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aggrieved employees and others similarly situated



**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SANTA CLARA**

ANA CANTU, individually and on behalf of
others similarly situated,

Plaintiff,

vs.

GOOGLE LLC, LISA NICOLE CHEN, AND
DOES 1 THROUGH 25, INCLUSIVE,

Defendants

Case No. 21CV392049

**PLAINTIFF ANA CANTU'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Hearing Date: March 6, 2025
Hearing Time: 1:30 p.m.
Department: 7

Complaint Filed: December 8, 2021
Trial Date: None set

**TO ALL THE PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

**YOU ARE HEREBY NOTIFIED THAT** on March 6, 2025, or as soon thereafter as the matter can be heard, in Department 7 of the above-entitled Court before the Honorable Charles F. Adams, Plaintiff Ana Cantu ("Plaintiff" or "Class Representative") will apply for an order:

(1) Preliminarily approving the proposed settlement of this class action with Defendant Google LLC ("Google");

(2) For settlement purposes only, conditionally certifying the following Class: All current and former Hispanic, Latinx, Indigenous, Native American, American Indian, Native Hawaiian, Pacific Islander, and/or Alaska Native employees who worked for Google in California any time during the time period of February 18, 2018 to December 31, 2024.

(3) Provisionally appointing Plaintiff as the representative of the Class;

(4) Provisionally appointing Beth Gunn and Catherine Coble of Gunn Coble LLP and Jennifer Kramer of Kramer Brown Hui LLP (formerly "Hennig Kramer LLP") as Class Counsel for the Class;

(5) Approving the form and method for providing class-wide notice;

(6) Directing that notice of the proposed settlement be given to the Class;

(7) Appointing Atticus Administration LLC as the Settlement Administrator; and

(8) Scheduling a final approval hearing date to consider Plaintiff's motion for final approval of the settlement and entry of the Judgment, and Plaintiff' motion for approval of attorney's fees and litigation expenses.

This motion for preliminary approval of the class settlement is brought pursuant to California Rules of Court, Rule 3.769. Plaintiff's motion will be based on this notice of motion and motion, the accompanying points and authorities, the Declarations of Beth Gunn, Catherine Coble, Jennifer Kramer, Ana Cantu, and Christopher Longley, all exhibits attached to the declarations, the Settlement Agreement ("Agreement") between the parties, and the complete files and records in this action.

///

Because all parties have agreed to the proposed class settlement, this motion is not opposed by Google.

Dated: February 20, 2025

GUNN COBLE LLP
KRAMER BROWN HUI LLP

By:_____
Beth Gunn
Attorneys for Plaintiff ANA CANTU individually and on behalf of the State of California, aggrieved employees, and others similarly situated

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## I. INTRODUCTION

This case is brought as a class and representative action alleging that Defendant Google LLC ("Google") violated California's Equal Pay Act. Specifically, Plaintiff Ana Cantu ("Plaintiff") alleges that Google failed to comply with the California Labor Code ("Labor Code") section 1197.5's requirement that "[a]n employer shall not pay any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions." Labor Code § 1197.5. In the lawsuit, Plaintiff alleges that Google systematically paid its over 7,000 current and former Hispanic, Latinx, Indigenous, Native American, American Indian, Native Hawaiian, Pacific Islander, and/or Alaska Native employees who worked for Google in California during the time period of February 15, 2018 through December 31, 2024 ("Class Members")[1] less than their White and/or Asian/Asian American counterparts. At all times, Google has denied the claims. This motion seeks preliminary court approval of Plaintiff's and Google's (collectively, "the Parties") settlement of the class action and representative claims brought pursuant to the Private Attorneys General Act ("PAGA"), which includes initial approval of the settlement terms as well as certification of a class for preliminary approval purposes.

The settlement contemplates that Google will pay $28,000,000.00 as a non-reversionary settlement to be distributed, after applicable deductions, to Class Members for a release that covers the class and PAGA claims at issue in the lawsuit, including the Labor Code section 1197.5 claims, as well as derivative claims for violations of Labor Code sections 201-203 and unfair competition, during the period of February 15, 2018 through the date of preliminary approval of the settlement. It is one of the first settlements of its kind since Labor Code section 1197.5 was updated in 2017 to bridge the wage gap based on race and ethnicity for California employees, and represents meaningful recovery in a novel area of law fraught with risks of uncertainty regarding potential future outcomes.

The proposed settlement satisfies all elements for preliminary approval. It is expected to bring prompt and significant financial benefit to Participating Class Members, and is fair, adequate and

[1] The term "Class Member" is used in this motion to comport with the language used in the settlement agreement, even though these individuals are more accurately defined as putative class members until the time that the Court certifies a class for settlement purposes in this case. The term "Participating Class Member" refers to Class Members who do not elect to opt out of the settlement.

reasonable. The settlement also includes non-monetary relief designed to prevent future harms of the same type alleged in the lawsuit. It was reached through arms-length bargaining with the assistance of both experienced counsel and a mediation session with a respected complex civil mediator as well as multiple follow-up negotiations. The applicable Notice clearly apprises Class Members of their rights to participate in, object to, or opt out of the settlement. There is no suggestion of anything other than good faith and fair dealing on all material issues related to the resolution of the action, and it compares favorably to other recent settlements involving similar claims in California. Plaintiff respectfully submits the proposed Settlement Agreement ("Agreement")[2] and respectfully requests that the Court: (1) grant preliminary approval of the settlement; (2) approve the proposed form and plan of notice; and (3) schedule a hearing to finally approve the settlement.

## II. SUMMARY OF THE LITIGATION

### A. Identity of the Parties, Procedural History, and Claims Asserted

Plaintiff is an ethnically Mexican and racially Indigenous employee who worked for Google in California from October 2014 to September 2021. *See* Declaration of Ana Cantu in support of Motion for Preliminary Approval of Class Action and PAGA Settlement ("Cantu Dec."), ¶ 4. On December 8, 2021, Plaintiff filed a Complaint containing her individual claims asserted in this matter, which included claims for violation of California's Fair Employment and Housing Act ("FEHA") in multiple ways, as well as violation of Labor Code sections 1197.5, violation of Labor Code section 1102 for violation of California's whistleblower protections, and associated tort claims. (Gunn Dec., ¶ 3). On December 9, 2021, Plaintiff sent a letter to the California Labor and Workforce Development Agency ("LWDA") and Google alleging Labor Code violations and announcing her intent to seek penalties pursuant to PAGA, Labor Code section 2698, *et seq*., on behalf of a group of herself and aggrieved non-White employees whom Google compensated less than its White employees who performed substantially similar work in violation of Labor Code section 1197.5. (*Id.*, ¶ 4, Ex. 2). Aggrieved employees were defined as all current and former employees of Google in the State of California who had one or more violation of the following provisions of the Labor Code violations

[2] *See* Declaration of Beth Gunn in support of Motion for Preliminary Approval of Class Action and PAGA Settlement ("Gunn Dec."), ¶ 2, Ex. 1.

committed against them as a result of Google's failure to pay non-White employees the same as White employees for substantially similar work: §§ 201-203, 204, 210, 226, 510, 1194, and 1197.5. (*Id.*). Plaintiff filed a First Amended Complaint to add the PAGA claim for violation of Labor Code section 1197.5 and the above-listed derivative Labor Code claims on February 15, 2022, after the required notice period for a PAGA claim had elapsed. (*Id.*, ¶ 5). On September 20, 2023, following the Court's sustaining of Google's demurrer with leave to amend on August 22, 2022, Plaintiff filed a Second Amended Complaint with additional allegations in support of her PAGA claim. (*Id.*, ¶ 6). Defendant's demurrer to the revised Second Amended Complaint was overruled. (*Id.*).

On November 8, 2023, after learning additional information about Google's compensation of non-White employees compared to White employees, Plaintiff filed a motion for leave to file a Third Amended Complaint containing causes of action seeking class-wide relief against Google for violation of Labor Code section 1197.5, violation of California Business and Professions Code § 17200, *et seq.*, and derivative penalties for failure to pay all wages due to discharged and quitting employees pursuant to Labor Code sections 201-203 and 1194.5. (*Id.*, ¶¶ 8-9). On January 18, 2024, the Court granted Plaintiff's motion for leave to amend and Plaintiff filed the Third Amended Complaint on January 22, 2024 on behalf of a class defined as "all current and former Hispanic, Latinx, Black/African descent, Indigenous, Native American, American Indian, Native Hawaiian, Pacific Islander, and/or Alaska Native employees who worked for Google in California within the last four years up to the date of trial in this action." (*Id.*, ¶ 10). A subclass of terminated class members was also identified. (*Id.*). Plaintiff sought unpaid wages, statutory and civil penalties, restitution of monies due to Plaintiff and the Class, pre-judgment and post-judgment interest, attorney fees, and costs, and injunctive relief. (*Id.*). The crux of the allegations was that Plaintiff and other non-White employees were compensated less than White employees who performed substantially similar work when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, depriving them of wages and entitling them to penalties and interest in violation of the Labor Code due to Google's willful business practices. (*Id.*)

Google filed a demurrer to the Third Amended Complaint on February 23, 2023, asserting

that Plaintiff, who is not Black, cannot represent Black employees, and that Plaintiff's proposed class is incapable of resolution on a class-wide basis because there is no way to resolve on a class basis whether any alleged pay disparity was the result of pay discrimination or some other bona fide reason, as Google contends. (*Id.*, ¶ 11). The demurrer also argued that waiting time penalties pursuant to Labor Code section 203 are not available based on Labor Code 1197.5 claims. Google's demurer was scheduled to be heard in July 2025. The demurrer hearing has been continued pending the Parties' settlement negotiations. (*Id.*).

As part of the settlement, the Parties have submitted a Stipulation to File Fourth Amended Complaint, which amends the class definition to exclude Google's employees who are Black/African descent, to address Google's concerns raised in its pending demurrer and to focus the settlement on the group of Google employees most closely aligned to Plaintiff's race/ethnicity. (*Id.*, ¶ 12, Ex. 4). Google's Black/African descent employees are currently putative class members in another pending federal class action lawsuit filed by former Black employees of Google containing class-wide claims for violations of Labor Code section 1197.5 and related claims entitled *April Curley, et al. v. Google LLC*, United States District Court, Northern District of California Case No. 3:22-cv-01735-AMO. (*Id.*, ¶ 12, Ex. 3).

## III. ANALYSIS OF THE SETTLEMENT

As a fiduciary for absent class members, a court must determine whether a proposed class action settlement is fair, adequate and reasonable, in light of all relevant factors, including whether the settlement is the result of an arm's length negotiating process, while exercising pragmatism and flexibility in dealing with class actions. *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 555; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 239-40. The court has broad powers to determine whether a proposed settlement is fair and should consider whether the settlement is reasonable in light of the strengths and weaknesses of the claims and the risks of litigation. *Luckey v. Super. Ct.* (2014) 228 Cal.App.4th 81, 95; *Mallick v. Super. Ct.*, 89

Cal.App.3d 434, 438 (1979); *In re Consumer Privacy Cases*, 175 Cal.App.4th at 555. Compromise is necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this does not restrict a settlement as "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Wershba*, 91 Cal.App.4th at 250.

**A. Legal and Factual Basis for Each Class/PAGA Claim Asserted**

Plaintiff made the following allegations in support of her claims that Google had a willful pattern and practice of compensating Class Members less than White and/or Asian/Asian American employees who performed substantially the same or similar work under similar circumstances:

- Google's administrative officers based in its headquarters maintained centralized control over employees' terms and conditions of employment, including recruiting, hiring, job and location assignment, career progression, promotion, and compensation policies, practices and procedures. In particular, Google has a company-wide system of assigning all jobs to a "job family," within which all employees perform similar job duties and responsibilities for a certain section of its business. Within the job family, each job is assigned both a job code for the particular job position as well as a job level that corresponds to a compensation range. According to this structure, all employees in the same job level and job position are performing a like level of duties and responsibilities. (Gunn Dec., ¶ 12, Ex. 4 [Fourth Amended Complaint], ¶¶ 43-46).
- Google sets a base compensation for each job position. When Plaintiff was hired, it was Google's standard practice to request each job candidate's salary history from their three prior jobs as part of its employment application form. During the hiring process, Google considered each potential new hire's prior compensation in determining the new employee's compensation and in what job level the new hire would be placed. Google "leveled up" or "leveled down" a new employee's job depending on whether the job level corresponded to the new hire's prior starting salary. According to Google, this practice ended in August 2017. (*Id.*, ¶¶ 47-48).
- However, Google calculates annual merit raises as a percentage of an employee's current compensation, based in part on each employee's performance ratings. Thus, the original job level and

compensation set affect the amounts employees may earn on a continuing basis. As a result, any initial pay disparities arising from the hiring process are compounded with an employee's continued tenure unless the pay disparity is corrected. Typically, employees receive raises when promoted, but the new salary does not correspond to the new job, it is set as a percentage of the employee's prior salary. Higher percentages of salary increases and bonuses, and more equity compensation, are available to employees working in higher job levels. (*Id.*, ¶ 49).

- As a result of these pay practices, employees were placed in initial job levels not based on skill, effort, or responsibility, but based on their prior salaries either at Google or at other jobs. The original decisions about how to "level" these employees followed them. These compensation practices do not reflect a seniority system, a merit system, a system based on quantity or quality of production, or any other bona fide factor other than race or ethnicity, such as education, training, or experience. (*Id.*, ¶¶ 50-52).
- Despite knowing about its pay disparity problem, Google did not effectively (1) close the wage gap arising from original subjective leveling and compensation decisions; (2) create compensation ranges to pay employees within the same range equally based on permissible criteria, such as education, training, or experience; (3) create a system assigning compensation based on the job performed as opposed to the person performing it, and/or restructured its workforce accordingly; or (4) otherwise correct the known ongoing wage gap between Class Members and its White and Asian/Asian American employees. (*Id.*, ¶¶ 53-57).
- These violations were willful because Google was aware of the wage differentials based on (1) its own internally available data reported to federal and state agencies, (2) an internal presentation highlighting the wage discrepancies affecting Latinx employees and knowledge of the data underlying it; and (3) Plaintiff's and other employees' complaints of pay disparity. In addition, Google claims to have conducted annual pay equity analyses that should have made the wage gap between Class Members and White and/or Asian/Asian American employees obvious. (*Id.*, ¶¶ 62-67).
- These violations resulted in derivative claims pursuant to Labor Code sections 201-203,

204, 210, 226, 510, and 1194, and Business and Professions Code section 17200. (*Id.*, ¶¶ 150-182).

**B. Summary of Investigation and Discovery Conducted**

Class Counsel and Defense Counsel have vigorously litigated this case since its inception. Prior to filing this lawsuit in December 2021, Plaintiff conducted an extensive investigation of the facts at issue, which continued after filing the original and subsequent complaints. (Gunn Dec., ¶¶ 13-19). Over the course of three years after the lawsuit was filed, the parties engaged in extensive formal and informal discovery. (*Id.*) When the parties' numerous meet and confer sessions did not fully resolve discovery issues, they participated in Informal Discovery Conferences with the Court on June 9, 2023, July 19, 2023, March 25, 2024 and May 3, 2024. (*Id.*) Following the 2023 Informal Discovery Conferences, Plaintiff brought a motion to compel production of informal PAGA-related discovery, which was granted in part on September 11, 2023, with the Court ordering Google to produce employee pay and employment data while protecting employee privacy. (*Id.*) Google responded to multiple rounds of written discovery, providing verified responses to five sets of discovery, including two rounds of supplemental responses and six separate privilege logs. (*Id.*) Google made eleven document productions between 2022 and 2024, totaling nearly 28,000 pages, including documents pertaining to Google's policies, procedures, training, compensation methodology, calibration information, job ladders, diversity annual reports, and internal communications relevant to Plaintiff's claims. Plaintiff responded to two rounds of written discovery, produced 1,148 pages of documents, had her medical and psychological records subpoenaed, and sat for two full days of in-person deposition testimony. (*Id.*)

On October 9, 2023, in response to a discovery order, Google produced data reflecting the pay data (defined as wages, bonuses, and equity awards/RSUs, as well as the date of and amount of any merit increases or pay raises) and employment history (defined as hiring and termination dates, job family/level/code, compensation region, leave and time off data), as well as data regarding what race/ethnicity the employee self-identified as, pertaining to Google's California workforce during the time period of December 9, 2018 to August 21, 2023. (*Id.*). Prior to mediation, Google supplemented this information to cover the time period of February 15, 2018 through December 8, 2018 and to

update the number of putative class members who self-identified as non-White, divided by categories consistent with the Third Amended Complaint. (*Id.*)

In April 2024, at Plaintiff's request, the Court issued an order allowing Plaintiff to seek additional data required to perform data analyses related to the case, including data to reflect the prior salary of employees through their tenure, including employees' starting salary at date of hire and thereafter as contained in a compensation dataset, as well as documents and information, including through Person Most Qualified ("PMQ") deposition testimony, about Google's official policies, and any official guidance/criteria about how to implement those policies, regarding: (1) recruiting practices; (2) hiring practices; (2) level assignments; (3) setting compensation for employees; (4) promotions; (5) performance evaluations; (6) calibration processes; (7) seniority system; (8) merit system; (9) system measuring earnings by quantity or quality of production; (10) compilation of data for filing EEO-1 reports; (11) compilation of data for filing Civil Rights Department (CRD) reports pursuant to California Government Code section 12999; and (12) evaluation/s of pay equity and/or pay disparity based on race/ethnicity. (*Id.,* ¶ 17). The court also permitted Plaintiff to seek identification of the PAGA aggrieved employees (*i.e.*, a contact list), and documents and information about Google's organizational structure for its California workforce. Plaintiff promptly propounded discovery requests (requests for documents, special interrogatories, and PMQ deposition notices) seeking all the information allowed by the Court's order. (*Id.*)

After agreeing to mediate the case, the Parties agreed to continue all deadlines on the official formal responses to discovery until after the mediation but agreed upon an informal provision of a substantial amount of the information and documents authorized by the Court, with an understanding that Plaintiff would proceed in mediation as if any un-produced information would support Plaintiff's claims. (*Id.*, ¶ 18).

Plaintiff hired a qualified expert in the field, labor economist David Neumark, Ph.D., to analyze the data Google provided, as described above. (*Id.*, ¶¶ 20-23). Dr. Neumark's data analyses in three other recent Labor Code section 1197.5 class action cases have been accepted as evidence

supporting class certification of those matters.[3] (*Id.*) Dr. Neumark conducted a multi-regression analysis to determine whether class members/aggrieved employees were paid, on average, less than White and Asian/Asian American employees during the class and PAGA periods.[4] (*Id.*) The analysis controlled for various factors, including job family, job code, time in job code and at Google, prior work experience, education (highest degree earned, and detailed controls for the schools and fields of study for the most recent degree), performance ratings, location information (different California offices and other location differences associated with pay variation); whether an employee was a campus hire; and the year of the observation. (*Id.*) All forms of compensation were included for the comparison, including base pay, bonuses, and equity (valued as of the time of vesting). (*Id.*) The analysis indicated race/ethnicity-based pay differentials within job codes, after being adjusted for the above factors, as well as the lower rate at which Class Members are employed at Google compared to White and Asian/Asian American employees, the consistently lower compensation they receive at hire, and the high percentage of White and Asian/Asian American employees who are compensated the highest within each pay range. (*Id.*)

Although PMQ depositions and full document productions were stayed pending mediation, Plaintiff assumed that Google's PMQs would corroborate the testimony Google provided to the Office of Federal Contract Compliance Programs ("OFCCP") during a prior audit of Google, which is publicly available, as is the information that the same individual provided PMQ testimony in the prior *Ellis* gender pay disparity case against Google. (*Id.*, ¶ 24). This testimony supports the conclusion that persons in the same job codes share skills and responsibilities sufficient to justify treating job codes as a proxy for persons performing substantially similar duties. (*Id.*) Plaintiff also retained an Industrial Occupational psychologist to explain how Google's job codes and job families reflect that its employees are engaged in substantially similar job duties and responsibilities. (*Id.*)

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[3] *See Kelly Ellis, et al., v. Google, LLC*, San Francisco Superior Court Case No. CGC-17-561299 ("*Ellis*"); *Laronda Rasmussen, et al. v. The Walt Disney Company, et al.*, Los Angeles Superior Court Case No. 19STCV10974 ("*Rasmussen*"); *Rong Jewett, et al. v. Oracle America, Inc.*, San Mateo County Superior Court, Case No. 17CIV02669 ("*Jewett*").

[4] Plaintiff refined the definition of potential comparators to include Asian/Asian American employees after an initial review of the data provided by Google.

This investigation of the claims allowed for a thorough analysis of potential liabilities and defenses to the claims in the Action. (*Id.*, ¶ 25).

**C. Summary of Settlement Negotiations**

On August 29, 2024, the Parties engaged in mediation with Stephanie Chow, an experienced mediator in this area of law. (*Id.*, ¶ 26). At the end of a full day of mediation, the Parties each accepted a mediator's proposal made by Ms. Chow and signed a Term Sheet memorializing the key material terms of this settlement on that date. (*Id.*) After the mediation, Plaintiff and Google refined the principal terms of the settlement through the preparation of a detailed long form settlement agreement, which is now presented to the Court for preliminary approval. (*Id.*) As reflected here, the negotiations were protracted and extensive, incorporated the sharing of documents and information necessary to facilitate rational analysis and decisions, contested at arm's length, and facilitated by the guidance and management of an experienced complex civil mediator. (*Id.*) The assistance of third parties to evaluate and assist in the negotiations avoids concerns regarding collusion. *Wershba*, 91 Cal.App.4th at 245; *Dunk*, 48 Cal.App.4th at 1801-02 ("The assistance of a well-respected mediator with substantial experience in employment litigation . . . supports approval of the settlement.").

The parties here have been diligent and capable advocates representing the interests of their clients. In reaching the Settlement, the Parties' counsel relied on their respective substantial litigation experience in similar employment-related class actions, and thorough analysis of the legal and factual issues presented in this case. (*Id.*, ¶¶ 13-25, 27-33, 36-47; *see also* Declaration of Catherine J. Coble in support of Motion for Preliminary Approval of Class Action and PAGA Settlement ("Coble Dec."), ¶¶ 3-10; Declaration of Jennifer Kramer in support of Motion for Preliminary Approval of Class Action and PAGA Settlement ("Kramer Dec."), ¶¶ 1-14). Substantial information obtained from Google, including document and data exchanges, as well as expert review and analysis, informed Plaintiff's assessment of the strengths and weaknesses of the case and the benefits of the Settlement. (Gunn Dec., ¶¶ 13-25, 36-47). Indeed, only after contested negotiations, exchange of information, and efforts by the mediator, did the Parties reach a settlement in principle, and then negotiations to fine-tune the details of settlement continued for several months thereafter. (*Id.*, ¶ 26). The fact the

Settlement "was the product of extensive and hard-fought adversarial negotiations between the parties" and only reached with the assistance of an experienced mediator is a strong indication the settlement process was fair and non-collusive. *Wershba*, 91 Cal.App.4th at 245.

### D. Summary of Risks, Expenses, Complexity and Duration of Further Litigation if the Settlement is Not Approved

It is the court's responsibility to ensure that the settlement represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. *Luckey v. Super. Ct.*, 228 Cal.App.4th at 94-95. It is within the Court's discretion to determine whether a settlement represents a reasonable compromise in light of all the facts, considering relevant factors, such as the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel. *Id. at* 95; *Wershba*, 91 Cal.App.4th at 245; *Kullar*, 168 Cal.App.4th at 129-30. *But see 7-Eleven*, 85 Cal.App.4th at 1150 ("[I]n the context of class action settlements, formal discovery is not a necessary ticket to the bargaining table where the parties had sufficient information to make an informed decision about settlement.").

#### 1. Significant Litigation Risks Weigh in Favor of Settlement

In evaluating the strength of a plaintiff's case, a court "should not reach any conclusions on contested issues of law or fact, because it is the uncertainty of such issues that leads parties to resolve their disputes short of a final, litigated resolution." *7-Eleven,* 85 Cal.App.4th at 1145. While Class Counsel believes the evidence supports the class claims, based on its investigation and analysis, a trial of this case nonetheless poses several uncertainties that favor settlement. (Gunn Dec., ¶ 36-47).

First, this case arises under relatively new law, namely, the expansion of California's Equal Pay Act in January 2017 to prohibit compensation differentials based on race/ethnicity, an extension of the statutory update the prior year addressing wage differentials based on sex/gender. (*Id.*) Very few cases have interpreted the scope of Labor Code section 1197.5's updated statutory language from 2016, including the meaning of the terms "substantially similar work," "composite of skill, effort,

and responsibility," and "similar working conditions" or an analysis of the extent to which the terms apply to circumstances like Google's job coding processes. Further, courts have not thoroughly addressed the meaning of the term "business necessity" or the scope of the exception in Labor Code section 1197.5(1)(D), permitting wage differentials justified by it. Plaintiff and Google interpret the meaning and scope of each of these terms very differently, and the California courts' ultimate adoption of one interpretation over another could impact liability in this case and/or diminish potential damages. (*Id.*) These are novel legal issues that carry a high risk of delay arising from future rulings that could be appealed by either party.

Even if the Class is certified and the issues go to trial, as the *Ellis*, *Rasmussen*, and *Jewett* courts have stated at class certification, the trial is likely to become a "battle of the experts" accompanied by challenges to the scope and substance of expert testimony and the inherent uncertainty of what a jury may decide in response to expert testimony. (*Id.*) Google has asserted that any differential payment of wages by Google was undertaken pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, and/or a bona fide factor other than race, ethnicity or any other protected characteristic(s), which would not be in violation of Labor Code § 1197.5. Google has also disputed Plaintiff's expert's analysis and argued that its own analysis shows that there is no pay shortfall between Class Members and Google's White and/or Asian/Asian American employees. Google has also disputed that job code alone may determine whether any two employees performed substantially similar work. There is always a risk that factfinders will credit defense arguments and evidence over plaintiff arguments and evidence and could render a verdict in Google's favor at trial.

The costs of further litigation are high and could adversely affect the Parties' ability to resolve the matter in the future. (*Id.*) Proof of the claims relies heavily on (1) the expert analysis of a labor economist to provide calculations and opinion regarding potentially statistically significant differences in the compensation paid to Class Members as compared to White and/or Asian/Asian American employees at Google (and challenges to any counter-designated experts regarding such analyses and opinions); (2) the expert analysis of an industrial occupational psychologist to provide

review, analysis and opinion regarding the similarities among Google's job codes and job families to support class-wide relief (and challenges to any counter-designated experts regarding such analyses and opinions); (3) testimony from multiple PMQ witnesses regarding Google's business practices in relation to compensation decisions; and (4) review of numerous additional documents and witness testimony in this case. Obtaining this information would substantially increase the out-of-pocket costs of pursuing the claims but might not necessarily increase the ultimate amounts available to resolve the case sufficient to add value to each Class Member's claim. (*Id.*) Without the Settlement, extensive, costly, and complex litigation would proceed in this case, especially because the Parties have not yet expended costs on depositions, briefing and expert work for motions for class certification, summary judgment, or other pre-trial or trial work. (*Id.*) For example, in the *Ellis, Rasmussen,* and *Jewett* matters involving similar factual and legal issues, discovery included production and review of hundreds of thousands of pages of documents in multiple productions, depositions of multiple corporate representatives, multiple expert reports that were reviewed and scrutinized, multiple expert depositions, as well as extensive briefing for class certification, summary judgment, and appellate writ motion practice. (*Id.*)

The current political climate, including its negative focus on race-based equity, poses another serious risk that could affect either how courts might analyze the policy objectives of the claims at issue or how a jury might evaluate the claims even if a class is certified. (*Id.*).

There is also a risk that the class claim for derivative waiting time penalties would not survive demurrer, a potential motion for summary adjudication, or class certification, based on Google's asserted arguments that Labor Code section 203 was not intended to be invoked in conjunction with violations of Labor Code section 1197.5 and could not proceed on a class-wide basis, thereby removing a significant amount of potential damages from the action. (*Id.*).

Each of these risks creates a potential scenario in which Class Members would receive no recovery as a result of the litigation, an outcome that should be avoided. At a minimum, delaying recovery that may not be greater than that available today would devalue Class Members' claims due to the present value of money. The length, expense, and uncertainty surrounding future litigation,

even without appeals, weigh in favor of approval of the Settlement.

**2. The Risks of Achieving and Maintaining Class Action Status Weigh in Favor of the Settlement**

The few recent cases that have attempted class certification of the updated Labor Code section 1197.5 claims based on sex/gender – *Ellis, Rasmussen, and Jewett* – have had mixed results, garnering both certification and decertification orders based on the same type of evidence and arguments Plaintiff would pursue in this case. (Gunn Dec., ¶ 38). Class Counsel are unaware of any cases seeking class certification of race/ethnicity-based Labor Code section 1197.5 claims. (*Id.*) The fact that no appellate court has adopted the same type of evidence and arguments Plaintiff would submit in support of class certification creates a high risk that class certification could be denied either by a trial court or an appeals court. (*Id.*) The largest risk is whether Plaintiff's proposed methods of common proof, which rely on a labor economist's regression analysis and an industrial organizational psychologist's analysis of similarity of jobs, will be deemed sufficient to satisfy class certification criteria. (*Id.*, ¶ 39). Google has argued that there is no way to resolve on a class basis whether any alleged pay disparity was the result of pay discrimination or some other bona fide reason, as Google contends. (*Id.*) Google has argued that individual issues prevail and that appropriate comparators for purposes of analyzing or proving Labor Code section 1197.5 claims cannot be determined on a class-wide basis. (*Id.*) Google has also argued that it has a due process right to assert individualized affirmative defenses that will preclude class certification pursuant to *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1. (*Id.*) Google has also argued that its own analyses show that it has no liability for the claims in this action. (*Id.*)

Class certification in this action would have been hotly disputed and was by no means a foregone conclusion. For example, in the *Jewett* case, class certification was granted once, and affirmed in response to the defendant's first request for decertification, but the court subsequently granted a request to decertify the class on the eve of trial on the grounds that trial would be unmanageable, and the plaintiff's writ petition regarding this ruling was pending before the California appeals court when the case resolved. (*Id.*) This same type of exhaustive motion practice is anticipated in this case, as absent this Settlement, Google has indicated that it would vigorously and repeatedly

pursue its defenses and contest the appropriateness of class treatment at all possible junctures, including through trial and appeal. (*Id.*)

### 3. The Settlement Recovery is Reasonable Compared to the Maximum Recovery Possible

When class members are "close to being made whole," a settlement represents "a reasonable compromise in light of all the facts." *Wershba,* 91 Cal.App.4th at 246 ("The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial."). "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable." *Id.*; *see Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408 (the most important factor for a court to consider in determining whether to preliminarily approve a class action settlement is the strength of the case for plaintiff on the merits balanced against the amount offered in settlement); *Kullar*, 168 Cal.App.4th at 130. The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is inadequate or should be disapproved. *7-Eleven*, 85 Cal.App.4th at 1150-51. After due consideration of all the relevant factors, "[a] properly negotiated settlement agreement serves compensatory and deterrent purposes. . . when the settlement agreement is fair and not a product of collusion…." *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 730. A court can find the settlement fair, adequate and reasonable when it is provided with information regarding the nature and magnitude of the claims and the basis for concluding the consideration being paid for the release of those claims represents a satisfactory compromise. *Kullar*, 168 Cal.App.4th at 133.

Here, based on the extensive data Google provided and a thorough regression analysis based on Class Members' actual compensation and employment information, Plaintiff's expert analysis estimated potential damages for Class Members as approximately $99 million for the Labor Code section 1197.5 claims and another approximately $29.5 million for the derivative waiting time penalty claims, for a total of about $128.5 million in total liability for the class claims. (Gunn Dec., ¶ 40). The Class Total Settlement Amount of $28 million is approximately 22% of the maximum possible recovery, which is reasonable considering the significant risks detailed above. (*Id.*) The recovery of $28 million represents about 28.3% of the $99 million maximum recovery for the Labor Code section

1197.5 claims, which is also extremely reasonable given the risk that the class claim for waiting time penalties could be dismissed via a dispositive motion. (*Id.*) These amounts are commensurate or better than the results of class action settlements of Labor Code section 1197.5 equal pay claims approved in California. In *Ellis*, the court approved a $118 million settlement amount, which reflects 20.7% of the estimated maximum potential recovery of $571 million, including for Labor Code section 1197.5 and related claims, achieved after class certification was granted. (Gunn Dec., ¶¶ 41-42). In *Jewett,* the court approved a $25 million settlement amount, which reflects 7% of the estimated maximum potential recovery of $355 million for similar claims, achieved after class certification was granted, reversed upon a decertification motion, and while an appeal was pending. (*Id.*). In *Rasmussen*, the parties are currently seeking approval of a $43.25 million settlement amount, which reflects 15.7% of the estimated maximum potential recovery of $275 million for similar claims, achieved after class certification was granted. (*Id.*, Exs. 5-7). Achieving a similar result in this case reflects an excellent recovery factoring in litigation risks, falling within the appropriate range of approval.

**4. The Settlement's Non-Monetary Terms Will Benefit the Class**

The Settlement also includes non-monetary relief addressing the race/ethnicity wage differential allegations underlying the Labor Code section 1197.5 claim. (*Id.*, ¶ 2, Ex. 1, ¶ III.F.). Specifically, as a result of the Settlement and to specifically address the factual allegations of disparate race/ethnicity-based pay in the action, the Settlement Agreement requires Google to: (1) utilize labor economist Janet Thornton to review Google's annual pay equity audits and make recommendations on that process; (2) provide to Class Counsel a report containing the results of the audit (with Google's redactions for attorney-client privilege) not more than six months following the completion of the audit; (3) continue this process for a period of three years following the settlement; (4) utilize industrial organizational psychologist Nancy Tippins to review its process for determining level at hire and make recommendations on that process; and (5) provide Class Counsel with a report regarding Tippins' work not more than six months following its completion. (*Id.*) Class Counsel shall treat the information it receives as privileged and confidential. (*Id.*) These non-monetary terms increase the benefit of the Settlement to the Class Members, as they are designed to correct the

problems identified in the lawsuit on a systematic and institutional level, an outcome that would not have been possible from trial. (*Id.*)

**5. The Amounts Allocated for PAGA Claims are Fair**

The PAGA claim is not a class claim, and the procedural rules for approving class settlements do not apply. *See generally Estrada v. Royally Carpet Mills, Inc.* (2024) 15 Cal.App.5th 582; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986. However, PAGA provides that the LWDA must be notified of a PAGA settlement (which Plaintiff has done) and that the Court "shall review and approve" any PAGA settlement. Labor Code § 2699(1)(1)(2). The Court reviews a PAGA settlement to "determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 (*disapproved on other grounds in Turrieta v. Lyft* (2024) 16 Cal.5th 664).

The payment in settlement of the PAGA claim also is within the range of reasonable PAGA settlement amounts approved by courts in California. Where "there is no indication that [the amount attributed to civil penalties] was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve lower PAGA payments, or PAGA payments representing a lower percentage of the overall settlement. *See id.* at *1 (approving PAGA settlement allocation of .3% of total settlement amount).

The Parties have agreed to allocate $240,000 of the Class Total Settlement Amount to resolve the claims of Class Members who are also part of the PAGA Settlement Group that arise under PAGA. (Gunn Dec., ¶ 2, Ex. 1, ¶ III.B; III.E.3). Pursuant to PAGA, as it was in effect at the time this action commenced prior to the 2024 amendments (which are not retroactive), 75 percent of the PAGA allocation shall be paid to the LWDA, reflecting an overall payment of $180,000 to the LWDA for PAGA penalties. (*Id*) The remaining 25 percent, or $60,000, will be allocated as the PAGA Amount to be distributed to aggrieved employees in the PAGA Settlement Group. (*Id.*)

Here, Google has already argued, and would continue to argue, that a representative PAGA

claim would be unmanageable for trial, on the ground that Plaintiff could not prove violations as to each aggrieved employee in a cohesive manner. (*Id*.) Google also could argue that the PAGA recovery is duplicative of any other class recovery, and therefore seek to reduce the penalties accordingly. (*Id*.) Because the PAGA claims overlap with the class claims, there is a risk that the Court will not "double-dip" and could reduce PAGA penalties that were already accounted for in the corresponding class claims, as it is arguably within a court's discretion to allocate $0 in PAGA penalties under such circumstances. (*Id*.) These arguments, if successful, could significantly reduce potential PAGA penalties. Plaintiff has submitted the Settlement Agreement to the LWDA at the same time as this motion was filed to allow the agency to also evaluate the reasonableness of the settlement. Labor Code § 2999(l)(2). (*Id*., ¶ 48, Ex. 8 (attaching confirmation)).

## IV. THE PROPOSED CLASS MEETS REQUIREMENTS OF CERTIFICATION FOR SETTLEMENT[5]

Plaintiff seeks provisional certification of a class for settlement purposes only pursuant to Cal. Rule of Court 3.769(d). Manageability and due process concerns for absent class members are eliminated or mitigated in the context of settlement. *Dunk,* 48 Cal.App.4th at 1807 n.19. In California, to prevail on a motion for class certification, Plaintiff must show there is a common question of fact or law, the parties are numerous, and it is impracticable to bring them all before the court. Code Civ. Proc. § 382. Plaintiff must further prove that the class is both ascertainable with a well-defined community of interest among class members, which requires: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 326; *Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1021. A court considers whether the issues are so numerous or substantial that maintenance of a class action would be advantageous to the judicial process and to the litigants. *Id.* These requirements are met here, and the

[5] Google does not oppose that the class certification requirements (numerosity, ascertainability, predominance of common questions of law and fact, typicality, adequacy of representation, and superiority of proceeding as a class action) have been met solely for settlement purposes, and reserves all rights to contest otherwise if the settlement is not approved.

Court should certify a class for settlement purposes accordingly.

### A. The Proposed Class is Ascertainable and Sufficiently Numerous

Ascertainability requires a class definition that is precise and objective and is achieved "by defining the class in terms of objective characteristics and common . . . facts making the ultimate identification of class members possible…" *Archer v. United Rentals, Inc.* (2011) 195 Cal.App.4th 807, 828; *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905. Ascertainability of a class is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members. *Reyes v. San Diego Cty. Bd. of Supervisors* (1987) 196 Cal.App.3d 1263, 1271. When class members can be identified by reference to official or business records, and the proposed class definition provides an objective means of identifying those persons who will be bound by the settlement, a class is said to be ascertainable. *Archer*, 195 Cal.App.4th at 828. In a showing of numerosity, Plaintiff must prove the existence, membership, and approximate size of the class, and demonstrate the impracticality of bringing all members of the class before the court. *Bauman v. Islay Invs.* (1975) 45 Cal.App.3d 797, 801.

The Class is defined as "all current and former Hispanic, Latinx, Indigenous, Native American, American Indian, Native Hawaiian, Pacific Islander, and/or Alaska Native employees who worked for Google in California any time during the Class Period." (Gunn Dec., ¶ 2, Ex. 1, ¶ II.A, II.I). The Class Period is defined as "the period of time from February 15, 2018, until December 31, 2024." (*Id.*, ¶ II.I).

The Class is both ascertainable and numerous, as Class Members can be identified from Google's business records that reflect its employees' self-identification as "Hispanic/Latino/Latinx," "Native American+," and "Native Hawaiian+," which designations incorporate the race/ethnicities contained in the class definition. (Gunn Dec., ¶ 23). According to the data provided by Google in August 2024, there were approximately 6,242 putative class members who identified as Hispanic/Latino/Latinx, and 827 who identified as Native American+ and Native Hawaiian+, which satisfies the numerosity component. (*Id.*)

### B. The Proposed Class Issues Satisfy the Community of Interest Requirement

"As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Brinker Rest. Corp.*, 53 Cal.4th at 1022. In determining whether certification is proper, a court focuses on the type of questions, common or individual, that are likely to arise in the action and considers whether the theory of recovery is likely to prove amenable to class treatment. *Sav-On Drug Stores*, *Inc*., 34 Cal.4th at 327 ("Reviewing courts consistently look to the allegations of the complaint and the declarations of attorneys representing the plaintiff class to resolve this question.") (citation omitted). The claims must depend upon a common contention, which it is capable of class-wide resolution and that its "truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 350. Significance is placed upon the capacity of a class-wide proceeding that "generate[s] common answers apt to drive the resolution of the litigation." *Id*. (citation and quotations omitted.)

#### 1. Common Legal and Factual Questions Predominate

Here, common legal and factual questions predominate over individualized inquiries. At base, the common question for all Class Members is whether Google paid Class Members less than White and/or Asian/Asian American employees who performed substantially similar work when viewed as a composite of skill, effort and responsibility, performed under similar working conditions during the Class Period. (Gunn Dec., ¶ 37.b). Moreover, common issues predominate because Google's policies and practices uniformly applied to Plaintiff, and all Class Members, and the resolution of these common issues affects the class as a whole. Such claims "are of the sort routinely, and properly, found suitable for class treatment." *Brinker Rest. Corp.*, 53 Cal.4th at 1033; *see also, Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1299–1305 (discussing Plaintiff's "theory of recovery," which involves "uniform policies applicable to the [Class Members] that are more amenable to class treatment."). The common evidence of Dr. Neumark's regression analysis and the industrial occupational psychologist's analysis of Google's job codes and job family assignments, along with anticipated PMQ testimony, can be presented to a jury to support the pursuit of the class claims.

(Gunn Dec., ¶ 37). Class claims for violations of Labor Code section 1197.5 and derivative claims were certified to be tried when the question of liability was framed this same way in *Ellis*, *Rasmussen*, and *Jewett*, and the proffered class-wide evidence was comprised of the same type of evidence. (*Id.*) Google disagrees, but concedes certification is appropriate for settlement purposes only.

**2. The Class Representative Has Claims Typical of the Class**

"The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct, which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Johnson v. GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1509. It is well-settled that a representative plaintiff must be a member of the class they seek to represent, which is derived from the principle that joinder of plaintiffs share a "well-defined community of interest" in the same questions of law and fact. *La Sala v. Am. Sav. & Loan Ass'n* (1971) 5 Cal.3d 864, 875; *see also Wershba,* 91 Cal.App.4th at 239 ("class members [including class representative] suffered common alleged wrong.") (*disapproved on other grounds*, *Hernandez v. Restor. Hardware, Inc.* (2018) 4 Cal.5th 260, 287).

Plaintiff alleges that she was subjected to the same violation of Labor Code section 1197.5 and derivative claims, including Labor Code section 203, and violation of Business and Professions Code section 17200, *et seq.*, as other Class Members. (Cantu Dec., ¶¶ 3-9). Specifically, Plaintiff experienced Google's alleged failure to pay Class Members the same as White and/or Asian/Asian American employees who performed substantially similar work when viewed as a composite of skill, effort and responsibility, performed under similar working conditions during the Class Period. Thus, the Labor Code violations on which Plaintiff bases the class claims are the same violations she alleges were experienced by all other Class Members. (*Id.*). Additionally, Plaintiff's claims are typical of each of the Class Members because Plaintiff was also employed by Google in California as a self-identified "Hispanic/Latino/Latinx," and "Native American+" employee and was subject to the same pay policies and procedures implemented by Google and applicable to the Class during the Class Period. (*Id.*). Therefore, the typicality requirement has been met for preliminary approval of class certification for settlement purposes. Google disagrees, but concedes certification is appropriate for

settlement purposes only.

### C. The Proposed Class Representatives are Adequate

Adequacy of representation depends on whether (1) plaintiff's counsel is sufficiently qualified to prosecute the proposed class action, and (2) plaintiff's interests are antagonistic to those of the class. *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450. A representative plaintiff must fairly and adequately protect the interests of absent class members. *Apple Comput., Inc. v. Super. Court* (2005) 126 Cal.App.4th 1253, 1271. "The entire process of adjudication which is comprised of the class representative, class counsel, and the trial judge must ensure adequacy of representation." *Id*. (citation and quotations omitted). As such, it is important that an informed and independent class representative be engaged in every aspect of the litigation. *Id*. Further, to be "adequate," a class representative must also have counsel "qualified to conduct the proposed litigation" with no conflict of interest. *McGhee*, 60 Cal.App.3d at 450.

#### 1. Plaintiff is an Adequate Class Representative

Plaintiff has no conflicts with the Class and will adequately represent the interests of the Class. (Cantu Dec., ¶¶ 3-19). She has the same interest in maintaining the class claims as any other Class Member and she expects to receive a Class Settlement Share in exchange for the release of the class and PAGA claims in the same manner as every other Class Member. (*Id.*; Gunn Dec., ¶ 34).[6] Throughout, Plaintiff has worked closely with Class Counsel, provided invaluable information and reviewed and analyzed information provided by Google to assist in the pursuit of the class-wide claims, provided deposition testimony, and assisted in the settlement process including preparing for and attending in-person mediation. (*Id.*) Plaintiff retained counsel experienced in employment

[6] Plaintiff's separate non-class claims are not antagonistic to, and do not pose a conflict with Class Members. Plaintiff's first, second, third, fourth, fifth, sixth, seventh, and ninth causes of action assert claims for FEHA discrimination, harassment, and retaliation on the basis of race/ethnicity/national origin, and failure to prevent or correct the same, for whistleblower retaliation in violation of Labor Code section 1102.5, for intentional and negligent infliction of emotional distress, and for wrongful termination in violation of public policy. They are based on facts related to Plaintiff's individual circumstances and were not brought as class claims, nor is a class release of those claims sought in the settlement. Those claims seek damages for lost past and future wages, emotional distress, and punitive damages not available in the claims brought on behalf of the Class. Neither the assertion or settlement of these claims on an individual basis interfered with Plaintiff's ability to adequately represent the Class. (Gunn Dec., ¶¶ 49-52).

litigation and class actions to vindicate both her rights and those of the Class. (*Id.* ¶ 14; Coble Dec., ¶¶ 3-10; Kramer Dec., ¶¶ 1-17).

**2. Class Counsel Are Experienced in Similar Litigation**

The views of the attorneys actively conducting the litigation should be given a presumption of reasonableness and the court should rely on the competence and integrity of experienced counsel. *Kullar*, 168 Cal.App.4th at 133; *Luckey*, 228 Cal. App. 4th at 95. Plaintiff's counsel—the proposed Class Counsel—are experienced in employment law and class action litigation. Class Counsel each have decades of experience, including significant background in litigating class action cases involving alleged California Labor Code violations. (Gunn Dec., ¶¶ 27-36; Coble Dec., ¶¶ 3-9; Kramer Dec., ¶¶ 8-10). They are thus well qualified to evaluate the class claims and settlement value on a fully-informed basis, and to evaluate the risks of loss and viability of Google's defenses. (*Id.*) Class Counsel has not agreed to any limitations on its ability to discharge their fiduciary duties. (*Id.*) Google's counsel, Felicia Davis and Eric Distelburger of Paul Hastings, LLP, are highly skilled and sophisticated lawyers, with extensive class action experience, and have defended Google vigorously throughout the litigation. (Gunn Dec., ¶ 53). Here, counsel on both sides agree the Settlement is fair and reasonable taking into account the monetary recoveries by the Class, the complexities of class action litigation, and the uncertainties of class certification, summary judgment, and trial. (*Id.*).

**D. Class Treatment for Settlement Purposes is Superior to Other Available Methods of Resolution**

Settlement is the preferred means of dispute resolution in complex class action litigation. *7-Eleven*, 85 Cal.App.4th at 1151. In addition to the considerations listed above, a court should consider the likelihood each class member would come forward to file a separate claim and whether the class action would serve as a deterrence and remedy the wrongdoing. *Id.* If many claims can be resolved at the same time, a class action is a superior method by which to obtain redress. *See Linder v. Thrifty Oil Corp.* (2000) 23 Cal.4th 429, 435. Certifying a class for settlement purposes results in "substantial benefits" to the court and the parties, including class members. *Id.* The maintenance of a class action is also superior because it saves judicial resources and avoids inconsistent judgments. *Sav-On Drug Stores, Inc.*, 34 Cal.4th at 326; *see Capitol People First v. Dep't of Dev. Servs.*, 155 Cal.App.4th 676,

702 (2007) ("[W]ithout class treatment there could be multiple actions that would burden the litigants and courts with cumulative and excessive expenses, discovery efforts and evidence.").

The class action procedure is an ideal method for resolving the claims alleged here. It would be inefficient, and tax the Court's resources, to require the more than seven thousand Class Members to separately litigate the same issues in different lawsuits, many of whom would be deterred from bringing individual claims due to the extreme costs of this type of litigation identified above, the risks identified above, and concerns that bringing a lawsuit could adversely affect their current or future employment. Considering the above, the Court should provisionally certify the Class for settlement purposes.

### E. The Proposed Process for Distributing Settlement Payments to Class Members is Fair and Reasonable

All Class Members who do not opt out of the Settlement will receive a share of the Class Net Settlement Amount proportional to their total compensation during the Class Period as compared to the total compensation paid to all Class Members during the Class Period, with a minimum payment of not less than $250. (Gunn Dec., ¶ 2, Ex. 1; ¶ III.D.1.a). This method of distribution is designed so that Class Members will receive a share of the Settlement Amount commensurate with their earnings at Google, and to more closely align to the alleged losses suffered from Google's violations of Labor Code section 1197.5. (*Id.*, ¶ 43). Further, any funds retained as a result of a lower amount allocated to attorneys' fees or costs, class representative enhancement fee, claims administration costs, or for LWDA and PAGA Payments, will be distributed to Participating Class Members and Aggrieved Employees on the same pro rata basis. (*Id.*, ¶ 2, Ex. 1; ¶ III.E).

Additionally, the checks-mailed payment process ensures that the maximum possible Class Net Settlement Amount will actually be received by Participating Class Members. As stated in the proposed Notice, a Class Member need not take any action to receive an Individual Settlement Payment. (*Id.*, ¶ 2, Ex. 1 [Exhibit A]). Thus, Class Members who are hesitant to take affirmative action to claim monies from Google will not face that barrier to recovery.

Moreover, Participating Class Members will have 180 days to cash their checks, and no settlement funds will revert to Defendant. (*Id.*, ¶ 2, Ex. 1; ¶ III.I.11). If money remains in the

settlement fund after the 180-day period for cashing checks, after Participating Class Members have received a reminder mailing, the remaining uncashed funds will be transmitted to the California State Controller's Office as property of the Participating Class Member who did not cash the check. (*Id.*). When it is not possible to compensate class members, the best alternative is to award damages in a way that benefits as many class members as possible, despite the possibility some may not benefit from the settlement. *In re Microsoft I-V Cases*, 135 Cal.App.4th at 716; *State of Cal. v. Levi Strauss & Co.*, 41 Cal.3d 460, 472 (1986) (noting where compliance with terms of settlement agreement are impossible, funds be put to "next best use" as "fluid recovery").

### F. The Proposed Provision for Attorneys' Fees and Costs is Reasonable and Fair Under the Circumstances

The court has discretion to award attorneys' fees based on either the lodestar/multiplier calculation or the percentage-of-recovery method. *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503. California law provides that "[e]xcept as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties…" Cal. Code Civ. Proc. § 1021. Courts consider the well-established "common fund" principle when determining appropriate attorneys' fees awards. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ("[W]hen a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff … for the benefit of all results in the creation or preservation of that fund, such plaintiff … may be awarded attorneys' fees out of the fund.").

Using the percentage of the benefits to class claimants as a benchmark, awards between 27.9% and 30% are not out of line with class action fee awards calculated using the percentage-of-the-benefit method, with courts routinely awarding up to around one-third (33%) of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11; *see, e.g.*, *Laffitte*, 1 Cal.5th at 503 (affirming fee award of one-third of the common fund and recognizing several advantages in using method for awarding fees: "relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation") (quotations omitted); *In re Consumer Privacy Cases*, 175 Cal.App.4th at 557 n.13 ("[R]egardless whether

percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."). The ultimate goal is to award reasonable fees to compensate counsel for their efforts. *Apple Computer, Inc.*, 126 Cal.App.4th at 1270.

The Settlement Agreement proposes that Plaintiff will apply to the Court for reasonable attorneys' fees in the amount of up to $7,000,000, or 25% of the Class Total Settlement Amount, and costs up to $300,000, to reimburse Plaintiff's counsel for litigation costs and expenses. (*Id.*, ¶ 2, Ex. 1; ¶ III.E.2). Notably, the Court need not rule on Plaintiff's counsel's fees and costs now, as Class Counsel will file a formal application prior to the Final Approval Hearing, explaining in detail that the proposed fee award of 25% of the Settlement fund is reasonable and well-justified in consideration of the risks Plaintiff's counsel has undertaken in pursuing this case on a contingency basis, including funding the expert work undertaken in pursuit of the class/PAGA claims, as well as the outstanding result achieved on behalf of the Class. Plaintiff's counsel expended significant time and resources on this matter and will continue to do so over the coming months to oversee administration of the Settlement. (Gunn Dec., ¶ 36).

**G. <u>The Proposed Enhancement Payment to Plaintiff is Fair and Reasonable</u>**

The law requires that the class representative, class counsel, and the court ensure the interests of the class are adequately met. *Apple Computer, Inc.*, 126 Cal.App.4th at 1271. An informed and independent class representative is required to oversee class counsel at every stage of the litigation. *Id*. As such, courts routinely approve enhancement payments to compensate class representatives for the services they provide and the risks they incur during class litigation. *See In re Cellphone Fee Term. Cases* (2010) 186 Cal.App.4th 1380, 1393 ("Incentive awards are fairly typical . . . and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."). Representative plaintiffs are eligible for reasonable incentive payments as compensation for "conferring a benefit on other members of the class" and are appropriate for their efforts in "bringing the action" and are sometimes "necessary to induce an individual to participate in the suit." *Bell v. Farmers Ins. Exch.*, (2004) 115 Cal.App.4th 715, 726, *as*

*modified on denial of reh'g* (Mar. 9, 2004); *Cellphone Term. Fee Cases*, 186 Cal.App.4th at 1394; *Munoz*, 186 Cal.App.4th at 412. California courts agree that a class representative is entitled to such an award, since without a named plaintiff there could be no class action. *Clark v. Am. Resid. Servs. LLC* (2009) 175 Cal.App.4th 785, 804; *Cellphone Term. Fee Cases*, 186 Cal.App.4th at 1395.

Here, an incentive award to Plaintiff in the amount of $50,000 is based on Plaintiff's extensive participation in this action, oversight and guidance of Class Counsel as to the esoteric nature of Google's record-keeping and other facts, the implications for her career in the technology industry, and the excellent recovery obtained for the Class. (Cantu Dec., ¶¶ 10-19; Gunn Dec., ¶¶ 34-35). Based on Plaintiff's significant time, effort and risks incurred in bringing this case on behalf of the Class, and the substantial benefits she recovered for the Class, the requested enhancement payment is reasonable and does not significantly reduce the Class Total Settlement Amount, as it represents less than one percent – 0.18% – of the total amount of the Class' $28 million recovery, which would have been impossible without Plaintiff's actions. (Gunn Dec., ¶ 34). It is also commensurate with the enhancement payments awarded in the *Ellis* and *Jewett* matters ($50,000 per class representative, except for a $75,000 enhancement payment to the lead plaintiff in *Ellis*). (*Id.*, ¶ 35). Before the Final Approval Hearing, Class Counsel will file a motion seeking to finalize the enhancement payment for Plaintiff, as the Class Representative. (*Id.*). In ruling on the instant motion, it is sufficient for the Court to determine that the award provided for in the Settlement Agreement does not render the overall Settlement inherently unfair, and is not an obstacle to preliminary approval. No such issues exist here.

## V. KEY TERMS OF PROPOSED CLASS SETTLEMENT

### A. Definition of Class and Aggrieved Employees

The Class is defined as "all current and former Hispanic, Latinx, Indigenous, Native American, American Indian, Native Hawaiian, Pacific Islander, and/or Alaska Native employees who worked for Google in California any time during the Class Period." (*Id.*, ¶ 2, Ex. 1, ¶ II.A). The Class Period is defined as "the period of time from February 15, 2018, until December 31, 2024." (*Id.*, ¶ 2, Ex. 1, ¶ II.I).

The "PAGA Settlement Group" is defined as "all current and former Hispanic, Latinx, Indigenous, Native American, American Indian, Native Hawaiian, Pacific Islander, and/or Alaska Native employees who worked for Google in California any time during the PAGA Period." (*Id.*, ¶ 2, Ex. 1, ¶ II.W, II.X). The PAGA Period is defined as "the period of time from December 8, 2020, until December 31, 2024." (*Id.*, ¶ 2, Ex. 1, ¶ II.V).

**B. Release of Claims for Participating Class Members**

The Settlement Agreement provides for a release of claims for Class Members tailored to the claims and factual allegations involved in the Action. (*Id.*, ¶ 2, Ex. 1, ¶ III.J.1). In exchange for receipt of settlement payments from Google, Class Members will release claims asserted against Google or its related entities

> that arise out of or relate to the class allegations in the operative complaint for the time period of February 15, 2018 through the date upon which the Class Settlement is preliminarily approved, including but not limited to the allegations that Google paid Class Members less than it paid White and Asian employees for substantially similar work, or that Google otherwise discriminated against Class Members on the basis of race with respect to pay. The released claims include but are not limited to claims brought under California Labor Code sections 201-203, 1194.5, 1197.5, 2698 *et seq.*, and California Business and Professions Code sections 17200 *et seq.* Such claims include claims for wages, statutory penalties, civil penalties, or other relief under the California Labor Code, PAGA, relief from unfair competition under California Business and Professions Code section 17200 *et seq.*, attorneys' fees and costs, and interest (the "Class Members' Released Claims"). (*Id.*).

The release becomes effective on the date the Class Settlement Payments are mailed to Class Members, which is after Final Approval. (*Id.*).

**C. Release of Claims for PAGA Settlement Group Members**

The Settlement Agreement provides for a release of claims for PAGA Settlement Group Members tailored to the claims and factual allegations involved in the PAGA claim. (*Id.*, ¶ 2, Ex. 1, ¶ III.J.2). In exchange for receipt of PAGA Settlement Payments from Google, PAGA Settlement Group Members will release

> any and all claims under PAGA for civil penalties against Google and the Released Parties that were pled or could have been pled based on the factual allegations contained in the notice submitted by Plaintiff to the LWDA pursuant to PAGA that occurred from December 8, 2020, until the date upon which the Class Settlement is

preliminarily approved, including but not limited to claims under California Labor Code sections 201-204, 210, 226, 1194.5, 1197.5, and 2698 et seq. (the "Released PAGA Claims").

The release becomes effective on the date the PAGA Settlement Payments are mailed to Class Members, which is after Final Approval. (*Id.*).

**D. General Release of Claims for Plaintiff**

As part of the Settlement, Plaintiff has agreed to a broader, general release of her individual claims, separate and apart from the class and PAGA claims, as well as all known and unknown claims and waiver under California Civil Code section 1542. (*Id.*, ¶ 2, Ex. 1, ¶ III.J.3). As discussed above, Plaintiff's individual claims arise under different statutes or common law, and carry different damages than the damages available to the class for the class and PAGA claims. Plaintiff has agreed to a release her additional individual claims for the amount of $2,000,000, which is not part of the Class Total Settlement Amount. This portion of the Settlement does not require Court approval, as it does not involve the class or PAGA claims. (*Id.*, ¶ 2, Ex. 1, ¶ I.I).

**E. Monetary Terms of the Settlement**

**1. Amount of Settlement**

The parties have reached agreement that Google will pay a non-reversionary, gross amount of $28,000,000.00 ("Class Total Settlement Amount") to settle the class and PAGA claims in this case, while continuing to deny liability. (Gunn Dec., ¶ 2, Ex. 1, ¶ II.M).

**2. Deductions from the Settlement Fund**

The net amount to be paid to the class, after accounting for the Settlement Administrator's costs (estimated as $36,000), Class Counsel's fees (up to $7,000,000), Class Counsel's costs (up to $300.000), an enhancement payment to Plaintiff (up to $50,000), a payment to the LWDA representing penalties under PAGA ($180,000), an aggregate payment to PAGA Settlement Group Members representing PAGA penalties ($60,000) is estimated to be $20,434,000 (the "Class Net Settlement Amount"). (*Id.*, ¶ 2, Ex. 1, ¶ III.E).

**3. Payment Formula**

Each Class Member who does not opt out of the Settlement will receive a "Class Payment"

according to the Plan of Allocation attached to the Settlement Agreement. (*Id.*, ¶ 2, Ex. 1, ¶ III.D.1). Specifically, the Class Net Settlement Amount shall be divided into Class Settlement Shares and paid to Participating Class Members on a pro rata basis, based on the Participating Class Member's respective total compensation during the Class Period. (*Id.*) Each Participating Class Member's pro rata share of the settlement amount will be calculated as follows: Pro Rata Share = Total Compensation Earned by Participating Class Member During Class Period ÷ Aggregate Total Compensation Earned by All Participating Class Settlement Members During Class Period. (*Id.*) No Participating Class Member shall receive less than $250.00 as a Class Payment. (*Id.*) Class Members are not required to submit claim forms to receive Class Settlement Payments. (*Id.*)

In addition to the Class Net Settlement Amount, $60,000.00 (25% of the PAGA Civil Penalties) has been designated as the "PAGA Amount." (*Id.*) Each PAGA Settlement Group Member shall receive a "PAGA Amount Payment" equal to the PAGA Amount times the ratio of (i) the number of pay periods worked by the PAGA Settlement Group Member for Google during the PAGA Period ("Covered Pay Periods") to (ii) the total number of Covered Pay Periods worked by all such PAGA Settlement Group Members. (*Id.*) All PAGA Settlement Group Members, including those who opt out of the Class Settlement, will receive a PAGA Amount Payment. (*Id.*).

**4. Taxation of Settlement Payments**

With the exception of the PAGA Amount Payments (which shall be reported on IRS Form 1099-MISC), the Class Settlement Shares shall be reported to taxing authorities as follows: One-half (1/2) or fifty percent (50%) of each Class Settlement Share (the "Wage Portion") will be treated as a payment in settlement of the Participating Class Member's claims for unpaid wages. (*Id.*, ¶ 2, Ex. 1, ¶ III.D.3). Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and deductions, and the Settlement Administrator will issue to the Participating Class Member a Form W-2 with respect to the Wage Portion. The remaining one-half (1/2) or fifty percent (50%) of each Class Settlement Share (the "Non-Wage Portion") will be treated as a payment in settlement of the Participating Class Member's claims for all penalties and interest. (*Id.*) Accordingly, the Non-Wage Portion will not be reduced by payroll tax withholding and deductions; and, instead, the Settlement

Administrator will issue to the Participating Class Member a Form 1099-MISC designating the amount as "Other Income" in Box 3 with respect to the Non-Wage Portion. (*Id.*)

The Settlement Administrator will be responsible for calculating the Wage Portion and the Non-Wage Portion of each Class Settlement Share and the portion of each PAGA Settlement Group Member's PAGA Amount. (*Id.*, ¶ 2, Ex. 1, ¶ III.H). The Settlement Administrator shall also pay the employer's share of federal, state, and local payroll and income taxes, which Google shall fund in addition to the Class Net Settlement Amount. (*Id.*, ¶ 2, Ex. 1, ¶ III.C). Based on the Class Net Settlement Amount and estimated number of Class Members, the average amount per Class Member is estimated to be approximately $2,900. (Gunn Dec., ¶ 43). This distribution between the Wage and Non-Wage Portions is based upon the claims in the case, Plaintiffs' expert's analysis of the approximate portion of damages that redress unpaid wages (the Wage Portion) as opposed to interest and penalties (the Non-Wage Portion), and Google's own apportionment of the alleged damages. (*Id.*) Class Counsel relied upon its expert damages estimates to determine that Google's maximum exposure on the Labor Code section 1197.5 claim was approximately 32% wage underpayment, 8% interest, 41% liquidated damages, and 19% derivative penalties and interest for Labor Code section 203 violations. (*Id.*) Google, on the other hand, has argued that Plaintiff's class claims are predominantly a wage claim and that it would be inappropriate to apportion less than 50% of the amount paid to each Settlement Class Member as a wage payment. The increase of the Wage Portion from 32 percent to 50 percent reflects a reduction in the amount allocated in settlement as potential waiting time penalties due to the enhanced risks of proceeding with that claim, and the emphasis on redressing the Class' underpayment of wages in the lawsuit. (*Id.*)

The settlement is designed to maximize participation by, and payout to, the Class, by providing for automatic payment without a claims process. (*Id.*, ¶ 2, Ex. 1, ¶ III.D). However, Class Members will have the opportunity to correct information during the settlement process, provided they do so by the opt-out deadline. (*Id.*, ¶ 2, Ex. 1, ¶ III.I.4). There will be no reversion to Google following the settlement process. (*Id.*, ¶ 2, Ex. 1, ¶ II.M). In the event that a Class Settlement Share is paid to a Participating Class Member by check and the check is not cashed on or before 120 days

after mailing, the Settlement Administrator will send a reminder mailing to the Class Member to cash the check. If a check is not cashed on or before the Check Cashing Deadline (180 days), the Settlement Administrator shall void the check and transmit the amount of the uncashed check to the California State Controller's Office as unclaimed property of the Participating Class Member who did not cash the check. (*Id.*, ¶ 2, Ex. 1, ¶ III.I.11). Due to the absence of a claims process, the reminder mailing sent out by the Settlement Administrator, and the anticipated amounts of the settlement checks, Class Counsel anticipates that the amount of uncashed checks will be negligible in comparison to the Class Total Settlement Amount. (Gunn Dec., ¶ 43).

**F. Notice Administration**

**1. The Settlement Administrator**

The Parties have agreed upon Atticus Administration LLC ("Atticus") as the Settlement Administrator. (Gunn Dec., ¶ 2, Ex. 1, ¶ III.H; Declaration of Christopher Longley Re Qualifications of Atticus Administration ("Longley Dec."), ¶ 10). Atticus provides class administration services, and has provided administrative services in over 1,200 class, collective or PAGA settlements and has disbursed approximately $1.47 billion. The founders and team members of Atticus collectively have experience administering over 3,000 settlements and have disbursed over $3 billion in settlement funds. (Longley Dec., ¶¶ 2-10). Atticus maintains insurance with AAA rated insurance carriers for professional liability and cybersecurity, and follows stringent procedures to secure information systems and protect the privacy of the client data received for all administration processes. (*Id.*, ¶¶ 11-12, Ex. 2).

The Settlement Administrator will be responsible for establishing the QSF, preparing, printing, and mailing the Class Notice Packet to the Class Members; conducting a National Change of Address search and using Accurint and other reasonable and cost-effective skip trace methods to locate any Class Member whose Class Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's new address; receiving Class Member objections and opt-outs from the Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Class Member objections and opt-

outs from the Settlement; calculating Estimated Class Settlement Shares and PAGA Amount Payments before mailing the Class Notice Packet; calculating Class Settlement Shares and PAGA Amount Payments to be paid to Class Members after the Motion for Final Approval has been granted; issuing and mailing the checks to effectuate the Class Payments and PAGA Amount Payments due pursuant to the Settlement; mailing a reminder postcard to Participating Class Members who have not cashed their checks; maintaining a static case web site to host required court documents and information, including posting the Final Judgment pursuant to Cal. R. Ct. 3.771(b); disbursing all amounts required by the Settlement by the required deadlines; administering all tax reporting required by the Settlement; resolving all disputes concerning the calculation of a Class Member's Class Settlement Share or PAGA Amount Payment, subject to the dollar limitations set forth in the Agreement; and otherwise administering the Settlement pursuant to the Agreement. (Gunn Dec., ¶ 2, Ex. 1, ¶ III.I). The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Class Total Settlement Amount. (*Id.*) For its efforts, Plaintiff will apply to the Court for approximately $36,000 to cover Atticus Administration LLC's fees, which is reasonable based on the amount of work to be performed by the Settlement Administrator. (*Id.*)*; see Munoz*, 186 Cal.App.4th at 406 (approving claim administration costs of $35,353 for settlement amount of $611,440.68).

**2. Content of the Notice**

The threshold requirement regarding the sufficiency of class notice is whether the means proposed for distributing the notice are reasonably calculated to apprise the class of the pendency of the action, the proposed settlement, and the right to object to the settlement. Cal. R. Ct. 3.769(f). The Court is afforded broad discretion in determining the appropriate notice to Class Members. Cal. R. Ct. 3.771; *7–Eleven*, 85 Cal.App.4th at 1164; *see also Wershba*, 91 Cal. App. 4th at 252. The Notice Packet should be provided in a manner that "has a reasonable chance of reaching a substantial percentage of the class members." *Wershba*, 91 Cal.App.4th at 251. With court approval, notices may be sent to each class member at her or her last known address by first class mail. *Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 690. Here, the manner of notice includes mailing to last-

known addresses, and skip-tracing, which is reasonable and practicable.

The content of the class notice is also subject to court approval. Cal. R. Ct. 3.766(d). The notice must fairly apprise the class members of the terms of the proposed compromise and of the options open to opposing the settlement. *See Wershba*, 91 Cal.App.4th at 251. If class members are given the option to opt-out, the notice must include: (1) a brief explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. *Id.*; *Cellphone Term. Fee Cases*, 186 Cal.App.4th at 1390; Cal. R. Ct. 3.766(d), 3.769(f).

The Parties have agreed upon a Notice to be sent to the Class in English, as Google employees typically all speak and read English in the workplace. (Cantu Dec., ¶ 20). A copy of the Notice is attached to the Settlement Agreement as **Exhibit A**. (*Id.*, ¶ 2, Ex. 1 [Ex. A]). Pursuant to California Rules of Court 3.766(d), the Notice provides: (1) a description of the claims to be settled; (2) the total amount of the settlement; (3) the amounts to be deducted as attorneys' fees, costs, and other payments; (4) the method of calculating payments to Class Members; (5) information regarding Class Members' right to opt out or object; (6) a description of the method for opting out or objecting; (7) identification of Class Counsel and contact information for Class Counsel; (8) the court in which the action is pending; (9) the date set for the final approval hearing; (10) the location of where to find additional information regarding the action; and (11) a method and time frame for disputing the amount of the Class Member's compensation during the Class Period as calculated by the Settlement Administrator. (*Id.*)

**3. Timing of the Notice**

The Parties' Settlement contemplates distribution of the Notice within sixty (60) days of preliminary approval, by way of First-Class U.S. mail, based on Google's most recent address information for members of the Class, updated by the Settlement Administrator through reference to

the National Change of Address ("NCOA") Database. (*Id.*, ¶ 2, Ex. 1, ¶ III.I.2). Any returned notices with forwarding addresses will be promptly re-mailed. (*Id.*)

**4. Responses to the Notice**

Class Members will have sixty (60) calendar days after the Notice is mailed to (1) exclude themselves from the settlement by mailing a written opt-out to the Settlement Administrator, (2) provide evidence concerning any dispute as to their amount of total compensation during the Class Period, or (3) object to the settlement. (*Id.*, ¶ 2, Ex. 1, ¶ III.I.3). If a Class Member submits a written, signed challenge to his/her Class Settlement Share before the Opt-Out deadline, including proof of other compensation paid, the Settlement Administrator may alter the amount of compensation used to calculate their Class Settlement Share accordingly. (*Id.*, ¶ 2, Ex. 1, ¶ III.I.4).

**5. Notice and Setting of Final Approval Hearing**

The Settlement Agreement provides for a final approval hearing to allow the Court to conduct a final review and approval of the settlement. (*Id.*, ¶ 2, Ex. 1, ¶ III.I.7). Plaintiff asks that the Court schedule this hearing more than 120 days after it grants this Motion for Preliminary Approval, to allow for the Notice process, and proposes the date of September 11, 2025. The Notice distributed to Class Members will advise the Class about the final approval hearing and their opportunity to attend the hearing and make their views on the settlement known. (*Id.*, ¶ 2, Ex. 1 [Exhibit A]). At the final approval hearing, the Parties will address any issues raised by Class Members or the Notice process, and the Court will have a second opportunity to review the settlement in full. The settlement will become effective only after all appeals have been completed or time to pursue an appeal has passed. (*Id.*, ¶ 2, Ex. 1, ¶ II.N). If the Court grants final approval of the Settlement, the Settlement Administrator shall post notice of final judgment on its website. (*Id.*, ¶ 2, Ex. 1, ¶ III.I.1).

**6. The Proposed Settlement Notice Should Be Approved**

Here, the proposed Notice Packet conforms to the Rules of Court and this Court's guidelines. The proposed mailing and distribution of the Class Notice constitutes the best notice practicable under the circumstances and the proposed Notice plan is fair and adequate, and compliant.

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## VI. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court preliminarily approve the Settlement and sign the concurrently-filed Preliminary Approval Order, which is also attached to the Settlement Agreement as **Exhibit C,** to execute the details of the Parties' Settlement Agreement. Plaintiff has attached a timeline of the anticipated dates for all events required by the Settlement to occur. (Gunn Dec., ¶ 54, **Exhibit 9**).

DATED: February 20, 2025

GUNN COBLE LLP
KRAMER BROWN HUI LLP

By: _____
Beth Gunn
Catherine J. Coble
Jennifer Kramer
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