

1 LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
2 Michael W. Sobol (SBN 194857)
msobol@lchb.com
3 Melissa Gardner (SBN 289096)
mgardner@lchb.com
4 Michael Levin-Gesundheit (SBN 292930)
mlevin@lchb.com
5 Michael K. Sheen (SBN 288284)
msheen@lchb.com
6 Jallé H. Dafa (SBN 290637)
jdafa@lchb.com
7 John D. Maher (SBN 316157)
jmaher@lchb.com
8 275 Battery Street, 29th Floor
San Francisco, CA 94111
9 Telephone: 415.956.1000
Facsimile: 415.956.1008

AHDOOT & WOLFSON, PC
Tina Wolfson (SBN 174806)
twolfson@ahdootwolfson.com
Theodore Maya (SBN 223242)
tmaya@ahdootwolfson.com
Bradley K. King (SBN 274399)
bking@ahdootwolfson.com
Henry J. Kelston (*pro hac vice*)
hkelston@ahdootwolfson.com
Deborah De Villa (SBN 312564)
ddevilla@ahdootwolfson.com
2600 West Olive Avenue, Suite 500
Burbank, California 91505
Telephone: 310.474.9111
Facsimile: 310.474.8585

Interim Co-Lead Class Counsel

10 LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
11 Nicholas Diamand (*pro hac vice*)
12 250 Hudson Street, 8th Floor
New York, NY 10013
13 Telephone: 212.355.9500
Facsimile: 212.355.9592

Interim Co-Lead Class Counsel

14
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

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS'
FEES AND EXPENSES, AND FOR
CLASS REPRESENTATIVE SERVICE
AWARDS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

21
22
23
24 Dept: Courtroom 4 - 5th Floor
Judge: Hon. Edward J. Davila
Date: April 18, 2024
Time: 9:00 A.M.

25
26 (Joint Declaration of Tina Wolfson and
27 Michael W. Sobol, and Declarations of
28 Settlement Class Representatives, filed
concurrently herewith)

1 **NOTICE OF MOTION AND MOTION**

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

3 **PLEASE TAKE NOTICE** that on April 18, 2024 at 9:00 a.m., in Courtroom 4 of the United States
4 District Court for the Northern District of California, Robert F. Peckham Federal Building & United
5 States Courthouse, 280 South First Street, San Jose, California 95113, the Honorable Edward J.
6 Davila presiding, Plaintiffs Napoleon Patacsil, Michael Childs, and Noe Gamboa (“Settlement
7 Class Representatives”) will and hereby move for an Order pursuant to Rules 23(h)(1) and 54(d)(2)
8 of the Federal Rules of Civil Procedure awarding: (i) Attorneys’ Fees to Class Counsel equal to
9 30% of the \$62 million non-reversionary Settlement Fund, or \$18.6 million¹; (ii) unreimbursed
10 expenses totaling \$151,756.23 that Class Counsel reasonably and necessarily incurred in
11 furtherance of the prosecution of this Action; and (iii) Service Awards of \$5,000 for each of the
12 three Settlement Class Representatives, totaling \$15,000.

13 This motion is based upon this Notice of Motion and Motion, the Memorandum of Points
14 and Authorities set forth below, the concurrently filed Joint Declaration of Tina Wolfson and
15 Michael W. Sobol in support of this motion (“Joint Declaration”) and all exhibits attached thereto,
16 the concurrently filed declarations of Settlement Class Representatives, the pleadings and records
17 on file in this Action, and other such matters and argument as the Court may consider at the hearing
18 of this motion.

19 **STATEMENT OF ISSUES TO BE DECIDED**

- 20 1. Whether the Court should award 30% of the \$62 million non-reversionary
21 Settlement Fund to Class Counsel as attorneys’ fees;
- 22 2. Whether the Court should award \$151,756.23 in out-of-pocket expenses that Class
23 Counsel reasonably and necessarily incurred in furtherance of the Action; and
- 24 3. Whether the Court should award Service Awards of \$5,000 to each of the three
25 Settlement Class Representatives for their time and effort in pursuing this Action.

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28 ¹ All capitalized words and terms are defined in the Class Action Settlement and Release Agreement (“Settlement Agreement” or “SA”) (Dkt. 328-1) (Section II) unless otherwise defined herein.

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Respectfully submitted,

Dated: January 29, 2024

/s/ Tina Wolfson
AHDOOT & WOLFSON, PC
Tina Wolfson (SBN 174806)
twolfson@ahdootwolfson.com
Theodore Maya (SBN 223242)
tmaya@ahdootwolfson.com
Bradley K. King (SBN 274399)
bking@ahdootwolfson.com
Henry J. Kelston (*pro hac vice*)
hkelston@ahdootwolfson.com
Deborah De Villa (SBN 312564)
ddevilla@ahdootwolfson.com
2600 West Olive Avenue, Suite 500
Burbank, California 91505
Tel: 310.474.9111
Fax: 310.474.8585

Interim Co-Lead Class Counsel

Dated: January 29, 2024

/s/ Michael W. Sobol
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
Michael W. Sobol (SBN 194857)
msobol@lchb.com
Melissa Gardner (SBN 289096)
mgardner@lchb.com
Michael Levin-Gesundheit (SBN 292930)
mlevin@lchb.com
Michael K. Sheen (SBN 288284)
msheen@lchb.com
Jallé H. Dafa (SBN 290637)
jdafa@lchb.com
John D. Maher (SBN 316157)
jmaher@lchb.com
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: 415.956.1000
Facsimile: 415.956.1008

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
Nicholas Diamand (*pro hac vice*)
250 Hudson Street, 8th Floor
New York, NY 10013
Telephone: 212.355.9500
Facsimile: 212.355.9592

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25 **Statutes**

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27 California Constitution Right to Privacy, Art. 1, § 1 3

28 California Invasion of Privacy Act (“CIPA”) 3

Video Protection Privacy Act of 1988 10

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After years of hard-fought litigation, Class Counsel negotiated a remarkable Settlement that
4 provides meaningful relief to the proposed Class and an outstanding resolution of this difficult and
5 uncertain case. Google will pay \$62 million into a non-reversionary Settlement Fund that will be
6 used to fund critical work by Court-approved organizations to promote and protect Class members'
7 privacy interests, including by providing education, advocacy, and security against similar privacy
8 violations now and in the future. Class Counsel also secured important injunctive relief for the
9 Class, which imposes enforceable mandates on Google to disclose the nature and extent of its use
10 and storage of users' Location Information, and how users can make informed choices to influence
11 those practices, including how to disable settings such as Location History, how to delete the data
12 collected, and how to set data retention limits.

13 In recognition of the substantial work performed for the Class in this case and the strong
14 result achieved—including an extraordinarily large monetary payment in light of the lack of any
15 potential statutory damages, plus injunctive relief custom-tailored to address the practices on which
16 Plaintiffs' claims are based—Class Counsel respectfully move the Court to award attorneys' fees
17 representing 30% of the Settlement Fund. This request, amounting to \$18.6 million, is further
18 supported by a lodestar cross-check, as the reasonable lodestar of \$12,960,632 results in a modest
19 multiplier of 1.44.

20 Class Counsel also seek reimbursement of their reasonably incurred litigation expenses,
21 which include costs relating to discovery, experts, travel, and mediation. These expenses, totaling
22 \$151,756.23, are modest in light of the complexity and nearly six-year duration of this Action.

23 In addition, Service Awards of \$5,000 for each of the three Class Representatives are
24 appropriate. Throughout the litigation, the Class Representatives actively assisted with prosecution
25 of the litigation, participated in discovery, and remained committed to their duties to the Class. By
26 stepping forward to assert their claims, the Class Representatives put their digital lives at issue in
27 this high-profile litigation, spent considerable time assisting with discovery, provided information
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1 about their specific experiences, reviewed pleadings, and consistently communicated with Class
2 Counsel to stay abreast of case developments.

3 For the reasons set forth herein, Plaintiffs and Class Counsel respectfully request that the
4 Court approve the requested fee award, expense reimbursement, and Service Awards in light of the
5 quality of the Settlement, the skill required to achieve it, the significant risks assumed and the
6 contingent nature of Class Counsel’s representation in this challenging and important litigation.

7 **II. BACKGROUND**

8 Co-lead class counsel Ahdoot & Wolfson, PC (“Ahdoot Wolfson”) and Lief Cabraser
9 Heimann & Bernstein, LLP (“Lief Cabraser”) (together, “Class Counsel”), with support from
10 counsel this Court appointed as Interim Class Counsel, have devoted nearly six years of work to
11 this case on a contingency basis, to the exclusion of other fee-generating work. As detailed below,
12 they have strategically invested considerable resources, as well as their experience and expertise in
13 litigating consumer data privacy class actions, to prosecuting the novel claims and negotiating an
14 outstanding settlement on behalf of the Settlement Class. Collectively, the size of the Class, the
15 untested nature of the claims asserted, the long duration of this litigation, the Court’s rulings on
16 Google’s motions to dismiss, and the attorney resources required presented a high-risk undertaking.
17 And despite the myriad of risks presented to them, Class Counsel achieved an outstanding result
18 for the Class.

19 **A. The Litigation and Class Counsel’s Efforts on Behalf of the Class**

20 Plaintiffs allege Google knowingly violated the privacy rights of millions of U.S. mobile
21 device users to amass and commercially exploit valuable and sensitive geolocation data, by tracking
22 and storing their geolocations despite the relevant setting—“Location History” —being disabled.
23 *See generally* Dkt. 164-1 (First Am. Consol. Class Action Compl., “FAC”). Class Counsel
24 demonstrated creativity, tenacity, and skill against a fierce defense at every phase of this Action.

25 After this litigation commenced on August 17, 2018 (Dkt. 1), the first-filed complaint was
26 swiftly followed by five additional putative class actions arising from the same facts. Class Counsel
27 efficiently negotiated the consolidation of these six related cases. (Dkt. 51). Following a contested
28 hearing on the appointment of lead counsel, on April 1, 2019, the Court appointed Tina Wolfson of

1 Ahdoot Wolfson and Michael Sobol of Lieff Cabraser as Interim Co-Lead Class Counsel, and
2 attorneys at five additional firms as Interim Class Counsel. Dkt. 72.

3 On April 29, 2019, Plaintiffs filed a Consolidated Complaint alleging: (a) violation of the
4 California Invasion of Privacy Act (“CIPA”), Cal. Pen. Code § 637.7; (b) intrusion upon seclusion;
5 and (c) violation of the California Constitution’s right to privacy, Art. 1, § 1. Dkt. 80. These were
6 difficult, pioneering claims that turned on novel questions of statutory interpretation and the
7 interpretation of concurrently-developing precedent from the higher courts. *See e.g., Carpenter v.*
8 *United States*, 138 S. Ct. 2206, 2217, (2018) (establishing new criteria for evaluating expectations
9 of privacy over geolocation information under the Fourth Amendment); *In re Facebook, Inc.*
10 *Internet Tracking Litig.*, 956 F.3d 589, 601 (9th Cir. 2020) (advancing the framework for evaluating
11 expectations of privacy and consent).

12 On December 19, 2019, the Court granted Google’s motion to dismiss all of Plaintiffs’
13 claims. Dkt. 113. The Court dismissed Plaintiffs’ CIPA cause of action with prejudice, finding that
14 the statute did not regulate the type of tracking at issue. The Court dismissed the California
15 constitutional and common law privacy claims without prejudice, finding that Plaintiffs alleged
16 neither “a legally protective privacy interest in the specific places they went” nor “how often their
17 geolocation was accessed.” *Id.* at 8-14, 19 (emphasis in original). At this point, Plaintiffs had no
18 claims, and faced a significant hurdle they would have to surmount to move the case forward.

19 Plaintiffs sought an interlocutory appeal of the December 2019 dismissal order, and the
20 parties agreed to stay discovery during such proceedings after Google made a limited production
21 of documents. Dkt. 118; Joint Decl. ¶ 31. In April 2020, the Court denied Plaintiffs’ motion to
22 certify the dismissal order for interlocutory appeal (Dkt. 126) and, in June 2020, the Court also
23 denied Plaintiffs’ motion for leave to file a motion for reconsideration of the dismissal order
24 (Dkt. 130).

25 Plaintiffs filed the FAC on July 6, 2020, re-asserting their claims for: (a) intrusion upon
26 seclusion; (b) violation of the California Constitution’s right to privacy, Art. 1, § 1; and alleging a
27 new claim for (c) unjust enrichment (or breach of contract in the alternative). Dkt. 131 (deemed
28 filed as of July 16, 2020, Dkts. 136, 137). Google moved to dismiss the FAC in its entirety. Dkt.

1 145. In January 2021, the Court largely denied the motion based on its finding that Plaintiffs now
2 alleged “continuous and comprehensive” tracking and storage of Location Information. Dkt. 162 at
3 8. After the Parties filed opposing briefs on the need to file portions of the FAC and motion to
4 dismiss briefing under seal, Plaintiffs filed an unredacted version of the FAC on February 8, 2021.
5 Dkt. 164-1. Google answered the FAC that same day. Dkt. 165.

6 Discovery reopened in February 2021. It was hard-fought and contentious throughout the
7 remaining years of this litigation. All told, the Parties engaged in approximately 26 months of
8 discovery, including: serving discovery requests and written responses; meeting and conferring;
9 engaging in discovery motion practice; and attending regular discovery conferences with
10 Magistrate Judge Nathanael Cousins. Joint Decl. ¶ 23. Plaintiffs reviewed hundreds of thousands
11 of pages of documents produced by Google. Joint Decl. ¶ 63; SA ¶ 13.

12 Magistrate Judge Cousins held seven discovery hearings and conferences, and required joint
13 reports concerning the Parties’ numerous disputes on a weekly, then biweekly, basis. Dkts. 187,
14 204, 229. While many disputes were adjudicated through that process, the Parties also briefed
15 numerous disputes through joint letter briefs, amounting to roughly 20 discovery disputes
16 altogether. Joint Decl. ¶¶ 30-62. These disputes included, *inter alia*, issues such as the appropriate
17 definition of “location information”; Google’s production of documents from the Arizona Attorney
18 General’s litigation against Google concerning its location-tracking practices; the proper
19 custodians, search terms, and sources of data from which discovery could be gathered; and the
20 sufficiency of responses to written discovery. *Id.* Even Plaintiffs’ ability to conduct expert analysis
21 was contentious, requiring them to litigate a contested motion to disclose material that Google
22 designated highly confidential to Plaintiffs’ expert (Dkt. 276), which was granted on March 21,
23 2023 (Dkt. 284).

24 As Plaintiffs fought Google’s persistent efforts to resist discovery, they also had to defend
25 against Google’s aggressive discovery towards them. For instance, Google requested that Plaintiffs
26 produce the history of every location-related setting on every app on every device Plaintiffs or their
27 children ever used during the class period. Plaintiffs were required to turn over their mobile devices,
28 and to have those devices as well as their personal email accounts forensically imaged and searched.

1 Joint Decl. ¶ 25.

2 On February 22, 2022, the Court again stayed discovery, this time to facilitate mediation.
3 Dkt. 243. Class Counsel negotiated the production of additional information by Google during, and
4 to facilitate, mediation. Joint Decl. ¶ 56.

5 Throughout the course of the litigation, Class Counsel actively monitored the progress of
6 other litigation arising from Google's alleged tracking of mobile devices in the U.S. and in other
7 countries, including lawsuits filed by the Attorneys General of four states and the District of Columbia,
8 complaints filed by consumer organizations in Norway, Sweden, Greece, Slovenia, Poland and the
9 Netherlands, as well as litigation brought by the Australian Competition and Consumer Commission in
10 the Federal Court of Australia. *Id.* ¶ 28.

11 **B. Settlement Negotiations and Mediation**

12 In light of the Parties' fundamentally oppositional views on the merits of this litigation, the
13 Settlement was extremely difficult to achieve. The Parties engaged in extensive, arm's-length
14 negotiations over many months, including three full-day mediation sessions on March 15, May 2,
15 and May 24, 2022, and numerous additional discussions facilitated by Professor Eric D. Green,
16 Esq., an experienced and well-respected mediator. Joint Decl. ¶ 5. In addition to information
17 gleaned through discovery, the Parties informally exchanged information to facilitate productive
18 mediation sessions. *Id.*

19 The Parties reached agreement on the general terms of a settlement in the form of a
20 mediator's proposal in May 2022. *Id.* ¶ 70; *see also* Dkt. 258. However, after months of intensive
21 negotiations, the Parties were unable to agree on certain terms necessary to consummate a full
22 settlement agreement and reported as much to the Court on October 12, 2022. Dkt. 254. The Parties
23 returned to active litigation, including additional discovery disputes before Judge Cousins. Joint
24 Decl. ¶¶ 57-62.

25 The Court held a status conference on November 3, 2022 (Dkt. 256), and referred the matter
26 to Magistrate Judge Spero, who held a settlement conference on January 19, 2023. (Dkt. 262).
27 Although progress was made during that conference, the case did not settle. Joint Decl. ¶ 71.

28 The Parties continued their direct negotiations and, on April 27, 2023, executed a term sheet

1 agreeing to settle the dispute on the general terms now before the Court. *Id.* ¶ 72. However, the
2 Parties had yet to reach agreement on other key terms and strenuous negotiations continued. *Id.*
3 Over the course of several months, the Parties participated in numerous video and phone
4 conferences during which they successfully negotiated the Settlement’s significant injunctive relief.
5 *Id.* ¶¶ 73-74. Injunctive relief negotiations extended for months, including numerous written
6 proposals and counterproposals, and consultation with experts. *Id.* Multiple drafts and redlines of
7 the Settlement Agreement and its many exhibits were exchanged and scrutinized. *Id.* ¶ 73.

8 Class Counsel obtained and carefully negotiated multiple rounds of bids from five well-
9 established, experienced, and highly regarded class action notice and administration firms. *Id.* ¶ 74.
10 Class Counsel collaborated with defense counsel and the proposed Settlement Administrator on the
11 logistics and substance of the Notice Plan. *Id.* ¶ 76.

12 As a result of the extensive discovery conducted prior to mediation (and document review
13 which continued even after the case was stayed), information provided during settlement
14 negotiations, consultation with experts, and the intense negotiations that lasted over a year in total
15 before the Settlement was finalized, Class Counsel had a comprehensive understanding of the case,
16 including Google’s anticipated defenses on the merits; the likely arguments that would be advanced
17 at class certification, summary judgment, and trial; the Settlement Class definition and the
18 challenges involved in identifying individual class members; and the complex technical issues
19 surrounding these issues and potential injunctive relief. *Id.* ¶ 69.

20 **C. Preliminary Approval and Dissemination of Notice**

21 On September 14, 2023, Plaintiffs filed a motion for preliminary approval of the Settlement,
22 supported by declarations of counsel and the Settlement Administrator, Epiq Class Action & Claims
23 Solutions, Inc. (“Epiq” or the “Settlement Administrator”). *See* Dkts. 327-329.

24 On November 7, 2023, the Court granted preliminary approval of the Settlement,
25 provisionally certified the Settlement Class, approved the Notice Plan, and appointed Class
26 Counsel, Class Representatives, and Epiq as the Settlement Administrator. *See* Dkt. 345 (Order
27 Granting Preliminary Approval of Class Action Settlement). Following preliminary approval, the
28

1 Administrator has been implementing the Settlement’s notice program. *See, e.g.*,
2 <https://www.googlelocationhistorysettlement.com/en>.

3 **III. THE COURT SHOULD APPROVE THE REQUESTED FEE AWARD**

4 Class Counsel vigorously pursued this action for years against significant odds and
5 negotiated a resolution that provides a non-reversionary Settlement Fund of \$62 million for the
6 benefit of the Settlement Class and significant injunctive relief. Accordingly, Class Counsel
7 respectfully submit that an award of attorneys’ fees in the amount of \$18.6 million, which represents
8 30% of the Settlement Fund and a 1.44 multiplier on Class Counsel’s reasonable lodestar, is fair
9 and reasonable.

10 **A. Class Counsel Should Be Awarded Attorneys’ Fees from the Common Fund**

11 The United States Supreme Court “has recognized consistently that a litigant or a lawyer
12 who recovers a common fund for the benefit of persons other than himself or his client is entitled
13 to a reasonable attorney's fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472,
14 478 (1980); *see also, e.g., Harrison v. Bank of Am. Corp.*, No. 19-cv-00316-LB, 2021 WL 5507175,
15 at *8 (N.D. Cal. Nov. 24, 2021) (“When counsel recovers a common fund that confers a ‘substantial
16 benefit’ on a class of beneficiaries, counsel is ‘entitled to recover their attorney’s fees from the
17 fund.’”) (quoting *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir. 2002));
18 *Williamson v. Microsemi Corp.*, No. 5:14-CV-01827-LHK, 2015 WL 13650045, at *1 (N.D. Cal.
19 Feb. 19, 2015) (“When counsel’s efforts result in the creation of a common fund that benefits a
20 class, counsel have an equitable right to be compensated from that fund as a whole.”).

21 **B. The Court Should Use the Percentage Method to Calculate Reasonable** 22 **Attorneys’ Fees**

23 In granting fees, “a court must ensure that attorney’s fees and costs awarded to class counsel
24 are ‘fair, reasonable and adequate.’” *Russell v. United States*, No. 09-03239, 2013 WL 3988778, at
25 *3 (N.D. Cal. Aug. 2, 2013) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 963–64 (9th Cir. 2003)).
26 Under Ninth Circuit law, “the district court has discretion in common fund cases to choose either
27 the percentage-of-the-fund or the lodestar method.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
28 1047 (9th Cir. 2002); *see also Williamson v. McAfee, Inc.*, No. 5:14-cv-00158-EJD, 2017 WL

1 6033070, at *1 (N.D. Cal. Feb. 3, 2017).

2 The percentage-of-the-fund method is the best method to determine the reasonableness of a
3 fixed and readily-quantified attorney’s fee award as Class Counsel requests here. Because the
4 “benefit to the class is easily quantified in common-fund settlements,” district courts may “award
5 attorneys a percentage of the common fund in lieu of the often more time-consuming task of
6 calculating the lodestar.” *Thomas v. MagnaChip Semiconductor Corp.*, No. 14-CV-01160-JST,
7 2018 WL 2234598, at *3 (N.D. Cal. May 15, 2018) (citing *In re Bluetooth Headset Prod. Liability*
8 *Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)); *see also In re Korean Air Lines Co., Ltd. Antitrust Litig.*,
9 No. CV 07-05107-SJO, 2013 WL 7985367, at *1 (C.D. Cal. Dec. 23, 2013) (“The use of the
10 percentage-of-the-fund method in common-fund cases . . . permits the Court to focus on a showing
11 that a fund conferring benefits on a class was created through the efforts of plaintiffs’ counsel.”);
12 *Barnes v. The Equinox Group, Inc.*, No. C 10-3586-LB, 2013 WL 3988804, at *3 (N.D. Cal. Aug.
13 2, 2013) (“The percentage-of-the-fund method is appropriate where—as here—the amount of the
14 settlement is fixed without any reversionary payment to the defendant.”). Accordingly, the nature
15 of this action warrants application of percentage-of-the-fund approach—the “prevailing practice in
16 the Ninth Circuit”—to determine the reasonableness of Class Counsel’s fee request. *Korean Air*
17 *Lines*, 2013 WL 7985367, at *1; *see also Destefano v. Zynga, Inc.*, No. 12-CV-04007-JSC, 2016
18 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016) (“Because this case involves a common settlement
19 fund with an easily quantifiable benefit to the Class, the Court will primarily determine attorneys’
20 fees using the percentage method.”).

21 **C. The Relevant Factors Support Class Counsel’s Requested Fee Award**

22 Class Counsel’s request for an award of 30% of the common fund “is within the ‘usual
23 range’” of fee awards that Ninth Circuit courts award in common fund cases, and reasonable under
24 the factors that courts in this Circuit apply to evaluate a fee award. *Munoz v. Big Bus Tours Ltd.*,
25 No. 18-05761, 2020 WL 13533045, at *4 (N.D. Cal. Feb. 12, 2020) (citing *Vizcaino*, 290 F.3d at
26 1047).

27 While the requested award falls above the 25% benchmark used as a starting point in this
28 Circuit, it is well justified. Courts within the Ninth Circuit have awarded fees above the 25%

1 benchmark where the award is justified by (1) the results achieved; (2) the effort, experience, and
2 skill of counsel; (3) the riskiness of the case and the financial burden shouldered by counsel on a
3 contingency basis; and (4) awards made in similar cases. *Vizcaino v. Microsoft Corp.*, 290 F.3d
4 1043, 1048-50 (9th Cir. 2002). Indeed, courts in this circuit award fees that exceed the 25%
5 benchmark “in most common fund cases.” *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d
6 1036, 1047 (N.D. Cal. 2008); *see also In re National Collegiate Athletic Association Athletic Grant-*
7 *in-Aid Cap Antitrust Litig.*, No. 14-md-2541, 2017 WL 6040065, at *2 (N.D. Cal. Dec. 6, 2017)
8 (same); *Hernandez v. Dutton Ranch Corp.*, No. 16-cv-817, 2021 WL 5053476, at *6 (N.D. Cal.
9 Sep. 10, 2021) (collecting cases and finding that “[d]istrict courts within this circuit . . . routinely
10 award attorneys’ fees that are one-third of the total settlement fund,” and “[s]uch awards are
11 routinely upheld by the Ninth Circuit”); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07-md-
12 1827, at *2 (N.D. Cal. Dec. 27, 2011) (30% award in \$405 million settlement); *Garner v. State*
13 *Farm Mut. Auto. Ins. Co.*, No. 8-1365, 2010 WL 1687832, at *18 (N.D. Cal. Apr. 22, 2010) (30%
14 award); *Knight v. Red Door Salons, Inc.*, No. 8-01520, 2009 WL 248367, at *7 (N.D. Cal. Feb 2,
15 2009) (30% award); *Weeks v. Google LLC*, No. 5:18-cv-00801-NC, 2019 WL 8135563, at *4 (N.D.
16 Cal. Dec. 13, 2019) (awarding 30% of the common fund). “Where a court adopts the percentage
17 method, absent extraordinary circumstances that suggest reasons to lower or increase the
18 percentage, the rate should be set at 30%.” *Omnivision*, 559 F. Supp. 2d at 1048 (internal quotation
19 marks and citations omitted).

20 **1. Class Counsel Achieved an Exceptional Result for the Class**

21 “The overall result and benefit to the class from the litigation is the most critical factor in
22 granting a fee award.” *Omnivision*, 559 F. Supp. 2d at 1046; *see also* Federal Judicial Center,
23 *Manual for Complex Litigation*, §21.71, p. 336 (4th ed. 2004) (“[T]he fundamental focus is the
24 result actually achieved for class members.”) (citing Fed. R. Civ. P. 23(h) committee note). “[W]hen
25 determining the value of a settlement, courts consider the monetary and non-monetary benefits that
26 the settlement confers.” *Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-04936, 2015 WL 758094,
27 at *5 (N.D. Cal. Feb. 20, 2015). The Ninth Circuit has held that the value of a settlement should be
28 enhanced for purposes of fee analyses where there are significant “nonmonetary benefits conferred

1 by the litigation.” *Vizcaino*, 290 F.3d at 1049.

2 The Settlement provides substantial redress for the alleged privacy violations. As described
3 in Plaintiffs’ Motion for Preliminary Approval (Dkt. 327), and summarized below, the *cy pres*
4 awards will ensure that the settlement fund is used to the benefit of Class members, as well as
5 satisfying the deterrent goals of the class action device. Further, both the *cy pres* awards and the
6 injunctive relief are designed to address the practices on which Plaintiffs’ claims are based, and to
7 prevent privacy violations in the future. The overall result and the benefit to the Settlement Class
8 warrants an upward departure from the Ninth Circuit benchmark attorneys’ fee.

9 **Monetary Relief:** The Settlement requires Google to pay \$62 million to resolve Plaintiffs’
10 claims under the California Constitutional right of privacy, common law intrusion upon seclusion,
11 and unjust enrichment. Class Counsel’s research has identified no larger recovery in any privacy
12 class action where only common law claims, without a potential statutory damages recovery, were
13 at issue. Moreover, *cy pres* distribution in large privacy class actions is not uncommon. *See, e.g.*,
14 *In re Google Inc. Street View*, 21 F.4th at 1109 (affirming final approval of \$13 million settlement
15 distributed as *cy pres*); *Campbell v. Facebook Inc.*, 2017 WL 3581179, at *4 (N.D. Cal. Aug. 18,
16 2017), *aff’d*, 951 F.3d 1106 (9th Cir. 2020) (approving settlement providing injunctive relief only
17 and no monetary relief); *Lane v. Facebook*, 969 F.3d 811, 819-820 (9th Cir. 2012) (affirming \$9.5
18 million settlement distributed as *cy pres* in case with statutory damages available under the Video
19 Protection Privacy Act (“VPPA”)); *In re Netflix Privacy Litig.*, No. 11-cv-00379, 2013 WL
20 1120801, at *3 (N.D. Cal. Mar. 18, 2013) (approving \$9 million settlement distributed as *cy pres*
21 in case involving alleged unauthorized storage of personal information, where statutory damages
22 under the VPPA were available); *In re Google Buzz Privacy Litig.*, No. 10-cv-672-JW, 2011 WL
23 7460099, at *4 (N.D. Cal. June 2, 2011) (approving settlement creating \$8.5 million *cy pres* fund
24 to resolve privacy claims of class estimated in the tens of millions).

25 If approved, the \$62 million Settlement Fund will be distributed (after payment of Court-
26 awarded notice and Settlement administration costs, attorneys’ fees and expenses, and service
27 awards) to nonprofit organizations approved by the Court. These potential *Cy Pres* Recipients
28 include educational institutions with track records of cutting-edge public interest research and

1 education regarding online privacy issues, influencing privacy policy and action across the country
2 (Berkman Klein Center for Internet & Society at Harvard University, MIT’s Internet Policy
3 Research Initiative, New York University’s Information Law Institute, Yale Law School’s
4 Information Society Project, the Fordham University Center on Law and Information Policy, the
5 Center on Privacy & Technology at Georgetown Law, and UCLA’s Institute for Technology, Law
6 & Policy); a non-profit news organization that employs trained technologists to conduct
7 independent research, and has a reputation for breaking news regarding internet privacy issues in
8 the technology industry (The Markup); an organization that serves a critical role in enabling access
9 for researchers, historians, scholars, and the general public to otherwise ephemeral sources on the
10 web—records critical to protecting consumer choice and privacy (Internet Archive); public interest
11 research and consumer advocacy organizations that focus on consumer privacy rights and issues
12 (the ACLU’s Speech, Privacy, and Technology Project, the ACLU of Northern California’s
13 Technology and Civil Liberties Program, the Center for Democracy & Technology, Connect Safely,
14 the Electronic Frontier Foundation, FPF Education & Innovation Foundation, Free Press, and
15 Privacy Rights Clearinghouse); individual researchers whose work will advance the public
16 understanding of privacy rights and means of securing them (the Data & Society Research
17 Institute); and the Rose Foundation for Communities and the Environment, which is well-
18 positioned to ensure that additional organizations meeting the nexus of this Class and the claims at
19 issue here are able to obtain and dedicate funding from this Settlement to serving Class members.
20 *See* Joint Decl. ¶ 77.

21 Class Counsel estimate that approximately \$42.6 million in *cy pres* funding would be made
22 available to support the work of these organizations—work specifically targeted to promote and
23 protect Class members’ privacy interests, providing education, advocacy, and security against
24 privacy violations in the future—if the requested attorneys’ fees and other expenses are approved
25 in full.

26 **Injunctive Relief:** Where, as here, a settlement achieves significant benefits that are not
27 accounted for in the dollar value of the common settlement fund, the court “should consider the
28 value of [such] relief obtained as a ‘relevant circumstance’ in determining what percentage of the

1 common fund class counsel should receive as attorneys' fees." *Staton v. Boeing Co.*, 327 F.3d 938,
2 974 (9th Cir. 2003); *see also Vizcaino*, 290 F.3d at 1049 (affirming enhanced fee award where "the
3 court found that counsel's performance generated benefits beyond the cash settlement fund");
4 *Linney v. Cellular Alaska Partnership*, No. C-96-3008, 1997 WL 450064, at *7 (N.D. Cal. July 18,
5 1997), *aff'd*, 151 F.3d 1234 (9th Cir. 1998) (granting fee award of one-third of common fund where
6 settlement provided additional non-monetary relief).

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

21 If the value of the injunctive relief were considered, it would "reduce[] the overall
22 percentage of fees" requested. *Walsh v. KindredHealthcare*, No. 11-50, 2013 WL 6623224, at *3
23 (N.D. Cal. Dec. 16, 2013) (approving fee request of 30% of the common fund; finding the
24 percentage was effectively reduced by the "substantial injunctive relief" obtained through the
25 settlement); *In re Google Play Developer Antitrust Litig.*, No. 20-cv-05792-JD, 2024 WL 150585
26 (N.D. Cal. Jan. 11, 2024), Dkt. 269 at *4 (finding "it appropriate to put a dollar value on a portion
27 of the structural reforms to be provided by the Settlement"). The Settlement's monetary and
28 injunctive relief serve as an excellent recovery for the Class and provide strong support for Class

1 Counsel's fee request.

2 **2. Class Counsel Undertook Substantial Risk in this Litigation**

3 The risk associated with litigation is a key consideration in determining whether a requested
4 fee award is reasonable. *Vizcaino*, 290 F.3d at 1048 (“Risk is a relevant circumstance” in applying
5 the percentage of the fund method); *see also Eashoo v. Iovate Health Sciences U.S.A., Inc.*, No.
6 CV-01726-BRO, 2016 WL 6205785, at *9 (C.D. Cal. Apr. 5, 2016) (“The risk that further litigation
7 might result in no recovery is a significant factor in assessing the fairness and reasonableness of an
8 award of attorneys’ fees.”) (internal quotation marks and citation omitted).

9 Class Counsel persisted in the face of numerous hurdles over the course of the litigation that
10 could have substantially narrowed or precluded any recovery in this case. Joint Decl. ¶¶ 16-18, 36,
11 60. Class Counsel assumed the risk of challenging Google, a well-resourced defendant that would
12 have continued to vigorously defend its business practices had the litigation gone forward. There
13 was no guarantee or predefined path to success on any of Plaintiffs’ novel and innovative legal
14 claims.

15 Although Plaintiffs believe their case is strong, class certification is warranted, and a jury
16 could find Google liable, there is a great deal of uncertainty as to whether the Court would grant
17 certification, deny a motion for summary judgment, and accept Plaintiffs’ damages models. Similar
18 uncertainty exists as to whether a jury would find Plaintiffs entitled to all damages they sought. The
19 risks here were heightened following the Court’s holding that Plaintiffs’ claims depend on proof of
20 “continuous and comprehensive” tracking and storage of Location Information, and the evidentiary
21 burden Plaintiffs would bear in further pretrial and trial proceedings. Dkt. 162. at 8. That risk is
22 amplified given Google’s likely arguments in opposition to class certification. *See, e.g., Hart v.*
23 *TWC Prod. & Tech. LLC*, No. 20-cv-03842-JST, 2023 WL 3568078, at *10-11 (N.D. Cal. Mar. 30,
24 2023) (denying certification because “[t]he common question of whether users maintained a
25 reasonable expectation of privacy . . . necessitates an individualized factual inquiry into whether
26 individual users understood that their affirmative responses to the permission prompts enabled
27 TWC to use the location data it collected”); *Brown v. Google, LLC*, No. 20-cv-03664-YGR, 2022
28 WL 17961497, at *19 (N.D. Cal. Dec. 12, 2022) (denying certification of privacy claims under

1 Rule 23(b)(3) because “the inquiry into implied consent . . . creates individualized issues that defeat
2 predominance”); *In re Google Inc. Gmail Litig.*, No. 13-md-02430-LHK, 2014 WL 1102660, at
3 *18 (N.D. Cal. Mar. 18, 2014) (denying certification of wiretapping claims because the issue of
4 consent would require individualized inquires as to which disclosures each viewed).

5 Litigation risks are particularly pronounced in consumer cases against technology
6 companies; privacy-related claims are often dismissed (as this one was), and class certification has
7 proven difficult. *See In re TikTok, Inc., Consumer Privacy Litig.*, No. 20 C 4699, 2022 WL
8 2982782, at *28 (N.D. Ill. Jul. 28, 2022) (“Data privacy law is a relatively undeveloped and
9 technically complex body of law, which creates uncertainty and, therefore, additional risk for Class
10 Counsel.”); *Heeger v. Facebook, Inc.*, 509 F. Supp. 3d 1182, 1186 (N.D. Cal. Dec. 24, 2020)
11 (largely dismissing two related class actions challenging Facebook’s collection of personal location
12 data); *Yastrab v. Apple Inc.*, 173 F. Supp. 3d 972, 976 (N.D. Cal. Mar. 25, 2016) (dismissing claims
13 based on software updates that purportedly removed features from iPhones); *In re iPhone*
14 *Application Litig.*, 6 F. Supp. 3d 1004, 1007 (N.D. Cal. Nov. 25, 2013) (granting summary judgment
15 and denying class certification as moot in case involving Apple’s data collection practices).

16 Given such realities, numerous privacy class actions against big-tech defendants have
17 settled for non-monetary relief and/or indirect *cy pres* relief. *See, e.g., In re Google Inc. Street View*
18 *Electronic Communications Litig.*, 21 F.4th 1102, 1115 (9th Cir. 2021) (affirming approval of
19 settlement providing for injunctive relief and *cy pres* monetary award); *Campbell v. Facebook Inc.*,
20 No. 13-cv-05996, 2017 WL 3581179, at *8 (N.D. Cal. Aug. 18, 2017) (granting final approval of
21 declaratory and injunctive relief settlement), *aff’d*, 951 F.3d 1106 (9th Cir. 2020); *McDonald, et al.*
22 *v. Killoo A/S, et al.*, No. 17-cv-04344 (N.D. Cal. Apr. 12, 2021), ECF No. 406 (granting final
23 approval to 16 injunctive relief-only settlements).

24 In short, given the anticipated disputes that would inevitably lie ahead, including summary
25 judgment (when Google might prevail by establishing it did not continuously and comprehensively
26 track class members throughout the Class Period) and class certification (when Google might
27 prevail by establishing that individualized issues regarding consent or the reasonable expectation
28 of privacy would predominate), Plaintiffs faced significant risk of non-recovery. And, even if

1 Plaintiffs successfully proved their case at trial, the claims in this litigation provide no guarantee of
2 a substantial damages award. If anything were recovered, it could take years to secure, as Google
3 would likely appeal any adverse judgment.

4 The risk of little or no recovery weighs in favor of the requested fee award. As courts in the
5 Ninth Circuit have concluded, there are considerable risks related to obtaining class certification,
6 surviving summary judgment, prevailing at trial, and “withstanding a potential appeal.” *Bower v.*
7 *Cycle Gear, Inc.*, No. 14-cv-02712-HSG, 2016 WL 4439875, at *7 (N.D. Cal. Aug. 23, 2016); *see*
8 *also Destefano*, 2016 WL 537946, at *17 (noting the “substantial” risk associated with “obtaining
9 [and maintaining] class certification”); *Roberti v. OSI Systems, Inc.*, No. CV13-09174 MWF
10 (MRWx), 2015 WL 8329916, at *6 (C.D. Cal. Dec. 8, 2015) (the defendant’s “vigorous opposition”
11 represented a “substantial” risk weighing in favor of the requested attorney’s fees).

12 3. The Settlement Required Skill and High-Quality Work

13 Class Counsel’s experience and the skill they brought to bear in this case also favor granting
14 the requested fee award. Class Counsel have decades of relevant expertise in high-profile privacy
15 cases and consumer class actions. *See e.g.*, Joint Decl. at ¶¶ 97-114 & Exs. B-C (describing privacy
16 cases including *In Re: Zoom Video Communications, Inc. Privacy Litig.*, No. 3:20-cv-02155-LB
17 (N.D. Cal.); *Rivera v. Google LLC*, No. 2019-CH-00990 (Ill Cir. Ct.); *In re Experian Data Breach*
18 *Litig.*, No. SACV1501592AGDFMX, 2017 WL 4325583 (C.D. Cal. May 18, 2017); *In re Premera*
19 *Blue Cross Customer Data Security Breach Litig.*, 296 F. Supp. 3d 1230 (D. Or. 2017); *In re Google*
20 *Inc. Cookie Placement Consumer Privacy Litig.*, 806 F.3d 125 (3d Cir. 2015); *In re Vizio, Inc.,*
21 *Consumer Privacy Litig.*, 238 F. Supp. 3d 1204 (C.D. Cal. 2017); and *In re Lenovo Adware Litig.*,
22 No. 15-md-02624-RMW, 2016 WL 6277245 (N.D. Cal. Oct. 27, 2016)); Joint Decl. at Ex. B
23 (describing other class actions arising out of technological vulnerabilities such as *In re Apple Inc.*
24 *Device Performance Litig.*, 386 F. Supp. 3d 1155 (N.D. Cal. 2019), and *In re Yahoo! Inc.*
25 *Shareholder Derivative Litig.*, 153 F. Supp. 3d 1107 (N.D. Cal. 2015)).

26 Class Counsel’s expertise in privacy and technology issues was critical to prosecution of
27 this action. For instance, discovery involved not only large quantities of documents, but highly
28 technical issues that required Class Counsel’s experience as well as the input of highly qualified

1 experts. Joint Decl. ¶ 5.

2 The quality of Class Counsel’s representation is reflected in the work they performed
3 throughout the case and, ultimately, in the favorable settlement for the Settlement Class. *See*
4 *generally* Joint Decl. “The prosecution and management of a complex national class action requires
5 unique legal skills and abilities.” *Omnivision*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008); *see*
6 *also Wallace v. Countrywide Home Loans, Inc.*, No. SACV-08-1463 JLS (MLGx), 2015 WL
7 13284517, at *9 (C.D. Cal. Apr. 17, 2015) (noting customary factors reflecting counsel’s skill such
8 as developing the facts and legal claims, conducting discovery, reviewing documents, retaining
9 experts, motion practice, and negotiating and drafting the settlement).

10 As discussed above, the settlement was not reached lightly. Over the course of nearly six
11 years, Class Counsel prosecuted the Class’s claims against a vigorous defense and aggressively
12 pursued discovery, reviewing and analyzing of hundreds of thousands of internal documents from
13 Google. Joint Decl. ¶¶ 5, 64-67. These efforts put Class Counsel in the best possible position to
14 negotiate a favorable resolution for the Class. *Id.* ¶ 69; *see also Barbosa v. Cargill Meat Solutions*
15 *Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (class counsel used their “specialized skill” in the
16 particular area of law which represented an asset to class members and weighed in favor of the fee
17 request); *Omnivision*, 559 F. Supp. 2d at 1047 (explaining that the plaintiffs’ case withstood a
18 motion to dismiss, “despite other weaknesses, is some testament to Lead Counsel’s skill” and that
19 “[t]his factor also supports the requested fee”); *In re Heritage Bond Litigation*, No. 02-ML-1475-
20 DT (RCx), 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005) (finding fact investigation, detailed
21 complaints, extensive motion practice, review of numerous documents, and demonstrated class
22 counsel’s legal skills); *Lenovo*, 2019 WL 1791420, at *8 (noting favorable result given that the case
23 had “been actively litigated for the past four years, and required complex legal and factual research
24 and analysis by Class Counsel”).

25 The quality of opposing counsel also should be considered when evaluating Class Counsel’s
26 performance. *See In re American Apparel, Inc. Shareholder Litig.*, No. CV-1006352-MMM, 2014
27 WL 10212865, at *22 (C.D. Cal. July 28, 2014) (“In addition to the difficulty of the legal and
28 factual issues raised, the court should also consider the quality of opposing counsel as a measure of

1 the skill required to litigate the case successfully.”) (citing *Wing v. Asarco Inc.*, 114 F.3d 986, 989
2 (9th Cir. 1997)). Google, a defendant with virtually unlimited resources, was represented in this
3 case by Kecker, Van Nest & Peters LLP, a highly respected litigation boutique with significant
4 resources and substantial experience defending consumer class actions. This factor weighs in favor
5 of the requested fee award. *See Heritage Bond*, 2005 WL 1594403, at *20 (“[P]laintiffs in this
6 litigation were opposed by highly skilled and respected counsel with well-deserved local and
7 nationwide reputations for vigorous advocacy in the defense of their clients.”).

8 **4. Class Counsel Worked for Years on a Fully Contingent Basis**

9 Class Counsel took this matter on contingency and advanced all necessary professional time
10 and expenses for nearly six years. Joint Decl. ¶ 87. In common fund cases, “attorneys whose
11 compensation depends on their winning the case must make up in compensation in the cases they
12 win for the lack of compensation in the cases they lose.” *Vizcaino*, 290 F.3d at 1051. “When counsel
13 takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after
14 years of litigation justifies a significant fee award.” *Bellinghausen v. Tractor Supply Co.*, 306
15 F.R.D. 245, 261 (N.D. Cal. 2015). “This substantial outlay, when there is a risk that none of it will
16 be recovered, further supports the award of the requested fees.” *In re Nexus 6P Products Liability*
17 *Litig.*, No. 17-cv-02185-BLF, 2019 WL 6622842, at *13 (N.D. Cal. Nov. 12, 2019) (quoting
18 *Omnivision*, 559 F. Supp. 2d at 1047). “Courts have long recognized that the public interest is
19 served by rewarding attorneys who assume representation on a contingent basis with an enhanced
20 fee to compensate them for the risk that they might be paid nothing at all for their work.” *Ching v.*
21 *Siemens Industry, Inc.*, No. 11-cv-04838-MEJ, 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014);
22 *see also In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994)
23 (“It is an established practice in the private legal market to reward attorneys for taking the risk of
24 non-payment by paying them a premium over their normal hourly rates for winning contingency
25 cases.”). “A contingent fee must be higher than a fee for the same legal services paid as they are
26 performed. The contingent fee compensates the lawyer not only for the legal services he renders
27 but for the loan of those services.” *Ladore v. Ecolab, Inc.*, No. CV 11-9386-FMO, 2013 WL
28 12246339, at *11 (C.D. Cal. Nov. 12, 2013).

5. The Award Requested Is on Par with Awards in Similar Cases

A review of fee awards in other common fund cases underscores the reasonableness of the fee requested here. Indeed, fee awards in common fund settlements of comparable size regularly exceed the 25% benchmark. *See, e.g. Omnivision*, 559 F. Supp. 2d at 1047 (“[I]n most common fund cases, the award exceeds that [25%] benchmark.”); *In re Mego Financial Corporations Securities Litig.*, 213 F.3d 454, 463 (9th Cir. 2000), as amended (June 19, 2000) (affirming fee award of one third of common fund).

Additionally, courts in the Ninth Circuit have regularly awarded attorney fees amounting to or exceeding 30%, including in relatively large settlements. *See, e.g., In re Volkswagen “Clean Diesel” Marketing*, No. 15-md-02672-CRB, 2022 WL 17730381, at *10 (N.D. Cal. Nov. 9, 2022) (awarding 30% of \$80 million settlement fund); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1022 (E.D. Cal. 2019), *appeal dismissed sub nom. Carlin v. Spooner*, 808 F.App’x 571 (9th Cir. 2020) (awarding one-third of \$40 million recovery, and citing cases in support); *Nexus 6P*, 2019 WL 6622842, at *13 (awarding 30% of common fund in case concerning defective smartphones, and finding that the “request for a 30% fee falls within the usual range of common fund cases”); *In re Lidoderm Antitrust Litig.*, No. 14-md-02521-WHO, 2018 WL 4620695, at *1 (N.D. Cal. Sept. 20, 2018) (awarding one-third of \$105 million settlement); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420-YGR, 2018 WL 3064391, at 1* (N.D. Cal. May 16, 2018) (awarding 30% of \$139.3 million settlement fund); *Patel v. Trans Union, LLC*, No. 14-cv-00522-LB, 2018 WL 1258194, at *12 (N.D. Cal. Mar. 11, 2018) (awarding one-third of settlement fund in consumer class action matter involving erroneous information on credit reports); *Hendricks v. Starkist Co.*, No. 13-CV-00729-HSG, 2016 WL 5462423, at *12 (N.D. Cal. Sept. 29, 2016), *aff’d sub nom. Hendricks v. Ference*, 754 F. App’x 510 (9th Cir. 2018) (awarding 30% of fund in consumer protection case); *Lusby v. GameStop Inc.*, No. 12-3783, 2015 WL 1501095, at *9 (N.D. Cal. Mar. 31, 2015) (awarding one-third of common fund); *In re Galena Biopharma, Inc. Sec. Litig.*, No. 3:14-cv-00367, 2016 WL 3457165 (D. Or. June 24, 2016) (awarding 32% fee based on a \$27.9 million recovery); *In re TFT-LCD Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 149692, at *2 (N.D. Cal. Jan. 14, 2013) (awarding 30% of \$68 million recovery); *Smith v. CRST Van Expedited, Inc.*,

1 No. 10-cv-1116-IEG, 2013 WL 163293, at *5 (S.D. Cal. Jan. 14, 2013) (“Under the percentage
 2 method, California has recognized that most fee awards based on either a lodestar or percentage
 3 calculation are 33 percent.”) (citing *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556
 4 n.13 (2009)); *Knight*, 2009 WL 248367, at *7-8 (awarding 30% of common fund). Accordingly,
 5 Class Counsel’s request for 30% of the Settlement Fund is well within the range of fees awarded in
 6 other cases, obtaining similarly exceptional results.

7 **D. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees**

8 “Finally, after applying the percentage method, courts typically roughly calculate the
 9 lodestar as a cross-check to assess the reasonableness of the percentage award.” *Miller*, 2015 WL
 10 758094, at *6 (internal quotation marks and citations omitted). *See Vizcaino*, 290 F.3d at 1050
 11 (“Calculation of the lodestar, which measures the lawyers’ investment of time in the litigation,
 12 provides a check on the reasonableness of the percentage award.”). The lodestar “is produced by
 13 multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate.”
 14 *Harrison*, 2021 WL 5507175, at *8 (citations omitted). The Court “has broad discretion in setting
 15 the reasonable hourly rates used in the lodestar calculation” and “can rely on its own experience.”
 16 *Id.* at *9 (internal quotation marks and citations omitted).

17 In performing the cross-check, however, “the determination of fees should not result in a
 18 second major litigation,” and “trial courts need not, and indeed should not, become green-eyeshade
 19 accountants. The essential goal . . . is to do rough justice, not to achieve auditing perfection.”
 20 *Jarrell v. Amerigas Propane, Inc.*, No. 16-CV-01481-JST, 2018 WL 1640055, at *4 (N.D. Cal.
 21 Apr. 5, 2018) (citations omitted); *see also In re Capacitors Antitrust Litig.*, No. 3:17-md-02801-
 22 JD, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018) (reasoning the cross-check does not require
 23 “mathematical precision nor bean-counting”) (citation omitted); *In re Toys R Us-Delaware, Inc. –*
 24 *Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 460 (C.D. Cal. 2014)
 25 (“In cases where courts apply the percentage method to calculate fees, they should use a rough
 26 calculation of the lodestar as a cross-check to assess the reasonableness of the percentage award.”).

27 **1. The Number of Hours Devoted to the Case Was Reasonable**

28 Pursuant to the Court’s initial appointment order, Class Counsel maintained

1 contemporaneous time records, and provided quarterly reporting of their time that was audited and
2 reviewed by Class Counsel. Joint Decl. ¶ 11. As reflected in these reports, Class Counsel performed
3 a significant amount of work in this Action, including: (i) diligently investigating the legal claims,
4 in consultation with experts; (ii) efficiently negotiating the consolidation of six related cases
5 asserting substantially similar claims; (iii) successfully opposing, in part, Google’s second motion
6 to dismiss the claims in full; (iv) engaging in comprehensive discovery and litigating roughly 20
7 discovery disputes through motions, regular hearings, and joint reports, before Magistrate Judge
8 Cousins; (v) conducting significant research and discovery in preparation for the anticipated class
9 certification motion; (vi) engaging in multiple mediation and settlement conference sessions with
10 Google, obtaining significant information regarding the Class claims in connection with such
11 mediation; and (vii) fulfilling their responsibilities under the Settlement, including identifying and
12 proposing appropriate *cy pres* recipients, seeking and obtaining preliminary approval of the
13 Settlement and overseeing Notice administration and responding to Class member inquiries, among
14 many other tasks—all of which have been reflected in the quarterly time reports submitted *in*
15 *camera* to this Court since 2019. *See generally* Joint Decl. Class Counsel continue to devote
16 substantial time and resources to this action daily—including by overseeing the Settlement
17 administration process—and will continue to do so until the conclusion of the Settlement’s
18 disbursement process, which may take years depending on the *cy pres* disbursements approved.
19 Joint Decl. ¶ 6. Moreover, Class Counsel closely audited the work and assignments of members the
20 additional firms appointed as Interim Class Counsel to ensure fairness and order, as well as to
21 minimize any work duplication. *Id.* ¶ 94. None of the time that any Class Counsel dedicated to the
22 contested applications for leadership in this action, for example, is included in the lodestar summary
23 presented here. In total, Plaintiffs’ Counsel collectively report approximately 17,600 hours on this
24 matter through December 31, 2023. Joint Decl. Ex. A. All time spent by attorneys who worked
25 fewer than 20 hours on the case, all time devoted to the disputed application for leadership of the
26 Action, and all time devoted to this fee application, has been omitted from the lodestar calculation.
27 Joint Decl. ¶ 94.

28

1 **2. The Hourly Rates Are Reasonable**

2 As the Supreme Court has stated, “[w]hen plaintiffs’ entitlement to attorney’s fees depends
3 on success, their lawyers are not paid until a favorable decision finally eventuates, which may be
4 years later. . . . Meanwhile, their expenses of doing business continue and must be met.”
5 *Pennsylvania v. Delaware Valley Citizens’ Council*, 483 U.S. 711, 716 (1987) (citations omitted).
6 Accordingly, “[a]ttorneys in common fund cases must be compensated for any delay in payment.”
7 *Stanger v. China Electric Motor, Inc.*, 812 F.3d 734, 740 (9th Cir. 2016) (quoting *Fischel v.*
8 *Equitable Life Assurance Society of U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002)). As the Ninth
9 Circuit in *Washington Public Power* reasoned, “[f]ull compensation requires charging current rates
10 [for attorneys still at the firm] for all work done during the litigation, or by using historical rates
11 [for those who left the firm prior to the filing of the fee petition] enhanced by an interest factor.”
12 *Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1305.

13 Courts acknowledge the risks taken by counsel in contingent matters and, accordingly,
14 “[c]urrent rates, rather than historical rates, should be applied in order to compensate for the delay
15 in payment” given the “deferred and contingent nature of counsel’s compensation.” *Brown v. Hain*
16 *Celestial Group, Inc.*, No. 3:11-CV-03082-LB, 2016 WL 631880, at *8 (N.D. Cal. Feb. 17, 2016)
17 (quoting *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2nd Cir. 1998)); *see also Miller*, 2015
18 WL 758094, at *6 (holding current rates are appropriate “given the deferred and contingent nature
19 of counsel’s compensation”). Here, because Class Counsel has waited almost six years, so far, to
20 recover any compensation for their work and expenses in this matter, the Court should cross-check
21 the percentage request utilizing a lodestar based on counsel’s current hourly rates.

22 The reasonable hourly rate is “the rate prevailing in the community for similar work
23 performed by attorneys of comparable skill, experience, and reputation.” *Fowler v. Wells Fargo*
24 *Bank, N.A.*, No. 17-cv-02092-HSG, 2019 WL 330910, at *6 (N.D. Cal. Jan. 25, 2019). Here, Class
25 Counsel’s hourly rates, as well as the rates of all members of additional firms appointed as Interim
26 Class Counsel, range from \$550 to \$1,300 for partners; \$420 to \$710 for associates²; and \$150 to

27 _____
28 ² This figure is exclusive of the rates of two senior Interim Class Counsel attorneys, each with
decades of legal experience, who were classified as associates on quarterly time submissions to

1 \$535 for paralegals and other support staff. Joint Decl. Ex. A. In the context of complex litigation,
 2 courts in this District have regularly approved rates at these levels or higher—and, in some cases,
 3 before the high levels of inflation experienced in the United States since the COVID-19 pandemic.
 4 *See Gutierrez v. Amplify Energy Corp.*, No. 21-01628, 2023 WL 6370233, at *7 (C.D. Cal. Sept.
 5 14, 2023) (surveying Northern District orders awarding attorneys’ fees, finding that Lieff
 6 Cabraser’s hourly “rates are consistent with market rates in their area.”); *In re MacBook Keyboard*
 7 *Litig.*, No. 18-cv-2813, 2023 WL 3688452, at *15 (N.D. Cal. May 25, 2023) (approving rates of up
 8 to \$1,195 for partners and \$850 for associates); *In re Facebook Internet Tracking Litig.*, 2022 WL
 9 16902426, at *12 (finding hourly rates up to \$1,200 “reasonable and commensurate with those
 10 charged by attorneys with similar experience in the market”); *Fleming v. Impax Laboratories Inc.*,
 11 No. 16-cv-06557-HSG, 2022 WL 2789496, at *9 (N.D. Cal. July 15, 2022) (finding rates of \$760
 12 to \$1,325 for partners to be reasonable); *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-JST, 2018
 13 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018) (finding rates up to \$1,250 for “partners or senior
 14 counsel,” \$650 for associates, and \$350 for paralegals reasonable); *In re Volkswagen “Clean*
 15 *Diesel” Marketing*, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (finding rates up to \$1,600
 16 for partners, \$790 for associates, and \$490 for paralegals reasonable).

17 **3. The Multiplier Is Justified Given the Results Obtained, the Complexity** 18 **of the Issues, and the Contingent Nature of the Representation**

19 Based on Class Counsel’s and Interim Class Counsel’s collective hours and their reasonable
 20 and customary hourly rates, and after excluding several hundred hours of reported time in the
 21 exercise of billing discretion, they have a combined lodestar of \$12,960,632. Joint Decl. ¶¶ 91-94
 22 & Ex. A. Thus, the requested award of fees of \$18.6 million represents a multiplier of 1.44. The
 23 two firms appointed Class Counsel, alone, have a combined lodestar of \$12,068,829 and, thus, the
 24 requested award represents a multiplier of 1.54 on that figure, alone. Joint Decl. ¶ 92.

25 Such a modest multiplier is well within the range of multipliers that the Courts in the Ninth
 26

27 the Court. These individuals billed approximately 40 hours in total at rates of \$830 and \$835. One
 28 of the individuals, responsible for the majority of the time, had applied to be lead counsel and
 described her title as Senior Attorney, a designation not available on quarterly time forms. *See*
 Dkts. 52, 52-1 at ¶ 1. She subsequently changed firms and now carries the title of partner.

1 Circuit and elsewhere regularly approve. *See Vizcaino*, 290 F.3d at 1043, 1051 (9th Cir. 2002) &
 2 Appendix (approving multiplier of 3.65 and citing cases with multipliers as high as 19.6); *In re*
 3 *Volkswagen*, 2017 WL 1047834, at *5 (Breyer, J.) (“Multipliers in the 3-4 range are common in
 4 lodestar awards for lengthy and complex class action litigation.”) (quoting *Van Vranken v. Atlantic*
 5 *Richfield Co.*, 901 F. Supp. 294, 298-99 (N.D. Cal. 1995)); *Gutierrez v. Wells Fargo Bank, N.A.*,
 6 No. C 07-05923 WHA, 2015 WL 2438274, *7 (N.D. Cal. May 21, 2015) (applying a 5.5 multiplier
 7 to lead counsel’s lodestar based on “the fine results achieved on behalf of the class, the risk of non-
 8 payment [lead counsel] accepted, the superior quality of their efforts, and the delay in payment”);
 9 *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litig.*, 768 F.
 10 App’x 651, 653 (9th Cir. 2019) (approving 3.66 multiplier in \$200 million settlement); *Steiner v.*
 11 *American Broadcasting Co.*, 248 F. App’x 780, 783 (9th Cir. 2007) (even a multiplier of 6.85 was
 12 “well within the range of multipliers that courts have allowed”); *Craft v. County of San Bernardino*,
 13 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (multiplier of approximately 5.2).

14 Here, given the extensive effort required, the Settlement’s excellent results, in the face of
 15 the risks presented and the complexity of the issues this litigation entailed, the lodestar cross-check
 16 and multiplier are appropriate.

17 **IV. CLASS COUNSEL ARE ENTITLED TO REIMBURSEMENT OF THEIR**
 18 **REASONABLE LITIGATION EXPENSES**

19 “Reasonable costs and expenses incurred by an attorney who creates or preserves a common
 20 fund are reimbursed proportionately by those class members who benefit[.]” *In re Media Vision*
 21 *Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citation omitted). Class Counsel have
 22 incurred \$151,756.23 in unreimbursed litigation expenses, including costs advanced in connection
 23 with consultants, legal research, court reporting services, copying and mailing, and other customary
 24 litigation expenses. Joint Decl. ¶ 115.

25 Here, Class Counsel is entitled to recover “those out-of-pocket expenses that would
 26 normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)
 27 (quotations omitted). The expenses for which Class Counsel seek reimbursement were reasonably
 28 necessary for the continued prosecution and resolution of this litigation, and were incurred by Class

1 Counsel for the benefit of the Class with no guarantee that they would be reimbursed. These
2 expenses include expert fees, mediation fees, fees for document review and hosting, fees for the
3 forensic consultant Class Counsel engaged in order to collect and preserve Plaintiffs' data, and
4 other fees ordinarily incurred in litigation. Joint Decl. ¶ 115. Courts have frequently found such
5 expenses to be recoverable. *See, e.g., In re LendingClub Sec. Litig.*, No. C 16-02627 WHA, 2018
6 WL 4586669, at *3 (N.D. Cal. Sept. 24, 2018) (expenses such as expert and consultant fees, court
7 fees, travel and lodging costs, legal research fees, and copying expenses were reasonable and
8 recoverable); *Thomas*, 2018 WL 2234598, at *4 (granting requests for costs consisting of "court
9 fees, online research fees, postage and copying, travel costs, electronic discovery expenses,
10 deposition costs, mediation charges, and travel costs"). Accordingly, the Court should approve
11 their reimbursement.

12 **VII. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS ARE**
13 **REASONABLE AND JUSTIFIED**

14 Service awards are "intended to compensate class representatives for work undertaken on
15 behalf of a class" and "are fairly typical in class action cases." *In re Online DVD-Rental Antitrust*
16 *Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (internal quotation marks and citation omitted). "In this
17 district, a \$5,000 incentive award is presumptively reasonable." *Harrison*, 2021 WL 5507175, at
18 *7. Here, Class Counsel request Service Awards of \$5,000 for each of the three Class
19 Representatives, for a total of \$15,000.

20 In considering the amount of a service payment, courts consider "the actions the plaintiff
21 has taken to protect the interests of the class, the degree to which the class has benefitted from those
22 actions, . . . and the amount of time and effort the plaintiff expended in pursuing the litigation."
23 *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 16-CV-03698-NC, 2018 WL 2183253, at *8
24 (N.D. Cal. May 11, 2018) (alterations and citation omitted); *In re Lenovo Adware Litig.*, No. 15-
25 md-02624, 2019 WL 1791420, at *9-10 (N.D. Cal. April 24, 2019) (same). Here, the Class
26 Representatives stepped forward to represent and protect the interests of the Settlement Class and
27 spent years prosecuting this Action. *See* concurrently filed Declarations of Napoleon Patacsil,
28 Michael Childs, and Noe Gamboa. The Class Representatives assisted in the investigation,

1 participated in the plaintiff vetting process implemented by their respective counsel and by Class
 2 Counsel after appointment, reviewed and approved the complaints, kept in close contact with
 3 counsel to monitor the progress of the litigation, and communicated with counsel regarding the
 4 Settlement. *Id.* The Class Representatives spent significant time responding to extensive and broad
 5 discovery served by Google, including invasive collection of comprehensive personal data from
 6 their phones, email, and Google accounts, despite privacy concerns. *Id.* The Class Representatives
 7 provided their mobile devices to Class Counsel’s forensic data experts. *Id.* The Class
 8 Representatives put their names and reputations on the line for the sake of the Class. The Class
 9 recovery here would not have been possible without their efforts.

10 Courts have awarded service payments for similar work on behalf of the class and time
 11 commitments. Class Counsel seek a total of \$15,000, which is reasonable in relation to the full
 12 amount of the Settlement Fund. Finally, the Settlement does not improperly grant preferential
 13 treatment to Plaintiffs. *In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL
 14 1991529, at *6 (N.D. Cal. June 30, 2007). Because Plaintiffs’ Service Award request “is in line
 15 with precedent,” *Allagas v. BP Solar Int’l, Inc.*, No. 3:14-cv-00560-SI (EDL), 2016 WL 9114162,
 16 at *4 (N.D. Cal. Dec. 22, 2016) (citations omitted), the Court should grant the requested Service
 17 Awards.

18 **VIII. CONCLUSION**

19 Class Counsel devoted many thousands of hours to the litigation. Ultimately they
 20 successfully negotiated a favorable settlement including a \$62 million non-reversionary cash fund
 21 and injunctive relief. Based on these circumstances, and consistent with the factors applied by
 22 federal courts, including in the Northern District of California, Class Counsel respectfully request
 23 that the Court issue an order awarding \$18.6 million in attorneys’ fees, approving reimbursement
 24 of \$151,756.23 in litigation expenses, and awarding Service Awards of \$5,000 to each of the three
 25 Plaintiffs.

26 Respectfully submitted,

27
 28 Dated: January 29, 2024

/s/ Tina Wolfson
 AHDOOT & WOLFSON, PC

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Tina Wolfson (SBN 174806)
twolfson@ahdootwolfson.com
Theodore Maya (SBN 223242)
tmaya@ahdootwolfson.com
Bradley K. King (SBN 274399)
bking@ahdootwolfson.com
Henry J. Kelston (*pro hac vice*)
hkelston@ahdootwolfson.com
Deborah De Villa (SBN 312564)
ddevilla@ahdootwolfson.com
2600 West Olive Avenue, Suite 500
Burbank, California 91505
Telephone: 310.474.9111
Facsimile: 310.474.8585

Dated: January 29, 2024

/s/ Michael W. Sobol
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
Michael W. Sobol (SBN 194857)
msobol@lchb.com
Melissa Gardner (SBN 289096)
mgardner@lchb.com
Michael Levin-Gesundheit (SBN 292930)
mlevin@lchb.com
Michael K. Sheen (SBN 288284)
msheen@lchb.com
Jallé H. Dafa (SBN 290637)
jdafa@lchb.com
John D. Maher (SBN 316157)
jmaher@lchb.com
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: 415.956.1000
Facsimile: 415.956.1008

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
Nicholas Diamand (*pro hac vice*)
250 Hudson Street, 8th Floor
New York, NY 10013
Telephone: 212.355.9500
Facsimile: 212.355.9592

Interim Co-Lead Class Counsel

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SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing Notice of Motion and Motion for Attorneys’ Fees and Expenses, and Service Awards; Memorandum of Points and Authorities in Support Thereof. Pursuant to L.R 5-1(i)(3) regarding signatures, I, Tina Wolfson attest that concurrence in the filing of this document has been obtained.

DATED: January 29, 2024

/s/ Tina Wolfson
Tina Wolfson