the trustee under the Roth IRA shall immediately transfer all assets in the Roth IRA (net of taxes owed as the result of the transfer) to Google in partial satisfaction of the Individual Commitment, or at Google's sole discretion, to the Residual Trust for distribution under the Plan. At Levandowski's discretion, he shall be permitted to make a transfer or transfers of the Agreed Exempt Amount, when earned, from the Roth IRA into another vehicle or vehicles.</p> <p>(c) Levandowski shall have no obligation to liquidate or withdraw funds from the Roth IRA under the Plan or pursuant to the Individual Commitment; <i>provided</i> that any distributions received from the Roth IRA before the Individual Commitment is fully satisfied shall be transferred to Google. The Roth IRA shall be subject to periodic reporting to Google and subject to limitation on reinvestment of assets currently held while the Individual Commitment is outstanding, all subject to agreement prior to the filing of the Plan.</p>
<p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p><b>Certain Other Terms</b></p> <p>The Plan Term Sheet includes the following terms, among others:</p> <p>(a) Levandowski shall receive a discharge to the fullest extent permissible by law, subject to the terms and commitments contained herein.</p> <p>(b) Property received by the Debtor after the Plan Effective Date shall not vest in the Residual Trust but rather shall vest in Levandowski (and not the debtor in possession or the estate), and the Residual Trust as well as holders of any and all Claims waive their right to any post-confirmation property under 11 U.S.C. §</p>

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	<p>1115. For the avoidance of doubt, nothing herein shall change the treatment of the Roth IRA.</p> <p>(c) Executory contracts and unexpired leases not assumed by the Reorganized Debtor, and all obligations thereunder, shall be deemed rejected. Notwithstanding, this shall not include any contracts or obligations otherwise affirmed herein, and in no event shall this agreement provide relief beyond that provided by the Bankruptcy Code relating to executory contracts.</p> <p>(d) The Trustee, Google and Levandowski shall use their commercially best efforts to make all transactions and documents tax-efficient including, where necessary, with appropriate findings in the confirmation order regarding, among other things, the nature of the Uber Settlement Payment.</p> <p>(e) The parties hereto will stipulate to allowance of an administrative claim of Levandowski, in his personal capacity, for payment of counsel fees in connection with the mediation and negotiation of the Term Sheet in an amount not to exceed \$30,000 (which amount is exclusive of the \$25,000 previously advanced).</p> <p>(f) Levandowski and Debtor shall make detailed representations and warranties to the Google Releasees regarding the non-use and destruction of the Google Releasees' confidential information, all as more fully set forth therein. Google, Levandowski and Uber also agree that any of Google and certain affiliates' information shall be returned to Google and its affiliate or destroyed, with their advance consent on the method to be used, consistent with the applicable protective orders.</p> <p>(g) The Bankruptcy Court shall retain jurisdiction over the Plan, this Plan Term Sheet, the Residual Trust, the Individual Commitment, and any obligations (and the enforcement of those obligations) of the Levandowski Release Parties under the Debtor's reorganization plan, this Plan Term Sheet, the Residual Trust, and the Individual Commitment.</p> <p>(h) For any Deferred Action, the Debtor shall preserve for 5 years or turn over to the Trustee all documents and information related to that Deferred Claim. The Trustee will provide a litigation hold notice to parties that may have liability on Deferred Claims to preserve all documents and information related to such Deferred Claims for 5 years.</p> <p>(i) Google and certain of its affiliates will represent and warrant that they have not transferred any legal claims or rights against the Debtor to any entity or person that is not included in the definition of Google Releasee (as that term is defined in the Plan Term Sheet) at any point prior to the date that the parties sign the term sheet. The Google Releasees will also acknowledge that Levandowski Release Parties (as that term is defined in the Plan Term Sheet) shall rely on the accuracy of the foregoing representation in granting the releases contained in Plan Term Sheet.</p>
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1                   **D.     The Plan Support Agreement**<sup>5</sup>

<p>2                   <b>Agreements of Google</b></p>	<p>3                   (a) <u>Agreement to Support</u>. Subject to the terms and conditions of the Plan Support Agreement, the Debtor, Levandowski and Google agree to use their best efforts to support the Plan.</p> <p>4                   (b) <u>Voting</u>. Google agrees that it will vote for a Plan in the form described in the Plan Support Agreement; and additional support provisions between Google and the Debtor are included.</p> <p>5                   (c) <u>Transfers</u>. During the Plan Support Period, Google shall not sell, use, loan, pledge, assign, transfer, permit the participation in, or otherwise dispose of, directly or indirectly, in whole or in part, any of the Google Claim.</p>
<p>8                   <b>Agreements of the Debtor</b></p>	<p>9                   (a) <u>Covenants</u>. Subject to the terms of the Plan Support Agreement, the Debtor agrees that he shall include the necessary provisions in any Plan proposed by the Debtor to effectuate the Plan Treatment; support and take all commercially reasonable efforts to facilitate the solicitation and confirmation of the Plan, and take all reasonably necessary actions to consummate the Plan, and the transactions contemplated thereby; and use its commercially reasonable efforts to achieve the following restructuring milestones unless otherwise extended by the written agreement of the Parties:</p> <ul style="list-style-type: none"><li>13                   ■ file a motion to permit the filing of a combined Plan and Disclosure Statement, and for solicitation procedures by February 21, 2022;</li><li>14                   ■ file a Plan and Disclosure Statement in form and substance consistent with the terms of this Agreement and subject to the Google Consent Right no later than February 28, 2022;</li><li>15                   ■ obtain a hearing on the Plan and Disclosure Statement no later than March 31, 2022;</li><li>16                   ■ obtain the Confirmation Order by April 15, 2022; and</li><li>17                   ■ declare the Effective Date of the Plan by a date no later than April 29, 2022.</li></ul> <p>18                   (b) <u>Fiduciary Duties</u>. Notwithstanding anything to the contrary herein, nothing in this Agreement requires the Debtor, or any subsequent fiduciary acting in the place of the Debtor, to take any action to the extent that the Debtor or fiduciary determines that taking such action would violate applicable law or would be inconsistent with the exercise of its fiduciary duties under applicable law.</p>

22                   **V.     BASIS FOR RELIEF REQUESTED**

23                   **A.     The Standard for Approval of Settlements Under Bankruptcy Rule 9019**

24                   The Debtor requests entry of an order pursuant to Bankruptcy Rule 9019 approving his

25                   entry into the Global Settlement. After notice and a hearing, the Court “may approve a

26                   compromise and settlement,” Fed. R. Bankr. P. 9019(a), if such a settlement is “in the best

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28 <sup>5</sup> Capitalized terms used in this section but not herein defined have the meanings ascribed to such terms in the Plan Support Agreement.

1 interests of the estate.” *In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. 499, 505 (Bankr.  
2 S.D.N.Y. 1991); *see also Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996). The  
3 decision to approve a particular compromise lies within the sound discretion of the Court. *See*,  
4 *e.g., Martin v. Kane (In re A&C Props.)*, 784 F.2d 1377, 1380 (9th Cir. 1986). Courts in the  
5 Ninth Circuit consider the following factors in determining whether a settlement should be  
6 approved: (i) the probability of success in litigation, with due consideration for the uncertainty  
7 in fact and law; (ii) the difficulties, if any, to be encountered in the matter of collecting any  
8 litigated judgment; (iii) the complexity and likely duration of the litigation and any attendant  
9 expense, inconvenience, and delay; and (iv) the paramount interest of the creditors and the  
10 proper deference to their reasonable views. *A&C Props.*, 784 F.2d at 1380.

11           Taken together, the conclusions must favor the approval of the Global Settlement. *See In*  
12 *re Pac. Gas & Elec. Co.*, 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004) (citing *In re WCI Cable,*  
13 *Inc.*, 282 B.R. 457, 473-74 (Bankr. D. Or. 2002)). This standard is deferential to the debtor’s  
14 judgment and requires the Court only to ensure that the settlement does not fall below the lowest  
15 point in the range of reasonableness in terms of benefits to the estate. *See, e.g., City Sanitation v.*  
16 *Allied Waste Servs. of Mass., LLC (In re Am. Cartage, Inc.)*, 656 F.3d 82, 91-92 (1st Cir. 2011)  
17 (“The task of both the bankruptcy court and any reviewing court is to canvass the issues and see  
18 whether the settlement falls below the lowest point in the range of reasonableness . . . If a trustee  
19 chooses to accept a less munificent sum for a good reason (say, to avoid potentially costly  
20 litigation), his judgment is entitled to some deference.”).

21           The Global Settlement is comprised of three major components—the Uber Settlement,  
22 the proposed reorganization plan contemplated by the Plan Term Sheet, and the CLAT  
23 Settlement—all of which satisfy the criteria in *A&C Properties*.

24           **1. The Uber Settlement and Plan Term Sheet Satisfy the Standards for**  
25           **Approval.**

26           The Uber Settlement and the Term Sheet should be approved pursuant to the standards  
27 set forth in *A&C Properties*.

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**a. The Probability of Success in Litigation**

The Uber Settlement and Plan Term Sheet call for the settlement of the disputes among the Debtor, Uber and Google in this Chapter 11 Case, including the core disputes being litigated in the Adversary Proceeding. The outcome of all of these disputes is uncertain. In the Adversary Proceeding, although each of the parties is confident in the strength of its respective position, there are multiple unsettled issues of fact and law, as have been previously identified by this Court, which could yield significantly different outcomes to creditors and the estate. *See Omnibus Order re Motions for Summary Judgment on Fraud and Statute of Limitations* [Docket No. 344] dated September 22, 2021; *Order Denying Plaintiff’s Motion for Partial Summary Judgment as to Count I of the First Amended Complaint* [Docket No. 333] dated July 2, 2021 (together, the “Summary Judgment Rulings”). As the Summary Judgment Rulings demonstrate, the amount payable under the Uber Settlement falls well within the likely range of outcomes in the Adversary Proceeding. Likewise, the outcome of the other disputes among the parties remains uncertain. Dischargeability of debts, exemptions, subordination of claims and other matters all remain disputed, and pose risks for each of the parties.

**b. Difficulty in Collecting a Judgment.**

The Debtor does not anticipate any difficulty in recovering from Uber and believes that this factor is neutral.

**c. Complexity and Duration of Litigation**

As discussed in the Summary Judgment Rulings, the issues before the Court in the Adversary Proceeding are factually and legally complex, necessitating a protracted and costly trial. Trial for just Phase I of the claims and defenses in the Adversary Proceeding was scheduled to begin February 14, 2021, and to last ten days, an extraordinary amount of time in the Court’s docket. The parties have put forward witness lists totaling over 20 live witnesses. The exhibit documents are anticipated to number into the tens of thousands of pages. Presenting a trial of this magnitude will require extensive professional time and cost.

Moreover, this Phase I trial would not resolve all of the disputes among the Debtor, Uber and Google. Phase II of the Adversary Proceeding is not yet scheduled for trial. This phase



1 involves a myriad of complex issues as to various claims and defenses concerning the Otto  
2 Transactions.

3 The Debtor, Uber and Google also have other disputes that would not be resolved by the  
4 Adversary Proceeding. For example, Uber and Google contend that their claims against the  
5 Debtor are non-dischargeable. They also contend that various assets that the Debtor declared  
6 exempt should be part of the estate. Google has also asserted that, to the extent any Uber claim  
7 identified in its proof of claim is allowed, that claim should be equitably subordinated to  
8 Google's claim, which Uber disputes.

9 Therefore, entry into the Uber Settlement will maximize value for the estate. It is a  
10 critical component of the Global Settlement, which resolves all disputes among the parties. The  
11 settlement also eliminates the need for the estate to incur what would be significant  
12 professionals' fees to litigate the Phase I trial of the Adversary Proceeding and other proceedings  
13 concerning disputes among the parties. Indeed, the Uber Settlement resolves by far the largest  
14 pending issue in the Chapter 11 Case, namely whether, and to what extent, Uber would be  
15 obligated to indemnify the Debtor for his liability for payment of the Google Claim, and the  
16 Global Settlement resolves the many other disputes among the Debtor's estate, Uber and Google.

17 **d. Interest of Creditors**

18 The terms of the Uber Settlement and the Term Sheet are in the best interest of the  
19 estate and its creditors. Instead of litigating the Adversary Proceeding and potential appeals  
20 therefrom and incurring expenses, Google will receive an immediate payment on account of the  
21 Google Claim, Google and Uber will support the Debtor's Plan, and all three parties will enter  
22 mutual releases, including with certain affiliates of Google. As important, "peace" among these  
23 critical constituencies assures that continued litigation concerning these disputes, and the risk  
24 and expense associated with it, will cease. Thus other creditors will benefit because the Chapter  
25 11 Case can now move forward expeditiously to resolution and payout of claims. In addition, as  
26 a result of Uber releasing its claims against the estate and Google reducing the amount of its  
27 Claims against the estate, all creditors are benefited.

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1 Thus, the Uber Settlement and the Plan Term Sheet are in the best interest of the estate  
2 and its approval by the court satisfies the standard as proscribed by the court in *A&C Properties*.

3 **2. The CLAT Settlement Satisfies the Standards for Approval.**

4 The CLAT Settlement also satisfies *A&C Properties*. There are significant risks to the  
5 CLAT's position that transfers to it in December 2016 are not avoidable. Indeed, litigation over  
6 that issue would be complex and costly. Settling the matter provides for the avoidance of all of  
7 the estate's claims without the need for litigation. No better outcome could be obtained if the  
8 estate were to commence an adversary proceeding to avoid transfers from the CLAT. Moreover,  
9 proceeds from the CLAT Settlement can be used by the estate to pay the mounting  
10 administrative fees. Accordingly, the CLAT Settlement is in the best interests of the estate and  
11 its creditors.

12 **C. The Court Should Approve the Payment to Google**

13 One of the elements in the Global Settlement is the immediate, indefeasible payment of  
14 the Main Uber Payment, in cash, by Uber to Google. Although Google will receive this payment  
15 directly from Uber under the Plan Term Sheet and Global Settlement, other unsecured creditors  
16 will receive *pro rata* recoveries from the estate and the Residual Trust in amounts no lower than  
17 the *pro rata* recovery Google would have received if it were paid by the Debtor. The Parties  
18 believe that the circumstances here support entry of an order authorizing such payment.

19 **1. Payment of Prepetition Debt Under Section 363(b).**

20 Bankruptcy Code section 363(b)(1) provides that a debtor, "after notice and a hearing,  
21 may use . . . other than in the ordinary course of business, property of the estate," and provides  
22 the authority necessary for the proposed payment because "section 363 . . . governs the use of  
23 funds by the debtor in possession while it operates its business after the bankruptcy petition is  
24 filed." 11 U.S.C. § 363(b). Bankruptcy Code section 105(a) provides the bankruptcy court with  
25 the power and authority to carry out the provisions of section 363(b). *See Law Debenture Trust*  
26 *Co. v. Calpine Corp. (In re Calpine Corp.)*, 356 B.R. 585, 594 (S.D.N.Y. 2007) (citing *Official*  
27 *Comm. of Unsecured Creditors of Enron Corp. v. Enron Corp. (In re Enron Corp.)*, 335 B.R. 22,  
28 27 (S.D.N.Y. 2005).

1           The business judgment rule requires a debtor to establish a valid business justification  
2 and good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska  
3 2018); *see also Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re*  
4 *Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999). “Where the debtor  
5 articulates a reasonable basis for its business decisions (as distinct from a decision made  
6 arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s  
7 conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville*  
8 *Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). A debtor’s showing of a sound business  
9 purpose need not be unduly exhaustive but, rather, a debtor is “simply required to justify the  
10 proposed disposition with sound business reasons.” *In re Baldwin United Corp.*, 43 B.R. 888,  
11 906 (Bankr. S.D. Ohio 1984).

12           There is very significant business justification for the payment to Google. This payment  
13 allows the Global Settlement to go forward as it is a condition to all of the other agreements  
14 provided by Google, which are necessary elements of the Global Settlement, including the Plan  
15 Support Agreement which allows for resolution of the Chapter 11 Case. And, as discussed  
16 below, all unsecured creditors are being treated equally under the Plan Term Sheet.

17           Moreover, the structure of the Global Settlement, with the Main Uber Payment being  
18 made to Google and an additional \$2 Million being paid to the estate, allows the Debtor to  
19 address its significant and immediate cash needs. Courts have found it appropriate to use estate  
20 proceeds under section 363(b)(1) to repay a secured creditor outside of a plan where such  
21 payment will stop the “hemorrhaging” of the estate’s cash to pay interest on those secured  
22 obligations. *See, e.g., Calpine*, 356 B.R. at 590, 597 (finding that repayment to secured lenders,  
23 which relieved the estate of unnecessary interest expense, was an appropriate use of cash under  
24 section 363). *See also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989)  
25 (“The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such  
26 payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”).

27           The same logic applies to two settlements involving unsecured claims in the *In TerreStar*  
28 *Corporation* bankruptcy in the Bankruptcy Court for the Southern District of New York, which

1 are instructive here. The first settlement, with Elektrobit Inc. (“Elektrobit”), a prepetition  
2 unsecured creditor, provided for an immediate cash payment. The debtors argued that this  
3 payment was a justifiable use of estate assets under section 363(b) because it would stop the  
4 bleeding of estate assets to pay for the fight with the settlement creditor; it was supported by all  
5 major constituent groups in the case, it was not opposed by any secured creditor; it would ensure  
6 the case moved towards emergence swiftly; Elektrobit would not receive more than other  
7 creditors; and Elektrobit was taking a 50% reduction in its claim. Over the objection of a trade  
8 creditor, the court approved the agreement with the payment to Elektrobit. Case No. 11-10612-  
9 SHL (Bankr. S.D.N.Y. Aug. 24, 2012) [Docket No. 593]. The second settlement, with Sprint  
10 Nextel Corporation, also provided for an immediate cash payment. The court approved this  
11 settlement as well, on the ground that the payment to Sprint increased the likelihood that all  
12 claims would be paid in full. Case No. 11-10612-SHL (Bankr. S.D.N.Y. Dec. 15, 2011) [Docket  
13 No. 299].

14 Under the Indemnification Agreement that is the subject of the Debtor’s Adversary  
15 Proceeding, Uber would be entitled to pay Google directly to resolve Google’s Claim eliminating  
16 any claim that the Debtor or his estate would have against Uber. Accordingly, allowing for the  
17 Main Uber Payment does not prejudice other creditors of the estate. In addition, as a result of the  
18 making of the Main Uber Payment to Google, Google has reduced its claims against the estate.

19 **2. The Payment to Google Is Appropriate Here.**

20 Here, a key provision in the Global Settlement is a direct, indefeasible payment to Google  
21 equal to a substantial portion of the Google Claim, upon approval of this Motion. As in the cases  
22 above, the payment is the key to the resolution of the case. Even without the accrual of interest,  
23 Google has agreed to limit its recovery on the Google Claim; moreover, its commitments and  
24 agreements throughout the Global Settlement clear the way to confirmation of the plan described  
25 in the Plan Term Sheet, as described below.

26 That Plan will provide for an equalizing payment for the remaining creditors of the estate  
27 in the amount of no less than the percentage paid to Google by Uber; if they prefer, they can take  
28 a single, final payment of 50% of such claims. The Debtor’s financial advisor, Paladin, has

1 analyzed the cash that would become available if the Global Settlement is approved and  
2 implemented and determined that the Debtor should have adequate cash to pay all unsecured,  
3 secured and priority claims, as well as unsecured claims as provided under the Plan Trust.<sup>6</sup> See  
4 Declaration of Allen Soong in support of the Motion, Exhibit A.

5 The plan will provide that the Residual Trust, managed by an independent trustee  
6 acceptable to the Debtor and Google, would assemble and liquidate substantially all of the  
7 Debtor's assets, including Litigation Claims. There is no ready alternative for this estate: The  
8 Debtor cannot realistically propose a plan absent resolution of the Adversary Proceeding or the  
9 support of Google (which is not assured absent its support of the Global Settlement). The Debtor  
10 thus believes that the alternatives available to the estate absent approval of the Global Settlement  
11 would result in worse recoveries to Google and his other creditors.

12 **D. The Debtor's Entry Into the Plan Support Agreement Is Appropriate**

13 Sections 363(b) and 105(a) of the Bankruptcy Code also permit the Debtor's entry into  
14 the Plan Support Agreement, and courts routinely approve plan support agreements under these  
15 sections. See, e.g., *In re Pacific Gas and Electric Company*, Case No. 19-30088 (Bankr. N.D.  
16 Cal. Dec. 19, 2019) [Docket No. 5173]; *In re Pacific Gas and Electric Company*, Case No. 01-  
17 30923 (DM) (Bankr. N.D. Cal. Mar. 27, 2002) [Docket No. 5558] (order approving proposed  
18 settlement of approximately \$2 billion in asserted unsecured claims against the debtor as part of  
19 plan support agreement under sections 363(b) and 105(a) of the Bankruptcy Code); *In re TK*  
20 *Holdings Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del. Dec. 13, 2017) [Docket No. 1359]  
21 (order approving postpetition plan support agreement pursuant to sections 363(b) and 105(a) of  
22 the Bankruptcy Code); *In re Energy Future Holdings Corp.*, Case No. 14-10979 (CSS) (Bankr.  
23 D. Del. Sept. 19, 2016) [Docket No. 9584] (order granting debtors' motion pursuant to sections  
24 363(b) and 105(a) of the Bankruptcy Code to enter into and perform under plan support  
25 agreement); *In re Energy Future Holdings Corp.*, Case No. 14-10979 (CSS) (Bankr. D. Del.  
26 Sept. 18, 2015) [Docket No. 6097] (same); *In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr.

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28 <sup>6</sup> The Debtor is consulting with tax professionals regarding how the Uber Main Payment  
will likely be treated for tax purposes and intends to update the Court.

1 S.D.N.Y. Dec. 23, 2009) [Docket No. 1030] (same), *but see In re Residential Capital, LLC*, 2013  
2 Bankr. LEXIS 2601, \*68 (Bankr. S.D.N.Y. June 27, 2013) (discussing cases invalidating plan  
3 support agreements where information was limited and the right to compel performance in lieu  
4 of economic damages risked “harm caused by solicitation without court-approved, adequate  
5 information.”).

6 The Plan Support Agreement assures that the Debtor and Google will work together to  
7 assure a speedy, predictable, and efficient resolution of the Chapter 11 case, while protecting the  
8 interest of other parties in interest, including other creditors.

9 **VI. REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(h)**

10 Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of  
11 property other than cash collateral is stayed until the expiration of 14 days after entry of the  
12 order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Debtor requests that  
13 any order approving the Motion be effective immediately upon entry by providing that the 14-  
14 day stay shall not apply. Immediate implementation of the Global Settlement is in the best  
15 interests of the Debtor and all parties in interest.

16 **VII. NOTICE**

17 Notice of this Motion will be provided to (i) the Office of the United States Trustee for  
18 Region 17 (Attn: Trevor Fehr, Esq.); (ii) the Internal Revenue Service; (iii) the California  
19 Franchise Tax Board; (iv) the office of the United States Attorney for the Northern District of  
20 California; (v) other entities appearing on the Debtor’s creditor matrix; and (vi) those persons  
21 who have formally appeared in this Chapter 11 Case and requested service pursuant to  
22 Bankruptcy Rule 2002. The Debtor respectfully submits that no further notice is required. No  
23 previous request for the relief sought herein has been made by the Debtor to this or any other  
24 Court.

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1           **WHEREFORE**, the Debtor respectfully requests entry of an order granting the relief  
2 requested herein and such other and further relief as the Court may deem just and proper.

3 Dated: February 10, 2022

**KELLER BENVENUTTI KIM LLP**

4 By: /s/ Dara L. Silveira

5 Dara L. Silveira

6 *Attorneys for the Debtor in Possession*

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