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19 **UNITED STATES BANKRUPTCY COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**  
21 **SAN FRANCISCO DIVISION**

22 In re:

23 ANTHONY SCOTT LEVANDOWSKI,  
24  
25 Debtor.

26 Case No. 20-30242 (HLB)

27 Chapter 11

28 **UBER TECHNOLOGY, INC.'S  
OBJECTION TO DEBTOR'S CLAIM  
OF EXEMPTION IN PENSICO ROTH  
IRA**

Hearing:

Date: March 11, 2021

Time: 10:00 a.m.

Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102

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STATUTES

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26 U.S.C. § 4975 .....13

1 Uber Technologies, Inc. (“Uber”) hereby objects, pursuant to Rule 4003(b) of the Federal  
2 Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the claim of exemption, pursuant to  
3 section 703.140(b) of the California Code of Civil Procedure, asserted by the above-captioned debtor  
4 (the “Debtor”) in a Pensco Roth IRA valued at \$17,199,570 (the “Pensco Roth IRA”). In support of  
5 this objection, Uber respectfully submits the declarations of Laureen M. Ryan (the “Ryan  
6 Declaration”) and Miriam Manning (the “Manning Declaration”), filed concurrently herewith. In  
7 further support of this objection, Uber respectfully states as follows:

8 **PRELIMINARY STATEMENT**

9 Between 2016 and 2017, the Debtor received approximately \$127 million for his work on  
10 autonomous vehicle technology at Google LLC (“Google”) and immediately put in motion an  
11 elaborate scheme to shield his assets from creditors. Through a complex circular web of entities  
12 controlled by friends and family members, the Debtor invested in family residences, personal side  
13 projects, and exotic tax shelters—such as founding and funding his own church and overfunding his  
14 Roth IRA with investments in a fund that invested in a company he founded and where he is currently  
15 employed.

16 The Debtor filed bankruptcy with more than \$66 million of assets sheltered in these  
17 alternative investment vehicles, including more than \$17 million of assets in the Pensco Roth IRA—  
18 which the Debtor claims is an exempt asset and not available to satisfy his debts. However, like the  
19 church he founded in order to be the beneficiary of his self-settled charitable trust, the Pensco Roth  
20 IRA is simply one of the Debtor’s tools to keep assets out of the reach of creditors. For example, the  
21 Debtor contributed more than \$17 million to the Pensco Roth IRA over a two-year span, while the  
22 maximum contribution allowed under the Internal Revenue Code was \$5,500 per year and his income  
23 level prohibited him from contributing anything at all.

24 Setting aside the Debtor’s efforts to overfund the Pensco Roth IRA, the assets in the Pensco  
25 Roth IRA are not reasonably necessary to support the Debtor in retirement. As set forth in the  
26 retirement analysis annexed to the Ryan Declaration as Exhibit A (the “Retirement Analysis”), the  
27 Debtor’s non-Pensco IRA assets will be sufficient to support the Debtor in retirement. At the time of  
28 retirement, the Debtor will receive Social Security income and be able to access his other retirement

1 accounts (currently valued in excess of \$400,000) without penalty. In addition, the Retirement  
2 Analysis took a conservative approach and assumed the Debtor will earn a reasonable salary and save  
3 a modest sum of \$10,000 a year toward his retirement. The Debtor is a 40-year-old self-described  
4 leading expert in autonomous vehicle technology who has earned millions of dollars for his work on  
5 self-driving technology and who will likely continue to successfully monetize his expertise in the  
6 field.

7 Although the Honorable William H. Alsup, United States District Court Judge, sentenced the  
8 Debtor to eighteen months in prison for “the biggest trade secret crime [he had] ever seen,” the  
9 Debtor secured for himself a full pardon from former President Trump with the support from several  
10 high-profile Silicon Valley billionaires.

11 Now, with his criminal record cleansed and billionaire allies at his side, there is little doubt  
12 that the Debtor’s future earning potential is significant. Under these circumstances, the Debtor’s  
13 claim of exemption with respect to the Pensco Roth IRA should be denied and the assets immediately  
14 returned to the estate to be liquidated for the benefit of his creditors.

## 15 RELEVANT FACTS

### 16 A. Chapter 11 Case Background

17 On March 4, 2020, the Debtor filed a voluntary petition for relief under chapter 11 of Title 11  
18 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the  
19 Northern District of California. On March 18, 2020, the Debtor filed his original set of Schedules of  
20 Assets and Liabilities (A-J) (“Schedules”) and Statement of Financial Affairs (“SOFA”).

21 On (i) May 4, 2020, (ii) May 29, 2020, (iii) June 26, 2020, (iv) July 14, 2020, (v) August 17,  
22 2020, and (vi) January 8, 2021, the Debtor filed amended Schedules. *See* Docket Nos. 74, 102, 123,  
23 137, 138, 215, and 216. On May 4, 2020, the Debtor filed an amended SOFA. *See* Docket No. 73.

24 On the Debtor’s third amended Schedule C, dated June 26, 2020 [Docket No. 123] (“Schedule  
25 C”), the Debtor lists a total of \$17,689,024 in exempt assets, including the Pensco Roth IRA valued at  
26 \$17,199,570. If the Pensco Roth IRA were excluded from this list, it would leave the Debtor with  
27 approximately \$489,454 in exempt assets, including a 401(k) valued at \$386,773.  
28

1 **B. The Relevant Employment and Litigation Timeline**

2 **1. Employment**

3 The Debtor was an employee of Google until January 27, 2016. While an employee at  
4 Google, the Debtor worked on Google’s self-driving car project named “Project Chauffeur.” A little  
5 less than a month before the Debtor terminated his employment with Google, the Debtor received  
6 \$50.6 million in deferred compensation in December 2015 and additional \$75.9 million in July 2016  
7 in connection with his work on Project Chauffeur.

8 In April 2016, the Debtor and his colleague, Mr. Ron, executed a series of agreements through  
9 which they sold to Uber two companies, Ottomotto and Otto Trucking, and agreed to work for Uber  
10 for an annual salary of \$ [REDACTED] plus equity and stock incentives. In or about 2018, the Debtor  
11 cofounded a company called Kachei.ai that later became known as Pronto.ai, Inc. (“Pronto”), which  
12 also specializes in autonomous vehicle technologies. Until August 30, 2019, the Debtor was the  
13 President, Chief Executive Officer, and Secretary of Pronto—and, upon information and belief, its  
14 primary funding source. Currently, the Debtor is a purported engineer at Pronto and receives an  
15 annual salary of approximately \$100,000 (but is believed to be in substance its chief executive).

16 **2. Material Civil Litigation Events**

17 On October 28, 2016, Google filed an arbitration demand (the “Google Arbitration”) against  
18 the Debtor alleging breaches of common law and contractual duties related to, among other things,  
19 the Debtor’s creation of Otto and solicitation of Google’s employees to that venture shortly before he  
20 left Google.

21 The following are the key dates related to the Google Arbitration:

22

Date(s)	Event
October 28, 2016	Google Arbitration demand
March 26, 2019	Google Arbitration panel issues Interim Award (\$179M).
December 6, 2019	Google Arbitration panel issues Final Award.
March 4, 2020	California Superior Court confirms Final Award.

23  
24  
25  
26  
27  
28

1           **3.     The Criminal Proceeding**

2           On February 23, 2017, Google’s sister company Waymo LLC (which was formed to operate  
3 the Chauffeur business) filed a lawsuit against Uber alleging trade secret misappropriation and patent  
4 infringement. To support its trade secret claims, Waymo alleged that before his departure from  
5 Google, the Debtor had downloaded roughly 14,000 files from a Google server containing  
6 confidential information. As a result of these allegations, the Honorable William H. Alsup, United  
7 States District Judge, referred the matter to the United States Attorney for “investigation of possible  
8 theft of trade secrets based on the evidentiary record . . . .”

9           On August 15, 2019, the Debtor was indicted on thirty-three counts of theft and attempted  
10 theft of trade secrets. Seven months later, on March 19, 2020, the Debtor entered into a Plea  
11 Agreement with the United States Attorney for the Northern District of California pursuant to which  
12 he agreed to plead guilty to a count of theft and attempted theft of trade secrets in violation of 18  
13 U.S.C. § 1832(a)(1), (2), (3) & (4).

14           On August 4, 2020, the Honorable William H. Alsup, United States District Court Judge,  
15 sentenced the Debtor to eighteen months in prison for trade secret theft and observed at the  
16 sentencing that “this is the biggest trade secret crime I have ever seen. This was not small. This was  
17 massive in scale.”

18           On January 21, 2021, then President Trump pardoned the Debtor.

19           **C.     The Pensco Roth IRA**

20           **1.     Establishment of the Pensco Roth IRA**

21           On or around April 2016, the Debtor established the Pensco Roth IRA, which is a self-  
22 directed investment retirement account designed to invest retirement funds in alternative assets. The  
23 Debtor opened the Pensco Roth IRA with \$4,326 cash. *See* Manning Declaration, Exhibit E.

24           **2.     Otto Trucking Is Transferred to the Pensco Roth IRA and Monetized**

25           Between April 2016 to October 2016—while in discussions to sell his company to Uber—the  
26 initial cash deposits of \$4,326 were used to purchase an adjusted 4,326,000 units of Otto Trucking,  
27 LLC (“Otto Trucking”), a subsidiary of Otto. *See* Manning Declaration, Exhibit F.

28           In July 2018, the Pensco Roth IRA’s Otto Trucking holdings were valued at \$17.2 million.



1 See Manning Declaration, Exhibit G. A month later, in August 2018, the Pensco Roth IRA sold  
 2 2,686,128 units of Otto Trucking to an unidentified purchaser for \$11.9 million in cash. (*Id.*)

3 In April 2019—a month after the arbitration panel issued its Interim Award against the  
 4 Debtor—the Pensco Roth IRA sold its remaining 1,186,672 units of Otto Trucking to Robert Miller  
 5 (CEO at Pronto) in exchange for a \$5.3 million Nonrecourse Promissory Note (the “Robert Miller  
 6 Note”). See Manning Declaration, Exhibit H and I.

7 Upon information and belief, the Robert Miller Note was not executed until May 2020 at  
 8 which time it was contributed to the Pensco Roth IRA (i.e., until May 2020, the Robert Miller Note  
 9 resided outside of the Pensco Roth IRA).

10 **3. Pensco Roth IRA Used to Loan Money to Friends and Associates**

11 Flush with cash from the monetization of the Pensco Roth IRA’s Otto Trucking holdings, the  
 12 Debtor began distributing the proceeds to affiliated entities or entities associated with his business  
 13 manager/partner and longtime friend, Randall Miller, as set forth in the following table:

Date	Borrower	Amount	Notes
December 2018	Nautilus Group Inc.	\$1,000,000	Loan to an entity controlled by Randall Miller.
March 2019	NGI East Bay Portfolio, LLC	\$2,000,000	Loan to an entity controlled by Randall Miller.
April 2019	Acorn Pacific Opportunities Fund LP / Pronto	\$8,900,000	Investment in a fund that turned around and invested the same amount in Pronto, the Debtor’s autonomous vehicle company.
October 2019	RAD Urban Inc.	\$1,000,000	Loan to an entity controlled by Randall Miller.

21 **D. Establishment of the Charitable Lead Annuity Trust and the Debtor’s Church**

22 On December 30, 2016—two months after Google made its arbitration demand, the Debtor  
 23 made a one-time contribution of \$7 million to a Charitable Lead Annuity Trust (“CLAT”), creating a  
 24 tax deduction in an equal amount. See Manning Declaration, Exhibit K. The Debtor is a beneficiary  
 25 of the CLAT, as are the Debtor’s children. Under the CLAT, the Debtor is authorized to distribute  
 26 the principal of the CLAT for his children’s health, education, support, and maintenance. At the end  
 27 of the annuity period (23.5 years), the funds revert back to the Debtor.  
 28



1 The CLAT also makes irrevocable gifts to the American Endowment Foundation (“AEF”), a  
2 501(c)(3) public charity. However, the Debtor maintains a Donor Advised Fund (“DAF”) at AEF.  
3 Although the DAF is legally owned by AEF, the Debtor is able to designate which charities receive  
4 disbursements from the DAF, which allows its funds to be misappropriated.

5 The largest donation of \$175,172 from the DAF, was made on January 11, 2018, to Way of  
6 the Future, a “church” founded by the Debtor. See, Manning Declaration, Exhibit L.

7 **E. Dissipation of Assets on the Eve of Bankruptcy**

8 According to the Debtor’s SOFA (Docket No. 73), during the 90-day prepetition period, the  
9 Debtor transferred \$6,222,545 to his company, Pronto, his family, and attorneys. The notable  
10 transfers are the \$3,000,000 he transferred to his Pronto, three business days before his bankruptcy  
11 filing; \$308,700 to his fiancé a portion of which was an ‘investment’ in her then dissolved company;  
12 \$80,000 to his step mother (through her company, Singalare); an additional \$41,920 to Fawn Park  
13 (another company controlled by his step-mother); and \$938,843 to his counsel, Goodwin Procter.  
14 These transfers do not include the gifts the Debtor gave to his fiancée, including a \$130,000 Tesla on  
15 February 13, 2020.

16 **F. Debtor’s Interests in Businesses Valued at \$15 + Million**

17 The Debtor maintains an ownership interest in a web of entities that hold interests in various  
18 investments, including real estate and Pronto, a potentially extremely valuable technology company.  
19 The material assets include:

20 **1. 2201 Dwight Way, Berkeley, CA – 77-Unit Housing Complex**

21 The Debtor has effective ownership of 13.67% of a 77-unit, 236-bed student housing complex  
22 (the “Dwight Project”) that is leased to the University of California Berkeley and currently generates  
23 income (\$361,000 per month). As depicted in the Organizational Chart, the Debtor holds his  
24 ownership interest indirectly through Dwight Partners, LLC, Garden Village Partners, LLC, and NGI  
25 East Bay Portfolio, LLC.

26 **2. 4700 and 5110 Telegraph Avenue, Oakland, CA**

27 The Debtor has effective ownership of 45% of two residential and commercial buildings  
28 located in Oakland, California (the “Telegraph Project”) through his indirectly controlled entity NGI

1 East Bay Portfolio LLC (“NGI”). The Debtor may potentially have additional interests in this entity  
2 through certain trusts who also appear to hold ownership interests in NGI.

3 **G. Loans to Affiliates and “SAFE” Investments With Total Loan Value of \$18+ Million**

4 **1. 250 Fawn Park, LLC Loan - \$720,000**

5 In 2017, the Debtor bought a home for his parents in St. Helena, California, but structured the  
6 transaction to make it appear that the purchase was a legitimate and arm’s length transaction for  
7 adequate consideration. It was not.

8 In March 2017, the Debtor, his step-mother Suzanna Musick, and father formed 250 Fawn  
9 Park, LLC (“Fawn Park”) for the purpose of buying, remodeling, and maintaining a home located at  
10 250 Fawn Park in St. Helena, California (“Fawn Park Property”). The Debtor made a capital  
11 contribution of \$1.14 million and received a 90% membership interest in Fawn Park, with his step-  
12 mother and father each receiving a 5% membership interest. Public records show that the Property  
13 was purchased approximately one month later in April 2017 for \$949,000.

14 In December 2017, the Debtor sold the entirety of his membership interest in Fawn Park to his  
15 step-mother for \$720,000, payable pursuant to an *unsecured* promissory note with a balloon payment  
16 of the principal due in 2048. Thus, the Debtor sold his interest back to his step-mother for \$420,000  
17 less than his capital contribution that had been made just a few months earlier and then deferred  
18 payment of that purchase price for thirty-one years.

19 **2. Home Studio SAFE Investment - \$250,000**

20 On February 10, 2020, the Debtor and Home Studio, Inc. (“Home Studio”) entered into a  
21 Simple Agreement for Future Equity (the “Home Studio SAFE”).<sup>1</sup> Home Studio’s Chief Executive  
22 Officer at the time was Victoria Pacchiana, the Debtor’s fiancée. Pursuant to the Home Studio SAFE,  
23 Home Studio agreed to issue the right to shares of its capital stock in exchange for a \$250,000  
24 payment from the Debtor.

25  
26 \_\_\_\_\_  
27 <sup>1</sup> In general, Simple Agreement for Future Equity (“SAFE”) investments are financing contracts typically used by start-up  
28 companies to raise capital during seed financing rounds. This investment form provides investors the right to receive  
future equity if a conversion event occurs, such as an additional round of financing or the sale of the company. Notably,  
SAFE investments do not accrue interest or mature (i.e., SAFE investors face the risk of not recovering their investment if  
a conversion event does not occur).

1 On March 4, 2020, the Debtor transferred \$250,000 to Home Studio on account of the  
2 “SAFE” investment. *See* SOFA, Docket No. 73.

3 **3. Pronto SAFE Investments - \$5.5 million**

4 Between October 2018 and July 2019, Pronto issued a convertible note (“Pronto Note”) to the  
5 Debtor with an outstanding balance of \$2,539,690 as of July 2019. On July 16, 2019, shortly after the  
6 Interim Award was issued, the Debtor and Pronto entered into an *Exchange Agreement* through which  
7 the \$2,539,690 balance of the Pronto Note was terminated and canceled in exchange for the issuance  
8 of a SAFE (“Pronto SAFE 1”). Under the terms of Pronto SAFE 1, Pronto agreed to issue the right to  
9 certain shares of its capital stock in exchange for the Pronto Note—effectively converting the Pronto  
10 Note to equity.

11 On February 28, 2020, shortly after the Final Award was issued, the Debtor entered into a  
12 second SAFE with Pronto (“Pronto SAFE 2” and, collectively with Pronto SAFE1, the “Pronto  
13 SAFE”). Under the terms of Pronto SAFE 2, Pronto agreed to issue the right to certain share of its  
14 capital stock in exchange for a \$3,000,000 payment from the Debtor. *See*, Manning Declaration,  
15 Exhibit Q.

16 **4. NGI Loan - \$8 million**

17 On March 31, 2017, the Debtor loaned \$8 million to NGI pursuant to a Promissory Note and  
18 Guaranty (the “NGI Note”). The NGI Note accrued interest at 9% per annum and matured on March  
19 31, 2020. To the extent the NGI Note has not been amended (and the Debtor did not ask this Court  
20 for permission to make an amendment), the NGI Note is in default. NGI is managed by Randall  
21 Miller.

22 **5. Randall Miller Loan - \$3.4 million**

23 In December 2017, the Debtor sold 15,000 Class A Units and 15,000 Class B Units in RAD  
24 Urban, LLC to Randall Miller in exchange for a \$3.4 million promissory note (the “Randall Miller  
25 Loan”). *See* Amended Schedule AB, Dkt 375. The Randall Miller Loan accrues interest at a  
26 favorable 2.1% per annum and is due December 14, 2026.

1           **6.       RAD Urban Loan - \$1.1 million**

2           Pursuant to Schedule A/B, the Debtor loaned \$1.1 million to RAD Urban, Inc. (f/k/a RAD  
3 Urban, LLC), another Randall Miller-run company. *See* Amended Schedule AB, Dkt 375.

4           **H.       Background Information Relevant to the Debtor’s Retirement Needs**

5           **1.       Debtor’s Age, Health, and Dependents**

6           Upon information and belief, the Debtor is 40 years old and has no known health issues.  
7 According to the Social Security Department’s actuarial tables, from which the Court may take  
8 judicial notice, the average life expectancy of a 40-year-old male at retirement age (67) is 14.6 years.  
9 *See* <https://www.ssa.gov/oact/STATS/table4c6.html>. According to the Debtor’s schedules, the  
10 Debtor has two sons ages 9 and 6.

11           **2.       Educational Background and Early Accomplishments**

12           As set forth in the *First Amended Complaint for Declaratory Relief, Specific Performance and*  
13 *Damages; Objection to Claim* (the “Complaint”) filed by the Debtor against Uber in September 2020  
14 (Adversary Proceeding No. 20-03050), the Debtor earned his undergraduate and graduate degrees in  
15 Industrial Engineering and Operations Research at University of California, Berkeley (“U.C.  
16 Berkeley”). The Debtor also describes himself as “one of the world’s leading experts in autonomous  
17 vehicle technology [and] a star engineer who built one of the first self-driving motorcycles . . . , one of  
18 the first self-driving cars, and one of the first self-driving freight trucks.” *Complaint* at 2.

19           As the Court is aware, the Debtor is also a founding member of Google’s autonomous car  
20 initiative, Project Chauffeur, and played an integral part in driving the technology development for  
21 Project Chauffeur. The Debtor earned approximately \$127 million in deferred compensation for his  
22 work on that project before he left Google.

23           **3.       The Debtor’s Current and Prior Income**

24           Pursuant to Form 122B, Docket No. 15, the Debtor reports that his current monthly income is  
25 \$8,333.00. As discussed above, the Debtor is currently employed by Pronto, an automotive safety  
26 technology firm that he co-founded and in which he is currently an investor through the Pronto SAFE  
27 investment. The Debtor was also previously the public facing chief executive officer, president, and  
28 secretary of Pronto.

1 The Debtor's current monthly income from Pronto, which is well below market rate,<sup>2</sup> is not  
2 representative of his earning capacity, as evidenced by his previous employment with Google where,  
3 among other things, the Debtor led the company's development of autonomous driving technology  
4 and was a key contributor of the company's achievements in the field for which he earned  
5 approximately \$127 million in deferred compensation. After leaving Google to work for Uber, the  
6 Debtor earned a base salary of \$ [REDACTED].

7 **4. The Debtor's Expenses**

8 On Schedule J, Docket No. 71, and the accompanying notes, the Debtor represents that he  
9 "maintains a household consisting of himself, his fiancée, and his two young sons who live with him  
10 part-time under a joint custody arrangement with their mother." The Debtor identified \$41,169 in  
11 monthly expenses, including: \$7,667 for his children's tuition<sup>3</sup> and \$21,250 for miscellaneous  
12 advisory services. *Id.* Upon information and belief, the \$21,250 expense figure consists of a \$10,000  
13 monthly payment to the Debtor's public relations firm (run by his fiancée) and \$10,000 per month to  
14 his step-mother for bookkeeping. Although the Debtor's initial operating budget included payments  
15 to his fiancée and step-mother, the Debtor has agreed to remove these insider payments from his  
16 budget. *See Debtor's Supplement to Motion to Approve (I) Chapter 11 Budget for the Use of the*  
17 *Debtor's Cash and Postpetition Income and (II) Payment of Certain Expenses*, Docket No. 106  
18 ("Supplemental Budget").

19 **ARGUMENT**

20 **A. The Debtor Has the Burden of Proof**

21 As an initial matter, the Debtor has the burden of proving by a preponderance of the evidence  
22 that the assets held in his Pensco Roth IRA are exempt under California law. *Diaz v. Kosmala (In re*  
23 *Diaz)*, 547 B.R. 329, 337 (BAP 9th Cir. 2016) ("where a state law exemption statute specifically  
24 allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation"); *In re*  
25 *Pomeroy*, 2017 Bankr. LEXIS 2358, at \*13 (BAP 9th Cir. April 24, 2017) ("Everyone agrees that the  
26

27 <sup>2</sup> According to the U.S. Bureau of Labor Statistics' Occupational Employment Statistics, in 2019 a chief executive in San  
28 Francisco makes an annual salary of approximately \$236,060. *See* [https://www.bls.gov/oes/current/oes\\_41860.htm#15-0000](https://www.bls.gov/oes/current/oes_41860.htm#15-0000).

<sup>3</sup> On the December 2020 Monthly Operating Report, Docket No. 409, the total annual tuition expenses is \$67,402, which amounts to roughly \$5,617 per month.

1 Debtor has the burden of proof”); *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); *In re*  
2 *Tallerico*, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015); *In re Barnes*, 275 B.R. 889, 898 n.2 (Bankr.  
3 E.D. Cal. 2002); *see also Gonzalez v. Davis (In re Davis)*, 323 B.R. 732, 740 (BAP 9th Cir. 2005)  
4 (Klein, J., concurring).

5 **B. The Pensco Roth IRA Does Not Qualify Under the IRS Code and Cannot Be Exempt**

6 Pursuant to Schedule C, the Debtor asserts that the following retirement accounts are exempt  
7 pursuant to section 703.140(b) of the California Code of Civil Procedure:

Account Type	Institution Name	Amount
IRA	Pensco Roth IRA	\$17,199,570.00
IRA	Fidelity – 0042	\$197.00
IRA	Fidelity – 4527	\$14.00
IRA	Fidelity – 5509	\$5,130.00
IRA	Morgan Stanley – 3935	\$23,714.00
IRA	Morgan Stanley – 3934	\$0.00
401(k)	Guideline 401(k)	\$386,773.00
<b>TOTAL:</b>		<b>\$17,615,398.00</b>

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14 This Objection is limited to the Debtor’s claim of exemption with respect to the Pensco Roth  
15 IRA and the assets set forth therein. Accordingly, Uber does not at this time challenge the claim of  
16 exemption with respect to the remaining \$415,828 of retirement account funds.

17 Section 703.140(b)(10)(E), which applies to retirement accounts, provides an exemption in  
18 any of the following:<sup>4</sup>

19 A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or  
20 contract on account of illness, disability, death, age, or length of service, to the  
21 extent reasonably necessary for the support of the debtor and any dependent of the  
debtor, unless all of the following apply:

- 22 (i) That plan or contract was established by or under the auspices of an  
23 insider that employed the debtor at the time the debtor’s rights  
under the plan or contract arose.
- 24 (ii) The payment is on account of age or length of service.
- 25 (iii) That plan or contract does not qualify under Section 401(a), 403(a),  
26 403(b), 408, or 408A of the Internal Revenue Code of 1986.

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28 <sup>4</sup> *Rousey v. Jacoway*, 544 U.S. 320, 326-27 (2005) (holding that IRAs are exempt from the bankruptcy estate section 522(d)(10)(E) of the Bankruptcy Code as the right to receive payment under an IRA is “on account of illness, disability, death, age or length of service.”)



1 The Debtor has failed to meet his burden to establish that the Pensco Roth IRA is eligible for  
2 exemption. Upon information and belief, the Pensco Roth IRA was established by the Debtor, the  
3 payments under the Pensco Roth IRA are to be made on account of age, and the Pensco Roth IRA  
4 does not qualify under Section 408A of the Internal Revenue Code of 1986 (the “IRC”).

5 The California retirement account exemption provides protected status to IRAs and other  
6 pensions. Accordingly, overfunding these plans is a common asset protection approach that can be  
7 abused—as it has been here. *In re Rucker*, 570 F.3d 1155, 1158, 1161 (9th Cir. 2009), is instructive.  
8 There, the court held that a claim of exemption for a retirement plan based upon California law was  
9 an abuse and would not be allowed. The court concluded that the debtor used the plan to shield his  
10 assets and thus it was not a retirement account that could be claimed as exempt, based on several  
11 factors, including (i) the debtor had one major creditor and admitted that he did not want to pay his  
12 “black hole” judgment, (ii) the debtor also overfunded the plan in violation of IRS/IRC rules, (iii) the  
13 debtor secretly funded the plans using a wholly owned offshore corporation and a foreign bank  
14 account, and (iv) one of the plans purchased property on which the debtor resided rent free.  
15 Similarly, in *Xiao v. Chorches*, 610 B.R. 183 (D. Conn. Sept. 30, 2019), the court denied the debtor  
16 an exemption in a pension plan because discretionary amendments to the plan were not in substantial  
17 compliance with the requirements of IRC section 401(a) as of the bankruptcy petition date, and  
18 debtor was materially responsible for such failure.

19 Like the debtors in *Rucker* and *Xiao*, the Debtor here has used his Roth IRA as an asset  
20 protection device and not for true retirement purposes. For starters, the Debtor was ineligible to  
21 establish his Roth IRA in 2016 because his adjusted gross income exceeded the cap set forth in the  
22 Internal Revenue Code. In 2016, the Internal Revenue Code limited annual funding into a Roth IRA  
23 for individuals under 55 years of age to \$5,500 and made Roth IRAs available only to taxpayers with  
24 an adjusted gross income below \$132,000. 26 U.S.C. § 408A(c)(2). Although the Debtor opened his  
25 Pensco Roth IRA with \$4,326 in cash, the Debtor’s adjusted gross income in 2015 was \$51,245,453  
26 and in 2016 was \$75,229,827, many, many multiples above the \$132,000 adjusted gross income cap  
27 for a single taxpayer.  
28



1 After he established his Pensco Roth IRA in violation of the Internal Revenue Code, he  
2 continued to violate the rules for such accounts. For example, in July 2018, Debtor contributed  
3 3,872,000 units of Otto Trucking valued at \$17.2 million, far above the \$5,500 annual contribution  
4 limit. The Debtor also invested the funds in his Roth IRA with “disqualified parties,” in violation of  
5 IRC section 4975(e)(2). The Debtor used the funds in his Roth IRA to invest in loans to companies  
6 managed by his good friend Randall Miller in which the Debtor also held an interest or in companies  
7 where the Debtor was an officer (e.g., the Nautilus Loan, RAD Loan, and Acorn Investment/Pronto).

8 These investments violated IRC section 4975(c). Section 4975(c) restricts certain transactions  
9 between a Roth IRA and a “disqualified person” to encourage the use of Roth IRAs for accumulation  
10 of retirement savings and to prohibit those in control of Roth IRAs from taking advantage of the tax  
11 benefits for their personal accounts—which is exactly what the Debtor has done here. 26 U.S.C.  
12 § 4975 (c). Section 4975(e)(2) defines a “disqualified person” as the Roth IRA holder (i.e., the  
13 Debtor), family members of the Roth IRA holder, and entities in which the Roth IRA holder holds a  
14 controlling equity or management interest. *Id.* § 4975(e)(2).

15 In addition to being a prohibited transaction under IRC section 4975(c), these Roth IRA  
16 related-party transactions may also be prohibited tax shelters (listed transaction). For example, the  
17 IRS has issued guidance intended to shut down abuses involving indirect contributions to Roth IRAs  
18 in which value is shifted into an individual’s Roth IRA through transactions involving entities owned  
19 by the individual. *See* Notice 2004-8, attached to the Manning Declaration, Exhibit R. In Notice  
20 2009-59, the IRS includes the transaction discussed in Notice 2004-8 (or those substantially similar to  
21 such transaction) as one determined by the IRS to be a tax avoidance transaction and identifies it  
22 among the “listed transactions” (illegal tax shelters) for purposes of Treasury Regulations. §1.6011-  
23 4(b)(2) and §301.6111-2(b)(2). *See* Notice 2009-59, attached to the Manning Declaration, Exhibit S.

24 In short, at a time when the Debtor was defending against Google’s significant claims, the  
25 Debtor moved substantial property into an “exempt” retirement vehicle in violation of applicable  
26 Internal Revenue Code rules and then used the funds in that retirement account to continue his  
27 business ventures, also in violation of Internal Revenue Code rules. Making the Debtor’s fraudulent  
28 intent even clearer is the fact that at the same time as the Debtor was abusing his Roth IRA, he also

1 was moving significant other assets into investments and family-member loans that would make the  
2 ability of his creditors to reach those assets more difficult. Because the Debtor will be unable to  
3 establish by a preponderance of the evidence that the Pensco Roth IRA is a qualified Roth IRA, the  
4 Court must deny the claim of exemption with respect to the Pensco Roth IRA.

5 **C. The Pensco Roth IRA Does Not Meet the “Reasonably Necessary” Test**

6 Assuming the Pensco Roth IRA is a qualified retirement account under the IRC, the value of  
7 the Pensco Roth IRA—\$17,199,570—far exceeds what is deemed “reasonably necessary” for the  
8 Debtor and his dependents during the Debtor’s retirement.

9 As discussed above, section 703.140(b)(10)(E) of the California Code of Civil Procedure  
10 provides an exemption for qualified retirement accounts, but only “*to the extent reasonably necessary*  
11 *for the support of the debtor and any dependent of the debtor*” when the debtor retires. *Pomeroy*,  
12 2017 Bankr. LEXIS 11162358, at \*9 (“The relevant inquiry is, thus, whether those payments (when  
13 Debtor retires) will be reasonably necessary for Debtor’s support.”).

14 To determine whether a retirement asset is “reasonably necessary” for a debtor or his  
15 dependent’s support under the California state exemption statute, courts in the Ninth Circuit look to a  
16 variety of factors:

- 17 (1) the debtor’s present and anticipated living expenses and income;
- 18 (2) the age and health of the debtor;
- 19 (3) the debtor’s ability to work and make a living (skills and education);
- 20 (4) the debtor’s other assets and their liquidity;
- 21 (5) the debtor’s ability to save for retirement; and
- 22 (6) any special needs of the debtor and his/her dependents.

23 *See Moffatt v. Habberbush (In re Moffat)*, 119 B.R. 201, 206 (BAP 9th Cir. 1990), *aff’d*, 959 F.2d  
24 740 (9th Cir. 1992); *Pomeroy*, 2017 Bankr. LEXIS 11162358, at \*9. The reasonably necessary  
25 standard therefore estimates whether the exempt asset “is designed to provide a debtor with the basic  
26 necessities and to prevent the debtor from being a public charge.” *In re Williams*, 556 B.R. 456, 461  
27 (Bankr. C.D. Cal. 2016).

1 Although the Debtor has the burden of proof beyond a preponderance of the evidence to  
2 establish that the \$17.2 million of assets contained in the Pensco Roth IRA are reasonably necessary  
3 for his support at retirement, an examination of the *Moffat* factors evidences that this amount far  
4 exceeds what is reasonably necessary for the Debtor's support in retirement.

5 The Ryan Declaration contains a detailed analysis of the Debtor's projected needs in  
6 retirement that are based on information in the Debtor's Schedules, the December 2020 operating  
7 report, and certain conservative assumptions regarding his income potential, including the following:  
8 (1) the Debtor's ability to earn a salary of \$236,060, which is the average market rate for CEOs in  
9 San Francisco<sup>5</sup> and which does not reflect the full value of the Debtor's earning potential based on his  
10 continued ability to create and monetize inventions; (2) the Debtor's receipt of social security income  
11 during his retirement; (3) the Debtor's ability to save \$10,000 a year for his retirement; and (4) the  
12 continued growth of his retirement accounts at a modest rate of 5% per year until he reaches  
13 retirement age and 3.5% growth per annum thereafter. Even utilizing these highly conservative  
14 assumptions, the Debtor will not only be able to fund his retirement expenses in full, but he will also  
15 have an additional \$395,130 remaining with which he can supplement his living expenses during  
16 retirement. Thus, the Debtor will earn enough between now and his retirement in 2047 to fully fund  
17 his retirement needs, rendering the entire value of the Pensco Roth IRA unnecessary to support the  
18 Debtor's needs in retirement.

19 Based on these reasonable and conservative assumptions, the Debtor will have approximately  
20 \$4,377,526 in total retirement sources/income to spend during his 14.6 years of retirement which is  
21 greater than his anticipated, total and approximate uses/expenses of \$3,982,395. The difference  
22 between these two figures—\$395,130—will serve as a cushion to supplement any additional needs  
23 that the Debtor may have in retirement.

24 Each of the *Moffat* factors is briefly addressed below.

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28 <sup>5</sup> See the U.S. Bureau of Labor Statistics average salary of a CEO in San Francisco in 2019,  
[https://www.bls.gov/oes/current/oes\\_41860.htm#15-0000](https://www.bls.gov/oes/current/oes_41860.htm#15-0000).

1                   **(1) The Debtor’s present and anticipated living expenses and income.**

2                   The Debtor’s present monthly living expenses as set forth in his December 2020 monthly  
3 operating report [Dkt 409] is \$17,813. Based on the Debtor’s filings, as set forth in the Ryan  
4 Declaration, Uber has prepared a Retirement Analysis that annualized these expenses, projected such  
5 expenses until retirement (age 67). *See* Ryan Declaration ¶ A. In addition, these annualized expenses  
6 were adjusted during the projected retirement period to represent the Debtor’s likely expenses at  
7 retirement. *Id.* For example, when the Debtor is expected to retire at age 67 in 2047, there is no  
8 reason to believe that he will be required to continue paying tuition and child support for what will  
9 then be his two adult children.

10                   **(2) The age and health of the debtor.**

11                   The Debtor is 40 years old and is in apparent good health. *Davis*, 323 B.R. at 740 (“Where a  
12 debtor is working and there is no evidence about the debtor’s health, it can be inferred that the  
13 debtor’s health is not an impediment to future productive work.”).

14                   **(3) The Debtor’s ability to work and make a  
15 living (skills and education) and save for retirement.**

16                   The Debtor earned both his undergraduate and graduate degrees in Industrial Engineering and  
17 Operations Research from U.C. Berkeley and has one of his early inventions—a self-driving  
18 motorcycle—on display at the Smithsonian Museum. The Debtor also describes himself as “one of  
19 the world’s leading experts in autonomous vehicle technology [and] a star engineer who built one of  
20 the . . . first self-driving cars, and one of the first self-driving freight trucks.” The Debtor has proven  
21 his ability to monetize his academic and innovative accomplishments as evidenced by the \$127  
22 million in deferred compensation he earned for his work on Project Chauffeur. The Debtor continued  
23 to earn substantial amounts of money after he left Google in 2016 when he helped start a self-driving  
24 trucking company, and then began working for Uber, earning a base salary of \$[REDACTED]. The Debtor  
25 continues to work in the field of autonomous vehicles, which only further demonstrates his ability  
26 earn a living and fund his retirement. While the Debtor’s current monthly income from his company,  
27 Pronto.ai, may be modest (\$100,000 per year), it is not an accurate reflection of the Debtor’s earning  
28 potential as evidenced by his very lucrative employment history.

1 According to the Social Security Department’s actuarial tables, from which the Court may  
2 take judicial notice, the Debtor is expected to live approximately 14.6 years after retirement. Based  
3 on the Debtor’s employment history, it is reasonable to expect that the Debtor will continue to not  
4 only support himself and his two minor children, but that he will be able to adequately save for his  
5 retirement.

6 Although the Debtor was indicted on thirty-three counts of theft and attempted theft of trade  
7 secrets and sentenced to eighteen months in prison, President Trump issued a full pardon to the  
8 Debtor on January 21, 2021. Accordingly, any risk the indictment and prison sentence posed to the  
9 Debtor’s ability to work and make a living has effectively been eliminated.

10 **(4) The Debtor’s other retirement assets and their liquidity.**

11 As noted on Schedule C, the Debtor has claimed an exemption in \$17,689,024 worth of assets.  
12 If Uber is successful in challenging the exemption taken in the Pensco Roth IRA, the Debtor will be  
13 left with at least \$415,828 in exempt assets, including a 401(k) that is valued at \$386,773. As  
14 reflected in the Ryan Declaration and the Retirement Analysis, the Debtor’s non-Pensco Roth IRA  
15 retirement accounts (\$415,828), combined with the amounts the Debtor is projected to receive from  
16 Social Security in retirement (\$1,623,784), will be sufficient to support the Debtor’s needs in  
17 retirement. Additionally, if the Debtor continues to earn a modest salary and saves \$10,000 a year  
18 until he retires, he will have an additional \$395,130 during his retirement years.

19 **(5) Any special needs of the Debtor or his dependents.**

20 Uber is not aware of any special needs of the Debtor or his dependents.

21 **CONCLUSION**

22 Although the Debtor has the burden to demonstrate that the Pensco Roth IRA is a qualified  
23 retirement account and its assets are reasonably necessary to support the Debtor in retirement, the  
24 facts establish that (1) the Debtor’s contributions to the Pensco Roth IRA exceeded the maximum  
25 allowable contributions and (2) the approximately \$17.2 million of assets in the Pensco Roth IRA are  
26 *not* reasonably necessary to support the Debtor in retirement. The Debtor is young, well educated,  
27 and a recognized leader in the field of autonomous vehicle technology who has earned over \$127  
28 million for his expertise in the field. The Debtor is well positioned to continue earn a substantial

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living before he retires in the next 27 years. Under these facts and circumstances, the Debtor's claim of exemption with respect to the Pensco Roth IRA should be denied.

Dated: February 10, 2021

PACHULSKI STANG ZIEHL & JONES LLP

By: /s/ Debra I. Grassgreen  
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and

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13  
14 **IN THE UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

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

Bankruptcy Case  
No. 20-30242 (HLB)  
Chapter 11

**CERTIFICATE OF SERVICE**



1 STATE OF CALIFORNIA )  
2 CITY OF SAN FRANCISCO )

3 I, Hung Phan, am employed in the City of San Francisco, State of California. I am over the  
4 age of 18 and not a party to the within action; my business address is 150 California Street, 15th  
Floor, San Francisco, California 94111.

5 On February 10, 2021, I caused to be served the following documents in the manner stated  
6 below:

7 • **UBER TECHNOLOGY, INC.'S OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTION IN PENSCO ROTH IRA**

8 9 10 11 <input checked="" type="checkbox"/>	<b>TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):</b> Pursuant to controlling General Orders and LBR, the foregoing document was served by the court via NEF and hyperlink to the document. On <b>February 10, 2021</b> , I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below
12 13 <input checked="" type="checkbox"/>	<b>(BY EMAIL)</b> I caused to be served the above-described document by email to the parties indicated on the attached service list at the indicated email address.
14 15 16 17 <input checked="" type="checkbox"/>	<b>(BY MAIL)</b> I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

18 I declare under penalty of perjury, under the laws of the State of California and the United  
19 States of America that the foregoing is true and correct.

20 Executed on February 10, 2021 at San Francisco, California.

21 /s/ Hung Phan  
22 Hung Phan

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