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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN JOSE DIVISION**

21 IN RE GOOGLE PLUS PROFILE
22 LITIGATION

Case No. 5:18-cv-06164-EJD (VKD)

23 **ORDER GRANTING FINAL**
24 **APPROVAL OF CLASS**
25 **SETTLEMENT, AWARDING**
26 **REASONABLE ATTORNEYS'**
27 **FEEES, COSTS AND SERVICE**
28 **AWARDS; AND ENTERING FINAL**
JUDGMENT

1 **INTRODUCTION**

2 This matter came before the Court for hearing on November 19, 2020 and January 7, 2021,
3 pursuant to the Court’s Preliminary Approval Order dated June 10, 2020, (ECF No. 71), and on the
4 Plaintiffs’ Motion for Final Approval of Class Action Settlement, dated October 15, 2020, (ECF No.
5 95) seeking final approval of the Settlement Agreement (the “Settlement”), entered into by the parties,
6 and Plaintiffs’ Omnibus Response in Opposition to Objections to Proposed Settlement, dated
7 November 5, 2020, (ECF No. 99). The Court has also considered Class Counsel’s Motion for
8 Attorneys’ Fees, Costs, and Expenses and Service Awards, dated September 28, 2020. (ECF No. 88).
9 Due and adequate notice having been given to the Class Members of the proposed Settlement and the
10 pending motions, as directed by the Court’s Preliminary Approval Order, and upon consideration of
11 all papers filed and proceedings had herein, and good cause appearing, **IT IS HEREBY ORDERED,**
12 **ADJUDGED AND DECREED** as follows:¹
13

14 **PROCEDURAL HISTORY**

15
16 This case concerns the alleged exposure of Google+ users’ Profile Information as a result of
17 software bugs that Google, LLC (“Google”) announced on October 8, 2018, and December 10, 2018.
18 Following briefing from the parties on dismissal, the parties mediated this case with Mr. Randall W.
19 Wulff, an experienced mediator, reaching a settlement after significant arms-length negotiations.
20 (Dkt. 71, ¶ 6). The parties then memorialized the settlement into the Settlement Agreement (the
21 “Settlement”) and moved for preliminary approval on January 6, 2020, which this Court granted on
22 June 10, 2020, after a hearing on Plaintiffs’ Motion for Preliminary Approval of Class Action
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25 _____
26 ¹ Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the
27 Settlement.
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1 Settlement. (Dkts. 57, 71). The Court approved the program for disseminating notice to Settlement
2 Class Members as set forth in the Settlement and exhibits A and B attached thereto (the “Notice
3 Program”). (Dkts. 57-2, 71). The Court appointed Plaintiffs Matt Matic, Zak Harris, Charles Olson,
4 and Eileen M. Pinkowski as class representatives for the Class. (Dkt. 71, ¶ 7). The Court also
5 appointed as Class Counsel attorneys John A. Yanchunis and Ryan J. McGee of Morgan Complex
6 Litigation Group; Clayeo C. Arnold and Joshua H. Watson of Clayeo C. Arnold Professional Law
7 Corporation; and Franklin D. Azar and Margeaux R. Azar of Franklin D. Azar & Associates, PC.
8 (Dkt. 71, ¶ 8).

10 **SUMMARY OF SETTLEMENT TERMS**

11 Under the Settlement, Google stipulated to a nationwide settlement for the following Class:

12 All persons residing within the United States who (1) had a consumer Google+
13 account for any period of time between January 1, 2015 and April 2, 2019; and (2)
14 had their non-public Profile Information exposed as a result of the software bugs
Google announced on October 8, 2018 and December 10, 2018.

15 (the “Settlement Class”). Google agreed to a non-reversionary \$7,500,000.00 Settlement Fund to
16 cover all costs associated with the Notice Program, monetary benefits to members of the Settlement
17 Class, incentive awards for the class representatives, and Class Counsel’s attorneys’ fees, costs, and
18 expenses. The Settlement represents a fair resolution of the claims asserted on behalf of the Plaintiffs
19 and the Settlement Class Members in this Action and released by the Settlement, and fully and finally
20 resolves all such claims. Google, Plaintiffs, and the Settlement Class Members shall be bound by the
21 Settlement, including the Release provisions set forth in Sections 7.1 to 7.6 of the Settlement, which
22 is incorporated by reference herein, and by this Order and the Final Judgment entered in connection
23 with this Order.
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LEGAL STANDARD

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2 A class action may not be settled without court approval. Fed. R. Civ. P. 23(e). “If the proposal
3 would bind class members, the court may approve it only after a hearing and on finding that it is fair,
4 reasonable, and adequate.” *Id.* When the parties to a putative class action reach a settlement
5 agreement prior to class certification, “courts must peruse the proposed compromise to ratify both the
6 propriety of the certification and the fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938,
7 952 (9th Cir.2003). “[J]udges have the responsibility of ensuring fairness to all members of the class
8 presented for certification.” *Id.*

9
10 The law favors the compromise and settlement of class action suits. *See, e.g., Churchill Vill.,*
11 *LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir.2004); *Class Plaintiffs v. City of Seattle*, 955 F.2d
12 1268, 1276 (9th Cir.1992); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th
13 Cir.1982). “[T]he decision to approve or reject a settlement is committed to the sound discretion of
14 the trial judge because he is exposed to the litigants and their strategies, positions, and proof.” *Hanlon*
15 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998).

16
17 First, the district court must assess whether a class exists under Federal Rule of Civil
18 Procedure 23(a) and (b). “Such attention is of vital importance, for a court asked to certify a settlement
19 class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the
20 proceedings as they unfold.” *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Second, the
21 district court must carefully consider “whether a proposed settlement is fundamentally fair, adequate,
22 and reasonable” pursuant to Federal Rule of Civil Procedure 23(e), recognizing that “[i]t is the
23 settlement taken as a whole, rather than the individual component parts, that must be examined for
24 overall fairness.” *Hanlon*, 150 F.3d at 1026 (citations omitted).

1 An objector to a proposed settlement agreement bears the burden of proving any assertions
2 they raise challenging the reasonableness of a class action settlement. *United States v. State of*
3 *Oregon*, 913 F.2d 576, 581 (9th Cir.1990). The court iterates that the proper standard for approval of
4 the proposed settlement is whether it is fair, reasonable, adequate, and free from collusion—not
5 whether the class members could have received a better deal in exchange for the release of their
6 claims. *See Hanlon*, 150 F.3d at 1027 (“Settlement is the offspring of compromise; the question we
7 address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair,
8 adequate and free from collusion.”).

10 ANALYSIS

11 **A. The Settlement is Fair, Adequate, and Reasonable, and is therefore Finally Approved**

12 A court may approve a proposed class action settlement of a certified class only “after a
13 hearing and on finding that it is fair, reasonable, and adequate after considering whether: (A) the class
14 representatives and class counsel have adequately represented the class; (B) the proposal was
15 negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i)
16 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of
17 distributing relief to the class, including the method of processing class-member claims; (iii) the terms
18 of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement
19 required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably
20 relative to each other.” Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, the Court need
21 not address whether the settlement is ideal or the best outcome, but determines only whether the
22 settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the
23 class. *See Hanlon v. Chrysler Corp.*, 150 F.3d at 1027.
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1 The Court reaffirms that this Action is properly maintained as a class action, for settlement
2 purposes only, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and 23(e), and that Class
3 Counsel and the Plaintiffs, as class representatives, fairly and adequately represent the interests of the
4 Settlement Class Members. Specifically, for settlement purposes only, the Court finds that the
5 requirements of Federal Rule of Civil Procedure 23(a) are satisfied: The Class is so numerous that
6 joinder of all members is impractical. Moreover, there are issues that are common to the Class,
7 including whether Google took adequate steps to prevent users' non-public Profile Information from
8 exposure to third parties. Further, the Plaintiffs' claims arise from the same alleged course of conduct
9 and are typical of the Class. Finally, the Court finds that the Plaintiffs and Class Counsel have
10 adequately represented the class and that there are not conflicts among the class.
11

12 The Court finds that the Settlement, including the exhibits thereto, is fair, reasonable and
13 adequate to the Settlement Class Members, has been entered into in good faith, and should be and
14 hereby is fully and finally approved pursuant to Federal Rule of Civil Procedure 23. In granting final
15 approval of the Settlement, the Court has considered the factors that courts in this Circuit consider in
16 evaluating proposed class settlements. *See Churchill Village LLC v. General Electric Corp.*, 361 F.3d
17 566, 575 (9th Cir. 2004). The Court finds that, given the benefits provided to Settlement Class
18 Members pursuant to the Settlement; the strengths and weaknesses of the parties' respective claims
19 and defenses in the litigation; the risk, expense, complexity, and likely duration of further litigation;
20 the fact that significant discovery and litigation have occurred in this case; given the experience and
21 views of Class Counsel who have considerable experience litigating class actions and other complex
22 cases; and given the positive reaction of the Settlement Class Members—more than 1.8 million claims
23 were made with only 761 objections filed—the Settlement is fair, reasonable, and adequate and
24 should be approved. The Court finds that the Settlement was negotiated in good faith and at arms-
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1 length by the parties and their experienced counsel, with the assistance of a highly-capable mediator,
2 Mr. Randall W. Wulff, and is free of any evidence of collusion. *See In re Bluetooth Headset Prod.*
3 *Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). The Court further finds, pursuant to Federal Rule of
4 Civil Procedure 23(e)(2), that the Plaintiffs and Class Counsel have adequately represented the Class;
5 the Settlement here was negotiated at arms-length; the settlement benefits provided under the
6 Settlement are adequate in relation to the scope of the claims released; and that the Settlement treats
7 the Settlement Class Members equitably relative to each other.

9 The parties and Settlement Administrator are hereby directed to implement the Settlement in
10 accordance with the terms and provisions thereof.

11 **B. Response to Class Notice**

12 The Court finds that the notice provisions set forth under the Class Action Fairness Act, 28
13 U.S.C. § 1715, were complied with in this matter. The Court further finds that the program for
14 disseminating notice to the Settlement Class Members provided for in the Settlement, and previously
15 approved and directed by the Court (hereinafter, the “Notice Program”), has been implemented by
16 the Settlement Administrator and the Parties, and that such Notice Program, including the approved
17 forms of notice, is reasonable and appropriate and satisfies all applicable due process and other
18 requirements, and constitutes notice reasonably calculated under the circumstances to apprise
19 Settlement Class Members of the pendency of the Action, the terms of the Settlement, their right to
20 object to the Settlement, and their right to appear at the Final Approval Hearing.

23 Approximately 1,820,549 individuals submitted timely claim forms under the terms of the
24 Settlement. The Court provided objectors up to and including October 8, 2020, to submit timely
25 objections, (Dkt. 71), which resulted in 761 objections.

26 **1. Exclusions**

1 The Court has reviewed the list of Settlement Class Members requesting exclusion. (Dkt. 96-
2 1). The Court also notes that Objections 56, 70, 116, 208, 235, 237, 275, 532, 737, and 793 are also
3 requests for exclusion, rather than objections. All of these individuals (*i.e.*, the submitted list and the
4 enumerated objections) were timely requests for exclusion, therefore, the Court excludes these
5 individuals from the Settlement and all relief provided therein, including any release.
6

7 **2. Objections**

8 First, the Court notes objections were submitted after the objection deadline of October 8,
9 2020. The Court has reviewed those objections and deems them untimely, and these objectors
10 presented no legal basis for an extension of exception to their late filings. Therefore, all untimely
11 objections are overruled. Fed. R. Civ. P. 23(c)(2)(B)(vi), (e).
12

13 Next, as stated at the hearing, the Court has carefully reviewed and considered all timely
14 submitted objections. Objections 97, 103, 256, 368, 403, 464, 458, 547, 574, 602, and 763, as well as
15 Dkt. 73, lack standing. These individuals represented that they did not have Google+ accounts, did
16 not include private information in their accounts, or live outside of the United States. “It is well-
17 settled that only class members may object to a class action settlement.” *Moore v. Verizon Comm.,*
18 *Inc.*, No. C09-1823 SBA 2013 WL 4610764, *9 (N.D. Cal. Aug. 28, 2013) (citing *Gould v. Alleco,*
19 *Inc.*, 883 F.2d 281, 284 (4th Cir. 1989); Fed. R. Civ. P. 23(e)(5)). Therefore, because these individuals
20 are not Settlement Class Members by virtue of their very admissions, the Court overrules these
21 objections. *Id.* (citing *Californians for Disability Rights v. Cal. Dept. of Transp.*, 2010 WL 2228531,
22 at *8 (N.D. Cal. 2010).
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24 Some objectors objected to the Notice Program. *See, e.g.*, Objections 13, 54, 279, 555, 510,
25 570, and 780. The Court carefully reviewed the Notice Program prior to its implementation, and
26 found it to comply with all requirements under Federal Rule of Civil Procedure 23. These objections
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1 do not alter the Court’s analysis, and are therefore overruled. Similarly, Objection 356 questions
2 whether the Court has jurisdiction to resolve a nationwide class. Google is based in California and
3 this Court has jurisdiction to approve a national class pursuant to the Settlement. The Court overrules
4 this objection.

5 Some objectors requested that any settlement amount be sent via check instead of received by
6 PayPal or ACH transfer. *See, e.g.*, Objections 118, 221, 228, 244, 246, 305, 320, 378, 384, 446, 545,
7 554, 623, 652, 789, as well as Dkt. 81). The Court overrules these objections, but directs the
8 Settlement Administrator to determine whether sufficient information is available for any such
9 objector and, if that objector made a claim under the Settlement, to provide monetary payment to said
10 objector via check, sent via U.S. Mail.

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12 Some individuals failed to state a valid basis for objection. *See, e.g.*, Objections 163, 330,
13 443, 467, 569, 678, 755, 759, and 794). These objections both failed to state a valid basis for not
14 approving the Settlement and therefore fail to comply with the procedures set forth in the Notice
15 Program, *Hendricks v. StarKist Co.*, No. 13-cv-00729-HSG, 2016 WL 5462423, at *8 (N.D. Cal. Sep.
16 29, 2016), and failed to carry their burden of proving any assertions raised in challenging the
17 reasonableness of the Settlement. *United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990);
18 *Schechter v. Crown Life Ins. Co.*, No. 13-cv-5596, 2014 WL 2094323, at *2 (C.D. Cal. May 19,
19 2014). The Court overrules these objections.

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21 Some individuals stated that Google should not have any liability in this case. *See, e.g.*,
22 Objections 10, 12, 22, 24, 26, 33, 71, 87, 103, 107, 112, 119, 121, 128, 133, 150, 151, 155,
23 176, 225, 229, 234, 260, 265, 283, 286, 300, 302, 320, 324, 325, 327, 331, 332, 335, 337, 351,
24 354, 358, 362, 366, 367, 371, 372, 373, 419, 488, 493, 496, 511, 538, 546, 562, 572, 575, 577,
25 581, 586, 589, 590, 607, 643, 650, 657, 662, 764, and 795. “[T]he purpose of Rule 23(e)’s final
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1 approval process is the protection of absent class members, and not the defendant.” *In re TD*
2 *Ameritrade*, 2011 WL 4079226, *12 (citing *Officers for Justice v. Civil Service Com’n of City and*
3 *County of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982)). These objections are not germane to
4 the issue of whether the Settlement is fair, therefore the Court overrules these objections.

5
6 Some individuals objected to the per-claimant value of the Settlement. *See, e.g.*, Objections
7 9, 11, 16, 28, 32, 34, 37, 43, 44, 45, 46, 55, 60, 61, 66, 67, 68, 69, 72, 73, 74, 76, 81,
8 82, 83, 84, 85, 86, 88, 90, 94, 96, 98, 99, 104, 106, 110, 111, 115, 117, 122, 123, 124, 125, 126, 129,
9 134, 136, 137, 138, 145, 167, 169, 170, 173, 177, 179, 181, 182, 207, 209, 210, 211, 212, 213, 216,
10 217, 219, 220, 227, 229, 230, 235, 237, 238, 245, 248, 249, 255, 261, 277, 285, 287, 288, 289, 291,
11 292, 293, 298, 303, 308, 311, 319, 321, 323, 325, 326, 334, 353, 355, 357, 363, 370, 375, 377, 379,
12 381, 385, 390, 391, 394, 396, 397, 398, 399, 400, 402, 404, 405, 406, 407, 408, 409, 412, 413, 414,
13 415, 416, 420, 421, 422, 426, 427, 429, 433, 434, 435, 436, 437, 442, 444, 446, 447, 450, 453, 454,
14 459, 460, 461, 462, 465, 470, 473, 482, 483, 485, 491, 505, 509, 510, 516, 517, 518, 522, 533, 539,
15 540, 542, 543, 548, 550, 552, 555, 561, 563, 568, 570, 578, 580, 583, 584, 585, 588, 595, 598, 600,
16 603, 606, 608, 612, 617, 621, 622, 636, 637, 638, 640, 641, 642, 646, 649, 653, 655, 664, 673, 675,
17 676, 677, 682, 684, 693, 720, 734, 738, 739, 743, 744, 745, 756, 765, 769, 789, 780, 782, 785, as well
18 as Dkts. 77, 82, and 92. These objections fail to comply with the procedures set forth in the Notice
19 Program, *Hendricks*, 2016 WL 5462423, at *8 (N.D. Cal. Sep. 29, 2016), and failed to carry their
20 burden of proving the per-claimant value of the Settlement is unfair. *United States v. Oregon*, 913
21 F.2d at 581; *Schechter*, 2014 WL 2094323, at *2. Class Counsel provided a range of values for the
22 information at issue in this case, spanning from \$0.20 to \$29.60, with an average of \$2.50 per
23 individual. (Dkt. 57, p.14; Dkt. 57-5, ¶¶ 30–31). These objections provide no expert testimony, nor
24 any persuasive argument to the contrary, and the Court overrules these objections. *Edwards v.*
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1 *National Milk Producers Federation*, No. 11-cv-04766-JSW, 2017 WL 3616638, *2 (N.D. Cal. June
2 26, 2017) (overruling objections despite a conflict in expert valuations, and noting that “it is the
3 parties themselves, as opposed to the court or the objectors, who are in the best position to assess
4 whether a settlement fairly reflects their expected outcome in litigation.”). That a settlement does not
5 provide full compensation is not a basis for rejecting a settlement, considering the risks of proceeding
6 to trial, recovering nothing, “must be weighed against the uncertainty of recovering something.” *In*
7 *re TD Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 WL 4079226, *12 (N.D. Cal.
8 Sep. 13, 2011).

10 Some individuals objected to the deterrent relief, essentially that Google will not learn any
11 lessons because the value of the Settlement is not sufficient and has no lasting impact. *See, e.g.*,
12 Objections 17, 25, 104, 114, 115, 137, 154, 171, 173, 185, 211, 227, 233, 253, 271, 274,
13 287, 295, 304, 311, 321, 328, 329, 364, 391, 397, 406, 408, 409, 427, 435, 447, 456, 462, 479,
14 482, 497, 504, 513, 535, 551, 557, 558, 565, 583, 587, 593, 606, 612, 621, 636, 637, 642, 646,
15 660, 668, 684, 696, 720, 734, 736, 743, 745, 769, 770, 781, and 782. To the contrary, Google has
16 shuttered its consumer social media platform. The objections provide no expert testimony, nor any
17 persuasive argument to suggest this Settlement is unfair, unreasonable, or should be rejected, and the
18 Court overrules these objections. *Edwards*, 2017 WL 3616638, *2; *In re TD Ameritrade Account*
19 *Holder Litig.*, 2011 WL 4079226, *12.

22 At the hearings on final approval on November 19, 2020, and January 7, 2020, the Court also
23 heard from objectors Steven Davis, Edward Orr, and Paul Cammerena, and heard from Class Counsel
24 as to why their objections should be overruled. The Court overrules these objections.

25 3. Service Awards

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1 The district court must evaluate named plaintiffs' awards individually, using relevant factors
2 including “the actions the plaintiff has taken to protect the interests of the class, the degree to which
3 the class has benefitted from those actions, . . . [and] the amount of time and effort the plaintiff
4 expended in pursuing the litigation.” *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). “Such
5 awards are discretionary . . . and are intended to compensate class representatives for work done on
6 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
7 and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v. West*
8 *Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009). The Ninth Circuit has emphasized that
9 district courts must “scrutiniz[e] all incentive awards to determine whether they destroy the adequacy
10 of the class representatives.” *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1163 (9th Cir.
11 2013). Here Plaintiffs are seeking service awards of \$1,500 each. The Court finds these service
12 awards are reasonable given Plaintiffs’ protection of the Settlement Class’ interests, the benefits from
13 the Settlement, and the efforts of Plaintiffs in pursuing this case, and hereby awards service awards
14 of \$1,500 each, to Plaintiffs Matt Matic, Zak Harris, Charles Olson, and Eileen M. Pinkowski, to
15 compensate them for their commitments and efforts on behalf of the Settlement Class Members.
16 Google shall pay such amounts pursuant to the terms of the Settlement. The Court finds that the
17 requested service awards are reasonable, appropriate, and justified by the circumstances of the
18 Plaintiffs’ efforts and commitments on behalf of the Class. The Court overrules the objections to
19 service awards. *See, e.g.*, Objections 697 and 787; *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948 (9th
20 Cir. 2003); *Hadix v. Johnson*, 322 Fo.3d 895 (6th Cir. 2003).

24 4. Attorneys’ Fees and Costs

25 Class Counsel requests a fee award of \$1,875,000.00 in attorneys’ fees and costs. Google does
26 not oppose the fee request. The record is undisputed that the settlement negotiation was overseen by
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1 an experienced mediator and negotiated only after all relief was obtained for the Settlement Class and
2 therefore free from any collusion. *See, e.g., In re Volkswagen "Clean Diesel" Marketing, Sales*
3 *Practices, and Products Liability Litigation*, 2017 WL 1047834, at *4 (N.D. Cal., Mar. 17, 2017
4 (“Volkswagen's agreement not to oppose the application does not evidence collusion and was not
5 obtained by Class Counsel to Class Members' detriment.”); *G. F. v. Contra Costa Cty.*, 2015 WL
6 4606078, at *13 (N.D. Cal. July 30, 2015) (noting that “[t]he assistance of an experienced mediator
7 in the settlement process confirms that the settlement is non-collusive”).

9 Where a settlement involves a common fund, courts typically award attorneys' fees based on
10 a percentage of the total settlement. *See State of Fla. v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990); *In*
11 *re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming attorney's fee award of 33%
12 of the recovery); *Morris v. Lifescan, Inc.*, 54 F. App'x 663, 664 (9th Cir. 2003) (affirming attorney's
13 fee award of 33% of the recovery). When determining the value of the settlement, courts consider
14 both the monetary and non-monetary benefits conferred under the settlement terms. *See, e.g., Staton*
15 *v. Boeing Co.*, 327 F.3d 938, 972-74 (9th Cir. 2003); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 645
16 (S.D. Cal. 2011), *aff'd*, 473 F. App'x. 716 (9th Cir. 2012).

18 In the Ninth Circuit, the benchmark for an attorney fee is 25% of the total settlement value,
19 including the monetary and non-monetary recovery. *See Six Mexican Workers*, 904 F.2d at 1311; *see*
20 *also Staton*, 327 F.3d at 974 (“[W]here the value to individual class members of benefits deriving
21 from injunctive relief can be accurately ascertained ... courts [may] include such relief as part of the
22 value of a common fund for purposes of applying the percentage method”). The benchmark
23 percentage “can then be adjusted upward or downward to account for any unusual circumstances
24 involved in the case.” *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989).
25 Many cases have found that between 30% and 50% of the common fund is an appropriate range when
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1 the settlement fund is less than ten million. *See Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294,
2 297-98 (N.D. Cal. 1995) (collecting cases); *see also Johnson v. Gen. Mills, Inc.*, 2013 WL 3213832,
3 at *6 (C.D. Cal. June 17, 2013) (awarding a fee award of 30% of the settlement fund in a food labeling
4 class action). Here Class Counsel’s fee request amounts to 25% of the monetary value of the
5 settlement, which is the benchmark under Ninth Circuit law, and this Court finds no basis to deviate
6 from that benchmark here. The Court overrules the objections to the Class Counsel’s attorneys’ fees.
7 *See, e.g.*, Objections 11, 21, 22, 23, 27, 79, 115, 116, 125, 137, 149, 168, 173, 174, 184, 211, 213,
8 216, 218, 227, 245, 273, 283, 291, 297, 298, 302, 311, 322, 323, 325, 355, 357, 363, 369, 371, 377,
9 385, 391, 397, 402, 406, 408, 409, 410, 413, 415, 427, 434, 435, 442, 444, 446, 447, 452, 459, 461,
10 462, 465, 470, 472, 484, 489, 503, 505, 519, 522, 523, 540, 541, 552, 564, 571, 575, 583, 585, 589,
11 596, 600, 606, 636, 641, 642, 646, 664, 671, 672, 680, 684, 732, 734, 739, 743, 769, 778, 782, as well
12 as Dkt. 82. These objections fail to carry the burden of demonstrating how the fee award is
13 unreasonable. *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL
14 1365900, *10 (N.D. Cal. April 3, 2013).

17 **5. Litigation Expenses**

18 Class Counsel are also entitled to reimbursement of reasonable out-of-pocket expenses. Fed.
19 R. Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may
20 recover reasonable expenses that would typically be billed to paying clients in non-contingency
21 matters.); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving
22 reasonable costs in class action settlement). Costs compensable under Rule 23(h) include “nontaxable
23 costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).
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1 Here, Class Counsel seek reimbursement of current litigation costs of \$64,558.23² and
2 anticipated future litigation costs of \$5,000.00, for a total of \$69,558.23. The Court finds Class
3 Counsel's submissions support the award of current and anticipated future litigation costs, and
4 therefore awards Class Counsel \$69,558.23 in litigation costs. Any objections to this award are
5 overruled.

6
7 **C. Cy Pres Awards**

8 The Settlement provided for a distribution to cy pres recipients in the event any Residual
9 Settlement Payments remained. Based on the response from Settlement Class Members for claims
10 made, there will be no Residual Settlement Payments, therefore this Court need not opine on any cy
11 pres awards.

12
13 **D. Compliance with the Class Action Fairness Act**

14 The record establishes that the required notices under the Class Action Fairness Act of 2005,
15 28 U.S.C. § 1715 were served, with the documentation required by 28 U.S.C. § 1715(b)(1-8). The
16 record further establishes that no objections were received from any state attorneys general or other
17 government entities.

18
19 **E. Releases**

20 As of the Effective Date, Releasing Named Plaintiffs and the Releasing Class Members shall
21 waive, release, forever discharge, and will not in any manner pursue the Released Claims as defined
22 and set forth in Section 1.37 of the Settlement against Google, its affiliates, and their respective
23 officers, directors, employees, members, agents, attorneys, administrators, representatives, insurers,
24

25 _____
26 ² The Court notes that Class Counsel sought \$64,603.23; however, during the final approval hearing, it was clarified that
27 a scrivener's error resulted in the \$45 difference. The Court, therefore, considers the amount of \$64,558.23, which is
28 supported by Class Counsel's detailed declarations in support of their request. (Dkts. 88-1, 88-2, and 88-3).

1 beneficiaries, trustees, shareholders, investors, contractors, joint venturers, predecessors, successors,
2 assigns, transferees, and all other individuals and entities acting on Google's behalf in connection
3 with the Released Claims..

4 **F. Other Effects of This Order**

5 The Court hereby dismisses this Action with prejudice, and without fees or costs except as
6 provided in the Settlement and this Order. Nothing in this Order or the Final Judgment entered in
7 connection with this Order shall preclude any action to enforce the terms of the Settlement. Without
8 affecting the finality of this Order or the Final Judgment entered in connection with this Order in any
9 way, the Court hereby retains continuing jurisdiction over:
10

- 11 a. all matters relating to the modification, interpretation, administration, implementation,
12 effectuation and enforcement of the Settlement; and
13
14 b. the Parties, Class Counsel, and Settlement Class Members for the purpose of
15 administering, supervising, construing and enforcing this Order and the Settlement in
16 accordance with its terms.

17 Neither this Order (nor the Final Judgment entered in connection with this Order), the
18 Settlement, nor any action taken to carry out this Order or the Final Judgment entered in connection
19 with this Order shall be construed or used against Google or the Released Parties as an admission,
20 concession, or evidence of the validity of any claim or defense or any actual or potential fault,
21 wrongdoing, or liability whatsoever. Without further order of the Court, the Parties may agree to
22 reasonably necessary extensions of time to carry out any of the provisions of the Settlement and to
23 make other nonmaterial modifications, in implementing the Settlement, that are not inconsistent with
24 this Order.
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1 The Clerk of the Court shall enter Final Judgment pursuant to Rule 58 of the Federal Rules of
2 Civil Procedure.

3 **IT IS SO ORDERED** this 25th day of January, 2021.

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6 HON. EDWARD J. DAVILA
7 UNITED STATES DISTRICT JUDGE
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