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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

17 KELLY ELLIS, HOLLY PEASE, KELLI
18 WISURI, and HEIDI LAMAR individually
and on behalf of all others similarly
19 situated,

20 Plaintiffs,

21 v.

22 GOOGLE, LLC,

23 Defendant.

Case No. CGC-17-561299

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 21, 2022

Time: 2:00 p.m.

Dept: 613

Judge: Hon. Andrew Y.S. Cheng,

Complaint Filed: September 14, 2017

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1 **I. INTRODUCTION**

2 On behalf of themselves and a certified class of current and former women employed in
3 California by Google, LLC (“Google”) in Covered Positions from September 14, 2013 to the
4 present (the “Class” or “Class Members”),¹ Plaintiffs Kelly Ellis, Holly Pease, Kelli Wisuri, and
5 Heidi Lamar (the “Named Plaintiffs” or “Plaintiffs”) respectfully submit this motion for
6 preliminary approval of the Parties’ Class and Private Attorneys General Act, California Labor
7 Code § 2698, *et seq.* (“PAGA”) Settlement Agreement and Proposed Consent Decree (the
8 “Settlement”). The proposed Settlement is attached as Exhibit 1 to the Declaration of Kelly M.
9 Dermody (“Dermody Decl.”), submitted herewith.

10 If approved, the Settlement will resolve Plaintiffs’ certified claims against Google, as well
11 as their PAGA claims. Specifically, this Court certified Plaintiffs’ challenge to two alleged
12 systemic practices at Google. First, Plaintiffs allege that Google pays women less than men in the
13 same job code, in violation of California’s Equal Pay Act, California Labor Code §1197.5
14 (“EPA”), which requires that men and women performing substantially equal or similar work be
15 paid equally, and in violation of California’s Unfair Competition Law, California Business and
16 Professions Code §17200 (“UCL”), by virtue of the EPA violation. Second, Plaintiffs allege that
17 Google assigns women to lower job levels than men with comparable experience and education
18 based on lower pay at prior employment, in violation of the UCL by virtue of a violation of
19 California’s Fair Employment and Housing Act, California Government Code §12900 *et seq.*
20 (“FEHA”). The Court also certified Plaintiffs’ claim for waiting time penalties under California
21 Labor Code §§ 201-203. Plaintiffs’ PAGA claims are derivative of their EPA and waiting time
22 claims.

23 The Settlement resolves these claims by: (1) creating a non-reversionary monetary fund
24 of \$118 million, to redress past harms; and (2) providing for substantial programmatic relief, to
25

26 ¹ A list of the 226 Covered Positions is attached as Exhibit B to the Settlement Agreement. *See*
27 *Dermody Decl.*, Ex. 1. Following the class certification notice and opt-out period that concluded
28 in August 2021, this case had 14,077 Class Members. The Class size has grown since then, as
Google has since hired additional female employees in California in the Covered Positions. *Id.*,
¶ 10.

1 prevent future harms. This programmatic relief includes engagement of independent third-party
2 experts selected jointly by the Parties to evaluate how Google might improve both its annual pay
3 equity process and its processes for setting level at hire, as well as an external monitor to oversee
4 Google’s good faith efforts to address the experts’ recommendations. These Settlement terms
5 were realized after four and a half years of extensive, hard-fought litigation. The Parties litigated
6 two demurrers and motions to strike, Plaintiffs’ motion for class certification, Google’s petition
7 for a writ of mandate, and numerous discovery disputes. Discovery was voluminous, including
8 more than 168,000 pages of documents, 19 depositions, and extensive expert analyses. A March
9 2019 attempt at mediation was unsuccessful, and the Parties were preparing for a January 23,
10 2023 trial when the Settlement was reached after a second mediation in March 2022.

11 As set forth herein, the Settlement satisfies all elements for approval. *First*, the Settlement
12 is fair and reasonable in light of the risks and costs of continued litigation, and provides adequate,
13 meaningful, and prompt relief to the Class. *Second*, the proposed Settlement notice procedures
14 and related forms fully comport with due process and adequately apprise the Class Members of
15 their rights. *Third*, and lastly, a final fairness hearing may be scheduled to allow Class Members
16 an opportunity to be heard regarding the Settlement and to give it finality. By this motion,
17 Plaintiffs therefore respectfully request that the Court: (1) grant preliminary approval of the
18 Settlement; (2) approve the proposed form and plan of notice; and (3) schedule a hearing on final
19 approval of the Settlement.

20 **II. FACTUAL AND PROCEDURAL BACKGROUND**

21 Plaintiffs filed their Complaint on September 14, 2017, alleging claims for discrimination
22 in pay, leveling, job channeling, and promotions on behalf of themselves and a proposed class of
23 all women employed by Google in California at any time in the previous four years.² On October
24 16, 2017 Google demurred and moved to strike the class allegations. On December 4, 2017, the
25

26 ² On the same day, Plaintiffs timely noticed the Labor and Workforce Development Agency
27 (“LWDA”) of their PAGA claim. Decl. of James M. Finberg (“Finberg Decl.”), submitted
28 herewith, ¶ 16. On June 7, 2022, Plaintiffs filed a stipulation and proposed order granting leave
to file a Second Amended Complaint, which adds a cause of action under PAGA, and will notify
the LWDA of same when this amendment is filed. *Id.*, ¶ 17.

1 Court sustained Google’s demurrer but granted Plaintiffs leave to amend the Complaint, and
2 denied Google’s motion to strike as moot. Plaintiffs filed their First Amended Complaint on
3 January 3, 2018, limiting the proposed class to women in the 226 Covered Positions. On
4 February 6, 2018, Google again demurred and moved to strike the class allegations. On March
5 27, 2018, the Court overruled Google’s demurrer and denied Google’s motion to strike.

6 The Parties engaged in three years of discovery practice, including litigation of numerous
7 discovery disputes regarding, *inter alia*, production of: certain fields in Google’s personnel data;
8 internal complaints of gender discrimination at Google; Google’s internal pay, performance, and
9 promotion gender equity audits, and Google’s claims of privilege to same; and appropriate
10 custodians and search terms for location of relevant Electronically Stored Information (“ESI”),
11 among other issues. Dermody Decl., ¶ 23. The discovery record created and reviewed through
12 this process was voluminous: from Google, 60 separate document productions totaling 163,491
13 pages; from Plaintiffs, 9 separate document productions totaling 3,787 pages; and between the
14 Parties, 19 depositions in total, including one from each of the four Named Plaintiffs, 11 from
15 corporate representatives of Google, and 4 from the Parties’ experts. *Id.*, ¶ 24.

16 Plaintiffs filed their motion for class certification on July 21, 2020, which Google
17 opposed. Plaintiffs did not move to certify their claims for discrimination in job channeling or
18 promotions, but only their claims for discrimination in pay (with attendant waiting time penalties)
19 and leveling. On May 27, 2021, this Court granted Plaintiffs’ motion for class certification in its
20 entirety. Google then filed a petition for a writ of mandate with the California Court of Appeal,
21 which Plaintiffs opposed and which was ultimately denied on August 21, 2021. Thereafter, the
22 Parties negotiated and submitted a pre-trial schedule, approved by the Court on October 18, 2021,
23 that provided for approximately six months of additional discovery followed by merits expert
24 reports, motions to strike expert reports, pre-trial exchanges and briefings, and a trial date of
25 January 23, 2023. The Court also ordered the Parties to mediate by March 30, 2022. The Parties
26 then continued onto merits discovery, which included an aggressive negotiation of custodians and
27 search terms for additional merits ESI, and prepared for additional depositions to take place in
28 April 2022. Dermody Decl., ¶ 24. Google continued to produce documents on a rolling basis,

1 and made an additional 3 productions totaling 813 pages. *Id.*

2 Merits fact discovery was nearing completion when the Parties attended an in-person
3 mediation on March 28, 2022 with mediator Mike Reiss of the firm Davis Wright Tremaine LLP.
4 Mediator Reiss was well-qualified to mediate this case, having worked as a trial lawyer for the
5 Equal Employment Opportunity Commission, law professor at the University of Southern
6 California, employment lawyer in private practice, and employment mediator for over a decade.
7 The Parties were unable to reach agreement at the mediation, but continued negotiations
8 thereafter via telephone conference. After two months of continued arm's-length negotiations,
9 the Parties signed a Memorandum of Understanding on June 2, 2022.

10 Plaintiffs now move for preliminary approval of the Settlement, which Google does not
11 oppose. Dermody Decl., ¶ 8. Plaintiffs are simultaneously notifying LWDA of the proposed
12 Settlement. Finberg Decl., ¶ 18.

13 **III. OVERVIEW OF THE SETTLEMENT**

14 The complete terms of the Settlement are set forth in the Settlement Agreement. *See*
15 Dermody Decl., Ex. 1. The essential terms are summarized below.

16 **A. Class Definitions**

17 The Classes are the same as those certified by the Court on May 27, 2021, minus the 140
18 individuals who opted out of the Classes through the class certification notice period that ended in
19 August 2021. Dermody Decl., ¶ 9.

20 The EPA claim class (“EPA Claim Class”) is defined as all women employed by Google
21 in a Covered Position in California at any time from September 14, 2013 through the date on
22 which the Court grants preliminary approval of the Settlement, who did not opt out of the
23 certified class in this action. Settlement § III.A.8.

24 The FEHA/leveling claim class (“FEHA Claim Subclass”) is defined as all women
25 employed by Google in a Covered Position in California at any time from September 14, 2013
26 through the date on which the Court grants preliminary approval of the Settlement, excluding
27 campus hires and women hired after August 28, 2017, who did not opt out of the certified class in
28 this action. Settlement § III.A.10.

1 **B. Monetary Relief**

2 The Settlement establishes a Total Settlement Amount of \$118 million. Settlement
3 Settlement § III.A.30. After deducting funds for PAGA payment, plaintiff service awards,
4 attorneys’ fees and costs, and settlement administration—as enumerated below—the remainder of
5 the Total Settlement Amount (the “Net Settlement Fund”) will be allocated to each Class Member
6 who does not opt out of the Classes through the Settlement notice process described below (the
7 “Participating Class Members”) as follows:

- 8 1. All EPA Claim Class Members hired on or before December 31, 2021
9 shall receive a minimum payment of \$500 (reduced to a minimum
10 payment of \$250 for those employed fewer than six months as of the date
11 of preliminary approval); and all EPA Claim Class Members hired on or
12 after January 1, 2022 shall receive a flat sum of \$250. Settlement, Ex. C
13 (Plan of Allocation).
- 14 2. Of the Remaining Net Settlement Fund, forty percent shall be paid to
15 Participating Class Members in the EPA Claim Class based on the
16 relative percentage each EPA Claim Class Member contributed to the
17 alleged damages for the EPA Claim Class using the four-step process and
18 statistical model described in the Plan of Allocation. Settlement
19 Agreement, Ex. C.
- 20 3. Sixty percent of the Remaining Net Settlement Fund shall be paid to
21 Class Members in the FEHA Claim Subclass based on the relative
22 percentage each FEHA Claim Subclass Member contributed to the
23 alleged damages for the FEHA Claim Subclass using the process and
24 statistical model described in the Plan of Allocation. Settlement, Ex. C.

25 This allocation of the Net Settlement Fund between the EPA Claim Class and the FEHA Claim
26 Subclass is based on the relative estimated Class exposure associated with each Claim. Dermody
27 Decl., ¶ 11. Specifically, Plaintiffs estimate different potential exposures depending on the type
28 of claim, with the EPA claim constituting about 40 percent of potential damages and the FEHA
29 Claim constituting about 60 percent of potential damages, depending on the assumptions used in
30 the model, which the parties vigorously dispute.³ *Id.* Google, on the other hand, disputes that any
31 damages arise due to these claims.

32 Subject to Court approval, the following amounts will be deducted from the Total
33 Settlement Amount prior to allocation, to create the Net Settlement Fund: \$1 million will be

34 _____
35 ³ Depending on the model, the alleged EPA Claim constitutes about 19 to 57 percent of the
36 overall potential damages, and the alleged FEHA claim constitutes about 43 to 81 percent.

1 deducted to resolve the PAGA Claims of the PAGA Group (the “PAGA Payment”)⁴; service
2 awards to the Named Plaintiffs of \$225,000 in total (the “Class Representative Service Award
3 Payments”): \$50,000 for Ms. Wisuri, Ms. Lamar, and Ms. Pease, and \$75,000 for the lead
4 Plaintiff, Ms. Ellis; and attorneys’ fees of 25 percent of the Total Settlement Amount⁵ and
5 reimbursement of expenses advanced by Class Counsel not to exceed \$1.5 million (collectively,
6 the “Class Counsel Fees and Expenses Payment”); and costs of settlement administration.

7 Settlement § III.A.15.

8 The Total Settlement Amount will be distributed according to the following schedule: the
9 Settlement Administrator will provide Google with wire transfer information within five days
10 after the Settlement is finally approved by this Court; Google will transfer the Total Settlement
11 Amount to the Settlement Administrator via wire transfer within 60 days of receipt of the wire
12 transfer information; and the Net Settlement Fund, PAGA Payment, Class Representative Service
13 Award Payments, and Class Counsel Fees and Expenses Payment will be distributed promptly
14 after the Settlement becomes effective, pursuant to the terms of the Settlement.⁶ Settlement §
15 IV.A, Ex. C.

16 After 45 days, the Settlement Administrator will make multiple efforts by telephone, text,
17 email, and U.S. mail to ensure that any Class Members who have not cashed checks for their
18 share of the Net Settlement Fund do so. Settlement § IX.I. Checks will become void 180 days

19 _____
20 ⁴ The Settlement Administrator will pay 25 percent (\$250,000) of the PAGA Payment to Class
21 Counsel as attorneys’ fees, subject to Court approval. Settlement § IX.E. Of the remaining
22 \$750,000, the Settlement Administrator will pay 75 percent (\$562,500) to the LWDA as its share
23 of the Settlement attributable to civil penalties under PAGA (the “LWDA Payment”), and 25
24 percent (\$187,500) to the PAGA Group, that is, all EPA Class Members who worked for Google
25 from one year prior to Plaintiffs’ filing of the Second Amended Complaint containing PAGA
26 Claims through the date the Settlement is preliminarily approved. *Id.*

27 ⁵ These fees will be inclusive of the attorneys’ fees on the PAGA Payment.

28 ⁶ The Settlement will become effective after it has been finally approved by this Court and either
(1) the California Court of Appeal has rendered a final judgment affirming the Court’s final
approval without material modification and the date for further appeal has passed without further
appeal; (2) the California Court of Appeal has rendered a final judgment affirming the Court’s
final approval without material modification and the further appeals have been resolved without
material modification of the final approval order; (3) the applicable date for seeking appellate
review of the Court’s final approval of the Settlement has passed without a timely appeal or
request for review having been made; or (4) upon the date the settlement is finally approved if no
objections to the Settlement have been filed. Settlement § III.A.7.

1 after mailing. *Id.* If after 180 days from the mailing date the amount of uncashed checks is equal
2 to or more than 1.5 percent of the Total Settlement Amount, then the Settlement Administrator
3 will send out a second round of distributions in proportion to the first round. *Id.* If the amount of
4 uncashed checks is less than 1.5 percent of the Total Settlement Amount, then the uncashed
5 checks will be sent to *cy pres* recipient Equal Rights Advocates, which works to advance the
6 rights of women. *Id.*

7 **C. Programmatic Relief**

8 The Settlement also includes significant programmatic relief addressing the pay equity
9 and leveling allegations underlying Plaintiffs' certified EPA and FEHA Claims. Specifically,
10 Google commits to performing the following at Google's expense beyond the Total Settlement
11 Amount:

- 12 1. Hire an expert Industrial Organizational (IO) psychologist to review its process for
13 determining level at hire, and make recommendations on that process, to the extent
14 there are opportunities to make the process more equitable, including with respect
15 to gender equity. Settlement § VII.B.
- 16 2. Hire an expert labor economist to review Google's annual pay equity audits and
17 make recommendations on that process, to the extent there are opportunities to
18 more accurately analyze whether employees are paid equitably for comparable
19 work, including with respect to gender equity. Settlement § VII.B.
- 20 3. Consider the recommendations of the external consultants in good faith and make
21 reasonable and good faith efforts to address concerns raised. Settlement § VII.B.
- 22 4. Appoint at least one person inside Google responsible for ensuring that the
23 recommendations are considered in good faith and that reasonable and good faith
24 efforts are taken to address the concerns raised. Settlement § VII.B.
- 25 5. Hire an external monitor mutually agreed upon by the parties to review the
26 recommendations of the IO psychologist and labor economist and Google's
27 responses thereto, and insure compliance therewith. Settlement § VII.B.

28 *See also* Dermody Decl., ¶¶ 12-15 (detailing Class Counsel's specific experience that informed
selection and negotiation of these commitments). Here, the parties have agreed to retain IO
psychologist Nancy Tippins, based on the competencies required for this work, which will be
paid for by Google. *Id.*, ¶ 13. Likewise, the parties have agreed to retain labor economist Janet
Thornton, due to her extensive experience in labor economics. *Id.*, ¶ 14. The external Monitor
selected by the parties is Hon. Chai Feldblum, a nationally-renowned civil rights advocate and

1 scholar and former Commissioner of the Equal Employment Opportunity Commission. *Id.*, ¶ 15.

2 The term of these commitments shall be three years from the date on which the Court
3 grants final approval of the Settlement, except that if it takes the IO or labor economist longer
4 than one year from the date on which the Court grants final approval of the Settlement to issue
5 their recommendations, then the term shall be extended by the amount of time over one year that
6 it took to issue the recommendations. Settlement § VII.A.

7 Further, the Parties will guarantee Google’s compliance with these commitments as
8 follows:

- 9 1. The Parties, along with the IO psychologist, labor economist, and external
10 monitor, shall hold annual compliance meetings. Settlement § VIII.B.
- 11 2. The external monitor shall issue a verbal report to Class Counsel annually, which
12 will be reduced to writing if the external monitor believes that Google is not
13 making good faith efforts to comply with the terms of this agreement. Settlement
14 § VIII.A.
- 15 3. If a dispute arises as to Google’s compliance, the Parties shall attempt to resolve it
16 through mediation with a mutually selected JAMS mediator. If mediation is not
17 successful, then the Court shall retain jurisdiction to hear the dispute. Settlement §
18 VIII.C.

16 **D. Notice**

17 A proposed notice of the Settlement (the “Notice”) is attached as Exhibit A to the
18 Settlement Agreement. If the Court approves that Notice, the Settlement Administrator will send
19 the Notice to each Class Member via U.S. mail and e-mail,⁷ along with an Information Form
20 including the estimated share of the Net Settlement Fund that the Class Member is qualified to
21 receive, within fifteen days of receiving Class Member information from Google.⁸ In the event of
22 returned or non-deliverable Notices, the Settlement Administrator will make reasonable efforts to
23 locate Class Members and re-send the Notice. After a competitive bidding process, the parties
24 have agreed to retain JND Legal Administrator, a highly-experienced settlement administrator, to

25 ⁷ The Notices sent by U.S. mail and e-mail will be identical. Dermody Decl., ¶ 17.

26 ⁸ Within twenty days after the Court grants preliminary approval, Google will provide to the
27 Settlement Administrator the following information for each Class Member employed on or
28 before the date of preliminary approval: name, employee ID number, last known address, email
address, and telephone number, dates of their employment in a Covered Position, and Social
Security number (the “Class List”). Settlement § IV.C.

1 serve as Settlement Administrator here. JND is led by its CEO and founder, Jennifer Keough,
2 who has over 20 years of experience in the field. Dermody Decl., ¶ 17. The costs of
3 administration are estimated not to exceed \$135,000. *Id.*

4 To elect not to participate in the Settlement, a Class Member must send written notice of
5 their intent to opt out of the Settlement Administrator within 45 days of the initial mailing of the
6 Notice, via U.S. mail or through the Settlement Administrator’s online portal. Settlement
7 §IV.C.4. Class Member objections to the Settlement must also be submitted in writing to the
8 Settlement Administrator within 45 of the Notice via U.S. mail or through the website. *Id.*, §
9 IV.C.3. The Settlement Administrator shall provide to all counsel and file with the Court all
10 objections and opt out requests that are received. No one may appear at the final approval
11 hearing for the purpose of objecting to the Settlement without having submitted an objection in
12 writing. Settlement § IV.C.3.

13 **E. Release of Claims**

14 In consideration for their awarded share of the Net Settlement Fund, as of the date the
15 Settlement is finally approved by this Court, all Participating Class Members will release their
16 claims against Google that arise out of or relate to the pay, leveling, and waiting time allegations
17 that the Court certified for class treatment. Settlement § V.A.

18 Should the Settlement be finally approved by this Court, the Named Plaintiffs will further
19 agree to release any and all individual, non-class claims against Google. Settlement § V.B.
20 Google agrees to pay the Named Plaintiffs \$200,000 (\$50,000 each) as consideration for this
21 general release (separate from and in addition to any portion of the Net Settlement Fund and/or
22 Class Representative Service Payment awarded to each Named Plaintiff). *Id.* The parties
23 negotiated the Named Plaintiffs’ non-class recovery separate from the Class Settlement, and only
24 after reaching agreement on the Class Settlement. *Id.*; Dermody Decl., ¶ 18.

25 **F. Tax Treatment**

26 For tax purposes, 50 percent of each Participating Class Member’s Settlement award (the
27 “Wage Portion”) is intended to settle her claims for unpaid wages. Accordingly, the Wage
28 Portion will be reduced by applicable payroll tax withholding and deductions (including the

1 employer's share of taxes), and the Settlement Administrator will issue to the Participating Class
2 Member a Form W-2 with respect to the Wage Portion. Settlement § IX.D.

3 The remaining 50 percent of each Participating Class Member's Settlement award (the
4 "Non-Wage Portion") is intended to settle her claims for all stock appreciation, interest and
5 penalties. Accordingly, the Non-Wage Portion will not be reduced by payroll tax withholding
6 and deductions; and, instead, the Settlement Administrator will issue to each Participating Class
7 Member a Form 1099 with respect to the Non-Wage Portion. Settlement § IX.D.

8 This distribution between the Wage and Non-Wage Portions is based upon the claims in
9 the case and Plaintiffs' expert's analysis of the approximate portion of damages that redress
10 unpaid wages (the Wage Portion) as opposed to stock appreciation, interest, and penalties (the
11 Non-Wage Portion). Dermody Decl., ¶ 20. Specifically, Plaintiffs' expert determined that
12 Google's maximum exposure on the EPA and FEHA Claims is approximately 65 percent wage
13 underpayment and 35 percent interest (on both claims) and liquidated damages (on the EPA
14 claim).⁹ *Id.* The further reduction of the Wage Portion from 65 percent to 50 percent reflects the
15 stock appreciation (non-wages) on Class Member damages.¹⁰ *Id.*

16 **G. Impact on Other Pending Litigation**

17 Plaintiffs are unaware of any overlapping class or PAGA actions. Dermody Decl., ¶ 21.

18 **IV. LEGAL STANDARDS**

19 The California Rules of Court ("Rules") set forth two steps for evaluating a class action
20 settlement. First, "the court preliminarily approves the settlement and the class members are
21 notified as directed by the court." *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110,
22 1118 (2009) (citing Rule 3.769(c)-(f)). Second, "the court conducts a final approval hearing to
23 inquire into the fairness of the proposed settlement." *Id.* (citing Rule 3.769(g)).

24 At the first, preliminary approval step, courts must determine whether "there is, in effect,
25 probable cause to submit the proposal to members of the class and to hold a full-scale hearing on
26

27 ⁹ See section V.D, *infra*, for further discussion of Plaintiffs' expert's damages calculations.

28 ¹⁰ See Dermody Decl., Ex. 3 (*Vizcaino v. Microsoft Corp.*, settlement approved 142 F. Supp. 2d 1299 (W.D. Wash. 2001) (noting that stock gains are not subject to payroll tax)).

1 its fairness.” *California v. Levi Strauss & Co.*, 41 Cal. 3d 460, 485 (1986) (quoting Manual for
2 Complex Litigation § 1.46). At this stage, “the settlement need only be potentially fair, as the
3 court will make a final determination of its adequacy at the hearing on final approval, after such
4 time as any party has had a chance to object and/or opt out.” *Acosta v. Trans Union, LLC*, 243
5 F.R.D. 377, 386 (C.D. Cal. 2007). This preliminary inquiry “must be limited to the extent
6 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
7 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
8 whole, is fair, reasonable and adequate to all concerned.” *Dunk v. Ford Motor Co.*, 48 Cal. App.
9 4th 1794, 1801 (1996) (quoting *Officers for Just. v. Civ. Serv. Comm’n of City & Cnty. of San*
10 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)). “Public policy generally favors the compromise
11 of complex class action litigation.” *Cellphone Termination Fee Cases*, 180 Cal. App. at 1118.

12 Courts have broad powers to determine whether a proposed class action settlement is fair,
13 reasonable, and adequate. *Mallick v. Superior Ct.*, 89 Cal. App. 3d 434, 438 (1979). The
14 decision to approve or reject a proposed settlement is committed to the trial court’s sound
15 discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001).

16 Plaintiffs’ PAGA claim is not a class claim, and the procedural rules for approving class
17 settlements thus do not apply. *See generally Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009).
18 However, PAGA provides that the LWDA must be notified of a PAGA settlement (which
19 Plaintiffs have done) and that the court “shall review and approve” any PAGA settlement. Labor
20 Code § 2699(1)(2). The court reviews a PAGA settlement to “determine whether it is fair,
21 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
22 deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*,
23 72 Cal. App. 5th 56, 77 (2021).

24 **V. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

25 Courts consider several factors in making the fairness determination, including “the
26 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
27 the risk of maintaining class action status through trial, the amount offered in settlement, the
28 extent of discovery completed and the stage of the proceedings, [and] the experience and views

1 of counsel.” *Dunk*, 48 Cal. App. 4th at 1801. Generally, settlement agreements are presumed
2 fair when: “(1) the settlement is reached through arm’s-length bargaining; (2) investigation and
3 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
4 experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.* at 1802. This
5 list “is not exclusive and the court is free to engage in a balancing and weighing of factors
6 depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245.

7 Here, these factors support preliminary approval of the Settlement.

8 **A. The Settlement Is a Product of Arm’s-Length Negotiations**

9 The Settlement is the result of extensive arm’s-length negotiations between experienced
10 Class Counsel, who are deeply familiar with the facts and legal issues of this case, and counsel
11 for Google, who vigorously defended the case. The negotiations took place under the guidance
12 of an experienced mediator, Mediator Reiss, a highly regarded mediator for complex, high-stakes
13 employment litigation such as this one. Dermody Decl., ¶ 22. Mediator Reiss’s active role in
14 the mediation substantiates the non-collusive nature of the Settlement. *See, e.g., In re Bluetooth*
15 *Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (noting that the “presence of a
16 neutral mediator . . . weigh[s] in favor of a finding of non-collusiveness”).

17 The negotiations also took place over a period of several years. Following an
18 unsuccessful full-day mediation in March 2019, and two additional years of discovery, the Parties
19 met again for another full-day, in-person mediation in March 2022. Dermody Decl., ¶ 22.
20 During this day of negotiation, the Parties strenuously advanced and held firm in their respective
21 positions, and were ultimately not able to reach agreement. *Id.* It was only through two
22 additional months of negotiation that the Parties were able to craft a fair resolution of the certified
23 claims in the form of the monetary and non-monetary relief described herein. The years of
24 discovery and litigation that pre-dated these extensive negotiations rendered both Parties well-
25 equipped with “an understanding of the amount that is in controversy and the realistic range of
26 outcomes of the litigation,” which further supports the non-collusive nature of the Settlement.
27 *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 801 (2009).

1 **B. Sufficient Discovery Occurred to Allow Counsel and the Court to Intelligently**
2 **Determine the Settlement Is Fair**

3 The status of discovery at the time the Settlement was reached also weighs in favor of
4 preliminary approval. This requirement exists so that parties can provide the court with “a
5 meaningful and substantiated explanation of the manner in which the factual and legal issues
6 have been evaluated.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 132-33 (2008).

7 Comprehensive discovery, including through the process of class certification and
8 preparation for trial, allowed counsel for both Parties to approach settlement here with a clear
9 view of the factual and legal issues. The Settlement followed years of discovery, resulting in
10 production and review of a vast evidentiary record of 167,278 pages of documents and many
11 hundreds more pages in deposition testimony from all four Named Plaintiffs and eleven
12 corporate representatives of Google. Dermody Decl., ¶ 24. The Parties also engaged in
13 extensive expert discovery involving nine separate expert reports that were thoroughly examined,
14 responded to, and scrutinized during four expert depositions. *Id.* Beyond discovery, the Parties
15 extensively litigated the substantive legal issues, including litigating two separate rounds of
16 Google’s demurrers, Plaintiffs’ class certification motion, and Google’s writ of mandate. *Id.*,
17 ¶ 25.

18 In short, no stone was left unturned over the more than four and a half years of this
19 litigation, allowing counsel to make fully informed decisions when negotiating the Settlement.
20 Courts have approved settlements in comparable and less extensive circumstances. *See, e.g., 7-*
21 *Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152 (2000)
22 (affirming class action settlement that “came only after some four and a half years of litigation,
23 including voluminous discovery and many motions filed and argued by both sides”).

24 **C. Settlement Is Appropriate in Light of the Strength of Plaintiffs’ Case and the**
25 **Risk of Further Litigation**

26 In evaluating the strength of a plaintiff’s case, a court should not reach any conclusions
27 on contested issues of law or fact, because it is the uncertainty of such issues that leads parties to
28 resolve their disputes short of a final, litigated resolution. *7-Eleven*, 85 Cal. App. 4th at 1145.

1 Here, although Class Counsel believes the evidence supports Plaintiffs’ certified EPA and FEHA
2 Claims, a trial of this case poses several uncertainties that favor settlement.

3 The uncertainties of trial—which remain common to the Classes—were detailed by the
4 Court at class certification. With respect to the EPA Claim, the Court noted that Google had
5 “identified ‘errors’ in [Plaintiffs’ expert] Professor Neumark’s model” of pay disparity between
6 men and women, and had offered “competing control variables to explain Plaintiffs’ observed
7 pay disparity” that “refute any claim of discrimination.” Class Cert. Order at 8. The Court
8 determined, however, that the Parties’ disagreement about “whether Plaintiffs’ or Google’s
9 expert report is more convincing,” *id.*, would ultimately be determined using common evidence
10 at trial: “[the experts’] competing analyses are common evidence that a factfinder can evaluate,
11 along with other evidence of Google’s actual pay practices, to determine whether bona fide
12 factors account for any gender pay disparities within job code, and whether those factors caused
13 the entire pay disparity as required by the EPA or whether, as Plaintiffs contend, the pay
14 disparity is caused by an impermissible factor.” *Id.* at 10. Similarly, with respect to the FEHA
15 Claim, Google attempted to rebut Plaintiffs’ expert’s finding of disparate impact by presenting
16 “common evidence of its own from its expert, Dr. Saad, to dispute that Google had a common
17 practice of considering prior pay information.” *Id.* at 11. On this Claim, too, the Court
18 concluded that at trial, the “factfinder can weigh this contrary common evidence and determine
19 whether or not Google had a policy of using prior pay to set salaries at Google, and whether or
20 not that policy had a disparate impact on women.” *Id.*

21 There is a risk that at trial, the factfinder will adopt some or all of Google’s expert
22 analyses, thereby undercutting or even eliminating Plaintiffs’ prima facie case on both the EPA
23 and FEHA Claims, or substantially reducing damages. Courts routinely hold that “tangible,
24 immediate benefits” of settlement outweigh such risks. *Ebarle v. Lifelock, Inc.*, No. 15-cv-
25 00258-HSG, 2016 WL 234364, at *8 (N.D. Cal. Jan. 20, 2016). Further, even if the factfinder
26 found for Plaintiffs at trial, Class Members may not receive any recovery until after years of
27 costly appeals by Google. This further weighs in favor of settlement. *See, e.g., Nat’l Rural*
28 *Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“In most situations,

1 unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy
2 and expensive litigation with uncertain results.”); *In re LinkedIn User Priv. Litig.*, 309 F.R.D.
3 573, 587 (N.D. Cal. 2015) (“Immediate receipt of money through settlement, even if lower than
4 what could potentially be achieved through ultimate success on the merits, has value to a class,
5 especially when compared to risky and costly continued litigation.”).

6 Plaintiffs’ PAGA Claims are derivative of their EPA claims and thus subject to the same
7 risks. And unlike damages, PAGA penalties may be reduced by the court based on a variety of
8 factors, making award of substantial penalties even less certain. Labor Code § 2699(e)(2).

9 **D. The Settlement Provides Substantial Monetary Relief to Class Members**

10 The monetary value of a settlement is another factor to consider in determining whether a
11 settlement falls within the range of possible final approval. *Wershba*, 91 Cal. App. 4th at 244-45.
12 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs might
13 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all
14 of the circumstances.” *Id.* at 250. Settlements providing for narrower relief than could be
15 obtained at trial can be fair and reasonable because “the public interest may indeed be served by a
16 voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.*
17 (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir.
18 1972)). *See also Officers for Just.*, 688 F.2d at 628 (“It is well-settled law that a cash settlement
19 amounting to only a fraction of the potential recovery will not per se render the settlement
20 inadequate or unfair.”).

21 Given the uncertainties and risks of trial detailed above, and the significant time and risk
22 involved in an appeal of any verdict in favor of Plaintiffs, the Settlement is an excellent result for
23 the Class. Even without consideration of the non-monetary relief, discussed below, the \$118
24 million settlement represents outstanding value given the vastly competing views of the Parties
25 as to what Plaintiffs could have achieved at trial. Specifically, Plaintiffs’ expert found that
26 Google was facing maximum damages of \$571 million: \$108 million for the EPA Claim and
27
28

1 \$463 million for the FEHA Claim.¹¹ Dermody Decl., ¶ 11 & n.1. Google, on the other hand,
2 maintains that there is no liability on either the EPA Claim or the FEHA Claim at all. *Id.*, ¶ 11.

3 The \$118 million Total Settlement Amount therefore represents approximately 14 percent
4 of Plaintiffs' maximum assessment of damages (or 21 percent without interest and penalties)
5 and, obviously, \$118 million over Google's assessment of damages. Courts routinely approve
6 settlements that amount to similar, or substantially smaller, portions of potential damages. *See,*
7 *e.g., Reed v. 1-800 Contacts, Inc.*, No. 12-cv-02359-JM, 2014 WL 29011, at *6 (S.D. Cal. Jan. 2,
8 2014) (granting final approval of a settlement providing for 1.7 percent of possible recovery); *In*
9 *re Toys R Us-Delaware, Inc.-Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295
10 F.R.D. 438, 453-54 (C.D. Cal. 2014) (3 percent); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d
11 1036, 1042 (N.D. Cal. 2008) (6 percent); *In re Currency Conversion Fee Antitrust Litig.*, No. 01-
12 MDL-1409, 2006 WL 3247396, at *6 (S.D.N.Y. Nov. 8, 2006) (10 to 15 percent); *In re High-*
13 *Tech Emp. Antitrust Litig.*, No. 11-cv-02509-LHK, 2015 WL 5159441, at *4 (N.D. Cal. Sept. 2,
14 2015) (14 percent); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (17
15 percent).

16 **E. The Settlement's Programmatic Non-Monetary Terms Are of Significant**
17 **Value and Will Benefit the Class**

18 Although injunctive relief is just one part of the proposed Settlement here, courts
19 assessing the adequacy of a multi-part settlement are instructed to view "the complete package
20 taken as a whole, rather than the individual component parts." *Officers for Just.*, 688 F.2d at 628.
21 To assess whether a Class settlement *overall* is adequate, the first question is whether the overall
22 consideration is sufficient for the release of claims. And, determining what might be appropriate
23 consideration is informed by the remedies the claims might provide if Plaintiffs were to prevail.¹²
24 *See Romero v. Securus Techs., Inc.*, No. 16CV1283 JM (MDD), 2020 WL 3250599, at *6 (S.D.

25 ¹¹ These figures increase to \$268 million and \$604 million, respectively, with interest and
26 penalties. Dermody Decl., ¶ 11 n.1.

27 ¹² To be clear, a court is not limited to only considering the value of those remedies which could
28 be achieved by judgment. For example, if a consumer suffered from errant credit reporting, it
might be more valuable to her for her credit report to be fixed than to receive a de minimis
statutory payment for the error, even if the legal remedy at trial only provided for the latter.

1 Cal. June 16, 2020) (court may consider “plaintiffs’ expected recovery [at trial] balanced against
2 the value of the settlement offer”).

3 Here, Plaintiffs have alleged claims for which the remedies are primarily monetary.
4 Accordingly, the adequacy of this settlement may be assessed entirely by reviewing the monetary
5 relief and recognizing that Google is changing the challenged practices. *See, e.g., Lerma v. Schiff*
6 *Nutrition Int’l, Inc.*, No. 11CV1056-MDD, 2015 WL 11216701, at *7 (S.D. Cal. Nov. 3, 2015)
7 (finding even limited injunctive relief fair, adequate and reasonable because “the Court has
8 weighed that limited value against the small or nonexistent potential value of the injunctive relief
9 Class Counsel could be expected to obtain at trial and the very significant risks of continuing the
10 litigation.”) (citing *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998));
11 *Moore v. PetSmart, Inc.*, No. 5:12-CV-03577-EJD, 2015 WL 5439000, at *6 (N.D. Cal. Aug. 4,
12 2015), *aff’d*, 728 F. App’x 671 (9th Cir. 2018) (“While the monetary recovery obtained for
13 settlement class members is significant, the injunctive relief agreed upon is less impressive
14 Nonetheless, as a whole, the monetary amount offered to purported class members is substantial
15 enough to weigh this factor in favor of settlement.”).

16 That said, the Parties here negotiated for much more than just cash in order to improve
17 processes that Plaintiffs believe will *solve* the concerns that Plaintiffs raised in the lawsuit. By all
18 measures, this relief exceeds what Plaintiffs could have achieved at trial, and will enhance equity
19 for women for years to come. *See* Settlement, § VIII (requiring, for example, that a qualified
20 independent expert analyze leveling practices and that an external economist monitor pay). This
21 compares favorably to other discrimination settlements approved by courts. *See, e.g., Marolda v.*
22 *Symantec Corp.*, No. 08-CV-05701 EMC, 2013 WL 12310821, at *5 (N.D. Cal. Apr. 5, 2013)
23 (finding settlement fair, adequate and reasonable because “Defendants have offered a substantial
24 amount of money in settlement, and the injunctive and equitable relief provided for in the
25 Settlement conveys significant benefits to the Class”); Dermody Decl., Exs. 4-10 (employment
26 class settlements with monetary and injunctive relief which were approved by Northern District
27 of California Judges Edward Chen, Phyllis Hamilton, Thelton Henderson, Susan Illston and
28 Claudia Wilkin; by Eastern District of New York Judge Pamela Chen; and by District of

1 Columbia District Judge Richard Roberts).

2 Here, the Settlement provides for significant programmatic relief, described above, which
3 will provide ongoing benefits to women at Google for years to come. Plaintiffs believe the
4 Settlement’s programmatic relief will help ensure that women are not paid less than their male
5 counterparts who perform substantially similar work moving forward, and that Google’s leveling
6 practices are equitable. Dermody Decl., ¶ 16. Importantly, the relief will help ensure the
7 problems Plaintiffs alleged do not occur in the future.¹³

8 **F. The Experience and Views of Counsel Support Settlement**

9 Plaintiffs are represented by respected Class Counsel with decades of class action
10 experience and a long and successful record of prosecuting employment matters to favorable
11 resolutions, including in cases before this Court. Dermody Decl., ¶¶ 3-5; Finberg, Decl., ¶¶ 3-15.
12 Their view that this settlement is fair weighs in favor of preliminary approval. *7-Eleven*, 85 Cal.
13 App. 4th at 1146.

14 **VI. THE PROPOSED NOTICE ADEQUATELY APPRISES CLASS MEMBERS OF**
15 **THEIR RIGHTS UNDER THE SETTLEMENT AND SATISFIES DUE PROCESS**

16 Under Rule 3.769, “[i]f the court has certified the action as a class action, notice of the
17 final approval hearing must be given to the class members in the manner specified by the court.
18 The notice must contain an explanation of the proposed settlement and procedures for class
19 members to follow in filing written objections to it and in arranging to appear at the settlement
20 hearing and state any objections to the proposed settlement.” An appropriate notice is one which
21 has a “reasonable chance of reaching a substantial percentage of the class members.” *Cartt v.*
22 *Superior Court*, 50 Cal. App. 3d 960, 974 (1975). The class notice must also “fairly apprise the
23 class members of the terms of the proposed compromise and of the options open to dissenting

24 _____
25 ¹³ The three-year horizon on Google’s non-monetary commitments is also commonly accepted as
26 appropriate for implementation of injunctive relief proposals. Dermody Decl., ¶ 16, Ex. 11 (*Pan*
27 *v. Qualcomm*, No. 16-cv-01885-JLS-DHB (S.D.Cal. 2017) (approving three-year compliance
28 period)); Ex. 12 (*Branner v. Covenant Aviation Security LLC*, No. 20-cv-03164 (San Mateo
Super. Ct. 2020) (same)); Ex. 6 (*Calibuso v. Bank of America*, No. 10-1413-PKC (E.D.N.Y.
2013) (same)); Ex. 13 (*Chen v. Western Digital*, No. 8:19-cv-00909-JLS-DFM (C.D. Cal 2021)
(two years)); Ex. 7 (*Ellis v. Costco Wholesale Corp.*, No. 04-3341-EMC (N.D. Cal. 2007)
(same)).

1 class members.” *Levi Strauss & Co.*, 41 Cal. at 485. The trial court has broad discretion in
2 fashioning an appropriate notice program. *Cartt*, 50 Cal. App. 3d at 973-74.

3 Plaintiffs request that the Court approve the plan and forms of Notice, which inform
4 Class members of the proposed settlement and their options: do nothing, and remain in the
5 Class(es); opt-out; or object and/or comment. Settlement, Ex. A. The proposed Notice also
6 provides information on the meaning and nature of the Claims; who is a Class Member; the
7 terms and provisions of the Settlement; the monetary and non-monetary relief the Settlement will
8 provide to Class Members; how the monetary relief will be allocated; the Class Member’s
9 estimated individual share of the Settlement, should she not exclude herself; details regarding the
10 PAGA Payment; the fact that Class Counsel will seek service awards for the Named Plaintiffs;
11 the amounts Class Counsel will seek for attorneys’ fees and reimbursement of litigation
12 expenses; the date, time and place of the final approval hearing; and the procedures and
13 deadlines for opting out or objecting to the Settlement. *Id.*

14 The Notice will be sent to Class Members both by U.S. mail and by e-mail. The
15 Settlement Administrator will also maintain a settlement website with copies of the Complaint,
16 the Notice, the Settlement Agreement and all exhibits thereto, and all filings made in connection
17 with the settlement approval process. In addition, the Settlement Administrator will maintain a
18 dedicated hotline where Class Members can call to have their questions answered. This plan
19 meets the constitutional standards as well as the standards under Rule 3.766, and should be
20 approved. *Cellphone Termination Fee Cases*, Cal. App. 4th at 1390. Accordingly, the Notice
21 should be approved.

22 **VII. THE PROPOSED PLAN OF ALLOCATION IS APPROPRIATE**

23 The amount attributed to each element of the Total Settlement Amount—*i.e.*, the Net
24 Settlement Fund, PAGA Payment, Class Representative Service Award Payments, and Class
25 Counsel Fees and Expenses Payment—is fair, reasonable, and adequate.

26 **A. The Distribution of the Net Settlement Fund Is Appropriate and Fair**

27 Class Members will be automatically allocated awards based on detailed statistical
28 models, described in the Plan of Allocation, that account for their relative contributions to the

1 alleged damages for the EPA Claim Class and/or FEHA Subclass Claim. Settlement, Ex. C.
2 There is no claims form and nothing the Class is required to do to participate. Checks will
3 automatically be mailed to any Class Member who does not opt out.

4 These allocation formulae are fair, reasonable, and adequately compensate Class
5 Members, as Class Members who suffered greater pay disparities will receive greater awards.
6 Moreover, these formulae are reliable because they are rooted in the same in-depth and
7 sophisticated expert analyses that this Court deemed sufficient to establish a potential prima facie
8 case of liability on the EPA and FEHA Claims at class certification. Class Cert. Order at 8-11.

9 Further, the distribution of payments to Participating Class Members between the Wage
10 and Non-Wage Portions reflects the different tax implications for wages, which are subject to
11 payroll taxes (FICA, etc.) in addition to income tax, while non-wages are only subject to income
12 tax. As the Parties did here, parties typically negotiate this allocation based on whether the
13 claims include penalties or non-wage income. *See, e.g., Dermody Decl., Ex. 9 (In re High-Tech*
14 *Litig. Employee Antitrust Litig., No. 11-CV-02509-LHK (N.D. Cal. 2015) (allocating the*
15 *settlement fund as 33 percent wages and 67 percent other income)).*

16 **B. The PAGA Payment Is Appropriate and Fair**

17 The \$1 million allocated to the PAGA Payment—which amounts to just under 1 percent
18 of the Total Settlement Amount—is also fair, reasonable, and adequate, and, in combination with
19 class damages and injunctive relief, will remediate the claimed labor law violations and deter
20 future ones. The PAGA claim has a one-year statute of limitations, which will run from the June
21 2022 filing of the Second Amended Complaint, and thus encompasses a much shorter time
22 period, and fewer employees, than the other claims. It will be allocated to members of the PAGA
23 Group proportionally based on the number of pay periods they worked during the PAGA
24 limitations period. Settlement, Ex. C. The PAGA Payment is consistent with PAGA allocations
25 routinely approved by other California courts. *See, e.g., Dermody Decl., Ex. 13 (Chen v. Western*
26 *Digital, No. 19-cv-00909-JLS (C.D. Cal. 2021) (final order granting allocation to LWDA at 1*
27 *percent of class settlement)); Ex. 11 (Pan v. Qualcomm, No. 16-cv-01885-JLS (S.D. Cal. 2017)*
28 *(same)); Ex. 14 (Cuenca v. Kaiser Foundation Health Plan, Inc., No. RG20065123 (Alameda*

1 Super. Ct. 2021) (same)); Ex. 15 (*McNaulty, et al. v. Alameda Contra Costa Transit District*, No.
2 RG189339766 (Alameda Super. Ct. 2020) (0.6 percent)).

3 **C. The Class Representative Service Awards Are Appropriate and Fair**

4 Courts routinely approve service awards to compensate named plaintiffs for the services
5 they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins.*
6 *Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service payments” to named plaintiffs
7 for their efforts in bringing the case).

8 Here, the Settlement provides that the Plaintiffs will seek by separate motion, and Google
9 will not oppose, service awards for each Named Plaintiff of either \$50,000 (for Ms. Wisuri, Ms.
10 Lamar, and Ms. Pease) or \$75,000 (for Ms. Ellis, the lead Plaintiff). Considering the dedication
11 and engagement the Named Plaintiffs have demonstrated throughout this four and a half year
12 litigation, these service awards are more than justified.¹⁴ All four Named Plaintiffs responded to
13 discovery, sat for a deposition, attended two all-day mediations, and kept thoroughly involved in
14 the investigation, including many hours on the telephone or communicating via email with Class
15 Counsel to provide information about their experiences at Google and input on the case and
16 Settlement. Dermody Decl., ¶ 26. Importantly, unlike other types of class actions, employee
17 plaintiffs face significant risk that future employers will not want to employ them due to their
18 participation in an employment discrimination class action lawsuit, a risk the Named Plaintiffs
19 accepted here to benefit others. The service awards Class Counsel seeks for their efforts are
20 therefore not only justified, but at amounts comparable to awards approved in other cases. *See,*
21 *e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (approving a
22 \$50,000 service award).

23 Plaintiffs respectfully submit that an additional \$25,000 is warranted for Ms. Ellis. She
24 performed all of the important and time-consuming tasks of the other Named Plaintiffs, but also
25 served as a leader among the group, whose name appeared first on the case caption and (often) in
26 press about the case. The additional scrutiny associated with this “first” position has,

27 _____
28 ¹⁴ Plaintiffs will also submit supporting declarations in advance of final approval, supporting the
amounts requested.

1 unfortunately, resulted in both online harassment and physical stalking that required police
2 intervention and a restraining order. Dermody Decl., ¶27. The emotional toll of the harassment
3 Ms. Ellis suffered as a result of her leadership in this case more than warrants the additional
4 \$25,000 in her proposed service award. *Id.*

5 Additionally, each Named Plaintiff will also receive an equal portion of the separate
6 \$200,000 fund created to compensate the Named Plaintiffs for their individual, non-class claims.
7 Settlement, § V.B. The Class need not and should not receive any more specific information
8 about these individual claims or the allocation, as that would increase the risk of serious
9 confusion to the Class about claims the Class is not releasing. If this information were added to a
10 Class notice, it would require a host of additional disclosures about the nature of the allegations,
11 as well as Google’s specific denials, that would not assist the Class in determining whether the
12 consideration here is appropriate for their more limited release of Class claims. Courts readily
13 approve class settlements where, as here, the class representatives settled individual, non-class
14 claims separate from and after settling the class allegations. *See* Dermody Decl., Ex. 12
15 (*Branner, et al. v. Covenant Aviation Security LLC*, No. 20-cv-03164 (San Mateo Super. Ct.
16 2020)); Ex. 1 (*McNaulty, et al. v. Alameda-Contra Costa Transit District*, No. RG189339766
17 (Alameda Super. Ct. 2020)); Ex. 13 (*Chen v. Western Digital*, No. 19-cv-00909-JLS (C.D. Cal.
18 2021)); Ex. 11 (*Pan v. Qualcomm*, No. 16-cv-01885-JLS (S.D. Cal 2017)); Ex. 14 (*Cuenca v.*
19 *Kaiser Permanente*, No. RG20065123 (Alameda Super. Ct. 2021)).

20 **D. The Proposed Award of Attorneys’ Fees and Costs Are Appropriate and Fair**

21 Class Counsel will separately move the Court for an award of attorneys’ fees and costs,
22 supported with declarations and documentation. California courts routinely conclude that an
23 appropriate method for awarding attorney’s fees in class actions is to award a percentage of the
24 “common fund” created as a result of the settlement. *City & County of San Francisco v. Sweet*,
25 12 Cal. 4th 105, 110-11 (1995). *See also, e.g., Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480,
26 503 (2016) (recognizing the following advantages to using the percentage method: “relative ease
27 of calculation, alignment of incentives between counsel and the class, a better approximation of
28 market conditions in a contingency case, and the encouragement it provides counsel to seek an

1 early settlement and avoid unnecessarily prolonging the litigation.”) (internal quotation marks
2 omitted).

3 The fees requested in this Settlement, constituting 25 percent of the Total Settlement
4 Amount, are below the standard 33 percent fee awards that are commonly approved by California
5 courts. *See, e.g., Laffitte*, 1 Cal. 5th at 503 (affirming fee award of one-third of the common fund
6 in a wage and hour class action); *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557 n.13
7 (2009) (“Empirical studies show that, regardless whether the percentage method or the lodestar
8 method is used, fee awards in class actions average around one third of the recovery.”) (internal
9 quotation marks omitted); *Smith v. CRST Van Expedited, Inc.*, No. 10-cv-1116-IEG, 2013 WL
10 163293, at *5 (S.D. Cal. Jan. 14, 2013) (recognizing the California benchmark for fee awards in
11 class actions as 33 percent). Class Counsel will further request reimbursement of reasonably-
12 incurred costs not to exceed \$1.5 million. Settlement, § X.A; Dermody Decl., ¶ 28. This expense
13 reimbursement is likewise common and appropriate. *See, e.g., Singh v. Roadrunner Intermodal*
14 *Servs., LLC*, No. 15-cv-01497, 2015 WL 5728415, at *7-8 (N.D. Cal. Sept. 30, 2015) (approving
15 reimbursement of litigation expenses in employment case).

16 The Court need not rule on Class Counsel’s fees and costs now; a formal application will
17 be filed prior to the final approval hearing. As will be explained in detail in the application, a fee
18 award of 25 percent of the Total Settlement Amount is reasonable and well-justified in
19 consideration of the risks Class Counsel have undertaken in pursuing this case on a contingency
20 basis and the result achieved on behalf of the Classes. Class Counsel also expended significant
21 time and resources on this matter and will continue to do so without additional compensation over
22 the next three years, as they oversee implementation of the programmatic relief. Dermody Decl.,
23 ¶ 28.

24 **VIII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED**

25 The final step in the settlement approval process is a final fairness hearing at which the
26 Court may hear additional evidence and argument necessary to make its settlement evaluation.
27 At that hearing, the Court will further address the fairness, adequacy, and reasonableness of the
28 Settlement, the amount of service awards to be awarded to the Class Representatives, the amount

1 of attorneys' fees and expenses to be awarded to Class Counsel, and whether final judgment
2 resolving the Claims should be entered. Plaintiffs request that, should the Court grant the instant
3 motion for preliminary approval, a date for a final approval hearing should also be set, along
4 with a schedule of events leading up to the hearing, as follows:

Event	Deadline
Mailing of Notice	Initial mailing within 34 days of a preliminary approval order (the "Order")
Motion for fees, costs, and service awards	Filed within 64 days of the Order
Motion for final approval	Filed within 64 days of the Order
Objections to the settlement and/or motion for fees, costs, and service awards	Must be postmarked or filed online within 45 days after initial mailing of the Notice
Any reply in support of motion for final approval	Filed within 5 court days of the final approval hearing
Hearing on Plaintiffs' motions for final approval and for fees, costs, and service awards	September 19, 2022 (approximately 90 days after the Order)

14 **IX. CONCLUSION**

15 For the reasons set forth herein, this Court should preliminarily approve the Settlement,
16 direct that notice be disseminated to Class Members, and schedule a final approval hearing.

17 Dated: June 10, 2022

Respectfully submitted,

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