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10 *Class Counsel*

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 **IN RE GOOGLE ADWORDS
15 LITIGATION**

16 Case No. 08-cv-3369-EJD

17 **PLAINTIFFS' NOTICE OF MOTION
18 AND MOTION FOR (1) AWARD OF
19 ATTORNEYS' FEES, (2)
20 REIMBURSEMENT OF COSTS AND
21 EXPENSES, AND (3) SERVICE
22 AWARDS; MEMORANDUM OF
23 POINTS AND AUTHORITIES**

24 Date: July 27, 2017
25 Time: 9:00 a.m.
26 Judge: Hon. Edward J. Davila
27 Courtroom: 4, 5th Floor

28 Action Filed: July 11, 2008

NOTICE OF MOTION

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD HEREIN:

PLEASE TAKE NOTICE that on July 27, 2017 at 9:00 a.m., or as soon thereafter as this matter can be heard, in the Courtroom of the Honorable Edward J. Davila, United States District Judge for the Northern District of California, 280 South 1st Street, 5th Floor, Courtroom 4, San Jose, California 95113, plaintiffs Pulaski & Middleman, LLC; JIT Packaging, Inc.; RK West, Inc.; and Richard Oesterling (collectively, “Plaintiffs”) will and hereby do move this Court for an order pursuant to Federal Rule of Civil Procedure 23(h) granting the following relief:

1. Awarding attorneys’ fees to Class Counsel in the amount of \$6,500,000;
2. Awarding \$700,000 in reimbursement of out-of-pocket litigation costs and expenses to Class Counsel; and
3. Awarding \$5,000 in service awards to Class Representatives JIT Packaging, Inc. (“JIT”); RK West, Inc. (“RK West”); and Richard Oesterling (“Oesterling”).

This motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the declarations of Plaintiffs’ counsel Noah M. Schubert, Kimberly A. Kralowec, Adam C. Belsky, and Robert M. Foote; the declarations of Plaintiffs; all other documents currently on file in this action; the argument of counsel; and any other evidence the Court may choose to entertain.

STATEMENT OF ISSUES PRESENTED

1. Is the request for attorneys’ fees in the amount of \$6,500,000 fair, reasonable, appropriate, and justified under the circumstances?
2. Should the Court award Class Counsel reimbursement of their out-of-pocket litigation costs and expenses in the amount of \$700,000?
3. Are the requests for service awards to Class Representatives JIT, RK West, and Oesterling in the amount of \$5,000 fair, reasonable, and appropriate?

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Class Counsel seeks an order awarding them \$6,500,000 in reasonable attorneys’ fees,
4 reimbursement of \$700,000 in out-of-pocket expenses incurred in prosecuting this action, and
5 service awards of \$5,000 each to Class Representatives JIT, RK West, and Oesterling in recognition
6 of their efforts.¹

7 Class Counsel incurred \$7,002,126 in billable work. The requested \$6,500,000 fee therefore
8 actually represents a *reduction* of \$502,126 from Class Counsel’s lodestar. Accordingly, Class
9 Counsel has agreed to forego approximately 7.2% of its fees and voluntarily seek a 0.93 fractional
10 multiplier of its lodestar. This voluntary reduction will maximize the settlement benefits payable to
11 Settlement Class Members.² Similarly, Class Counsel’s actual out-of-pocket expenses exceed the
12 \$700,000 it now seeks.

13 For more than eight years, the parties fiercely contested whether Google misled its AdWords
14 advertisers by failing to disclose that it placed their ads on allegedly low-quality parked domains and
15 error pages. Class Counsel defeated Google’s motion to dismiss the complaint, substantially
16 completed all merits discovery, including almost one million pages of documents and depositions of
17 Google’s witnesses and experts, obtained reversal of this Court’s denial of class certification in the
18 U.S. Court of Appeals for the Ninth Circuit, and successfully opposed a petition for certiorari in the
19 U.S. Supreme Court. Class Counsel then negotiated a fair, adequate, and reasonable settlement on
20 behalf of the Class. On March 9, 2017, the Court granted preliminary approval of the proposed \$22.5
21 million non-reversionary cash Settlement. Dkt. No. 369.

22
23
24 ¹ These amounts include attorneys’ fees and out-of-pocket expenses incurred by the other law firms
25 that Class Counsel assigned work to during the course of this litigation. Pursuant to § 8.8 of the
26 Settlement Agreement, Class Counsel will have sole discretion to distribute the Fee and Expense
Award to these other participating law firms.

27 ² Capitalized terms not defined herein have the meanings set forth in the Class Action Settlement
28 Agreement (the “Settlement Agreement”) that was filed on February 23, 2017 as Exhibit A to the
Declaration of Noah M. Schubert (Dkt No. 365-1).

1 The proposed settlement is an exceptional result for the Class. The settlement fund represents
2 between 29% and 50% of the relief that could have been recovered at trial, assuming that Plaintiffs
3 prevailed on the merits and on damages. Google, of course, vigorously disputed Plaintiffs’
4 arguments at every turn. This settlement avoids the myriad of risks, delays, and hurdles of a trial.
5 *See* Dkt. No. 367, ¶¶ 7-9. It is an outstanding result.

6 The Settlement was the result of the considerable time, effort, and resources expended by
7 Class Counsel on behalf of the Class. For example, Class Counsel incurred \$750,645.43 in actual
8 out-of-pocket costs and expenses to litigate this action and achieve a settlement. *See* § III(D), *infra*.
9 This represents a sizeable investment of Class Counsel’s resources, which were committed to the
10 case throughout. Over the eight years of litigation, Class Counsel and their staff devoted 12,496.6
11 billable hours to working the case—all work that was necessary and reasonable to successfully
12 resolve this matter. *See* § III(C)(1)(b), *infra*.

13 For their services in generating a settlement fund for the benefit of the class, Class Counsel
14 seeks a \$6.5 million fee award. This fee represents a fraction of their lodestar—and an amount
15 totaling less than 29% of the Settlement Fund. Plaintiffs also seek an award of \$700,000 in
16 unreimbursed out-of-pocket costs and expenses incurred in litigating the action. Additionally,
17 Plaintiffs request service awards for Class Representatives JIT, RK West, and Oesterling for their
18 services on behalf of the Class.

19 Here, the Court has discretion to determine an award of attorneys’ fees under either the
20 lodestar or percentage-of-the-fund approach. Regardless of the method applied, Plaintiffs’ \$6.5
21 million fee request is reasonable and well-within the range of fees commonly awarded in comparable
22 cases. Under the lodestar method, the request is unquestionably reasonable, as the amount is less
23 than 93% of counsel’s actual lodestar. Further, because the benefit to the class is easily quantified,
24 the percentage-of-the fund “cross-check” confirms that the requested amount is reasonable. The fee
25 represents approximately 28.9% of the settlement fund, in accord with other fee awards in California
26 and the Ninth Circuit.

27 Likewise, Class Counsel’s request for \$700,000 in costs and expenses is also reasonable. It
28 represents \$50,645.43 *less* than their expenses to date. These out-of-pocket expenses were necessary

1 to the litigation. The bulk were incurred in retaining critical experts and litigation consultants,
2 participating in mediation, electronically hosting Google’s massive document production,
3 conducting legal research, and deposing Google’s key witnesses and experts.

4 Lastly, as is common in settled class actions where the efforts of the named plaintiffs were
5 instrumental in producing a class-wide settlement, Plaintiffs also seek approval of \$5,000 service
6 awards payable to Class Representatives JIT, RK West, and Oesterling. These amounts are
7 consistent with the service awards approved by this and numerous other California courts in similar
8 circumstances. As explained in their declarations, filed herewith, Class Representatives JIT, RK
9 West, and Oesterling met and conferred with counsel during the litigation, attended day-long
10 depositions, and provided responses and documents in response to Google’s discovery requests. The
11 Class Representatives’ participation in the litigation was invaluable to Class Counsel’s efforts and
12 merits the requested awards.

13 Accordingly, the Court should grant Class Counsel’s motion and enter the proposed order,
14 submitted herewith.

15
16 **II. RELEVANT BACKGROUND**

17 **A. This Action Settled Following Years of Hard-Fought Litigation**

18 1. Summary of Plaintiffs’ Claims and Relevant Procedural History

19 The first of several actions in this consolidated litigation was filed in July 2008 (*Levitte v.*
20 *Google*, No. 08-cv-3369 (N.D. Cal. July 11, 2008). On February 25, 2009, the Court (Hon. James
21 Ware presiding) consolidated the *Levitte* action with the related underlying actions as *In re Google*
22 *AdWords Litigation*. See Dkt. No. 40. On April 24, 2009, Plaintiffs filed a consolidated complaint
23 (Dkt. No. 45) and further amended their complaint twice more to reflect facts they learned during
24 discovery. Google answered each of the consolidated and amended complaints. Dkt. Nos. 46, 77,
25 156. Plaintiffs then sought leave to file a Third Amended Complaint, which, after contested motion
26 practice and oral argument, Judge Ware granted. See Dkt. Nos. 127, 141, 148, 163-64. In their
27 operative Third Amended Complaint, Plaintiffs contend that Google violated California’s Unfair
28 Competition Law (“UCL”), Cal. Bus. & Prof. Code. §§ 17200 *et seq.*, and False Advertising Law

1 (“FAL”), Cal. Bus. & Prof. Code §§ 17500 *et seq.*, by failing to disclose to its AdWords advertisers
2 that it placed their ads on low-quality parked domains and error pages. Plaintiffs alleged that this
3 nationwide class of advertisers overpaid for their ads and were owed restitution.

4 2. The Parties Conducted Extensive Discovery.

5 Since filing this action, Plaintiffs conducted extensive discovery relating to both the merits
6 and class certification, including reviewing and analyzing almost one million pages of documents
7 and data produced by Google. Declaration of Noah M. Schubert (“Schubert Decl.”) ¶ 3. In total,
8 Plaintiffs propounded 71 document requests (over three sets) and 60 interrogatories (over six sets).
9 *Id.* Plaintiffs took the depositions of five Google employees and experts: Hal Varian, Courtney
10 Bowman, Jonathan Alferness, Michael Mothner, and Randolph E. Bucklin. *Id.* And Plaintiffs
11 produced numerous documents to Google, provided interrogatory responses, and sat for depositions.
12 *Id.* Discovery was often hotly contested, with both parties successfully moving to compel additional
13 discovery on several occasions. *See* Dkt. Nos. 125, 152, 174, 240. In connection with Plaintiffs’
14 motion for class certification, the parties exchanged initial expert reports and rebuttals, and each of
15 the parties’ experts was deposed. Schubert Decl. ¶ 3. When the parties entered mediation in October
16 2016, Plaintiffs had substantially completed all merits and class certification discovery.

17 3. Plaintiffs Won Pivotal Victories, Including Defeating the Motion to Dismiss
18 and Reversing this Court’s Denial of Class Certification in the Ninth Circuit.

19 On March 17, 2011, Judge Ware denied Google’s motion to dismiss Plaintiffs’ Third
20 Amended Complaint, holding that Plaintiffs had “adequately alleged a cause of action for fraud
21 under California law.” Dkt. No. 235, p. 5.

22 On March 14, 2011, Plaintiffs moved to certify a nationwide class of Google AdWords
23 advertisers who had been charged for clicks on ads that Google placed on parked domains and error
24 pages. Google vigorously opposed the motion. Dkt Nos. 227, 272, 282. Following oral argument
25 and supplemental briefing ordered by the Court, on January 5, 2012, this Court denied class
26 certification. Dkt. Nos. 295-96, 307, 315. Plaintiffs moved for leave to file a motion for
27 reconsideration, which was also denied. Dkt. No. 326.

1 Plaintiffs subsequently petitioned the U.S. Court of Appeals for the Ninth Circuit for
2 permission to appeal the Court’s denial of class certification under Federal Rule of Civil Procedure
3 23(f). Although such petitions are rarely successful, Plaintiffs’ petition for permission to appeal was
4 granted. After three years of appellate proceedings, on September 21, 2015, the Ninth Circuit
5 reversed the Court’s denial of class certification. It remanded the case for further proceedings.
6 *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 990 (9th Cir. 2015), 9th Cir. No. 12-
7 16752, Dkt. No. 39.

8 Google, however, sought further appellate review. It retained preeminent Supreme Court
9 specialist Neal Katyal of Hogan Lovells, who filed a petition for panel rehearing and rehearing *en*
10 *banc*. The U.S. Chamber of Commerce filed an amicus brief supporting Google’s petitions for
11 rehearing. On December 8, 2015, the Ninth Circuit denied Google’s petition, noting that no judge
12 requested a vote on whether to rehear the matter *en banc*. 9th Cir. No. 12-16752, Dkt. No. 59.

13 Following its loss in the Ninth Circuit, Google filed a petition for a writ of certiorari in the
14 U.S. Supreme Court. The Pacific Legal Foundation and Intel Corporation submitted amicus briefs
15 supporting Google’s petition. Google argued that the Ninth Circuit’s decision created a circuit split
16 and that the decision should be vacated and remanded in light of the U.S. Supreme Court’s decision
17 in *Tyson Foods Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016). The U.S. Supreme Court
18 did not do either. On June 6, 2016, Google’s petition for a writ of certiorari was denied.

19 The Ninth Circuit’s decision in this action, holding that “damage calculations alone cannot
20 defeat certification,” even after the U.S. Supreme Court’s decision in *Comcast Corp. v. Behrend*,
21 133 S. Ct. 1426 (2013), was a landmark decision in class action jurisprudence. In the twenty months
22 since Plaintiffs’ victory, the decision has been cited by forty-six courts (forty-four favorably), as
23 well as seven treatises and law-review articles. It is now the leading authority on the role of damages
24 at class certification in the Ninth Circuit.

25 4. The Parties Engaged in Arm’s-Length
26 Negotiations before a Highly Respected Mediator.

27 In February 2011, after the parties had engaged in the extensive class certification discovery,
28 they first explored a potential settlement. The parties entered mediation with the Hon. Layn R.

1 Phillips, U.S. District Judge (Ret.). At that time, Google’s motion to dismiss the Third Amended
2 Complaint was pending, and the parties were in the process of briefing class certification. At that
3 early stage, the parties could not reach a settlement.

4 During the course of litigation concerning class certification and the subsequent appeal, the
5 parties engaged in further negotiations informally with Judge Phillips’s assistance. The parties’
6 settlement positions, however, remained too far apart during these years. Following the Ninth
7 Circuit’s reversal of the denial of class certification—and the Supreme Court’s denial of Google’s
8 petition for certiorari—the parties attended an in-person mediation with Judge Phillips. With the
9 mediator’s assistance, the parties reached an agreement in principle, which they memorialized in a
10 binding term sheet. The parties then negotiated the precise settlement terms for nearly four months,
11 and, on February 23, 2017, the Settlement Agreement was finally executed.

12 **B. The Court Granted Preliminary Approval of the Settlement.**

13 On March 9, 2017, the Court granted preliminary approval of the Settlement. Dkt. No. 369.
14 In that Order, the Court certified the following Settlement Class:

15 All persons or entities located within the United States who, from July 11,
16 2004 through March 31, 2008, had an AdWords account with Google and
17 were charged for clicks on advertisements appearing on parked domains
and/or error pages.

18 Under the terms of the Settlement, Google will create a \$22.5 million non-reversionary cash
19 fund with four components: (1) Settlement Payments to Class Members who submit valid claims;
20 (2) a Fee and Expense Award to Class Counsel; (3) proposed Service Awards to each of the Class
21 Representatives; and (4) Notice and Administration Costs. Class Members will receive Settlement
22 Payments on a *pro rata* basis in accordance with the total amount they spent on ads that were placed
23 on parked domains and error pages during the Settlement Class Period.

24 The Court also approved notice and ordered dissemination to the Settlement Class.
25 Accordingly, in April 2017, the Court-approved Settlement Administrator, Analytics LLC, updated
26 the Settlement Website (www.AdWordsClassAction.com) to include the settlement notice, claim
27 form, and other important settlement documents. Schubert Decl. ¶ 17. On or about April 22, 2017,
28 Analytics completed the Court-approved notice plan by disseminating the Email Notice and mailing

1 the supplemental Postcard Notice to Settlement Class Members whose Email Notices had bounced.
2 *Id.* On April 18, 2017, Class Counsel also issued a press release announcing the settlement. *Id.* The
3 deadline to request exclusion from the Settlement Class, object, or make a claim is June 21, 2017.

4 The preliminary approval order also appointed Robert C. Schubert and Noah M. Schubert of
5 Schubert Jonckheer & Kolbe LLP as Class Counsel and the named plaintiffs as Class
6 Representatives. It set the Final Approval Hearing for July 27, 2017, at which time the Court will
7 consider final approval of the Settlement and the instant motion. Dkt. No. 369.

8
9 **III. ARGUMENT**

10 **A. California Law Governs the Award of Attorneys' Fees and Costs.**

11 Counsel who recover a common fund that confers a "substantial benefit" on a class of
12 beneficiaries are "entitled to recover their attorney's fees from the fund." *Fischel v. Equitable Life*
13 *Assurance Soc'y of the U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002); *see also Serrano v. Priest*, 20 Cal.
14 3d 25, 35-38 (1977). Likewise, Federal Rule of Civil Procedure 23(h) authorizes the Court to "award
15 reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties'
16 agreement." Fed. R. Civ. Proc. 23(h). And the Settlement Agreement provides that Class Counsel's
17 reasonable attorneys' fees and expenses will be paid from the \$22.5 million settlement fund, subject
18 to this Court's approval. Settlement Agreement, § 8.1.

19 Plaintiffs' operative complaint seeks restitution on behalf of a nationwide class of AdWords
20 advertisers based on California law, the UCL and FAL. Under the Class Action Fairness Act of 2005
21 ("CAFA"), the Court has diversity jurisdiction over these state law claims. 28 U.S.C. § 1332(d); *see*
22 *also* Dkt. No. 166, ¶ 18. Under these circumstances, where the asserted and settled counts are state
23 law claims over which a federal court has exercised diversity jurisdiction, any fee award must be
24 calculated under substantive state law (here, California). *Emmons v. Quest Diagnostics Clinical*
25 *Labs, Inc.*, 2017 U.S. Dist. LEXIS 27249, at *19 (E.D. Cal. Feb. 24, 2017); *Mangold v. California*
26 *Public Utils. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995) ("Existing Ninth Circuit precedent has
27 applied state law in determining not only the right to fees, but also in the method of calculating
28 fees."); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

1 **C. The Requested Fee Award of \$6,500,000 is Fair, Reasonable, and Justified.**

2 The California Supreme Court recently held that courts have discretion to choose among two
3 different methods of calculating a reasonable attorneys’ fee award under California law. *See Laffitte*
4 *v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 504 (2016) (“The choice of a fee calculation is generally
5 one within the discretion of the trial court ...”). Ultimately, in evaluating a request for attorneys’
6 fees, whether one employs a lodestar approach or the percentage-of-the-fund method,
7 “[r]easonableness is the goal.” *Fischel*, 307 F.3d at 1007; *Laffitte*, 1 Cal. 5th at 504 (“[T]he goal
8 under either the percentage or lodestar approach [is] the award of a reasonable fee to compensate
9 counsel for their efforts.”). Regardless of the approach selected here, Plaintiffs’ \$6.5 million fee
10 request is clearly reasonable.

11 1. The Fee Award—Representing a Fractional Multiplier of Class
12 Counsel’s Lodestar—Is Unquestionably Fair and Reasonable.

13 Under the lodestar method, the Court calculates the fee award by multiplying the number of
14 hours reasonably spent by a reasonable hourly rate for the region and for the experience of the
15 lawyers—and then enhances that figure, if appropriate, under the unique circumstances presented by
16 the action. *Laffitte*, 1 Cal. 5th at 489; *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272
17 (9th Cir. 1989). Although in most cases the lodestar figure is a “presumptively reasonable” fee
18 award, courts may “adjust it upward or downward by an appropriate positive or negative multiplier
19 reflecting a host of ‘reasonableness’ factors, including the quality of representation, the benefit
20 obtained for the class, the complexity and novelty of the issues presented, and the risk of
21 nonpayment.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)
22 (internal citations omitted); *see also Laffitte*, 1 Cal. 5th at 489. The Court may also consider awards
23 made in similar cases and the preclusion of the attorneys’ other employment due to acceptance of
24 the case. *In re Optical Disk Drive Prods. Antitrust Litig.*, 2016 U.S. Dist. LEXIS 175515, at *57
25 (N.D. Cal. Dec. 19, 2016).

26 As described below, the amount of attorneys’ fees sought here is significantly less than Class
27 Counsel’s lodestar, strongly supporting the reasonableness of the request.

1 a. *Class Counsel’s Hourly Rates are Reasonable.*

2 Class Counsel has submitted detailed lodestar itemizations and breakdowns for itself and
3 each of the law firms it tasked with assignments in this litigation. *See* Schubert Decl. ¶ 13;
4 Declaration of Robert M. Foote (“Foote Decl.”), ¶ 3; Declaration of Adam C. Belsky (“Belsky
5 Decl.”), ¶ 3; Declaration of Kimberly A. Kralowec (“Kralowec Dec.”), ¶ 3.³ To determine the
6 appropriate lodestar amount, courts first assess the reasonableness of the attorneys’ hourly billing
7 rates. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). In considering the
8 reasonableness of hourly rates, courts examine the rate “prevailing in the community for similar
9 services by lawyers of reasonably comparable skill, experience and reputation.” *Blum v. Stenson*,
10 465 U.S. 886, 895, n. 11 (1984); *Camacho*, 523 F.3d at 979. To meet their burden, counsel may rely
11 on several sources, including their own declarations and “rate determinations in other cases,
12 particularly those setting a rate for the plaintiffs’ attorney,” which constitute “satisfactory evidence
13 of the prevailing market rate.” *In re Animation Workers Antitrust Litig.*, 2016 U.S. Dist. LEXIS
14 156720, at *20 (N.D. Cal. Nov. 11, 2016). In calculating lodestar, courts generally apply each biller’s
15 current rates for all hours of work performed, regardless of when the work occurred, as a means of
16 compensating for the deferred nature of counsel’s work. *See, e.g., Fischel* 307 F.3d at 1010; *In re*
17 *Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994).

18 Here, Class Counsel’s hourly rates are well within those prevailing in the community. The
19 Northern District frequently recognizes similar—and indeed higher—hourly rates as reasonable in
20 the San Francisco Bay Area. For instance, in *In re High-Tech Employee Antitrust Litig.*, 2015 U.S.
21 Dist. LEXIS 118052 (N.D. Cal. Sept. 2, 2015), in connection with an award of attorneys’ fees in a
22 settlement, Judge Lucy H. Koh approved the following billing rates as a reasonable reflection of the
23 prevailing attorney hourly rates in this District for class action work: partners ranging from \$490 to
24 \$975; non-partner attorneys (such as senior counsel, senior associates, associates, and staff attorneys)
25 ranging from \$310 to \$800 (with most under \$500); and other staff (paralegals, law clerks and
26

27 ³ The resume of each of these law firms, summarizing the backgrounds and experience of their
28 current attorneys, is attached as an exhibit to their respective declaration.

1 litigation support) ranging from \$190 to \$430 (with most in the \$300 range). *Id.* at **33-34.
2 Similarly, in *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 U.S. Dist. LEXIS 67298 (N.D. Cal. May
3 21, 2015), Judge William Alsup approved hourly partner rates ranging from \$475 to \$975, associate
4 rates between \$300 and \$475, paralegal rates between \$150 and \$430, and litigation support rates
5 between \$250 and \$340. *Id.* at **14-15. Judge Alsup based this decision on the fact that “counsel
6 waited patiently for payment for several years” and that “many of the claimed rates were comparable
7 to those in our geographic region for the skill and experience involved.” *Id.* at *14. In *Beaver Cnty.*
8 *Emples. Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 U.S. Dist. LEXIS 15018 (N.D. Cal. Feb. 2,
9 2017), Magistrate Judge Jacqueline Scott Corley approved similar ranges of hourly rates for partners,
10 associates, and paralegals. *Id.* at *4. Comparable rates have also met unconditional approval by the
11 Ninth Circuit in cases that predate this motion by several years. *See Prison Legal News v.*
12 *Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010).

13 Class Counsel’s hourly rates (and the rates of its supporting counsel) here range: (i) for
14 partners and of counsel attorneys, from \$600-\$900; (ii) for associates, project attorneys, and
15 consulting counsel, from \$350-\$750; and (iii) for paralegals, law clerks, and other litigation support
16 staff, from \$150-\$350. All of these rates are consistent with the recent fee decisions cited above.
17 Furthermore, numerous other courts in this District and elsewhere have approved the same rates
18 requested by Class Counsel here. *See* Schubert Decl., ¶ 10; Foote Decl., ¶ 8; Belsky Decl., ¶ 8;
19 Kralowec Decl., ¶ 8. For instance, Schubert Firm senior partner Robert C. Schubert’s \$900 hourly
20 rate (the highest rate within the lodestar records) is the same hourly rate that Magistrate Judge Donna
21 M. Ryu approved in 2015 in connection with a Telephone Consumer Protection Act (“TCPA”) class
22 action. *True Health Chiropractic, Inc. v. McKesson Corp.*, No. 13-cv-2219-HSG (N.D. Cal.), Dkt.
23 No. 198. In January 2016, Judge Jack Zouhary also approved Mr. Schubert’s \$900 rate in the
24 polyurethane foam antitrust class action, *In re Polyurethane Foam Antitrust Litig.*, No. 10-md-2196
25 (N.D. Ohio).

26 Indeed, for complex class action litigation, the market rates for defense firms defending these
27 actions—including Cooley LLP, which represents Google—often exceed the rates sought here. *See*
28 *National Law Journal*, Billing Rates Across the Country, <http://www.nationallawjournal.com/>

1 [id=1202636785489/Billing-Rates-Across-the-Country](http://www.cooley.com/insights/id=1202636785489/Billing-Rates-Across-the-Country) (last visited May 3, 2017) (reflecting that, in
2 2014, the average Cooley LLP partner’s billable rate was \$820 per hour, with a high of \$990, and
3 associates averaged \$525).

4 Accordingly, Class Counsel’s billable rates are reasonable, commensurate with the
5 prevailing market rates in the San Francisco Bay Area.

6 b. *The Hours Billed by Class Counsel Are Reasonable.*

7 Since the litigation began in 2008, Class Counsel has billed 14,270.4 hours, totaling
8 \$7,978,519 in attorneys’ fees to date. Schubert Decl. ¶ 7. To maximize the Settlement Class
9 Members’ recovery, Class Counsel conducted an extensive review of its billing records, including
10 the records of each of the supporting firms, in connection with this motion. *Id.* Class Counsel closely
11 reviewed its own and each supporting firm’s daily, contemporaneous timekeeping records. As a
12 result of this review, Class Counsel removed billing entries for work performed: (i) by attorneys or
13 staff that was not directly related to tasks specifically requested or assigned by Class Counsel; (ii)
14 that was not otherwise directly necessary for the effective prosecution and resolution of this case;
15 (iii) or that was potentially duplicative of work performed by others. For instance, time records in
16 which attorneys read and reviewed court filings (when not tasked with a specific assignment from
17 Class Counsel in connection with those filings) were removed. Additionally, billing records for work
18 performed by firms other than Class Counsel prior to the Court’s February 25, 2009 Order
19 consolidating the underlying actions (Dkt. No. 40) were stricken. As a result, Class Counsel has
20 eliminated 1,773.8 hours—amounting to \$976,393 in attorneys’ fees—in connection with its request
21 for reasonable attorneys’ fees.

22 Accordingly, Class Counsel’s cumulative revised lodestar for purposes of this fee motion is
23 \$7,002,126, reflecting 12,496.6 hours prosecuting this litigation. Schubert Decl. ¶ 11. These figures
24 do not include time spent in connection with this motion for an award of attorneys’ fees or any of
25 the additional time that will be incurred in connection with settlement approval, implementation of
26 the settlement, final resolution of this action, or any future appeal.

27 Class Counsel’s \$6.5 million requested fee is less than its total lodestar of \$7.98 million and
28 even its revised lodestar of \$7.00 million, after eliminating all unnecessary or duplicative entries,

1 further supporting the reasonableness of the request. All of the time reported in connection with this
2 motion was incurred for the benefit of Plaintiffs and the Settlement Class and was reasonably
3 necessary for the effective resolution of this case.⁴

4 The tasks performed, and hours incurred performing them, “adequately reflect the amount of
5 time reasonably spent on this litigation,” as documented in Class Counsel’s and the supporting firms’
6 accompanying declarations. *See In re High-Tech Empl. Antitrust Litig.*, 2015 U.S. Dist. LEXIS
7 118052, at *9. The work performed to advance the litigation and ultimately secure the favorable
8 settlement was meaningful, complex, and undoubtedly called for significant investments of time and
9 resources. Wherever possible, Class Counsel sought to avoid any duplication of work and tasks and
10 ensure efficiency. Schubert Decl. ¶ 3. Class Counsel and the supporting firms performed the
11 following tasks, among others:

12 *Class Certification*

- 13 • Researched, briefed, and argued motion for class certification
- 14 • Researched and drafted supplemental briefs for class certification
- 15 • Researched and briefed motion for reconsideration of denial of class certification
- 16 • Researched, briefed, and argued motion to strike expert declaration opposing class
17 certification
- 18 • Researched, briefed, and argued supplemental expert disclosures
- 19 • Worked extensively with economic experts on damages model for class certification
- 20 • Prepared for and defended the deposition of Plaintiffs’ damages expert
- 21 • Deposed five Google fact and expert witnesses for class certification
- 22 • Prepared for and defended the depositions of the four named plaintiffs

23 *Appellate Practice*

- 24 • Researched and drafted Ninth Circuit petition for permission to appeal
- 25 • Researched, briefed, and argued Ninth Circuit appeal of class certification denial

26
27 ⁴ Class Counsel obtained authorization from each of the supporting firms to lodge their daily time
28 records for the Court’s inspection, if the Court so requests.

- 1 • Researched and prepared for Ninth Circuit petition for rehearing *en banc*
- 2 • Researched and briefed opposition to certiorari petition in U.S. Supreme Court

3 *Motion Practice & Case Management*

- 4 • Researched and drafted numerous consolidated and amended complaints
- 5 • Researched and drafted motions to consolidate and relate cases
- 6 • Drafted case management statements and appeared at case management conferences
- 7 • Briefed and argued motion for leave to file amended complaint
- 8 • Briefed and argued motion to dismiss amended complaint

9 *Discovery Practice*

- 10 • Reviewed and analyzed nearly one million pages of Google documents
- 11 • Negotiated and drafted expert discovery orders and stipulated protective order
- 12 • Briefed and argued numerous motions to compel discovery responses
- 13 • Propounded six sets of interrogatories to Google and numerous document requests
- 14 • Responded to numerous interrogatories and document requests from Google

15 *Settlement Negotiations & Approval*

- 16 • Drafted mediation briefs and engaged in two in-person mediations
- 17 • Negotiated and drafted Settlement Agreement
- 18 • Briefed and argued motion for preliminary approval of settlement
- 19 • Managed the form and dissemination of notice with the settlement administrator

20 The above list represents only a summary of the major events and tasks on which Class
21 Counsel expended significant hours. For a complete list of each of the principal events and tasks
22 undertaken by Class Counsel, see Schubert Decl., ¶ 4.

23 Generally, hours are considered “reasonable if they were ‘reasonably expended in pursuit of
24 the ultimate result achieved in the same manner that an attorney traditionally is compensated by a
25 fee paying client.’” *Carnes v. Atria Senior Living, Inc.*, 2016 U.S. Dist. LEXIS 182751, at *5 (N.D.
26 Cal. July 12, 2016) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983)). The work described
27 above, along with the litigation efforts discussed in Class Counsel’s accompanying declarations,
28 easily satisfies this standard.

c. *Although Not Requested, Class Counsel
Would Be Entitled to a Lodestar Multiplier.*

Class Counsel’s revised lodestar for purposes of this fee motion is \$7,002,126. Schubert Decl., ¶ 11. As counsel has requested only \$6.5 million in fees (i.e., less than 93% of their lodestar), a multiplier is not currently requested, although the facts amply support such an enhancement. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942. In the event that the hours billed or rates submitted by Class Counsel were deemed excessive, the factors supporting a multiplier are briefly set forth below. That is, even if Class Counsel’s revised lodestar were further reduced, it would still be entitled to a lodestar multiplier that justifies the fee award sought here.

California law also governs whether to award a lodestar multiplier in this case and the relevant factors. *See Mangold*, 67 F.3d at 1478-79. When applying the lodestar-based approach under California law, counsel’s lodestar may be adjusted upward based on factors such as (i) the novelty or difficulty of the questions involved, (ii) the expertise and capability of counsel, (iii) the results obtained, and (iv) the extent to which the litigation precluded other employment by the attorneys. *Fortson v. Marriott Int’l, Inc.*, 2013 U.S. Dist. LEXIS 62496, at *6, n. 4 (N.D. Cal. May 1, 2013) (citing *Serrano v. Priest*, 20 Cal. 3d 25, 48-49 (1977)). In California courts, “[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation.” *Emmons*, 2017 U.S. Dist. LEXIS 27249, at *19 (further noting that a multiplier of approximately 1.7 “is on the low end of acceptable potential modifiers”).

Here, the relevant factors all support a lodestar multiplier under California law.⁵ Class Counsel undertook this case solely on a contingent-fee basis. For the eight years in which this case has been pending, counsel have not been paid and never obtained any guarantee of receiving compensation. Schubert Decl. ¶ 16; Foote Decl. ¶ 11; Belsky Decl. ¶ 11; Kralowec Decl. ¶ 11. Google’s zealous defense of this action further compounded this uncertainty and risk. For instance, Google vigorously (and successfully) opposed Plaintiffs’ class certification motion, and even upon being handed a defeat in the Ninth Circuit, sought an *en banc* rehearing and filed a petition for a writ

⁵ Because courts also consider several of these factors in determining whether an upward adjustment to a “benchmark” percentage-of-the-fund fee award is appropriate, the factors are more thoroughly discussed in §III(C)(3), *infra*.

1 of certiorari in the U.S. Supreme Court. Google also indicated its intention to move to decertify the
2 class, based on purported changes in relevant class action jurisprudence, threatening to unwind
3 Plaintiffs’ hard-fought victory in the Ninth Circuit. *See* Dkt. No. 353. Class Counsel’s significant
4 out-of-pocket expenses also reflects the complexity of the legal issues presented and the real risk
5 undertaken in prosecuting this matter on a contingent fee basis. And it cannot be questioned that
6 Class Counsel obtained an outstanding result for the Settlement Class Members or that Class Counsel
7 are experienced and highly regarded members of the bar.

8 Accordingly, although no positive lodestar multiplier is sought, such an enhancement would
9 plainly be justified, further supporting the reasonableness of the fee request.

10 2. A Percentage-of-the-Fund “Cross Check” Confirms
11 the Reasonableness of Class Counsel’s Fee Request.

12 a. *The Requested Fees Are Reasonable Under California Law.*

13 California has no percentage-of-the-fund benchmark for awarding attorneys’ fees in common
14 fund cases. *See Emmons*, 2017 U.S. Dist. LEXIS 27249, at **19-20. In discussing the California
15 Supreme Court’s recent *Laffitte* decision, the court in *Emmons* explained, “Notably, while the
16 California Supreme Court recognized the Ninth Circuit’s 25 percent benchmark for percentage
17 awards in common fund cases, it did not adopt such a benchmark for California cases.” *Id.* Rather,
18 California courts routinely award attorneys’ fees equaling one-third of the fund’s value. *Laffitte*, 1
19 Cal. 5th at 487 (reflecting lower court’s award of 33 1/3% of common fund as attorneys’ fees); *Smith*
20 *v. CRST Van Expedited, Inc.*, 2013 U.S. Dist. LEXIS 6049, at *13 (S.D. Cal. Jan. 14, 2013)
21 (“California has recognized that most fee awards based on either lodestar or percentage calculation
22 are 33 percent”). Here, the \$6.5 million fee request amounts to approximately 28.9% of the
23 Settlement Fund, a percentage significantly below that awarded by other California courts.

24 b. *Plaintiffs’ Fee Request Is Reasonable Under Ninth Circuit*
25 *Precedent and Consistent with Fee Awards in Comparable Cases.*

26 Although this motion is governed by California law, Plaintiffs’ fee request is also reasonable
27 under federal law. While the so-called “benchmark” percentage-of-the-fund award sometimes
28 referenced by the Ninth Circuit in non-diversity actions is 25%, the Ninth Circuit has repeatedly

1 cautioned that this is a mere “starting point” from which an upward departure of the modest
2 magnitude involved here is often justified and reasonable, particularly in complex class actions.
3 *Vizcaino*, 290 F.3d at 1048 (“The 25% benchmark rate, although a starting point for analysis, may
4 be inappropriate in some cases. Selection of the benchmark or any other rate must be supported by
5 findings that take into account all of the circumstances of the case.”).

6 Following this directive, numerous Ninth Circuit decisions, as well as orders from California
7 federal district courts, have approved a percent-of-the-fund award commensurate with (or higher
8 than) the 28.9% requested here. Indeed, the “exact percentage [awarded] varies depending on the
9 facts of the case, and in most common fund cases, the award exceeds that [25%] benchmark.”
10 *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010); *Hopkins v. Stryker*
11 *Sales Corp.*, 2013 U.S. Dist. LEXIS 16939, at *3 (N.D. Cal. Feb. 6, 2013) (“this court’s review of
12 recent reported cases discloses that nearly all common fund awards range around 30%”) (citation
13 omitted).

14 Percentages comparable or higher than the 28.9% requested here were approved in: *Brown*
15 *v. Hain Celestial Grp., Inc.*, 2016 U.S. Dist. LEXIS 20118, at *24 (N.D. Cal. Feb. 18, 2016) (38%);
16 *Keller v. NCAA*, 2015 U.S. Dist. LEXIS 166546, at *32 (N.D. Cal. Dec. 10, 2015) (29% and 30%
17 from two separate settlement funds); *In re Optical Disk Drive Antitrust Litig.*, No. 10-md-2143 (N.D.
18 Cal. July 23, 2015) (30%); *Hopkins*, 2013 U.S. Dist. LEXIS 16939 (30%); *Barbosa v. Cargill Meat*
19 *Sols. Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013) (33 1/3 %); *Konstantinos Moshogiannis v. Sec.*
20 *Consultants Grp., Inc.*, No. 10-cv-5971 (N.D. Cal. Jun 19, 2012) (30%); *Vizcaino*, 290 F.3d at 1052
21 (28%); *Moore v. PetSmart, Inc.*, 2015 U.S. Dist. LEXIS 102804, at *35 (N.D. Cal. Aug. 4, 2015)
22 (27%). *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880, at *33 (C.D. Cal. Nov. 18, 2014)
23 (33 1/3%).

24 3. Other Factors Support Plaintiffs’ Fee Request

25 California courts and the Ninth Circuit both recognize that the following factors are relevant
26 in evaluating the reasonableness of fees requested under either approach.

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a. *Class Counsel Achieved an Excellent Result on a Purely Contingent Basis.*

Courts consistently acknowledge that the result achieved is an important factor in approving a fee award. *Hensley*, 461 U.S. at 436 (“most critical factor is the degree of success obtained”); *Vizcaino*, 290 F.3d at 1048 (“[e]xceptional results are a relevant circumstance” in awarding attorneys’ fees); *Glendora v. Cmty. Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465, 475 (1984); *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 40 (2000); *In re Omnivision Techs.*, 559 F. Supp. 2d, 1036, 1046 (N.D. Cal. 2007).

The \$22.5 million non-reversionary settlement achieved here represents an excellent result for the Class, particularly in light of the risks posed by Google’s anticipated motion to decertify the class, summary judgment, or a smaller recovery if the case continued through trial or subsequent appeals. As discussed above, the Settlement amounts to between 29.2% and 50% of the relief that Plaintiffs estimate could have been recovered at trial, assuming that Plaintiffs prevailed on the merits and on damages, which were vigorously disputed by Google. The settlement provides immediate financial benefits to Settlement Class Members. Absent this settlement, Plaintiffs faced substantial risks at trial, plus years of appeals thereafter, with no guarantee of greater recovery.

b. *Class Counsel Bore Substantial Risk by Litigating this Difficult and Complex Case.*

The risk of nonpayment of expenses and attorneys’ fees is also a relevant factor in assessing the reasonableness of a proposed award. *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *16 (C.D. Cal. June 10, 2005). As reflected above, the litigation presented numerous and serious risks, any of which could have resulted in Class Counsel recovering nothing for their work, further supporting the fee request. *See Vizcaino*, 290 F.3d at 1048 (awarding above the benchmark where, as here, class counsel “succeeded in reviving their case on appeal”). Class Counsel’s further outlay of \$750,645.43 in litigation expenses indicates the high stakes of this litigation. These expenses included the high costs of retaining experts on key class certification and damages issues, retaining litigation consultants in connection with Plaintiffs’ class certification appeal, retaining a highly experienced mediator, electronically hosting Google’s massive document production, conducting

1 legal research, and deposing Google’s witnesses and experts. “Small firms” such as Class Coun,
2 with fewer than fifteen attorneys each, “face even greater risks in litigating large class actions with
3 no guarantee of payment.” *Boyd*, 2014 U.S. Dist. LEXIS 162880, at *28.

4 In addition to their out-of-pocket expenses, Class Counsel devoted significant resources of
5 time, energy, and effort to prosecute the case on a fully contingent basis, with no guarantee that they
6 would ever be paid. The contingent nature of this work—and the risk Class Counsel assumed in
7 advancing these significant costs—weigh strongly in favor of granting the fee request. *See Barbosa*,
8 297 F.R.D. at 449 (“Like this case, where recovery is uncertain, an award of one-third of the common
9 fund as attorneys’ fees has been found to be appropriate.”); *see also Graham v. Daimler Chrysler*
10 *Corp.*, 34 Cal. 4th 553, 580 (2004) (“A contingent fee must be higher than a fee for the same legal
11 services paid as they are performed. The contingent fee compensates the lawyer not only for the
12 legal services he renders but for the loan of those services.”).

13 *c. Class Counsel Handled the Difficult Factual*
14 *and Legal Issues with Skill and Success.*

15 Class Counsel, as well as supporting counsel, have special expertise in consumer class
16 actions and complex litigation, including ample experience litigating and settling cases involving
17 unfair business practices. *See* Schubert Decl. ¶ 2 & Ex. A; Foote Decl. ¶ 2 & Ex. A; Kralowec Decl.
18 ¶ 2 & Ex. A; Belsky Decl. ¶ 2 & Ex. A. Together, they skillfully performed the work necessary to
19 pursue the class claims, overcame the risks described above, and achieved an excellent result for the
20 Class. The skill displayed in successfully opposing Google’s motion to dismiss and winning their
21 appeal of class certification denial in the Ninth Circuit is particularly noteworthy. As explained
22 earlier, Class Counsel not only achieved a major victory for the Class but also established the leading
23 precedent on damages at class certification in the Ninth Circuit.

24 Indeed, that Google petitioned for rehearing *en banc* in the Ninth Circuit followed by
25 certiorari in the U.S. Supreme Court further reflects the significance of Plaintiffs’ accomplishment.
26 Google’s certiorari petition drew national press attention for its ramifications on class action
27 jurisprudence. *See, e.g.,* Alison Frankel, *Scalia’s Comcast legacy is at stake in Google Adwords*
28 *case*, Reuters, (May 3, 2016), <http://blogs.reuters.com/alison-frankel/2016/05/03/scalias-comcast->

1 [legacy-is-at-stake-in-google-adwords-case/](#); Lawrence Hurley, *U.S. Supreme Court lets Google*
2 *advertising class action suit proceed*, Reuters, (June 6, 2016), [http://www.reuters.com/article/us-](http://www.reuters.com/article/us-usa-court-google-idUSKCN0YS1GI)
3 [usa-court-google-idUSKCN0YS1GI](#). As a result, the *Pulaski & Middleman* decision, holding that
4 “damages calculations alone cannot defeat class certification,” even after *Comcast*, stands as the
5 preeminent authority in the Ninth Circuit.

6 *d. Class Counsel’s Work in this Case Precluded*
7 *Their Employment on Other Matters.*

8 The eight-year-long battle to achieve this Settlement prevented Class Counsel from pursuing
9 other work that might well have been as or more rewarding than this case. *See* Schubert Decl. ¶ 16;
10 Foote Decl. ¶ 11; Kralowec Decl. ¶ 11; Belsky Decl. ¶ 11. Though they are small firms, Class
11 Counsel, as well as the supporting firms, possess significant, unique experience and expertise in
12 class actions and have the ability to handle complex cases nationwide. This class action, in which
13 over 14,000 hours were expended, necessarily limited Class Counsel’s availability to undertake other
14 matters, further demonstrating the reasonableness of the fee request.

15 *e. The Benefits to the Public Achieved*
16 *by Class Counsel Support the Fee Request.*

17 The public interest served by this settlement also supports the fee award Class Counsel seeks.
18 *State v. Meyer*, 174 Cal. App. 3d 1061, 1074 (1985) (“the public service element, and motivation to
19 represent consumers and enforce laws” is a factor in determining the reasonableness of a fee request);
20 *Lealao*, 82 Cal. App. 4th at 41 (“this kind of consumer class action would not be pursued by counsel
21 but for the expectation of receiving enhanced fee awards in successful cases”). The California
22 Supreme Court has found that “[p]rotection of unwary consumers from being duped by unscrupulous
23 sellers is an exigency of the utmost priority in contemporary society.” *Vasquez v. Superior Court*, 4
24 Cal. 3d 800, 808 (1971). Likewise, the public benefit of class actions in cases alleging fraud
25 involving small sums on an individual basis is well-recognized. “The policy at the very core of the
26 class action mechanism is to overcome the problem that small recoveries do not provide an incentive
27 to bring a solo action prosecuting his or her right. A class action solves this problem by aggregating
28 the relatively paltry potential recoveries into something worth someone’s (usually an attorney’s)

1 labor.” *Discover Bank v. Superior Court*, 36 Cal. 4th 148, 156-57 (2005). Without commensurate
2 fee awards, the incentive to undertake high-stakes consumer class action litigation, as here, could be
3 lost.

4 **D. Class Counsel’s Reasonable Out-Of-Pocket Expenses
5 Incurred in This Litigation Should be Reimbursed.**

6 In the course of this litigation, Class Counsel, as well as supporting counsel, incurred
7 significant, unreimbursed expenses and costs totaling \$750,645.43. *See* Schubert Decl. ¶¶ 15
8 (tabulating expenses for the firms).⁶ Despite the significant burden of carrying these unreimbursed
9 expenses, Class Counsel believed that they were necessary to zealously litigate this action for the
10 Class. Both California and the Ninth Circuit, as well as Federal Rule of Civil Procedure 23(h), allow
11 recovery of litigation costs in class action settlements. *See Staton v. Boeing Co.*, 327 F.3d 938, 974
12 (9th Cir. 2003); *Serrano*, 20 Cal. 3d at 35 (reimbursement of costs from a common fund is grounded
13 in courts’ historic power of equity); Fed. R. Civ. Proc. 23(h) (“the Court may award reasonable
14 attorneys’ fees and nontaxable costs that are authorized by law or the parties’ agreement”).⁷ Here
15 too, Class Counsel seeks *less than* their actual incurred costs, thereby maximizing payments to the
16 Settlement Class.

17 “An attorney seeking an expense award should file an itemized list of his or her expenses by
18 category, listing the total amount advanced for each category, allowing the Court to assess whether
19 the expenses are reasonable.” *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 U.S. Dist. LEXIS
20 5383, at *170 (N.D. Cal. Jan. 14, 2016). As reflected in the following chart, the bulk of the expenses
21 comprise fees paid to Plaintiffs’ class certification and damages experts, Stan V. Smith, Ph.D. and
22 Robert Kneuper, Ph.D., who wrote extensive reports, reviewed relevant documents, provided
23 valuable testimony, and regularly consulted with Class Counsel. In fact, it was these experts’ reports
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25 ⁶ The expense breakdown for Class Counsel, as well as each of the supporting firms, is set forth in
26 each firms’ accompanying declarations. *See* Schubert Decl. ¶13; Foote Decl. ¶ 10; Belsky Decl. ¶
27 10; Kralowec Decl. ¶ 10.

28 ⁷ The Settlement Agreement provides that these expenses would be sought as part of any fee award
and be payable from the settlement fund. *See* Settlement Agreement, § 8.1.

1 that ultimately allowed the Ninth Circuit to conclude that Plaintiffs had offered a reasonable method
 2 of calculating restitution. *See Pulaski & Middleman, LLC*, 802 F.3d at 988-89.

3 Plaintiffs also paid considerable sums to online discovery vendors to host Google’s massive
 4 document production, incurred significant costs associated with two mediations in this action, and
 5 paid substantial fees to critical litigation consultants Myron Moskowitz (in connection with
 6 Plaintiffs’ successful appellate argument in the Ninth Circuit) and David C. Frederick of Kellogg
 7 Hansen Todd Figel & Frederick PLLC (in connection with successfully opposing Google’s petition
 8 for a writ of certiorari in the U.S. Supreme Court). Schubert Decl. ¶ 13-14.

Expense Category	Totals
Alternative Dispute Resolution / Mediation	\$34,505.00
Experts	\$505,521.82
FedEx	\$1,861.03
Filing Fees	\$2800.00
In-House Copies / Reproduction / Appellate Binding	\$14,891.66
Legal Research (PACER, Lexis, Westlaw)	\$32,503.63
Litigation Consultant Fees	\$20,032.06
Messenger / Courier	\$4,125.05
Online Document Production Hosting Charges	\$93,718.78
Postage	\$212.60
Process Service	\$170.00
Telephone / Facsimile	\$2,509.12
Transcripts	\$14,425.45
Travel-Related Expenses	\$23,369.23
Expense Totals	750,645.43

27 These expenses were reasonably necessary for the prosecution of this action. They were
 28 incurred by Class Counsel for the benefit of the Class with no guarantee that they would be

1 reimbursed during the eight-year prosecution of this action. *See* Schubert Decl. ¶¶ 13, 16; Foote
2 Decl. ¶ 11; Belsky Decl. ¶ 11; Kralowec Decl. ¶ 11. Additionally, these expenses are all of the type
3 that would normally be charged to a fee paying client. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th
4 Cir. 1994); *see also Destefano v. Zynga, Inc.*, 2016 U.S. Dist. LEXIS 17196, at *73 (N.D. Cal. Feb.
5 11, 2016) (identifying recoverable expenses as including photocopying, printing, postage, court
6 costs, research on online databases, experts and consultants, travel, and meals). Further, the amounts
7 are reasonable in light of the highly contentious complex nature of this eight-year-long class action.
8 Accordingly, the Court should grant Class Counsel’s request for reimbursement of \$700,000 in
9 litigation expenses.

10 **E. The Class Representative Service Awards Are Fair,**
11 **Reasonable, and Justified, and Should be Approved.**

12 Courts routinely allow service (or incentive) awards to class representatives as compensation
13 for a plaintiff undertaking the risk and expending the time to advance the interests of a class. *See*
14 *Rodriquez v. West Pub. Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009); *Vasquez v. Coast Valley*
15 *Roofing, Inc.*, 266 F.R.D. 482, 490 (E.D. Cal. 2010).

16 Here, Class Representatives JIT, RK West, and Oesterling each seek approval of a \$5,000
17 service award. As detailed in their accompanying declarations, these Class Representatives regularly
18 communicated with Class Counsel and supporting counsel during the course of this eight-year-long
19 litigation. The Class Representatives answered questions, produced documents, researched and
20 verified discovery responses, confirmed the accuracy of fact allegations, and provided valuable
21 testimony at their day-long depositions. *See* Declaration of Richard Oesterling (“Oesterling Decl.”),
22 ¶ 4; Declaration of Russell Kovner (“Kovner Decl.”), ¶ 4; Declaration of Michael Hrbacek
23 (“Hrbacek Decl.”), ¶ 4. Prior to deciding to bring suit, JIT, RK West, and Oesterling considered the
24 attendant commitments inherent in pursuing this class action, and each fully embraced the
25 responsibilities and duties. Oesterling Decl., ¶¶ 2-3; Kovner Decl., ¶¶ 2-3; Hrbacek Decl., ¶¶ 2-3.
26 Importantly, none of these Class Representatives conditioned their agreement to the proposed
27 settlement on receiving any service or incentive award for their role as a Class Representative.
28 Oesterling Decl., ¶ 5; Kovner Decl., ¶ 5; Hrbacek Decl., ¶ 5.

1 This Court has previously found that similar service awards are “presumptive reasonable”
2 under the same circumstances presented here. *See, e.g., In re Google Referrer Header Privacy Litig.*,
3 87 F.Supp.3d 1122, 1137 (N.D. Cal. 2015) (approving \$5,000 incentive awards as “presumptively
4 reasonable” where the named plaintiffs “assumed the responsibilities and burdens of acting as
5 representatives in this lawsuit, including providing documents, verifying allegations, and consulting
6 with counsel”). Here, each of the Class Representatives’ involvement in this litigation proved
7 invaluable to Class Counsel’s efforts and merits recognition. Plaintiffs’ requested \$5,000 service
8 awards to JIT, RK West, and Oesterling should be approved.

9
10 **IV. CONCLUSION**

11 For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion
12 for (1) An Award of Attorneys’ Fees, (2) Reimbursement of Costs and Expenses, and (3) Service
13 Awards. A proposed order is submitted herewith.

14
15 Dated: May 8, 2017

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