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11 [Proposed] Lead Counsel for Plaintiff

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15 ADAM WICKS, Individually and on Behalf of )  
16 All Others Similarly Situated, )  
17 Plaintiff, )

18 vs.

19 ALPHABET, INC., et al., )  
20 Defendants. )

Case No. 4:18-cv-06245-JSW  
CLASS ACTION  
NOTICE OF MOTION AND MOTION FOR  
CONSOLIDATION OF RELATED  
ACTIONS, APPOINTMENT AS LEAD  
PLAINTIFF, AND APPROVAL OF  
SELECTION OF LEAD COUNSEL;  
MEMORANDUM OF LAW IN SUPPORT  
THEREOF

21 DATE: February 8, 2019  
22 TIME: 9:00 a.m.  
23 CTRM: 5, 2nd Floor  
JUDGE: Hon. Jeffrey S. White  
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1 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

2 PLEASE TAKE NOTICE that on February 8, 2019, at 9:00 a.m., or as soon thereafter as the  
 3 matter may be heard in Courtroom 5 on the 2nd Floor of the United States District Court for the  
 4 Northern District of California, 1301 Clay Street, Oakland, CA, 94612 before the Honorable Jeffrey  
 5 S. White, class member State of Rhode Island, Office of the Rhode Island Treasurer on behalf of the  
 6 Employees' Retirement System of Rhode Island (the "Retirement System"), will and hereby does  
 7 move this Court pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15  
 8 U.S.C. §78u-4(a)(3)(B), for an order: (1) consolidating the related actions pursuant to Fed. R. Civ. P.  
 9 42(a); (2) appointing the Retirement System as lead plaintiff; and (3) approving the Retirement  
 10 System's selection of Robbins Geller Rudman & Dowd LLP as lead counsel. This Motion is made  
 11 on the grounds that the related actions allege substantially similar facts and raise identical legal  
 12 issues, and the Retirement System is the most adequate plaintiff to serve as lead plaintiff in the  
 13 consolidated action. In support of this Motion, the Retirement System submits herewith a  
 14 Memorandum of Points and Authorities and the Declaration of Danielle S. Myers ("Myers Decl.").

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 Presently pending in this District are two related securities class action lawsuits brought  
 18 pursuant to §10(b) and §20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and  
 19 Securities and Exchange Commission ("SEC") Rule 10b-5 promulgated thereunder, 17 C.F.R.  
 20 §240.10b-5: (1) *Wicks v. Alphabet, Inc.*, No. 18-cv-06245-JSW; and (2) *El Mawardy v. Alphabet,*  
 21 *Inc.*, 18-cv-07018-YGR (the "Related Actions").<sup>1</sup> Pursuant to the PSLRA, the Court must decide  
 22 whether to consolidate the Related Actions before selecting a movant to lead this litigation on behalf  
 23 of the putative class. *See* 15 U.S.C. §78u-4(a)(3)(B)(ii). As discussed below, the Related Actions  
 24 should be consolidated pursuant to Rule 42(a) because they each involve similar legal and factual  
 25 issues.

26 \_\_\_\_\_  
 27 <sup>1</sup> On November 1, 2018, the *El Mawardy* Action was transferred in from the Eastern District of  
 28 New York. *Wicks*, ECF No. 14 at 2. There has not been an order relating the *Wicks* and *El*  
*Mawardy* Actions as of the date of this filing.

1           Additionally, the PSLRA states that, the Court “shall appoint the most adequate plaintiff as  
2 lead plaintiff.” *See* 15 U.S.C. §78u-4(a)(3)(B)(ii). The lead plaintiff is the “member or members of  
3 the purported plaintiff class that the court determines to be most capable of adequately representing  
4 the interests of class members.” 15 U.S.C. §78u-4(a)(3)(B)(i). The Retirement System should be  
5 appointed as lead plaintiff because it: (1) timely filed this Motion; (2) has a substantial financial  
6 interest in the outcome of this litigation; and (3) will typically and adequately represent the class’s  
7 interests. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii). In addition, the Retirement System’s selection of  
8 Robbins Geller to serve as lead counsel should be approved because the Firm possesses extensive  
9 experience prosecuting securities class actions and will adequately represent the interests of all class  
10 members.

## 11 **II. STATEMENT OF ISSUES TO BE DECIDED**

12           1.       Whether the Court should consolidate the Related Actions pursuant to Rule 42(a) of  
13 the Federal Rules of Civil Procedure;

14           2.       Whether the Court should appoint the Retirement System as lead plaintiff pursuant to  
15 15 U.S.C. §78u-4(a)(3)(B); and

16           3.       Whether the Court should approve the Retirement System’s selection of Robbins  
17 Geller as lead counsel for the class pursuant to 15 U.S.C. §78u-4(a)(3)(B)(v).

## 18 **III. STATEMENT OF FACTS**

19           Alphabet is the parent company of its leading subsidiary Google Inc., among others. Google  
20 was founded in 1998. Alphabet and Google are headquartered in Mountain View, California. The  
21 Company’s Class A and Class C shares trade on the NASDAQ Global Select Market (“NASDAQ”)  
22 under the respective ticker symbols GOOGL and GOOG.

23           Alphabet, through its subsidiary Google, operates a social networking website called  
24 Google+ that allows people to communicate with their family, friends, and coworkers. Google+  
25 users ostensibly have the ability to share and restrict the sharing of personal information according to  
26 their preferences by changing privacy settings.

1           The complaints allege that throughout the Class Period, defendants made materially false and  
2 misleading statements in violation of the Exchange Act regarding Alphabet’s security failures  
3 affecting users’ personal data.<sup>2</sup> Specifically, the complaints allege that defendants made false and/or  
4 misleading statements and/or failed to disclose that: (1) the Company’s security measures had failed  
5 recently and massively, as Google had exposed the private data of hundreds of thousands of users of  
6 Google+ to third parties; (2) damage to the Company’s reputation and operating results and loss of  
7 customers from this failure of the Company’s security measures were imminent and inevitable; (3)  
8 the Company’s security protections did not shield personal user data against theft and security  
9 breaches; and (4) the Company’s security measures had been breached due to employee error,  
10 malfeasance, system errors or vulnerabilities. *Wicks*, ECF No. 1 at ¶5; *see also El Mawardy*, ECF  
11 No. 1 at ¶25.

12           On October 8, 2018, citing “people briefed on the incident and documents reviewed,” *The*  
13 *Wall Street Journal* reported that in March 2018, Google discovered a software glitch in its Google+  
14 social network that had exposed users’ personal data to third parties, but “opted not to disclose the  
15 issue . . . in part because of fears that doing so would draw regulatory scrutiny and cause reputational  
16 damage.” *Wicks*, ECF No. 1 at ¶6. On this news, Alphabet’s Class A and Class C shares fell over  
17 the next two trading days, causing substantial harm to investors.

18           Then, on October 10, 2018, Senator Richard Blumenthal announced during a congressional  
19 hearing that he would be calling on the Federal Trade Commission (“FTC”) to investigate Google in  
20 connection with its recent Google+ data privacy incident. *El Mawardy*, ECF No. 1 at ¶29. That  
21 same day, Senators Blumenthal, Markey, and Udall sent a letter to the FTC urging it to investigate  
22 “whether the Google+ incident constitutes a breach of the company’s consent decree or other  
23 commitments, and more broadly whether Google has engaged in deceptive acts and practices with  
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26 <sup>2</sup>           The *Wicks* Action is on behalf of those who acquired Alphabet common shares between  
27 April 23, 2018 and October 7, 2018. The *El Mawardy* Action is on behalf of those who acquired  
28 Alphabet securities between April 24, 2018 and October 10, 2018. The slight differences in the class  
definitions and class periods will be resolved upon the filing of a consolidated complaint.

1 respect to privacy.” *Id.* at ¶30. On this news, the price of Alphabet’s Class A and Class C shares  
 2 declined, causing substantial harm to investors.

#### 3 **IV. ARGUMENT**

##### 4 **A. This Court Should Consolidate the Related Actions to Promote 5 Efficiency**

6 The PSLRA requires the Court to consolidate the Related Actions before appointing a lead  
 7 plaintiff. *See* 15 U.S.C. §78u-4(a)(3)(B)(ii). Consolidation pursuant to Rule 42(a) is proper when  
 8 actions involve common legal and factual questions. Fed. R. Civ. P. 42(a). “In applying this  
 9 standard, courts have found that ‘[c]onsolidation of private securities fraud class actions arising from  
 10 the same alleged misconduct is generally appropriate.’” *GGCC, LLC v. Dynamic Ledger Solutions,  
 11 Inc.*, 2018 WL 1388488, at \*2 (N.D. Cal. Mar. 16, 2018) (citation omitted). Furthermore, “[t]he  
 12 district court has broad discretion . . . to consolidate cases pending in the same district.” *Investors  
 13 Research Co. v. U.S. Dist. Ct. for Cent. Dist.*, 877 F.2d 777 (9th Cir. 1989).

14 The Related Actions present virtually identical factual and legal issues, alleging the same  
 15 violations of the Exchange Act against similar defendants. Because these Related Actions are based  
 16 on the same facts and legal issues, the same discovery will pertain to both lawsuits. Thus,  
 17 consolidation is appropriate here.

##### 18 **B. The Retirement System Is the “Most Adequate Plaintiff” and Should 19 Be Appointed Lead Plaintiff**

20 The PSLRA establishes the procedures for the appointment of a lead plaintiff in “each private  
 21 action arising under [the Exchange Act] that is brought as a plaintiff class action pursuant to the  
 22 Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(1); *see also* 15 U.S.C. §78u-4(a)(3)(B)(i).  
 23 First, the pendency of the action must be publicized in a widely circulated national business-oriented  
 24 publication or wire service not later than 20 days after filing of the first complaint. 15 U.S.C. §78u-  
 25 4(a)(3)(A)(i). Next, the PSLRA provides that the Court shall adopt a presumption that the most  
 26 adequate plaintiff is the person or the group of persons that –

26 (aa) has either filed the complaint or made a motion in response to a notice . . . ;

27 (bb) in the determination of the court, has the largest financial interest in the relief  
 28 sought by the class; and

1 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil  
2 Procedure.

3 15 U.S.C. §78u-4(a)(3)(B)(iii)(I); *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002). The  
4 Retirement System meets each of these requirements and should be appointed Lead Plaintiff.

### 5 **1. This Motion Is Timely**

6 The statutory notice of this action was published on October 11, 2018, advising class  
7 members of: (1) the pendency of the action; (2) the claims asserted therein; (3) the proposed class  
8 period; and (4) the right to move the Court to be appointed as lead plaintiff by December 10, 2018.  
9 *See Myers Decl., Ex. A.* In addition, counsel for plaintiff Adam Wicks also caused a notice to be  
10 published. *See Myers Decl., Ex. B.* Because this Motion is being filed on December 10, it is timely  
11 and the Retirement System is entitled to be considered for appointment as lead plaintiff.

### 12 **2. The Retirement System Has a Substantial Financial Interest in the Relief Sought by the Class**

13 As evidenced by its PSLRA Certification, the Retirement System acquired 36,896 shares of  
14 Alphabet Class A and Class C stock during the Class Period and suffered over \$4.8 million in losses  
15 as a result of defendants' alleged misconduct. *See Myers Decl., Exs. C, D.* Therefore, the  
16 Retirement System has a substantial financial interest in the relief sought by the class.

### 17 **3. The Retirement System Is Typical and Adequate of the Putative Class**

18 In addition to possessing a significant financial interest, a lead plaintiff must also “otherwise  
19 satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-  
20 4(a)(3)(B)(iii)(I)(cc). Rule 23 requires that “the claims or defenses of the representative parties are  
21 typical of the claims or defenses of the class; and [that] the representative parties will fairly and  
22 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(3)-(4); *Cavanaugh*, 306 F.3d at  
23 730 (focusing “in particular” on typicality and adequacy at the lead plaintiff stage); *In re Taleo Corp.*  
24 *Sec. Litig.*, 2009 WL 322914, at \*1 (N.D. Cal. Feb. 9, 2009) (White, J.) (same).

25 The test of typicality is “whether other members have the same or similar injury, whether  
26 the action is based on conduct which is not unique to the named plaintiffs, and whether other class  
27 members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976  
28

1 F.2d 497, 508 (9th Cir. 1992) (citation omitted). The adequacy requirement is met if no conflicts  
2 exist between the representative and class interests and the representative's attorneys are qualified,  
3 experienced and able to vigorously prosecute the action on behalf of the class. *See* Fed. R. Civ. P.  
4 23(a)(4).

5 Here, the Retirement System purchased Alphabet securities and suffered harm when  
6 defendants' alleged misconduct was revealed. *See* Myers Decl., Exs. C-D. In addition, the  
7 Retirement System's substantial stake in the outcome of the case indicates it has the requisite  
8 incentive to vigorously represent the class's claims. Moreover, the Retirement System is not aware  
9 of any conflicts between its claims and those asserted on behalf of the putative class and is not  
10 subject to any unique defenses. Further, the Retirement System's "status as an institutional investor  
11 supports a finding of adequacy." *Taleo*, 2009 WL 322914, at \*1. Finally, as discussed below, the  
12 Retirement System has selected qualified counsel experienced in securities litigation.

13 The Retirement System's common interests shared with the class, substantial financial  
14 interest in the litigation, and selection of qualified counsel demonstrate that it satisfies the Rule 23  
15 inquiry.

### 16 **C. The Court Should Approve the Retirement System's Selection of** 17 **Counsel**

18 The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to  
19 the Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). The Court should not disturb the lead  
20 plaintiff's choice of counsel unless it is necessary to protect the interests of the class. *In re Cohen*,  
21 586 F.3d 703, 711-12 (9th Cir. 2009); *Cavanaugh*, 306 F.3d at 732-35. The Retirement System has  
22 selected Robbins Geller as lead counsel in this case.

23 Robbins Geller, a 200-attorney firm with one of its principal offices in this District, regularly  
24 practices complex securities litigation. *See* Myers Decl., Ex. E. Judges of this Court and district  
25 courts throughout the country have recognized Robbins Geller's significant experience in  
26 successfully litigating complex securities class actions, which has resulted in the appointment of  
27 Robbins Geller attorneys to lead roles in hundreds of complex class action securities cases. *See, e.g.,*  
28 *Bodri v. Gopro, Inc.*, 2016 WL 1718217, at \*5 (N.D. Cal. Apr. 28, 2016) (finding that Robbins

1 Geller “has extensive experience in litigating complex securities class actions” and that “the Court is  
2 satisfied that the lead plaintiff has made a reasonable choice of lead counsel”); Myers Decl., Ex. E.  
3 Accordingly, the Retirement System’s selection of counsel is reasonable and should be approved.

4 **V. CONCLUSION**

5 The Related Actions are substantially similar in facts and legal issues, and should be  
6 consolidated for all purposes. Additionally, the Retirement System has satisfied each of the  
7 PSLRA’s requirements for appointment as lead plaintiff. As such, the Retirement System  
8 respectfully requests that the Court consolidate the Related Actions, appoint the Retirement System  
9 as Lead Plaintiff, and approve its selection of counsel.

10 DATED: December 10, 2018

Respectfully submitted

11 ROBBINS GELLER RUDMAN  
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[Proposed] Lead Counsel for Plaintiff



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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on December 10, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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# Mailing Information for a Case 4:18-cv-06245-JSW Wicks v. Alphabet, Inc. et al

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