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

19 IN RE: GOOGLE LOCATION HISTORY
LITIGATION

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

20 **NOTICE OF MOTION AND MOTION**
21 **FOR PRELIMINARY APPROVAL OF**
22 **CLASS ACTION SETTLEMENT;**
23 **MEMORANDUM OF POINTS AND**
24 **AUTHORITIES IN SUPPORT**
25 **THEREOF**

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

(Joint Declaration of Tina Wolfson and
Michael W. Sobol, including Settlement
Agreement, and Declaration of Daniel
Talavera, filed concurrently herewith)

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 26, 2023 at 9:00 a.m., in Courtroom 4 of the United States District Court for the Northern District of California, Robert F. Peckham Federal Building & United States Courthouse, 280 South First Street, San Jose, California 95113, the Honorable Edward J. Davila presiding, Plaintiffs¹ will and hereby do move for an Order pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Rule”): (i) preliminarily approving the proposed Class Action Settlement Agreement and Release dated August 23, 2023 (attached as Exhibit 1 to the concurrently filed Joint Declaration of Tina Wolfson and Michael W. Sobol); (ii) finding that, for purposes of effectuating the proposed Settlement, the prerequisites for class certification under Federal Rule of Civil Procedure 23 are likely to be found satisfied; (iii) approving the form and manner of notice to the Settlement Class; (iv) approving the selection of the Settlement Administrator; and (iv) scheduling a Final Approval Hearing before the Court.

Plaintiffs’ motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below, the Joint Declaration of Tina Wolfson and Michael W. Sobol in Support of Plaintiffs’ Motion for Preliminary Approval of Proposed Class Action Settlement (“Joint Declaration”), the Settlement Agreement, the Declaration of Cameron R. Azari, Esq., all exhibits attached thereto, the pleadings and records on file in this Action, and other such matters and argument as the Court may consider at the hearing of this Motion.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the proposed Settlement warrants: (a) preliminary approval; (b) a finding that, for purposes of effectuating the proposed Settlement, the prerequisites for class certification under Federal Rule of Civil Procedure 23 are likely to be satisfied; (c) dissemination of Notice of the Settlement’s terms to Settlement Class Members; and (d) a hearing on Motions for final

¹ All capitalized words and terms are defined in the Settlement Agreement (Section II) unless otherwise defined herein.

1 approval of the Settlement, and for attorneys' fees, and reimbursement of expenses and Service
2 Awards to the Class Representatives;

3 2. Whether the proposed Notice satisfies due process and adequately apprises the
4 Settlement Class Members of the terms of the Settlement and their rights with respect to it; and

5 3. Whether Epiq Class Actions & Claims Solutions, Inc. should be appointed as
6 Settlement Administrator;

7 4. Whether the proposed plan of allocation of the Settlement Fund should be
8 preliminarily approved.

9
10 Respectfully submitted,

11 Dated: September 14, 2023

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs request that the Court preliminarily approve a nationwide class action settlement
4 by which Defendant Google LLC (“Defendant” or “Google”) agrees to pay \$62 million into a non-
5 reversionary cash fund to be used in support of Class Members’ privacy rights, and which would
6 require meaningful prospective injunctive relief giving Class Members greater understanding of,
7 and control over, their Location Information. This Settlement comes after years of hard-fought
8 litigation that began in August 2018, and over a year of contentious, well-informed, arm’s-length
9 settlement negotiations aided by mediator Eric D. Green, Esq. and by Magistrate Judge Joseph C.
10 Spero. It was reached at a critical juncture in the litigation, after extensive motion practice and
11 discovery, but before Plaintiffs face the risks of class certification and summary judgment.

12 The Settlement provides substantial financial redress for the alleged privacy violations
13 through *cy pres* awards and injunctive relief designed to address the practices on which Plaintiffs’
14 claims are based and to prevent privacy violations in the future. If approved, the \$62 million
15 Settlement Fund, which would be among the largest privacy class action recoveries where statutory
16 damages were unavailable, will be distributed (after notice and Settlement administration costs and
17 any service awards and attorneys’ fees and costs the Court may award) to Court-approved
18 organizations with a track record of addressing privacy concerns on the Internet. *Cy pres* relief is a
19 necessary and appropriate means of distributing the Settlement’s cash component given the
20 economic infeasibility of individual distributions where there are as many as 247.7 million Class
21 Members. The negotiated injunctive relief would impose enforceable mandates on Google to
22 disclose the nature and extent of its use and storage of users’ Location Information, and how users
23 can make informed choices to influence those practices, including how to disable settings such as
24 Location History, how to delete the data collected, and how to set data retention limits.

25 Expert Settlement Administrator Epiq Class Action & Claims Solutions, Inc. (“Epiq” or the
26 “Settlement Administrator”) recommends a digital publication-based notice plan to advise potential
27 Class Members of the Action and the Settlement Agreement, and to ensure all Class Members can
28 exercise their rights to object or exclude themselves from the Settlement. Publication notice is best

1 notice practicable here because publication is necessary to reach Settlement Class Members who
2 no longer have Google accounts, and the same notice also will reach current Google users.

3 In sum, the Settlement delivers substantial monetary and injunctive relief and satisfies all
4 requirements of Rule 23 and this District’s Guidelines for Class Action Settlements. The Settlement
5 presents an excellent result, particularly considering the substantial risks of protracted litigation.
6 Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval, allow
7 dissemination of notice, and set a final fairness hearing.

8 **II. BACKGROUND**

9 As detailed below, Plaintiffs litigated against substantial opposition for approximately five
10 years. Co-lead class counsel Ahdoot & Wolfson, PC and Lieff Cabraser Heimann & Bernstein, LLP
11 (together, “Class Counsel”), along with the additional firms appointed as Interim Class Counsel,
12 invested over 17,000 hours. On behalf of the proposed Class, Class Counsel: (i) diligently
13 investigated and asserted their legal claims, in consultation with experts; (ii) efficiently negotiated
14 the consolidation of six related cases asserting substantially similar claims; (iii) successfully
15 opposed, in part, Google’s second motion to dismiss the claims in full; (iv) engaged in
16 comprehensive discovery and litigated roughly 20 discovery disputes through motions, regular
17 hearings, and joint reports, before Magistrate Judge Nathanael Cousins; (v) conducted significant
18 research and discovery in preparation for the anticipated class certification motion; and (vi) engaged
19 in multiple mediation and settlement conference sessions with Defendant, obtaining significant
20 information regarding the Class claims in connection with such mediation; among many other tasks,
21 all of which have been reflected in the quarterly time reports submitted *in camera* to this Court
22 since 2019. As a result of this work, Plaintiffs and Class Counsel had a thorough understanding of
23 the relative strengths and weaknesses of the claims asserted at the time the Settlement was reached.

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

25 Plaintiffs allege Google knowingly violated the privacy rights of millions of U.S. mobile
26 device users by tracking and storing their geolocations despite the relevant setting (“Location
27 History”) being disabled. *See generally* Dkt. 131 (First Am. Consol. Class Action Compl., “FAC”).
28 Plaintiffs allege Google’s actions violated its own representations and wrongfully enabled Google

1 to amass and commercially exploit valuable and sensitive geolocation data. *Id.*

2 This action commenced on August 17, 2018 (Dkt. 1) and was swiftly followed by six
3 additional putative class actions asserting similar claims. Following consolidation of all related
4 cases on December 11, 2018 (Dkt. 51), on April 1, 2019, the Court appointed Class Counsel.
5 Dkt. 72. Class Counsel reported time to the Court quarterly in accordance with that order. Joint
6 Declaration of Tina Wolfson and Michael W. Sobol (“Joint Decl.”) ¶ 10.

7 On April 29, 2019, Plaintiffs filed a Consolidated Complaint alleging: (a) violation of the
8 California Invasion of Privacy Act (“CIPA”), Cal. Pen. Code § 637.7; (b) intrusion upon seclusion;
9 and (c) violation of the California Constitution’s right to privacy, Art. 1, § 1. Dkt. 80.

10 On December 19, 2019, the Court granted Defendant’s motion to dismiss, dismissing all of
11 Plaintiffs’ claims. Dkt. 113. At this point, Plaintiffs had no claims.

12 Plaintiffs attempted an interlocutory appeal of the December 2019 dismissal order, and the
13 parties agreed to stay discovery during such proceedings after Google made a limited production
14 of documents previously produced to Congress in connection with its investigation of Google’s
15 practices regarding Location Information. Dkt. 118; Joint Decl. ¶ 12. In April 2020, the Court
16 denied Plaintiffs’ motion to certify the dismissal order for interlocutory appeal (Dkt. 126) and, in
17 June 2020, the Court also denied Plaintiffs’ motion for leave to file a motion for reconsideration of
18 the dismissal order (Dkt. 130).

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

25 After the Parties filed opposing briefs on the need to file portions of the FAC and motion to
26 dismiss briefing under seal, an unredacted version of the FAC was filed on February 8, 2021. Dkt.
27 164, 164-1. Defendant answered the FAC that same day. Dkt. 165.

28 Discovery reopened in February 2021. It was hard-fought and contentious throughout the

1 remaining years of this litigation. All told the Parties engaged in approximately 26 months of
2 discovery, including: serving discovery requests and written responses; meeting and conferring;
3 engaging in discovery motion practice; and attending regular discovery conferences with
4 Magistrate Judge Cousins. Joint Decl. ¶ 17. Defendant produced, and Plaintiffs reviewed (including
5 while discovery was stayed to facilitate mediation), more than 500,000 pages of documents. *Id.*

6 Magistrate Judge Cousins held seven discovery hearings and conferences and required joint
7 reports concerning the Parties' numerous disputes on a weekly, then biweekly, basis. Dkts. 187,
8 204, 229. While many disputes were adjudicated in that fashion, the Parties also briefed numerous
9 disputes through joint letter briefs. *See, e.g.*, Dkts. 173 (Letter Brief), 175 (Order), 180 (Letter
10 Brief), 183 (Letter Brief), 187 (Order), 207 (Order), 215 (Order), 225 (Order), 226 (Order), 229
11 (Order), 288 (Letter Brief), 292 (Order), 293 (Letter Brief), 308 (Order), 309 (Letter Brief). Even
12 Plaintiffs' ability to conduct expert analysis was contentious, requiring the Court to adjudicate an
13 opposed motion to disclose material that Google designated highly confidential to Plaintiffs' expert
14 (Dkt. 276), which was granted on March 21, 2023 (Dkt. 284).

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

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

23 Throughout the course of the litigation, Class Counsel tracked the progress of related
24 litigation in the U.S. and in other countries, including in Australia and Europe, and researched the
25 application of the issues surrounding those cases to this litigation. *Id.* ¶ 21.

26 **B. Settlement Negotiations and Mediation**

27 The Parties engaged in extensive, arm's-length negotiations over many months, including
28 three full-day mediation sessions on March 15, May 2, and May 24, 2022, and numerous additional

1 discussions facilitated by an experienced and well-respected mediator, Eric D. Green, Esq. Joint
2 Decl. ¶ 22. Mr. Green has extensive experience mediating class actions, including multiple data
3 privacy cases where a settlement was reached and approved. *Id.* Ahead of these mediation sessions,
4 the Parties exchanged information to facilitate productive mediation sessions, in addition to
5 information already gleaned through discovery. *Id.*

6 The Parties reached agreement on the general terms of a settlement in the form of a
7 mediator's proposal in May 2022. *Id.* ¶ 23; *see also* Dkt. 258. However, after months of intense
8 negotiations the Parties were unable to agree on certain terms necessary to consummate a full
9 settlement agreement and reported as much to the Court on October 12, 2022. Dkt. 254.

10 The Court held a status conference on November 3, 2022 (Dkt. 256), and referred the matter
11 to Magistrate Judge Spero, who held a settlement conference on January 19, 2023. (Dkt. 262).
12 Although progress was made, the case did not settle at that time. Joint Decl. ¶ 24.

13 The Parties continued their negotiations, and, on April 27, 2023, executed a term sheet
14 agreeing, subject to the Court's approval, to settle the dispute on the general terms now before the
15 Court. *Id.* ¶ 25. However, the Parties had yet to reach agreement on other key terms and continued
16 to negotiate these issues intensely. *Id.* The Parties also participated in numerous video and phone
17 conferences during which they successfully negotiated the Settlement's significant injunctive relief.
18 *Id.* ¶ 26. Injunctive relief negotiations extended for months, including several iterations and
19 revisions of written proposals and counterproposals, and consultation with experts. *Id.* Numerous
20 drafts and redlines of the Settlement Agreement and its many exhibits were exchanged and
21 scrutinized. *Id.* ¶ 27.

22 Class Counsel collaborated with defense counsel and the proposed Settlement Administrator
23 on the logistics and substance of the Notice Plan. *Id.* Class Counsel spent numerous hours obtaining
24 and negotiating multiple rounds of bids from five well-established, experienced, and highly
25 regarded class action notice and administration firms. *Id.*

26 As a result of the extensive discovery conducted prior to mediation (and document review
27 which continued even after the case was stayed), consultation with experts, and the intense
28 negotiations that lasted over a year in total before the Settlement was finalized, Plaintiffs had a

1 thorough understanding of the case including Google’s anticipated defenses on the merits; the likely
2 arguments that would be advanced at class certification, summary judgment, and trial; the
3 Settlement Class and the challenges presented with identifying individual class members; and the
4 complex technical issues surrounding these issues and potential injunctive relief. *Id.* ¶ 42.

5 **III. SUMMARY OF SETTLEMENT TERMS**

6 **A. The Settlement Class and Release**

7 The proposed Settlement Class is defined as: “All natural persons residing in the United
8 States who used one or more mobile devices and whose Location Information was stored by Google
9 while “Location History” was disabled at any time during the Class Period (January 1, 2014 through
10 the Notice Date).” Settlement Agreement (“SA”) ¶ 28.

11 In exchange for the Settlement’s benefits, Class Members will release any claims against
12 Google and the Released Parties that are based on, or arise from, one or more of the same factual
13 predicates or theories of liability as alleged in the Consolidated Action. *Id.* ¶¶ 50-57. The scope of
14 the Release is consistent with this Circuit’s governing standards. *See, e.g., Hesse v. Sprint Corp.*,
15 598 F.3d 581, 590 (9th Cir. 2010) (“A settlement agreement may preclude a party from bringing
16 a . . . released claim [that] is ‘based on the identical factual predicate as that underlying the claims
17 in the settled class action’”) (citation omitted).

18 **B. The \$62 Million Non-Reversionary Settlement Fund**

19 The Settlement would create a non-reversionary cash Settlement Fund of \$62 million, which
20 would be used to pay for the costs of Notice and Settlement administration, any Court-awarded
21 attorneys’ fees and expenses and Class Representative Service Awards. SA ¶¶ 32, 39. The balance
22 (the “Net Settlement Fund”) would be distributed to one or more Court-approved *cy pres* recipients.
23 SA ¶¶ 40-42. No portion of the Settlement Fund would revert to Google. *Id.* ¶ 32.

24 After payment of settlement administration expenses, Court-approved service awards and
25 attorneys’ fees and costs, the Net Settlement Fund would be distributed to Court-approved *cy pres*
26 recipients within 60 days of the Effective Date. SA ¶¶ 41.2, 42. The proposed recipients must be
27 “independent 501(c)(3) organizations with a track record of addressing privacy concerns on the
28 Internet (either directly or through grants) and . . . shall use the funds to promote the protection of

1 internet privacy.” SA ¶ 41.2.

2 The Parties propose 17 entities identified in Exhibit D of the Settlement Agreement as *cy*
3 *pres* recipients. These include educational institutions with track records of cutting-edge public
4 interest research and education regarding online privacy issues, influencing the course of privacy
5 policy and action across the country (the Berkman Klein Center for Internet & Society at Harvard
6 University, MIT’s Internet Policy Research Initiative, New York University’s Information Law
7 Institute, Yale Law School’s Information Society Project, the Fordham University Center on Law
8 and Information Policy); a non-profit news organization that employs trained technologists to
9 conduct independent research, and has a reputation for breaking news regarding internet privacy
10 issues in the technology industry (The Markup); an organization which serves a critical role in
11 enabling access for researchers, historians, scholars, and the general public to otherwise ephemeral
12 sources on the web—records critical to protecting consumer choice and privacy (Internet Archive);
13 public interest research and consumer advocacy organizations that focus on consumer privacy rights
14 and issues (the ACLU’s Speech, Privacy, and Technology Project, the ACLU of Northern
15 California’s Technology and Civil Liberties Program, the Center for Democracy & Technology,
16 Connect Safely, the Electronic Frontier Foundation, FPF Education & Innovation Foundation, and
17 Privacy Rights Clearinghouse); individual researchers whose work will advance the public
18 understanding of privacy rights and means of securing them (the Data & Society Research
19 Institute); and the Rose Foundation for Communities and the Environment, which is well-
20 positioned to ensure that additional organizations meeting the nexus of this Class and the claims at
21 issue here are able to obtain and dedicate funding from this Settlement to serving Class members.
22 *See* Joint Decl. ¶ 34. The proposed *cy pres* awards account for the nature of Plaintiffs’ lawsuit and
23 the interests of silent class members. *See Lane v. Facebook*, 969 F.3d 811, 819-820 (9th Cir. 2012).
24 Plaintiffs are soliciting detailed proposals from the organizations regarding how they would use the
25 *cy pres* awards if approved, which they hope to submit with their Reply brief.

26 As a condition of receiving any portion of the Settlement Fund, each Approved *Cy Pres*
27 Recipient shall provide a report to the Court and the Parties every six months regarding how any
28 portion of the Settlement Fund allocated to it has been used and how remaining funds will be used.

1 SA ¶ 41.4. Class Counsel shall ensure that such reports are posted on the Settlement Website. *Id.*

2 **C. Injunctive Relief**

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

16 **D. The Settlement’s Notice Plan**

17 The proposed Class Notice is attached as Exhibit A to the Settlement Agreement. Notice
18 will be disseminated via a targeted digital media campaign specifically designed to reach Class
19 Members. SA Ex. B Declaration of Cameron R. Azari, Esq. (“Azari Decl.”), ¶¶ 22-50. A Settlement
20 Website will include all important information, deadlines, and the Class Notice. SA ¶ 26.41. The
21 Settlement Website also will provide access to relevant case documents such as the operative
22 complaint, the Settlement Agreement, the Preliminary Approval Order, any application for the
23 Attorneys’ Fees and Expense Award or Service Awards, any brief filed by the Parties in support of
24 the Settlement and, once issued, the Final Approval Order and Final Judgment. SA ¶ 26.41; Azari
25 Decl. ¶ 47. A toll-free telephone number, email, and physical mailing address will be available for
26 Class Members to contact the Settlement Administrator directly. SA ¶¶ 65.2-65.3; Azari Decl. ¶¶
27 47-49. The costs of Notice will be paid out of the Settlement Fund. SA ¶¶ 66, 69. The Notice Plan
28 is the best practicable notice under the circumstances, meets all due process requirements, and is

1 expected to reach at least 80% of the Settlement Class. Azari Decl. ¶¶ 52-54.

2 **E. Attorneys' Fees and Expenses, and Class Representative Service Awards**

3 Class Counsel will file a motion for an award of reasonable attorneys' fees, reimbursement
4 of costs and expenses, and service awards for the Class Representatives, at least 35 days prior to
5 the Objection Deadline. SA ¶¶ 58, 61. The sums requested (see *infra* Section IV.B.vii) will be
6 disclosed in the Class Notice. Joint Decl. ¶¶ 38-41; SA ¶ 61 and Ex. A at Question 13.

7 Any approved service awards, attorneys' fees, and expenses will be paid out of the
8 Settlement Fund. SA ¶ 59. The Settlement is not conditioned upon the Court's approval of any
9 service award, attorneys' fees, or expenses, and Google may oppose. SA ¶¶ 62-63.

10 **F. The Settlement Administrator**

11 The Parties propose that Epiq, an experienced and reputable national class action
12 administrator, serve as Settlement Administrator to provide Notice to the Class and all other
13 services necessary to implement the Settlement. SA ¶ 26.36; *see generally* Azari Decl. ¶¶ 4-12 &
14 Attach. 1. Settlement administration expenses will be paid out of the Settlement Fund. SA ¶ 66.

15 Epiq was selected after a competitive bidding process. Joint Decl. ¶ 28. Class Counsel vetted
16 and considered proposals from five potential administrators. *Id.* Class Counsel—each of whom
17 have litigated hundreds of class actions to settlement—previously have worked with Epiq, the four
18 other bidders, as well as other professional administrators. *Id.* Class Counsel was able to negotiate
19 a cap on the total notice and administrative costs. Azari Decl. ¶ 56. The estimated cost of \$561,153
20 to \$589,211 for class notice and settlement administration is reasonable. Joint Decl. ¶ 29.

21 **IV. ARGUMENT**

22 **A. The Legal Standards for Preliminary Approval**

23 In deciding whether to approve a proposed settlement, the Ninth Circuit has a “strong
24 judicial policy that favors settlements, particularly where complex class action litigation is
25 concerned.” *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 556 (9th Cir. 2019); *Officers*
26 *for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). “[T]here is an overriding
27 public interest in settling and quieting litigation,” and this is “particularly true in class action suits.”
28 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

1 At the preliminary approval stage, the Court must determine that it “will likely be able to:
 2 (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on
 3 the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Specifically, in evaluating a proposed settlement, the
 4 Court should consider whether “(A) the class representatives and class counsel have adequately
 5 represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for
 6 the class is adequate . . . ; and (D) the proposal treats class members equitably relative to each
 7 other.” Fed. R. Civ. P. 23(e)(2).²

8 Prior to class certification, class settlements must withstand a “higher level of scrutiny for
 9 evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e)
 10 before securing the court’s approval as fair,” to ensure that “the settlement is not the product of
 11 collusion.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

12 The Northern District of California’s Procedural Guidance for Class Action Settlements
 13 (“Guidance”) covers most of these requirements. The Settlement satisfies the Guidance
 14 requirements, Rule 23(e), the *Churchill* factors, and all other requirements for preliminary approval.

15 **B. The Settlement Satisfies the Northern District’s Guidance**

16 **i. Guidance 1a-b: Differences Between Class Definitions**

17 A class has not yet been certified. The proposed Settlement Class is: “all natural persons
 18 residing in the United States who used one or more mobile devices and whose Location Information
 19

20 ² Rule 23(e)(2), as amended, was not intended “to displace any factor” courts have articulated as
 21 relevant to the decision whether to approve a class settlement as fair and adequate. Fed. R. Civ. P.
 22 23(e)(2), 2018 Adv. Comm. Note. In the Ninth Circuit, these factors include: “(1) the strength of
 23 the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of future litigation; (3) the
 24 risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5)
 25 the extent of discovery completed and the stage of the proceedings; (6) the experience and views
 26 of counsel; (7) the presence of a governmental participant; and (8) the reaction of class members to
 27 the proposed settlement.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir.
 28 2015) (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

1 was stored by Google while ‘Location History’ was disabled at any time during the Class Period
 2 (January 1, 2014 through the Notice Date).” SA ¶ 28. The Settlement Class definition tracks the
 3 class definition in the operative FAC, with three exceptions: (1) “Location Information” was not
 4 defined in the FAC, but is defined in the Settlement Agreement for clarity; (2) the Settlement Class
 5 period is incorporated into the Settlement Class definition, but was not defined in the FAC; and (3)
 6 Plaintiffs do not seek certification for settlement purposes of three subclasses proposed in the FAC.
 7 FAC ¶ 140 (defining an “Android Class,” an “Apple Class,” and a “Parent Subclass”). Courts
 8 routinely approve more extensive departures from proposed litigation classes. *See, e.g., Carlotti v.*
 9 *ASUS Computer Int’l*, No. 18-cv-03369, 2019 WL 6134910, at *14 (N.D. Cal. Nov. 19, 2019)
 10 (approving settlement class narrower than class in complaint); *In re Chrysler-Dodge-Jeep*
 11 *Ecodiesel Mktng, Sales Practices, and Prods. Liab. Litig.*, No. 17-md-02777, 2019 WL 536661, at
 12 *3-7 (N.D. Cal. Feb. 11, 2019) (approving settlement with “simpler” class definition).

13 **ii. Guidance 1c.: Settlement Recovery Compared to Trial**

14 The proposed \$62 million recovery and injunctive relief is significant and adequate in
 15 comparison to the potential recovery if Plaintiffs prevailed after trial on each of their claims.

16 **Intrusion upon seclusion and California Constitutional privacy.** Plaintiffs’ common law
 17 and constitutional privacy claims allow for compensatory damages, restitution, punitive damages,
 18 nominal damages, and injunctive relief. *See, e.g., CACI No. VF-1800 (2023); Restatement*
 19 *(Second) of Torts § 652H (Am. L. Inst. 1977); Rutter Group, CAL. PRAC. GUIDE: CIV. PROC. TRIAL*
 20 *CLAIMS & DEF., Ch. 4(IV)-E; Cf. Cummings v. Connell, 402 F.3d 936, 944 (9th Cir. 2005)* (“Where
 21 a plaintiff proves a violation of constitutional rights, nominal damages must be awarded as a matter
 22 of law.”). Calculating class-wide damages under the claims asserted here is inherently uncertain
 23 and would have drawn significant challenges from Google. Plaintiffs have not sought compensation
 24 for past financial expenditures, which would have raised objections regarding individualized
 25 inquiries, and potential punitive damages would be a matter for the jury. In any event, given the
 26 large size of the class, damages, while difficult to estimate, could be substantial.

27 **Unjust enrichment.** Plaintiffs’ unjust enrichment claim allows for possible disgorgement
 28 of advertising revenue wrongfully derived from class members’ Location Information. While

1 Google’s revenues are substantial, there is significant risk associated with the inevitably competing
2 expert evidence that quantifies the portion of those revenues attributable to the unlawful conduct.
3 For example, Google has taken the position that the Court “limited Plaintiffs’ unjust-enrichment
4 claim to data collected ‘when users did *not* interact with Google apps or services.’ Dkt. 293 at 4
5 (quoting MTD Order, Dkt. 162 at 15). Despite that Google’s total U.S. advertising revenues during
6 the Class Period exceed \$600 billion (based on a review of the company’s annual filings since
7 2014), there not only is risk associated with proving the offending conduct during that entire period,
8 but also risk that a fact finder concludes there is insufficient evidence to attribute any of that revenue
9 to the offending conduct. In addition, Google entered into various settlements with various state
10 attorneys general and may argue that those recoveries—totaling approximately \$500 million—
11 should offset any recovery here.

12 Although Plaintiffs believe their case is strong, class certification is warranted, and that a
13 jury could find Google liable, there is a great deal of uncertainty as to whether the Court would
14 grant certification, deny a motion for summary judgment, and accept Plaintiffs’ damages models.
15 And similar uncertainty exists as to whether a jury would find Plaintiffs entitled to all damages they
16 sought. The risks here are particularly acute given the Court’s holding that Plaintiffs’ claims depend
17 on proof of “continuous and comprehensive” tracking and storage of Location Information, and
18 the evidentiary burden Plaintiffs would bear in further pretrial and trial proceedings. Dkt. 162. at 8.
19 That risk is amplified given Google’s likely arguments in opposition to class certification. *See, e.g.,*
20 *Hart v. TWC Prod. & Tech. LLC*, No. 20-cv-03842, 2023 WL 3568078, at *10-11 (N.D. Cal. Mar.
21 30, 2023) (denying certification because “[t]he common question of whether users maintained a
22 reasonable expectation of privacy . . . necessitates an individualized factual inquiry into whether
23 individual users understood that their affirmative responses to the permission prompts enabled
24 TWC to use the location data it collected”); *Brown v. Google, LLC*, No. 20-cv-03664, 2022 WL
25 17961497, at *19 (N.D. Cal. Dec. 12, 2022) (denying certification of privacy claims under Rule
26 23(b)(3) because “the inquiry into implied consent . . . creates individualized issues that defeat
27 predominance”); *In re Google Inc. Gmail Litig.*, No. 13-md-02430-LHK, 2014 WL 1102660, at
28 *18 (N.D. Cal. Mar. 18, 2014) (denying certification of wiretapping claims because the issue of

1 consent would require individualized inquires as to which disclosures each viewed).

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

9 In short, given the anticipated disputes that would inevitably lie ahead, including summary
10 judgment (when Google might prevail by establishing it did not continuously and comprehensively
11 track class members throughout the Class Period) and class certification (when Google might
12 prevail by establishing that individualized issues regarding consent would predominate), Plaintiffs
13 faced significant risk. And, even if Plaintiffs successfully proved their case at trial, the amount of
14 recovery, if any, could vary widely. If anything were recovered, it would take years to secure, as
15 Google undoubtedly would appeal any adverse judgment. In comparison, the Settlement provides
16 a guaranteed, immediate, and substantial cash recovery of \$62 million, plus significant injunctive
17 relief custom-tailored to address the allegedly offensive practices.

18 **iii. Guidance 1e-g: The Settlement’s Plan of Allocation Merits Approval**

19 The proposed *cy pres* awards are the most effective means of providing a benefit to the
20 Settlement Class here. These distributions will meaningfully benefit Class Members by funding
21 activities that are in their interest and that serve the goals of this litigation.

22 Where individual distributions would not be economically viable, *cy pres* awards are viewed
23 as the best and most effective means of benefiting class members. *See In re Google Inc. Street View*,
24 21 F.4th at 1115 (affirming approval of settlement providing for injunctive relief and *cy pres*
25 monetary award, where “self-identification” by class members whose wi-fi network data was
26 collected by Google “would be pure speculation”); *Six (6) Mexican Workers v. Ariz. Citrus*
27 *Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990) (“[F]ederal courts have frequently approved [*cy pres*]
28 in the settlement of class actions where the proof of individual claims would be burdensome or

1 distribution of damages costly.”).

2 Here, distribution to class members is economically infeasible. Plaintiffs allege Google
3 stored Location Information collected via mobile devices despite users’ Location History settings
4 being disabled during the Class Period, and thus consider each U.S. mobile device user with a
5 Location History setting that was turned off at any point during the Class Period to be a Settlement
6 Class Member. The Location History setting was off by default throughout the Class Period. *See*,
7 *e.g.*, SA Ex. A at Question 2.

8 According to Epiq, there are approximately 247.7 million U.S. adults with mobile devices.
9 Joint Decl. ¶ 31. Google asserts it has billions of U.S. accounts associated with such people.
10 Declaration of Daniel Talavera (“Talavera Decl.”) ¶ 7. Because U.S. Google accounts (each of
11 which has a Location History setting) far outnumber U.S. adults with mobile devices, Plaintiffs
12 believe the number of U.S. adults with mobile devices roughly approximates the size of the
13 Settlement Class.

14 Accordingly, were Google to email each class member at a single email address (despite
15 having multiple email addresses for many), and offer each an automatic payment via Google Pay,
16 each class member’s share, assuming administration costs were unrealistically capped at the cost
17 of publication notice proposed here to achieve the same Net Settlement Fund, would be a *de minimis*
18 sum of approximately 17¢. Of course, de-duplicating multiple Google accounts per individual and
19 addressing claims of individuals who deleted their accounts would be time- and resource-intensive
20 (if possible at all), and would drive up administration costs. If a claims process were implemented,
21 Plaintiffs expect the Settlement would receive significant media attention, and the response rate
22 could be similar to or higher than the rate recently reported in *In re Facebook Consumer Privacy*
23 *User Profile Litig.*, No. 18-md-02843 (N.D. Cal.)—around 7%. If that were achieved, each claimant
24 would be expected to receive approximately \$2.50. *See* Bonnie Eslinger, *Facebook Jurist ‘Blown*
25 *Away’ By Record Reply To \$725M Deal*, LAW360, Sept. 7, 2023.

26 The Settlement’s *cy pres* distribution will give the Class the greatest benefit of any form of
27 monetary relief that could be realized here. The Settlement Class will benefit from millions of
28 dollars in donations to qualified organizations with a track record of addressing privacy concerns

1 on the Internet. SA ¶ 41.2. The donations to these organizations will benefit the Class by aiding
2 consumers in protecting themselves and their privacy online in the future. *See Lane*, 696 F.3d at
3 821 (*cy pres* supported where “direct monetary payments . . . would be infeasible given that each
4 class member’s direct recovery would be de minimis.”).

5 Further, the Settlement Fund of \$62 million here is large in the context of comparable
6 settlements. *See, e.g., In re Google Inc. Street View*, 21 F.4th at 1109 (affirming final approval of
7 settlement providing \$13 million in *cy pres* and injunctive relief where the class size was 60
8 million); *Campbell*, 2017 WL 3581179, at *4 (approving settlement providing injunctive relief only
9 and no monetary relief); *In re Google Referrer Header Privacy Litig.*, 869 F.3d 737, 740 (9th Cir.
10 2017), *vacated on other grounds by Frank v. Gaos*, 139 S. Ct. 1041 (2019) (affirming approval of
11 settlement providing for *cy pres* distribution of \$5.3 million); *Lane*, 696 F.3d 811 (unauthorized
12 disclosure of personal information; *cy pres* distribution of \$9.5 million); *In re Netflix Priv. Litig.*,
13 No. 11-cv-00379, 2013 WL 1120801, at *3 (N.D. Cal. Mar. 18, 2013) (approving settlement
14 including *cy pres* distribution of \$9 million in case involving alleged unauthorized storage of
15 personal information); *In re Google Buzz Privacy Litig.*, No. 10-cv-672-JW, 2011 WL 7460099, at
16 *4 (N.D. Cal. June 2, 2011) (approving settlement creating \$8.5 million *cy pres* fund to resolve
17 privacy claims of class estimated in the tens of millions).

18 Considering the myriad uncertainties of litigation and the immediate benefits offered to the
19 Class by the proposed Settlement, the Settlement Agreement offers the Class the greatest relief
20 possible and warrants preliminary approval.

21 **iv. Guidance 2: The Proposed Settlement Administrator**

22 The Parties request that the Court appoint Epiq as Settlement Administrator for the
23 Settlement. As described in Section III.G above, Epiq is an excellent choice selected through a
24 competitive bidding process involving four other potential administrators. Joint Decl. ¶ 28.

25 **v. Guidance 3: The Proposed Notice Plan**

26 Rule 23(c)(2)(B) requires that settlement notice be “the best notice that is practicable under
27 the circumstances, including individual notice to all members who can be identified through
28 reasonable effort.” Fed. R. Civ. P. 23(c); *see also* Fed. R. Civ. P. 23(e)(1)(B) (“The court must

1 direct notice in a reasonable manner to all class members who would be bound by the propos[ed
2 settlement].”). Notice “must generally describe[] the terms of the settlement in sufficient detail to
3 alert those with adverse viewpoints to investigate and to come forward and be heard.” *Lane v.*
4 *Facebook, Inc.*, 696 F.3d at 826 (9th Cir. 2012) (citation omitted). “The means [of notice] employed
5 must be such as one desirous of actually informing the absentee might reasonably adopt to
6 accomplish it. The reasonableness and hence the constitutional validity of any chosen method may
7 be defended on the ground that it is in itself reasonably certain to inform those affected.” *Mullane*
8 *v. Cent. Hanover Bank Trust Co.*, 339 U.S. 306, 315 (1950).

9 Google states that its “data-collection practices and systems make it infeasible to identify
10 the individuals who fit the class definition.” Talavera Decl. ¶ 3. While Plaintiffs take no position
11 on whether Google could identify the email addresses of a significant portion of the Settlement
12 Class, the question need not be resolved. Publication notice would be necessary regardless because
13 any list of email addresses would be significantly under-inclusive of former Google users, given
14 that Google “may not have reliable contact information for a user” who “deleted their account or
15 stopped using it.” *Id.* ¶ 8. Further, it would be extremely challenging to search for alternative contact
16 information associated with abandoned Google accounts. Publication notice is thus the only
17 reasonable way to reach former users, and those same digital advertisements would also target all
18 Settlement Class Members.

19 In sum, because Google cannot generate a comprehensive class list, publication notice is
20 the best notice here. *See, e.g., In re MetLife Demutualization Litig.*, 262 F.R.D. 205, 208 (E.D.N.Y.
21 2009) (“The best practicable notice under the circumstance is notice by publication in newspapers.
22 In view of the millions of members of the class, notice to class members by individual postal mail,
23 email or radio or television advertisements, is neither necessary nor appropriate.”); *Schneider v.*
24 *Chipotle Mexican Grill, Inc.*, No. 16-cv-02200, 2019 WL 1512265, at *3 (N.D. Cal. Apr. 8, 2019)
25 (ordering publication notice and denying request to issue direct notice via email to an email list not
26 coextensive with class membership); *In re Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534,
27 545-46 (N.D. Ga. 1992) (requiring publication notice only where defendant’s list of potential class
28 members was both over- and under-inclusive). Plaintiffs propose a comprehensive digital media

1 campaign that is well-designed “to inform those affected,” given that class members by definition
2 use digital devices. *Mullane*, 339 U.S. 306 at 315. This is the best practicable notice given the
3 enormous size and composition of this Settlement Class.

4 **Publication Notice.** Notice to Class Members will include a comprehensive publication
5 plan that conforms to all applicable rules and guidelines. The proposed notice plan includes Gmail
6 inbox ads and targeted digital advertising including banners, audio, and video ads designed to target
7 Settlement Class Members and attain the widest reach possible. Azari Decl. ¶¶ 32-24, 38-47. The
8 Notice Plan is well-designed to reach Class Members and is the best notice practicable. *Id.* ¶¶ 52-
9 54; *accord Noll v. eBay, Inc.*, 309 F.R.D. 593, 604-05 (N.D. Cal. 2015) (“While Rule 23 requires
10 that reasonable efforts be made to reach all class members, it does not require that each individual
11 actually receive notice.”). The Class Notice forms are clear and, together with the Settlement
12 Website, provide all the information Settlement Class Members possibly might require to make an
13 informed decision as to how to respond. Azari Decl. ¶¶ 47-50. The Notice program therefore
14 satisfies the requirements of Rule 23. *Id.* ¶¶ 53-54.

15 **Settlement Website.** The Settlement Administrator will create the Settlement Website,
16 which will remain active until at least 90 days after the Settlement’s Effective Date. SA ¶ 65.2. Key
17 documents will be available here, and the website will notify Class Members of their rights to object
18 or opt out and inform Class Members that they should monitor the Settlement Website for
19 developments. The Settlement Administrator also will establish a toll-free telephone number and
20 P.O. Box to which Class Members may submit questions. Azari Decl. ¶¶ 48-49.

21 **vi. Guidance 4 and 5: Opt-Outs and Objections**

22 The proposed Notice complies with Rule 23(e)(5) and: (a) describes the nature of the Action
23 and the proposed Settlement, including information on the definition of the Settlement Class, (b)
24 directly states that the Settlement does not entitle class members to any direct payment and explains
25 how the proposed Settlement would provide indirect relief through the *cy pres* beneficiaries; (c)
26 describes what claims are released under the proposed Settlement; (d) advises Settlement Class
27 Members that, if they do not file valid exclusion requests, they will release their claims; (e) informs
28 Settlement Class Members of their right to opt out; (f) informs Settlement Class Members of their

1 right to object to the proposed Settlement, Attorneys' Fees and Expenses Award, and/or Service
2 Awards and to appear at the Final Approval Hearing; (g) informs Settlement Class Members that
3 fees and expenses related to the Settlement Administrator will be deducted from the Settlement
4 Fund, and the maximum Fees and Expenses Award and Service Awards to be sought; and (h)
5 informs the Settlement Class about the Proposed *Cy Pres* Recipients. SA ¶ 64.

6 **vii. Guidance 6: The Intended Attorneys' Fees and Expenses Request**

7 Class Counsel anticipate seeking attorneys' fees up to 30% of the Settlement Fund (i.e., up
8 to \$18.6 million), plus reimbursement of reasonable out-of-pocket expenses currently totaling
9 approximately \$145,000. Joint Decl. ¶ 39. Google has the right to oppose Class Counsel's request,
10 but the 30% fee award would be appropriate considering the results achieved for the Class. SA ¶ 63.
11 It also will be supported by a lodestar cross-check, given that Plaintiffs' Counsel's total lodestar,
12 through June 30, 2023 (the last reporting deadline as of this filing), totals approximately \$10.8
13 million for approximately 17,000 hours of work. Joint Decl. ¶ 39. Though Class Counsel anticipate
14 reporting a higher lodestar with their Fee Motion, at this amount, the maximum fee request would
15 represent a modest multiplier of 1.7. *Id.* Class Counsel will detail the work, hours, lodestar, and
16 expenses in their fee and expense motion.

17 **viii. Guidance 7: Service Awards**

18 Service Awards "have long been approved in the Ninth Circuit," *In re Apple Inc. Device*
19 *Performance Litig.*, No. 18-md-02827, 2021 WL 1022866, at *11 (N.D. Cal. Mar. 17, 2021), and
20 are "fairly typical in class action cases," *Rodriguez v. West Publg. Corp.*, 563 F.3d 948, 958 (9th
21 Cir. 2009). Plaintiffs have been dedicated and active participants in this litigation. Joint Decl. ¶ 40.
22 They assisted in the investigation, participated in the plaintiff vetting process implemented by their
23 respective counsel and by Class Counsel after appointment, reviewed and approved the complaints,
24 kept in close contact with counsel to monitor the progress of the litigation, and communicated with
25 counsel regarding the Settlement. *Id.* Plaintiffs spent significant time responding to extensive and
26 broad discovery served by Google, including invasive collection of comprehensive personal data
27 from their phones, email, and Google accounts, despite privacy concerns. Plaintiffs provided their
28 mobile devices to Class Counsel's forensic data experts. *Id.* ¶ 41. Plaintiffs put their names and

1 reputations on the line for the sake of the Class. Joint Decl. ¶ 41. The Class recovery here would
 2 not have been possible without their efforts. Given the time and risk Class Representatives took on
 3 to participate in this Action, Class Counsel will petition the Court for approval of Service Awards
 4 in the amount of \$5,000 each. *Id.* These amounts will be disclosed in the Class Notice. *Id.*

5 **ix. Guidance 8: Proposed *Cy Pres* Recipients**

6 The Parties propose the *cy pres* recipients identified in Section III.C., above. Each proposed
 7 recipient is an independent 501(c)(3) organization with a track record of addressing privacy
 8 concerns on the Internet (either directly or through grants), and as a condition of becoming
 9 Approved *Cy Pres* Recipients and receiving any portion of the Settlement Fund (*see* SA ¶ 41.2),
 10 they each will have provided a specific proposal demonstrating and committing how they will use
 11 the funds to promote the protection of internet privacy. Joint Decl. ¶¶ 34-36.

12 Where class action settlements provide for a *cy pres* remedy, “[t]he district court’s
 13 review . . . is not substantively different from that of any other class-action settlement,” with one
 14 exception. *Lane*, 696 F.3d at 819-820. *Cy pres* “awards [must] meet a ‘nexus’ requirement by being
 15 tethered to the objectives of the underlying statute and the interests of the silent class members.”
 16 *In re Google Referrer Header Privacy Litig.*, 869 F.3d at 743 (*citing Nachshin v. AOL, LLC*, 663
 17 F.3d 1034, 1039 (9th Cir. 2011)).

18 The proposal that funds be distributed to potential *cy pres* recipients here complies with the
 19 directives from the Ninth Circuit because the funds will be used to promote the protection of
 20 Internet privacy. When Plaintiffs file their papers in support of Final Approval—after specific
 21 proposals are received from Proposed *Cy Pres* Recipients—the Parties will identify for the Court,
 22 a proposed percentage of the Net Settlement Fund to be distributed to each Approved *Cy Pres*
 23 Recipient. *Id.* ¶ 41.3. To the extent some or all the Proposed *Cy Pres* Recipients do not become
 24 Approved *Cy Pres* Recipients, the Parties may mutually agree to nominate additional Proposed *Cy*
 25 *Pres* Recipients, if so requested or directed by the Court. In the event the Parties are unable to agree
 26 on additional Proposed *Cy Pres* Recipients to propose after meeting and conferring in good faith,
 27 each Party may submit Proposed *Cy Pres* Recipients unilaterally. *Id.*

28

1 **x. Guidance 9: Proposed Timeline**

2 The Parties suggest a schedule based on the following intervals:

Event / Deadline	Proposed Time for Compliance
Notice Date	No later than 30 days after the Court's entry of the Preliminary Approval Order. SA ¶ 26.20
Objection Deadline	91 days after the Notice Date. SA ¶ 26.22
Exclusion (Opt-Out) Deadline	91 days after the Notice Date. SA ¶ 26.23
Deadline to file Motions for Attorneys' Fees and Expenses and Class Representative Service Awards	35 days prior to the Objection Deadline. SA ¶¶ 58, 61
Deadline to file Motion for Final Approval	21 days after the Request for Exclusion (Opt-Out) Deadline. SA ¶ 26.13
Oppositions to Motion for Final Approval	14 days after Motion for Final Approval
Reply in Support of Motion for Final Approval	21 days after Oppositions to Motion for Final Approval
Final Approval Hearing	In light of the deadlines above, no earlier than 200 days after the Court's entry of the Preliminary Approval Order.

14 **xi. Guidance 10: Class Action Fairness Act**

15 The Administrator will serve the notice required by the Class Action Fairness Act, 28 U.S.C.
16 § 1715, no later than 10 days after this filing. SA ¶ 97.

17 **xii. Guidance 11: Comparable Outcomes**

18 In *In re Google Inc. Street View*, the Ninth Circuit affirmed approval of a comparable *cy*
19 *pres* settlement distribution. In that case, plaintiffs alleged that Google used its Street View vehicles
20 to intentionally intercept and store electronic communications transmitted by class members over
21 unencrypted wireless internet connections. 21 F.4th at 1108-09. The settlement covered
22 approximately 60 million members, provided for injunctive relief and a \$13 million settlement fund
23 which, after subtracting attorneys' fees and other payments, would be distributed to nonprofit
24 organizations involved in addressing consumer privacy issues. *Id.* at 1109, 1114-15.

25 *In re Google Buzz Privacy Litig.*, No. 10-00672, 2011 WL 7460099 (N.D. Cal. June 2,
26 2011), was a privacy class action brought on behalf of a class estimated to be in the tens of millions
27 and included allegations that defendant Google disseminated the personal information of users of
28 its Google Buzz program in violation of federal privacy-related statutes. The settlement included

1 an \$8.5 million fund to be distributed to third-party *cy pres* recipients for the purpose of furthering
2 consumer privacy protection. *Id.* The court found that the *cy pres* distribution would provide “an
3 indirect benefit to the Class Members consistent with the Class Members' claims.” *Id.* at *4.

4 *In re Netflix Priv. Litig.*, No. 11-00379, 2013 WL 1120801 (N.D. Cal. Mar. 18, 2013), was
5 a putative class action challenging the way defendant retained and used its subscribers’
6 Entertainment Content Viewing Histories and other personally identifiable information allegedly
7 in violation of the Video Protection Privacy Act (“VPPA”), which provides for statutory damages.
8 The Court approved a settlement that provided for *cy pres* distribution of \$9 million where the class
9 size was approximately 62 million. *Id.* at *7.

10 In *Lane*, the Ninth Circuit affirmed approval of a *cy pres* distribution similar to that
11 proposed here. The case, brought on behalf of a class of millions, involved alleged violations of the
12 VPPA and other privacy statutes based on allegations that defendant Facebook gathered and
13 disseminated the personal information of its members. The settlement agreement included a \$9.5
14 million fund which, after subtracting attorneys’ fees and other awards and costs, would be used by
15 Facebook to set up a new charity organization whose stated purpose would be to “fund and sponsor
16 programs designed to educate users, regulators[,] and enterprises regarding critical issues relating
17 to protection of identity and personal information online through user control, and the protection of
18 users from online threats.” *Lane*, 696 F.3d at 817. The Ninth Circuit concluded this settlement
19 warranted approval because, in addition to the \$9.5 million pay-out being a “substantial” sum for
20 this type of class action, “it would be burdensome and inefficient to pay the \$6.5 million in *cy*
21 *pres* funds that remain after costs directly to the class because each class member’s recovery under
22 a direct distribution would be *de minimis*.” *Id.* at 824–25 (internal quotation marks omitted).

23 The present Settlement compares favorably to these and other class settlements alleging
24 digital privacy violations. *See e.g.*, *In re Google Plus Profile Litig.*, No. 18-cv-06164, 2021 WL
25 242887, at *1 (N.D. Cal. Jan. 25, 2021) (\$7.5 million for 161 million Google+ users in data breach
26 case); *In re: Vizio, Inc., Consumer Privacy Litigation*, 16-ml-02693 (C.D. Cal. July 31, 2017) (\$17
27 million for 16 million potential claimants for unauthorized collection and disclosure of information
28 from customers’ VIZIO smart TVs, including IP addresses and device identifiers); *In re LinkedIn*

1 *User Priv. Litig.*, 309 F.R.D. 573, 582 (N.D. Cal. 2015) (\$1.25 million for claims related to
2 approximately 6.4 million LinkedIn users’ stolen account passwords). Furthermore, Plaintiffs here
3 successfully obtained substantive and meaningful injunctive relief. And while a handful of privacy
4 settlements in recent years have resulted in larger absolute recoveries—*e.g.*, *In re Facebook*
5 *Biometric Information Privacy Litig.*, 15-cv-03747-JD (N.D. Cal.)—few involved solely common
6 law or constitutional privacy tort claims, without attendant statutory damages.

7 Google’s settlements with various state attorneys general in late 2022 and early 2023, which
8 resolved different claims relating to the same underlying conduct and which resulted in total
9 payments by Google exceeding \$500 million, are not comparable. Those settlements resolved state
10 enforcement actions, not consumer privacy class actions. Nonetheless, Plaintiffs faced the risk that
11 Google could argue that these settlements would offset any recovery here. This Settlement will not
12 affect those cases or settlements. *See* Guidance 1.d.

13 **C. The Settlement Is the Product of Arm’s-Length Negotiations and Is**
14 **Supported by Experienced Counsel**

15 None of the signs of collusion identified by the Ninth Circuit are present here. There is no
16 “free sailing provision.” *Bluetooth*, 654 F.3d at 942; SA ¶¶ 58, 63. There is no reversion of the
17 Settlement Fund—rather the Settlement will distribute the entire Settlement Amount. *See* SA ¶¶ 32,
18 40-42. Class Counsel will apply for fees from the Settlement Fund and had every incentive to secure
19 the largest fund possible. There has been no collusion or fraud in the settlement negotiations.

20 It required over a year of intense and contentious negotiations to reach the agreement
21 currently before the Court, including, for a time, a return to active litigation. Courts recognize that
22 the opinion of experienced counsel supporting settlement after arm’s-length negotiations “is
23 entitled to considerable weight.” *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal.
24 1980), *aff’d*, 661 F.2d 939 (9th Cir. 1981). Class Counsel conducted an extensive investigation into
25 the claims, and diligently prosecuted the case in the face of an aggressive and steadfast defense
26 mounted by a premier firm representing a defendant with unlimited resources. The Parties’
27 protracted and hard-fought negotiations included the determined assistance of an experienced
28 mediator, including three formal mediation sessions, and input from Magistrate Judge Spero. The

1 Parties submitted multiple comprehensive mediation briefs. *See Villegas v. J.P. Morgan Chase &*
 2 *Co.*, No. 09-cv-00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (noting that private
 3 mediation “tends to support the conclusion that the settlement process was not collusive”). The
 4 settlement was zealously and contentiously negotiated, and Class Counsel support the settlement as
 5 fair, reasonable, and adequate. Joint Decl. ¶¶ 22-29, 42-43.

6 **D. The Stage of the Proceedings and the Discovery Conducted Support Approval**

7 As discussed above, Class Counsel (and their co-counsel) engaged in extensive
 8 investigation, research, and analysis of the Class’s claims. The Parties engaged in approximately
 9 26 months of discovery, including: serving discovery requests and written responses; meeting and
 10 conferring; engaging in discovery motion practice, where necessary; and attending regular
 11 discovery conferences with Magistrate Judge Cousins. *See* Joint Decl. ¶¶ 7, 17-21. Defendant
 12 produced, and Plaintiffs reviewed (including while discovery was stayed), more than 500,000 pages
 13 of documents. *Id.* ¶ 17. In addition, Class Counsel consulted with several experts. *Id.* ¶¶ 7, 26, 42.
 14 This discovery allowed Plaintiffs to adequately evaluate the merits of their claims.

15 **E. Rule 23’s Requirements for Class Certification Are Met**

16 Parties seeking class certification for settlement purposes must satisfy the requirements of
 17 Fed. R. Civ. P. 23. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). “A court considering
 18 such a request should give the Rule 23 certification factors ‘undiluted, even heightened, attention
 19 in the settlement context.’” *Sandoval v. Roadlink USA Pac., Inc.*, No. 10-cv-00973, 2011 WL
 20 5443777, at *2 (C.D. Cal. Oct. 9, 2011) (quoting *Amchem*, 521 U.S. at 621). “[I]f a class has not
 21 [yet] been certified, the parties must ensure that the court has a basis for concluding that it likely
 22 will be able, after the final hearing, to certify the class.” Fed. R. Civ. P. 23, Adv. Comm. Notes to
 23 2018 Amendment. All the requirements of Rule 23(a) must be met, and “at least one of the three
 24 requirements listed in Rule 23(b).” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011).

25 **i. Class Representatives Satisfy Rule 23(a)’s Prerequisites**

26 **Numerosity—Rule 23(a)(1):** As explained above there are likely hundreds of millions of
 27 Settlement Class Members. There can be no doubt that numerosity is satisfied.

28 **Commonality—Rule 23(a)(2):** For purposes of Rule 23(a)(2), even a single common

1 question is satisfactory. *Wal-Mart*, 564 U.S. at 359; *see also Mazza v. Am. Honda Motor Co.*, 666
2 F.3d 581, 589 (9th Cir. 2012) (characterizing commonality as a “limited burden”). Questions about
3 how and why Google collected and stored Location Information, and what Google did or did not
4 disclose about its actions, at a minimum, are common to the Class.

5 **Typicality—23(a)(3)**: Plaintiffs are typical of the Settlement Class they seek to represent.
6 *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Each alleges that they took efforts
7 to prevent their mobile devices’ Location Information from being recorded and stored by Google,
8 and despite these efforts and contrary to Google’s representations, Google recorded and stored it.
9 Plaintiffs’ and Class Members’ claims arise from the same nucleus of facts, pertain to a common
10 defendant, and are based on the same legal theories. Plaintiffs are typical of other Class Members.

11 **Adequacy—Rule 23(a)(4)**: Plaintiffs have no conflicts with other Class Members. They
12 and Class Counsel prosecuted this Action vigorously on behalf of the Settlement Class and will
13 continue to do so. *Ebarle v. Lifelock, Inc.*, No. 15-cv-00258, 2016 WL 234364, at *4 (N.D. Cal.
14 Jan. 20, 2016) (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000)).

15 **ii. Plaintiffs Satisfy Rule 23(b)(3)’s Requirements**

16 Plaintiffs seek conditional certification under Rule 23(b)(3), which provides that a class
17 action can be maintained where: (1) the questions of law and fact common to members of the class
18 predominate over any questions affecting only individuals; and (2) the class action mechanism is
19 superior to the other available methods for the fair and efficient adjudication of the controversy.
20 Fed. R. Civ. P. 23(b)(3); *eBay*, 309 F.R.D. at 604.

21 **Predominance**: Every Class Member was subjected to the same alleged conduct—
22 invasions of widely held and reasonable expectations regarding their data, and Google’s wrongful
23 use of it—that caused them the same type of harm. The overarching questions at issue in this case
24 are common ones and can be resolved for all members of the proposed Settlement Class in a single
25 adjudication. *See, e.g., Abante Rooter & Plumbing, Inc. v. Pivotal Payments Inc.*, No. 16-cv-05486,
26 2018 WL 8949777, at *5 (N.D. Cal. Oct. 15, 2018); *In re Anthem, Inc. Data Breach Litig.*, 327
27 F.R.D. 299, 312 (N.D. Cal. 2018).

28 **Superiority**: Where, as here, a court is deciding the certification question in a settlement

1 context, it need not consider manageability issues because “the proposal is that there be no trial,”
 2 and hence manageability considerations are no hurdle to certification for purposes of settlement.
 3 *Amchem*, 521 U.S. at 620. Here, a class action is the only reasonable method to fairly and efficiently
 4 adjudicate Class Members’ claims against Google. *See, e.g., Phillips Co. v. Shutts*, 472 U.S. 797,
 5 809 (1985) (“Class actions . . . permit the plaintiffs to pool claims which would be uneconomical
 6 to litigate individually.”). Resolution of the predominant issues of fact and law through individual
 7 actions is impracticable: the amount in dispute for individual class members is too small, the
 8 technical issues involved are too complex, and the required expert testimony and document review
 9 too costly. *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1123 (9th Cir. 2017).

10 **F. The Court Should Appoint the Named Plaintiffs as Class Representatives**

11 The Court should appoint the named Plaintiffs as Class Representatives because they have
 12 no conflicts with the Settlement Class and are represented by qualified counsel who will vigorously
 13 prosecute the Class’s interests. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 943.

14 **G. The Court Should Appoint Class Counsel as Settlement Class Counsel**

15 Class Counsel were previously appointed on an interim basis. Dkt. 72. Considering
 16 counsel’s collective expertise and experience in handling similar actions, the resources they have
 17 committed to vigorously representing the Class over more than five years, and the result they have
 18 ultimately achieved, they should be appointed as Class Counsel for the proposed Settlement Class
 19 under Rule 23(g)(3) and confirmed under Rule 23(g)(1). Joint Decl. ¶¶ 7, 42-43; *see also* Dkt. 54.

20 **V. CONCLUSION**

21 For the reasons discussed above, Plaintiffs respectfully request the Court preliminarily
 22 approve the proposed Settlement; find that, for purposes of effectuating the proposed Settlement,
 23 the prerequisites for class certification under Rule 23(a) are likely to be satisfied; approve Notice
 24 and the selection of the Settlement Administrator; and set a final approval hearing.

25
 26 Respectfully submitted,

27 Dated: September 14, 2023

28 /s/ Tina Wolfson
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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 Preliminary Approval of Proposed Class Action Settlement; 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: September 14, 2023

/s/ Tina Wolfson
Tina Wolfson