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15 UNITED STATES DISTRICT COURT
16
17 NORTHERN DISTRICT OF CALIFORNIA
18
19 SAN JOSE DIVISION

20 IN RE: GOOGLE LOCATION HISTORY
LITIGATION

Case No. 5:18-cv-05062-EJD

**JOINT DECLARATION OF TINA
WOLFSON AND MICHAEL W.
SOBOL IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

23 Dept: Courtroom 4 - 5th Floor
24 Judge: Hon. Edward J. Davila
Date: October 26, 2023
25 Time: 9:00 A.M.

1 We, Tina Wolfson and Michael W. Sobol, declare as follows:

2 1. I, Tina Wolfson, am a member in good standing of the California State Bar and a
3 partner in the law firm of Ahdoot & Wolfson, PC (“AW”).

4 2. I, Michael W. Sobol, am a member in good standing of the California State Bar and
5 a partner in the law firm of Lieff Cabraser Heimann & Bernstein, LLP (“LCHB”). I have served
6 as the chair of my firm’s Cybersecurity & Data Privacy practice group since its inception in 2016.

7 3. We were appointed by the Court as Interim Co-Lead Class Counsel in the
8 consolidated proceedings against Defendant Google LLC (“Defendant” or “Google”). We have
9 personal knowledge of the matters set forth herein, and could and would testify competently hereto
10 if called upon to do so. We respectfully submit this Joint Declaration in support of Plaintiffs’
11 Motion for Preliminary Approval of Class Action Settlement.

12 4. After years of hard-fought litigation since these consolidated actions commenced in
13 August 2018, and over a year of contentious, well-informed, arm’s-length settlement negotiations
14 aided by mediator Eric D. Green, Esq. and by Magistrate Judge Joseph C. Spero, the Parties present
15 the Court with an agreement to settle Plaintiffs’ claims against Google on a nationwide, class basis.

16 5. Attached hereto as **Exhibit 1** is the Class Action Settlement and Release Agreement
17 (“Settlement” or “SA”) entered into between the Parties to this litigation.

18 6. If approved, the Settlement will establish a non-reversionary cash Settlement Fund
19 of \$62 million to be distributed (after notice and Settlement administration costs and any service
20 awards and attorneys’ fees and costs the Court may award) to Court-approved organizations with
21 a track record of addressing privacy concerns on the Internet.

22 7. At the time the Settlement was reached, we, and members of our respective firms,
23 had a firm understanding of the risks and benefits of further litigation. We have been actively and
24 personally involved in every aspect of this litigation since its inception, and (i) diligently
25 investigated and asserted the legal claims of the proposed Class, in consultation with experts; (ii)
26 efficiently negotiated the consolidation of six related cases asserting substantially similar claims;
27 (iii) successfully opposed, in part, Google’s second motion to dismiss the claims in full; (iv)
28 engaged in comprehensive discovery and litigated roughly 20 discovery disputes through motions,

1 regular hearings, and joint reports, before Magistrate Judge Nathanael Cousins; (v) conducted
2 significant research and discovery in preparation for the anticipated class certification motion; and
3 (vi) engaged in multiple mediation and settlement conference sessions with Defendant, obtaining
4 significant information regarding the Class claims in connection with such mediation; among
5 many other tasks, all of which have been reflected in the quarterly time reports submitted *in camera*
6 to this Court since 2019.

7 8. Given the substantial risks of this litigation, we believe that the Settlement is very
8 clearly in the best interests of the Class. As discussed below, we believe the Settlement is not only
9 fair, reasonable, and adequate, but an excellent outcome that will advance Class Members' privacy
10 interests.

11 **BACKGROUND**

12 9. Plaintiffs allege that Google knowingly violated the privacy rights of millions of
13 U.S. mobile device users by tracking and storing their geolocations despite the relevant setting
14 ("Location History") being disabled. *See generally* Dkt. 131 (First Am. Consol. Class Action
15 Compl., "FAC"). Plaintiffs allege Google's actions violated its own representations and
16 wrongfully enabled Google to amass and commercially exploit valuable and sensitive geolocation
17 data. *Id.*

18 10. This action commenced on August 17, 2018 (Dkt. 1) and was swiftly followed by
19 six additional putative class actions asserting similar claims. Following consolidation of all related
20 cases on December 11, 2018 (Dkt. 51), on April 1, 2019, the Court appointed us as Interim Co-
21 Lead Class Counsel, and additional attorneys as Interim Class Counsel. Dkt. 72.

22 11. On April 29, 2019, Plaintiffs filed a Consolidated Complaint alleging: (a) violation
23 of the California Invasion of Privacy Act ("CIPA"), Cal. Pen. Code § 637.7; (b) intrusion upon
24 seclusion; and (c) violation of the California Constitution's right to privacy, Art. 1, § 1. Dkt. 80.
25 On December 19, 2019, the Court granted Defendant's motion to dismiss, dismissing all of
26 Plaintiffs' claims. Dkt. 113. At this point, Plaintiffs had no claims.

27 12. Plaintiffs attempted an interlocutory appeal of the December 2019 dismissal order,
28 and the parties agreed to stay discovery during such proceedings after Google made a limited

1 production of documents previously produced to Congress in connection with its investigation of
2 Google’s practices regarding Location Information. Dkt. 118.

3 13. In April 2020, the Court denied Plaintiffs’ motion to certify the dismissal order for
4 interlocutory appeal (Dkt. 126).

5 14. In June 2020, the Court also denied Plaintiffs’ motion for leave to file a motion for
6 reconsideration of the dismissal order (Dkt. 130).

7 15. Plaintiffs filed the FAC on July 6, 2020, alleging claims for: (a) intrusion upon
8 seclusion; (b) violation of the California Constitution’s right to privacy, Art. 1, § 1; and (c) unjust
9 enrichment (or, alternatively, breach of contract) (Dkt. 131), which was deemed filed as of July
10 16, 2020. Dkts. 136, 137. Google moved for dismissal under Rule 12(b)(6). Dkt. 145. In January
11 2021, the Court largely denied the motion. Dkt. 162. The Court’s denial of this motion to dismiss
12 turned on its finding that Plaintiffs now alleged “continuous and comprehensive” tracking and
13 storage of Location Information. *Id.* at 8.

14 16. Defendant answered the FAC on February 8, 2021. Dkt. 165.

15 17. Discovery reopened in February 2021. It was hard-fought and contentious
16 throughout the remaining years of this litigation. All told the Parties engaged in approximately 26
17 months of discovery, including: serving discovery requests and written responses; meeting and
18 conferring; engaging in discovery motion practice; and attending regular discovery conferences
19 with Magistrate Judge Cousins. Defendant produced, and Plaintiffs reviewed (including while
20 discovery was stayed to facilitate mediation), more than 500,000 pages of documents.

21 18. Magistrate Judge Cousins held seven discovery hearings and conferences, and
22 required joint reports concerning the Parties’ numerous disputes on a weekly, then biweekly, basis.
23 Dkts. 187, 204, 229. While many disputes were adjudicated in that fashion, the Parties also briefed
24 numerous disputes through joint letter briefs. *See, e.g.*, Dkts. 173 (Letter Brief), 175 (Order), 180
25 (Letter Brief), 183 (Letter Brief), 187 (Order), 207 (Order), 215 (Order), 225 (Order), 226 (Order),
26 229 (Order), 288 (Letter Brief), 292 (Order), 293 (Letter Brief), 308 (Order), 309 (Letter Brief).
27 Even Plaintiffs’ ability to conduct expert analysis was contentious, requiring the Court to
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1 adjudicate an opposed motion to disclose material that Google designated highly confidential to
2 Plaintiffs' expert (Dkt. 276). Plaintiffs prevailed (Dkt. 284).

3 19. While Plaintiffs fought Google's persistent efforts to block their discovery efforts,
4 they defended against Google's aggressive discovery towards them. For instance, Google sought
5 the history of every location-related setting on every app on every device Plaintiffs or their children
6 used during the class period. Plaintiffs were required to turn over their mobile devices, and to have
7 those devices as well as their personal email accounts imaged and searched.

8 20. On February 22, 2022, the Court stayed discovery a second time, to facilitate
9 mediation. Dkt. 243. The Parties exchanged additional documents and information in connection
10 with the ongoing mediation and settlement discussions.

11 21. Throughout the course of the litigation, Class Counsel tracked the progress of related
12 litigation in the U.S. and in other countries, including in Australia and Europe, and researched the
13 application of the issues surrounding those cases to this litigation.

14 **SETTLEMENT NEGOTIATIONS AND MEDIATION**

15 22. The Parties engaged in extensive, arm's-length negotiations over many months,
16 including three full-day mediation sessions on March 15, May 2, and May 24, 2022, and numerous
17 additional discussions facilitated by an experienced and well-respected mediator, Eric D.
18 Green, Esq. Mr. Green has extensive experience mediating class actions, including multiple data
19 privacy cases where a settlement was reached and approved. Ahead of these mediation sessions,
20 the Parties exchanged information to facilitate productive mediation sessions, in addition to
21 information already gleaned through discovery.

22 23. The Parties reached agreement on the general terms of a settlement in the form of a
23 mediator's proposal in May 2022. However, after months of intense negotiations the Parties were
24 unable to agree on certain terms necessary to consummate a full settlement agreement and reported
25 as much to the Court on October 12, 2022.

26 24. The Court held a status conference on November 3, 2022, and referred the matter to
27 Magistrate Judge Spero, who held a settlement conference on January 19, 2023. Although progress
28 was made, the case did not settle at that time. The Parties returned to active, contentious litigation.

1 technology, IP address, cell tower data, wireless internet access points (Wi-Fi data), or Bluetooth
2 data.” SA ¶ 26.17.

3 31. We are informed and believe that the Notice Target Audience consisting of Adults,
4 Aged 18+ in the United States with a mobile device is approximately 247.7 million people
5 according to the MRI-Simmons 2022 Survey of the American Consumer[®]. In our experience,
6 MRI-Simmons’ data commonly is used for purposes of class action notice planning.

7 32. The Settlement establishes a non-reversionary cash Settlement Fund of \$62 million,
8 which would be used to pay for the costs of Notice and Settlement administration, any Court-
9 awarded attorneys’ fees and expenses and Class Representative Service Awards. SA ¶¶ 32, 39.
10 The balance (the “Net Settlement Fund”) would be distributed to one or more Court-approved *cy*
11 *pres* recipients. SA ¶¶ 40-42.

12 33. The proposed recipients must be “independent 501(c)(3) organizations with a track
13 record of addressing privacy concerns on the Internet (either directly or through grants) and . . .
14 shall use the funds to promote the protection of internet privacy.” SA ¶ 41.2.

15 34. The Parties propose 17 entities identified in Exhibit D of the Settlement Agreement
16 as *cy pres* recipients. These include:

17 i. **Berkman Klein Center for Internet & Society at Harvard University** is
18 a leading academic research center devoted to researching and teaching about issues at the
19 intersection of emerging technologies, law, public policy, industry, and education.

20 ii. **MIT Internet Policy Research Initiative** was founded in 2015 as a
21 response to the critical need for technology-informed policy making in the areas of privacy,
22 security, networks and the Internet economy. Its mission is to lead the development of policy-
23 aware, technically grounded research that enables policymakers and engineers to increase the
24 trustworthiness of interconnected digital systems like the Internet and related technologies.

25 iii. **New York University Information Law Institute (“ILI”)** is devoted to the
26 study of law, policy, and technology as they define and affect the flow of information in digitally
27 networked societies, with a primary focus on information privacy. The ILI regularly hosts events
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1 involving faculty, policy makers, public interest advocates, and industry representatives from the
2 United States and elsewhere around the world.

3 iv. **Yale Law School Information Society Project** is an intellectual center at
4 Yale Law School. It supports a community of interdisciplinary scholars who explore issues at the
5 intersection of law, technology, and society.

6 v. **Fordham University Center on Law and Information Policy (“CLIP”)**
7 brings together scholars, the bar, the business community, technology experts, the policy
8 community, students, and the public to address and assess policies and solutions for cutting-edge
9 issues that affect the evolution of the information economy. CLIP pursues work in five related
10 areas, including technology, privacy and security;

11 vi. **The Markup** is a nonprofit newsroom with the motto “Big Tech Is Watching
12 You. We’re Watching Big Tech.” Staffed with quantitative journalists who pursue meaningful,
13 data-driven investigations, the Markup investigates how powerful institutions are using technology
14 to change our society, and has created publicly-accessible tools for consumers to understand
15 privacy risks associated with technology used in their day-to-day lives, including “Blacklight,”
16 real-time website privacy inspector that empowers anyone to uncover how their personal data is
17 collected as they browse the internet. In 2021, the Markup received the Electronic Privacy
18 Information Center’s Champion of Freedom Award for 2021, which recognizes individuals and
19 organizations that have helped safeguard the right of privacy, promote open government, and
20 protect democratic values with courage and integrity.

21 vii. **The Internet Archive (“IA”)** is a nonprofit with the mission “to provide
22 Universal Access to All Knowledge.” More specifically, IA provides free access to researchers,
23 historians, scholars, people with print disabilities, and the general public to historical information
24 from the web, including over 26 years of web history accessible through the Wayback Machine
25 (which indeed even served as a useful investigative source for Plaintiffs in this case). IA has
26 consistently devoted its efforts—to great effect—to enabling public access to knowledge about
27 statements made on the web and in other ephemeral sources. IA provides access to historical
28 records of privacy policies and other disclosures that are critical for consumers to understand

1 choices they have made, or are charged with having made, about mobile device settings and
2 information sharing, as well as for policymakers and research into practices and disclosures.

3 viii. **American Civil Liberties Union Foundation (Speech, Privacy, and**
4 **Technology Project)** consistently has been at the forefront of precedent-setting privacy litigation
5 (*see, e.g., U.S. v. Carpenter*) and also engages in records requests, public education, advocacy
6 before companies and internet standards-setting bodies, and separately funded state and federal
7 lobbying, to protect data privacy and security throughout the United States.

8 ix. **American Civil Liberties Union Foundation of Northern California**
9 **(Technology and Civil Liberties Program)** works to protect the privacy, civil rights and civil
10 liberties of Californians through advocacy in the courts, communities, companies and legislatures
11 to ensure that individuals control how personal information is collected, shared and used.

12 x. **Center for Democracy & Technology** (“CDT”) is a consumer advocacy
13 group dedicated to keeping the internet open, innovate, and free. The CDT has contributed to the
14 development and implementation of robust protections for consumer privacy through government
15 policy, improved business practices, privacy design, and consumer awareness and empowerment.

16 xi. **Connect Safely** is a non-profit organization dedicated to educating
17 consumers about online safety, privacy, security and digital wellness.

18 xii. **Electronic Frontier Foundation** (“EFF”) focuses on defending free speech,
19 privacy, innovation, and consumer rights on the cutting edge of technology. The EFF uses reactive
20 education—which grants consumers broader, deeper understandings of their rights and lays out
21 what consumers can do to protect those rights—and technology tools—which aim to make it easier
22 for users to engage in prophylactic behavior with regard to online privacy and security—to further
23 these goals.

24 xiii. **The Future of Privacy Forum Education & Innovation Foundation**
25 serves as a catalyst for privacy leadership and scholarship, advancing principled data practices in
26 support of emerging technologies.

27 xiv. **Privacy Rights Clearinghouse** (“PRC”) is a nonprofit organization focused
28 on increasing access to information, policy discussions and meaningful rights so that data privacy

1 can be a reality for everyone. The PRC publishes clear overviews of complex data privacy laws
2 and creates resources that provide context for rights and choices that lie at the intersection of data
3 privacy and other key topics such as health, employment, finance, and housing.

4 xv. **Data & Society Research Institute** is a non-profit research institute that
5 works to illuminate how data-centric technologies and automation affect the world around us. Data
6 & Society uses interdisciplinary research and engagement to advance public understanding of the
7 social and cultural implications of technology.

8 xvi. **National Cyber Security Alliance** (“NCA”) was established in 2001 and
9 has since been instrumental in offering practical digital privacy and security advice to the
10 American public. The NCA’s commitment to promoting a culture of privacy and security equips
11 digital citizens with the necessary knowledge to safeguard themselves, their organizations, and
12 their families. Its primary goal is to provide practical, actionable advice and answer the pressing
13 questions people have about protecting their online privacy.

14 xvii. **The Rose Foundation for Communities and the Environment** is a non-
15 profit organization that specializes in distributing *cy pres* funds for a wide range of charitable work
16 that has a direct nexus with the class action settlement. The Rose Foundation utilizes its grant-
17 making experience and deep knowledge of privacy issues and consumer education to conduct a
18 public, competitive, and transparent national grant-making process designed to identify
19 appropriate recipients whose work has a direct nexus to the interests of class members and the
20 goals of the underlying litigation. The foundation’s Consumer Privacy Fund has previously
21 administered more than \$7 million in privacy grants to more than 100 consumer privacy non-
22 profits throughout the United States, funded by *cy pres* settlements in other privacy litigation.

23 35. Each proposed recipient is an independent 501(c)(3) organization with a track record
24 of addressing privacy concerns on the Internet (either directly or through grants).

25 36. Plaintiffs are soliciting detailed proposals from the organizations regarding how they
26 would use the *cy pres* awards if approved, which they hope to submit with their Reply brief in
27 support of preliminary approval.

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1 37. The Settlement also provides meaningful injunctive relief that extends for at least
2 three years, requiring Google to: (1) confirm that it removed from its website (and any app or
3 settings page controlled by Google where it appeared) the statement that, “[w]ith Location History
4 off, the places you go are no longer stored”; (2) maintain a policy whereby (a) Location
5 Information stored through Location History (“LH”) and Web & App Activity (“WAA”) is
6 automatically deleted by default after a period of at least 18 months when users opt into these
7 settings for the first time, and (b) users can set their own auto-delete periods; (3) send a notification
8 that WAA and LH collect Location Information with instructions on how to disable each setting,
9 delete the data collected by each, and set data retention limits; (4) confirm that Google does not
10 now share users’ precise Location Information collected in LH or WAA with third parties (except
11 for valid legal reasons); (5) create and maintain a “Location Technologies Page” that will provide
12 useful information about Google’s location practices; and (6) include a link to the Location
13 Technologies Page in its annual “Privacy Check-Up” email and on other pages concerning
14 location. *See* SA ¶¶ 43-44 & Ex. C.

15 **PROPOSED ATTORNEYS’ FEES AND SERVICE AWARDS**

16 38. Class Counsel will file a motion for an award of reasonable attorneys’ fees,
17 reimbursement of costs and expenses, and service awards for the Class Representatives, at least 35
18 days prior to the Objection Deadline. The sums requested will be disclosed in the Class Notice.

19 39. Class Counsel anticipate seeking attorneys’ fees up to 30% of the Settlement Fund
20 (i.e., up to \$18.6 million), plus reimbursement of reasonable out-of-pocket expenses currently
21 totaling approximately \$145,000. Google has the right to oppose Class Counsel’s request, but the
22 30% fee award would be appropriate considering the results achieved for the Class. It also will be
23 supported by a lodestar cross-check, given that Plaintiffs’ Counsel’s total lodestar, through June 30,
24 2023 (the last reporting deadline as of this filing), totals approximately \$10.8 million for
25 approximately 17,000 hours of work. Though Class Counsel anticipate reporting a higher lodestar
26 with their Fee Motion, at this amount, the maximum fee request would represent a 1.7 multiplier.
27 Class Counsel will detail their work, hours, lodestar and expenses in their fee and expense motion.
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Executed on this 14th day of September, 2023, by Tina Wolfson in Los Angeles,
California. Michael W. Sobol in San Francisco, California.

/s Tina Wolfson
Tina Wolfson

/s Michael W. Sobol
Michael W. Sobol