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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 IN RE TEZOS SECURITIES LITIGATION

No. 3:17-cv-06779-RS
(Consolidated)

12 This document relates to:

CLASS ACTION

13 ALL ACTIONS

**LEAD PLAINTIFF'S NOTICE OF
MOTION, MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: April 30, 2020
Time: 1:30 p.m.
Courtroom: 3, 17th Floor
Judge: Hon. Richard Seeborg

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1
2 **NOTICE OF MOTION AND MOTION**

3 **TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD**

4 PLEASE TAKE NOTICE that on April 30, 2020 at 1:30 p.m., or as soon thereafter as
5 counsel may be heard before the Honorable Richard Seeborg, United States District Judge, at the
6 United States Courthouse, United States District Court, Northern District of California, 450 Golden
7 Gate Ave., San Francisco, California, Lead Plaintiff Trigon Trading Pty. Ltd. (“Trigon” or “Federal
8 Lead Plaintiff”), and plaintiffs Pumaro LLC, Artiom Frunze, Hayden Hsiung, and Gijs Master
9 (collectively, the “Federal Plaintiffs”), will and do hereby move for an order: (1) preliminarily
10 approving the proposed settlement of this Action; (2) preliminarily certifying a class for purposes of
11 implementing the proposed settlement; (3) approving the form and manner of giving notice of the
12 proposed settlement to the Settlement Class; and (4) scheduling a hearing before the Court to
13 determine whether the proposed settlement, and Lead Counsel’s application for an award of
14 attorneys’ fees and reimbursement of Litigation Expenses, should be granted final approval.
15

16
17 The grounds for this motion are that the proposed settlement is within the range of what could
18 be found to be fair, reasonable, and adequate so that notice of its terms may be disseminated to
19 members of the proposed Settlement Class and a hearing for final approval of the proposed
20 settlement scheduled.

21
22 This motion is supported by the following memorandum of points and authorities in support
23 thereof, and the Stipulation of Settlement (“Settlement Agreement” or “Stipulation”) dated March
24 16, 2020, and exhibits thereto which embody the terms of the proposed settlement between the
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1 parties, submitted herewith, the previous filings and orders in this case, and such other and further
2 representations as may be made by Counsel at any hearing on this matter.¹

3 **STATEMENT OF ISSUES TO BE DECIDED**

4 1. Whether the proposed \$25,000,000 settlement of this Action is within the range of
5 fairness, reasonableness, and adequacy to warrant the Court’s preliminary approval and the
6 dissemination of notice of its terms to members of the proposed Settlement Class.

7
8 2. Whether a Settlement Class should be preliminarily certified for purposes of
9 settlement.

10 3. Whether the proposed form of settlement notice and proof of claim and release form
11 and the manner for dissemination to the Members of the Settlement Class should be approved.

12 4. Whether the Court should set a date for a hearing for final approval of the proposed
13 settlement and the application of Lead Counsel for an award of attorneys’ fees and reimbursement of
14 Litigation Expenses.
15

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. PRELIMINARY STATEMENT**

18 Lead Plaintiff Trigon and Plaintiffs Pumaro LLC, Artiom Frunze, Hayden Hsiung, and Gijs
19 Master respectfully submit this memorandum of points and authorities in support of their motion,
20 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for preliminary approval of the
21 proposed settlement (the “Settlement”) of this class action. The Settlement is made in conjunction
22 with the related State Litigation (as defined herein) involving State Class Plaintiff Andrew Baker
23 (“Baker” or the “State Class Plaintiff”) (together with the Federal Plaintiffs, “Plaintiffs”) and the
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¹ Unless otherwise indicated, capitalized terms shall have their meaning as defined in the
28 Stipulation.

1 same Defendants. This settlement will resolve all pending litigation in the United States involving
2 Defendants.

3 The Settlement, as set forth in the Stipulation of Settlement dated as of March 16, 2020 (the
4 “Settlement Agreement” or “Stipulation”) and filed contemporaneously herewith, provides for the
5 payment of \$25 million in cash for the benefit of the Settlement Class.² Plaintiffs submit that the
6 Settlement represents an excellent result for the Settlement Class and ultimately should be approved
7 by this Court, especially when viewed in light of the substantial challenges the Settlement
8 Class would face in establishing Defendants’ liability, demonstrating the full amount of the
9 Settlement Class’ damages, and actually collecting any amount that may be awarded.
10

11 **A. Statement of Facts**

12 The allegations and claims in this Action are familiar to the Court, and Federal Plaintiffs
13 therefore provide only a brief overview at this preliminary approval stage. Additional details
14 regarding Plaintiffs’ extensive prosecution of this case for over two years—including document
15 discovery from Defendants and third-parties, filing motions to compel, opposing motions to dismiss,
16 and moving for class certification—will be provided in connection with Plaintiffs seeking final
17 approval of the Settlement, in the event the Court grants preliminary approval such that notice of the
18 proposed Settlement may be sent to potential Settlement Class Members, as requested herein.
19
20

21 ² The Settlement Class is defined in the Settlement Agreement as “all persons and entities who,
22 directly or through an intermediary, contributed bitcoin and/or ether to what Plaintiffs describe as the
23 Tezos blockchain ‘Initial Coin Offering’ and what Defendants describe as a fundraiser conducted
24 between July 1, 2017 and July 13, 2017, inclusive. Excluded from the Settlement Class are: (i)
25 Defendants; (ii) members of the immediate family of Arthur Breitman, Kathleen Breitman, Johann
26 Gevers, or Timothy Draper; (iii) any person who was an officer or director of the Foundation, DLS,
27 Draper Associates, or Bitcoin Suisse during the Fundraiser and any members of their immediate
28 families; (iv) any parent, subsidiary, or affiliate of the Foundation, DLS, Draper Associates, or
Bitcoin Suisse; (v) any firm, trust, corporation, or other entity in which any Defendant or any other
excluded person or entity had a controlling interest during the Fundraiser; and (vi) the legal
representatives, agents, affiliates, heirs, successors-in-interest, or assigns of any such excluded
persons or entities. Also excluded from the Settlement Class are those Persons who timely and
validly request exclusion.” Settlement Agreement, at ¶1.28.

1 The fundamental allegation in this case is that for over two weeks in July 2017, Defendants
 2 unlawfully conducted an Initial Coin Offering (ICO)³ for Tezos “tokens” (also referred to as “XTZ”
 3 or “tezzies”) during which investors contributed digital currencies, including Bitcoin and/or
 4 Ethereum, in exchange for Tezos tokens. In the first 15 hours alone, Defendants collected \$109
 5 million worth of Bitcoin and Ethereum from investors. Upon its completion, the Tezos ICO was the
 6 largest in history, with Defendants having collected the equivalent of \$232 million in Bitcoin and
 7 Ethereum (at July 2017 prices). Since the ICO, the value of the contributed Bitcoin and Ethereum
 8 fluctuated significantly and reached a value of more than \$1.52 billion on January 7, 2018.

9 Federal securities laws require any security that is offered or sold to be registered with the
 10 Securities and Exchange Commission (“SEC”). These laws are designed to protect the public by
 11 requiring various disclosures so that investors can better understand the security that is being offered
 12 or sold. Under Section 2(a)(1) of the Securities Act of 1933 (“Securities Act”), a “security” is
 13 defined to include an “investent contract.”⁴

14 **B. Procedural History**

15 **1. The Federal Litigation**

16 This Action was commenced on November 26, 2017. [ECF No. 1.] By Order dated March
 17 16, 2018, the Court consolidated the related actions,⁵ appointed Arman Anvari (“Anvari”) as the lead
 18 plaintiff, and approved LTL Attorneys LLP and Hung G. Ta, Esq. PLLC as Lead Counsel. See Order
 19 Regarding Consolidation, Appointment Of Lead Plaintiff, And Selection Of Lead Counsel [ECF No.
 20 101]. On April 3, 2018, Anvari filed the Consolidated Complaint For Violations Of The Federal
 21

22
 23 ³ An ICO is similar to an initial public offering of stock and is a fundraising mechanism by which
 24 the founders of a “blockchain” project sell “tokens” or “coins” in exchange for cryptocurrencies or
 for fiat currencies (such as U.S. Dollars). ¶¶1-2. All “¶” cites refer to Lead Plaintiffs’ Consolidated
 Complaint For Violations Of The Federal Securities Laws (the “Complaint”). [ECF No. 108.]

25 ⁴ See ¶ 3.

26 ⁵ See *GGCC, LLC v. Dynamic Ledger Sols., Inc.*, Case No. 3:17-cv-06779, United States District
 27 Court, Northern District of California (filed November 26, 2017); *Okusko v. Dynamic Ledger Sols.,*
Inc., Case No. 3:17-cv-06829, United States District Court, Northern District of California (filed
 28 November 28, 2017); and *MacDonald v. Dynamic Ledger Sols., Inc.*, Case No. 3:17-cv-7095, United
 States District Court, Northern District of California (filed December 13, 2017).

1 Securities Laws. See Consolidated Complaint [ECF No. 108]. The Consolidated Complaint asserted
2 claims under §§5 and 12(a)(1) of the Securities Act of 1933 (the “Securities Act”), and under §15 of
3 the Securities Act, on behalf of a class of all investors who contributed digital currencies, including
4 Bitcoin and/or Ethereum, to the Tezos ICO. The named defendants included Defendants Dynamic
5 Ledger Solutions, Inc. (“DLS”), Tezos Stiftung (“Tezos Foundation”), Kathleen and Arthur
6 Breitman (the “Breitmans”), Timothy Cook Draper (“Draper”), Draper Associates V Crypto LLC
7 (“Draper Associates Crypto”), and Bitcoin Suisse AG (“Bitcoin Suisse”).

9 On May 15, 2018, motions to dismiss were filed on behalf of Tezos Stiftung [ECF Nos. 119-
10 122], DLS [ECF Nos. 123-125], the Draper Defendants [ECF No. 117], and Bitcoin Suisse AG [ECF
11 No. 126] arguing that the Complaint failed to state a claim upon which relief could be granted. [ECF
12 Nos. 119-126]. On June 8, 2018, Plaintiffs filed oppositions to the motions [ECF Nos. 131-135], and
13 Defendants filed reply briefs on June 29, 2018 [ECF Nos. 137-140].

15 On August 7, 2018, the Court granted in part and denied in part Defendants’ motions. [ECF
16 No. 148]. The Court’s Order dismissed all claims asserted against Bitcoin Suisse without leave to
17 amend and against the Draper Defendants with leave to amend. The Court’s Order sustained the
18 claims against DLS, the Tezos Foundation, and the Breitmans.

19 On September 6, 2018, the Court entered a Case Management Scheduling Order which set
20 deadlines for, among other things, the class certification briefing and completion of discovery. [ECF
21 No. 165]. Defendants answered the Complaint on September 14, 2018 [ECF Nos. 168-171].

23 On January 23, 2019, Plaintiffs Artiom Frunze and Pumaro LLC filed a motion for class
24 certification, [ECF Nos. 193-195]. Shortly thereafter, on January 25, 2019, Anvari sought to
25 withdraw as lead plaintiff, and to substitute in his place named plaintiff Artiom Frunze. [ECF No.
26 196]. Class member Trigon Trading Pty. Ltd. opposed the motion, and instead sought to appoint
27 itself lead plaintiff in a competing motion. [ECF No. 198]. The Court granted the motion to withdraw
28

1 Anvari as lead plaintiff, denied the motion to substitute Anvari with Frunze as lead plaintiff, and
2 granted the motion to substitute Trigon as lead plaintiff. The Court also ordered that Trigon’s counsel
3 Block & Leviton LLP and Anvari’s counsel Hung G. Ta, Esq. PLLC serve as co-lead counsel going
4 forward and denied the pending class certification motion without prejudice. [ECF No. 213].
5

6 The Court’s August 7, 2018 Order denying in part Defendants’ motion to dismiss the
7 Complaint lifted the mandatory discovery stay imposed pursuant to the Private Securities Litigation
8 Reform Act of 1995 (“PSLRA”), and lead plaintiff Anvari (and later Trigon) commenced discovery.
9 Over the course of the litigation, Federal Plaintiffs’ discovery efforts included, among other things:
10 (1) serving and responding to multiple document requests, interrogatories and requests for
11 admissions; (2) issuing document subpoenas to third parties; (3) reviewing and analyzing documents
12 received from Defendants and non-parties; (4) preparing Plaintiffs Anvari, Pumaro LLC, and Frunze
13 for deposition and attending their depositions; (5) preparing and filing multiple motions concerning
14 the parties’ discovery disputes [ECF Nos. 219; 222; 231; 235; 237]; (6) negotiating a Stipulated
15 Protective Order and subsequent amendments [ECF Nos. 177-178; 217; 224-225; 228-230]; (7)
16 engaging in multiple in-person and telephonic meet and confer conferences with Defendants; and (8)
17 preparing a Freedom of Information Act request to the SEC for documents pertaining to the Tezos
18 ICO.
19

20 From August 2018 through October 2019, the parties engaged in a comprehensive fact
21 discovery process. Following a November 22, 2019 mediation, the parties reached an agreement-in-
22 principle to settle the case.
23

24 **2. The State Litigation**

25 The State Litigation began with a complaint filed by Andrew Baker in San Francisco
26 Superior Court on October 25, 2017, also alleging that the ICO constituted an offering of
27 unregistered securities. *Baker v. Dynamic Ledger Solutions, Inc. et al.*, Superior Court of California,
28

1 County Francisco, Case No. CGC-17562144. Defendants removed the case to the U.S. District Court
2 for the Northern District of California where it was ultimately assigned to this Court, prior to
3 consolidation. *GGCC, LLC v. Dynamic Ledger Solutions, Inc.*, No. 17-cv-06779-RS, 2018 WL
4 1388488, at *1 (N.D. Cal. Mar. 16, 2018). Baker moved to remand the case to California state court.
5

6 While the motion to dismiss in the federal case was pending, this Court remanded Baker's
7 complaint to San Francisco Superior Court on April 1, 2018 following the Supreme Court's ruling in
8 *Cyan*, a case that clarified that federal securities cases could be heard in state courts.

9 Baker then filed a First Amended Complaint which, like the federal case, asserted violations
10 of Sections 5 and 12(a)(1) of the Securities Act, as well as a claim for control person liability under
11 Section 15 of the Securities Act against the same defendants. Baker also began serving discovery
12 requests on DLS.
13

14 After the *Cyan* decision, Trigon also filed a new action in San Mateo Superior Court on April
15 24, 2018 asserting the same securities law claims (violation of Sections 5 and 12(a)(1) of the
16 Securities Act) on behalf of the same class. *Trigon Trading Pty. Ltd., et al. v. Dynamic Ledger
17 Solutions, Inc., et al.*, Superior Court of California, County of San Mateo, Case No. 18CIV02045.
18 DLS and the Draper Defendants moved to stay both the *Baker* and *Trigon* actions, and the courts in
19 both cases stayed the case pending the resolution of a coordination petition filed by Trigon. On
20 August 16, 2018, the Judicial Council ordered the *Baker* and *Trigon* actions coordinated, after which
21 the two actions proceeded in a coordinated manner ("State Coordinated Proceeding"). After the first
22 status conference in the State Coordinated Proceeding held on October 22, 2018, the parties
23 negotiated a protective order and ESI protocol.
24

25 Following its lead plaintiff appointment in the instant federal action, Trigon requested
26 dismissal without prejudice from the State Coordinated Proceeding on June 25, 2019, which the
27 court granted on June 26, 2019. Thereafter, and after multiple rounds of demurrer briefing, a
28

1 renewed motion to stay, and briefing regarding jurisdiction and service of process on the Tezos
2 Foundation, the parties in the State Coordinated Proceeding joined the federal case parties in the
3 November 22, 2019 mediation and likewise reached an agreement-in-principle to settle the case.

4 **C. Settlement Negotiations**

5 Throughout this Action, the parties engaged in arm's length settlement discussions. On
6 December 14, 2018, the parties conducted the first mediation in San Francisco, California with Eric
7 Green acting as the mediator. The mediation was unsuccessful.

9 On November 22, 2019, the parties conducted a second mediation in New York with the
10 assistance of the Hon. Layn Phillips, a former United States District Judge and a well-regarded
11 private mediator with Phillips ADR Enterprises ("Phillips ADR"), who has considerable knowledge
12 and expertise in the field of federal securities law.⁶ Prior to this mediation session, Plaintiffs and
13 Defendants exchanged lengthy mediation statements on the salient factual and legal issues expected
14 to arise during the discussions. During the full-day session, the parties presented their respective
15 legal positions in the case, and submitted liability and damages figures and analyses.

17 During these discussions, the parties discussed damages and the definition and scope of the
18 class, among other things. Ultimately, the parties reached an agreement-in-principle that led to this
19 Settlement. The entire process involved significant disputed issues, and even after an agreement-in-
20 principle had been reached, negotiations about specific terms of the settlement agreement continued.

21
22
23 ⁶ According to the Phillips ADR website, for the last decade, Judge Phillips has presided over
24 cases that have collectively resulted in several billion dollars in settlements annually. As a judge, he
25 presided over more than 140 trials in Oklahoma, New Mexico, and Texas. He also sat by designation
26 on the United States Court of Appeals for the Tenth Circuit in Denver, Colorado, where he
27 participated in numerous panel decisions and published opinions. As a result of his trial work, Judge
28 Phillips was elected into the American College of Trial Lawyers. He has the dual honor of being
named by LawDragon Magazine as one of the "Leading Judges in America" and as one of the
"Leading Litigation Attorneys in America." In August 2016, Judge Phillips was named as one of the
top seven mediators in the United States of America by Chambers and Partners. [see
<http://www.phillipsadr.com/bios/layn-phillips/>].

1 **II. THE PROPOSED SETTLEMENT**

2 **A. Settlement Consideration**

3 The Settlement provides that the Tezos Foundation will pay \$25 million in cash into an
4 Escrow Account for the benefit of the Settlement Class. This Settlement consideration, after the
5 deduction of any attorneys’ fees and Litigation Expenses provided for in the Settlement Agreement
6 or approved by the Court and less Notice and Administration Expenses, Taxes and Tax Expenses,
7 and other Court-approved deductions (the “Net Settlement Fund”), will be distributed among
8 Settlement Class Members who submit timely and valid Proof of Claim and Release Forms
9 (“Authorized Claimants”), in accordance with the Plan of Allocation set forth in the Notice.
10

11 Plaintiffs believe that the proposed Settlement is an excellent recovery on the claims asserted
12 in this Action, and is in all respects fair, adequate, reasonable, and in the best interests of the
13 Settlement Class.

14 **B. Plan of Allocation**

15 Under the Plan of Allocation, the Claims Administrator, selected by Plaintiffs for Court
16 approval after a rigorous competitive proposal process, will calculate each Authorized Claimant’s
17 claim amount based on the information supplied in each Person’s Proof of Claim and Release. The
18 Net Settlement Fund will be allocated *pro rata* based on the amount of each Authorized Claimant’s
19 Recognized Claim as calculated by the Claims Administrator under the Plan of Allocation.
20

21 The structure of the Plan of Allocation, which is appended in full to the Notice, allows for the
22 equitable distribution of the Net Settlement Fund to those Settlement Class Members who suffered
23 economic losses as a result of the alleged violations of the federal securities laws. The Plan of
24 Allocation allocates the Net Settlement Fund to Settlement Class Members on a *pro rata* basis after
25 determining the Settlement Class Members’ Recognized Loss Amounts (based primarily on the
26 difference in the genesis block XTZ price at the time of purchase or acquisition and at the time of
27
28

1 sale). The Plan of Allocation also takes into consideration the form of payment that an Authorized
 2 Claimant used to purchase his/her/its XTZ tokens (i.e., Bitcoin or Ethereum), and, if the claimant
 3 sold the tokens, when the tokens were sold. The Plan of Allocation was determined with the
 4 assistance of Plaintiffs' expert, Chad Coffman, of Global Economics Group. Plaintiffs submit that
 5 the Plan is fair and reasonable and should be approved together with the Settlement at the Settlement
 6 Hearing.
 7

8 III. ARGUMENT

9 A. The Court Should Grant Preliminary Approval of The Proposed Settlement

10 Strong judicial policy favors settlement of class actions. *Class Plaintiffs v. City of Seattle*,
 11 955 F.2d 1268, 1276 (9th Cir. 1992); *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir.
 12 1998); *West v. Circle K Stores, Inc.*, No. S-04-0438 WBS GGH, 2006 WL 1652598, at *1 (E.D. Cal.
 13 June 13, 2006). Settlements of complex cases greatly contribute to the efficient utilization of scarce
 14 judicial resources and achieve the speedy resolution of justice.

15 A motion seeking preliminary approval of a settlement agreement in a putative class action
 16 may be granted if, “[1] the proposed settlement appears to be the product of serious, informed,
 17 noncollusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential
 18 treatment to class representatives or segments of the class, and [4] falls within the range of possible
 19 approval” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citing
 20 *Manual for Complex Litigation*, Second § 30.44 (1985)).⁷ Because some of the factors bearing on the
 21 propriety of a settlement cannot be assessed prior to the final approval hearing, “a full fairness
 22 analysis is unnecessary at this stage.” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008).
 23 Applying these standards, the Settlement should be preliminarily approved.
 24

25 ⁷ See also *Fraley v. Facebook, Inc.*, No. CV-11-01726 RS, 2012 WL 6013427, at * 1 (N.D. Cal.
 26 Dec. 3, 2012) (granting preliminary approval after finding proposed settlement was non-collusive,
 27 had no obvious defects, and was within the range of possible settlement approval); *Satchell v.*
 28 *Federal Express Corp.*, Nos. C 03-2659 SI, C 03-2878 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr.
 13, 2007) (same).

1 **1. The Proposed Settlement Is The Product Of Good Faith, Arm’s Length**
2 **Negotiations Among Experienced Counsel Mediated By An Experienced Private**
3 **Mediator**

4 “The involvement of experienced class action counsel and the fact that the settlement
5 agreement was reached in arm’s length negotiations, after relevant discovery had taken place creates
6 a presumption that the agreement is fair.” *Linney v. Cellular Alaska P’ship*, No. C-96-3008 DLJ,
7 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997). The procedural history of this Action, as
8 summarized above, clearly reflects an adversarial and contentious relationship among the parties.
9 This Action was filed more than two years ago, and the parties have engaged in vigorous litigation
10 since then, involving extensive motion practice by the parties and comprehensive fact discovery. The
11 Settlement was reached only after a burdensome process of analyzing the evidence and contesting
12 pertinent legal issues.

13 There were numerous issues in this Action that caused the parties to have different views of
14 the settlement value of this case. These issues included: (1) whether the Tezos tokens are securities;
15 (2) whether investors were bound by the so-called “Contribution Terms”; (3) whether Defendants are
16 “sellers” under Section 12(a)(1); (4) whether the Breitmans are controlling persons under Section 15;
17 and (5) whether the Securities Act applies under *Morrison*.

18 The mediation process also demonstrates that the Settlement was hard-fought and negotiated
19 at arm’s-length. The fact that the initial mediation session was unsuccessful, and required further
20 negotiations, supports an inference that the Settlement was the product of arm’s-length negotiations.
21 *See, e.g., Hicks v. Morgan Stanley*, No. 01 CIV. 10071 (RJH), 2005 WL 2757792, at *5 (S.D.N.Y.
22 Oct. 24, 2005) (“A breakdown in settlement negotiations can tend to display the negotiation’s arms-
23 length and non-collusive nature.”) (citation omitted). Both the first and second mediations were
24 conducted by an experienced mediator. As courts in this district and elsewhere have found, “[t]he
25 assistance of an experienced mediator in the settlement process confirms that the settlement is non-
26 collusive.” *Satchell*, 2007 WL 1114010, at *4; *see also In re Indep. Energy Holdings PLC Sec.*
27 *Litig.*, No. 00 CIV. 6689 (SAS), 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) (“the fact that
28 the Settlement was reached after exhaustive arm’s-length negotiations, with the assistance of a

1 private mediator experienced in complex litigation, is further proof that it is fair and reasonable”)
2 (citation omitted).

3 During each of the mediations and follow-up, the parties fully explored the strengths and
4 weaknesses of their respective claims and defenses, as well as the benefits of settlement.
5 Negotiations focused on the highly complex and heavily disputed issues of class size and the proper
6 measure of damages, if any. Estimates of total damages presented by the parties during mediation
7 discussions ranged from less than \$1 million to over \$150 million US dollars. Throughout this
8 process, Plaintiffs were actively involved and informed of the negotiations.

9 Courts have given considerable weight to the opinion of experienced and informed counsel
10 who support settlement. In deciding whether to approve a proposed settlement of a class action,
11 “[t]he recommendations of plaintiffs’ counsel should be given a presumption of reasonableness.” *In*
12 *re OmniVision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (citation omitted). In
13 *OmniVision*, the court held that the recommendation of counsel weighed in favor of settlement given
14 their familiarity with the dispute and their significant experience in securities litigation. *Id.*; *see also*
15 *Int’l Brotherhood of Elec. Workers Local 697 Pension Fund v. Int’l Game Tech., Inc.*, No. 3:09-cv-
16 00419-MMD-WGC, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012); *Fernandez v. Victoria Secret*
17 *Stores, LLC*, No. CV 06-04149 MMM (SHx), 2008 WL 8150856, at *7 (C.D. Cal. July 21, 2008).
18 Lead Counsel likewise has a thorough understanding of the merits of the Action and extensive
19 experience in securities litigation. Lead Counsels’ (and Plaintiffs’) recommendation as to the fairness
20 and reasonableness of this Settlement warrants a presumption of reasonableness.

21 **2. The Proposed Settlement Has No Obvious Deficiencies And Does Not Improperly**
22 **Grant Preferential Treatment To Class Representatives Or Segments Of The**
Settlement Class

23 The Settlement “has no obvious deficiencies [and] does not improperly grant preferential
24 treatment to class representatives or segments of the class[.]” *Young v. Polo Retail, LLC*, No. C-02-
25 4546 VRW, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006) (citation omitted). As discussed
26 above, the \$25,000,000 recovery constitutes a significant and certain benefit for Settlement Class
27
28

1 Members. Plaintiffs will receive a distribution from the Net Settlement Fund in accordance with the
2 Plan of Allocation in the same manner as distributions to all other Settlement Class Members, and
3 may also seek reimbursement of their costs and expenses for service as Plaintiffs for the benefit of
4 the Settlement Class, as authorized by the PSLRA. Subject to the approval of the Court, and pursuant
5 to approval of the Federal Plaintiffs, Federal and State Lead Counsel expect to apply to the Court for
6 an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed one-third of the
7 Settlement Fund, or \$8,333,333. In addition, Lead Counsel will seek payment in an amount not to
8 exceed \$300,000 for Litigation Expenses reasonably incurred while prosecuting this action.

9
10 In sum, nothing in the course of the settlement negotiations or the terms of the Settlement
11 itself evidence grounds to doubt its fairness. Rather, the substantial recovery to the Settlement Class,
12 the arm's-length nature of the negotiations, and the participation of sophisticated counsel throughout
13 the Action support a finding that the proposed Settlement is sufficiently fair, reasonable, and
14 adequate to justify notice to the Settlement Class and a hearing on final approval. Federal Plaintiffs
15 respectfully request preliminary approval of the Settlement.
16

17 **3. The Proposed Settlement Falls Well Within The Range Of Reasonableness And**
18 **Warrants Notice And A Hearing On Final Approval**

19 “[A]t this preliminary approval stage, the court need only ‘determine whether the proposed
20 settlement is within the range of possible approval.’” *West*, 2006 WL 1652598, at *11 (citation
21 omitted). Federal Plaintiffs believe that the proposed \$25,000,000 Settlement is an excellent result
22 for the Settlement Class in light of all of the risks of continued litigation, and falls well within a
23 range of what is considered fair, reasonable, and adequate.

24 In considering whether to enter into the Settlement, Plaintiffs, represented by counsel
25 experienced in securities litigation, took into particular account the risks inherent in establishing all
26 of the elements of their claims under the federal securities laws, including in particular recoverable
27
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1 damages, as well as the expense and likely duration of the Action. *See Churchill Vill., L.L.C. v. Gen.*
2 *Elec.*, 361 F.3d 566, 576 (9th Cir. 2004) (citing risk, expense, complexity, and likely duration of
3 further litigation as factors supporting final approval of settlement); *see also In re Portal Software,*
4 *Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 1991529, at *6 (N.D. Cal. June 30, 2007) (“Based
5 on the risk of summary judgment, which defendants had filed before settlement, . . . and the
6 anticipated expense and complexity of further litigation, the court cannot say that the proposed
7 settlement is obviously deficient or is not ‘within the range of possible approval.’”) (citation
8 omitted).

9
10 Plaintiffs agreed to settle this Action on these terms based on its careful investigation and
11 evaluation of the facts and law relating to the allegations in the Complaint and consideration of the
12 facts noted and views expressed by the mediator, Judge Phillips, and Defendants during the
13 settlement negotiations. *See Louie v. Kaiser Found. Health Plan, Inc.*, No. 08-cv-0795 IEG RBB,
14 2008 WL 4473183, at *6 (S.D. Cal. Oct. 6, 2008) (“Class counsels’ extensive investigation,
15 discovery, and research weighs in favor of preliminary settlement approval.”); *In re Immune*
16 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1173 (S.D. Cal. 2007) (“There is no evidence to suggest
17 that the settlement amount is not fair and reasonable. Plaintiffs contend that the Parties engaged in
18 lengthy settlement discussions before two retired judges. Accordingly, the settlement is presumed to
19 be fair.”).

20
21
22 In particular, Plaintiffs were aware that Defendants would argue, for instance, that the
23 transactions at issue did not involve “securities” as defined under the federal securities laws, and that
24 such transactions were otherwise exempt from registration. Plaintiffs were also aware that the value
25 of the blockchain assets at issue could rapidly fluctuate. Thus, Plaintiffs knew that, even if they were
26 successful, even after trial and appeals, they might actually recover substantially less than the amount
27 obtained in this Settlement for the benefit of the Settlement Class.
28

1 Plaintiffs also took into consideration the immediate cash benefits to Settlement Class
2 Members, the desirability of providing certain and effective relief to Settlement Class Members now,
3 the attendant risks of continuing with complex litigation, and the uncertainty inherent in establishing
4 Defendants' liability and collecting any judgment. Indeed, the risk, expense, complexity and likely
5 duration of further litigation, strongly favor settlement because further litigation would entail
6 substantial risk to the Settlement Class of recovering nothing. There is no doubt that both sides
7 would have to present dense and nuanced information, including in the context of a "battle of the
8 experts." Experts would be required to opine as to the workings of blockchains, accounting issues,
9 causation, and damages.
10

11 Additionally, as the Tezos Foundation is based in Switzerland, preparing this case for trial
12 would require Plaintiffs to conduct substantial discovery at great expense and under foreign
13 procedures. The results of the trial would almost certainly not end the Action, as one side would
14 likely appeal, and it is quite possible that both sides would do so in the event that the jury found for
15 the Settlement Class but awarded substantially less than the damages sought. Absent a settlement,
16 Settlement Class Members would have to wait substantially longer before they obtained any relief,
17 even assuming Plaintiffs were successful and overcame every obstacle.
18

19 Plaintiffs, having considered the myriad risks of continued litigation, respectfully submit that
20 if the Court preliminarily approves the Settlement, the Court ultimately will find that the Settlement
21 is fair, reasonable, and adequate and is deserving of final approval.
22

23 **B. The Proposed Settlement Meets The Requirements of Fed. R. Civ. P. 23(e)(2)**

24 Under Fed. R. Civ. P. 23(e)(2), a proposed settlement should be approved only after the Court
25 considers whether (A) the class representatives and class counsel have adequately represented the
26 class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is
27
28

1 adequate; and (D) the proposal treats class members equitably relative to each other. Each element is
2 met here.

3 First, the class has been represented adequately pursuant to Fed. R. Civ. P. 23(e)(2)(A). As
4 explained in detail in Section III.C.4, Federal Plaintiffs and Lead Plaintiff have adequately
5 represented the class by, among other things, reviewing the Complaint, participating in discussions
6 with Co-Lead Counsel; supervising and monitoring court proceedings; providing input as to strategy;
7 sitting for depositions; and participating in discussions about the resolution of this Action. Co-Lead
8 Counsel have also adequately represented the class in the prosecution of this action, as described in
9 detail below.

10 Second, as required by Fed. R. Civ. P. 23(e)(2)(B), and as explained in detail in Section I.C,
11 the resolution of this Action was reached at arm's length, including through two mediations,
12 including the ultimately successful mediation with Hon. Layn Phillips on November 22, 2019. *See*
13 *Hicks*, 2005 WL 2757792, at *5; *Indep. Energy*, 2003 WL 22244676, at *4.

14 Third, the relief provided to the class is adequate under the factors described in Fed. R. Civ.
15 P. 23(e)(2)(C)(i)-(iii): (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any
16 proposed method of processing class-member claims; and (iii) the terms of any proposed award of
17 attorney's fees, including timing of payment.

18 For the reasons described in Section III.A.3, the considerations involved in determining to
19 settle this case took into account the potential costs, risks, and delays associated with trial and
20 appeal.

21 The payment of claims is also effective. Given the online nature of the claims in this case,
22 payments will be made not only by paper check, but also by wire transfer (including international
23 wire transfer) or through PayPal payment. *See* Settlement Agreement, Ex. A-2 (Claim Form at 4).

24 Lead Counsel is asking for an award of attorneys' fees not to exceed one-third of the
25 Settlement Amount. This request will be detailed in the Final Approval briefing. No attorneys' fees
26 will be paid until the Court executes the Judgment and an order awarding such fees. *See* Stipulation
27 ¶ 7.2. The Ninth Circuit and numerous district courts have awarded fees of one-third of the

1 settlement in complex class action cases. *Morris v. Lifescan, Inc.*, 54 F. App'x 663, 664 (9th Cir.
2 2003) (affirming attorneys' fee award of 33% of a \$14.8 million cash settlement in consumer class
3 action); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming a fee award of one-
4 third of a \$12 million settlement fund in derivative and securities class actions); *In re Banc of Cal.*
5 *Sec. Litig.*, No. SA CV 17-118-DMG (DFMx), 2020 WL 1283486, at *1 (C.D. Cal. Mar. 16, 2020)
6 (awarding 33% of \$19.75 million settlement fund in securities class action); *Cheng Jiangchen v.*
7 *Rentech, Inc.*, No. CV 17-1490-GW-FFMx, 2019 WL 6001562, at *1 (C.D. Cal. Nov. 8, 2019)
8 (approving 33.3% fee award on settlement of \$2.05 million in securities class action); *In re K12 Inc.*
9 *Sec. Litig.*, No. 4:16-cv-04069-PJH, 2019 WL 3766420, at *1 (N.D. Cal. July 10, 2019) (approving
10 33% fee award on settlement of \$3.5 million in securities class action); *Tawfilis v. Allergan, Inc.*, No.
11 8:15-cv-00307-JLS-JCG, 2018 WL 4849716, at *7 (C.D. Cal. Aug. 27, 2018) (awarding one-third of
12 \$13.45 million settlement fund in antitrust class action); *In re Audioeye, Inc., Sec. Litig.*, No. CV-15-
13 00163-TUC-DCB, 2017 WL 5514690, at *4 (D. Ariz. May 8, 2017) (approving 33.3% fee award on
14 settlement of \$1.525 million in securities class action); *Boyd v. Bank of Am. Corp.*, No. SACV 13-
15 0561-DOC (JPRx), 2014 WL 6473804, at *10 (C.D. Cal. Nov. 18, 2014) (awarding one-third of
16 \$5,800,000 in FLSA case); *In re Heritage Bond Litig.*, No. CV 01-5752 DT (RCX), 2005 WL
17 1594389, at *9 (C.D. Cal. June 10, 2005) (awarding one-third of a \$27.78 million settlement fund in
18 securities class action). Each of these factors supports a finding that the relief provided to the class is
19 adequate.

20 Finally, Rule 23(e)(2)(C)(iv) asks the Court to consider the fairness of the proposed
21 Settlement in light of any agreement required to be identified under Rule 23(e)(3). Here, the Parties
22 have entered into one fully disclosed agreement that: "If Persons who would otherwise be Settlement
23 Class Members have timely requested exclusion from this Settlement in accordance with the Notice,
24 the Foundation shall have the option to terminate the Settlement in the event that Settlement Class
25 Members representing more than 5% of all XTZ tokens allocated in the Tezos genesis block (i.e.
26 38,000,000 of XTZ tokens) exclude themselves from the Class." See Stipulation ¶ 8.4. This
27 agreement is fully disclosed as part of the notice materials. See Notice at 18. The public disclosure of
28

1 this provision complies with the Court’s Order in *In re OCZ Technology Group, Inc. Sec. Litig.*, No.
 2 12-cv-05265-RS (N.D. Cal. Arp. 9, 2015) (ECF No. 96 at 2) (citing *In re Chiron Corp. Sec. Litig.*,
 3 2007 WL 4249902, at *9-11 (N.D. Cal. Nov. 30, 2007).

4 **C. The Proposed Settlement Class Also Meets The Prerequisites For Class Certification**
 5 **Under Rule 23**

6 The Ninth Circuit has long recognized that class actions may be certified for the purpose of
 7 settlement only. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998). Rule 23(a) sets forth the
 8 following four prerequisites to class certification: (i) numerosity, (ii) commonality, (iii) typicality,
 9 and (iv) adequacy of representation. In addition, the class must meet one of the three requirements of
 10 Rule 23(b). *See* Fed. R. Civ. P. 23; *In re UTStarcom, Inc. Sec. Litig.*, No. C 04- 04908 JW, 2010 WL
 11 1945737, at *9 (N.D. Cal. May 12, 2010).

12 The proposed Settlement Class is defined in the Stipulation:

13 All persons and entities who, directly or through an intermediary, contributed bitcoin
 14 and/or ether to what Plaintiffs describe as the Tezos blockchain “Initial Coin Offering”
 15 and what Defendants describe as a fundraiser conducted between July 1, 2017 and July
 16 13, 2017, inclusive. Excluded from the Settlement Class are: (i) Defendants; (ii)
 17 members of the immediate family of Arthur Breitman, Kathleen Breitman, Johann
 18 Gevers, or Timothy Draper; (iii) any person who was an officer or director of the
 19 Foundation, DLS, Draper Associates, or Bitcoin Suisse during the Fundraiser and any
 20 members of their immediate families; (iv) any parent, subsidiary, or affiliate of the
 21 Foundation, DLS, Draper Associates, or Bitcoin Suisse; (v) any firm, trust, corporation,
 or other entity in which any Defendant or any other excluded person or entity had a
 controlling interest during the Fundraiser; and (vi) the legal representatives, agents,
 affiliates, heirs, successors-in-interest, or assigns of any such excluded persons or
 entities. Also excluded from the Settlement Class are those Persons who timely and
 validly request exclusion.

22 *See* Stipulation ¶ 1.28.

23 Courts routinely endorse the use of the class action device to resolve claims brought under
 24 the federal securities laws. *See, e.g., Hodges v. Akeena Solar Inc.*, 274 F.R.D. 259, 266 (N.D. Cal.
 25 2011); *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 642 (C.D. Cal. 2009). “[C]lass actions
 26 commonly arise in securities fraud cases as the claims of separate investors are often too small to
 27

1 justify individual lawsuits, making class actions the only efficient deterrent against securities fraud.
2 Accordingly, the Ninth Circuit and courts in this district hold a liberal view of class actions in
3 securities litigation.” *In re Adobe Sys., Inc. Sec. Litig.*, 139 F.R.D. 150, 152-53 (N.D. Cal. 1991)
4 (citations omitted); *see also In re Seagate Tech. II Sec. Litig.*, 843 F. Supp. 1341, 1350 (N.D. Cal.
5 1994) (same). This Action is no exception, and Federal Plaintiffs submit that the proposed Settlement
6 Class satisfies each of the requirements of Rules 23(a) and 23(b)(3).

8 1. Numerosity

9 Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is
10 impracticable. The Ninth Circuit has stated that “‘impracticability’ does not mean ‘impossibility,’ but
11 only the difficulty or inconvenience of joining all members of the class.” *Harris v. Palm Springs*
12 *Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (citation omitted). Indeed, classes
13 consisting of 25 members have been held to be large enough to justify certification. *See Perez-Funez*
14 *v. Dist. Director, I.N.S.*, 611 F. Supp. 990, 995 (C.D. Cal. 1984); *see also Welling v. Alexy*, 155
15 F.R.D. 654, 656 (N.D. Cal. 1994) (no set number cut-off for numerosity). Additionally, the exact size
16 of the class need not be known so long as general knowledge and common sense indicate that the
17 class is large. *Welling*, 155 F.R.D. at 656; *see also Schwartz v. Harp*, 108 F.R.D. 279, 281-282 (C.D.
18 Cal. 1985) (“A failure to state the exact number in the proposed class does not defeat class
19 certification, and plaintiff’s allegations plainly suffice to meet the numerosity requirement of Rule
20 23.”) (citations omitted).

21
22
23 In this case, there were 30,317 investors (or wallets that were funded) in the Tezos ICO
24 during the two-week period in July 2017. ¶¶ 78, 131. A class of this size is sufficiently numerous to
25 make individual joinder impracticable. *See UTStarcom*, 2010 WL 1945737, at *4; *Yamner v. Boich*,
26 No. C-92-20597 RPA, 1994 WL 514035, at *3 (N.D. Cal. Sept. 15, 1994). Thus, the numerosity
27 element is satisfied.
28

1 **2. Commonality**

2 Rule 23(a)(2) is satisfied where the proposed class representatives share at least one question
3 of fact or law with the claims of the prospective class. *Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644
4 (N.D. Cal. 1987). Further, commonality exists even if there are varying fact situations among
5 individual members of the class so long as the claims of the plaintiffs and other class members are
6 based on the same legal or remedial theory. *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975).
7

8 The common questions of fact and law include: (a) Whether the offer of the Tezos tokens
9 through the Tezos ICO constituted the offer and sale of “securities”; (b) Whether Defendants were
10 required to file a registration statement for the Tezos ICO; (c) Whether Defendants are sellers under
11 Section 12(a)(1) of the Securities Act; (d) Whether the Breitmans are “controlling persons” under the
12 Securities Act; and (e) Whether Plaintiffs and the Class are entitled to rescission, or damages, and the
13 proper calculation and amount of those damages.
14

15 Each of these questions focuses on Defendants’ conduct and their Class-wide impact, making
16 the core factual and legal issues subject to common proof. *Portal*, 2007 WL 1991529, at *3
17 (commonality found where “[a]ll class members’ claims share[d] ... common questions of law and
18 fact”); *Basile v. Valeant Pharm. Int’l., Inc.*, No. SACV 14-2004-DOC (KES), 2017 WL 3641591, at
19 *11 (C.D. Cal. Mar. 15, 2017). The commonality requirement is therefore satisfied.
20

21 **3. Typicality**

22 The typicality requirement of Rule 23(a)(3) is satisfied when the claims or defenses of the
23 party or parties representing the class are typical of the claims or defenses of the other class
24 members. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997) (common-issues test
25 readily met in securities cases). However, differences in the amount of damage, the size or manner of
26 purchase, the nature of the purchaser, and the date of purchase are insufficient to defeat class
27 certification. *See Alfus v. Pyramid Tech. Corp.*, 764 F. Supp. 598, 606 (N.D. Cal. 1991). In other
28

1 words, typicality exists “even where factual distinctions exist between the claims of the named
2 representative and the other class members.” *Danis v. USN Commc’ns, Inc.*, 189 F.R.D. 391, 395-97
3 (N.D. Ill. 1999); *see also West*, 2006 WL 1652598, at *5.

4 Here, the claims of Federal Plaintiffs arise from the same events or course of conduct that
5 give rise to claims of other Settlement Class Members, and the claims asserted are based on the same
6 legal theory. *See UTStarcom*, 2010 WL 1945737, at *5 (explaining that the test for typicality is
7 “whether ‘other members have the same or similar injury, whether the action is based on conduct
8 which is not unique to the named plaintiffs, and whether other class members have been injured by
9 the same course of conduct’”) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.
10 1992)). Indeed, this case satisfies the Rule 23(a)(3) typicality requirement because the claims of all
11 Settlement Class Members derive from the same legal theories and allege the same set of operative
12 facts. Federal Plaintiffs’ claims, like the claims of the rest of the Class, are all based on Defendants’
13 sale of unregistered securities, and Plaintiffs’ purchases of Tezos tokens, in the July 2017 Tezos ICO.
14 The legal and factual arguments that Plaintiffs advance regarding Defendants’ liability are the same
15 as the arguments that other Class members would advance in support of their claims. Thus, the
16 typicality requirement is satisfied.

17 Further, the proof that Federal Plaintiffs would present to establish their claims also would
18 prove the claims of the rest of the Settlement Class. Additionally, Plaintiffs are not subject to any
19 unique defenses that could make them atypical members of the prospective Settlement Class.
20 Therefore, Lead Counsel respectfully submit that this Court should find that Plaintiffs’ claims are
21 typical of the claims of the Settlement Class. *See Akeena Solar*, 274 F.R.D. at 266-67; *Cooper*, 254
22 F.R.D. at 635-36.
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1 **4. Adequacy**

2 The representative parties must satisfy Rule 23(a)'s adequacy requirement by showing that
3 they will fairly and adequately protect the interests of the Settlement Class. To satisfy this
4 requirement, the proposed class representative must be free of interests that are antagonistic to the
5 other members of the class, and counsel representing the class must be qualified, experienced and
6 capable of conducting the litigation. *See Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512
7 (9th Cir. 1978); *Hanlon*, 150 F.3d at 1020. In the Ninth Circuit, resolution of "two questions"
8 determines legal adequacy: "(1) do the named plaintiffs and their counsel have any conflicts of
9 interest with other class members and (2) will the named plaintiffs and their counsel prosecute the
10 action vigorously on behalf of the class?" *In re LendingClub Sec. Litig.*, 282 F. Supp. 3d 1171, 1182
11 (N.D. Cal. 2017) (quoting *Hanlon*, 150 F.3d at 1020). The adequacy requirement is satisfied here.
12

13 As described above, Plaintiffs have claims that are typical of and coextensive with those of
14 the Settlement Class. Plaintiffs, like all Settlement Class Members, invested Ethereum and/or Bitcoin
15 in the Tezos ICO and were promised delivery of a corresponding amount of Tezos tokens. The other
16 members of the Class also contributed either Bitcoin or Ethereum, and were promised corresponding
17 amounts of Tezos tokens. Plaintiffs and the proposed Class members were all sold unregistered
18 securities in violation of the Securities Act. Thus, Plaintiffs' interest in establishing Defendants'
19 liability and obtaining appropriate relief is aligned with the interests of absent Class members.
20

21 Plaintiffs have also demonstrated their willingness and ability to serve as Class
22 Representatives. Among other responsibilities during the litigation so far, Plaintiffs have: (1)
23 reviewed the Complaint, and approved their addition as named plaintiffs to this litigation; (2)
24 participated in numerous discussions with Co-Lead Counsel; and (3) supervised and monitored the
25 progress of court proceedings, including providing input as to strategy. In addition, two of the
26 Federal Plaintiffs, Pumaro LLC and Artiom Frunze, attended full-day despositions that were taken
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1 by Defendants. In order to have his deposition taken, Mr. Frunze was required to travel from
 2 overseas to San Francisco. In short, Plaintiffs have demonstrated that they are ““familiar with the
 3 basis for the suit and their responsibilities,”” and Plaintiffs’ willingness and ability to perform these
 4 duties satisfies the “modest burden” of Rule 23(a)(4). *LendingClub*, 282 F. Supp. 3d at 1182
 5 (citations omitted). Further, Plaintiffs have retained counsel highly experienced in securities class
 6 action litigation and who have successfully prosecuted many securities and other complex class
 7 actions throughout the United States.⁸ Thus, Plaintiffs are adequate representatives of the Settlement
 8 Class, and their counsel are qualified, experienced and capable of prosecuting this Action, in
 9 satisfaction of Rule 23(a)(4).
 10

11 **5. Common Questions of Law Predominate And A Class Action Is the Superior**
 12 **Method Of Adjudication**

13 In addition to meeting the prerequisites of Rule 23(a), this case also satisfies Rule 23(b)(3),
 14 which requires that the proposed class representative establish that common questions of law or fact
 15 predominate over individual questions, and that a class action is superior to other available methods
 16 of adjudication. *See Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011); *In re*
 17 *LDK Solar Sec. Litig.*, 255 F.R.D. 519, 525 (N.D. Cal. 2009); *Vathana v. EverBank*, No. C 09–02338
 18 RS, 2010 WL 934219, at *2 (N.D. Cal. Mar. 15, 2010) (noting that “subsection [23(b)(3)]
 19 encompasses ‘those cases in which a class action would achieve economies of time, effort, and
 20 expense, and promote uniformity of decision as to persons similarly situated, without sacrificing
 21 procedural fairness or bringing about other undesirable results’”) (quoting Fed. R. Civ. P. 23 1966
 22 advisory committee’s note). Notably, Rule 23(a)(2)’s commonality requirement does not require that
 23 “every question in the case, or even a preponderance of questions, is capable of class wide
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⁸ *See* Exhibits A-E to the Declaration of Jacob A. Walker in Support of the Motion for
 28 Preliminary Approval.

1 resolution.” *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (internal quotation marks and
 2 citation omitted). “So long as there is even a single common question, a would- be class can satisfy
 3 the commonality requirement of Rule 23(a)(2).” *Id.* (internal quotation marks and citation omitted).

4 Common questions of law and fact predominate and a class action is clearly the superior
 5 method available to fairly and efficiently litigate this securities action.⁹ “[C]ommon issues need only
 6 predominate, not outnumber individual issues.” *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204
 7 F.R.D. 330, 345 (N.D. Ohio 2001). Further, the superiority of class actions in large securities cases is
 8 well recognized. *See Amchem*, 521 U.S. at 625 (finding common questions predominated in
 9 securities class action certified for settlement).
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14 ⁹ When certifying a class for settlement purposes only, the standards for satisfying the class
 15 certification element of “superiority” under Rule 23(b)(3) may be relaxed because the Court does not
 16 need to consider the difficulties of managing the class in any future litigation or at trial. *See, e.g.,*
 17 *Ybarrondo v. NCO Fin. Sys., Inc.*, No. 05cv2057-L(JMA), 2009 WL 3612864, at *7 n.3 (S.D. Cal.
 18 Oct. 28, 2009); *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 477 (E.D. Cal. 2010). Indeed,
 19 courts have certified class actions for settlement purposes even where certification was or likely
 20 would have been denied for litigation purposes. *See, e.g., In re Initial Pub. Offering Sec. Litig.*, 260
 21 F.R.D. 81, 116 & n.308 (S.D.N.Y. 2009) (granting preliminary approval of a settlement class that
 22 included § 11 claimants who had been excluded from the litigation class on grounds of
 23 “predominance”) (citing *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 194-95 (S.D.N.Y.
 24 2005) (reasoning that the “predominance” and “manageability” concerns under Rule 23(b)(3) were
 25 intertwined and “because the litigation was no longer going to trial, manageability was no longer an
 26 issue, and the ‘predominance defect [] no longer fatal’”)); *Columbus Drywall & Insulation, Inc. v.*
 27 *Masco Corp.*, 258 F.R.D. 545, 557-58 (N.D. Ga. 2007) (certifying a settlement class in antitrust case
 28 despite noting serious questions about whether a litigation class could be certified; finding “that the
 fact of settlement is relevant to the decision to certify a class” and that “Courts have, thus, certified
 classes at the settlement stage noting that such a certification does not present the same problems that
 certification of a litigation class proposing the same class definition would present”); *O’Keefe v.*
Mercedes-Benz USA, LLC, 214 F.R.D. 266, 292-93 (E.D. Pa. 2003) (certifying a settlement class
 bringing state law fraud claims; recognizing that a “manageability problem” was rendered moot by
 the settlement, and thus was not a bar to class certification in the settlement context); *Ramirez v.*
DeCoster, 203 F.R.D. 30, 36-37 (D. Me. 2001) (certifying a settlement class despite having
 previously ruled that predominance requirement was not met; the settlement context mooted the
 court’s concerns that calculation of individual damages would overwhelm common issues in the
 litigation); *In re Diet Drugs*, Nos. 1203, 99-20593, 2000 WL 1222042, at *43 (E.D. Pa. Aug. 28,
 2000) (“[W]hen taking the settlement into consideration for purposes of determining class
 certification, individual issues which are normally present in personal injury litigation become
 irrelevant, allowing the common issues to predominate.”).

1 As discussed above, there are a number of common questions of law and fact that would
2 warrant class certification of this matter. These questions clearly predominate over individual
3 questions because Defendants' alleged conduct affected all Settlement Class Members in the same
4 manner. Indeed, issues relating to Defendants' liability are common to all Members of the Settlement
5 Class. *See LDK Solar*, 255 F.R.D. at 530; *UTStarcom*, 2010 WL 1945737, at *9 (same); *In re*
6 *Emulex Corp. Sec. Litig.*, 210 F.R.D. 717, 721 (C.D. Cal. 2002) ("The predominant questions of law
7 or fact at issue in this case are the alleged misrepresentation Defendants made during the Class
8 Period and are common to the class.").

10 Whether the Tezos tokens are securities, whether Defendants are "sellers" under Section
11 12(a)(1), whether the Breitmans are controlling persons under Section 15, and whether the Securities
12 Act applies under *Morrison* are issues that "affect investors alike," and whose proof "can be made on
13 a class-wide basis" because they "affect[] investors in common." *Schleicher v. Wendt*, 618 F.3d 679,
14 682, 685, 687 (7th Cir. 2010). Likewise, here, Defendant's alleged sale of unregistered securities
15 "affect[ed] [all] investors alike" and proof that the Tezos tokens were securities will "be made on a
16 class-wide basis." *Id.* at 685, 687; *Cooper*, 254 F.R.D. at 641. As a result, common questions of law
17 and fact predominate.

19 In light of the foregoing, all of the requirements of Rule 23(a) and (b) are satisfied, and there
20 are no issues that would prevent the Court from certifying this Settlement Class for settlement
21 purposes, appointing Federal Plaintiffs as class representatives, and appointing Lead Counsel as
22 counsel for the Settlement Class. *See, e.g., Wahl v. Am. Sec. Ins. Co.*, No. C08-00555-RS, 2011 U.S.
23 Dist. LEXIS 59559, at *5-6 (N.D. Cal. June 2, 2011) (class certified for settlement purposes); *Gittin*
24 *v. KCI USA, Inc.*, No 09-CV-05843 RS, 2011 WL 1467360, at *1 (N.D. Cal. Apr. 12, 2011) (same).
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1 **D. The Court Should Approve The Form Of Notice And Plan For Providing Notice To The**
2 **Settlement Class**

3 The Court should approve the form and content of the proposed Notice and Summary Notice.
4 *See* Settlement Agreement, Exs. A-1 and A-3. The Notice is written in plain language and features a
5 question-and-answer format that clearly sets out the relevant information and answers most questions
6 Settlement Class Members will have. Consistent with Rules 23(c)(2)(B) and 23(e)(1), the Notice
7 objectively and neutrally apprises the nature of the Action, the definition of the Settlement Class, the
8 claims and issues, that the Court will exclude from the Settlement Class any Settlement Class
9 Member who requests exclusion (and sets forth the procedures and deadlines for doing so), and the
10 binding effect of a class judgment on Settlement Class Members under Rule 23(c)(3), among other
11 disclosures.

12
13 With respect to items relating to the Settlement, the Notice also satisfies the separate
14 disclosure requirements imposed by the PSLRA. It states the amount of the settlement proposed to be
15 distributed to the parties; provides a statement from each party concerning the issues about which the
16 parties disagree; states the amount of attorney's fees and Litigation Expenses that Lead Counsel will
17 seek; provides the names, addresses, and telephone numbers of Lead Counsel, who will be available
18 to answer questions from Settlement Class Members; and provides a brief statement explaining the
19 reasons why the parties are proposing the Settlement. *See* 15 U.S.C. §78u-4(a)(7); *In re Tyco Int'l,*
20 *Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 258 (D.N.H. 2007) (discussing adequacy of notice and
21 PSLRA disclosure requirements).

22
23 Additionally, the Notice discloses the date, time, and location of the Settlement Hearing and
24 the procedures and deadlines for the submission of Proof of Claim and Release Forms and objections
25 to any aspect of the Settlement, Plan of Allocation, or attorney's fees and Litigation Expenses to be
26 sought by Lead Counsel. These disclosures are complete and should be approved by the Court. *See*
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1 *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 175 (E.D. Pa. 2000) (approving notice
2 that stated the settlement terms and plan of allocation, estimated potential recovery at trial, revealed
3 maximum request for attorney’s fees and identified contact information of relevant attorneys).

4 Rule 23(c)(2)(B) requires the court to direct to a class certified under Rule 23(b)(3) “the best
5 notice that is practicable under the circumstances, including individual notice to all members who
6 can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Similarly, Rule 23(e)(1)
7 requires the court to “direct notice in a reasonable manner to all class members who would be
8 bound” by a proposed settlement, voluntary dismissal, or compromise. Fed. R. Civ. P. 23(e)(1). The
9 proposed notice program, which is set forth in the Preliminary Approval Order submitted herewith,
10 readily meets these standards. Particularly, given the unique, online-only nature of this case, the
11 notice program uses electronic mail for distribution of the notice, and provides an electronic claim
12 form which can be completed online.
13

14
15 The proposed settlement administrator is Epiq Class Actions & Claims Solutions, Inc., an
16 experienced and diligent settlement and claims administrator (“Epiq” or the “Claims
17 Administrator”). Lead Counsel distributed a request for proposal (“RFP”) and received bid proposals
18 from six potential settlement administrators. Given the unique characteristics of the Settlement Class
19 Members, the RFP specifically requested that in addition to all normal and customary services,
20 proposals should provide information on the settlement administrator’s ability to:
21

- 22 • Conduct individual notice entirely electronically;
- 23 • Run targeted online ads, including on *Reddit* and *Twitter*;
- 24 • Allow for claims forms to be completed entirely online with electronic signature
25 ability;
- 26 • Provide an option for Claimants to receive electronic payment;
- 27 • Work with Settlement Class Members residing outside of the United States; and
- 28 • Conduct any necessary “Know Your Customer / Anti-Money Laundering”
verification.

1 The estimates for the bid proposals received ranged from \$132,556 to \$300,000. Lead
2 Counsel ultimately selected Epiq based on a combination of their estimated costs and fees,
3 willingness to set a firm cap on costs and fees, and experience with international claims and
4 electronic notice methods. Epiq's ability to offer international phone numbers and to allow all claims
5 to be completed electronically, including by providing for international bank wires is particularly
6 useful here, as Settlement Class Members invested in the ICO online. Epiq's estimated costs and fees
7 are \$7,231 and \$134,420, respectively. Epiq has agreed to a firm cap on costs and fees of \$170,000,
8 or less than one percent of the \$25 million Settlement Amount. Lead Counsel believes the costs and
9 fees are reasonable in relation to the value of the Settlement. The costs and fees will be paid out of
10 the Net Settlement Fund.¹⁰

11
12 The Tezos Foundation will work in good faith to provide the Claims Administrator with
13 information about the potential Settlement Class Members sufficient to allow claims to be verified
14 and for the purpose of identifying and giving notice to the Settlement Class. The Claims
15 Administrator will then promptly use reasonable efforts to send the Notice, including the Plan of
16 Allocation and Proof of Claim and Release, to Persons who contributed to the Tezos blockchain
17 ICO/fundraiser by electronic mail.

18
19 This Action is unique in that Settlement Class Members are spread throughout the world and
20 contributed to the ICO electronically. Lead Counsel is unaware of previous securities settlements that
21 are substantially similar to the Settlement here. Nonetheless, Epiq estimates that of the 30,317
22 potential Settlement Class Members, approximately 7,579 will submit claim forms. Lead Counsel
23 and Epiq have developed a plan to ensure that notice reaches the most potential Settlement Class
24

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27 ¹⁰ Co-Lead Counsel Block & Leviton has not had any engagements with Epiq in the last two
28 years. In 2017, Block & Leviton engaged Epiq as the claims administrator in *In re Amicus
Therapeutics, Inc. Securities Litigation*, No. 3:15-cv-7350-PGS-DEA (D.N.J.); that engagement
ended in the last year.

1 Members as possible. Notably, in addition to the electronic mail notice, Epiq will engage in a
2 targeted marketing campaign on *Twitter*, *Reddit*, and *Google Display Network*. Epiq will also
3 advertise the Settlement on *Baidu Display Network*, which will target potential Settlement Class
4 Members in China.

5
6 The proposed notice program detailed above fulfills the requirements of due process because
7 the proposed Notice alerts and informs those Members of the Settlement Class who can be identified
8 through reasonable efforts. *See, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946
9 (9th Cir. 2015) (approving use of email notice); *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30,
10 35-36 (D.N.H. 2006) (approving notice program that distributed notice packets to individual
11 investors and nominees and published summary notice in national newspaper and wire services).

12
13 The Summary Notice, to be sent via e-mail to all Settlement Class Members, provides an
14 abbreviated but informative description of the Action and the proposed Settlement, and also explains
15 how to obtain the more detailed Notice, with hyperlinks to the settlement website. Courts routinely
16 find that comparable notice programs meet the requirements of due process and Rule 23. *See, e.g.,*
17 *Portal*, 2007 WL 1991529, at *7 (holding that “notice by mail and publication is the ‘best notice
18 practicable under the circumstances,’ as mandated by FRCP 23(c)(2)(B)”); *In re Sorbates Direct*
19 *Purchaser Antitrust Litig.*, Nos. C 98-4886MMC et al., 2002 WL 31655191, at *1 (N.D. Cal. Nov.
20 15, 2002); *see also West*, 2006 WL 1652598, at *11 (settlement notice that explains to class
21 members what their options are is more than adequate).

22
23 In connection with preliminary approval of the Settlement, the Court must set a final approval
24 hearing date, dates for mailing and publication of the Notice and Summary Notice, and deadlines for
25 submitting claims or for objecting to the Settlement. The parties respectfully propose the following
26 schedule for the Court’s consideration, as set forth in the proposed Preliminary Approval Order:
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<u>Event</u>	<u>Time for Compliance</u>
Deadline for mailing the Notice and Proof of Claim to Class Members (“Notice Date”)	No later than 10 business days after entry of Preliminary Approval Order
Deadline for beginning advertising program and publishing summary notice over newswire	No later than 10 business days after Notice Date
Deadline for filing final approval papers	30 calendar days prior to the Final Approval Hearing
Deadline for receipt of exclusion requests or objections	21 calendar days prior to the Final Approval Hearing
Deadline for filing reply papers	7 calendar days prior to the Final Approval Hearing
Final Approval Hearing	As soon as practicable 84 days after signing the Preliminary Approval Order
Deadline for submitting Proof of Claim and Release Forms	120 calendar days after the Notice Date

IV. CONCLUSION

For the foregoing reasons, Federal Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement, certify the Settlement Class for settlement purposes, approve the forms and methods of notice, and issue the proposed Preliminary Approval Order attached as Exhibit A to the Settlement Agreement and submitted herewith.

1 March 20, 2020

Respectfully submitted,

2
3 /s/ Jacob A. Walker

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Jacob A. Walker
Jacob A. Walker