

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

**IN RE GOOGLE INC. COOKIE  
PLACEMENT CONSUMER PRIVACY  
LITIGATION**

**Case No. 12-MD-2358-ER**

**This Document Relates to:  
All Actions**

**NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF SETTLEMENT  
WITH GOOGLE INC.**

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**TO DEFENDANTS AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that Plaintiffs Jose M. (“Josh”) Bermudez, Nicholas Todd Heinrich, and Lynne Krause (collectively “Plaintiffs” or “Class Representatives”) respectfully move the Court for an Order finally approving the Settlement reached with Defendant Google Inc. (“Google”). Plaintiffs file this motion pursuant to Federal Rule of Civil Procedure 23, on the grounds that the requirements for final approval are met, and the proposed Settlement is fair, reasonable, and adequate. On October 15, 2021, this Court granted preliminary approval of the Settlement, certified a Settlement Class, appointed Settlement Class Counsel, and directed that notice of the Settlement be issued. Plaintiffs now seek the Court’s Order finding that the settlement is fair, reasonable, and adequate and granting final approval.

Dated: August 8, 2022

Respectfully submitted,

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**LOCAL RULE 7.1.1 STATEMENT**

No party to the proposed Settlement opposes the relief sought in this Motion.

Dated: August 8, 2022

/s/ Brian R. Strange  
Brian R. Strange

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

**IN RE GOOGLE INC. COOKIE  
PLACEMENT CONSUMER PRIVACY  
LITIGATION**

**Case No. 12-MD-2358**

**This Document Relates to:  
All Actions**

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF SETTLEMENT WITH GOOGLE INC.**

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Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs Jose M. (“Josh”) Bermudez, Nicholas Todd Heinrich, and Lynne Krause (collectively “Plaintiffs” or “Class Representatives”) respectfully move the Court for an Order finally approving the Settlement reached with Defendant Google Inc. (“Google”) that will resolve more than a decade of litigation.

After briefing, oral argument, and supplemental briefing at the Court’s request, this Court preliminarily approved the proposed Settlement on October 15, 2021. D.I. 203. Since then, an expert notice administrator has ensured that the notice materials were presented more than **429 million** times to potential Class Members. Declaration of Michelle M. La Count Regarding Notice Administration (“La Count Decl.”) ¶ 18. As of August 8, 2022, only 34 valid exclusion requests<sup>1</sup> and 2 objections were received.<sup>2</sup> *Id.* ¶¶ 27–29; D.I. 206, 207. This response reaffirms the fundamental fairness of the proposed Settlement, which ensures meaningful injunctive relief for the Class and advances the purposes of the suit and the law by providing *cy pres* awards to protect and promote Internet privacy and security.

For the reasons set forth herein, Plaintiffs respectfully submit that the proposed Settlement is fair, reasonable, and adequate and the Court should grant final approval.

## **I. BACKGROUND**

### **A. Litigation History**

For over ten years, Plaintiffs have litigated their claims that Google violated numerous federal and state laws by circumventing Plaintiffs’ and Class Members’ privacy settings on

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<sup>1</sup> An additional 50 exclusion requests were received when notice was first provided to the Class in 2016. *See* La Count Decl. ¶ 26. In its preliminary approval order, the Court instructed that those original exclusion requests would stand alongside any additional exclusion requests received after notice was provided to the Class a second time. *See* D.I. 203 at 2 n.2.

<sup>2</sup> The two objections are addressed in separately-filed responses to be filed with the Court on August 8, 2022. As explained in those responses, neither objection has merit.

Apple Safari and Microsoft Internet Explorer web browsers. Plaintiffs engaged in extensive motion practice and two lengthy and difficult appeals.

1. Case Filing, Motion to Dismiss, and First Appeal

In early 2012, numerous individuals, including Plaintiffs, filed complaints in various federal courts around the country after Google's alleged actions were publicized. These actions were centralized and transferred to this Court for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 on June 12, 2012 (D.I. 1). After several groups submitted applications to be lead counsel, the Court selected Class Counsel to be Interim Co-Lead Counsel on November 16, 2012. D.I. 44.

On December 19, 2012, Plaintiffs filed a Consolidated Class Action Complaint against Google and other Defendants (D.I. 46), and, on June 21, 2016, Plaintiffs filed a Consolidated Amended Class Action Complaint (D.I. 162). In the Complaint, Plaintiffs alleged, on behalf of a nationwide class of consumers, that Google intentionally set cookies on Plaintiffs' Safari and Internet Explorer web browsers in conflict with the default cookie-blocking settings of such browsers and in violation of various federal and state laws. Google denies all allegations of wrongdoing. The parties also propounded and answered discovery, including initial disclosures (D.I. 155, 156), requests for production of documents (D.I. 155, 158–60), and interrogatories (D.I. 155, 159).

On January 22, 2013, Google filed a motion to dismiss all claims against it (D.I. 56). After extensive briefing, oral argument was held on July 25, 2013, and, on October 9, 2013, this Court granted the motion to dismiss in its entirety (D.I. 122).<sup>3</sup> Plaintiffs appealed that Order and,

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<sup>3</sup> In the interim, Plaintiffs reached a settlement with Defendant PointRoll, Inc. ("PointRoll"), which called for injunctive relief in the form of ending the complained of practices on behalf of

on November 10, 2015, the Third Circuit vacated the dismissal of two of Plaintiffs' state law claims, affirmed the dismissal of Plaintiffs' other claims, and remanded the case to this Court for further consideration. D.I. 146.

Plaintiffs also filed a petition for a writ of certiorari with the United States Supreme Court on March 10, 2016, seeking review of the Third Circuit's affirmed dismissal of some of Plaintiffs' claims. Google and the other Defendants waived their right to respond to the petition. On May 10, 2016, the Supreme Court requested that Google and the other Defendants respond to the petition. Such an order requesting a response is rare, as the Supreme Court only requests responses to approximately 2.5–4.7 percent of the petitions before it.<sup>4</sup> Google notified the Supreme Court of its settlement with Plaintiffs and of its intent not to respond to the petition unless specifically requested to do so despite the settlement. The other Defendants responded to the petition on August 11, 2016. Plaintiffs filed a reply to their response on August 31, 2016. Ultimately, on October 3, 2016, the Supreme Court denied Plaintiffs' petition after the extensive briefing was completed.

## 2. Mediation and Settlement

On May 9, 2016, Class Counsel and counsel for Google participated in a private all-day mediation before retired federal Judge Layn R. Phillips. In advance of the mediation, the parties exchanged detailed briefing in response to the mediator's numerous questions regarding the strengths and weaknesses of Plaintiffs' case, including with regard to Plaintiffs' damages theories and class certification prospects. The parties then participated in pre-mediation phone

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PointRoll, and payment of \$115,000 in attorneys' fees and expenses. This Court finally approved the PointRoll settlement and fee award in April 2014. D.I. 145.

<sup>4</sup> See David C. Thompson & Melanie F. Wachtell, *An Empirical Analysis of Supreme Court Certiorari Petition Procedures: The Call for Response and the Call for the Views of the Solicitor General*, 16 Geo. Mason L. Rev. 237, 268 (2009).

calls with Judge Phillips. Following an all-day private mediation before Judge Phillips and many subsequent back-and-forth negotiations and discussions (some of which involved Judge Phillips and/or his staff), the parties agreed upon and executed a formal Settlement Agreement on June 30, 2016. Declaration of Brian R. Strange (“Strange Decl.”) ¶¶ 3, 7–8; Declaration of Jim Frickleton (“Frickleton Decl.”) ¶ 3; Declaration of Steve Grygiel (“Grygiel Decl.”) ¶¶ 11–13. Thereafter, consistent with the terms of the Settlement, Plaintiffs filed a Motion for Preliminary Approval on August 29, 2016. D.I. 163. On August 31, 2016, the Court preliminarily approved the Settlement and directed that Notice be disseminated to the Settlement Class in accordance with the Settlement Agreement. D.I. 164.

The proposed Settlement is the result of extensive, arm’s-length negotiations between experienced counsel. Those negotiations came after extensive motion practice, including Google’s motion to dismiss, and after the conclusion of Plaintiffs’ appeal of this Court’s ruling on that motion, including briefing before the United States Supreme Court and the remand of the case to this Court. Plaintiffs and Google discussed for several months the possibility of settling Plaintiffs’ claims against Google. Strange Decl. ¶ 3; Frickleton Decl. ¶ 3; Grygiel Decl. ¶ 11. Throughout the course of settlement negotiations, the parties took into consideration potential liability and damages issues; the risks of dismissal, class certification, summary judgment, and trial; the possibility of further appeals of any judgment and/or rulings of the trial court; and how these factors could add to the cost, delay, and uncertainty of litigation. Strange Decl. ¶¶ 8, 20; Frickleton Decl. ¶ 8; Grygiel Decl. ¶¶ 9, 13, 16, 18.

### 3. Objection to Settlement and Second Appeal

Following the notice program, Plaintiffs filed a Motion for Final Approval and a Motion for Attorney Fees, Expenses, and Incentive Awards on December 7, 2016. D.I. 167, 168. Prior

to the hearing on final approval, the Court received fifty requests for exclusion and only one objection. The lone objector challenged this Court's certification of the settlement class and the terms of the approved settlement. D.I. 171. This Court overruled the objection and the objector appealed. D.I. 173. The Third Circuit, applying *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004), approved the settlement in most respects assuming, without holding, that the presumption of fairness attached. *In re: Google Inc. Cookie Placement Consumer Privacy Litig.* (“*Google IP*”), 934 F.3d 316, 326 n.8 (3d Cir. 2019). The objector did not challenge numerosity, typicality, or commonality or challenge the Court's ruling on Class Counsel's Motion for Attorney Fees, Expenses, and Incentive Awards. The Third Circuit determined that there was Article III standing in this case but remanded the case to this Court for further consideration of two issues: (1) whether the *cy pres* recipients were chosen on their merits; and (2) whether the class-wide release of damages was appropriate in a class certified under Rule 23(b)(2). *Id.* at 329–30.

#### 4. Renewed Motion for Settlement Approval

On remand, and in order to address the Third Circuit's concerns regarding the propriety of the release, Plaintiffs now request certification of the Class under both Fed. R. Civ. P. 23(b)(2) and (3). In accordance with the terms of the Settlement Agreement that requires the parties to cooperate on administrative and procedural matters in order to consummate the purpose and spirit of the agreement, the settlement relief was modified so that a neutral third party appointed by the Court will choose the *cy pres* recipients, thereby obviating any concerns regarding their selection.

Having addressed the issues raised by the Third Circuit's opinion, Plaintiffs filed a renewed Motion for Preliminary Approval on January 3, 2020. D.I. 193, 194. After a hearing

and supplemental briefing, the Court granted Plaintiffs' Motion for Preliminary Approval on October 15, 2021 and ordered that Plaintiffs commence a renewed notice program to the Class prior to filing for final approval. D.I. 203.

### **B. Summary of Settlement Terms**

The Settlement Agreement provides for a single Settlement Class, defined as follows:

All Persons in the United States of America who used the Apple Safari or Microsoft Internet Explorer web browsers and who visited a website from which Doubleclick.net (Google's advertising serving service) cookies were placed by the means alleged in the Complaint.

Strange Decl. ¶ 4, Ex. A, ("S.A.") § 2.3.<sup>5</sup>

Under the Settlement Agreement, Google will pay \$5.5 million into a Settlement Fund which will (after payment of approved attorney's fees, reimbursement of approved expenses, approved Plaintiff incentive awards, and the costs of class notice and settlement administration) be used to fund Court-approved *cy pres* awards to "independent organizations" who will use the awards to "promote public awareness and education, and/or to support research, development, and initiatives, related to the security and/or privacy of Internet browsers." S.A. § 5.3.2. None of the Settlement Fund will revert to Google. S.A. § 5.3.4.

In addition to the *cy pres* payments, the Settlement also confers substantial additional benefits upon Class Members, particularly in light of the potential recovery provable at trial and given the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or appeal. The estimated monetary amount Google obtained from its actions was about \$4

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<sup>5</sup> Excluded from the Settlement Class are "(i) Google, its parent, subsidiaries, successors, affiliates, officers, and directors; (ii) the judge(s) to whom the Civil Actions are assigned and any member of the judge's or judges' immediate family; (iii) Persons who have settled with and released Google from individual claims substantially similar to those alleged in the Litigation; and (iv) Persons who submit a valid and timely Request for Exclusion." S.A. § 2.5.



million<sup>6</sup> and Google paid much more than that amount in fines when settling the FTC investigation into its actions. Thus, because Google had already disgorged any alleged unjust enrichment, and because Class Members had minimal damages that had not already been repaid by Google, Class Counsel, experienced in this type of case, reasonably concluded that obtaining a further \$5.5 million from Google for *cy pres* contributions and for the benefit of the Class was the best path forward. The Settlement also provides for remedial and prospective relief for Class Members, including Google's assurances that it took actions to expire or delete, by modifying the cookie deletion date contained in each cookie, all third-party Google cookies that exist in the browser files for Safari browsers. S.A. § 5.1. Class Counsel believes that this action by Google is a practical, reasonable, and effective means of removing the cookies from Safari browsers.

In exchange for the relief described, upon final approval, Plaintiffs and Class Members will release all claims arising from the alleged cookie placement during the Relevant Time Period. S.A. §§ 2.2, 2.25, 10.1.

### **C. Notice to the Class, Objections, and Exclusions**

The Court preliminarily approved the Settlement on October 15, 2021. D.I. 203. Beginning on March 24, 2022, and continuing for six weeks until May 4, 2022, Notice of the Proposed Settlement with Google Inc. ("Notice") was disseminated to potential members of the Class in English and Spanish via online advertisements on the Verizon (Yahoo) Audience network, as well as through targeted social media advertising on Facebook, Instagram, and Reddit designed by the Class Administrator to reach the broadest possible audience of potential Apple Safari and Microsoft Internet Explorer web browsers. *See* La Count Decl. ¶¶ 9–10, 14–16 & Ex. 2. A Summary Notice was also published in the April 15, 2022 issue of *People Magazine*,

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<sup>6</sup> *See* United States' Response to Consumer Watchdog's Amicus Curiae Brief, at 10 n.11, *United States v. Google Inc.*, No. 3:12-cv-04177-SI (N.D. Cal. Sept. 28, 2012, ECF No. 15).

a nationally distributed and widely read magazine. *Id.* ¶ 11 & Ex. 1.<sup>7</sup> A website containing the long-form Notice of the Settlement, as well as other Court documents and answers to frequently asked questions, was also established and, as of August 3, 2022, it was visited at least 92,607 times, resulting in at least 75,295 unique sessions. *Id.* ¶ 24. This campaign was appropriately targeted to reach as many members as practicable of a proposed Class whose members are not readily identifiable, but who may have been harmed by the conduct alleged in the Complaint.

The advertising program delivered more than 429 million ad impressions to potential Class Members. *Id.* ¶ 18. The Settlement Website will remain active after final approval, but to date it has received at least 92,607 visits. *Id.* ¶ 24. The administrator has received 6 letters or other correspondence regarding the Settlement and has responded to each. *Id.* ¶¶ 20–21.

The postmark deadline for exclusion requests from or objections to the Settlement was July 7, 2022. *Id.* ¶ 27. As of August 3, 2022, the Class Administrator has received 38 valid and timely requests for exclusion from the Settlement and one invalid request for exclusion. *See id.* ¶¶ 27–28 & Ex. 4. To date, Class Counsel have received 2 objections to the Settlement. D.I. 206, 207. Class Counsel will separately respond to the objections by August 8, 2022. The Court will hold a fairness hearing at a date and time to be determined. D.I. 205.

#### **D. Counsel Recommendations on Distribution of *Cy Pres* Funds**

In the Motion for Preliminary Approval, and in order to satisfy the concerns raised by the Third Circuit’s opinion, Plaintiffs proposed that the Court select a third-party neutral to select up to ten *cy pres* recipients to receive the settlement funds. D.I. 194 at 6–7. Recipients selected by the neutral third-party will be required to satisfy eligibility criteria identified in the Settlement Agreement, including establishing a sufficient nexus between their work and the injuries claimed

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<sup>7</sup> The number of potential Class Members reached by this notice program stands in addition to the potential Class Members reached by the initial notice provided in 2016.

by the Class Members, be recognized leaders in the fields of online privacy, safety, and/or advocacy, and agree to devote the funds to promote public awareness and education and/or to support research, development, and initiatives related to the security and/or privacy of the Internet. The Court, in its discretion, may allow for the entities selected by the neutral third-party to submit their proposals for the funds and for those proposals to be placed on the settlement website for review and comment by the Class Members before approving any payments. The Court may also require recipients to submit a sworn declaration prior to final approval that (1) confirms their eligibility; (2) confirms their promise to use the funds in accordance with the agreement; and (3) discloses any existing or prior relationship to the Court, parties, and/or counsel, including prior donations or *cy pres* distributions from the parties. And finally, the Court may require the recipients to produce a witness at the final approval hearing to respond to the Court's questions regarding their application to receive a *cy pres* distribution.

## **II. ARGUMENT**

To determine whether to approve a class action settlement, the Court must first assure itself that the proposed settlement class may be certified under Rule 23(a) and (b); next the Court must assess whether the proposed settlement is “fair, reasonable, and adequate.”<sup>8</sup> *Halley v. Honeywell Int’l, Inc.*, 861 F.3d 481, 488 (3d Cir. 2017).

### **A. The Settlement Class Meets the Requirements of Rules 23(a)**

Under Rule 23(a), the proponent of class certification must “demonstrate, first, that (1)

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<sup>8</sup> The Court must also assure itself “of litigants’ standing under Article III” before certifying a settlement class. *Frank v. Goas*, 139 S. Ct. 1041, 1046 (2019). In this case, the Third Circuit determined that the Named Plaintiffs have Article III standing. *Google II*, 934 F.3d at 324 (“More than precedent supports our conclusion. History and tradition reinforce that a concrete injury for Article III standing purposes occurs when Google, or any other third party, tracks a person’s internet browser activity without authorization.”). No objector challenges whether any Named Plaintiff has Article III standing and the Third Circuit’s finding is the law of the case. *See Todd & Co., Inc. v. SEC*, 637 F.2d 154, 157 (3d Cir. 1980).

the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting Fed. R. Civ. P. 23(a)). Those requirements are met here.

1. The members of the Settlement Class are so numerous that joinder is impracticable

The numerosity requirement of Rule 23(a)(1) is satisfied where the traditional joinder of parties would be “unworkable.” *In re Bulk (Extruded) Graphite Antitrust Litig.*, No. 02-cv-6030, 2006 WL 891362, at \*5 (D.N.J. Apr. 4, 2006). There is no “minimum number of plaintiffs required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.” *Stewart v. Abraham*, 275 F.3d 220, 226–27 (3d Cir. 2001) (citing *5 Moore’s Federal Practice* § 23.22[3][a] (3d ed. 1999)); *see also In re Abbot Labs. Norvir Antitrust Litig.*, No. C 04-1511 CW, 2007 WL 1689899, at \*6 (N.D. Cal. June 11, 2007) (holding that numerosity may be satisfied where class membership is unknown but common sense indicates that it is large). Moreover, numerosity is not determined solely by the size of the class, but also by the geographic location of class members. *See Marsden v. Select Med. Corp.*, 246 F.R.D. 480, 484 (E.D. Pa. 2007). Class Counsel estimates that millions of users of Safari and Internet Explorer web browsers have been affected by Google’s alleged conduct during the relevant time period and that those users are geographically dispersed throughout the United States. The numerosity requirement is met.

2. There are common questions of law and fact

Rule 23(a)(2) requires there be “questions of law or fact common to the members of the

class.” The commonality requirement is construed permissively and “is easily met because it may be fulfilled by a single common issue.” *In re Linerboard Antitrust Litig.*, 203 F.R.D. 197, 205 (E.D. Pa. 2001); *see also Stewart*, 275 F.3d at 226–27 (“The commonality requirement will be satisfied if the named plaintiffs share at least *one* question of fact or law with the grievances of the prospective class.” (emphasis added; citation omitted)); 1 H. Newberg & A. Conte, *Newberg on Class Actions* § 3.10 (3d ed. 1992) [hereinafter *Newberg*] (the commonality standard is “easily met” for most settlement classes).

Here, for settlement purposes, numerous questions of law or fact are common to the Class, including: (1) whether Google’s alleged practice of circumventing Plaintiffs’ and Class Members’ Safari and Internet Explorer browsers’ security and privacy settings to place third-party cookies constituted a violation of intrusion upon seclusion under California common law or a violation of the California Constitution’s right to privacy; (2) how Google carried out the browser circumvention; and (3) whether Plaintiffs and the Class are entitled to damages or other relief. Because there exist common factual and legal questions related to liability, the commonality requirement of Rule 23(a)(2) is met.

3. Plaintiffs’ claims are typical of the claims of the Settlement Class

Rule 23(a)(3) requires that “the claims . . . of the representative parties are typical of the claims . . . of the class.” The typicality factor examines “whether the named plaintiffs’ claims are typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class.” *Beck v. Maximus, Inc.*, 457 F.3d 291, 295–96 (3d Cir. 2006). A named plaintiff’s claim is typical if it arises from the same alleged wrongful conduct by the defendant that gives rise to the claims of the putative class. *See Baby Neal v. Casey*, 43 F.3d 48, 57–58 (3d Cir. 1994); *see also Stanford v. Foamex L.P.*, 263 F.R.D. 156, 168 (E.D. Pa. 2009) (Rule 23(a)(3) “does not demand identical claims, only that they be reasonably

coextensive with those of the absent class members” (citation omitted)). This requirement “does not mandate that all putative class members share identical claims, because even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories or where the claim arises from the same practice or course of conduct.” *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 184–85 (3d Cir. 2001) (citations and internal quotation marks omitted). Instead, in examining typicality, the Court must ensure that the Class Representatives do not have interests antagonistic to those of the Class. *See In re Flat Glass Antitrust Litig.*, 191 F.R.D. 472, 481 (W.D. Pa. 1999). Here, the Class Representatives and the Class press the same claims and share similar injuries—violations of privacy rights—all flowing from the same alleged conduct by Google.

4. Plaintiffs will fairly and adequately protect the interests of the Settlement Class

Finally, the Class Representatives must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This inquiry asks (1) whether Class Counsel has “the qualifications . . . to represent the class,” and (2) whether any “conflicts of interest [exist] between named parties and the class they seek to represent.” *In re Prudential Ins. Co. Am. Sales Practices Litig. Agent Actions* (“*Prudential*”), 148 F.3d 283, 312 (3d Cir. 1998) (quotation omitted). Both requirements are met here.

First, Plaintiffs have retained qualified and experienced counsel to pursue this action. Settlement Class Counsel—Strange LLP, Bartimus, Frickleton & Robertson, P.C., and Silverman, Thompson, Slutkin, White—have extensive experience and expertise in class action litigation, privacy and Internet actions, and other complex proceedings and are qualified and able

to conduct this litigation.<sup>9</sup> Strange Decl. ¶¶ 15–18; Frickleton Decl. ¶¶ 9–10; Grygiel Decl. ¶¶ 18–20. Class Counsel have already demonstrated their full commitment to the continued prosecution of this litigation over the last decade and they possess the experience, skill, and resources to continue to do so. *Id.*

Second, to be adequate, the Class Representatives must be part of the Class, have suffered the same injury, and have the same interests as the rest of the Class Members. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625–26 (1997). Here, no antagonism exists between Plaintiffs and the rest of the Class Members—all of them assert the same underlying claims based on the same alleged conduct by Google. Plaintiffs and the rest of the Class Members allege they visited sites on their Safari and/or Internet Explorer web browsers that were served Google ads, thereby receiving the same Google code that allegedly caused cookies to be set in an identical manner on each web browser. Plaintiffs’ interests are thus aligned with those of the other members of the Class.

**B. The Proposed Settlement Class Meets the Requirements of Rule 23(b)(2)**

Rule 23(b)(2) requires that Google acted on grounds that apply generally to the Class such that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole. This element is easily met here as Google served the same code in the same manner that circumvented users’ Safari and/or Internet Explorer web browsers’ security and privacy settings to all Plaintiffs and Class Members. Therefore, Rule 23(b)(2)’s requirements are

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<sup>9</sup> Rule 23(g) requires the Court to examine the capabilities and resources of Class Counsel to determine whether they will provide adequate representation to the Class. The Court previously appointed Class Counsel as Interim Co-Lead Counsel. D.I. 44. For the same reasons that the Court appointed Class Counsel as Interim Co-Lead Counsel, their appointment as Settlement Class Counsel is also appropriate.

satisfied. *See Baby Neal*, 43 F.3d at 58 (explaining that a Rule 23(b)(2) class is “almost automatically satisfied in actions primarily seeking injunctive relief”).

**C. The Proposed Settlement Class Meets the Requirements of Rule 23(b)(3)**

Under Rule 23(b)(3), the Court may certify a class when it finds that “the questions of law or fact common to class members predominate over any questions affecting only individual members and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”

1. Common issues predominate over individual ones

The predominance requirement “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc.*, 521 U.S. at 623. Issues common to the class must “predominate” over individual issues. *Prudential*, 148 F.3d at 313–14. Because the Court’s analysis of the “commonality” requirement under Rule 23(a)(2) overlaps with the “predominance” requirement of Rule 23(b)(3), courts often examine “commonality under Rule 23(a) together with predominance under Rule 23(b)(3).” *Abante Rooter & Plumbing, Inc. v. Alarm.com Inc.*, No. 15-cv-6314-YGR, 2017 WL 1806583, at \*6 (N.D. Cal. May 5, 2017).

In the Third Circuit, the predominance inquiry focuses on “whether the defendant’s conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant’s conduct.” *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 298 (3d Cir. 2011). This criterion is normally satisfied when there is an essential common factual link between all class members and the defendant for which the law provides a remedy. *Lake v. First Nationwide Bank*, 156 F.R.D. 615, 625 (E.D. Pa. 1994). The legal and factual questions identified above as “common” pursuant to Rule 23(a) will clearly predominate over any other questions that might arise. *See supra* Section II.A.2.



2. Class treatment is superior to other methods of adjudication

Rule 23(b)(3) requires that a “class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” The superiority element requires the Court “to balance, in terms of fairness and efficiency, the merits of a class action against those of ‘alternative available methods of adjudication.’” *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 309 (3d Cir. 2005). Factors for the Court to consider in evaluating the superiority requirement include:

(A) The class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3)(A)–(D). The superiority inquiry is simplified in the settlement context, because when certifying a settlement-only class, the Court need not inquire whether the case, if tried, would pose intractable management problems, for the purpose of the settlement is to not have a trial. *Amchem Prods., Inc.*, 521 U.S. at 620.

In this case, a class action is the superior method of resolving the Class Members’ claims. All of the Class Members’ claims are based upon the same operative facts and legal standards. It would be a far better use of judicial resources to adjudicate all of these identical issues once, on a common basis. *See In re Nat’l Football League Players’ Concussion Injury Litig.*, 301 F.R.D. 191, 202 (E.D. Pa. 2014) (“If the cases filed by Plaintiffs against the NFL Parties were litigated individually, the parties could face decades of litigation and significant expense in many different state and federal courts, potentially resulting in conflicting rulings.”). By contrast, individualized litigation would carry great uncertainty, risk, and costs, and provide no guarantee that Class Members would obtain any greater relief than they are to receive under the Settlement Agreement. In addition, because this case involves potentially millions of Class Members, who

have all been injured in a relatively small amount, individual litigation is even more unlikely to be feasible, making class adjudication superior. *See Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004) (“The realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for \$30.”). Therefore, settlement of this case as a class action is superior to any alternative.

**D. The Proposed Settlement Is Fair, Reasonable, and Adequate and Should Be Approved By the Court**

A proposed class action settlement should be approved under Federal Rule of Civil Procedure 23(e) if it is “fair, adequate and reasonable.” The Settlement here satisfies that standard, as well as the *Girsh* and *Prudential* fairness factors, and should therefore be approved.

1. Public policy favors settlement of class actions

Courts routinely recognize that the “law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (citing 2 *Newberg* § 11.41 (citing cases)). “The parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial.” *Id.* (citation omitted). “These economic gains multiply when settlement also avoids the costs of litigating class status—often a complex litigation within itself.” *Id.*

2. The Settlement is entitled to a presumption of fairness

Class settlements are presumed fair “if the court finds that: (1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 254 (D. Del. 2002); 4 *Newberg* § 11.24. By

preliminarily approving this Settlement, the Court has already found these factors to be present.

D.I. 203 at 2.

Class Counsel and counsel for Google—each experienced class action and defense attorneys—have, individually and with the mediator’s pointed observations, fully evaluated the strengths, weaknesses, and equities of the parties’ respective positions and engaged in arm’s-length negotiations in order to reach the proposed Settlement. Strange Decl. ¶ 3; Frickleton Decl. ¶ 3; Grygiel Decl. ¶ 13. Their view that the proposed Settlement is a fair resolution of their dispute is entitled to considerable weight. *Austin v. Pa. Dep’t of Corr.*, 876 F. Supp. 1437, 1472 (E.D. Pa. 1995) (“great weight” normally given to opinion of counsel regarding class settlement).

3. The Settlement is fair, reasonable, and adequate under Rule 23(e)

Rule 23(e)(2), as amended and effective December 1, 2018, requires the Court to consider the following factors:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).<sup>10</sup> Each factor is discussed in order below.

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<sup>10</sup> The Rule 23(e) factors are like the *Girsh* factors previously applied to decide whether a class action settlement is fair and reasonable in the Third Circuit. See *Hall v. Accolade, Inc.*, No. 17-3423, 2019 WL 3996621, at \*2 n.1 (E.D. Pa. Aug. 23, 2019) (“The *Girsh* factors predate the recent revisions to Rule 23, which now explicitly identifies the factors that courts should apply in scrutinizing proposed class settlements and the discussion in *Girsh* substantially overlaps with the factors identified in Rule 23.”).

i. Rule 23(e)(2)(A): Adequacy of representation

This factor focuses “on the actual performance of counsel acting on behalf of the class.” *Hall*, 2019 WL 3996621, at \*4; *see also In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 439 (3d Cir. 2016) (class counsel should “develop[] enough information about the case to appreciate sufficiently the value of the claims”).

Here, this factor is satisfied. To date, Plaintiffs’ counsel has dedicated thousands of attorney hours to this litigation. *See* D.I. 168-2, Strange Decl., ¶ 12. Moreover, prior to reaching settlement, Plaintiffs’ counsel conducted an extensive investigation of the facts underlying the case, engaged in years of briefing and appeals on issues important to this case—many of which remain areas of substantial disagreement across the reported decisions—and prepared extensively for the mediation that led to the settlement in this case. *See id.* ¶¶ 2–7.

The case was first filed over ten years ago in 2012 and Class Counsel has been litigating this case since that time without any payment.<sup>11</sup> When this case was first filed, the state of the law on whether a consumer was “injured” by a company taking their data was unclear. Google’s initial response to this case in their motion to dismiss—which was a common argument at the time in litigation throughout the country—was that Plaintiffs suffered no “injury” and had no claim due to allegedly misappropriated customer data. The district court agreed with Google, and it granted Google’s motion to dismiss in its entirety. Class Counsel appealed that decision, and through substantial briefing and argument (all of which was performed on a contingency basis), the Third Circuit issued a published decision finding that there was injury as a matter of law and remanded the case to the district court. This decision was one of the first of its kind in

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<sup>11</sup> Except for the small payment received from the settlement with Defendant PointRoll, Inc. in 2014. D.I. 144.

the privacy-related cases and has paved the way as the data issues have become much more common and important for consumers. Class Counsel began fighting the case anew and, with the assistance of a respected former federal judge, a settlement was reached between the parties. After briefing and hearings, the district court approved the settlement and an appeal was then taken by a sole professional objector. In sum, Class Counsel and the class representatives have adequately represented the class for many years in a complicated and ever-changing technological environment. This factor is thus satisfied.

ii. Rule 23(e)(2)(B): Arm's length negotiation

The second factor requires that the settlement proposal was negotiated at arm's length. Fed. R. Civ. P. 23(e)(2)(B). The parties here only agreed to settle the case after extensive and detailed pre-mediation submissions, a day-long mediation, and several subsequent conferences before retired federal Judge Layn Phillips. *See* Strange Decl. ¶¶ 7–8. “[T]he participation of an independent mediator in settlement negotiations virtually ensures that the negotiations were conducted at arm's length and without collusion between the parties.” *Hall*, 2019 WL 3996621, at \*4 (citation and punctuation omitted). This factor weighs in favor of approving the settlement.

iii. Rule 23(e)(2)(C)(i): Adequacy of relief provided after accounting for the costs, risks, and delay of trial and appeal

This factor recognizes that while the “relief that the settlement is expected to provide to the class members is a central concern,” such relief must be viewed in relation to “the cost and risk involved in pursuing a litigated outcome.” Fed. R. Civ. P. 23(e)(2)(C) advisory committee's note to 2018 amendment.

Here, this factor is satisfied. First, absent settlement, the cost and delays associated with this litigation would be significant. The Court would be required to resolve extensive and contested motions, including discovery-related motions, a class certification motion, and likely

summary judgment motion(s). Class Counsel and defense counsel would likely retain experts on privacy, technology, and damages issues for purposes of presenting the case to the jury. In sum, continued adversarial litigation would be a long, complicated, and expensive process for the parties and the Court.

Moreover, numerous litigation risks are present absent settlement. For instance, there is a risk that the Court would not grant Plaintiffs' class certification motion, especially because—at the time the settlement was reached—only two claims under California law remained following the dismissal of Plaintiffs' statutory-damage claims. This uncertainty is highlighted by Google's adamant position throughout the litigation that (i) the deployment of cookies did not involve the collection, retention, or resale of any specific personal information, (ii) Google never possessed the requisite intent to invade Plaintiffs' privacy, (iii) the alleged cookie placement was inadvertent and unknown to Google at the time, and (iv) the class suffered no legally cognizable injuries as a result of the alleged conduct. *See Grygiel Decl.* ¶ 13. While Class Counsel disagrees with Google's analysis, there is clearly no guarantee that Plaintiffs will prevail.

Even if Plaintiffs succeed at class certification, the merits of the case will also be hard fought. The method that Google used to collect information is complicated, and it is anticipated that Google will vigorously dispute requested discovery. Because of the complicated nature of this case involving the use of "cookies" and collection of data on the Internet by a sophisticated and well-funded tech giant, and given that the events at issue happened more than a decade ago, the nature of the litigation without settlement would very likely be protracted and drawn out, with the possibility of yet a third appeal by whichever party is unsuccessful on the merits before the district court. This factor weighs in favor of approving the settlement.

iv. Rule 23(e)(2)(C)(ii): Adequacy of relief provided after accounting for effectiveness of any proposed distribution method

Under this factor the Court “scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims” and “should be alert to whether the claims process is unduly demanding.” Fed. R. Civ. P. 23(e)(2)(C) advisory committee’s note to 2018 amendment. This factor is not applicable here because the proposed settlement does not seek to establish a claims-processing mechanism.

v. Rule 23(e)(2)(C)(iii): The terms of any proposed award of attorney’s fees, including the timing of payment

Rule 23(e)(2)(C)(iii) requires the Court to consider “the terms of any proposed award of attorney’s fees, including the timing of payment.” The district court previously analyzed Class Counsel’s request for attorney’s fees and expenses and granted Class Counsel a fee equal to 35% of the settlement fund. D.I. 173 at 11–12. That fee award represented a negative multiplier measured against Class Counsel’s hours devoted to the case.<sup>12</sup> Counsel will be paid once the settlement is finally approved by the Court. In addition, no Class Member—including objector Mr. Frank—timely objected to the Court’s fee order, and it was not at issue during the appeal before the Third Circuit.<sup>13</sup> This factor therefore weighs in favor of approving the Settlement.

vi. Rule 23(e)(2)(C)(iv): Any agreement required to be identified under Rule 23(e)(3)

Rule 23(e)(3) requires the settling parties to “file a statement identifying any agreement made in connection with the proposal.” Here, the previously-provided Settlement Agreement is

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<sup>12</sup> It should also be noted that Class Counsel is not requesting any additional attorneys’ fees or reimbursement of any additional expenses incurred since the Court approved Class Counsel’s request for attorneys’ fees and expenses in 2017, despite the fact that Class Counsel has devoted significant additional time and incurred additional expenses since that time.

<sup>13</sup> Objector Mudrechenko does purport to object to the amount of attorneys’ fees (D.I. 206) but, for the reasons explained in Class Counsel’s separately-filed response to that objection, his objection is untimely and without merit.

the only agreement connected to this Settlement and it is available on the Court’s docket, *see* D.I. 163-1, Ex. A, and on the Settlement website. *See* La Count Decl. ¶ 23.

vii. Rule 23(e)(2)(D): Equitable treatment of Class Members

Finally, Rule 23(e)(2)(D) requires the Court to determine that class members are treated equitably and to prevent the “inequitable treatment of some class members vis-à-vis others.” Fed. R. Civ. P. 23(e)(2)(D) advisory committee’s note to 2018 amendment. All Class Members—even those who opt-out and the two that have objected—are treated equally by the proposed settlement in that each will benefit equally from the work that the *cy pres* recipients will perform to educate, monitor, and analyze Internet privacy issues similar to the issues that were litigated in this action. In addition, each Class Member will equally benefit from Google’s pledge not to re-engage in the type of cookie placement that was at issue in this litigation. Thus, this factor supports approval of the proposed settlement. In addition, the low number of objections and opt-outs from the proposed settlement strongly suggests it is fair and reasonable. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 234–35 (3d Cir. 2001) (finding that a low number of objectors and opt-outs strongly favors approval of the settlement). Moreover, the alternative to this proposed *cy pres* settlement—a distribution of a minute amount (likely pennies) to potentially millions of Class Members—is less “equitable” than a *cy pres* settlement that would result in several Internet-protection entities monitoring the conduct of Google and other tech giants in order to prevent similar conduct from occurring again in the future.

4. The *Girsh* factors strongly support approval of the Settlement

In addition to being consistent with public policy and presumptively valid, the proposed Settlement also satisfies the relevant *Girsh* factors—factors established by the Third Circuit for determining whether a proposed settlement is “fair, adequate and reasonable.” *See Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). The *Girsh* factors are: (1) the complexity, expense,



and likely duration of the litigation; (2) the reaction of the Class to the Settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of Defendant to withstand a greater judgment; (8) the range of reasonableness of the Settlement Fund in light of the best possible recovery; and (9) the range of reasonableness of the Settlement Fund in light of all the attendant risks of litigation.<sup>14</sup> *Id.* at 156–57. Satisfaction of the *Girsh* factors demonstrates that the Settlement is fair, reasonable, and adequate, and that final approval of the Settlement should be granted.

i. Complexity, expense, and likely duration of the litigation

The first *Girsh* factor captures “the probable costs, in both time and money, of continued litigation,” weighing the potential risks and rewards of proceeding with litigation against the likelihood of success and the benefits of an immediate settlement. *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 801 (3d Cir. 1974). This factor weighs strongly in favor of approval of the Settlement here.

When the Settlement was reached, only two claims remained after the Third Circuit’s decision—a claim for intrusion upon seclusion under California common law and a claim for violation of the California Constitution’s right to privacy. The Third Circuit affirmed dismissal of Plaintiffs’ statutory claims that would have provided statutory damages and would, therefore, have been easier to certify as class actions. Further, while privacy cases permit awards of

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<sup>14</sup> “The Third Circuit has observed that in assessing the fairness of a proposed settlement, the Court should be careful not to substitute its image of an ideal settlement for the compromising parties’ views: “The evaluating court must, of course, guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.” *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 534 (D.N.J. 1997) (quoting *In re Gen. Motors Corp.*, 55 F.3d at 806); *see also id.* (“Thus, the issue is whether the settlement is adequate and reasonable, not whether one could conceive of a better settlement.”).

damages, privacy injuries can be “very difficult to prove.” *Pichler v. UNITE*, 542 F.3d 380, 399 (3d Cir. 2008) (quotation omitted). While Plaintiffs are confident in their position and believe their remaining claims are strong, Class Counsel are experienced and realistic and know that the guaranteed relief and certainty achieved through settlement—as opposed to the uncertainty inherent in the trial and appellate process—weighs in favor of settlement. Strange Decl. ¶ 11; Frickleton Decl. ¶ 8; Grygiel Decl. ¶ 18.

This uncertainty is highlighted by Google’s adamant position throughout the litigation that it never deliberately intended to invade Plaintiffs’ or Class Members’ privacy and that the alleged cookie placement on web browsers was an inadvertent error caused by an unadvertised feature of the web browser that was unknown to Google. In sum, Google is represented by able counsel who have mounted a vigorous defense, and no doubt would continue to do so. Moreover, the damages issues in this case are untested, particularly with respect to theories of general damages in cases alleging constitutionally-based state privacy claims. Whether Class Plaintiffs are entitled to general or nominal damages per Class Member and the amount of such damages under these circumstances would be hotly contested. And while Class Counsel may disagree with Google’s positions and have confidence in the strength of the case, the Settlement guarantees significant recovery to the Class that is uncertain if the litigation continues. The complexity, expense, and duration of the litigation favor approval of the Settlement.

ii. Reaction of the Class to the Settlement

This *Girsh* factor “attempts to gauge whether members of the class support the settlement.” *Prudential*, 148 F.3d at 318. A lack of significant objections by Class Members weighs in favor of approving the Settlement. *See Linerboard*, 296 F. Supp. 2d at 577–78. And while it is common for some Class Members to object to a proposed settlement, class settlements are often approved over the objections of many class members. *See, e.g., In re Domestic Air*

*Transp. Antitrust Litig.*, 148 F.R.D. 297 (N.D. Ga. 1993) (approving class action settlement notwithstanding a large number of objectors).

The Notice Plan disseminated notice to Safari and Internet Explorer users for a six-week period via online advertisements, targeted social media engagement, and via *People* magazine. La Count Decl. ¶¶ 9–19. As of August 3, 2022, Class Counsel have received just two objections and 38 valid requests for exclusion from the Settlement. *Id.* ¶¶ 27–29 & Ex. 4. Class Counsel will respond to the objections in separate filings, but one of the objections was posed by an individual who is likely not a Class Member (due to being located outside of the United States during the Class Period) and the other objection is raised by a professional objector who is opposed to many forms of class action settlements as a philosophical matter.

To date, the reaction of the Settlement Class Members has been favorable, which strongly supports final approval of the Settlement.

iii. Stage of the proceedings

This factor captures “the degree of case development that class counsel have accomplished prior to settlement” to “determine whether counsel had an adequate appreciation of the merits of the case before negotiating.” *In re Cendant Corp. Litig.*, 264 F.3d at 235 (quotation omitted).

Prior to the Settlement, Class Counsel made a thorough investigation into the facts and circumstances relevant to the claims at issue in this litigation, as reflected in the detailed Complaints filed in this action. *See* Strange Decl. ¶ 5; Frickleton Decl. ¶ 3; Grygiel Decl. ¶ 9. In addition, the parties have engaged in exhaustive motion and appellate practice in this case and Class Counsel have developed a thorough understanding of the strengths and weaknesses of the case, putting them in a position to make an informed judgment as to the merits of the litigation and the likelihood of its success. This factor supports final approval of the Settlement.

iv. Risks of establishing liability

The fourth factor seeks to determine “what the potential rewards (or downside) of litigation might have been had class counsel decided to litigate the claims rather than settle them.” *In re Cendant Corp. Litig.*, 264 F.3d at 237 (quotation omitted). “In examining this factor, the Court need not delve into the intricacies of the merits of each side’s arguments, but rather may ‘give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their causes of action.’” *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 115 (E.D. Pa. 2005) (quotation omitted).

As discussed above, while Class Counsel believe their case against Google is strong, are prepared to present evidence that Google’s cookie circumvention technique violated California common and constitutional law, and that the case should be certified as a class action, Google is equally prepared to mount a vigorous defense. Strange Decl. ¶ 13; Frickleton Decl. ¶ 8; Grygiel Decl. ¶ 18. Class Counsel are experienced in this type of litigation and recognize the inherent risks in proceeding to trial. *See Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 337 (W.D. Pa. 1997) (“Here, as in every case, Plaintiffs face the general risk that they may lose at trial, since no one can predict the way in which a jury will resolve disputed issues.”). “As is true in any case, the proposed Settlement represents a compromise in which the highest hopes for recovery are yielded in exchange for certainty and resolution.” *Int’l Union, UAW v. Ford Motor Co.*, No. 05-74730, 2006 WL 1984363, at \*23 (E.D. Mich. July 13, 2006).

In addition, the passage of time has created another risk that supports the adequacy of the proposed Settlement. The Class Period encompasses Google’s alleged placement of cookies on users’ Internet browsers between 2011 and 2012. By the time of trial, memories of key witnesses may well have faded. And the privacy rights invaded by Google’s alleged conduct

will be further removed from current time. This presents challenges to putting forth the case and supports approving the Settlement. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009) (noting that an “anticipated motion for summary judgment, and . . . [i]nevitable appeals would likely prolong the litigation, and any recovery by class members, for years,” which militated in favor of approval of the settlement).

Given the risks of establishing liability, Class Counsel believe that the proposed Settlement with Google provides meaningful and certain benefits to the Class and this factor supports final approval of the proposed Settlement. *See In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 487 (E.D. Pa. 2010) (“If it would be difficult for a plaintiff to establish liability, this factor favors settlement.”).

v. Risks of establishing damages

This *Girsh* factor looks to the “expected value of litigating the action rather than settling it at the current time.” *In re Cendant Corp. Litig.*, 264 F.3d at 238 (quotation omitted). As discussed above, this case has already been dismissed by this Court, been through two appeals to the Third Circuit, and returned to this Court for consideration of two causes of action that do not provide statutory damages. Even if Plaintiffs overcame the obstacles of establishing liability and certifying the case as a class action, establishing a right to and an amount of damages would present further difficulties and uncertainties. Google would likely present expert testimony to refute Plaintiffs’ expected damages theories and the jury may award lower damages than Plaintiffs seek or no damages at all. In such cases, courts regularly recognize that this factor favors approval of a proposed settlement. *See, e.g., In re Rent-Way Secs. Litig.*, 305 F. Supp. 2d 491, 506 (W.D. Pa. 2003) (competing expert opinions add uncertainty as to how much money, if any, the class might recover at trial). The fifth *Girsh* factor favors final approval.

vi. Risks of maintaining the class action through trial

Because “the prospects for obtaining [class] certification have a great impact on the range of recovery one can expect to reap from the action, this [*Girsh*] factor measures the likelihood of obtaining and keeping a class certification if the action were to proceed to trial.” *In re Warfarin*, 391 F.3d at 537. Under Federal Rule of Civil Procedure 23, a district court may decertify or modify a class at any time during the litigation if it proves to be unmanageable. *In re Sch. Asbestos Litig.*, 789 F.2d 996, 1101 (3d Cir. 1986). Accordingly, obtaining and maintaining class certification is not without risks. Because there “will always be a ‘risk’ or possibility of decertification,” “the court can always claim this factor weighs in favor of settlement.” *Prudential Agent Actions*, 148 F.3d at 321. Thus, while Class Counsel believe they could certify a class in this case, the risk of maintaining a class through trial is a consideration that makes this *Girsh* factor weigh in favor of approving the proposed Settlement.

vii. Ability of Defendant to withstand a greater judgment

The seventh *Girsh* factor weighs “whether the defendants could withstand a judgment for an amount significantly greater than the Settlement.” *In re Cendant Corp. Litig.*, 264 F.3d at 240. While Class Counsel believes Google has the ability to withstand a greater judgment, based on the numerous risks and uncertainties noted above, Class Counsel believe the proposed Settlement is beneficial to the Class. Moreover, courts accord this factor little weight in assessing the fairness, reasonableness, and adequacy of a proposed settlement—that a defendant is enormously wealthy cannot alter the judgment of experienced counsel, fully knowledgeable of the law and facts of the case, that rejecting a settlement and continuing litigation creates a substantial risk that class members will receive no benefit at all. *See, e.g., McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 645 (E.D. Pa. 2015) (Third Circuit courts “regularly find a settlement to be fair even though the defendant has the practical ability to pay greater amounts”);

*Lazy Oil*, 95 F. Supp. 2d at 318 (finding defendant’s ability to pay a greater judgment did not weigh against approving settlement “in light of the risks that Plaintiffs would not be able to achieve any greater recovery at trial”). Therefore, this factor does not weigh against approving the proposed Settlement and is, at worst, neutral.

viii. Range of reasonableness of the Settlement Fund in light of the best possible recovery and all the attendant risks of litigation

Finally, the last two *Girsh* factors seek to determine the reasonableness of the Settlement Fund in light of the best possible recovery and in light of all the attendant risks of litigation.

Class Counsel estimates that millions of users of Safari and Internet Explorer web browsers have been affected by Google’s alleged conduct during the relevant time period and that those users are geographically dispersed throughout the United States. However, determining the exact identity of each Class Member may never be possible given the difficulties in knowing all the users of a particular web browser during a defined time. And, even if the exact number and identity of each Class Member could be determined, any recovery (however large) would result in a distribution that likely costs more to distribute than it’s worth. In such situations, courts recognize the benefits of and regularly approve *cy pres* settlements for the benefit of the Class as a whole. See *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990) (“[W]hen a class action involves a large number of class members but only a small individual recovery, the cost of separately proving and distributing each class member’s damages may so outweigh the potential recovery that the class action becomes unfeasible . . . *cy pres* distribution avoids these difficulties . . . [and] federal courts have frequently approved this remedy in the settlement of class actions where proof of individual claims would be burdensome or distribution of damages costly.” (citations omitted)).

Here, the proposed Settlement will place Class Members in the position they were before Google’s alleged conduct started, and Google will provide Class Counsel with assurances that it implemented systems configured to stop the offending conduct. S.A. § 5.1. The Settlement will also provide a benefit to Class Members and the greater public through *cy pres* contributions to organizations dedicated to promoting and researching Internet and web browser security and privacy. *Id.* § 5.3.2; *see also Hughes v. Kore of Ind. Enter., Inc.*, 731 F.3d 672, 676 (7th Cir. 2013) (“A foundation that receives \$10,000 can use the money to do something to minimize violations of the [relevant law]; as a practical matter, class members each given \$3.57 cannot.”). These remedies, coupled with the injunctive and monetary penalties already obtained by the government against Google on behalf of consumers, renders the proposed Settlement reasonable for Class Members and these *Girsh* factors weigh in favor of approval.

#### 5. The Applicable Prudential Factors Also Favor Settlement

In addition to the Rule 23(e) and *Girsh* factors, the Third Circuit has also identified a series of non-exclusive factors to consider for a “thoroughgoing analysis of settlement terms.” *In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 268 (E.D. Pa. 2012). The factors are:

- (1) The maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages;
- (2) The existence and probable outcome of claims by other classes and subclasses;
- (3) The comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants;
- (4) Whether class or subclass members are accorded the right to opt out of the settlement;
- (5) Whether any provisions for attorneys’ fees are reasonable; and
- (6) Whether the procedure for processing individual claims under the settlement is fair and reasonable.

*In re Prudential*, 148 F.3d at 323. Each factor is addressed in turn below.



The first *Prudential* factor is an amalgam of the *Girsh* and Rule 23(e) factors. As discussed above, the probable outcome of a trial on liability and damages, as well as Class Counsel’s investigation and extensive work on the case for more than 10 years, all support approval. *See supra*, Sections II.C.2, II.D.4.i, II.D.4.iii–vi, II.D.4.viii.

The second and third *Prudential* factors “look at the outcomes of claims by other classes and other claimants.” *Vista Healthplan, Inc. v. Cephalon, Inc.*, No. 2:06-cv-1833, 2020 WL 1922902, at \*23 (E.D. Pa. Apr. 21, 2020). In this case, all civil class actions filed against Google for the alleged conduct were consolidated in this MDL proceeding, so there are no other classes or claimants to compare the settlement against. Thus, these factors are inapplicable here.

The fourth *Prudential* factor supports approval because potential class members had the right to exclude themselves from the settlement and not be bound by its terms. *See* La Count Decl. ¶ 25.

The fifth *Prudential* factor—concerning the reasonableness of attorneys’ fees—also favors approval. As discussed in Section II.D.3.v above, the district court has already determined and ordered a reasonable award of attorneys’ fees to Class Counsel and the district court’s ruling was not challenged by the objector on appeal. *See* D.I. 173; *see also Sourovelis v. City of Phila.*, 515 F. Supp. 3d 321, 339 (E.D. Pa. 2021) (“The fifth [*Prudential*] factor also favors approval. As discussed in a separate order granting counsel’s unopposed fee petition, the Court has concluded that counsel’s fees are reasonable.”).

Finally, the sixth *Prudential* factor is inapplicable in this case, as the proposed settlement does not contemplate instituting a claims process.

#### **E. Notice Was Proper Under Rule 23 and Constitutional Due Process**

The Court must also determine that the proposed Settlement’s Notice Plan was appropriate. Under Federal Rule of Civil Procedure 23, the Court must direct “the best notice

that is practicable under the circumstances” to Class Members who would be bound by a proposed class settlement. Recent amendments emphasize that “notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.” Fed. R. Civ. P. 23(c)(2)(B).

To satisfy the requirements of Rule 23 and constitutional due process, notice of a proposed class settlement must be “designed to summarize the litigation and the settlement and ‘to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings filed in the litigation.’” *Prudential Agent Actions*, 148 F.3d at 326–27 (quoting 2 *Newberg* § 8.32). But the “notice need not be unduly specific.” *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 177 F.R.D. 216, 231 (D.N.J. 1997).

Here, the Notice and Summary Notice provided all of the requisite information and material terms of the Settlement to potential Class Members, including the relief provided under the Settlement, the location of the fairness hearing to be held at a future date set by the Court, the procedures and deadlines for opting-out of or submitting objections to the Settlement, and that Class Members would be bound by any final judgement in this case if they did not opt-out of the Settlement. *See* La Count Decl. ¶ 23.

The method of notice also complied with Rule 23 and constitutional due process. Notice was provided to Internet users—the same method of interaction that would have caused an individual to become a potential Class Member in the first instance—using the Safari and Internet Explorer web browsers through electronic advertisements on websites determined by the Class Administrator to be heavily trafficked. *Id.* ¶¶ 14–19. This notice period extended for six weeks. *Id.* ¶ 10. In addition, notice was provided through targeted Facebook, Instagram, and Reddit social media advertisements and through a *People* magazine advertisement. *Id.* ¶¶ 11, 16.

Finally, this Court already “re-approve[d] the form and method of notice originally provided by counsel” during the original notice period in its order preliminarily approving the Settlement. D.I. 203 at 2. Thus, the Notice Plan satisfied Rule 23 and constitutional due process and the proposed Settlement should be finally approved.

### **III. CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully request that the Court enter the proposed Final Approval Order lodged concurrently herewith, find that the proposed Settlement is fair, reasonable, and adequate, and grant final approval.

Dated: August 8, 2022

Respectfully submitted,

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*Executive Committee Member*

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

**IN RE GOOGLE INC. COOKIE  
PLACEMENT CONSUMER PRIVACY  
LITIGATION**

**Case No. 12-MD-2358 (ER)**

**This Document Relates to:  
All Actions**

**DECLARATION OF BRIAN R. STRANGE IN SUPPORT OF MOTION FOR FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT**

**STRANGE LLP**

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*Executive Committee Member*

I, Brian R. Strange, having first been duly sworn, declare:

1. I am a Partner in the law firm of Strange LLP, one of the lead counsel appointed by the Court in this MDL and a member of the Executive Committee in this case. This declaration is based on my own personal knowledge and, if called to testify, I could and would competently testify hereto under oath.

2. This declaration is submitted in support of Plaintiffs' Motion for Final Approval of Class Action Settlement with Defendant Google Inc. ("Google") for certification of a Settlement Class and for the appointment of Plaintiffs Jose M. Bermudez, Nicholas Todd Heinrich, and Lynne Krause as Class Representatives for the Settlement Class and for the appointment of Class Counsel to represent the Settlement Class.

3. After discussions with Google's counsel that spanned several months, the parties held a mediation in this case on May 9, 2016 before retired federal Judge Layn Phillips. During the mediation, the parties agreed to the basic terms of the settlement. The settlement was reached following arm's length negotiations considering the history of the case, the liability and damage potential, and the risks of future litigation. Prior to reaching a settlement, I along with other members of the Executive Committee made a thorough investigation of the facts and circumstances relevant to this litigation.

4. A true and correct copy of the signed Settlement Agreement between Plaintiffs and Google has been provided to the Court along with the Motion for Preliminary Approval of this settlement and is attached hereto as **Exhibit A**. The Court issued its Order preliminarily approving the settlement on October 15, 2021. (D.I. 203.) As part of the Settlement Agreement, Google has agreed to fund a Settlement Fund of \$5,500,000.00, to be distributed to a designated *cy pres* recipients after payment of costs related to the Agreement, including the expenses of the

Settlement Administrator, the Notice Plan, Incentive Awards, the Fee Award, and any other administrative expenses and fees in connection with the Agreement. The Notice Plan approved and ordered by the Court in its Preliminary Approval order has been accomplished. A separate declaration will be filed by the Class Administrator in connection with Plaintiffs' Final Approval Motion.

5. The proposed Settlement is, in my experienced opinion, a fair resolution of Plaintiffs' claims, which are procedurally and legally complex class action claims that have been pending for more than a decade. This case was heavily litigated and contested, and involved a substantial amount of work and an outlay of significant expenses. Defendants have a number of defenses to the merits and class certification of Plaintiffs' claims making the uncertainty of litigation evident were the Settlement Class to continue on to class certification and trial. The proposed Settlement was reached only after discovery had begun and substantial litigation had taken place over the course of years.

6. Plaintiffs filed for preliminary approval of the Settlement on January 3, 2020 and the Court, on October 15, 2021, found the Settlement to be preliminarily fair, reasonable, and adequate. Strange LLP was appointed as co-lead Class Counsel in connection with the Settlement along with the other firms comprising the Executive Committee. A true and correct copy of the Court's Order granting preliminary approval to the Settlement is attached hereto as **Exhibit B**.

#### **Settlement Negotiations**

7. Due to the extensive motion and appellate work (in addition to preliminary discovery exchanges) that preceded the settlement negotiations, all counsel had full knowledge of the strengths and weaknesses of all parties' claims at the time of the parties' mediation and

negotiations. This knowledge was furthered by the extensive pre-mediation briefing that the parties undertook in preparation for their May 9, 2016 mediation with former federal Judge Layn Phillips. Guided by Judge Phillips' probing questions, the parties further answered extensive questioning about the strengths and weaknesses of their cases on the merits, at class certification, and of their damages theories. The proposed Settlement was reached following extensive arm's length negotiations that included a full-day mediation before the highly-respected and experienced Judge Phillips, as well as additional back-and-forth negotiations between the parties (and sometimes involving Judge Phillips and/or his staff) regarding the specific terms of the proposed Settlement. Over the course of the next month, the parties diligently continued working out the details of the proposed agreement, which was finally agreed to and fully-executed on June 30, 2016. As a result, the Settlement is the product intensive formal mediation and lengthy negotiations by knowledgeable and experienced counsel on all sides.

8. Throughout the course of settlement negotiations, the parties took into consideration Judge Phillips' invaluable input and guidance; the potential liability and damage issues; the risks of class certification, summary judgment, and/or trial; the possibility of appeals of any judgment and/or rulings of the trial court; and how these factors could add to the cost, delay, and uncertainty of litigation. Based on our reasoned judgment, Class Counsel believe the proposed Settlement is fair and reasonable and should be finally approved by this Court.

#### **Cy Pres Recipient Selection Process**

9. Following remand from the Third Circuit, Plaintiffs and Google extensively met and conferred in order to arrive at a compromise designed to address the Third Circuit's stated concerns about the *cy pres* recipient selection process. Based on those extensive negotiations, Plaintiffs and Google have arrived at the following requirements to ensure that there is no bias on

the part of any of the parties that could impact the selection of any potential *cy pres* recipient, consistent with the Third Circuits' decision:

- A. Up to ten *cy pres* recipients to be selected by a neutral third party, and not by the parties;
- B. The Court will appoint the third-party neutral to select the proposed *cy pres* recipients;
- C. The selected *cy pres* recipients must satisfy the eligibility criteria identified in the Settlement Agreement and must agree to use the funds for the purpose identified in the Settlement Agreement;
- D. The selected *cy pres* recipients must submit a sworn declaration that (1) confirms their eligibility to receive funds under the Settlement Agreement; (2) confirms their promise to use the funds in accordance with the Settlement Agreement; and (3) discloses any existing or prior relationship to the Court, the parties, and/or counsel, including prior donations or *cy pres* distributions from the parties; and
- E. The selected *cy pres* recipients must send a witness to the final approval hearing for questioning by the Court, if requested.

10. Class Counsel believes that the above *cy pres* selection process, which is the only material change from the original Settlement Agreement, addresses the concerns laid out in the Third Circuit's prior decision in this case, and adopts the fix suggested by that Court in its opinion.

**The Settlement Provides Substantial Benefits to the Settlement Class**

11. Given the size of the potential class and the issues involved, the parties believe



that the distribution of the Settlement Fund to *cy pres* recipients who must agree to use the funds to promote public awareness and education and/or support research, development, and initiatives related to the security and/or privacy of Internet browsers is the best use of the settlement proceeds. It would not be practicable to distribute the Settlement funds to potentially millions of Class Members and the actual damages of Class Members are likely minimal and difficult to calculate.

12. Google will provide Class Counsel with assurances that it implemented systems configured to instruct Safari brand web browsers to expire any cookie placed from the Doubleclick.net domain by Google if those systems encountered such a cookie, with the exception of the Doubleclick opt-out cookie, until the time that all cookies placed from the Doubleclick.net domain by Google on Safari brand web browsers through February 15, 2012 should have expired by design.

13. Although Plaintiffs' counsel intended to present strong evidence that Google's cookie circumvention technique violated California common law and constitutional principles, that this case should be certified as a class action, and that such class should be entitled to damages, we understand that Google would be prepared to mount a vigorous defense on these issues. Given the risks and uncertainties of litigation, Class Counsel believe that this settlement with Google provides meaningful benefits to the class and is reasonable. Class Counsel have considered the fact that Google has already made a substantial payment of approximately \$39,500,000.00 to the Federal Trade Commission and various state governments arising under the same conduct alleged by Plaintiffs ensuring that, as a result, Google has not made any financial gain from the alleged conduct at issue in this case.

**The Notice Plan Provided the Best Notice Practicable**

14. The parties proposed a careful notice plan which the Court found would provide the best practicable notice to the Settlement Class in its October 15, 2021 Preliminary Approval Order. The parties have since timely executed the multi-communication notice plan, which included publication notice in a leading national magazine, online advertisements on widely-viewed websites visited with Apple Safari and Microsoft Internet Explorer web browsers, and social media advertisements on the widely-used Facebook, Instagram, and Reddit websites. More detail about the notice plan can be found in the concurrently-filed declaration of the Class Administrator, Epiq Class Action & Claims Solutions, Inc.

15. Each form of notice linked and/or directed Class Members to the Long Form Notice, which described the basic terms of the Settlement; the amount of attorneys' fees, costs, and incentive awards that was previously granted by the Court; their rights to object and/or opt-out of the Settlement and their deadlines to do so; and the place of the final approval hearing to be held on a future date determined by the Court.

16. As of the filing of this declaration, Class Counsel have received only two objections filed to the Settlement.

**Experienced Class Counsel Endorse the Settlement**

17. Class Counsel, who are experienced in class actions, have spent a considerable amount of time and effort litigating these cases for more than a decade. Class Counsel believe Plaintiffs' claims are strong. At the same time, however, Class Counsel recognize the numerous hurdles and areas of uncertainty present in this case. Based on this uncertainty, and considering Google's likely defenses and the risks of further litigation, this Settlement is an excellent result for Class Members in Class Counsel's experienced opinion. Based on Class Counsel's reasoned

judgment, we believe this Settlement is fair and reasonable and should be approved by this Court.

18. The question of competent and vigorous representation is met. I am an experienced trial lawyer and litigation strategist and have been involved in MDL proceedings and complex litigation for more than 30 years. This Court has previously recognized as much in appointing my firm (along with the other two members of the Executive Committee) as interim Class Counsel pursuant to Rule 23(g)(3) of the Federal Rules of Civil Procedure. (D.I. 44.) In doing so, the Court noted our firms' "experience in large class actions and with substantial privacy rights litigation," our "impressive credentials and the underlying qualifications to serve as lead counsel," our "understanding of the legal issues," our "work to identify or investigate potential claims," and "the resources [we] will bring to bear on behalf of the putative class." (*Id.* at 3–4.)

19. As the Court has recognized, I have substantial experience in complex class actions, including cases similar to this, having served and still serving as class counsel in numerous federal and state consumer fraud actions which have resulted in tens of millions of dollars being returned to consumers, as well as privacy actions. I have been appointed to leadership in MDLs across the country. For example, I was selected as one of the members of plaintiffs' leadership out of 16 applicants appointed to Plaintiffs' Steering Committee in *In re Sony Gaming Networks Customer Data Security Breach Litig.*, MDL No. 2258, by the Honorable Anthony J. Battaglia in the Southern District of California. I was also approved by Judge Jack Zouhary to serve on the Plaintiffs' Executive Committee in a consolidated antitrust case, *In re: Polyurethane Foam Antitrust Litig.*, in the United States District Court for the Northern District of Ohio, MDL No. 2196, which was considered one of the largest antitrust



# **EXHIBIT A**

## SETTLEMENT AGREEMENT AND RELEASE

### 1. PREAMBLE

- 1.1. This class action Settlement Agreement and Release (“Agreement”) is entered into by and among the individuals and entities defined below as “Plaintiffs” and the individuals and entities defined below as “Google” where Plaintiffs and Google are collectively referred to herein as the “Parties.”
- 1.2. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as the term is defined below), upon and subject to the terms and conditions of this Agreement, and subject to preliminary and final approval of the Court.

### 2. DEFINITIONS

- 2.1. “Agreement” means this Settlement Agreement and Release, including all exhibits.
- 2.2. “Civil Actions” or “Litigation” mean all of the civil actions that have been, will be, or could be transferred by the Judicial Panel on Multidistrict Litigation to the federal District Court for the District of Delaware (Judge Sue L. Robinson) for inclusion in *In Re: Google Inc. Cookie Placement Consumer Privacy Litigation*, No. 1:12-md-02358-SLR, including without limitation the following actions: 1:12-cv-00740-SLR, 1:12-cv-00742-SLR, 1:12-cv-00744-SLR, 1:12-cv-00743-SLR, 1:12-cv-00741-SLR, 1:12-cv-00739-SLR, 1:12-cv-00745-SLR, 1:12-cv-00794-SLR, 1:12-cv-00796-SLR, 1:12-cv-00795-SLR, 1:12-cv-00800-SLR, 1:12-cv-00200-SLR, 1:12-cv-00792-SLR, 1:13-cv-00560-SLR, 1:12-cv-00793-SLR, 1:12-cv-00797-SLR, 1:12-cv-00791-SLR, 1:12-cv-00799-SLR, 1:12-cv-00798-SLR, 1:12-cv-00790-SLR, 1:12-cv-00789-SLR, 1:12-cv-00962-SLR, 1:12-cv-00667-SLR, 1:12-cv-01000-SLR, 1:12-cv-01003-SLR, and 1:13-cv-00559-SLR.
- 2.3. “Class” means all persons in the United States of America who used the Apple Safari or Microsoft Internet Explorer web browsers and who visited a website from which Doubleclick.net (Google’s advertising serving service) cookies were placed by the means alleged in the Complaint.
- 2.4. “Class Counsel” means the attorneys appointed by the Court as “interim class counsel” in the Court’s order dated November 16, 2012 and any attorneys hereafter appointed by the Court to represent the Class for purposes related to this Agreement.
- 2.5. “Class Member” means any person who qualifies under the definition of the Class, excluding: (i) Google, its parent, subsidiaries, successors, affiliates, officers, and directors; (ii) the judge(s) to whom the Civil Actions are assigned and any member of the judges’ or judges’ immediate family; (iii) Persons who have settled with and released Google from individual claims substantially similar to those alleged in the Litigation; and (iv) Persons who submit a valid and timely Request for Exclusion.
- 2.6. “Class Representatives” mean Jose Bermudez, Nicholas Todd Heinrich, and Lynne Krause, acting either individually or through Class Counsel.
- 2.7. “Complaint” means the Consolidated Class Action Complaint filed on December 19, 2012 and the Consolidated Amended Class Action Complaint submitted by stipulation on June 20, 2016 in the Litigation and attached as an exhibit hereto.

- 2.8. “Court” means the federal District Court for the District of Delaware (Judge Sue L. Robinson) and any appellate court which may review any orders entered by the District Court related to this Agreement.
- 2.9. “Cy Pres Recipients” means any of the entities mutually agreed upon by the Parties and approved by the Court to receive a cy pres distribution from the Settlement Fund under this Agreement.
- 2.10. “Day” or “days” refer to calendar days.
- 2.11. “Effective Date” means the first date after either (i) the time to appeal the Final Order and Judgment has expired with no appeal having been filed or (ii) the Final Order and Judgment is affirmed on appeal by a reviewing court and no longer reviewable by any court.
- 2.12. “Execution” means the signing of this Agreement by all signatories hereto.
- 2.13. “Fee Award” means any attorneys’ fees, reimbursement of expenses, and other costs awarded by the Court to Class Counsel as allowed by this Agreement.
- 2.14. “Final Approval Hearing” means the hearing before the Court where (i) the Parties request that the Court approve this Agreement as fair, reasonable, and adequate; (ii) the Parties request that the Court enter its Final Order and Judgment in accordance with this Agreement; and (iii) Class Counsel request approval of their petition for reasonable attorneys’ fees and expenses, as well as any requested incentive award to the Class Representatives.
- 2.15. “Final Order and Judgment” means the order entered by the Court, in a form that is mutually agreeable to the Parties, approving this Agreement as fair, reasonable, adequate, and in the best interest of the Class as a whole, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement, without modifying any terms of this Agreement that either Party deems material.
- 2.16. “Google” means Google Inc. and all of its parent and subsidiary corporations and those acting on their behalf.
- 2.17. “Incentive Award” means any amount awarded by the Court to the Class Representatives as compensation for serving as Class Representatives.
- 2.18. “Notice Plan” means the planned method by which notice of this Agreement will be given to the Class.
- 2.19. “Notice of Proposed Class Action Settlement” means the notice described in the Notice Plan.
- 2.20. “Opt-Out Deadline” means the deadline for a Class Member to submit a Request for Exclusion as set forth in the Preliminary Approval Order and which will be no more than sixty (60) days from the completion date of the Notice of Proposed Class Action Settlement.
- 2.21. “Parties” means, collectively, the Plaintiffs and Google, and “Party” means any one of them.

- 2.22. “Person” means an individual or legal entity, including an association, or his, her, or its respective estate, successors, or assigns.
- 2.23. “Plaintiffs” mean the Class Representatives acting on behalf of themselves and all Class Members.
- 2.24. “Preliminary Approval Order” means the order issued by the Court provisionally (i) granting preliminary approval of this Agreement; (ii) certifying the Class for settlement purposes; (iii) appointing Class Representatives and Class Counsel; (iv) approving the form and manner of the Notice Plan and appointing a Settlement Administrator; (v) approving the proposed Cy Pres Recipients; (vi) establishing deadlines for Requests for Exclusion and the filing of objections to the proposed settlement contemplated by this Agreement; (vii) finding that the Parties have complied with 28 U.S.C. § 1715; and (viii) scheduling the Final Approval Hearing.
- 2.25. “Released Claims” means any claims, complaints, actions, proceedings, or remedies of any kind (including, without limitation, claims for attorneys’ fees and expenses and costs) whether in law or in equity, under contract, tort or any other subject area, or under any statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds whatsoever, arising from the beginning of time through the Effective Date, that were, could have been, or could be asserted by the Releasing Parties arising out of or relating to any acts, facts, omissions or obligations, whether known or unknown, whether foreseen or unforeseen, arising out of or relating to the Litigation or the subject matter of the Litigation.
- 2.26. “Released Parties” means Google, as well as any and all of its current or former directors, officers, members, administrators, agents, insurers, beneficiaries, trustees, employee benefit plans, representatives, servants, employees, attorneys, parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint venturers, predecessors, related entities, successors and assigns, and all other individuals and entities acting on Google’s behalf. This definition does not include Vibrant Media, Inc., Media Innovation Group, LLC, or WPP plc.
- 2.27. “Releasing Parties” means Plaintiffs and all Class Members, as well as their present, former, and future heirs, executors, administrators, estates, representatives, agents, attorneys, partners, successors, predecessors-in-interest, directors, officers, members, insurers, beneficiaries, trustees, employee benefit plans, servants, employees, parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors, joint venturers, related entities, and assigns, and all other individuals and entities acting on their behalf.
- 2.28. “Request for Exclusion” means the form that must be completed and returned in the manner and within the time period specified in this Agreement for a Class Member to request exclusion from the Class.
- 2.29. “Settlement Administrator” means a third-party class action settlement administrator to be selected by the Parties’ mutual agreement to implement aspects of this Agreement.
- 2.30. “Settlement Fund” means the \$5,500,000 total sum that Google will pay in connection with this Agreement, deposited into a common fund for payment of (i) distributions to Cy Pres Recipients, (ii) the Fee Award, (iii) the Incentive Awards, and (iv) all settlement administration and notice costs.



### 3. RECITALS

- 3.1. On February 17, 2012 and over the following weeks, multiple putative class actions were filed in federal district courts throughout the United States against Google (and other defendants) based generally on allegations that Google's placement of a browser cookie from the doubleclick.net domain on Safari and Internet Explorer browsers circumvented the default browser settings that Plaintiffs believed were designed to block such cookie placement.
- 3.2. On June 12, 2012, the U.S. Judicial Panel on Multidistrict Litigation transferred these actions to the District of Delaware as *In re: Google Inc. Cookie Placement Consumer Privacy Litigation*, Civ. No. 12-MD-2358-SLR. A consolidated class action complaint was filed by Plaintiffs on December 19, 2012. On October 9, 2013, the District Court granted a motion by Google to dismiss all claims against Google. On November 10, 2015, following an appeal by Plaintiffs, the United States Court of Appeal for the Third Circuit affirmed dismissal of all but two claims: a claim for intrusion upon seclusion under California common law and a claim for violation of the California Constitution's right to privacy. On March 10, 2016, Plaintiffs filed a petition for certiorari with the United States Supreme Court, which petition is currently pending. On May 10, 2016 (after the Parties had reached a settlement agreement at mediation as described below but before this Agreement was drafted), the United States Supreme Court requested Google and other defendants to respond to the petition for certiorari.
- 3.3. On May 9, 2016, the Parties participated in an all-day mediation with former Judge Layn Phillips that resulted in this Agreement to settle the Litigation on a class-wide basis.
- 3.4. Plaintiffs have conducted meaningful investigation and analyzed and evaluated the merits of the claims made to date against Google, and the impact of this Agreement on Plaintiffs and the Class, and based upon that analysis and the evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery whatsoever for the Class, or might result in a recovery that is less favorable to the Class, and that any such recovery would not occur for several years, Plaintiffs are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interest of the Class.
- 3.5. Google has denied and continues to deny each allegation and all charges of wrongdoing or liability of any kind whatsoever asserted or that could have been asserted in the Litigation.
- 3.6. While Plaintiffs believe these claims possess substantial merit and while Google vigorously disputes such claims, without in any way agreeing as to any fault or liability, the Parties have agreed to enter into this Agreement as an appropriate compromise of the Class claims to put to rest all controversy and to avoid the uncertainty, risk, expense, and burdensome, protracted, and costly litigation that would be involved in prosecuting and defending the Litigation.
- 3.7. The Parties therefore agree that, in consideration for the undertakings, promises, and payments set forth in this Agreement and upon the entry by the Court of a Final Order and Judgment approving and directing the implementation of the terms and conditions of this Agreement, the Litigation will be settled and compromised upon the terms and conditions set forth below.

#### 4. RESTRICTIONS ON USE OF THIS AGREEMENT

- 4.1. This Agreement is for settlement purposes only and is entered into as a compromise to avoid the inherent risks and expenses posed by continued litigation of the claims in the Litigation. Neither the fact nor content of this Agreement, nor any action based on it, will constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim, of any fact alleged in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability or non-liability, wrongdoing, fault, or violation of law or fact alleged in the Civil Actions.
- 4.2. Subject to approval by the Court, Google conditionally agrees and consents to certification of the Class for settlement purposes only and within the context of this Agreement only. If this Agreement, for any reason, is not approved or is otherwise terminated, Google reserves the right to assert any and all objections and defenses to certification of a litigation class, and neither this Agreement nor any order or other action relating to this Agreement will be offered as evidence in support of a motion to certify a class for a purpose other than settlement pursuant to this Agreement.

#### 5. RELIEF

- 5.1. Assurance of Remediation. Google will provide Class Counsel with assurances that it implemented systems configured to instruct Safari brand web browsers to expire any cookie placed from the doubleclick.net domain by Google through February 15, 2012 if those systems encountered such a cookie, with the exception of the DoubleClick opt-out cookie, until the time that all cookies placed from the doubleclick.net domain by Google on Safari brand web browsers through February 15, 2012 should have expired by design.
- 5.2. Settlement Fund.
  - 5.2.1. Google will deposit in an interest-bearing bank account designated and controlled by the Settlement Administrator the total sum of \$5,500,000. That Settlement Fund will represent the total monetary obligations of Google under this Agreement, and the Settlement Administrator will draw from the Settlement Fund to cover all obligations with respect to costs related to this Agreement, including the expenses of the Settlement Administrator, the Notice Plan, payments to Cy Pres Recipients, any Incentive Awards, the Fee Award, and any other administrative fees and expenses in connection with this Agreement; provided, however, that the Parties must approve any payments to the Settlement Administrator prior to the Settlement Administrator incurring such expenses.
  - 5.2.2. A first installment of \$500,000.00 will be deposited within 21 days of entry of the Preliminary Approval Order. The remaining \$5,000,000.00 will be deposited within 21 days of the Effective Date. If this Agreement is terminated, the Settlement Administrator will return all funds to Google within ten (10) days of the termination date; provided, however, that the Settlement Administrator need not return any funds already spent on notice and on reasonable Settlement Administrator expenses before the termination date.

5.2.3. Other than the Settlement Fund, Google will have no financial obligations to Plaintiffs, the Class, the Cy Pres Recipients, or the Settlement Administrator under this Agreement.

5.3. Cy Pres Recipients.

5.3.1. Within 21 days after Execution, Plaintiffs will provide Google with a list of at least 10 proposed Cy Pres Recipients. Google may strike any proposed recipient from this list for a non-arbitrary reason and request that Plaintiffs propose a different recipient and Plaintiffs shall do so until the Parties can agree on a final list of proposed recipients. The final list of proposed Cy Pres Recipients mutually agreed upon by the Parties will be submitted to the Court for the Court's approval with the motion for preliminary approval of this Agreement.

5.3.2. As a condition to receiving a distribution under this Agreement, each Cy Pres Recipient must agree to devote the funds to promote public awareness and education, and/or to support research, development, and initiatives, related to the security and/or privacy of Internet browsers. If any Cy Pres Recipient does not agree to these conditions, then its portion will be distributed pro rata to the other identified recipients; if no recipient agrees to the conditions, or if the Court so requires, the Parties will meet and confer to identify other appropriate recipients.

5.3.3. The total distribution from the Settlement Fund to the Cy Pres Recipients will equal the total amount of the Settlement Fund, including any accrued interest, less all expenses for the Settlement Administrator, the Notice Plan, the Fee Award, the Incentive Awards, and any other administrative and notice costs or other expenses in connection with this Agreement.

5.3.4. Because the Cy Pres Recipients will receive the remaining amounts due after all other payment obligations are met, no portion of the Settlement Fund or interest thereon will revert to Google.

5.3.5. The Settlement Administrator will make payments to the Cy Pres Recipients within 60 days after the Effective Date.

5.4. No Tax Liability. Under no circumstances will Google have any liability for taxes or the tax expenses of any Person that receives a portion of the Settlement Fund under this Agreement.

6. SUBMISSION FOR PRELIMINARY APPROVAL

6.1. Within 60 days after Execution, Class Counsel will submit this Agreement to the Court and request that the Court enter the Preliminary Approval Order in a form mutually agreed to by the Parties.

6.2. Class Counsel will take any acts reasonably necessary to carry out this Agreement's expressed intent.

7. NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

7.1. The Settlement Administrator will be allocated up to \$500,000.00 out of the Settlement Fund to implement a Notice Plan, subject to the Parties' agreement in

consultation with the Settlement Administrator and further subject to Court approval as part of the Preliminary Approval Order and consistent with the requirements of due process.

- 7.2. The Parties shall agree to the Notice Plan before submission of this Agreement for preliminary approval. The specific text and content of the Notice Plan and Notice of Proposed Class Action Settlement will be mutually agreed upon by the Parties, subject to Court approval.
- 7.3. Although the Settlement Administrator may purchase commercial services at standard rates from Google as part of the Notice Plan, Google has no obligation to otherwise facilitate delivery of the Notice of Proposed Class Action Settlement. For example, Google will have no obligation to search and provide information relating to the Class or to send bulk email messages to any Person or group of Persons.
- 7.4. Within 10 days after the filing of this Agreement with the Court, the Settlement Administrator shall notify the appropriate state and federal officials of this Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

## 8. CLASS MEMBERS' RIGHT OF EXCLUSION/INCLUSION

- 8.1. A Class Member may request exclusion from the Class up until the Opt-Out Deadline. To request exclusion, the Class Member must complete, sign, and mail to the Settlement Administrator a Request for Exclusion, using a form to be agreed on by the Parties. The Request for Exclusion must be signed by the Class Member seeking exclusion under penalty of perjury. The Request for Exclusion must be postmarked on or before the Opt-Out Deadline. Any Person who submits a valid and timely Request for Exclusion shall not be entitled to relief under, and shall not be affected by, this Agreement or any relief provided by this Agreement.
- 8.2. The Parties shall have the right to challenge the timeliness and validity of any Request for Exclusion. The Court shall determine whether any contested exclusion request is valid.
- 8.3. Within 10 days after the Opt-Out Deadline, the Settlement Administrator will provide the Parties a list of all Persons who opted out by validly requesting exclusion.

## 9. OBJECTIONS

- 9.1. Any Class Member who does not submit a valid and timely Request for Exclusion may object to the fairness, reasonableness, or adequacy of this Agreement. Class Members may not seek to exclude themselves from the Class and submit an objection to this Agreement.
- 9.2. No later than 21 days before the Final Approval Hearing, any Class Member who wishes to object to any aspect of this Agreement must send to the Settlement Administrator, Class Counsel, and Google's counsel, and file with the Court, a written statement of the objection(s). The written statement of the objection(s) must include (i) a detailed statement of the Class Member's objection(s), as well as the specific reasons, if any, for each objection, including any evidence and legal authority the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of his/her objection(s); (ii) the Class Member's full name, address and telephone number; and (iii) information

demonstrating that the Class Member is entitled to be included as a member of the Class.

- 9.3. Class Members may raise an objection either on their own or through an attorney hired at their own expense. If a Class Member hires an attorney other than Class Counsel to represent him or her, the attorney must (i) file a notice of appearance with the Court no later than 21 days before the Final Approval Hearing or as the Court otherwise may direct, and (ii) deliver a copy of the notice of appearance on Class Counsel and Google's counsel, no later than 21 days before the Final Approval Hearing. Class Members, or their attorneys, intending to make an appearance at any hearing relating to this Agreement, including the Final Approval Hearing, must deliver to Class Counsel and Google's counsel, and file with the Court, no later than 21 days before the date of the hearing at which they plan to appear, or as the Court otherwise may direct, a notice of their intention to appear at that hearing.
- 9.4. Any Class Member who fails to comply with the provisions of the preceding subsections shall waive and forfeit any and all rights he or she may have to appear separately and/or object, and shall be bound by all the terms of this Agreement and by all proceedings, orders, and judgments in the Litigation.

#### 10. RELEASES; EXCLUSIVE REMEDY; DISMISSAL OF ACTIONS

- 10.1. Upon entry of the Final Order and Judgment, and regardless of whether any Class Member executes and delivers a written release, each Plaintiff and each Class Member (each of whom is a Releasing Party) shall be deemed to waive, release and forever discharge Google and the Released Parties from all Released Claims. No Released Party will be subject to any liability or expense of any kind to any Releasing Party with respect to any Released Claim.
- 10.2. Upon entry of the Final Order and Judgment, the Releasing Parties, and each of them, will be deemed to have, and will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.
- 10.3. Upon entry of the Final Order and Judgment, the Releasing Parties, and each of them, will be deemed to have, and will have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Plaintiffs acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever to settle and release the Released Claims, notwithstanding any unknown claims they may have.
- 10.4. This Agreement shall be the sole and exclusive remedy for any and all Released Claims. Upon entry of the Final Order and Judgment, each Class Member shall be barred from initiating, asserting, or prosecuting any Released Claims against the Released Parties.

- 10.5. Upon entry of Final Order and Judgment, the Civil Actions shall be dismissed with prejudice.

## 11. CLASS COUNSEL FEES AND COSTS AND INCENTIVE AWARDS

- 11.1. Plaintiffs may apply to the Court seeking a reasonable proportion of the Settlement Fund as payment of any reasonable attorneys' fees and costs (the Fee Award) and any Incentive Award in recognition of the Class Representatives' efforts on behalf of the Class as appropriate compensation for their time and effort expended in serving the Class.
- 11.2. Google will not contest a total amount of Fee Award and Incentive Awards (not to exceed \$1,000 per Class Representative) up to \$2,500,000.00.
- 11.3. It is not a condition of this Agreement that any particular amount of attorneys' fees, costs or expenses or incentive awards be approved by the Court, or that such fees, costs, expenses or awards be approved at all. Any order or proceeding relating to the amount of any award of attorneys' fees, costs, or expenses or incentive awards, or any appeal from any order relating thereto, or reversal or modification thereof, shall not operate to modify, terminate or cancel this Agreement, or affect or delay the finality of the Final Order and Judgment, except that any modification, order or judgment cannot result in Google's overall obligation exceeding the agreed-upon amount of the Settlement Fund.
- 11.4. The Settlement Administrator shall pay the Fee Award and Incentive Awards out of the Settlement Fund within 31 days of the Effective Date.
- 11.5. Except as otherwise provided in this section, each Party will bear its own costs, including attorneys' fees, incurred in connection with the Litigation.

## 12. TERMINATION OF THE AGREEMENT

- 12.1. The performance of this Agreement is expressly contingent upon achieving the Effective Date. This includes both (i) the entry of the Preliminary Approval Order approving this Agreement, including the Notice Plan and the selection of the Cy Pres Recipients, and the Final Order and Judgment approving this Agreement and the expiration of all appeal periods and appeal rights without modification to the Final Order and Judgment that any Party deems material. If the Court fails to issue either (1) the Preliminary Approval Order or (ii) the Final Order and Judgment approving this Agreement without modification that any Party deems material following conclusion of the Final Approval Hearing, this Agreement will be deemed terminated.
- 12.2. If the Final Order and Judgment is vacated, modified in a manner deemed material by any Party, or reversed, in whole or in part, this Agreement will be deemed terminated (except with respect to rulings on any Fee Award), unless all Parties who are adversely affected thereby, in their sole discretion within thirty (30) days of receipt of such ruling, provide written notice to all other Parties of their intent to proceed with this Agreement as modified.
- 12.3. If this Agreement is deemed terminated by refusal of the Court to approve or affirm approval of the Agreement, it will have no force or effect whatsoever, shall be null and void, and will not be admissible as evidence for any purpose in any pending or future litigation in any jurisdiction.



### 13. CONFIDENTIALITY

- 13.1. Other than responses to inquiries from governmental entities or as necessary to comply with federal and state tax and securities laws or comply with the terms of this Agreement, no Party shall initiate any publicity relating to or make any public comment regarding this Agreement until a motion seeking the Preliminary Approval Order is filed with the Court.
- 13.2. Unless and until all Parties execute this Agreement and present it to the Court in a motion seeking the Preliminary Approval Order, the Parties agree that all terms of this Agreement will remain confidential and subject to Federal Rule of Evidence 408.
- 13.3. Notwithstanding anything to the contrary in this Agreement, including Paragraphs 13.1 and 13.2, the Parties shall be entitled to make filings with the Supreme Court and United States District Court for the District of Delaware that disclose the fact that they have reached a classwide settlement.

### 14. ENFORCEMENT OF THE AGREEMENT

- 14.1. The Court will retain jurisdiction to enforce the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement. As part of its continuing jurisdiction, the Court may amend, modify or clarify orders issued in connection with this settlement upon good cause shown by a party. No other court or tribunal will have any jurisdiction over claims or causes of action arising under this Agreement.
- 14.2. This Agreement will be governed by and construed in accordance with the internal laws of the State of California without regard to conflicts of law principles that would direct the application of the laws of another jurisdiction.
- 14.3. The prevailing party in any action or proceeding in which is asserted a claim or cause of action arising under this Agreement will be entitled to recover all reasonable costs and attorneys' fees incurred in connection with the action or proceeding.

### 15. MISCELLANEOUS

- 15.1. This Agreement, including all attached exhibits, shall constitute the entire agreement among the Parties (and covering the Parties and the Class) with regard to the subject matter of this Agreement and shall supersede any previous agreements and understandings between the Parties.
- 15.2. This Agreement may not be changed, modified or amended except in writing signed by Class Counsel and Google's counsel, subject to Court approval if required.
- 15.3. Each Party represents and warrants that it enters into this Agreement of his, her, or its own free will. Each Party is relying solely on its own judgment and knowledge and is not relying on any statement or representation made by any other Party or any other Party's agents or attorneys concerning the subject matter, basis, or effect of this Agreement.
- 15.4. This Agreement has been negotiated at arm's length by Class Counsel and Google's counsel. In the event of any dispute arising out of this Agreement, or in any proceeding to enforce any of the terms of this Agreement, no Party shall be deemed to be the drafter of this Agreement or of any particular provision or provisions, and no

part of this Agreement shall be construed against any Party on the basis of that Party's identity as the drafter of any part of this Agreement.

- 15.5. The Parties agree to cooperate fully and to take all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
- 15.6. This Agreement shall be binding upon and inure to the benefit of all the Parties and Class Members, and their respective representatives, heirs, successors, and assigns.
- 15.7. The headings of the sections of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.
- 15.8. Prior to pursuing relief or submitting any dispute relating to this Agreement or the Litigation to the Court, the Parties and Class Counsel agree to mediate the dispute before Layn Phillips in Newport Beach, California.
- 15.9. Any notice, instruction, court filing, or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, or overnight delivery service to the respective representatives identified below or to other recipients as the Court may specify. As of the date of this Agreement, these respective representatives are as follows:

*For the Class:*

Stephen G. Grygiel  
Silverman Thompson Slutkin White  
26th Floor  
201 N. Charles Street  
Baltimore, MD 21201  
sgrygiel@mdattorney.com

Brian R. Strange  
Strange & Butler  
12100 Wilshire Boulevard, Suite 1900  
Los Angeles, CA 90025  
bstrange@strangeandbutler.com

James P. Frickleton  
Bartimus, Frickleton, & Robertson, P.C.  
11150 Overbrook Road, Suite 200  
Leawood, KS 66211  
jimf@bflawfirm.com

*For Google:*

Michael H. Rubin  
Wilson Sonsini Goodrich & Rosati  
One Market Plaza  
Spear Tower, Suite 3300  
San Francisco, CA  
mrubin@wsgr.com

Anthony J Weibell  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
aweibell@wsgr.com

- 15.10. The Parties each represent and warrant that they have not sold, assigned, transferred, conveyed, subrogated, or otherwise disposed of any claim or demand covered by this Agreement. If a Class Member has sold, assigned, transferred, conveyed, subrogated or otherwise disposed of any claim or demand, the Person that acquired such claim or demand is bound by the terms of this Agreement to the same extent as the Class Member would have been but for the sale, assignment, transfer, conveyance, or other disposition.

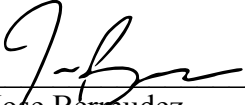


- 15.11. The respective signatories to this Agreement each represent that they are fully authorized to enter into this Agreement on behalf of the respective Parties.
- 15.12. The waiver by one Party of any breach of this Agreement by any other Party will not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.
- 15.13. All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.
- 15.14. This Agreement may be executed in one or more counterparts, and may be executed by facsimile or electronic signature. All executed counterparts and each of them will be deemed to be one and the same instrument.
- 15.15. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

[SIGNATURES ON FOLLOWING PAGE]

THIS SETTLEMENT AGREEMENT AND RELEASE IS AGREED TO AND APPROVED BY:

**Plaintiffs and Class Representatives**

  
\_\_\_\_\_  
Jose Bermudez

24 June 2016  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Nicholas Todd Heinrich

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lynne Krause

\_\_\_\_\_  
Date

**Class Counsel**

\_\_\_\_\_  
Stephen G. Grygiel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brian R. Strange

\_\_\_\_\_  
Date

\_\_\_\_\_  
James P. Frickleton

\_\_\_\_\_  
Date

**Google Inc.**

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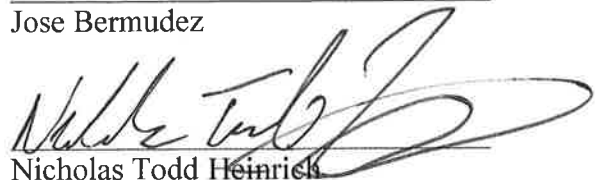
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THIS SETTLEMENT AGREEMENT AND RELEASE IS AGREED TO AND APPROVED BY:

**Plaintiffs and Class Representatives**

\_\_\_\_\_  
Jose Bermudez

\_\_\_\_\_  
Date

  
Nicholas Todd Heinrich

\_\_\_\_\_  
6-29-16

\_\_\_\_\_  
Date

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Lynne Krause

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Date

**Class Counsel**

\_\_\_\_\_  
Stephen G. Grygiel

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Date

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Brian R. Strange

\_\_\_\_\_  
Date

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James P. Frickleton

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Date

**Google Inc.**

\_\_\_\_\_  
Date

THIS SETTLEMENT AGREEMENT AND RELEASE IS AGREED TO AND APPROVED BY:


**Plaintiffs and Class Representatives**

\_\_\_\_\_  
Jose Bermudez

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Date

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Nicholas Todd Heinrich

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Date

  
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Lynne Krause

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6/26/16

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Date

**Class Counsel**

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Stephen G. Grygiel

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Date

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Brian R. Strange

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Date

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James P. Frickleton

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Date

**Google Inc.**

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Date

THIS SETTLEMENT AGREEMENT AND RELEASE IS AGREED TO AND APPROVED BY:

**Plaintiffs and Class Representatives**

\_\_\_\_\_  
Jose Bermudez

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Date

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Nicholas Todd Heinrich

\_\_\_\_\_  
Date

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Lynne Krause

\_\_\_\_\_  
Date

**Class Counsel**

  
Stephen G. Grygiel

6/23/16  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Brian R. Strange

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Date

\_\_\_\_\_  
James P. Frickleton

\_\_\_\_\_  
Date

**Google Inc.**

\_\_\_\_\_  
Date

THIS SETTLEMENT AGREEMENT AND RELEASE IS AGREED TO AND APPROVED BY:

**Plaintiffs and Class Representatives**

\_\_\_\_\_  
Jose Bermudez

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Date

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Nicholas Todd Heinrich

\_\_\_\_\_  
Date

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Lynne Krause

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Date

**Class Counsel**

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Stephen G. Grygiel

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Date

\_\_\_\_\_  
Brian R. Strange

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6-30-16  
Date

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James P. Fricleton

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Date

**Google Inc.**

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\_\_\_\_\_  
Date

THIS SETTLEMENT AGREEMENT AND RELEASE IS AGREED TO AND APPROVED BY:

**Plaintiffs and Class Representatives**

\_\_\_\_\_  
Jose Bermudez

\_\_\_\_\_  
Date

\_\_\_\_\_  
Nicholas Todd Heinrich

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lynne Krause

\_\_\_\_\_  
Date

**Class Counsel**

\_\_\_\_\_  
Stephen G. Grygiel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brian R. Strange

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James P. Prickett

6-22-16  
\_\_\_\_\_  
Date

**Google Inc.**

\_\_\_\_\_  
Date

THIS SETTLEMENT AGREEMENT AND RELEASE IS AGREED TO AND APPROVED BY:

**Plaintiffs and Class Representatives**

\_\_\_\_\_  
Jose Bermudez

\_\_\_\_\_  
Date

\_\_\_\_\_  
Nicholas Todd Heinrich

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lynne Krause

\_\_\_\_\_  
Date

**Class Counsel**

\_\_\_\_\_  
Stephen G. Grygiel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brian R. Strange

\_\_\_\_\_  
Date

\_\_\_\_\_  
James P. Frickleton

\_\_\_\_\_  
Date

**Google Inc.**

*Steph...*  
\_\_\_\_\_

*June 21, 2016*  
\_\_\_\_\_  
Date



# **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: GOOGLE, INC. COOKIE :  
PLACEMENT CONSUMER PRIVACY : Civ. No. 12-MD-2358  
LITIGATION :

O R D E R

AND NOW, this 15th day of October, 2021, upon consideration of Plaintiff's motion for preliminary approval of the class action settlement (ECF No. 193) and the supplement thereto, and after a hearing on February 25, 2021, it is hereby **ORDERED** that the Court:

1. preliminarily certifies the settlement class which consists of:

All Persons in the United States of America who used the Apple Safari or Microsoft Internet Explorer web browsers and who visited a website from which Doubleclick.net (Google's advertising serving service) cookies were placed by the means alleged in the Complaint

after concluding that:

a. the numerosity, commonality, typicality, and adequacy of representation requirements of Federal Rule of Civil Procedure 23(a) have been met;

b. the injunctive class requirements of Federal rule of Civil Procedure 23(b) (2) have been met in that the class is sufficiently cohesive and is capable of being described in a readily discernible way; and

c. the monetary relief class predominance and superiority requirements of Federal Rule of Civil Procedure 23(b) (3) have been met, as have the portions of the Third

Circuit's ascertainability inquiry that are relevant to a settlement class;

2. preliminarily finds the settlement fair and reasonable and that counsel have adequately shown at this stage that the Federal Rule of Civil Procedure 23(e)(2), Girsh, and Prudential factors weigh in favor of the settlement;<sup>1</sup> and

3. re-approves the form and method of notice originally provided by counsel, but will require counsel to re-distribute the notice and set new deadlines for objections and opt-outs given that the proposed settlement has been altered following remand by the Third Circuit Court of Appeals.<sup>2</sup> **By November 14, 2021**, counsel shall provide the Court with a timeline for notice and objections and for the earliest date on which the Court can schedule a final fairness hearing.

**AND IT IS SO ORDERED.**

/s/ Eduardo C. Robreno  
EDUARDO C. ROBRENO, J.

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<sup>1</sup> The Court retains concerns about the ultimate fairness of a class settlement which provides a cy pres only fund, half of which will go towards counsel and administration fees, in exchange for the release of all monetary claims of a class of unknown and unknowable size. However, the Court will reserve its ultimate judgment until all interested parties have been heard.

<sup>2</sup> This new notice period will not negate the fifty opt-outs that were received during the original notice period. Instead, those fifty will be added to any additional opt-outs submitted during the new notice period.

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

IN RE GOOGLE INC. COOKIE )  
PLACEMENT CONSUMER PRIVACY )  
LITIGATION )  
) Case No. 12-MD-2358 (ER)  
)  
This Document Relates to: )  
All Actions )

**DECLARATION OF STEPHEN G. GRYGIEL IN SUPPORT OF MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

**STRANGE LLP**

/s/ Brian R. Strange  
Brian Russell Strange  
12100 Wilshire Blvd., Suite 420  
Los Angeles, CA 90025  
Tel: 310-207-5055  
*brian@strangellp.com*

*Executive Committee Member*

**SILVERMAN THOMPSON SLUTKIN  
WHITE**

/s/ Stephen G. Grygiel  
Stephen G. Grygiel (DE Bar ID #4944)  
201 N. Charles Street, 26th Floor  
Baltimore, MD 21201  
Tel: 443-909-7516  
*sgrygiel@silvermanthompson.com*

*Executive Committee Member*

**BARTIMUS, FRICKLETON,  
and ROBERTSON, P.C.**

/s/ James P. Frickleton  
James P. Frickleton  
Mary D. Winter  
Edward D. Robertston, Jr.  
11150 Overbrook Road, Suite 200  
Leawood, KS 66211  
Tel: 913-266-2300  
*jimf@bflawfirm.com*

*Executive Committee Member*

I, Stephen G. Grygiel, having first been duly sworn, declare:

1. I am over the age of 18 and believe in the obligations of an oath.

2. From April 2014 through approximately May 2019 I was a partner in the law firm of Silverman Thompson Slutkin & White, LLP (“STSW”) one of the lead counsel appointed by the Court in this MDL and a member of the Executive Committee. Since May 2019 I have been *of counsel* to STSW.

3. On July 19, 2019 STSW withdrew its appearance as co-counsel for Plaintiffs, with notification that I would continue as a Lead Counsel for the Plaintiffs through Grygiel Law, LLC. [D.I. 181]. My Appearance of Counsel through Grygiel Law, LLC appears at D.I. 187.

4. This declaration is based on my own personal knowledge. If called to testify, I could and would competently testify hereto under oath.

5. I submit this Declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement with Defendant Google Inc. (“Google”) on behalf of class representatives Jose M. Bermudez, Nicholas Todd Heinrich, and Lynne Krause, of even date herewith.

6. I also submit this Declaration in support of Plaintiffs’ Responses to the Objections to the Settlement filed by Theodore Frank [D.I. 207] and Dimitrii Mudrechenko [D.I. 206].

7. I incorporate by reference, as if set forth in full herein, my previously filed Declarations in this case. [D.I. 118-2, 163-2, 167-4, 168-4, 194-3].

8. I have practiced law for some thirty-five years, been the first-chair lawyer in numerous jury and bench trials, and am very experienced in class action litigation. I have substantial experience in privacy rights class action litigation. For example, I am a co-Lead Counsel in *In re: Facebook Internet Tracking Litigation*, No. 5:12-MD-2314-EJD, in which the

Court granted Preliminary Settlement Approval on March 31, 2022 to a settlement creating a \$90 MM common fund (at the time of settlement the 7<sup>th</sup> largest such settlement in cases of its kind) and in which the Defendant agreed to sequester, and ultimately delete, the data that Plaintiffs alleged had been improperly collected. I have a thorough understanding of statutory privacy rights claims and of common law privacy claims, am well aware of the elements of proof required for privacy rights claims, and fully familiar to the hurdles to proving damages even after successfully proving liability. I am also well-versed in class certification law, and familiar with the difficulties of obtaining class certification in general and in privacy cases in particular.

9. As described in my previous Declarations in this case, and as the docket reflects, in working on the Complaints in this case and its motion practice, I extensively analyzed the strengths and weaknesses of this case, including, but not limited to, through my personal preparation for and ultimately unsuccessful oral argument against Google's Motion to Dismiss and work on Plaintiffs' subsequent appeal of that wholesale dismissal to the Third Circuit.

10. The Third Circuit ultimately reinstated only two of the Plaintiffs' numerous privacy rights claims, both of which were California law claims. That ruling had important class certification implications. Google would surely have opposed any motion for class certification, and, even were a class to be granted, Google would have had arguments that, if any class were certified, only a California class, not a nationwide class, could be certified.

11. After the Third Circuit reinstated two of the operative Complaint's claims, my co-counsel, Messrs. Strange and Frickleton, and I conducted further settlement discussions with Google's counsel. Ultimately those discussions led to the agreement to retain the highly respected and experienced former federal Judge Layn Phillips to mediate this case. Of course, Plaintiffs' counsel did this at their own, not insubstantial, expense.

12. Judge Phillips's rigorous process ensures that mediation will be meaningful. Among other things, Judge Phillips posed numerous and highly focused written questions to both sides' counsel about the pros and cons of their cases, requiring detailed written responses. After the pre-mediation briefing and numerous settlement-related conversations had occurred, the mediation occurred on May 9, 2016. After an all-day session, under Judge Phillips's stewardship, the parties agreed to a settlement in principle.

13. The settlement negotiations were entirely at arms-length. My co-Lead Counsel and I were fully aware that we had only two California state law claims with which to work, and that those claims carried, as all claims do, hurdles to proving liability and damages, and to obtaining and keeping class certification. Messrs. Frickleton, Strange and I were fully aware of the risks of continued litigation and concerned that, after much more litigation, including expensive and intrusive discovery, motion practice through class certification and summary judgement, trial and appeals, the class might end up with no relief whatsoever.

14. The parties executed a formal Settlement Agreement on or about June 30, 2016.

15. To date, neither STSW nor Grygiel Law has received any notices of objections to the settlement other than those officially filed with the Court.

16. Even assuming this case would have permitted certification of only a California class, the size of the class would have been extremely large. Using Google's settlement payment to fund *cy pres* recipients whose work aligns closely with the privacy protection goals of and claims advanced in the litigation was a far superior choice to making inevitably paltry monetary distributions to a few class members that would provide no benefit at all to all of those affected by the conduct challenged in the litigation. In short, this was and remains a case in which the greatest good for the largest amount of class members can only be achieved through a *cy pres*

settlement. Given the relatively modest settlement payment and large class size, this case is paradigmatically suited to use of the *cy pres* settlement mechanism.

17. Further, it is incorrect to call this settlement “*cy pres*-only.” Google has agreed to provide Class Counsel with assurances of Google’s implementation of systems configured to protect class members’ privacy by ensuring that Safari web browsers expire the cookies that the operative Complaint alleged were improperly placed.

18. My co-counsel and I are experienced lawyers. We were prepared to develop and introduce evidence that would have proven the California common law and constitutional privacy claims reinstated by the Third Circuit. But we were also fully aware that privacy rights cases present a number of hurdles to class certification, as well as to proving liability and damages. And the age of this case did not give us comfort that proof would be ready to hand.

19. My co-counsel and I were also well aware that Google, a massively rich company defended by an extremely competent and aggressive national law firm, would have fought tooth and nail through class certification, summary judgment, trial and appeal. We also had to consider that Google had already paid some \$39,500,000.00 to the Federal Trade Commission and various state governments for the same conduct alleged by Plaintiffs.

20. Despite the long history and many obstacles this case has presented, my co-counsel and I have never wavered from our commitment to it. We have done the best that we could.

Based on my long experience, including in privacy rights cases, and my knowledge of the strengths and weaknesses of what remained of this case after appeal, I believe that the proposed settlement is fair, adequate and reasonable and should be finally approved.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 8th day of August, 2022, at Clinton, New York.,  
13323.

/s/ Stephen G. Grygiel  
Stephen G. Grygiel

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

**IN RE GOOGLE INC. COOKIE** )  
**PLACEMENT CONSUMER PRIVACY** )  
**LITIGATION** )  
) **Case No. 12-MD-2358-ER**  
)  
**This Document Relates to:** )  
**All Actions** )

**DECLARATION OF JAMES P. FRICKLETON IN SUPPORT OF MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

**STRANGE LLP**

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*brian@strangellp.com*  
*Executive Committee Member*

**BARTIMUS, FRICKLETON,  
and ROBERTSON, P.C.**

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*jimf@bflawfirm.com*  
*Executive Committee Member*

**SILVERMAN THOMPSON SLUTKIN  
WHITE**

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201 N. Charles Street, 26th Floor  
Baltimore, MD 21201  
Tel: 443-909-7516  
*sgrygiel@mdattorney.com*

*Executive Committee Member*

I, James P. Frickleton, having first been duly sworn, declare:

1. I am a partner in the law firm of Bartimus, Frickleton, Robertson & Rader, P.C., one of the lead counsel appointed by the Court in this MDL and a member of the Executive Committee in this case. This declaration is based on my own personal knowledge and, if called to testify, I could and would competently testify hereto under oath.

2. This declaration is submitted in support of Plaintiffs' Motion for Final Approval of Class Action Settlement with Defendant Google Inc. ("Google") on behalf of class representatives Jose M. Bermudez, Nicholas Todd Heinrich, and Lynne Krause.

3. As previously detailed to the Court in past Declarations, after discussions with Google's counsel that spanned several months, the parties held a mediation in this case on May 9, 2016 before retired federal Judge Layne Phillips. During the mediation, the parties agreed to the basic terms of the settlement. The settlement was reached following arms-length negotiations considering the history of the case, the liability and damage potential, and the risks of future litigation. Prior to reaching a settlement, I along with other members of the Executive Committee made a thorough investigation of the facts and circumstances relevant to this litigation.

4. After this case was heard by the 3<sup>rd</sup> Circuit Court of Appeals it was remanded and the parties had further negotiations which resulted in a modification of the settlement agreement which has now been executed and presented to the Court along with the Motion for Preliminary Approval of this settlement. The Court issued its Order preliminarily approving the settlement on October 15, 2021. (D.I. 203.)

5. To date, neither I nor my office have received any notices of opt-outs or objections to the settlement other than those officially filed with the Court.

6. Given the size of the potential class and the issues involved, the parties believe

that the distribution of the Settlement Fund to *cy pres* recipients who must agree to use the funds to promote public awareness and education and/or support research, development, and initiatives related to the security and/or privacy of Internet browsers is the best use of the settlement proceeds.

7. In addition, Google will provide Class Counsel with assurances that it implemented systems configured to instruct Safari brand web browsers to expire any cookie placed from the Doubleclick.net domain by Google if those systems encountered such a cookie, with the exception of the Doubleclick opt-out cookie, until the time that all cookies placed from the Doubleclick.net domain by Google on Safari brand web browsers through February 15, 2012 should have expired by design.

8. Although Plaintiffs' counsel intended to present strong evidence that Google's cookie circumvention technique violated California common law and constitutional principles, that this case should be certified as a class action, and that such class should be entitled to damages, we understand that Google will be prepared to mount a vigorous defense on these issues. Given the risks and uncertainties of litigation, Class Counsel believe that this settlement with Google provides meaningful benefits to the class and is reasonable. Class Counsel have considered the fact that Google has already made a substantial payment of approximately \$39,500,000.00 to the Federal Trade Commission and various state governments arising under the same conduct alleged by Plaintiffs.

9. On November 16, 2012, this Court appointed my firm as one of the lead counsel in this MDL pursuant to Rule 23(g)(3) of the Federal Rules of Civil Procedure. In doing so, the Court noted our firm's "experience in large class actions and with substantial privacy rights litigation," our "impressive credentials and the underlying qualifications to serve as lead

counsel,” and we have served as co-lead counsel in this case since that time.

10. The Court’s file reflects the experience in complex civil and class action litigation that gave rise to my firm’s appointment as co-lead counsel in this case and I will not repeat it here. However, that experience leads me to conclude that this proposed settlement is fair and reasonable should be finally approved.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 8th day of August, 2022, at Leawood, Kansas, 66211.

*/s/ James P. Frickleton*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

In Re GOOGLE, INC. COOKIE  
PLACEMENT CONSUMER PRIVACY  
LITIGATION

Civ. No.: 12-MD-2358

Judge Eduardo C. Robreno

DECLARATION OF MICHELLE M. LA COUNT  
REGARDING NOTICE AND SETTLEMENT  
ADMINISTRATION

**DECLARATION OF MICHELLE M. LA COUNT REGARDING NOTICE ADMINISTRATION**

I, Michelle M. La Count, hereby declare and state as follows

1. I am a Project Director employed by Epiq Class Action & Claims Solutions, Inc. (“Epiq”). I have more than 17 years of experience working in the legal field of which 14 years have been dedicated to settlement administrations.
2. Epiq was established in 1968 as a client services and data processing company. Epiq has administered bankruptcies since 1985 and settlements since 1993. Epiq has routinely developed and executed notice programs and administrations in a wide variety of mass action contexts including settlements of consumer, antitrust, products liability, and labor and employment class actions, settlements of mass tort litigation, Securities and Exchange Commission enforcement actions, Federal Trade Commission disgorgement actions, insurance disputes, bankruptcies, and other major litigation. Epiq has administered more than 4,500 settlements, including some of the largest and most complex cases ever settled. Epiq’s class action case administration services include administering notice requirements, designing direct-mail notices, implementing notice fulfillment services, coordinating with the

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<sup>1</sup> All capitalized terms not otherwise defined in this document shall have the same meanings ascribed to them in the Agreement.

United States Postal Service (“USPS”), developing and maintaining notice websites and dedicated telephone numbers with recorded information and/or live operators, processing exclusion requests, objections, claim forms and correspondence, maintaining class member databases, adjudicating claims, managing settlement funds, and calculating claim payments and distributions. As an experienced neutral third-party administrator working with settling parties, courts, and mass action participants, Epiq has handled hundreds of millions of notices, disseminated hundreds of millions of emails, handled millions of phone calls, processed tens of millions of claims, and distributed hundreds of billions in payments.

3. Hilsoft Notifications (“Hilsoft”), a firm that specializes in designing, developing, analyzing, and implementing, large-scale legal notification plans. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc. (“Epiq”).
4. The statements of fact in this declaration are based on my personal knowledge and information provided to me by my colleagues in the ordinary course of business, and if called on to do so, I could and would testify competently thereto.
5. This declaration will advise the Parties and the Court for dissemination of the Settlement Notice Plan (“Notice”), final exclusion request totals, objections received, and correspondence information for the settlement in *Google, Inc. Cookie Placement Consumer Privacy Litigation*, Civ. No.: 12-MC-2358, District of Delaware.
6. Epiq was appointed the Settlement Administrator pursuant to the Court’s Order granting approval of the parties proposed for re-issuing notice (the “Order”) entered February 24, 2022. I submit this Declaration in order to advise the Parties and the Court regarding the

implementation of the notice plan and to report on requests for exclusion and objections postmarked by the July 7, 2022, deadline in accordance with the Order.

### **NOTICE SUMMARY**

7. On February 24, 2022, the Court approved the proposed plan for re-issuing notice. Hilsoft designed the notice campaign in accordance the Order granting preliminarily approval of the class action settlement and the supplement thereto on October 15, 2021 (“Preliminary Approval Order”). In the Preliminary Approval Order, the Court certified the following Settlement Class:

All persons in the United States of America who used the Apple Safari or Microsoft Internet Explorer web browsers and who visited a website from which Doubleclick.net (Google’s advertising serving service) cookies were placed by the means alleged in the Complaint.

8. After the Order was entered, Epiq began to implement the notice campaign. This declaration will detail the notice activities undertaken. This declaration will also discuss the administration activity to date.

### ***The Media Plan***

9. The Media Plan included various forms of notice, which utilized a national consumer print publication, internet banner advertising, social media targeting Apple Safari and Microsoft Internet Explorer web users in English and Spanish. Each notification had a link to the website where the long form notice was available along with pertinent dates, deadlines, and a summary of Class Members rights.
10. The campaign ran for a period of (6) six weeks, beginning March 24, 2022, and continuing until May 4, 2022.



*National Consumer Publication*

11. The Notice included a highly visible national print program. A 1/3-page notice appeared once on April 15, 2022, weekly magazine *People*, a leading consumer publication in the United States. *People* magazine has circulation of 3.4 million and a readership of over 28 million.
12. The Notice in *People* magazine contained the material terms of the Settlement to potential Class Members, including the relief provided under the Settlement, the time period and location for the Fairness Hearing, the procedures and deadlines for excluding from the Settlement, or submitting objections to the Settlement, and an explanation that Class Members would be bound by any final judgement in this case if they did not opt-out of the Settlement. The Notice included the contact information to both Class Counsel, and the website address, [GoogleCookiePlacementPrivacySettlement.com](http://GoogleCookiePlacementPrivacySettlement.com).
13. The Publication Notice is included as **Exhibit 1**.

*Digital Banner Notice*

14. Internet advertising has become a standard component in legal notice programs. The internet has proven to be an efficient and cost-effective method to target and provide measurable reach of persons covered by a settlement.
15. Banner Notices were booked on the *Verizon (Yahoo) Audience*<sup>1</sup> ad networks. Banners ran on desktop, mobile and tablet devices and were targeted to adults 25+. Additionally, people

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<sup>1</sup> Verizon Audience Network is now known as Yahoo Audience Network.

who clicked on a Banner Notice and visited the website were retargeted with additional Banner Notices.

16. The Notice also included advertising on social media, which consisted of newsfeed and right-hand column ads on *Facebook*. In addition, newsfeed ads were placed on *Instagram* and *Reddit*. *Facebook* is the leading social networking site in the United States and combined with *Instagram* covers over 200 million users in the United States. The social news discussion website *Reddit* is one of the top 10 most visited websites in the United States.

17. The Banner Notice examples are included as **Exhibit 2**.

18. The Banner Notice campaign, including display and social ads, ran from March 24, 2022, through May 4, 2022, nationwide. Clicking on the Banner Notices linked the reader to the settlement website, where they can easily file a claim for benefits online, request a paper claim form and obtain detailed information about the Settlement. Combined, a total of 429,292,485 impressions ran.

19. The Banner Notice campaign data is attached as **Exhibit 3**.

### **CLASS COMMUNICATION**

20. Epiq received limited communication from Class Members with only two requests for copies of the long form notice, which were responded to by US Mail and included a copy of the requested long form notice.

21. There were a total of four pieces of additional correspondence. In all instances Epiq

responded with a letter and a copy of the Notice as the questions posed were answered in the long form notice itself.

**POSTAL MAILING ADDRESS**

22. A post office box for correspondence about the Settlement were also established and maintained, to allow Settlement Class Members to contact the Claims Administrator by mail with any specific requests or questions.

**SETTLEMENT WEBSITE**

23. In accordance with the Order Epiq designed and made public a Settlement website, [GoogleCookiePlacementPrivacySettlement.com](http://GoogleCookiePlacementPrivacySettlement.com) and launched the site on March 23, 2022. The website included important information regarding the class action description, important dates, and contact information. Furthermore, important documents were on the site and downloadable. Those included the long form notice and exclusion request form, among others. The long form notice contained the material terms of the Settlement to potential Class Members, including relief provided under the Settlement, the date, time and place of the Fairness Hearing, the procedures and deadlines for opting out of the Settlement and submitting objections to the Settlement, as well as an explanation that Class Members would be bound by any final judgment in this case if they did not opt out of the Settlement. Class Members also had access to Court documents such as; Motion for Preliminary Approval, Preliminary Approval Order, Order Granting Proposed Plan, and the Settlement Agreement.

24. As of August 7, 2022, the Settlement website has received 92,659 page hits, resulting in 75,325 unique sessions.

### **REQUESTS FOR EXCLUSION**

25. Pursuant to Sections 8.1-8.3 of the Agreement, any Class Member may have sought to be excluded from the Settlement by submitting a request for exclusion to the Settlement Administrator.

26. The reissued notice period did not negate the 50 timely and 11 late exclusion requests that were received during the initial notice period.

27. Between March 24, 2022, the start of the reissued notice campaign, through August 3, 2022, there were 40 unique reissued notice period requests for exclusion. Of those, 39 were postmarked on or before the exclusion request deadline set by the Court of July 7, 2022.

28. One of the requests for exclusion received during the reissued notice period was not signed and thus fails to meet the criteria for a complete exclusion request, and;

29. One request was postmarked after the exclusion request deadline leaving 38 complete, timely requests for exclusion received during the reissued notice period

30. Attached as **Exhibit 4** is a list of all timely, complete exclusion requests along with any incomplete or late requests, inclusive of both the original notice period and the reissued notice period.

**OBJECTIONS**


31. Pursuant to Sections 9.1-9.4 of the Agreement, any Class Member who wanted to object to the Settlement had to file their reason to objecting with the Clerk of the Court, Counsel, and the Settlement Administrator on or before July 7, 2022.
32. Epiq has received one timely submitted objection and no untimely objections.
33. A copy of the objection is attached as **Exhibit 5**.

**COST OF NOTICE ADMINISTRATION**

34. The combined, approximate cost to provide notice and handle the claims administration is currently estimated at \$279,906.71. As of July 19, 2022, Epiq has invoiced \$263,188.50 for notice and claims administration. All costs are subject to the Service Contract under which Epiq will be retained as the Settlement Administrator, and the terms and conditions of that agreement.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on August 8, 2022, at Green Bay, Wisconsin.

  
\_\_\_\_\_  
Michelle M. La Count

# **EXHIBIT 1**

# If You Used Apple Safari Or Internet Explorer Browsers, You Could Be Affected By A Class Action Settlement.

## What Is This Lawsuit About?

A class action settlement has been reached *In Re: Google Inc. Cookie Placement Consumer Privacy Litigation, Case No. 12-MD-2358 (ER)*. Plaintiffs allege that, in violation of federal and state laws, Google placed third-party tracking cookies on browsers that visited websites containing Google ads by circumventing browser settings that were set to block such cookies. Google denies all allegations of wrongdoing.

The Settlement Agreement provides for substantial injunctive relief for Settlement Class Members, including assurances from Google regarding its remediation efforts. Google has also agreed to pay \$5.5 million to be distributed to various non-profit or educational institutions that agree to devote the funds to promote public awareness, research, and initiatives related to the security or privacy of Internet browsers.

This Settlement Agreement was originally announced in 2016. You may have previously received a notice of this settlement at that time. At the direction of the Court, a second notice and opt-out period are now being provided to Class Members because the Court has approved a revised process for selecting the institutions that will receive settlement funds.

## Are You Affected?

If you used a Safari or Internet Explorer browser in 2011-2012 with the browser cookie settings set, by default or by choice, either to accept only cookies from “visited” sites or to block cookies from “third parties and advertisers,” and you visited a non-Google website that displayed ads from doubleclick.net (Google’s advertising serving service), and a cookie from doubleclick.net was placed on your browser as a result of that visit, you may be a Class Member.

## What Are Your Rights And Options?

Class Members may request exclusion by sending a completed “Request for Exclusion” form to the Administrator postmarked by **July 7, 2022**. If you submit a timely Request for Exclusion you will not be affected by the settlement. If you do not exclude yourself from the settlement, you will be bound by its terms and will release any and all claims.

If you wish to comment or object in writing to any aspect of the proposed Settlement, you may do so by filing your comments or objections with the Court and sending them by U.S. Mail to the Parties no later than **July 7, 2022**.

## When Is The Fairness Hearing?

The Court will schedule a final fairness hearing at a date to be determined after September 9, 2022, in the Courtroom of the Honorable Eduardo C. Robreno, Senior Judge of the U.S.D.C., sitting by designation in the District of Delaware, at J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, DE 19801. At this hearing, the Court will consider if the Settlement should be granted final approval. The Court previously approved Class Counsel’s request for attorneys’ fees, expenses, and Class Representative incentive awards. Although you may attend the hearing or send your own attorney at your own expense, you are not required to do so.

## Where Can I Get More Information?

This notice is a summary only. If you need further information, please view the Long Form Notice at [GoogleCookiePlacementPrivacySettlement.com](http://GoogleCookiePlacementPrivacySettlement.com) or please contact Class Counsel, Brian R. Strange, Strange LLP, 12100 Wilshire Blvd., Ste. 420, Los Angeles, CA 90025; and/or James P. Frickleton, Bartimus Frickleton Robertson Rader, 4000 W. 114th Street, Suite 310, Leawood, KS 66211.

**PLEASE DO NOT CONTACT THE COURT.**

# **EXHIBIT 2**



# Yahoo display 300 x 600 px.

The image shows a screenshot of a Yahoo! homepage. At the top left is the "yahoo!" logo. To its right is a search bar with a microphone icon and a search icon. Further right are "Sign in", a notification bell, and a "Mail" icon. An orange arrow points from the top right towards the "Mail" icon.

The main content area features a large advertisement for "align PROBIOTIC". The ad has an orange background and includes the text: "Dramatization", "Align contains a quality probiotic", "Try Align for a month & see how great a healthy gut can feel!\*" and "Join the Healthy Gut Team Up and get a \$2 coupon". It also shows a "Join Now" button and a product image of the Align Probiotic container.

To the right of the Align ad is a blue banner with white text: "If You Used Apple Safari or Internet Explorer Browsers, You Could be Affected by a Class Action Settlement". Below this banner is a photo of hands typing on a laptop keyboard.

Below the Align ad, there are social media icons for Facebook, Twitter, and Email. Next to the Facebook icon is the text "BUSINESS INSIDER". Below these icons is a headline: "Air New Zealand will operate the 4th longest flight in the world when it launches the first-ever nonstop route between the US East Coast and the South Pacific nation".

At the bottom right, there is a "Factbox-Latest on the worldwide spread of the coronavirus" with the source "Reuters". The factbox image shows a person in a white protective suit in an airport setting.

# Yahoo display 728 x 90 px.

The screenshot shows the top portion of the Yahoo! Sports website. At the top is a dark navigation bar with links for HOME, MAIL, NEWS, FINANCE, SPORTS, ENTERTAINMENT, LIFE, SEARCH, SHOPPING, YAHOO PLUS, and MORE... Below this is the 'yahoo!sports' logo and a search bar. To the right of the search bar are 'Sign in' and 'Mail' buttons. The main content area features three article thumbnails with titles and read times. Below the articles is a blue banner advertisement with white text: 'If You Used Apple Safari or Internet Explorer Browsers, You Could be Affected by a Class Action Settlement'. An orange arrow points from the top right towards the banner advertisement.

## 44 Comments

429 Viewing

Welcome to Yahoo comments! Please keep conversations courteous and on-topic. To foster productive and respectful conversations, you may see comments from our Community Managers, who will be designated by a "Yahoo Staff" or "Staff" label. See our [community guidelines](#) for more information.

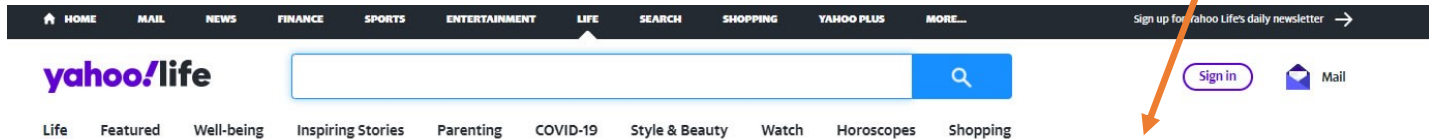
# Yahoo display 300 x 250 px.

The screenshot displays the Yahoo! homepage layout. At the top left is the 'yahoo!' logo. A search bar is located at the top center, and 'Sign in' and 'Mail' links are on the top right. Below the search bar is a horizontal navigation menu with categories: Politics, US News, Celebrity, Lifestyle, Sports, Business, and Entertainment. The main content area features several news stories with accompanying images and headlines:

- Netflix Cancels Another Round Of Great Shows** (Ad Bonvoyaged): Unfortunately, these shows won't be returning anytime soon..
- Sports Illustrated Swimsuit model Nina Agdal poses completely nude on Instagram: 'When you got it... flaunt it!'** (Celebrity Fox News): The Sports Illustrated Swimsuit model took to Instagram and posted a completely nude mirror selfie.
- Wife of Valley cheese magnate arraigned on DUI charges after alleged 125 mph crash in Maserati** (U.S. Merced Sun-Star): Authorities said she was driving a Maserati which crashed into numerous vehicles.
- In Jackson hearing, Tillis declines to join his repugnant GOP colleagues** (Politics Raleigh News and Observer): Includes a video thumbnail and a quote: "Sen. Durbin said Republicans had used SCOTUS hearing to 'showcase talking points for th...".
- 'Enough touchscreen tipping already! I'm over it': Two years into the COVID-19 pandemic, do I have to tip for coffee, ice cream an...** (Lifestyle MarketWatch): 'The online-order service request a tip. Am I supposed to now tip before I pick up my own food?'

On the right side of the page, there is a weather forecast for the current day and the following three days, a 'Scoreboard' section for various cities (Phoenix, Denver, Cleveland, Toronto, Washington, Milwaukee), a 'Daily Horoscope' for Aries, and a large blue advertisement for a class action settlement: "If You Used Apple Safari or Internet Explorer Browsers, You Could be Affected by a Class Action Settlement". An orange arrow points from the bottom center towards the advertisement.

# Yahoo display 970 x 250 px.



An advertisement with a blue background. On the left, white text reads: 'If You Used Apple Safari or Internet Explorer Browsers, You Could be Affected by a Class Action Settlement'. On the right, there is a photograph of a person's hands typing on a laptop keyboard. A magnifying glass icon is overlaid on the photo.

yahoo/life

## It may be time to double check your computer's privacy settings

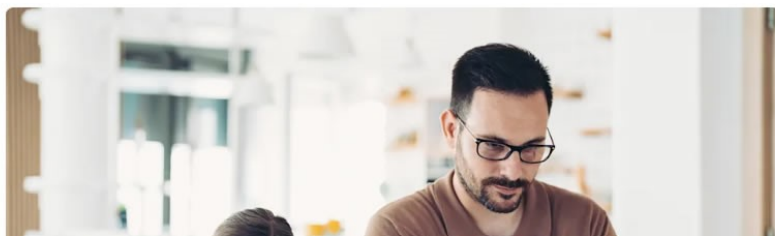


Erica Gerald Mason

February 15, 2022 · 4 min read



Yahoo Life is committed to finding you the best products at the best prices. Some of the products written about here are offered in affiliation with Yahoo. We may receive a share from purchases made via links on this page. Pricing and availability are subject to change.



An advertisement for Sophos cybersecurity. It features a blue background with white text: 'Kaspersky users are switching to Sophos for better endpoint cybersecurity.' Below this is a 'Learn More' button and the Sophos logo with the tagline 'Cybersecurity delivered.'

An advertisement for McAfee parental controls. It features a white background with a purple triangle on the right. Text includes the Yahoo! and McAfee logos, 'Manage your kids' devices', and 'Try Safe Family parental controls.' Below is a 'Try it free\*' button.



# Yahoo display 300 x 600 px. SPANISH

The screenshot shows the top portion of a Yahoo! homepage. At the top left is the "yahoo!" logo. To its right is a search bar with a microphone icon and a search icon. Further right are links for "Sign in", a notification bell, and "Mail". Below the search bar is a horizontal banner for an advertisement titled "How Savvy Investors Pay for Healthcare in Retirement" by Fisher Investments, with a "READ MORE" button. The main content area features a news article from AXIOS with the headline "The Parrotheads are changing what it means to retire" and a photograph of a white lifeguard stand with "LATITUDE MARGARITVILLE" written on it. To the right of the article is a blue legal notice in Spanish: "Si usted utilizó los navegadores de Internet Apple Safari o Internet Explorer, usted podría verse afectado por una acción judicial colectiva". Below the text is a small image of hands typing on a laptop keyboard. A white "X" button is in the top right corner of the notice. An orange arrow points from the bottom of the page towards the legal notice.

yahoo!

Sign in

Mail

How Savvy Investors Pay for Healthcare in Retirement  
Fisher Investments  
READ MORE

AD

AXIOS

## The Parrotheads are changing what it means to retire

Si usted utilizó los navegadores de Internet Apple Safari o Internet Explorer, usted podría verse afectado por una acción judicial colectiva

# Yahoo display 300 x 250 px. SPANISH

The image shows a screenshot of the Yahoo! homepage in Spanish. At the top left is the "yahoo!" logo. To its right is a search bar with a microphone icon and a search button. Further right are "Sign in", a notification bell, and a "Mail" icon. Below the search bar is a Bask Bank advertisement with the text "Earn 5x the national average APY in 5 minutes." and "START EARNING" button. The main content area features a BGR article titled "Scientists think there's a mirror universe where time moves backwards" by Joshua Hawkins, dated Tue, March 22, 2022, 11:35 AM. The article includes social media sharing icons and a large image of a colorful nebula. To the right of the article is a blue notification box with the text "Si usted utilizó los navegadores de Internet Apple Safari o Internet Explorer, usted podría verse afectado por una acción judicial colectiva" and a close button. Below the notification is a photo of hands typing on a laptop. Further down is another article titled "In a hurry? An iPhone can be used for TSA screening at Phoenix Sky Harbor Airport" from American City Business Journals, with a photo of an airport security checkpoint.

# Yahoo display 728 x 90 px. SPANISH

yahoo!



Sign in



Mail

Si usted utilizó los navegadores de Internet Apple Safari o Internet Explorer, usted podría verse afectado por una acción judicial colectiva



Miami Herald

## Is your iPhone's battery draining faster after update? Here's what Apple says to do



**GILDAN**  
MEN'S UNDERWEAR

Comfort from head to toe.

Shop now

available at  
**amazon**



In a hurry? An iPhone can be used for TSA screening at Phoenix Sky Harbor Airport

American City Business Journals



# Yahoo display 970 x 250 px. SPANISH



yahoo/finance

Search for news, symbols or companies



Sign in

Mail

Finance Watchlists My Portfolio Cryptocurrencies Yahoo Finance Plus Screeners Markets News Personal Finance Videos Yahoo U ...

**Si usted utilizó los navegadores de Internet Apple Safari o Internet Explorer, usted podría verse afectado por una acción judicial colectiva**

U.S. markets close in 5 hours 37 minutes

S&P 500

4,475.32  
+19.08 (+0.43%)

Dow 30

34,519.89  
+161.39 (+0.47%)

Nasdaq

13,929.93  
+7.32 (+0.05%)

Russell 2000

2,057.19  
+4.98 (+0.24%)

Crude Oil

112.47  
-2.46 (-2.14%)



**JOBS:**

**New weekly jobless claims hit the lowest level since 1969**

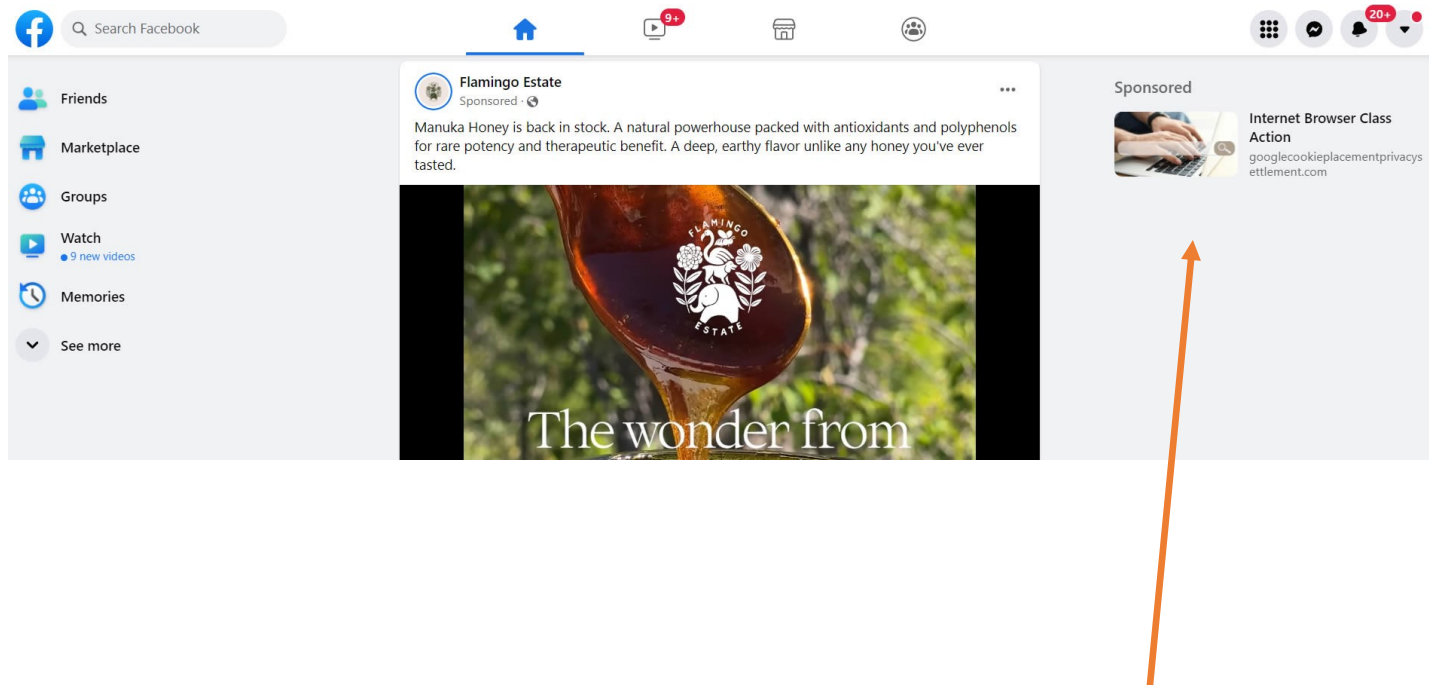
Continuing claims also fell further to reach 1.35 million — the least since January 1970

REUTERS

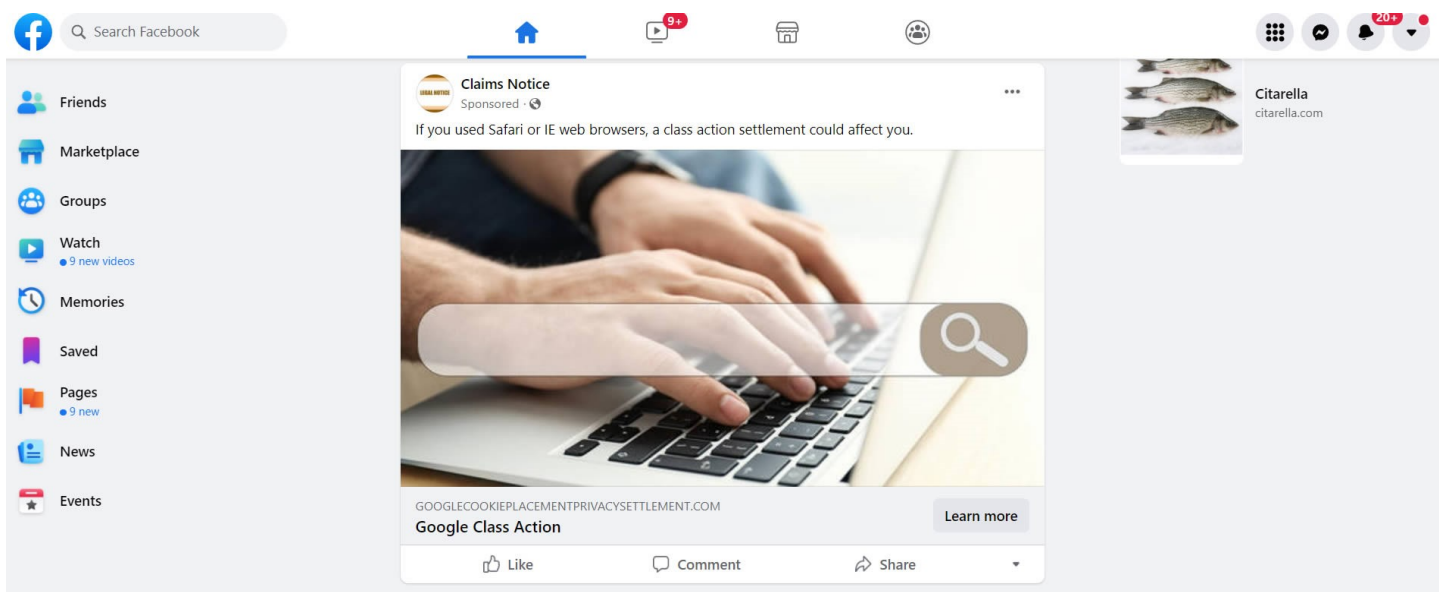
## Nikola shares jump as it starts manufacturing electric trucks



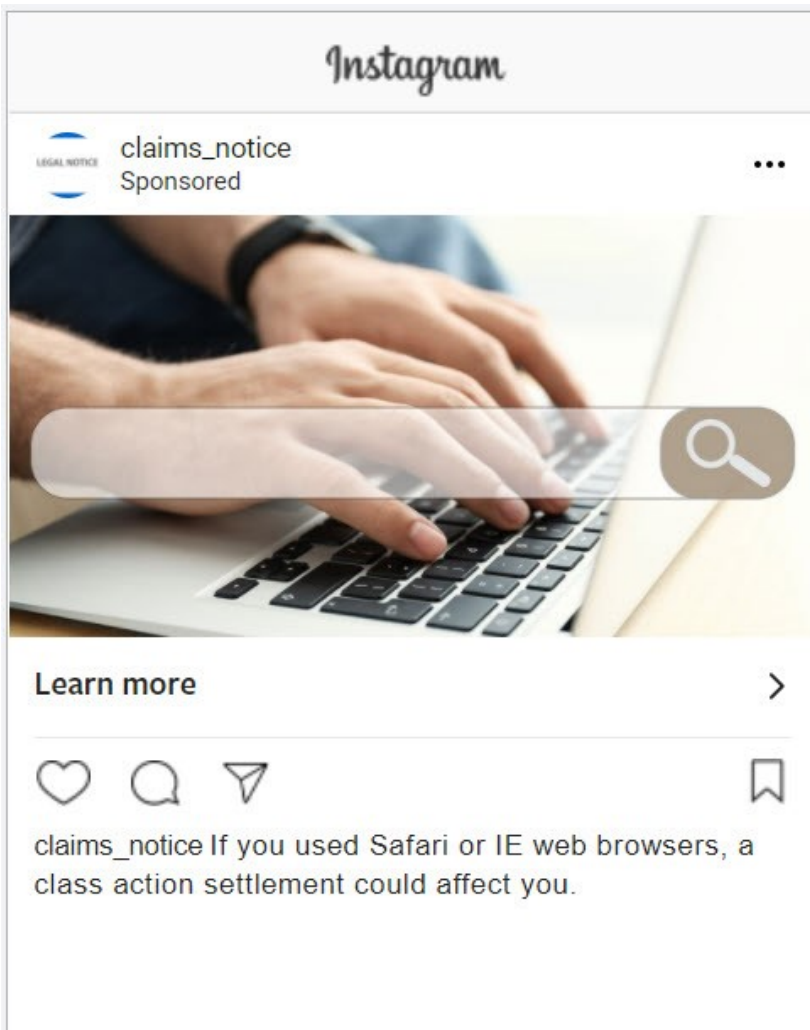
# Facebook display



# Facebook Newsfeed

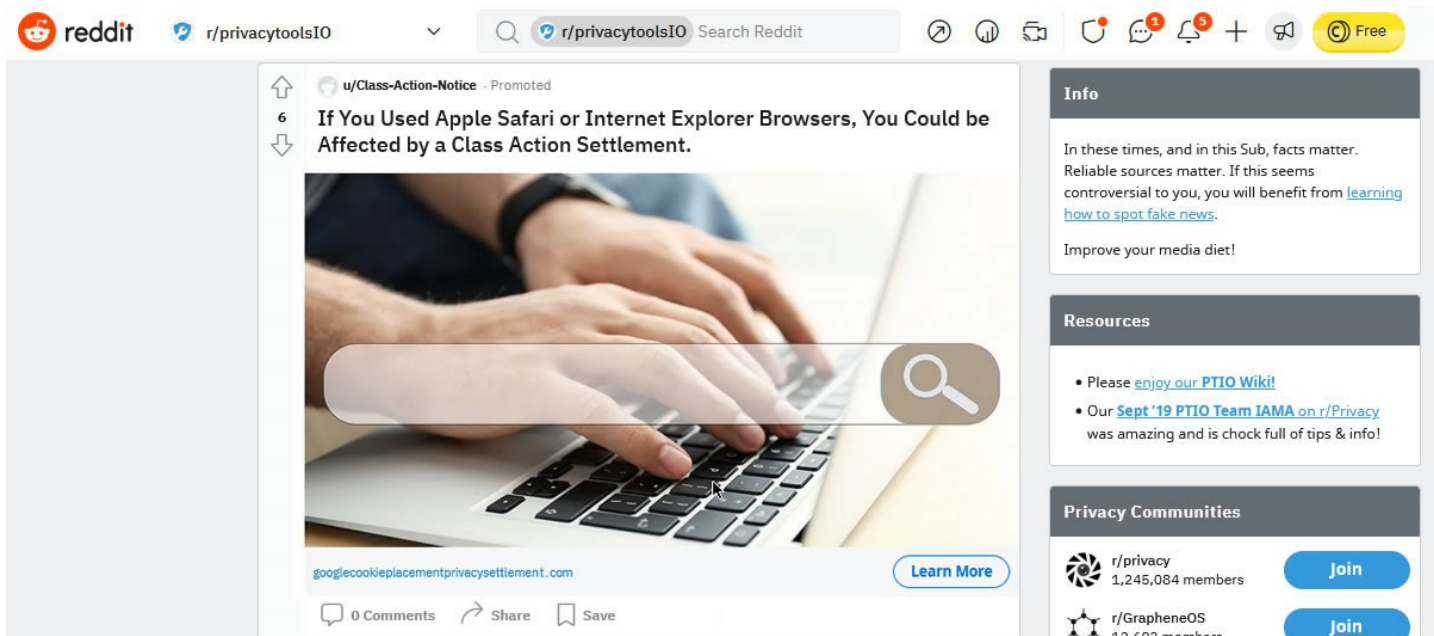


# Instagram



The image shows a screenshot of an Instagram post. At the top, the Instagram logo is visible. Below it, the username 'claims\_notice' is displayed with a 'Sponsored' label and a 'LEGAL NOTICE' icon. The main content is a photograph of hands typing on a laptop keyboard. A semi-transparent search bar is overlaid on the image. Below the image, there is a 'Learn more' link with a right-pointing arrow. At the bottom, there are icons for heart, comment, share, and bookmark. The caption reads: 'claims\_notice If you used Safari or IE web browsers, a class action settlement could affect you.'

# Reddit



The image shows a screenshot of a Reddit post on the r/privacytoolsIO subreddit. The post is promoted and titled 'If You Used Apple Safari or Internet Explorer Browsers, You Could be Affected by a Class Action Settlement.' The main content is a photograph of hands typing on a laptop keyboard, identical to the one in the Instagram post. A semi-transparent search bar is overlaid on the image. Below the image, there is a 'Learn More' button and a link to 'googlecookieplacementprivacysettlement.com'. The post has 0 comments. On the right side, there is an 'Info' section with text: 'In these times, and in this Sub, facts matter. Reliable sources matter. If this seems controversial to you, you will benefit from [learning how to spot fake news](#). Improve your media diet!'. Below that is a 'Resources' section with two links: 'Please enjoy our PTIO Wiki!' and 'Our Sept '19 PTIO Team JAMA on r/Privacy was amazing and is chock full of tips & info!'. At the bottom right, there are 'Privacy Communities' with buttons to join 'r/privacy' (1,245,084 members) and 'r/GrapheneOS' (12,603 members).

# **EXHIBIT 3**

**Google Cookie Placement Consumer Privacy Litigation**

Notice Plan Proposal

Proprietary and Confidential

October 22, 2021



Notice plan reaches 70% of the target audience, an average frequency of 2.8 times each.

**Detailed Media Plan**

Print	Circulation	Insertions	Distribution	Frequency	Ad Size	Cost
People	3,400,000	1	National	Weekly	1/3 Page B&W	
<b>Total Estimated Print:</b>						<b>\$67,395</b>

Digital Base Plan (Display & Social)	Duration	Impressions*	Distribution	Target	Ad Size	Cost
- Notice on desktop, mobile and tablet devices. - Remarket to Adults who have visited settlement website.						
Verizon (Yahoo!) Audience Network	6 weeks	165,000,000	National	Adults 25+ (English and Spanish language)	728x90, 300x250, 300x600 & 970x250	
Facebook	6 weeks	90,000,000	National	Adults 25+	Newsfeed & Right Hand Column	
Facebook	6 weeks	70,000,000	National	Adults 25+ with interests in Internet Privacy, Information Privacy and/or Browser Security	Newsfeed & Right Hand Column	
Instagram	6 weeks	40,000,000	National	Adults 25+	Newsfeed	
Instagram	6 weeks	30,000,000	National	Adults 25+ with interests in Internet Privacy, Information Privacy and/or Browser Security	Newsfeed	
Reddit	6 weeks	21,000,000	National	Adults 25+ who have interacted with the subreddits r/privacy, r/privacytoolsio, r/cybersecurity and/or r/privacyguides	Reddit Feed Ads	
<b>Total Estimated Digital:</b>		<b>416,000,000</b>				<b>\$188,631</b>

**Plan Total: ^ \$256,026**

\*Impression inventory at time of booking may vary slightly.

^Expert and professional time to be billed separately.

Estimated Program Duration (including lead time after Preliminary Approval): Approximately 8 weeks

Quote valid for 60 days from issue date. All advertising is subject to publisher's approval and availability at the time of the buy.



Hilsoft Notifications  
10300 SW Allen Blvd.  
Beaverton, OR 97005  
503.350.5800  
[www.hilsoft.com](http://www.hilsoft.com)



comScore target - A18+  
 Did not weight; class is inherently online  
 comScore August 2021

raw reach  
 66.65%

raw GRP  
 235.0

Print reach: 10.60% A25+  
 Print GRP: 10.6  
 MRI Simmons DB 2021

Total Reach: **69.65%**  
 Average Frequency: **3.9**

Secondary #/F test	raw reach A25+	raw GRP
Desktop Comscore	44.58%	111.41
Mobile Comscore	39.81%	77.92
Digital Reach	<b>66.64%</b>	
Total Reach:	<b>70.18%</b>	
Average Frequency:	<b>2.8</b>	

Gross Cost	Net Cost	Actual Ad Size	Run Date	Page	Have Tearsheet?
\$68,743.53	\$58,432.00		4/25 issue; on sale 4/15	30	Yes

Gross Cost	Net Cost	CPM	Run Dates	Have Screenshot?	Impressions Run	Total Clicks
\$80,558.82	\$68,475.00	\$0.4150	3/24 - 5/4, 2022	Yes	169,838,710	42,231
\$36,264.71	\$30,825.00	\$0.3425	3/24 - 5/4, 2022	Yes	91,243,599	12,372
\$28,199.38	\$23,969.47	\$0.3424	3/24 - 5/4, 2022	Yes	72,651,129	9,831
\$17,623.53	\$14,980.00	\$0.3745	3/24 - 5/4, 2022	Yes	43,055,878	5,855
\$13,208.56	\$11,227.27	\$0.3742	3/24 - 5/4, 2022	Yes	31,046,716	4,239
\$12,776.47	\$10,860.00	\$0.517	3/24 - 5/4, 2022	Yes	21,456,453	4,925
					<b>429,292,485</b>	<b>79,453</b>

# **EXHIBIT 4**

## Google Cookie Placement Consumer Privacy Litigation

**2016**

**2022**

*Exclusion Request*

Tracking Number	CLASS MEMBER NAME	STATUS	Tracking Number	RE-NOTICE CLASS MEMBER NAME	STATUS
59E7A68549	CHARLES E RICHARDSON	Incomplete	1	SHAWN HOLMES	Incomplete
E2D29C8163	UNITA FAY MITCHELL	Incomplete	2	RAUL MENDOZA	Complete
B4E535D02C	AKIKO DUNN	Complete	3	ERNEST ROBINSON	Complete
C395C9BF85	ALAN LANSING	Complete	4	JOHANNA R SILVA	Complete
609F01BCE3	ALEKSANDR Y SHINKAREV	Complete	5	LORENE BANKS	Complete
5004E9094B	ALESIA JACKSON	Complete	6	LEROY EARLE	Complete
D8576D76A5	ANDREY SHLOMOVICH	Complete	7	OREO BANKS	Complete
A918648630	ANITRA MURPHY	Complete	8	MICHELE RUSSO	Complete
1113BDD2E6	BRADDOCK BUCK DEANGELO	Complete	9	LEROY D EARLE III	Complete
0A5BDF6236	BRYAN MURPHY	Complete	10	DENISE INGRAM	Complete
F6CEFE734	CAMERON CORNELISON	Complete	11	LORENE BANKS	Complete
2C3D6535C6	CHARLES JACKLIN	Complete	12	LINDA K LAM	Complete
7457060D41	CHARLES RICHARDSON	Complete	13	LISA K LAM	Complete
2D675464D7	CHRISTOPHER GALBRAITH	Complete	14	CAROLYN BARBEE	Complete
7D1F2D7B47	DEANGELO BRADDOCK	Complete	15	CLAUDIA ANDERSEN	Complete
F16BF035C1	DOREEN M CAOUILLE	Complete	16	MICHEAL T SHEPHERD	Complete
04AED75C43	DWAYNE HAWKINS-LODGE	Complete	17	KANEICE L STACKHOUSE	Complete
CAD886200A	EMANUEL HAJEK	Complete	18	CELESTE Y SCHADE	Complete
EBCC4518F	GARY RICHARDSON	Complete	19	JAMES E HOUSTON	Complete
C111B7C04C	GEROD GREEN	Complete	20	JAMES L HATCHER	Complete
DC5A7CED01	GLENDA JOHNSON	Complete	21	JENNIFER M LONG	Complete
485D8F69EA	GLENNA O'DELL	Complete	22	KALYNA F JACKSON	Complete
97A52D8C4A	JAMES COBB	Complete	23	ANITA M JORDAN	Complete
37D5FC861D	JAMES L NELSON JR	Complete	24	MICHEAL T GOLDSTEIN	Complete
9E12FA2824	JAMES WALTON	Complete	26	BRENDA GRIMES	Complete
1B3A58CE36	JENNIFER SIMONIAN	Complete	27	KEESHIA WHITESIDE JAYNES	Complete
18C456CD80	JESSICA BROWN	Complete	28	MEGAN J MOORE	Complete
8A3F6127C0	JESSICA BROWN	Complete	29	ANTHONY H BALL	Complete
C5179FA632	JESSICA BROWN	Complete	31	MICHELLE G SETTLES	Complete
E623AA70EB	KAREN FENNESSEY	Complete	32	JIM SHANNON	Complete
264767730C	KIN WAH KUNG	Complete	33	TYEISHA HARRIS	Complete
344DC93545	MARIA ZAPOLSKI	Complete	34	ANTONIO FORTSON	Complete
4E38C388EC	MARINA SHLOMOVICH	Complete	35	DEBBIE BELCHER	Complete
AD69E16E0C	MARY REPINE	Complete	36	KRYSTAL PATE	Complete
4E248D3080	MICHAEL BROWN	Complete	37	ANTWON AUSTIN	Complete
D5F1F7F5C4	MICHAEL BROWN	Complete	39	RACHEL K. NARR	Complete
A89FE75E77	MICHELLE SHLOMOVICH	Complete	40	ADAM E. HIPPI	Complete
E86A9EB8A0	MOHAMAD HAKKANI	Complete	41	KATHERINE A. WENZEL	Complete
22A8716654	PETRA HAYEK	Complete	42	MICHAEL A. PALUMBO	Complete
6F6B6BCB5A	PHYLLIS BYRD	Complete	38	DIANA L. ANGUS	Late
603EFF417A	RACHELLE REESE	Complete			
E52A4866E2	RICHARD HAYEK	Complete			
CF4B00E930	RONY YARDEN	Complete			
91F80D4144	SHARD MASON	Complete			
2F35BB7580	SHERONDA WILLIAMS	Complete			
2C50A485E7	SMITH TRATICA	Complete			
BC9C044FF3	SONJI LANGFORD	Complete			
6BE7BD15DD	STEPHANIE WARD	Complete			
D2791B6886	TODD DORDAN	Complete			
8E8E55C18E	TRATICA SMITH	Complete			
7FC1C49FA3	SONIA MARTINEZ	Late			
7CFF2C7A31	ROCCO A. CONFORTI JR	Late			
40AE9DB0CC	ROCCO A. CONFORTI JR	Late			
7CFF2C7A31	ROCCO A. CONFORTI JR	Late			
40AE9DB0CC	ROCCO A. CONFORTI JR	Late			
344F34B05A	SONIA MARTINEZ	Late			
342451F4E6	DANIEL FRANCO	Late			
7FC1C49FA3	SONIA MARTINEZ	Late			
342451F4E6	DANIEL FRANCO	Late			
2793CE6AFD	BIANCA M JOYAL	Late			
34904D73FB	CODY THOMSON-ESQUER	Late			

# **EXHIBIT 5**



**THE U.S. DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re: Google, Inc. Cookie Placement  
Consumer Privacy Litigation

Case No. 1:12-md-02358

**OBJECTION TO THE SETTLEMENT**

The objector, Dmitrii Mudrechenko, disagrees that the proposed settlement is fair, reasonable and adequate. The objector requests the settlement should not be approved as fair, reasonable, and adequate and, in accordance with the settlement's terms; and class counsel's application for attorneys' fees and expenses should be denied.

This objection is filed on his behalf and on behalf of all class members. Dmitrii Mudrechenko is of legal age, a valid class member, a "U.S. consumer" along with being a resident of the State of Minnesota and he wrote this objection himself. In 2011 the objector used the Apple Safari web browser and visited a website from which Doubleclick.net (Google's advertising serving service) cookies were placed. The objector chose to block all cookies from "third parties and advertisers" and visited a non-Google website containing an advertisement served by Doubleclick.net (Google's advertising serving service) and did not already have a cookie from the Doubleclick.net domain but received one as a result of this visit because of means employed by Google to set cookies under these circumstances. He therefore is a valid class member and has standing to object. This objection is made in good faith. The sole purpose of this objection is to benefit class members.

The objector believes the settlement does not directly benefit class members. The \$5,500,000 total sum that Google will pay in connection with this settlement, will not be distributed to class members. In fact, there are no monetary benefits at all available to class members. Therefore, this settlement is not fair, reasonable, or adequate. The goal of this objection is to obtain greater compensation

for class members. The objector believes that a significant portion of the fund should be distributed to the class members instead. Attorneys representing plaintiffs argue that no direct monetary payments to class members are based on the difficulty in determining distribution of funds to such a large class. However, in class action lawsuit settlements, it is a well-known practice to establish a website that allows the class members to file a claim themselves and do it electronically. Therefore, claims can be filed fast and efficiently. Providing the class members with tools to file the claim electronically and advertising it on well known class action lawsuits news outlets and forums will ultimately resolve attorneys' concern about difficulty in determining class members.

In addition, the attorneys' fees represent an undue proportion of the fund. Attorneys' fees in the amount of \$1,925,000 are excessive. The fact that the settlement provides approximately \$2 million in attorneys' fees and nothing for the class members is unfair. Similar case occurred in *Chapman v. Tristar Products, Inc.* In *Tristar*, the Arizona Attorney General lodged an objection in the District Court to the terms of the settlement involving allegedly defective pressure cookers. The settlement agreement, entered after the first day of trial, which the Sixth Circuit characterized as "not going well for plaintiffs," provided for approximately \$2 million in attorneys' fees and costs and "substantially less than that—primarily in the form of coupons—for the class members." In *In re Google Inc. Cookie Placement Consumer Privacy Litigation* attorneys are also receiving close to \$2 million in attorneys' fees, but the class members are not receiving even a coupon or google electronic voucher. In fact, *In re Google Inc. Cookie Placement Consumer Privacy Litigation* represents the worst possible award for class members, that is absolute zero.

This objection was mailed to the administrator on 6/30/2022 by prepaid, first class, certified, return receipt mail.

I certify under penalty of perjury of the United States that all of the above is true and accurate to the best of my knowledge.



Dmitrii Mudrechenko, Pro se objector, 3155 Bluestem Drive, Unit 134, West Fargo, ND, 58078

E: [d.mudrechenko@gmail.com](mailto:d.mudrechenko@gmail.com) P: 701-404-3302 June 30, 2022

Dmitrii Mydrenchenko  
3155 Bluestem Dr, #134  
West Fargo, ND 58078



U.S. POSTAGE PAID  
FOM LETTER  
56537  
JUN 29 '22  
AMOUNT  
**\$6.80**  
R2304E104719-07



In Re: google cookie Placement Settlement  
Administrator

c/o GCG  
P.O. Box 10320  
Dublin, OH

**RETURN RECEIPT  
REQUESTED**

43017-092020  
43017-5920

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

**IN RE GOOGLE INC. COOKIE  
PLACEMENT CONSUMER PRIVACY  
LITIGATION**

**Case No. 12-MD-2358-ER**

**This Document Relates to:  
All Actions**

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT AND JUDGMENT**



WHEREAS, this matter has come before the Court pursuant to Plaintiffs' Motion for Final Approval of Class Action Settlement with Defendant Google Inc. (the "Motion");

WHEREAS, the Court finds that it has jurisdiction over this action and each of the parties for purposes of settlement;

WHEREAS, the Court has held a Final Fairness Hearing on \_\_\_\_\_; and

WHEREAS, the Court has considered all of the submissions related to the Motion and is otherwise fully advised in the premises;

IT IS HEREBY ORDERED THAT:

1. The terms of the Settlement Agreement between Plaintiffs and Defendant Google Inc. ("Defendant" or "Google"), dated June 30, 2016 (the "Agreement"), attached as Exhibit A to the Declaration of Brian R. Strange filed in support of the Motion, are hereby approved. This Order incorporates herein, and makes a part hereof, the Agreement. Unless otherwise provided herein, the terms defined in the Agreement shall have the same meanings herein. The Agreement was entered into only after extensive arm's-length negotiations by experienced counsel. The Court finds that effective Notice of the Proposed Agreement was given to the Class and that the Class Settlement embodied in the Agreement (the "Class Settlement") is fair, reasonable, and adequate. In making this determination, the Court has considered the current posture of this litigation and the risks and benefits to the parties involved in both settlement of these claims and continuation of the litigation.

2. The Settlement Class<sup>1</sup> is defined and certified as follows:

---

<sup>1</sup> Excluded from the Class are (1) Google, its parent, subsidiaries, successors, affiliates, officers, and directors; (2) the judge(s) to whom this case is assigned and any member of the judge's or judges' immediate family; (3) Persons who have settled with and released Google from individual claims substantially similar to those alleged in the Litigation; and (4) Persons who submit a valid and timely Request for Exclusion.

All persons in the United States of America who used the Apple Safari or Microsoft Internet Explorer web browsers and who visited a website from which Doubleclick.net (Google's advertising serving service) cookies were placed by the means alleged in the Complaint.<sup>2</sup>

3. The Court finally finds that the Settlement Class meets all the applicable requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and (b)(3) and hereby certifies the Settlement Class. The Court hereby finds, in the specific context of the Class Settlement, that:

a. Numerosity

The Settlement Class consists of millions of members located throughout the United States and satisfies the numerosity requirement of Federal Rule of Civil Procedure 23(a). Joinder of these widely dispersed, numerous Settlement Class Members into one suit would be impracticable.

b. Commonality

Common questions of law and fact, with regard to the alleged activities of Google, exist for each of the Settlement Class Members. These issues are central to this case and are sufficient to establish commonality.

c. Typicality

Plaintiffs' claims in this litigation are typical of the claims of the Settlement Class Members. Therefore, in the context of this Settlement, the element of typicality is satisfied.

d. Adequate Representation

Plaintiffs' interests do not conflict, and are co-extensive, with those of absent Settlement Class Members. Additionally, this Court recognizes the experience of Class Counsel—Strange LLP, Bartimus, Frickleton & Robertson, P.C., and Silverman, Thompson, Slutkin, White—and finds under Federal Rule of Civil

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<sup>2</sup> The Complaint alleges that in 2011–2012, users of Apple Safari or Microsoft Internet Explorer web browsers that were set to accept cookies only from “visited” sites or to block cookies from “third parties and advertisers” who visited a non-Google website containing an advertisement served by Doubleclick.net (Google's advertising serving service) and who did not already have a cookie from the Doubleclick.net domain would have received one as a result of this visit because of means employed by Google to set cookies under these circumstances.

Procedure 23(g), that the requirement of adequate representation of the Settlement Class Members has been fully met.

e. Rule 23(b)(2)

As to the remedial relief provided by the Settlement Agreement, Google has acted on grounds that apply generally to the Settlement Class, so that final injunctive relief is appropriate respecting the Settlement Class as a whole.

f. Rule 23(b)(3)

The proposed Class is sufficiently cohesive to warrant adjudication by representation such that issues common to the Class predominate over any individual issues. Further, a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. The Court appoints Named Plaintiffs Jose M. (“Josh”) Bermudez, Nicholas Todd Heinrich, and Lynn Krause as Class Representatives. Based upon the Court’s familiarity with the claims and parties, the Court finally finds that these designated representatives are appropriate representatives for settlement purposes and appoints them as Class Representatives.

5. The Court further finds that the following firms fairly and adequately represent the interests of the Settlement Class and hereby confirms them as Settlement Class Counsel pursuant to Federal Rule of Civil Procedure 23(g): Strange LLP, Bartimus, Frickleton & Robertson, P.C., and Silverman Thompson Slutkin White.

6. The Court has considered the notice to Class Members that were made consistent with the Settlement Agreement and the Court’s Order Preliminarily Approving the Settlement (D.I. 203, 205), and finds that the forms, content, and manner of Notice meet the requirements of due process and Federal Rule of Civil Procedure 23(c) and (e), constitute reasonable, sufficient, and appropriate notice under the circumstances, and satisfy the constitutional requirements of notice. The Court further finds that the Notice Program constituted the best notice practicable

under the circumstances given the size of the Settlement Class, the lack of addresses for direct notice, and the method by which Class Members were allegedly harmed.

7. The Court finds that the persons identified in **Exhibit A** attached hereto have timely and validly requested exclusion from the Class, and are, therefore, excluded accordingly. Such persons are not included in or bound by the Final Judgment in this Action. Such persons are not entitled to any recovery obtained through this Settlement.

8. The Court, having considered the timely objections to the Settlement, as well as Plaintiffs' responses filed on August 8, 2022, and any oral argument as to these objections, hereby overrules all such objections.

9. The Court hereby dismisses on the merits and with prejudice the claims asserted in the Litigation by Plaintiffs against Google.

10. In accordance with the terms of the Settlement, the Releasing Parties hereby fully, finally, and forever release, relinquish, and discharge against each of the Released Parties and all persons acting through, under, or in concert with each such Released Party, all claims in the Action. Specifically, the Releasing Parties release any and all past, present, or future claims, causes of action, suits, petitions, demands in law or equity, or any allegations of liability or damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interest ,or expenses that have been, may be, or could be asserted in the Action, arising out of, or relating to the Litigation or the subject matter of the Litigation.

11. Without affecting the finality of the Final Judgment in any way, the Court hereby retains continuing and exclusive jurisdiction over and for the purposes of: (a) implementation of the Settlement and the distribution(s) to *cy pres* recipients as authorized under the Settlement; (b) Defendants until the Final Judgment contemplated hereby has become effective and each and



every act agreed to be performed by the Parties has been performed pursuant to the Settlement; and (c) all Parties and Class Members for the purpose of enforcing and administering the Settlement.

12. In the event the Settlement does not become effective, then the judgment shall be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void and the Parties shall be returned to their respective positions *ex ante*.

13. The Court finds, pursuant to Federal Rules of Civil Procedure 54(a) and 54(b), that Final Judgment should be entered as to the Parties in this Litigation. Accordingly the Clerk is hereby directed to enter judgment forthwith.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Hon. Eduardo C. Robreno  
United States District Judge

# **EXHIBIT A**

## Google Cookie Placement Consumer Privacy Litigation

**2016**

**2022**

*Exclusion Request*

Tracking Number	CLASS MEMBER NAME	STATUS	Tracking Number	RE-NOTICE CLASS MEMBER NAME	STATUS
59E7A68549	CHARLES E RICHARDSON	Incomplete	1	SHAWN HOLMES	Incomplete
E2D29C8163	UNITA FAY MITCHELL	Incomplete	2	RAUL MENDOZA	Complete
B4E535D02C	AKIKO DUNN	Complete	3	ERNEST ROBINSON	Complete
C395C9BF85	ALAN LANSING	Complete	4	JOHANNA R SILVA	Complete
609F01BCE3	ALEKSANDR Y SHINKAREV	Complete	5	LORENE BANKS	Complete
5004E9094B	ALESIA JACKSON	Complete	6	LEROY EARLE	Complete
D8576D76A5	ANDREY SHLOMOVICH	Complete	7	OREO BANKS	Complete
A918648630	ANITRA MURPHY	Complete	8	MICHELE RUSSO	Complete
1113BDD2E6	BRADDOCK BUCK DEANGELO	Complete	9	LEROY D EARLE III	Complete
0A5BDF6236	BRYAN MURPHY	Complete	10	DENISE INGRAM	Complete
F6CEFE734	CAMERON CORNELISON	Complete	11	LORENE BANKS	Complete
2C3D6535C6	CHARLES JACKLIN	Complete	12	LINDA K LAM	Complete
7457060D41	CHARLES RICHARDSON	Complete	13	LISA K LAM	Complete
2D675464D7	CHRISTOPHER GALBRAITH	Complete	14	CAROLYN BARBEE	Complete
7D1F2D7B47	DEANGELO BRADDOCK	Complete	15	CLAUDIA ANDERSEN	Complete
F16BF035C1	DOREEN M CAOQUETTE	Complete	16	MICHEAL T SHEPHERD	Complete
04AED75C43	DWAYNE HAWKINS-LODGE	Complete	17	KANEICE L STACKHOUSE	Complete
CAD886200A	EMANUEL HAJEK	Complete	18	CELESTE Y SCHADE	Complete
EBCC4518F	GARY RICHARDSON	Complete	19	JAMES E HOUSTON	Complete
C111B7C04C	GEROD GREEN	Complete	20	JAMES L HATCHER	Complete
DC5A7CED01	GLENDA JOHNSON	Complete	21	JENNIFER M LONG	Complete
485D8F69EA	GLENNA O'DELL	Complete	22	KALYNA F JACKSON	Complete
97A52D8C4A	JAMES COBB	Complete	23	ANITA M JORDAN	Complete
37D5FC861D	JAMES L NELSON JR	Complete	24	MICHEAL T GOLDSTEIN	Complete
9E12FA2824	JAMES WALTON	Complete	26	BRENDA GRIMES	Complete
1B3A58CE36	JENNIFER SIMONIAN	Complete	27	KEESHIA WHITESIDE JAYNES	Complete
18C456CD80	JESSICA BROWN	Complete	28	MEGAN J MOORE	Complete
8A3F6127C0	JESSICA BROWN	Complete	29	ANTHONY H BALL	Complete
C5179FA632	JESSICA BROWN	Complete	31	MICHELLE G SETTLES	Complete
E623AA70EB	KAREN FENNESSEY	Complete	32	JIM SHANNON	Complete
264767730C	KIN WAH KUNG	Complete	33	TYEISHA HARRIS	Complete
344DC93545	MARIA ZAPOLSKI	Complete	34	ANTONIO FORTSON	Complete
4E38C388EC	MARINA SHLOMOVICH	Complete	35	DEBBIE BELCHER	Complete
AD69E16E0C	MARY REPINE	Complete	36	KRYSTAL PATE	Complete
4E248D3080	MICHAEL BROWN	Complete	37	ANTWON AUSTIN	Complete
D5F1F7F5C4	MICHAEL BROWN	Complete	39	RACHEL K. NARR	Complete
A89FE75E77	MICHELLE SHLOMOVICH	Complete	40	ADAM E. HIPPI	Complete
E86A9EB8A0	MOHAMAD HAKKANI	Complete	41	KATHERINE A. WENZEL	Complete
22A8716654	PETRA HAYEK	Complete	42	MICHAEL A. PALUMBO	Complete
6F6B6BCB5A	PHYLLIS BYRD	Complete	38	DIANA L. ANGUS	Late
603EFF417A	RACHELLE REESE	Complete			
E52A4866E2	RICHARD HAYEK	Complete			
CF4B00E930	RONY YARDEN	Complete			
91F80D4144	SHARD MASON	Complete			
2F35BB7580	SHERONDA WILLIAMS	Complete			
2C50A485E7	SMITH TRATICA	Complete			
BC9C044FF3	SONJI LANGFORD	Complete			
6BE7BD15DD	STEPHANIE WARD	Complete			
D2791B6886	TODD DORDAN	Complete			
8E8E55C18E	TRATICA SMITH	Complete			
7FC1C49FA3	SONIA MARTINEZ	Late			
7CFF2C7A31	ROCCO A. CONFORTI JR	Late			
40AE9DB0CC	ROCCO A. CONFORTI JR	Late			
7CFF2C7A31	ROCCO A. CONFORTI JR	Late			
40AE9DB0CC	ROCCO A. CONFORTI JR	Late			
344F34B05A	SONIA MARTINEZ	Late			
342451F4E6	DANIEL FRANCO	Late			
7FC1C49FA3	SONIA MARTINEZ	Late			
342451F4E6	DANIEL FRANCO	Late			
2793CE6AFD	BIANCA M JOYAL	Late			
34904D73FB	CODY THOMSON-ESQUER	Late			