JOHN A. YANCHUNIS (*pro hac vice*)
jyanchunis@forthepeople.com
RYAN J. McGEE (*pro hac vice*)
rmcgee@forthepeople.com
JONATHAN B. COHEN (*pro hac vice*)
jcohen@forthepeople.com
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Telephone: (813) 223-5505
Facsimile: (813) 223-5402

Counsel for Plaintiffs Matt Matic and Zak Harris

CLAYEO C. ARNOLD, SBN 65070
carnold@justice4you.com
JOSHUA H. WATSON, SBN 238058
jwatson@justice4you.com
CLAYEO C. ARNOLD
A PROFESSIONAL LAW
CORPORATION
865 Howe Avenue
Sacramento, California 95825
Telephone: (916) 777-7777
Facsimile: (916) 924-189

IVY T. NGO, SBN 249860
ngoi@fdazar.com
FRANKLIN D. AZAR & ASSOCIATES, P.C.
14426 East Evans Avenue
Aurora, Colorado 80014
Telephone: (303) 757-3300
Facsimile: (720) 213-5131

Counsel for Plaintiffs Charles Olson and Eileen M. Pinkowski

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE GOOGLE PLUS PROFILE LITIGATION	No. 5:18-CV-06164-EJD (VKD)
	PLAINTIFFS' NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
	Date: February 20, 2020 Time: 9:00 a.m. Courtroom: 4, 5th Floor Judge: Hon. Edward J. Davila

NOTICE OF MOTION

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on February 20, 2020, at 9:00AM, or as soon thereafter as counsel may be heard, before the Honorable Edward J. Davila, Courtroom 4, 5th Floor, United States District Court for the Northern District of California, 280 South 1st Street, San Jose, California 95113, Plaintiffs will and hereby move this Court, pursuant to Federal Rule of Civil Procedure 23, to grant Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

Plaintiffs base their Motion for Preliminary Approval of Class Action Settlement on: Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; Memorandum of Points and Authority in Support Thereof; Settlement Agreement and all exhibits attached thereto; Proposed Press Release; Proposed Order Granting the Motion; Declaration of John A. Yanchunis; Declaration of Steven Weisbrot; and all other records and papers on file in this action and all other matters properly before the Court.

STATEMENT OF RELIEF SOUGHT

Plaintiffs seek an order pursuant to Federal Rule of Civil Procedure 23(b)(3) certifying the Settlement Class more fully described in the Settlement Agreement, attached hereto as Exhibit 1; preliminarily approving the Settlement as fair, reasonable, and adequate; directing notice to be disseminated to the Settlement Class in the form and manner proposed by the parties as set forth in the Settlement Agreement and attached exhibits A and B thereto; appointing Angeion Group to serve as the Settlement Administrator; appointing Plaintiffs as Class Representatives and the undersigned attorneys as Class Counsel; and setting a hearing date and schedule for final approval of the Settlement and consideration of Class Counsel's forthcoming motion for award of fees, costs, expenses, and service awards.

DATED: January 6, 2020

/s/ John A. Yanchunis

JOHN A. YANCHUNIS (*pro hac vice*)
jyanchunis@forthepeople.com
RYAN J. McGEE (*pro hac vice*)
rmcgee@forthepeople.com
JONATHAN B. COHEN (*pro hac vice*)
jcohen@forthepeople.com

MORGAN & MORGAN COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Telephone: (813) 223-5505
Facsimile: (813) 223-5402

CLAYEO C. ARNOLD, SBN 65070
carnold@justice4you.com
JOSHUA H. WATSON, SBN 238058
jwatson@justice4you.com
CLAYEO C. ARNOLD A PROFESSIONAL LAW CORPORATION
865 Howe Avenue
Sacramento, California 95825

Counsel for Plaintiffs Matt Matic and Zak Harris

IVY T. NGO, SBN 249860
ngoi@fdazar.com
FRANKLIN D. AZAR & ASSOCIATES, P.C.
14426 East Evans Avenue
Aurora, Colorado 80014
Telephone: (303) 757-3300
Facsimile: (720) 213-5131

Counsel for Plaintiffs Charles Olson and Eileen M. Pinkowski

JOHN A. YANCHUNIS (*pro hac vice*)
jyanchunis@forthepeople.com
RYAN J. McGEE (*pro hac vice*)
rmcgee@forthepeople.com
JONATHAN B. COHEN (*pro hac vice*)
jcohen@forthepeople.com
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Telephone: (813) 223-5505
Facsimile: (813) 223-5402

Counsel for Plaintiffs Matt Matic and Zak Harris

CLAYEO C. ARNOLD, SBN 65070
carnold@justice4you.com
JOSHUA H. WATSON, SBN 238058
jwatson@justice4you.com
CLAYEO C. ARNOLD
A PROFESSIONAL LAW
CORPORATION
865 Howe Avenue
Sacramento, California 95825
Telephone: (916) 777-7777
Facsimile: (916) 924-189

IVY T. NGO, SBN 249860
ngoi@fdazar.com
FRANKLIN D. AZAR & ASSOCIATES, P.C.
14426 East Evans Avenue
Aurora, Colorado 80014
Telephone: (303) 757-3300
Facsimile: (720) 213-5131

Counsel for Plaintiffs Charles Olson and Eileen M. Pinkowski

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE GOOGLE PLUS PROFILE LITIGATION	No. 5:18-CV-06164-EJD (VKD)
	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
	Date: February 20, 2020 Time: 9:00 a.m. Courtroom: 4, 5th Floor Judge: Hon. Edward J. Davila

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ALLEGATIONS OF THE COMPLAINT 2

A. Google's Social Media Platform and Representations Concerning Data Security 2

B. The First Data Leak 3

C. The Second Data Leak 4

D. Litigation History 4

E. Plaintiffs' Claims and Relief Sought 5

F. Settlement Negotiations 6

III. THE SETTLEMENT TERMS 6

IV. ARGUMENT 9

A. The Settlement Class Should Be Preliminarily Certified 9

1. The Rule 23(a) Requirements Are Met 9

2. The Requirements of Rule 23(b) Are Met 10

B. The Settlement Should be Preliminarily Approved 11

1. The Strength of Plaintiffs' Case 13

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation 15

3. The Risk of Maintaining Class Action Status Through Trial 16

4. The Amount Offered in Settlement 16

5. The Extent of Discovery Completed and the Stage of Proceedings 17

6. The Experience and View of Counsel 17

7. The Presence of a Government Participant 18

8. The Reaction of the Class Members to the Proposed Settlement 18

9. Lack of Collusion Among the Parties 19

C. The Proposed Notice Plan Should Be Approved 19

D. Appointment of the Settlement Administrator 20

E. Appointment of Settlement Class Counsel 20
F. Appointment of Special Master to Designate Cy Pres Recipients.....21
G. Schedule for Final Approval.....21

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997) 9, 11

Cotter v. Lyft, Inc., 193 F. Supp. 3d 1030 (N.D. Cal. 2016) 12

Ellis v. Costco Wholesale Corp., 657 F.3d 970 (9th Cir. 2011) 9

G. F. v. Contra Costa Cty., No. 13-cv-03667-MEJ, 2015 WL 4606078 (N.D. Cal. July 30, 2015) 19

Hammond v. The Bank of N.Y. Mellon Corp., No. 08 Civ. 6060 (RMB) (RLE), 2010 WL 2643307 (S.D.N.Y. June 25, 2010) 15

Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) 10

In re Anthem, Inc. Data Breach Litig., 327 F.R.D. 299 (N.D. Cal. 2018) 11

In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935 (9th Cir. 2011) 13

In re High-Tech Emp. Antitrust Litig., No. 11-CV-02509-LHK, 2014 WL 3917126 (N.D. Cal. Aug. 8, 2014) 11

In re LinkedIn User Privacy Litig., 309 F.R.D. 573 (N.D. Cal. 2015) 11

In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078 (N.D. Cal. 2007) 11

In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig., 266 F. Supp. 3d 1 (D.D.C. 2017) 15

In re Yahoo! Inc. Cust. Data Sec. Breach Litig., No. 5:16-md-02752-LHK (N.D. Cal. July 20, 2019) 11, 18

Just Film, Inc. v. Buono, 847 F.3d 1108 (9th Cir. 2017) 10, 11

Linney v. Cellular Alaska P'ship, 151 F.3d 1234 (9th Cir. 1998) 15

Matic, et al v. Google, Inc., No. 5:18-cv-06164-EJD (N.D. Cal. 2018) 4, 5

O'Connor v. Uber Techs., Inc., 201 F. Supp. 3d 1110 (N.D. Cal. 2016) 12

Olson, et al v. Google, Inc., No. 5:18-cv-06365-NC (N.D. Cal. 2018) 4, 5

Parsons v. Kimpton Hotel & Rest. Group, LLC, No. 3:16-cv-05387-VC (N.D. Cal. Jan. 9, 2019) 11

Smith v. Triad of Ala., LLC, No. 1:14-CV-324-WKW, 2017 WL 1044692 (M.D. Ala. Mar. 17, 2017) 16

Spann v. J.C. Penney Corp., 314 F.R.D. 312 (C.D. Cal. 2016) 19

Staton v. Boeing Co., 327 F.3d 938 (9th Cir. 2003) 10

Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036 (2016) 11

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011) 10

STATUTES, RULES, AND REGULATIONS **PAGE(S)**

Class Action Fairnes Act, 28 U.S.C. § 1715, *et seq*. 18

Fed. R. Civ. P. 23 ..... *passim*

PUBLICATIONS **PAGE(S)**

Manual for Complex Litigation (4th Edition) 9

I. INTRODUCTION

In October and December 2018, Google[1] acknowledged that software bugs in its Google+ social media platform potentially exposed Google+ users' profile information to unauthorized third parties (collectively, the "Data Disclosures"), including the users' names, genders, and email addresses, as well as additional profile fields, such as the users' occupations and places lived. ("Personal Information").

Following the filing of class action complaints, Co-Lead Counsel retained experts in the areas of cybersecurity, dark web valuations, and financial modeling; consolidated the plaintiffs and causes of action for the purposes of the operative Amended Consolidated Class Action Complaint (the "Complaint") (Dkt. No. 37); fully briefed dispositive motions and responses thereto; exchanged informal discovery; and engaged in a day-long mediation session. At the arm's-length mediation conducted by renowned mediator Randall C. Wulff, the parties reached a resolution that—if accepted—will resolve all pending litigation and provide substantive relief to Class Members.

On April 2, 2019, Google took its Google+ social media platform offline for consumer use, thus alleviating any further need for revised information and data security business practices.

The Settlement provides a $7,500,000 non-reversionary settlement fund for the benefit of the Class ("Settlement Fund"). The Settlement Fund will be used for disbursements to claimants, as well as for administrative costs, service awards, and any fees, costs, and expenses sought by Class Counsel ("Net Settlement Fund"). The Net Settlement Fund shall be allocated to Claimants on a pro rata basis up to an initial cash payment of US$5.00 per Claimant. If there are insufficient funds to pay claimants $5.00 based on the number of claimants, the payment to each claimant will be reduced pro ratably. If sufficient funds remain after calculation of the aggregate initial maximum distribution of US$5.00 per Claimant, the allocation shall be recalculated on a pro rata basis up to a maximum distribution of up to US$12.00 per Claimant. Under no circumstances will any Class Member receive more than $12.00. Any funds remaining in the Net Settlement Fund

[1] Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement and Release, which is being filed concurrently herewith as **Exhibit 1**.

after distribution(s) to Class Members will be distributed to Cy Pres Recipients that have been selected by a neutral third party and approved by the Court.

Plaintiffs strongly believe the Settlement is favorable for the Settlement Class.[2] The Settlement provides quick relief for Settlement Class Members, including payments for potentially disseminating their non-public information to unauthorized third-party application developers. Importantly, the Personal Information of all Class Members was never disseminated or accessed by hackers or other malicious third parties, but instead was potentially exposed to third-party software developers known to Google.

Accordingly, Plaintiffs respectfully request the Court preliminarily approve the parties' Settlement Agreement and enter an order that:

(1) Certifies the Settlement Class under Fed. R. Civ. P. 23(b)(3);

(2) Preliminarily approves the Settlement as fair, reasonable, and adequate;

(3) Directs Notice to be disseminated to the Settlement Class in the form and manner proposed by the parties as set forth in the Settlement Agreement and Exhibits A and B thereto;

(4) Appoints Angeion Group ("Angeion") to serve as the Settlement Administrator;

(5) Appoints Class Representatives and Class Counsel; and

(6) Sets a hearing date and schedule for final approval of the settlement and consideration of Class Counsel's motion for award of fees, costs, expenses, and service awards.

II. ALLEGATIONS OF THE COMPLAINT

A. Google's Social Media Platform and Representations Concerning Data Security

Google provides comprehensive internet services. Launched in June 2011, Google's social media platform, Google+, facilitated the sharing of information, photographs, weblinks, conversations, and other shared, private content similar in many ways to Facebook, Twitter, and other social media platforms. ¶ 2.[3] As part of the sign-up process and a consequence of interacting

[2] Declaration of John Yanchunis ("Yanchunis Dec."), ¶ 33.

[3] References to "¶__" or "¶¶__" are to the Complaint, unless otherwise noted.

with the social media platform, Google+ users created, maintained, and updated profiles containing significant amounts of Personal Information, including the users' names, genders, and email addresses, as well as additional profile fields, such as the users' occupations and places lived. ¶ 3.

Anyone creating a Google+ account and participating in the Google+ social media platform agreed to Google's Terms of Service, which made it clear Google collected and stored this information for its users. ¶ 20. The Google Privacy Policy, however, made specific representations to users regarding the *protection* and *exposure* of their Personal Information. ¶ 20. The Google Privacy Policy specifically advised users that "When you use [Google's] services, you're trusting us with your information. We understand this is a big responsibility and work hard to protect your information and put you in control." ¶ 21.[4] Google explicitly represented that it would only "share [P]ersonal [I]nformation outside of Google when we have your consent. ¶ 21.[5] Google's Privacy Policy continued, representing that users "have choices regarding the information [Google] collect[s] and how it's used," that Google needed to "ask for [users'] consent before using [that] information for a purpose that isn't covered in [the Google Privacy Policy]," and that Google would "ask for [users'] explicit consent to share any sensitive personal information." ¶ 22.[6] Most importantly, Google stated users "[c]ontrol whom you share information with through your account on Google+." ¶ 23.[7]

B. The First Data Leak

On October 8, 2018, Google suddenly announced it would permanently shutter its Google+ social media platform, but within that announcement, Google disclosed that a "software glitch" had allowed third-party application developers access to Google+ users' Personal Information between 2015 and March 2018 (the "First Data Leak"). ¶ 27. In announcing the First Data Leak, Google explained that while users could grant third party applications access to their Personal Information, a "glitch" or "bug" in Google's Application Program Interfaces ("API") allowed

---

[4] Google, Privacy Policy (May 25, 2018), https://policies.google.com/privacy
[5] *Id.*
[6] *Id.*
[7] *Id.*

third-party applications to access that Personal Information without the Google+ users' permission. ¶ 28.[8] In other words, the First Data Leak made it possible for third parties to access users' Personal Information without permission. The information substantiating the First Data Leak was, however, known to Google since March 2018, yet Google took approximately seven months to disclose it to the public. ¶ 32. The First Data Leak affected an unknown number of users, with potentially 438 third-party developers accessing that Personal Information. ¶ 33.

C. The Second Data Leak

On December 10, 2018, Google announced that it would accelerate the closing of Google+ from August 2019, to April 2019, due to another "glitch" or "bug" that permitted the Personal Information of several million users in the United States to be shared with third-party developers (the "Second Data Leak"). ¶ 50. The Second Data Leak resulted from Google attempting to fix another vulnerability identified in the Google+ platform, but instead resulted in exposure of the Personal Information to unauthorized third-party developers between November 7, 2018 and November 13, 2018, regardless of the privacy setting the Google+ user set for her or his profile. ¶¶ 50–51.

D. Litigation History

Following Google's announcement of the First Data Leak, Plaintiffs Matt Matic and Zak Harris filed their class action complaint on October 9, 2018 (the "*Matic* Case"). (Dkt. No. 6). Shortly thereafter, Plaintiffs Charles Olson and Eileen Pinkowski filed their class action complaint on October 17, 2018 (the "*Olson* Case"). (Dkt. No. 12). And on December 5, 2018, this Court ordered the *Matic* Case and *Olson* Case related, pursuant to Civil L.R. 3-12. (Dkt. No. 20). On December 11, 2018, following Google's announcement of the Second Data Leak, but before the *Matic* Case and *Olson* Case were consolidated, Plaintiffs Matic and Harris filed their First

---

[8] Douglas MacMillan & Robert McMillan, *Google Exposed User Data, Feared Repercussions of Disclosing to Public*, The Wall Street Journal (Oct. 8, 2018), available at https://www.wsj.com/articles/google-exposed-user-data-feared-repercussions-ofdisclosing-to-public-1539017194; Douglas MacMillan & John McKinnon, *Google to Accelerate Closure of Google+ Social Network After Finding New Software Bug*, The Wall Street Journal (Dec. 10, 2018), available at https://www.wsj.com/articles/google-to-accelerate-closure-of-google-social-network-1544465975.

Amended Class Action Complaint, consolidating the First and Second Data Leaks into this litigation. (Dkt. No. 26). Shortly thereafter, counsel in both the *Matic* Case and *Olson* Case jointly moved for appointment of Interim Lead Counsel, (Dkt. No. 27), and counsel for all parties (i.e., *Matic*, *Olson*, and Google) jointly petitioned the Court to consolidate the cases. (Dkt. No. 30). On January 9, 2019, the Court consolidated the *Matic* Case and *Olson* Case, (Dkt. No. 31), counsel in the *Matic* Case and *Olson* Case convened and filed their consolidated complaint (i.e., the previously-defined Complaint), (Dkt. No. 37), and the Court appointed John A. Yanchunis and Ivy T. Ngo as co-lead counsel. (Dkt. No. 44).

On April 10, 2019, Google moved to dismiss Plaintiffs' Complaint, arguing failure to allege economic or other harms, and failure to allege sufficient factual bases to meet Fed. R. Civ. P. 8, 9, and 12 pleadings standards. (Dkt. No. 45). On May 10, 2019, Plaintiffs responded in opposition to Google's Motion to Dismiss, detailing the sufficiency of their factual and legal allegations in support of equitable and other relief, (Dkt. No. 47), and on May 31, 2019, Google filed its reply to Plaintiffs' opposition. (Dkt. No. 49).

E. Plaintiffs' Claims and Relief Sought

Plaintiffs sought several types of equitable and monetary relief in this matter, premised on claims arising from the Data Disclosures. Fundamentally, Plaintiffs' theories rested on three crucial issues: Google 1) failed to prevent the unauthorized disclosure of Google+ consumers' Personal Information; 2) waited approximately seven months after discovering and remediating the First Data Leak and reporting the First Data Leak to consumers; and 3) caused the Second Data Leak attempting to remediate additionally-identified vulnerabilities. ¶ 50.

Accordingly, Plaintiffs sought relief under numerous legal theories, including: violation of California's Unfair Competition Law ("UCL"), for unlawful, unfair, and fraudulent/deceptive business practices; negligence; invasion of privacy; breach of confidence; deceit by concealment or omission; breach of contract; and breach of the implied covenant of good faith and fair dealing. ¶¶ 125–221.

F. Settlement Negotiations

Following full briefing of Google's Motion to Dismiss, Google's counsel and Co-Lead Counsel discussed the possibility of a mediation in this case, and on August 14, 2019, Interim Class Counsel and Google engaged in an arm's-length, in-person, day-long mediation session under the direction of Mr. Randall Wulff in California. (Dkt. No. 52). During the mediation, the parties agreed to terms forming the substance of the Settlement. Negotiations of attorneys' fees, costs, and expenses did not commence until agreement on behalf of the Settlement Class had been reached. S.A. §§ 9.1, 10; Yanchunis Dec., ¶¶ 4, 15, 16.

III. THE SETTLEMENT TERMS

A. Proposed Settlement Class

The Settlement Agreement will provide relief for the following class:

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

S.A., § 1.8.

Because the claims at issue relate to alleged disclosure of private information, the class is defined to include U.S. users who included non-public information in their Google+ profile fields that was exposed due to the bugs. Users meeting the class definition will have the opportunity to submit a claim form affirming that they had non-public information in their Google+ profile fields that was susceptible to the software bugs, either because the user shared the profile information with another Google+ user, or authorized a third-party app to access that information.

While the parties do not know the total number of users who meet the class definition, based on available data about the U.S-based accounts that were potentially susceptible to the second bug, it is estimated that under ten million users in the United States had account settings such that information in their profiles could have been exposed by the second bug. As to the first bug, due to the lack of historical records, the total number of potentially affected accounts during the first bug's existence cannot be conclusively determined. However, the relatively small number of susceptible accounts at the time of its discovery suggests that the impact of the first bug

was significantly smaller than the second bug. Further, the parties do not have sufficient information to determine how many of those users with susceptible accounts had non-public data in profile fields, and thus do not know the exact number of persons contained within the proposed class.

B. Business Practice Changes

Following the announcement of the first software bug on October 8, 2018, Google announced its intent to permanently shutter its Google+ social media platform in August 2019. ¶¶ 1, 27, 44. Following the announcement of the second software bug on December 10, 2018, Google expedited the shuttering of its Google+ social media platform to April 2, 2019. ¶ 52. Because the Google+ social media platform is no longer operative for consumer use, Plaintiffs do not seek any additional business practice changes because the potential for harm has been remediated. Yanchunis Dec., ¶ 24.

C. Settlement Fund

Google's total financial commitment under the Settlement Agreement is $7,500,000. S.A. §§ 1.48, 2.1. The Settlement Fund will be applied to pay all Notice and Administrative Costs, the taxes described within the Settlement Fund, the Fee, Cost, and Expense Award, and any Service Awards. S.A. § 2.8. The Settlement Fund will also be used to distribute Residual Settlement Payments (if any) to Approved Cy Pres Recipients. S.A. §§ 2.8, 2.12. The Net Settlement Fund will be applied to Claimants in accordance with the Final Approval Order or any subsequent order of the Court. S.A. §§ 2.8, 2.9. The Net Settlement Fund will be allocated to Claimants on a pro rata basis up to a cash payment of US$5.00 per Claimant. S.A. §§ 2.8, 2.10. If there are insufficient funds to pay claimants $5.00 based on the number of claimants, the payment to each claimant will be reduced pro ratably. S.A. §§ 2.8, 2.10. If sufficient funds remain after calculation of the aggregate initial maximum distribution of US$5.00 per Claimant, the allocation shall be recalculated on a pro rata basis up to a maximum distribution of up to US$12.00 per Claimant. S.A. § 2.10. Under no circumstances will any Class Member receive more than $12.00. S.A. § 2.10. Any funds remaining in the Net Settlement Fund after distribution(s) to Class Members will be distributed to Cy Pres Recipients that have been selected by a neutral third party and approved

by the Court. S.A. §§ 2.8, 2.9. Plaintiffs believe the Settlement Fund will be more than ample enough to accommodate the amounts drawn from it, Yanchunis Dec., ¶¶ 22, 30–32, but, in the event it is not, all claims drawn from it will be reduced *pro rata*. S.A. § 2.10.

D. Class Notice and Settlement Administration

Notice to the Settlement Class and the costs of administration will be paid from the Settlement Fund. S.A. § 2.8. Angeion, a nationally recognized and well-regarded class action settlement administrator has been retained to serve here, subject to the Court's approval. Reflective of the nature of the Settlement Class, email addresses are available for the potential Class Members, and individual notice will be achieved primarily via email sent to the email addresses associated with the accounts of Google+ users in the U.S. as reflected in Google's records. S.A., §§ 4.1, 6.1.1. Notice will also be provided by the creation of a Settlement Website, available at www.GooglePlusDataLitigation.com, S.A., § 4.2, as well as via press release, attached hereto as **Exhibit 2**, issued through PR Newswire's US1 commercial newswire service and will also be posted on the Settlement Website and Class Counsel's respective firm websites. S.A., §§ 4.2, 4.3. Copies of all the notice documents are attached to this preliminary approval motion; they are clear and concise, and directly apprise Settlement Class Members of all the information they need to know to make a claim. Fed. R. Civ. P. 23(c)(2)(B).

E. Service Awards to Named Plaintiffs

Plaintiffs in this case have been integral in litigating this matter, including providing the entirety of their Google+ profiles to Google during informal discovery exchanged prior to the mediation in this case. All four representatives have been personally involved in the case and support the Settlement. Yanchunis Dec., ¶ 25. Plaintiffs will separately petition the Court to award each representative up to $1,500 in recognition of the time, effort, and expense they incurred pursuing claims that benefited the entire class. S.A., § 10.

F. Attorneys' Fees, Costs, and Expenses

Plaintiffs will also separately seek an award of attorneys' fees and reimbursement of litigation costs and expenses, not to exceed 25% of the Settlement Fund (i.e., $1,875,000). S.A., § 9.1, as well as $200,000 for additional costs. S.A. § 9.1. The request for fees, costs, and expenses

will encompass all effort and expenditures incurred by counsel and is within the sole discretion of this Court. S.A., § 9.1. The motion will be supported with detailed lodestar information and an accounting of expenses. Yanchunis Dec., ¶ 36. If the Court awards less than the amount sought by Class Counsel, that will not be a basis for setting aside this Settlement. S.A., § 9.1.

G. Reduction or Residual

Importantly, this Settlement is non-reversionary. If the Net Settlement Fund is insufficient to cover the disbursement of $5.00 to each Settlement Class Member, all such claims will be reduced on a *pro rata* basis. S.A., § 2.10. Conversely, should there be a remaining amount, surplus funds will be used to increase the disbursement payments up to the $12.00 individual claim cap, S.A. § 2.10, the approximate full value of Personal Information stored in social media profiles. Yanchunis Dec., ¶¶ 30–33. If additional funds remain in the Net Settlement Fund following those two disbursements, then a neutral third party appointed by the Court will select a Cy Pres recipient or recipients, subject to this Court's approval. S.A. §§ 2.10, 2.12.

H. Release

In exchange for the benefits provided under the Settlement Agreement, Settlement Class Members will release any claims against Google related to or arising from any of the facts alleged in the complaints filed in this litigation. S.A., §§ 7.1–7.6.

IV. ARGUMENT

A. The Settlement Class Should Be Preliminarily Certified

Before assessing the parties' settlement, the Court should first confirm the underlying settlement class meets the requirements of Rule 23. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); Manual for Complex Litigation, § 21.632. The requirements are well known: numerosity, commonality, typicality, and adequacy—each of which is met here. Fed. R. Civ. P. 23(a); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011).

1. The Rule 23(a) Requirements Are Met

The Settlement Class is estimated to potentially include up to approximately ten million United States-based accounts, and so readily satisfies the numerosity requirement. *See* Fed. R. Civ. P. 23(a)(1). The commonality requirement, which requires that class members' claims "depend

upon a common contention" of such a nature that "determination of its truth or falsity will resolve an issue that is central to the validity of each [claim] in one stroke," is also met. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, Plaintiffs' claims turn on whether Google's security environment was adequate to protect Settlement Class Members' Personal Information. The resolution of that inquiry revolves around evidence that does not vary from class member to class member, and so can be fairly resolved—whether through litigation or settlement—for all class members at once.

Likewise, typicality and adequacy are easily met. Each proposed Settlement Class Representative alleges he or she was a Google+ user, with Personal Information stored on Google's servers, that was exposed to unauthorized third parties during the Data Leaks, and thus they were impacted by the same inadequate data security that they allege harmed the rest of the Class. *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017) ("[I]t is sufficient for typicality if the plaintiff endured a course of conduct directed against the class."). The Settlement Class Representatives also have no conflicts with the Settlement Class; have participated actively in the case, including thorough examination of their Google+ profiles to identify the personal and private nature of the Personal Information stored therein; and are represented by experienced attorneys who were previously appointed by this Court to represent Class Members' interests. (Dkt. No. 44); *Staton v. Boeing Co*., 327 F.3d 938, 957 (9th Cir. 2003) (adequacy satisfied if plaintiffs and their counsel lack conflicts of interest and are willing to prosecute the action vigorously on behalf of the class); Yanchunis Dec., ¶¶ 25, 27.

2. The Requirements of Rule 23(b) Are Met

"In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or (3)." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1022 (9th Cir. 1998). Here, the Settlement Class is maintainable under Rule 23(b)(3), as common questions predominate over any questions affecting only individual members and class resolution is superior to other available methods for a fair and efficient resolution of the controversy. *Id*. Plaintiffs' claims depend, first and foremost, on whether Google used reasonable data security to protect consumers' Personal Information

stored in Google+ user profiles. That question can be resolved using the same evidence for all Settlement Class Members, and thus is the precise type of predominant question that makes a class-wide adjudication worthwhile. *See Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) ("When 'one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) … .'") (citation omitted).

Importantly, the predominance analysis in the settlement context need not consider manageability issues because "the proposal is that there be no trial," and hence manageability considerations are no hurdle to certification for purposes of settlement. *Amchem*, 521 U.S. at 620. There is only the predominant issue of whether Google failed to properly secure the Personal Information disclosed to unauthorized third parties during the Data Leaks and failed to provide timely notice, such that its users should now be provided a remedy. Resolution of that issue through individual actions is impracticable: the amount in dispute for individual class members is too small, the technical issues involved are too complex, and the required expert testimony and document review too costly. *See Just Film*, 847 F.3d at 1123. Rather, the class device is the superior method of adjudicating consumer claims arising from the Data Leaks—just as in other data breach cases where class-wide settlements have been approved. *See, e.g.*, *In re Yahoo! Inc. Cust. Data Sec. Breach Litig.*, No. 5:16-md-02752-LHK (N.D. Cal. July 20, 2019); *Parsons v. Kimpton Hotel & Rest. Group, LLC*, No. 3:16-cv-05387-VC (N.D. Cal. Jan. 9, 2019); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 316-17 (N.D. Cal. 2018); *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 585 (N.D. Cal. 2015).

B. The Settlement Should be Preliminarily Approved

There is "relatively scant appellate authority regarding the standard that a district court must apply in reviewing a settlement at the preliminary approval stage." *In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2014 WL 3917126, at *3 (N.D. Cal. Aug. 8, 2014). In the past, courts have focused only on whether the proposed agreement appears to be non-collusive, is free of "obvious deficiencies," and generally falls within the range of "possible" approval. *See, e.g.*, *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007). Recently, however, several courts have criticized the notion that review at the preliminary approval stage

need only involve a "quick look," or a watered-down version of final approval. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1036 (N.D. Cal. 2016); *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1122 (N.D. Cal. 2016).

Revisions to Rule 23—effective December 1, 2018—further confirm the need for a more detailed analysis. Rule 23(e)(1) now states:

> **(e) Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> **(1)** ***Notice to the Class.***
>
> **(A)** *Information That Parties Must Provide to the Court.* The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.
>
> **(B)** *Grounds for a Decision to Give Notice.* The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:
>
> **(i)** approve the proposal under Rule 23(e)(2); and
>
> **(ii)** certify the class for purposes of judgment on the proposal.
>
> **(2)** ***Approval of the Proposal.*** If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:
>
> **(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). Thus, under the new rule, notice should be given to the class, and hence,

preliminary approval should only be granted, where the Court "will likely be able to" finally approve the settlement under Proposed Rule 23(e)(2) and certify the class for settlement purposes. *Id.*; Committee Notes on Rules – 2018 Amendment to Fed. R. Civ. P. 23.

Thus, the proposed rule reflects the factors already used in this Circuit for final approval: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; (8) the reaction of the class members to the proposed settlement; and (9) whether the settlement is a product of collusion among the parties. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

Accordingly, Plaintiffs will undertake here an analysis under the now-effective Rule 23(e), save for recognizing that at least one of those factors—the reaction of class members—is not yet known. Each weighs in favor of approval.

1. The Strength of Plaintiffs' Case

While Plaintiffs have built a strong liability case based on the value of information contained in Google+ profiles and shared with unauthorized third parties, as well as Google's public statements and chronology of Google's actions, including omissions to Congress, the viability of their causation and damages models on a class-wide basis remains subject to vigorous challenge from Google, subject to *Daubert* challenges, and is untested on a class-wide basis, including in this District, beyond the pleading stages and certainly at trial.

As to liability, Plaintiffs detailed in their Complaint the shortcomings in Google's information security environment despite representations to the contrary, the omissions Google made during congressional testimony, and the subsequent flaws in Google's attempts to remediate the First Data Leak, demonstrating Google's numerous failures. ¶¶ 20–36, 38–44, 48–52. Plaintiffs also established that key senior executives had contemporaneous knowledge of the First Data Leak, yet failed to provide notice to users and Congress until months later. ¶¶ 37–40. Finally, anticipating attacks to the harm from the Data Leaks, Plaintiffs provided potential damages

models, supported by well-regarded experts, to establish the predominance and manageability of class treatment. Yanchunis Dec., ¶¶ 30–32.

Yet, Defendants raise substantial questions of causation and damages—both as to the named Plaintiffs individually and as to any ability to prove causation or damages class-wide. (Dkt. No. 45, at 7–14). Google not only attacked injuries resulting from its alleged tortious behavior, but also argued the invasion of privacy could not proceed due to lack of intent, no reasonable expectation of privacy, and no breach of social norms. (Dkt. No. 45, at 15–16). Similarly, Google attacked alleged legal deficiencies in Plaintiffs' theories of breach of confidence, (Dkt. No. 45, at 17–18), and pleadings requirements under Rule 9 for Plaintiffs' fraud claims. (Dkt. No. 45, at 18–21). Concerning the sensitivity of information contained in Plaintiffs' profiles, Google contended much of that information was available publicly, and attacked the legal sufficiency of Plaintiffs' theory that, although some information may be gleaned from public sources, the aggregated nature of profiles enables hackers and other malicious actors to more easily perpetuate identity theft and other forms of fraud. (Dkt. No. 45, at 15–16); ¶¶ 53–63 (discussing value of aggregated personal information)).

The range of potential outcomes was thus vast. For example, Plaintiffs' expert Ian Ratner noted that the type of information contained in Google+ profiles derives value from remaining private and not falling into the hands of unauthorized third parties. Yanchunis Dec., ¶¶ 30, 31. Due to the Data Leaks, however, Google essentially granted access to users' Personal Information for free and conveyed value to unauthorized third parties without compensation to the rightful owners (i.e., the users) of that information. Yanchunis Dec., ¶ 31. Mr. Ratner justified this theory of damages via the Income Method, which analyzes what third parties pay to access the type of information stored and aggregated in a Google+ profile. Yanchunis Dec., ¶ 31. Mr. Ratner determined the range of transaction values for access to social media accounts ranges between $0.20 and $29.60, with an average of $2.50 per account. Yanchunis Dec., ¶ 31.

But Google challenged crucial issues applicable to this valuation, namely the amount of information users provided in Google+ profiles, the availability of that information from other sources, and the lack of proof of exfiltration and misuse, which affects the value of a potential

settlement for injuries to Class Members. Prior data breach settlements with proof of exfiltration indicate a value exceeding $1 per user. While the legal theory behind a larger average recovery per user may be sound, it remains untested, and, as a practical matter, Plaintiffs' counsel recognize that taking such large numbers to a jury presents substantial strategic risks. Yanchunis Dec., ¶ 29.

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

While Plaintiffs believe their case is a strong one, all cases, including this one, are subject to substantial risk. This case involves millions of individuals, and a complicated and technical factual overlay lodged against a well-funded, technologically savvy, and motivated defendant. The damages methodologies, theoretically sound in Plaintiffs' view, remain untested in a disputed class certification setting and unproven in front of a jury. And—as in any data breach, but especially one of this scope and age—establishing causation and damages on a class-wide basis is an unexplored legal frontier rife with uncertainty.

Although nearly all class actions involve a high level of risk, expense, and complexity—undergirding the strong judicial policy favoring amicable resolutions, *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)—this is an especially complex class in an especially risky arena. Historically, data breach cases faced substantial hurdles in surviving even past the pleading stage. *See, e.g.*, *Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB) (RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting cases). Even cases of similar wide-spread notoriety and implicating data far more sensitive than at issue here have been found wanting at the district court level. *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1, 19 (D.D.C. 2017) ("The Court is not persuaded that the factual allegations in the complaints are sufficient to establish . . . standing."), *reversed in part*, 928 F.3d 42 (D.C. Cir. June 21, 2019) (holding that "Plaintiffs had standing to bring [data breach] lawsuit […]").

To the extent the law has gradually accepted this relatively new type of litigation, the path to a class-wide monetary judgment remains unforged; particularly in the area of damages. For now, data breach cases are among the most risky and uncertain of all class action litigation, making settlement the more prudent course when a reasonable deal is available.

By settling now, practical remedies that have been absent become imminently available. In the absence of proof that the information of the class was exfiltrated, this settlement offers consumers monetary relief through a simplified claims process, and Google has discontinued the Google+ platform for consumer use, thus assuaging the possibility of further dissemination of PII to unauthorized third parties. Even if Plaintiffs achieved a successful judgment, relief to Class Members would likely be forestalled for years following the exhaustion of appeals. Here then, delay only further delays compensation to Class Members they rightly deserve.

3. The Risk of Maintaining Class Action Status Through Trial

While Plaintiffs' case is still in the pleadings stage, the parties have not briefed and the Court has not yet certified any class treatment of this case. Certification of consumer data breach cases is rare—first occurring in *Smith v. Triad of Ala., LLC*, No. 1:14-CV-324-WKW, 2017 WL 1044692, at *6 (M.D. Ala. Mar. 17, 2017). While certification of additional consumer data breach classes should follow, the dearth of direct precedent adds to the risks posed by continued litigation.

4. The Amount Offered in Settlement

Google's total financial commitment under the Settlement Agreement is $7,500,000. S.A. §§ 1.48, 2.1. The Settlement Fund will be applied to pay all Notice and Administrative Costs, the taxes described within the Settlement Fund, the Fee, Cost, and Expense Award, and any Service Awards. S.A. § 2.8. The Settlement Fund will also be used to distribute Residual Settlement Payments (if any) to Approved Cy Pres Recipients. S.A. §§ 2.8, 2.10, 2.12. The Net Settlement Fund will be applied to Claimants in accordance with the Final Approval Order or any subsequent order of the Court. S.A. §§ 2.8, 2.9. The Net Settlement Fund will be allocated to Claimants on a pro rata basis up to a cash payment of US$5.00 per Claimant. S.A. §§ 2.8, 2.10. If there are insufficient funds to pay claimants $5.00 based on the number of claimants, the payment to each claimant will be reduced pro ratably. If sufficient funds remain after calculation of the aggregate initial maximum distribution of US$5.00 per Claimant, the allocation shall be recalculated on a *pro rata* basis up to a maximum distribution of up to US$12.00 per Claimant. S.A. §§ 2.8, 2.10. Under no circumstances will any Class Member receive more than $12.00. S.A. §§ 2.8, 2.10. Any funds remaining in the Net Settlement Fund after distribution(s) to Class Members will be

distributed to Cy Pres Recipients that have been selected by a neutral third party and approved by the Court. S.A. §§ 2.8, 2.10, 2.12. Plaintiffs believe the Settlement Fund will be more than ample enough to accommodate the amounts drawn from it, Yanchunis Dec., ¶¶ 22, 30–32, but, in the event it is not, all claims drawn from it will be reduced pro rata. S.A. § 2.10.

This is a fair and just outcome where the parties devoted financial resources to early resolution to benefit Class Members, instead of increasing Google's costs by litigating the issues described above. Yanchunis Dec., ¶¶ 14–16, 19–21.

5. The Extent of Discovery Completed and the Stage of Proceedings

Here, Plaintiffs vigorously and aggressively gathered all of Google's press releases related to this case—including statements to shareholders; publicly-available testimony from Google officers, directors, and employees provided to governmental and regulatory agencies; and other publicly-available documents concerning Google's announcements of the Data Leaks and failure to provide timely notice of the First Data Leak. Yanchunis Dec., ¶¶ 12–14, 28, 30–32.

Although the parties did not engage in formal discovery, Class Counsel's extensive experience in privacy and data protection practices since 1999 provided substantive knowledge on the subject to enable Class Counsel to represent Plaintiffs' and Class Members' interests without expending hundreds of hours and enormous financial resources to come up to speed on the subject area. Yanchunis Dec., ¶¶ 12–14, 28, 30–32. Class Counsel worked with cybersecurity expert Mary Frantz and her team at Enterprise Knowledge Partners to evaluate the Data Leaks, as well as assist with formulating discovery requests, including targeted interrogatories, requests for production, requests for admissions, and initial identification of crucial Google witnesses for depositions. Yanchunis Dec., ¶¶ 12, 13. Class Counsel also prepared Plaintiffs for intimate and detailed discovery, including providing and reviewing complete digital copies of their Google+ profiles, and preparing Plaintiffs for potential depositions in this case. Yanchunis Dec., ¶ 25.

Accordingly, Plaintiffs are well informed about their case, its assets and pitfalls, and have had the benefit of their experts' opinions in understanding the challenges of this case.

6. The Experience and View of Counsel

Class Counsel initiated this lawsuit when Google announced the First Data Leak—which

based on available information may have impacted hundreds of thousands of Google+ users (of which U.S.-based users would account for a substantially-lower amount)—far fewer than other blockbuster and headline-grabbing data breaches announced over the last few years. (Dkt. No. 1). When the Second Data Leak increased the number of potentially impacted Google+ users from hundreds of thousands of users to tens of millions of users worldwide (of which U.S.-based users are estimated to account for under 10 million users), Class Counsel were quick to amend and continue to represent the best interests of the class. The Court then appointed Class Counsel, charged with responsibilities to orderly and efficiently conduct litigation, such as discovery, expert retention, and settlement discussions, while avoiding unnecessary duplication and unproductive efforts. (Dkt. No. 44). Counsel representing the class, particularly John Yanchunis, has substantial experience litigating complex class cases of various natures, and extensive exposure to the highest profile data breach cases in the country. For example, Mr. Yanchunis serves as lead counsel in the *Yahoo!* data breach case and was a member of the Plaintiffs' Steering Committee who assisted his counsel in negotiating the settlement in Equifax, the largest settlement of a data breach case to date. Yanchunis Dec., ¶ 19 and accompanying Exhibit A thereto. Having worked on behalf of the putative class since the Data Leaks were first announced, evaluated the legal and factual disputes, and dedicated considerable time and monetary resources to this litigation, proposed Settlement Class Counsel endorse the Settlement without reservation. Yanchunis Dec., ¶¶ 19–22, 28, 37.

7. The Presence of a Government Participant

Although various investigations by governmental and regulatory authorities were commenced relating to the Data Leaks, Plaintiffs here pursued their claims independently. Should preliminary approval be granted, the United States Attorney General and Attorneys General of each of the States will be notified pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, and given an opportunity to raise any objections or concerns they may have. S.A., § 4.4.

8. The Reaction of the Class Members to the Proposed Settlement

Because notice has not yet been given, this factor is not yet implicated; however, Settlement Class Representatives all strongly support the Settlement. Yanchunis Dec., ¶ 33.

9. Lack of Collusion Among the Parties

Here, the parties negotiated a substantial Settlement Fund, making available $7,500,000 million to resolve this case. The parties did not commence discussion of fees until agreement on all substantive portions of the class resolution had been reached, and both the class portion of the resolution and the fees were negotiated at arm's-length under the direction of the parties' mutually-agreed upon mediator Mr. Randall Wulff, who has extensive experience litigating complex commercial, intellectual property, securities, and insurance cases, among others, for more than 20 years, and has mediated in excess of 2,000 cases—including a $1.1 billion class action settlement concerning antitrust claims against Microsoft, and leading panels concerning recovery for property damages claims resulting from the tragedy on September 11, 2001. http://www.wqsadr.com/randallwwulff.html; *see G. F. v. Contra Costa Cty.*, No. 13-cv-03667-MEJ, 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015) ("[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.") (internal quotation marks and citation omitted).

C. The Proposed Notice Plan Should Be Approved

Rule 23 requires that prior to final approval, the "court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). For classes certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Under now-amended Rule 23(c)(2)(B), "[t]he 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).

Here, because email addresses are available for the Class Members, the chief vector of direct, individual notice will be via email. Even prior to the above-noted change in Rule 23 expressly permitting electronic notice, email notice in similar circumstances has been found appropriate. *See, e.g.*, *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 331 (C.D. Cal. 2016). Substitute notice will also be provided by the creation of a Settlement Website, available at www.GooglePlusDataLitigation.com, as well as via press release issued through PR Newswire's

US1 commercial newswire service and will also be posted on the Settlement Website. S.A., §§ 4.1-4.3.2. Copies of all the notice documents are attached to this preliminary approval motion; they are clear and concise, and directly apprise Settlement Class Members of all the information they need to know to make a claim. Fed. R. Civ. P. 23(c)(2)(B).

Moreover, on the dedicated Settlement Website, Class Members are able to review the detailed Long Form Notice, which provides clear and concise information with respect to all the relevant aspects of the litigation. Thus, the Notice provides all the information necessary for Settlement Class Members to make informed decisions with respect to whether they remain in or opt out of the Settlement Class, or object to the proposed Settlement. Yanchunis Dec., ¶¶ 22, 37–42. The Notice Plan has been developed by a provider with significant experience in designing notice plans in large and national class actions similar to this one. Yanchunis Dec., ¶¶ 22, 37–42.

Accordingly, the content and method of dissemination of the proposed Notice fully comports with the requirements of due process, the now-amended Federal Rules of Civil Procedure, and applicable case law, and the Court should approve the proposed Notice and direct that it be distributed as agreed by the parties.

D. Appointment of the Settlement Administrator

In connection with implementation of the notice plan and administration of the settlement benefits, the parties seek the Court to appoint Angeion to serve as the Settlement Administrator. Angeion has a trusted and proven track record of supporting over 2,000 class action administrations and the distribution of over $10 billion to class members. Notice and administration is expected to cost approximately $265,000. Yanchunis Dec., ¶ 22.

E. Appointment of Settlement Class Counsel

Under Rule 23, "a court that certifies a class must appoint class counsel [who must] fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). In making this determination, courts generally consider the following attributes: the proposed class counsel's (1) work in identifying or investigating potential claims, (2) experience in handling class actions or other complex litigation, and the types of claims asserted in the case, (3) knowledge of the applicable law, and (4) resources committed to representing the class. Fed. R. Civ. P.

23(g)(1)(A)(i–iv).

Here, proposed Settlement Class Counsel have extensive experience prosecuting class action cases, and specifically data breach cases, and were previously appointed by this Court. (*See* Dkt. Nos. 27-2, 27-3). Accordingly, the Court should appoint John Yanchunis, Ryan J. McGee, and Jonathan B. Cohen of Morgan & Morgan Complex Litigation Group, Clayeo C. Arnold and Joshua H. Watson of Clayeo C. Arnold Professional Law Corporation, and Ivy T. Ngo of Franklin D. Azar & Associates as Class Counsel.

F. Appointment of Special Master to Designate Cy Pres Recipients

The Settlement Agreement provides that Cy Pres Recipients shall be designated by a special master to be appointed by the Court. As set forth in the Proposed Order submitted herewith as **Exhibit 3**, the parties propose appointment of former Magistrate Judge Elizabeth LaPorte of JAMS (or another neutral to be selected by the Court), who will review applications from non-profit entities and recommend applicants to be selected as Approved Cy Pres Recipients.

G. Schedule for Final Approval

Once the Court has ruled on the motion for preliminary approval, the timeline for providing notice, opting out of the Settlement Class, and submitting claims will begin to run. Plaintiffs provided an agreed-upon schedule in their Proposed Order granting this Motion.

V. CONCLUSION

In light of the significant benefits provided by the Settlement, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Preliminary Approval. Google does not oppose Plaintiffs' Motion for Preliminary Approval.

Dated: January 6, 2020

Respectfully submitted,

/s/ John A. Yanchunis
John A. Yanchunis (*pro hac vice*)
Ryan J. McGee (*pro hac vice*)
Jonathan B. Cohen (*pro hac vice*)
Morgan & Morgan
Complex Litigation Group

and

Clayeo C. Arnold (65070)
Joshua H. Watson (238058)
Clayeo C. Arnold, P.C.
Counsel for Plaintiffs Matic and Harris

and

Ivy T. Ngo (249860)
Franklin D. Azar & Associates, P.C.
Counsel for Plaintiffs Olson and Pinkowski

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

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

Executed on January 6, 2020.

/s/ John A. Yanchunis
John A. Yanchunis (admitted *pro hac vice*)

Exhibit 1

Preamble

This agreement ("Settlement Agreement" or "Agreement") is made and entered into this 6th day of January, 2020 (the "Execution Date"), by and between Google LLC ("Google" or "Defendant") and Plaintiffs Matt Matic, Zak Harris, Charles Olson, and Eileen M. Pinkowski (collectively, "Plaintiffs," and with Google, the "Parties"), individually and on behalf of the Class, as defined below. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below) on the terms and conditions of this Agreement. It is subject to the final approval of the United States District Court for the Northern District of California (the "Court").

Recitals

WHEREAS, Plaintiffs brought suit on behalf of themselves and all others similarly situated for damages and declaratory and injunctive relief under California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and for negligence; invasion of privacy; breach of confidence; deceit by concealment or omission; breach of contract (and in the alternative breach of the implied covenant of good faith and fair dealing) against Google; these claims are pending in the Northern District of California and captioned *In re Google Plus Profile Litigation*, Case No. 5:18-cv-06164 (the "Action");

WHEREAS, on April 10, 2019, Google moved to dismiss the Action and such motion remains pending;

WHEREAS, arm's-length settlement negotiations have taken place between Plaintiffs' Co-Lead Counsel and counsel for Google, including through an all-day mediation with Randall W. Wulff of Wulff Quinby Sochynsky Dispute Resolution;

WHEREAS, this Settlement Agreement has been reached as a result of those negotiations;

WHEREAS, Plaintiffs have conducted a meaningful investigation and analyzed and evaluated the merits of the claims made in the Action against Google, including with the benefit Google's motion to dismiss, and based upon that analysis, and recognizing the substantial risks of continued litigation, have concluded that a settlement with Google on the terms set forth below is fair, reasonable, and adequate and in the best interest of the members of the Class; and

WHEREAS, Google believes that it is not liable for the claims asserted and has good defenses to Plaintiffs' claims, but nevertheless has decided to enter into this Settlement Agreement in order to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation; and to obtain the releases, orders and judgment contemplated by this Settlement Agreement, and to put to rest with finality all Released Claims, as defined below; and

NOW, THEREFORE, in consideration of the agreements and releases set forth herein, and intending to be legally bound, it is agreed by and between Google and the Plaintiffs that the Action be settled, compromised, and dismissed with prejudice, without costs to Plaintiffs, the Class Members, or Google except as provided for herein, subject to the approval of the Court, on the following terms and conditions:

Agreement

1. Definitions

1.1 "Action" means the case entitled *In re Google Plus Profile Litigation*, Case No. 5:18-cv-06164-EJD, pending in the United States District Court for the Northern District of California.

1.2 "Affiliates," with respect to a party, shall mean (i) all entities now or in the future controlling, controlled by or under common control with that party; (ii) all entities in the past controlling, controlled by or under common control with that party, for the period of time that such control exists or existed; and (iii) predecessors, successors, or successors in interest thereof, including all entities formed or acquired by that party in the future that come to be controlled by that party. For purposes of this definition, "control" means possession directly or indirectly of the power to direct or cause the direction of management or policies of a company or entity through the ownership of voting securities, contract, or otherwise, and "entities" includes all persons, companies, partnerships, corporations, associations, organizations, and other entities.

1.3 "Approved Cy Pres Recipient" means an organization approved by the Court to receive any cy pres funds from the Settlement pursuant to Section 2.12.

1.4 "Claim" means a Settlement Class Member's Claim Form submission that may, if valid, entitle the Settlement Class Member to a Settlement Payment.

1.5 "Claimant" means a Settlement Class Member who has submitted a Claim that the Settlement Administrator has determined is valid and timely in accordance with the claims process described in Section 3.

1.6 "Claim Form" means the document Settlement Class Members submit to make a Claim pursuant to this Agreement. The Claim Form will be available online at the Settlement Website, and the contents of the Claim Form will be approved by the Court. The proposed Claim Form is attached hereto as Exhibit A to this Settlement Agreement.

1.7 "Claims Deadline" means the date by which Settlement Class Members must submit all Claims Forms for the Claims Forms to be timely. The Claims Deadline shall be one-hundred and fifty (150) days after entry of the Preliminary Approval order and shall be clearly stated in the Notice and on the Claim Form.

1.8 "Class" or "Settlement Class" means all persons residing within the United States who (1) had a consumer Google+ account for any period of time between January 1, 2015 and April 2, 2019; and (2) had their non-public Profile Information exposed as a result of the software bugs Google announced on October 8, 2018 and December 10, 2018. Excluded from the Settlement Class are (1) Google, and its officers, directors, employees, subsidiaries, and Google Affiliates; (2) all judges and their staffs assigned to this case and any members of their immediate families; (3) the Parties' counsel in this litigation; and (4) any Excluded Class Member.

1.9 "Class Counsel" means John A. Yanchunis, Jonathan B. Cohen, and Ryan J. McGee of the law firm Morgan & Morgan Complex Litigation Group; Clayeo C. Arnold and Joshua H. Watson of the law firm Clayeo C. Arnold Professional Law Corporation; and Ivy T. Ngo of the law firm Franklin D. Azar & Associates, P.C.

1.10 "Class Representative(s)" means each and all of the named Plaintiffs in this Action: Matt Matic, Zak Harris, Charles Olson, and Eileen M. Pinkowski.

1.11 "Co-Lead Counsel" means: (i) John A .Yanchunis of the law firm Morgan & Morgan Complex Litigation Group, 201 N. Franklin Street, 7th Floor, Tampa, Florida 33602; and (ii) Ivy T. Ngo of the law firm Franklin D. Azar and Associates, 14426 East Evans Avenue, Aurora, Colorado 80014.

1.12 "Court" means the United States District Court for the Northern District of California, the Hon. Edward. J. Davila presiding, or any judge who succeeds him as the judge in this Action.

1.13 "Effective Date" means the first business day after both of the following conditions have occurred:

1.13.1 Class Counsel and Google's Counsel have executed this Settlement Agreement.

1.13.2 The Final Approval Order has become a final, non-appealable judgment approving the Settlement Agreement in all respects and is no longer subject to review, reconsideration, rehearing, appeal, petition for permission to appeal, petition for a writ of certiorari, or any other appellate review of any kind, including without limitation under the All Writs Act, 28 U.S.C. § 1651.

1.14 "Electronic Payment" means payment via an electronic payment option to be selected by Claimants on the Claim Form. The electronic payment options are transfer via Paypal or digital check.

1.15 "Email Notice" means the notice of the Settlement that is emailed to potential Settlement Class Members, providing a link to the Claim Form, a link to the Settlement Website, and contact information for the Settlement Administrator.

1.16 "Escrow Agent" means Angeion Group, or another neutral third party agreed to by the Parties or appointed by the Court.

1.17 "Excluded Class Member" means any person or entity meeting the Class definition who has timely exercised his, her or its right to be excluded from the Class.

1.18 "Exclusion List" means the list of all persons and entities who have timely and validly excluded themselves from the Settlement.

1.19 "Fee, Cost, and Expense Award" means the amount of attorneys' fees and reimbursement of costs and expenses awarded to Class Counsel by the Court from the Settlement Fund.

1.20 "Final Approval Order" is the final judgment and order to be entered by the Court following the Final Fairness Hearing approving the Settlement set forth in this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Action with prejudice and without costs (except as specified in this Agreement).

1.21 "Final Fairness Hearing" means the Court hearing where the Plaintiffs will request that the Final Approval Order be entered approving this Agreement, and where Class Counsel will request that the Court approve the Fee, Cost, and Expense Award and the Service Awards. The Final Fairness Hearing must occur at least 35 days after the Objection and Exclusion Deadline, on such date as set by the Court.

1.22 "Google Affiliates" shall mean all Affiliates of Google. For purposes of this Agreement, Google Affiliates shall not include Google Capital (formerly Google Ventures "GV") or any entities that otherwise would be deemed an Affiliate of Google as a result of an investment in Google Capital or GV, even where such investment may afford Google Capital or GV some level of control over the entity.

1.23 "Google's Counsel" means the law firm of Wilson Sonsini Goodrich & Rosati, P.C, 650 Page Mill Road, Palo Alto, California 94304.

1.24 "Net Settlement Fund" means the Settlement Fund, reduced by the sum of the following amounts: Notice and Administrative Costs, any Service Awards, and any Fee, Cost, and Expense Award.

1.25 "Notice" means the notice of this proposed Settlement Agreement and of the Final Fairness Hearing, which will be disseminated to Settlement Class Members in accordance with the terms of this Agreement. The proposed Notice is attached hereto as Exhibit B to this Settlement Agreement.

1.26 "Notice and Administrative Costs" means all costs and expenses incurred in the dissemination of Notice; the establishment of the Settlement Website; the administrative processing, handling, review, and payment of Claims; and all other expenses reasonably necessary for effective Notice and administration of the Settlement pursuant to the Preliminary Approval order, including fees charged by the special master appointed to designate Proposed Cy Pres Recipients pursuant to Section 2.12.

1.27 "Notice Date" means the date on which Notice to Settlement Class Members is complete. The Notice Date shall be as soon as reasonably practicable, but no later than 60 days following entry of the Preliminary Approval order.

1.28 "Objection" means the written notice that a Settlement Class Member may submit to the Court in order to object to the Settlement.

1.29 "Objection and Exclusion Deadline" means the date by which a Settlement Class Member must submit an Objection to this Agreement or an Opt-Out Form to the Settlement Administrator. The Objection and Exclusion Deadline shall be 150 days after entry of the Preliminary Approval order.

1.30 "Objector" means a person or entity who submits an Objection.

1.31 "Opt-Out Form" means the form provided by the Settlement Administrator that Settlement Class Members must use to request exclusion from the Settlement.

1.32 "Plan of Allocation" means the plan for allocating the Net Settlement Fund set forth in Section 2.10 below, or other such plan for allocating the Net Settlement Fund as may be approved by the Court.

1.33 "Preliminary Approval" means the Court's order finding that the Notice to the Settlement Class is justified by the Parties' showing that the Court will likely be able to approve the Settlement under Fed. R. Civ. P. 23(e)(2) and certify the Settlement Class for purposes of judgment on the proposal.

1.34 "Profile Information" means information that was entered into in a Google+ profile field of a member of the Class.

1.35 "Proposed Cy Pres Recipient" means an organization proposed by a special master pursuant to the selection procedure described below at Section 2.12.

1.36 "Rejected Claimant" means a person or entity who submitted a Claim that the Settlement Administrator deemed invalid or untimely.

1.37 "Released Claims" means any and all claims, complaints, demands, damages, debts, liabilities, actions, proceedings, remedies, causes of actions or suits, known or unknown, of whatever kind or nature, including but not limited to whether in law or in equity, under contract, tort or any other subject area, or under any statute, rule, regulation, order, or law, asserted or not asserted, arising out of or related to the allegations in the Consolidated Amended Complaint, including but not limited to the claims arising out of or related to the allegations in the Consolidated Amended Complaint that have been asserted or could have been asserted by Releasors in the Consolidated Amended Complaint. Released Claims do not include any claims arising out of the enforcement of this Settlement Agreement.

1.38 "Releasees" means Google, its Affiliates, and their respective officers, directors, employees, members, agents, attorneys, administrators, representatives, insurers, beneficiaries, trustees, shareholders, investors, contractors, joint venturers, predecessors, successors, assigns, transferees, and all other individuals and entities acting on Google's behalf in connection with the Released Claims.

1.39 "Releasing Class Members" means all Settlement Class Members (and their parents or guardians on behalf of any minor Settlement Class Members) except those who appear on the Exclusion List, and each of their respective current or former directors, officers, trustees, beneficiaries, insurers, predecessors, successors, assigns, legatees, heirs, partners, agents,

personal representatives, and all other individuals or entities acting on a Releasing Class Member's behalf.

1.40 "Releasing Named Plaintiffs" means the named Plaintiffs in this Action: Matt Matic, Zak Harris, Charles Olson, and Eileen M. Pinkowski, on behalf of themselves and each of their respective insurers, predecessors, successors, assigns, legatees, heirs, attorneys, agents, personal representatives, and all other individuals or entities acting on the Plaintiff's behalf.

1.41 "Residual Settlement Payment" means the amount the Cy Pres Recipient(s) shall receive from the Net Settlement Fund if any funds remain after Settlement Payments are made.

1.42 "Service Award" means the award sought by each Class Representative in consideration for their service during the course of the Action and subsequently approved by the Court. Any such Service Award is separate and apart from any Settlement Payments each Class Representative may receive as a result of submitting a Claim as a Settlement Class Member.

1.43 "Settlement Administrator" means Angeion Group, or another firm agreed to by the parties or appointed by the Court, which will provide Notice and Claims administration services in connection with the Settlement Agreement.

1.44 "Settlement Amount" means Seven Million Five Hundred Thousand Dollars ($7,500,000), which shall be paid to the Escrow Agent by Google as detailed in Section 2 below.

1.44.1 The "Advance" means the payment of Seven Hundred Fifty Thousand Dollars ($750,000) to be paid within 30 days after the entry of the Preliminary Approval order; and

1.44.2 The "Balance" means the payment of Six Million Seven Hundred Fifty Thousand Dollars ($6,750,000) to be paid within 10 days after the entry of the Final Approval Order.

1.45 "Settlement Class Members" means members of the Settlement Class.

1.46 "Settlement Fund" means a cash fund of a total of Seven Million Five Hundred Thousand Dollars ($7,500,000) to be paid by Google in accordance with the terms of this Settlement Agreement.

1.47 "Settlement Payment" means the amount a Claimant shall receive from the Net Settlement Fund in accordance with the Plan of Allocation.

1.48 "Settlement Website" means a website created and maintained by the Settlement Administrator for the purpose of providing the Settlement Class with Notice of the proposed Settlement. This website will allow Settlement Class Members to access and submit Claim Forms and Opt-Out Forms, and update their contact information and preferred payment method.

1.49 "Supplemental Settlement Agreement" means an agreement signed by the Parties, which provides Defendants the option to withdraw from the Settlement if an agreed upon number of Settlement Class Members who exclude themselves from the Class is exceeded, which

number shall be submitted to the Court in camera or under seal, and kept confidential by the Parties unless the Court orders otherwise.

1.50 "Valid Claim" means a Settlement Class Member's Claim Form that the Settlement Administrator has deemed valid and timely and accepted for Settlement Payment.

1.51 "Website Notice" means the formal legal notice of the proposed Settlement terms that will be hosted on the Settlement Website, as approved by Class Counsel, Google's Counsel, and the Court.

2. Settlement Relief

2.1 Settlement Fund

Google's total financial commitment under this Agreement shall be $7,500,000. Within 30 days after entry of the Preliminary Approval order, Google shall make a non-reversionary payment in the amount of the Advance by check or wire transfer to the Escrow Agent in accordance with the instructions to be provided by the Escrow Agent to make payments for initial Notice and Administrative Costs. Within 10 days after the entry of the Final Approval Order, Defendants shall pay or cause to be paid to the Escrow Agent a non-reversionary payment in the amount of the Balance in accordance with the instructions to be provided by the Escrow Agent. The Settlement Amount may be paid by wire transfer, by delivering to the Escrow Agent a check or checks payable to the Settlement Fund, by any combination of those methods, or in any other manner agreed upon by Plaintiffs' counsel and Google. Within thirty (30) days of execution of this Agreement, the Escrow Agent will furnish to Google's Counsel adequate payment instructions consisting of wire transfer instructions, instructions for payment by check, and a completed IRS form W-9 for the Settlement Amount, including an address and tax ID number. The interest from this escrow account will accrue to the benefit of the Settlement Class if the Court grants final approval of the Settlement. If the Court does not grant final approval of the Settlement, the interest and Settlement Amount will be returned to Google less the portion of the amount applied to provide Notice to the Settlement Class.

2.2 Escrow.

The Escrow Agent will place the Settlement Fund in an interest-bearing account (the "Account") created by order of the Court intended to constitute a "qualified settlement fund" ("QSF") within the meaning of Section 1.468B-1 of the Treasury Regulations ("Treasury Regulations") promulgated under the U.S. Internal Revenue Code of 1986, as amended (the "Code"). Google shall be the "transferor" to the QSF within the meaning of Section 1.468B-1(d)(1) of the Treasury Regulations with respect to the Settlement Fund or any other amount Transferred to the QSF pursuant to this Settlement Agreement. The Settlement Administrator shall be the "administrator" of the QSF within the meaning of Section 1.468B-2(k)(3) of the Treasury Regulations, responsible for causing the filing of all tax returns required to be filed by or with respect to the QSF, paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable information reporting or tax withholding requirements imposed by Section 1.468B-2(*l*)(2) of the Treasury Regulations or any other applicable law on or with respect to the QSF. Google and the Settlement Administrator shall reasonably cooperate in

providing any statements or making any elections or filings necessary or required by applicable law for satisfying the requirements for qualification as a QSF, including any relation-back election within the meaning of Section 1.468B-1(j) of the Treasury Regulations.

2.3 No Liability for Investment.

Google, Google's Counsel, and Releasees shall have no liability, obligation or responsibility with respect to the investment, disbursement, or other administration or oversight of the Settlement Fund or QSF and shall have no liability, obligation or responsibility with respect to any liability, obligation or responsibility of the Escrow Agent or Settlement Administrator, including but not limited to, liabilities, obligations or responsibilities arising in connection with the investment, disbursement or other administration of the Settlement Fund and QSF.

2.4 Satisfaction of Obligations.

Google's transfers of its contributions to the Settlement Fund to the Escrow Agent shall constitute full and complete satisfaction of their obligations under this Agreement. Following Google's transfers of its contributions to the Settlement Fund, neither Google nor any Releasees shall have any liabilities, obligations or responsibilities with respect to the payment, disbursement, disposition or distribution of the Settlement Fund. Settlement Class Members shall look solely to the Settlement Fund for settlement and satisfaction against Google and any Releasees of all claims that are released herein: Fee, Cost, and Expense Award; Notice and Administrative Costs; all Service Awards; and all administrative or other costs and expenses arising out of or related to the Action or the Settlement. Settlement Class Members shall not under any circumstances be entitled to any further payment from Google or any Releasees with respect to the Released Claims, the Action, or the Settlement. In the event that the Settlement Agreement becomes final and effective, payment of the Settlement Fund will fully satisfy any and all Released Claims. Except as provided by order of the Court, no Settlement Class Member shall have any interest in the Settlement Fund or any portion thereof.

2.5 Custody.

All funds in the escrow account shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Agreement and/or further order(s) of the Court.

2.6 Taxes.

2.6.1 Notwithstanding any effort, or failure, of the Settlement Administrator or the Parties to treat the Account as a QSF, any tax liability, together with any interest or penalties imposed thereon, incurred by Google or any Releasees resulting from income earned on the Settlement Fund or the Account or payments made from the Account (or the receipt of any payment under this paragraph) shall be reimbursed from the Account in the amount of such tax liability, interest or penalties promptly upon and in no event later than five (5) days after Google's or any Releasees' written request to the Settlement Administrator.

2.6.2 For avoidance of doubt, neither Google nor any Releasees nor Class Counsel shall have any liability, obligation, or responsibility whatsoever for tax obligations arising from payments to any Claimant, or based on the activities and income of the QSF. In addition, neither Google nor any Releasees shall have any liability, obligation, or responsibility whatsoever for tax obligations arising from payments to Class Counsel. The QSF will be solely responsible for its tax obligations. Each Claimant will be solely responsible for his or her tax obligations. Each Class Counsel attorney or firm will be solely responsible for his, her, or its tax obligations.

2.7 No Liability.

Google shall have no liability whatsoever with respect to (i) any act, omission, or determination by Class Counsel, the Escrow Agent, or the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, or calculation of claims to be paid to Claimants from the Settlement Fund; or (v) the payment or withholding of taxes or related expenses, or any expenses or losses incurred in connection therewith. The Releasing Class Members, Class Representatives, and Class Counsel release Google from any and all liability and claims arising from or with respect to the administration, investment or distribution of the Settlement Fund.

No person shall have any claim against Class Representatives, Class Counsel or the Settlement Administrator, or any other person designated by Class Counsel, based on determinations or distributions made substantially in accordance with this Agreement and the settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

2.8 Disposition of the Settlement Fund

The Settlement Fund shall be applied as follows:

(a) To pay all Notice and Administrative Costs;

(b) To pay the taxes described herein;

(c) After the Effective Date, to pay the Fee, Cost, and Expense Award, and any Service Awards;

(d) After the Effective Date, to distribute the Net Settlement Fund to Claimants in accordance with the Final Approval Order or any subsequent order of the Court; and

(e) To distribute Residual Settlement Payments (if any) to Approved Cy Pres Recipients.

2.9 Settlement Payments to Settlement Class Members

After the Effective Date, Settlement Payments shall be made from the Net Settlement Fund to Settlement Class Members who submit Valid Claims in accordance with the Plan of Allocation.

2.10 Plan of Allocation

The Net Settlement Fund shall be allocated to Claimants on a pro rata basis up to an initial cash payment of US$5.00 per Claimant. If there are insufficient funds to pay claimants $5.00 based on the number of claimants, the payment to each claimant will be reduced pro ratably. If sufficient funds remain after calculation of the aggregate initial maximum distribution of US$5.00 per Claimant, the allocation shall be recalculated on a pro rata basis up to a maximum distribution of up to US$12.00 per Claimant. Under no circumstances will any Class Member receive more than $12.00. Any funds remaining in the Net Settlement Fund after distribution(s) to Class Members will be distributed to Cy Pres Recipients that have been selected by a neutral third party and approved by the Court.

2.11 Payment Method

For each Claimant, the Settlement Administrator shall provide Settlement Payments through an Electronic Payment option to be selected by Claimant on the Claim Form. Settlement Class Members with Valid Claims who fail to provide sufficient or correct information to permit such Electronic Payment, shall, after a reasonable attempt to resolve any such Settlement Payment issues, relinquish their right to Settlement Payments.

2.12 Distribution of Residual Funds to Approved Cy Pres Recipients

The Parties will select a neutral (*e.g.*, from JAMS or another alternative dispute resolution provider) to designate Proposed Cy Pres Recipients for distribution of any Residual Settlement Payments. The Preliminary Approval Motion shall request appointment by the Court of the selected person as a special master for this purpose. Following appointment, the special master will review applications from organizations seeking to be named Cy Pres Recipients, which applications shall include an affidavit disclosing any relationships between the organization on one hand and the Parties and their counsel on the other hand. The affidavit shall also set forth the organization's qualifications as an appropriate recipient of cy pres funds with respect to a settlement relating to data privacy. In advance of the Final Approval Motion, the special master will issue a report designating the Proposed Cy Pres Recipients, along with the reasons supporting the designation. The Final Approval Motion will request the Court's approval of the Proposed Cy Pres Recipients. Residual Settlement Payments will be distributed to the Approved Cy Pres Recipients in the manner directed by the Court in the Final Approval Order.

2.13 Timing of Payment

Settlement Payments from the Net Settlement Fund shall be distributed to Claimants within 60 days following the Effective Date. If applicable, payments to Approved Cy Pres Recipients, shall be distributed within 120 days following the Effective Date.

2.14 Certification

Within 35 days of execution of the Agreement, Google will provide a written certification confirming the facts and circumstances of the software bugs at issue in the Action and

confirming that Notice under this Agreement is reasonably calculated to inform Class Members of the Settlement.

3. Claims Process

3.1 Claim Form

3.1.1 Each Settlement Class Member shall be entitled to submit no more than one Claim for a Settlement Payment as described in this section.

3.1.2 The Claim Form will be available on the Settlement Website and may be completed and submitted online or in hard copy sent by postal mail to the Settlement Administrator.

3.1.3 The Claim Form shall, among other terms, require the Settlement Class Member to: (1) provide his or her current contact information and Electronic Payment information; (2) make attestations concerning the Settlement Class Member's usage of Google+; and (3) affirm under oath that the information he or she submits is, to the best of his or her knowledge, true and correct.

3.2 Deadline to file claims

3.2.1 To be considered timely, all Claim Forms must be submitted on the Settlement Website or mailed to the Settlement Administrator by the Claims Deadline, which shall be clearly stated in the Notice, on the Claim Form, and on the Settlement Website.

3.2.2 For Claim Forms submitted electronically on the Settlement Website, the deadline is 11:59 p.m. Pacific Time on the Claims Deadline.

3.2.3 For Claim Forms mailed to the Settlement Administrator, the Claim Form must be postmarked by 11:59 p.m. Pacific Time on the Claims Deadline.

3.2.4 Late claims may be considered if deemed appropriate by the Settlement Administrator in consultation with Class Counsel, or if ordered by the Court.

3.3 Claims review

The Settlement Administrator shall review all Claims to determine their validity. The Settlement Administrator may reject any Claim that does not comply in any material respect with the instructions on the Claim Form; is not submitted by a Settlement Class Member; is a duplicate of another Claim; is a fraudulent Claim; or is submitted after the Claims Deadline. The decision of the Settlement Administrator shall be final as to the determination of the Claimant's recovery.

3.4 Notification of Rejected Claims

The Settlement Administrator shall promptly notify, via the email address provided by the Claimant, all Rejected Claimants whose Claim Form the Settlement Administrator proposed to reject, in whole, or in part, and provide its reasons.

3.5 Claims disputes and inquiries

The Settlement Administrator shall notify Class Counsel and Google's Counsel of any disputes regarding the rejection of a Claim. Class Counsel and Google's Counsel may review any Claims rejected by the Settlement Administrator. If Class Counsel and Google's Counsel agree that a Claim was improperly rejected, the Claim shall be deemed valid and shall be paid. If Class Counsel and Google's Counsel do not agree as to whether a Claim was improperly rejected, the decision of the Settlement Administrator shall be final.

3.6 Claims processing

As soon as reasonably possible after the Claims Deadline, after all Claims have been processed to determine their validity, the Settlement Administrator will provide Class Counsel and Google's Counsel with a list of Claimants with Valid Claims and a list of all Claims it deems invalid or untimely.

3.7 Reporting and claims database

The Settlement Administrator will maintain a database of Claims, which will include all relevant information captured from Claimants' Claim Forms.

4. Notice and Administration

Direct Notice of the Settlement will be made to potential Settlement Class Members as set forth below. Notice shall be completed as soon as reasonably practicable, but no later than 60 days following entry of the Preliminary Approval order.

4.1 Direct Email Notice

4.1.1 Following entry of the Preliminary Approval order, Google shall compile a list of the e-mail addresses of the potential Settlement Class Members, as reflected in Google's current records, which shall be reasonably calculated to inform consumer users of the Google+ service located in the U.S. of the Settlement.

4.1.2 Within sixty (60) days following entry of the Preliminary Approval order, the Settlement Administrator shall coordinate with Google to effectuate email Notice of the Settlement to the list of e-mail addresses compiled pursuant to Section 4.1.1.

4.1.3 The Email Notice will provide a link to a Claim Form where the Settlement Class Member can submit a Claim; will provide a link to an Opt-Out Form where the Settlement Class Member can submit an Opt-Out Form, will provide a link to the Settlement Website; and will list contact information for the Settlement Administrator.

4.2 Website Notice

4.2.1 Within ten (10) business days of entry of the Preliminary Approval order, the Settlement Administrator will post the Website Notice in a user-accessible format on the Settlement Website.

4.2.2 Class Counsel, Google's Counsel, and the Settlement Administrator will jointly select the domain name for the Settlement Website.

4.2.3 The Settlement Website will include the Claims Form and Opt-Out Form; answers to frequently asked questions; a list of important deadlines; case documents, and contact information for the Settlement Administrator. Google's Counsel and Class Counsel must agree to any additions or revisions to the Settlement Website design or content.

4.2.4 The Settlement Website will remain active for at least 90 days following the Effective Date of the Settlement. However, the Settlement Administrator will disable online submissions of the Claim Form and the Opt-Out Form immediately following the Claims Deadline and the Objection and Exclusion Deadline.

4.3 Press Release

4.3.1 Within ten (10) business days of entry of the Preliminary Approval order, Class Counsel will issue a Press Release, which Google's Counsel will have the opportunity to review and reasonably approve prior to publication, providing Notice of the Settlement, a link to the Settlement Website, and contact information for the Settlement Administrator.

4.3.2 The Press Release will be issued through PR Newswire's US1 commercial newswire service and will also be posted on the Settlement Website and Class Counsel's website.

4.4 CAFA Notice

Not later than ten (10) days after this Settlement Agreement is filed with the Court, the Settlement Administrator, at Defendant's direction, shall serve notice of the Settlement and other required documents upon relevant government officials in accordance with the Class Action Fairness Act ("CAFA"), 28 U.S. § 1715. Prior to the Preliminary Approval hearing, the Settlement Administrator shall provide proof of service of such notice for filing with the Court.

5. Objections and Exclusions

5.1 Objections

5.1.1 Any Settlement Class Member who has not submitted a timely written Opt-Out Form and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, the Fee, Cost, and Expense Award, or the Service Awards must comply with the following requirements.

5.1.2 All Objections and supporting papers must be in writing and must:

(a) Clearly identify the case name and number, *In re Google Plus Profile Litigation*, Case No. 5:18-cv-06164-EJD;

(b) Include the full name, address, telephone number, and email address of the person objecting;

(c) Include the full name, address, telephone number, and email address of the Objector's counsel (if the Objector is represented by counsel);

(d) State whether the objection applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection;

(e) Identify the number of class action settlements objected to by the Settlement Class Member in the last three years, and list those cases by case name and number; and

(f) Be verified by an accompanying declaration submitted under penalty of perjury or a sworn affidavit.

5.2 Submission of Objections

Objections must be submitted by the Objection and Exclusion Deadline:

(a) If submitted through ECF, Objections must be submitted on this date by 11:59 p.m. PST.

(b) If submitted by postal mail, Objections must be postmarked by the Objection and Exclusion Deadline. The date of the postmark on the envelope containing the written statement objecting to the Settlement shall be the exclusive means used to determine whether an Objection has been timely submitted. In the event a postmark is illegible or unavailable, the date of mailing shall be deemed to be three days prior to the date that the Court scans the Objection into the electronic case docket.

(c) Settlement Class Members who fail to submit timely written Objections in the manner specified above shall be deemed to have waived any objections and shall be forever barred from making any objection to the Agreement and the proposed Settlement by appearing at the Final Fairness Hearing, appeal, collateral attack, or otherwise

5.3 Attendance at Final Fairness Hearing

Any Objections from Settlement Class Members regarding the proposed Settlement Agreement must be submitted in writing to the Court. If a Settlement Class Member does not submit a timely written Objection, the Settlement Class Member will not be able to participate in the Final Fairness Hearing. If an Objector who has submitted a timely written Objection wishes to attend the Final Fairness Hearing, he or she may do so at his or her own expense.

5.4 Objector's Attorneys' Fees and Costs

If an Objector makes an Objection through an attorney, the Objector shall be solely responsible for the Objectors attorneys' fees and costs.

5.5 Requests for Exclusion

The Notice shall advise all Settlement Class Members of their right to exclude themselves from the Settlement. This Settlement Agreement will not bind Settlement Class Members who opt-out of the Settlement.

5.6 How to Opt-Out

To request to be excluded from the Settlement, Settlement Class Members must timely submit a completed Opt-Out Form. This Opt-Out Form may be submitted electronically on the Settlement Website or sent by postal mail to the Settlement Administrator.

5.7 Deadline to Opt-Out

To be excluded from the Settlement, the Opt-Out Form must be submitted by the Objection and Exclusion Deadline.

(a) If submitted electronically, the Opt-Out Form must be submitted no later than 11:59 p.m. PST on or before the Objection and Exclusion Deadline.

(b) If submitted by postal mail, the Opt-Out Form must be postmarked, no later than the Objection and Exclusion Deadline. The Settlement Class Member must pay for postage.

5.8 Effect of Opt-Out

Any person or entity who falls within the definition of the Settlement Class and who validly and timely requests exclusion from the Settlement shall not be a Settlement Class Member; shall not be bound by the Settlement Agreement; shall not be eligible to make a Claim for any benefit under the terms of the Settlement Agreement; and shall not be entitled to submit an Objection to the Settlement.

5.9 Exclusion List

No later than 14 days after the Objection and Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Google's Counsel with a list of all persons and entities who have timely and validly excluded themselves from the Settlement. The Exclusion List shall be filed with the Court as part of the Motion for Final Approval.

5.10 Termination Clause

If the number of Settlement Class Members requesting exclusion exceeds a number agreed to by the Parties in the Supplemental Settlement Agreement, then Defendant may notify Class Counsel in writing that it has elected to terminate this Settlement Agreement. Such notification of intent to terminate the Settlement Agreement must be provided within 14 days of the date that the Exclusion List is provided to the Parties by the Settlement Administrator. If this Settlement Agreement is terminated, it will be deemed null and void ab initio and Section 8.5 below will apply.

6. Settlement Administration

6.1 Duties of Settlement Administrator

6.1.1 The Settlement Administrator shall perform the functions specified in this Agreement, including, but not limited to, overseeing administration of the Settlement Fund; coordinating Notice to Settlement Class Members via email; establishing and operating the Settlement Website and a toll-free number; administering the claims processes; and distributing Settlement Payments according to the processes and criteria set forth herein.

6.1.2 The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include:

(a) Effecting Notice in accordance with the procedures set forth herein;

(b) Establishing and maintaining a post office box for mailed communications from the Settlement Class Members;

(c) Establishing and maintaining the Settlement Website that, among other things, allows Settlement Class Members to submit claims electronically;

(d) Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;

(e) Responding to any mailed or emailed Settlement Class Member inquiries;

(f) Mailing to Settlement Class Members who request it paper copies of the Notice and/or Claim Forms;

(g) Processing all written notifications of exclusion from the Settlement Class;

(h) Providing weekly reports that summarize the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and Defendant's counsel;

(i) In advance of the Final Fairness Hearing, preparing affidavits to submit to the Court that: (i) attest to implementation of the Notice Plan in accordance with the Preliminary Approval Order; and (ii) identify each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class; reviewing, determining the validity of, and processing all Claims submitted by Settlement Class Members, pursuant to criteria set forth herein;

(j) Providing weekly reports and a final report to Class Counsel and Defendant's counsel that summarize the number and amount of Claims since the prior reporting period, the total number and amount of Claims received to date, the number and amount of any Claims approved and denied since the prior reporting period, the total number and amount of Claims approved and denied to date, and other pertinent information as requested by Class Counsel and Defendant's counsel;

(k) Providing any information as may be needed for a Post-Distribution Accounting as set forth in the Northern District of California Procedural Guidance for Class Action Settlements;

and

(l) Performing any function related to Settlement administration at the agreed-upon instruction of both Class Counsel and Defendant's counsel, including, but not limited to, verifying that cash payments have been distributed in accordance with this Agreement.

7. Releases

7.1 No admission of liability

This Settlement Agreement is made in compromise of a dispute. Neither the Agreement nor anything that the Parties stated or did during the negotiation of the Agreement shall be construed or used in any manner as an admission of liability or evidence of any party's fault, liability, or wrongdoing. Defendant expressly denies any liability or wrongdoing whatsoever.

7.2 Named Plaintiffs and Settlement Class Members' Release

Upon the Effective Date of this Agreement, all the Releasing Named Plaintiffs and Releasing Class Members shall release, forever discharge, will not in any manner pursue this Action, and shall be forever barred from asserting, instituting, or maintaining against the Releasees, any and all Released Claims, as defined in this Agreement.

7.3 Release of Unknown Claims

Releasing Named Plaintiffs and Releasing Class Members fully understand that the facts on which this Settlement Agreement is executed may be different from the facts now believed by Releasing Named Plaintiffs, Releasing Class Members, and their Counsel to be true. Releasing Named Plaintiffs and Releasing Class Members expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in facts. Releasing Named Plaintiffs and Releasing Class Members further agree that this waiver is an essential and material term of this release and the Settlement that underlies it and that without such waiver the Settlement would not have been agreed to.

7.4 Waiver of California Civil Code § 1542

As to the Released Claims only, Releasing Named Plaintiffs and Releasing Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, or any other similar provision under federal or state law. Releasing Named Plaintiffs and Releasing Class Members understand that California Civil Code § 1542 states:

> **A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

7.5 No Reliance

The Parties understand that, if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes that risk of such possible difference in facts, and agrees that this Agreement shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises or representations made by anyone other than those embodied herein.

7.6 Enforcement

The Releasing Named Plaintiffs and Settlement Class Members' Release shall not bar a claim, complaint, action, or proceeding for breach of this Settlement Agreement, for which the Court shall retain jurisdiction to resolve and enforce.

8. Court Approval of Settlement

8.1 Cooperation

Cooperation to Obtain Court Approval. The Parties will jointly take all reasonable steps necessary to secure the Court's approval of this Settlement. Class Counsel will draft and file the motions for Preliminary Approval and Final Approval. Google's Counsel will be provided with advance copies of these papers at least 7 calendar days prior to filing, and may join the motions or file separate briefs in support of Preliminary and Final Approval of the Settlement. Class Counsel will be provided with advance copies of any papers in support of preliminary or final approval Defendant proposes to file at least two business days prior to filing.

8.2 Settlement Class

The Parties agree that, for purposes of this Settlement, this Action should be certified and proceed as a class action under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only. Class Counsel shall serve as counsel for the Settlement Class.

8.3 Preliminary Approval

Within 45 days after the execution of this Agreement, Plaintiffs, in consultation with Defendant, shall move the Court for an order:

(a) Finding that the Court will likely be able to approve the Settlement under Rule 23(e)(2);

(b) Finding that the Court will likely be able to certify the Settlement Class for purposes of entering the Final Approval Order; and

(c) Finding that Notice, including the form, manner, and content of the Direct Email Notice and Website Notice is justified; and

(d) Placing the Final Fairness Hearing on the Court's calendar, with the hearing being set at least 35 days after the Objection and Exclusion Deadline, subject to the Court's availability.

8.4 Final approval

At least 35 days prior to the Final Fairness Hearing, Plaintiffs, in consultation with Defendant, shall move the Court for the Final Approval Order seeking:

(a) Final Approval of the Settlement, approving the terms of this Settlement to be fair, reasonable, and adequate and in the best interest of Settlement Class Members;

(b) A finding that the Notice complied with the Settlement Agreement, all applicable law, and due process;

(c) Distribution of the Settlement Fund and approval of the Settlement Payments and Residual Settlement Payments; and

(d) Dismissal of the Action with prejudice, entry of judgment, and entry of a Final Approval Order.

8.5 Effect if Settlement Not Approved

The Settlement Agreement is being entered into for settlement purposes only. If the Court does not grant Preliminary Approval, does not grant Final Approval, or if the Effective Date does not occur, this Settlement Agreement will be deemed null and void ab initio. In that event:

(a) The Preliminary Approval order and the Final Approval Order, to the extent they have been entered by the Court, will be vacated by operation of law;

(b) The Parties will be restored to their respective positions immediately preceding execution of the Agreement, and any intervening Court rulings or decisions shall be vacated;

(c) No term or condition of the Agreement, or any draft thereof, or any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect; nor shall any such matter be admissible in evidence for any purpose in the Action or any other proceeding; nor shall any such matter be used in the Action for any purpose whatsoever;

(d) Defendant will retain all of its rights to object to any attempt by Plaintiffs to reference, cite to, or rely upon, in any way, the Agreement or any factual or legal statement or conclusion within it, including as to the feasibility of the maintenance of the Action as a class action.

8.6 Modifications Suggested by the Court

8.6.1 If the Court (1) suggests any modifications to the Agreement or (2) conditions either Preliminary Approval or Final Approval on modifications to the Agreement, the Parties shall, working in good faith and consistent with the Agreement, endeavor to cure any such deficiencies identified by the Court. However, the Parties shall not be obligated to make any additions or modifications to the Agreement that would affect the benefits provided to Settlement Class Members, or the cost to or burden on Defendant, the content or extent of Notices required to Settlement Class Members, or the scope of any of the releases contemplated

in this Agreement. If the Court orders or proposes such additions or modifications, the Parties will each have the right to terminate the Settlement Agreement within 7 days from the date of the Court's order or proposal. If any Party elects to terminate the Settlement Agreement pursuant to this section, the Agreement will be deemed null and void ab initio and the provisions of Section 8.5 will apply.

8.6.2 Notwithstanding the foregoing, the Parties will not be entitled to terminate this Settlement Agreement based on any order relating to Class Counsel's anticipated motion for a Fee, Cost, and Expense Award or to Plaintiffs' anticipated motion for Service Awards to the Named Plaintiffs, nor any appeal from such order or reversal or modification thereof.

9. Class Counsel's Fees, Costs, and Expenses

9.1 Fee, Cost, and Expense Award.

Class Counsel will file a motion with the Court seeking a portion of the Settlement Fund as payment of their reasonable attorneys' fees, plus reimbursement of actual costs and expenses, including experts and consultants, incurred in connection with prosecuting this Action, including any appeal(s). Google expressly reserves the right to oppose the motion seeking a Fee, Cost, and Expense Award if the portion sought exceeds 25% of the Settlement Fund ($1,875,000) plus $200,000 in costs. The Fee, Cost, and Expense Award is within the sole discretion of the Court, and if the award is less than the amount sought by Class Counsel, this will not be a basis for setting aside the Settlement.

9.2 Disclosure of Amounts Sought

In its Motion for Preliminary Approval of the Settlement and supporting papers, Class Counsel will provide the maximum amount of the Settlement Fund it will seek from the Court as attorneys' fees, as well as the total amount of costs and expenses (or best estimates for costs and expenses not yet charged) for which it will seek reimbursement. On or before the Notice Date, these amounts will also be disclosed in the Settlement Notice, which shall be posted on the Settlement Website.

9.3 Motion for Attorneys' Fees, Costs, and Expenses

At least 35 days prior to the Objection and Exclusion Deadline, Class Counsel will file a motion for award of attorneys' fees, costs, and expenses. Class Counsel's motion for attorneys' fees, costs, and expenses will also be posted on the Settlement Website.

9.4 Timing of Payment

If awarded by the Court, the Fee, Cost, and Expense Award shall be payable from the Settlement Fund within 60 days after the Effective Date.

9.5 Distribution of Fee, Cost, and Expense Award

Class Counsel shall have sole responsibility and discretion to distribute the Fee, Cost, and Expense Award to any other attorney or law firm that may claim they are owed attorneys' fees, costs, or expenses under the terms of this Settlement.

10. Service Awards

Class Counsel will seek, and Google will not oppose, Service Awards for each Class Representative in consideration for their service during the course of the Action. Any Service Awards are subject to the approval of the Court and shall not exceed $1,500 per Class Representative. Any such Service Awards are separate and apart from any Settlement Payments the Class Representatives may receive as a result of submitting Claims as Settlement Class Members. If awarded by the Court, the Service Awards shall be payable from the Settlement Fund 60 days after the Effective Date of the Settlement. At least 30 days prior to payment of the Service Awards, Class Counsel shall furnish the Settlement Administrator with all necessary payment, routing, and tax information for the Class Representatives to facilitate the transfer.

11. Miscellaneous

11.1 Entire Agreement

This Agreement, together with the Supplemental Settlement Agreement, constitutes the complete, final and exclusive embodiment of the entire agreement among Plaintiffs, the Settlement Class, and Google with regard to the subject matter hereof, and supersedes all previous or contemporaneous agreements between Plaintiffs, the Settlement Class, and Google relating to the Agreement's subject matter. It is entered into without reliance on any statements, promises, warranties or representations, written or oral, other than those expressly contained herein, and it supersedes any other statements, promises, warranties or representations.

11.2 No Construction Against Any Party.

The terms of the Settlement Agreement have been negotiated at arm's-length among knowledgeable parties represented by experienced counsel. The Parties agree that the normal rule of construction that any ambiguity in a document is construed against the drafting party shall not apply to the interpretation or enforcement of the Settlement Agreement, as the Parties each participated in the drafting of the Settlement Agreement.

11.3 Headings and Captions.

The captions or headings in this Agreement are inserted for convenience, reference, and identification purposes only, and shall neither control, define, limit, nor affect any provisions of this Agreement.

11.4 Severability.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. If any provision (or part of a provision) of this Agreement is found to be invalid, illegal or unenforceable, the rest of the Agreement shall remain in effect.

11.5 Specific Prohibitions.

The following specific prohibitions shall apply to the Settlement Agreement as follows:

(a) No Assignment: The Settlement Agreement, including any of the rights and duties of each Party under the Agreement, may not be assigned without prior written approval by the other Parties.

(b) No Waiver: No Party will be treated as having waived any rights or privileges, including attorney-client privilege, as the result of the Settlement Agreement. Additionally, a waiver of any breach of the Settlement Agreement by any Party shall not be deemed to be a waiver by any Party of any other breach of the Agreement.

(c) No Third-Party Beneficiaries: The Settlement Agreement does not confer any benefits on any third party.

(d) Execution in Counterparts: This Agreement may be executed by the Parties in counterparts and exchanged by electronic means, including facsimile, PDF, and other electronic means, with the same effect as if all Parties had signed the same instrument.

11.6 Amendments.

Any amendment must be in writing, signed by Class Counsel and Google's Counsel, and expressly state that it is amending the Settlement Agreement.

11.7 Communications with Settlement Class Members

Google reserves the right to continue any and all ordinary-course-of-business communications with Settlement Class Members. Should it become evident in the course of any such communication that a Settlement Class Member is inquiring regarding the settlement memorialized in this Agreement, Google shall refer the inquiry to the Settlement Administrator or to Class Counsel.

11.8 Waiver of Objections by Class Representatives

The Settlement Class Representatives agree not to object to any of the terms of this Agreement

11.9 Governing Law.

All claims arising out of or relating to this Agreement will be governed, interpreted, enforced, construed and controlled by the laws of the State of California, without regard to principle of conflicts or choice of law provisions.

11.10 Enforcement and Jurisdiction.

The Court shall retain exclusive jurisdiction to enforce, interpret, and implement the Settlement Agreement, including any alleged violations, any disputes, and the terms of any order entered pursuant to this Agreement.

SIGNATORIES

IN WITNESS WHEREOF, each of the Parties hereto has reviewed and approved this Agreement and has caused this Agreement to be executed on its behalf by its duly authorized counsel of record or representative.

Plaintiffs Matt Matic, Zak Harris, Charles Olson, and Eileen M. Pinkowski Agreed to: _____ Morgan & Morgan Complex Litigation Group Agreed to: _____ Franklin D. Azar and Associates Attorneys for Plaintiffs and the Proposed Settlement Class	**Defendant Google LLC** Agreed to: _____ David H. Kramer WILSON SONSINI GOODRICH & ROSATI PC Date: 1/6/2020 Attorneys for Google LLC, as authorized and on behalf of Defendant Google LLC

Exhibit A

CLAIM FORM

1. You may be eligible to receive a cash payment if you submit this Claim Form.

Settlement Class Members who submit a Claim may be eligible to receive cash payments in an amount up to a maximum of $12.00, depending on the total number of Claimants. Each Settlement Class Member is allowed to submit no more than **one** claim, regardless of the number of Google+ accounts the Class Member had.

Settlement Class Members whose Claims are determined to be valid will receive their payments via the Electronic Payment method specified below. Claimants must fully complete all sections of this form.

2. Name and Contact Information of Claimant

_____ _____
First Name Last Name

_____ _____
Street Address City

____ _____
State Zip Code

_____
Email address associated with Claimant's Google+ account

3. Election of Electronic Payment Format

Please indicate your preferred method of payment and provide the required Electronic Payment information. Please choose only **one** of the below options.

[_] Paypal _____
Provide Your PayPal Account Email Address

[__] Digital Check _____
Provide Your Primary Email Address[1]

[1] Claimants who elect to receive a digital check and who submit a Valid Claim will be contacted at the email address provided here with instructions for receiving the digital check.

4. Details Concerning Eligibility

You must be able to check **all** of the following boxes in order to be eligible to receive a settlement payment. Check each box below that represents a true statement about your use of Google+.

[_] I was a user of the consumer Google+ service while a resident of the United States at some point during the period from January 1, 2015 to April 2, 2019;
[_] My Email address associated with my Google+ account was _____.
[_] I entered private (meaning non-public) information in at least one of my Google+ profile fields that was not set to be shared publicly[2]; and
[_] **Either** I shared that information with another Google+ user through the Google+ service **or** I authorized an app to access my Google+ profile field information.

5. Verification

By signing below and submitting this claim form I hereby affirm under oath that: (1) I am 18 years of age or older; (2) I am the person identified above (or, if the person identified above is a minor, I am the parent or guardian of that person); and (3) the information provided in this Claim Form is, to the best of my knowledge, true and correct.

_____ _____
Date Signature

_____
Printed Name

THIS CLAIM FORM MUST BE SUBMITTED ON THE SETTLEMENT WEBSITE NO LATER THAN _____, 20__, OR MAILED TO THE CLAIMS ADMINISTRATOR BY PREPAID, FIRST-CLASS MAIL POSTMARKED NO LATER THAN _____, 20__TO:

[ADDRESS]

[2] The list of profile fields is available at [URL on settlement admin website].

Exhibit B

Notice of Class Action Settlement

You are not being sued. This notice affects your rights. Please read it carefully.

On _____, 20__, the Honorable Edward J. Davila of the U.S. District Court for the Northern District of California, granted preliminary approval of this class action Settlement and directed the litigants to provide this notice about the Settlement. You have received this notice because Google's records indicate that you may be a Settlement Class Member, and you may be eligible to receive a payment from the Settlement. Please visit www.GooglePlusDataLitigation.com for more information. The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at _:__ [am/pm] on _____, 20__ in San Jose Courthouse, Courtroom 4, 5th Floor located at 280 South 1st Street, San Jose, CA 95113. You are not required to attend the Final Approval Hearing, but you are welcome to do so at your own expense.

Summary of Litigation

Google operated the Google+ social media platform for consumers from June 2011 to April 2019. In 2018, Google announced that the Google+ platform had experienced software bugs between 2015 and 2018, which allowed app developers to access certain Google+ profile field information in an unintended manner. Plaintiffs Matthew Matic, Zak Harris, Charles Olson, and Eileen M. Pinkowski thereafter filed this lawsuit asserting various legal claims on behalf of a putative class of Google+ users who were allegedly harmed by the software bugs ("Class"). Google denies Plaintiffs' allegations, denies any wrongdoing and any liability whatsoever, and believes that no Class Members, including the Plaintiffs, have sustained any damages or injuries due to the software bugs.

Summary of Settlement Terms

Settlement Fund: Under the Settlement, Google will pay $7.5 million which will be used to fund: (1) Class Member Settlement payments; (2) attorneys' fees not to exceed 25% of the Settlement Fund and costs and expenses not to exceed $200,000.00; (3) four service awards to the Class Representatives in an amount not to exceed $1,500 each for their services on behalf of the Settlement Class and for a general release of all claims they may have against Google; (4) administration fees and costs; and, if necessary, (5) cy pres distribution of any residual funds. No portion of the Settlement Fund can be returned to Google.

Amount of Payments: Class Members who submit a Valid Claim may receive a pro rata share of the Net Settlement Fund up to a cash payment of $12.00 depending on the number of claimants. Each Class Member can submit only one claim. Any funds remaining in the Net Settlement Fund after distribution(s) to Class Members will be distributed to Cy Pres Recipients that have been selected by a neutral third party and approved by the Court.

Method of Payment: The payments above for Class Members who submit a Valid Claim will be made by Electronic Payment (Paypal or Digital Check).

Your Options Under the Settlement

Option 1 - Submit a Claim Form to Be Eligible for a Cash Payment
If you submit a Valid Claim by [date], you may receive a payment. You will also give up your rights to sue Google and/or any other released entities regarding the legal claims in this case.

Option 2 - Opt Out of the Settlement
This is the only option that allows you to sue Google and/or other released parties on your own regarding the legal claims in this case. You will not receive a payment from the Settlement. The deadline for excluding yourself is [date].

Option 3 - File an Objection with the Court
Write to the Settlement Administrator about why you do not like the Settlement. The deadline for objecting is [date]. These Objections will be shared with the Court. If you object to the Settlement, you will be bound by the Settlement's terms and will not be allowed to exclude yourself from the Settlement; you will lose the right to sue Google and/or any other released entities regarding the legal claims in this case.

Option 4 - Do Nothing
If you do nothing, you will not receive any payment. You will be bound by the Settlement's terms and will lose the right to sue Google and/or any other released entities regarding the legal claims in this case.

Additional Information

How do I know if I am part of the Settlement Class?
The Settlement Class is defined as: "all persons within the United States who (a) had a consumer Google+ account for any period of time between January 1, 2015 and April 2, 2019, and (2) had their non-public Profile Information exposed as a result of the software bugs Google announced on October 8, 2018 and December 10, 2018. Excluded from the Settlement Class are (a) Google and its officers, directors, employees, subsidiaries, and Google Affiliates; (b) all judges and their staffs assigned to this case and any members of their immediate families; (c) the Parties' counsel in this litigation; and (d) any Excluded Class Member."

What are the terms of the Settlement?
Under the Settlement, Google has agreed to create a Settlement Fund of $7,500,000.
This Settlement Fund will provide compensation to Settlement Class Members, pay for notice and administration costs, provide for any approved Service Awards to the Class Representatives who filed the case, and compensate the attorneys for any approved fee, cost, and expense awards. If the Settlement is finally approved, Settlement Class Members will be prevented from bringing any further claims against Google for any conduct relating to the software bugs affecting Google+ profile fields.

How will the Settlement Fund be distributed?

The lawyers for the Settlement Class ("Class Counsel") will ask the Court to approve the following payments from the Settlement Fund:

· The costs of providing notice and administration of the Settlement;
· Service Awards to each of the Class Representatives, not to exceed $1,500 each, as compensation for their active participation in the case on behalf of the Settlement Class;
· Class Counsel's compensation for the time and effort incurred litigating the case, which will not exceed 25% of the Settlement Fund, and costs and expenses they incurred not to exceed $200,000.00;
· Payments to Settlement Class Members who file timely and Valid Claim Forms according to the Plan of Allocation outlined below; and
· Any residual funds remaining after payments to Settlement Class Members will be distributed to Approved Cy Pres Recipients as approved and directed by the Court.

More information regarding the Settlement, including the Settlement Agreement, can be found at the Settlement Website, www.GooglePlusDataLitigation.com.

How can I get a Settlement Payment?

If you are a Settlement Class Member and would like to receive a Settlement Payment, you must submit a Claim Form no later than [date].

You may complete the Claim Form online at www.GooglePlusDataLitigation.com, or you may mail your Claim Form to the following address:

[address]

If you do not file a Claim Form, you will not receive a payment. Note that for each Valid Claim, the payment method will be the Electronic Payment method specified on the Claimant's Claim Form.

How much will I receive from the Settlement?

The Plan of Allocation provides for Settlement Payments to Claimants as follows: The Net Settlement Fund shall be allocated to Claimants on a pro rata basis up to an initial maximum distribution of US$5.00 per Claimant. If there are insufficient funds to pay claimants $5.00 based on the number of claimants, the payment to each claimant will be reduced pro ratably. If sufficient funds remain after calculation of the aggregate initial maximum distribution of US$5.00 per Claimant, the allocation shall be recalculated on a pro rata basis up to a maximum distribution of up to US$12.00 per Claimant. For clarity, the maximum Settlement Payment to be made to any single Claimant shall not exceed US$12.00.

How do I get out of the Settlement?

If you do not want to be part of the Settlement, you must submit an Opt-Out Form no later than [date]. You may obtain the Opt-Out Form at www.GooglePlusDataLitigation.com. Your completed Opt-Out Form may be submitted via e-mail to [address], or via postal mail to the following address: [address] If you opt-out of the Settlement, you will not be bound by the Settlement Agreement, you will not receive a Settlement Payment, and you will not be allowed to object to the Settlement.

Do I have a lawyer in this case?
Yes. The Court has appointed Class Counsel to represent you and other Settlement Class Members. In this case, Class Counsel are John A. Yanchunis, Ryan J. McGee, and Jonathan B. Cohen of the law firm Morgan & Morgan Complex Litigation Group; Clayeo C. Arnold and Joshua H. Watson of the law firm Clayeo C. Arnold Professional Law Corporation; and Ivy T. Ngo of the law firm Franklin D. Azar & Associates, P.C. You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one at your own expense.

How will the lawyers be paid?
The attorneys representing the Settlement Class have not yet received any payment for their legal services or any reimbursement of the costs or out-of-pocket expenses they have incurred. Class Counsel plans to ask the Court to award attorneys' fees from the Settlement Fund not to exceed $1,875,000 which is 25% of the Settlement Fund, and reimbursement of costs and expenses in the approximate amount of $200,000.

How do I object to the Settlement?
If you are a Settlement Class Member and do not opt out of the Settlement Class, you may object to any aspect of the Settlement. This includes commenting on the applications for Class Representative Service Awards or the award of attorneys' fees, costs, and expenses.
Your completed Objection must be submitted no later than [date] online at www.GooglePlusDataLitigation.com, or via postal mail to the following address:
[address]
Any Objection must be in writing and must:
(a) Clearly identify the case name and number, *In re Google Plus Profile Litigation*, Case No. 5:18-cv-06164-EJD;
(b) Include the full name, address, telephone number, and email address of the person objecting;
(c) Include the full name, address, telephone number, and email address of the Objector's counsel (if the Objector is represented by counsel);
(d) State whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class, and also state with specificity the grounds for the Objection; and
(e) Be verified by an accompanying declaration submitted under penalty of perjury or a sworn affidavit.
Settlement Class Members who fail to submit timely written Objections in the manner specified above will waive their right to object to any aspect of the Settlement.

Do I need to attend the Final Fairness Hearing?
No. Class Counsel will answer any questions the Court may have. However, any Settlement Class Member who timely submits an Objection has the option to appear and request to be heard at the Final Fairness Hearing, either in person or through their counsel. If you choose to make an Objection through an attorney or have an attorney appear at the Final Fairness Hearing on your behalf, you will be solely responsible for paying that attorney's fees.

How can I get more information?

This Notice summarizes the Settlement. It does not describe all of its details. For the precise terms and conditions of the Settlement, please see the Settlement Agreement and related documents. Additional information about the Settlement, including a copy of the Settlement Agreement, may be obtained by:

· Visiting the Settlement Website at www.Google;

· Contacting the Settlement Administrator toll-free by phone at [phone] or by email at [email];

· Accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at ecf.cand.uscourts.gov; or

· Visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 280 South 1st Street, 2nd Floor, San Jose, CA 95113, between 9:00 am and 4:00 pm, Monday through Friday, excluding Court holidays.

Please do not telephone the Court or the Court Clerk's Office to inquire about the Settlement.

Exhibit 2

[DRAFT]

Court Preliminarily Approves $7.5 Million Settlement of Google+ Consumer Class Action

The law firms of Morgan & Morgan and Franklin D. Azar and Associates announce that on [date], the United States District Court for the Northern District of California issued an order granting preliminary approval of a $7.5 million settlement in a consumer class action lawsuit relating to the Google+ service. The settlement resolves litigation arising from Google's announcements that two software bugs in its social media platform, Google+, allowed app developers to access certain Google+ profile field information (such as name, email address, occupation, gender, and age) in an unintended manner. Google+ has been shut down for consumer use since April 2, 2019.

The settlement class is composed of US-based individuals who had consumer Google+ accounts for any period of time between January 1, 2015 and April 2, 2019 and who had non-public Google+ profile information exposed as a result of the software bugs announced on October 8, 2018 and December 10, 2018. Excluded from the class are (1) Google, and its officers, directors, employees, subsidiaries, and certain affiliates; (2) judges and their staffs assigned to this case and any members of their immediate families; and (3) counsel for the parties.

Under the terms of the settlement, Google will pay $7.5 million into a non-reversionary settlement fund. Class members who submit valid claims will receive payments from the fund in an amount up to $12.00 per claimant, depending on the total number of claimants. Class counsel will seek attorneys' fees not to exceed 25% of the settlement fund ($1.875 million) and costs and expenses not to exceed $200,000.00. Google denies any wrongdoing and does not admit any liability in connection with the settlement.

The deadline for settlement class members to submit claims is [date]. Claims can be submitted online, at www.GooglePlusDataLitigation.com, or through the mail. A notice will be emailed to potential class members for whom the parties have contact information. For additional information, claim forms, and detailed instructions on how to make a claim, go to www.GooglePlusDataLitigation.com or call toll-free at [phone number]. The lawsuit is titled *In re Google Plus Profile Litigation*, Case No. 5:18-cv-06164-EJD, in the U.S. District Court for the Northern District of California and is pending before Judge Edward J. Davila in San Jose, California. The Court has scheduled a hearing for [date] to determine whether to grant final approval to the settlement.

Additional information can be obtained by contacting the attorneys for plaintiffs and the settlement class below.

John A. Yanchunis
jyanchunis@forthepeople.com
Ryan J. McGee
rmcgee@forthepeople.com
Jonathan B. Cohen
jcohen@forthepeople.com
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Telephone: (813) 223-5505
Facsimile: (813) 223-5402

Ivy T. Ngo
ngoi@fdazar.com
FRANKLIN D. AZAR & ASSOCIATES, P.C.
14426 East Evans Avenue
Aurora, Colorado 80014
Telephone: (303) 757-3300
Facsimile: (720) 213-5131

JOHN A. YANCHUNIS (*pro hac vice*)
jyanchunis@forthepeople.com
RYAN J. McGEE (*pro hac vice*)
rmcgee@forthepeople.com
JONATHAN B. COHEN (*pro hac vice*)
jcohen@forthepeople.com
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 223-5505
Facsimile: (813) 223-5402

Counsel for Plaintiffs Matt Matic and Zak Harris

Clayeo C. Arnold, SBN 65070
carnold@justice4you.com
Joshua H. Watson, SBN 238058
jwatson@justice4you.com
CLAYEO C. ARNOLD
A PROFESSIONAL LAW
CORPORATION
865 Howe Avenue
Sacramento, California 95825
Telephone: (916) 777-7777
Facsimile: (916) 924-1829

IVY T. NGO, SBN 249860
ngoi@fdazar.com
FRANKLIN D. AZAR & ASSOCIATES, P.C.
14426 East Evans Avenue
Aurora, Colorado 80014
Telephone: (303) 757-3300
Facsimile: (720) 213-5131

Counsel for Plaintiffs Charles Olson and Eileen M. Pinkowski

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE GOOGLE PLUS PROFILE LITIGATION	Case No. 5:18-cv-06164-EJD (VKD) **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Upon review and consideration of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, and all briefing, arguments, exhibits and other evidence submitted in support thereof, including the Class Action Settlement Agreement ("Agreement"), dated _____ and executed by Plaintiffs Matt Matic, Zak Harris, Charles Olson, and Eileen M. Pinkowski, and by Google, LLC ("Google"), it is hereby ORDERED as follows:

1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreement.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 and has personal jurisdiction over the Parties. Venue is proper in this District.

3. The following "Class" is provisionally certified, for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and 23(e):

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

4. The Court finds that, for settlement purposes only, the Class, as defined above, meets the requirements for class certification under Federal Rules of Civil Procedure 23(a) and 23(b)(2)—namely, that for settlement purposes, (1) the Class Members are sufficiently numerous such that joinder is impracticable; (2) there are common questions of law and fact; (3) the Plaintiffs' claims are typical of those of the Class Members; (4) Plaintiffs and Class Counsel have adequately represented, and will continue to adequately represent, the interests of Class Members; and (5) as alleged, Google has acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

5. Certification of the Class shall be solely for settlement purposes and without prejudice to the Parties in the event the Settlement is not finally approved by this Court or otherwise does not take effect.

6. The Court preliminarily approves the proposed Settlement as fair, reasonable and adequate, entered into in good faith, free of collusion, and within the range of possible judicial approval. The Court notes that the Settlement was reached through significant arms-length negotiations assisted by an experienced mediator, Mr. Randall W. Wulff.

7. The Court appoints Plaintiffs Matt Matic, Zak Harris, Charles Olson, and Eileen M. Pinkowski as class representatives for the Class.

8. The Court appoints the following attorneys as Class Counsel for the Class: John A. Yanchunis, Ryan J. McGee, and Jonathan B. Cohen of Morgan and Morgan Complex Litigation Group; Clayeo C. Arnold and Joshua H. Watson of Clayeo C. Arnold Professional Law Corporation; and Ivy T. Ngo, Esq., of Franklin D. Azar & Associates, PC.

9. The Court appoints Angeion Group ("Angeion") to serve as the Settlement Administrator and directs Angeion to carry out all duties and responsibilities of the Settlement Administrator as specified in the Agreement and herein.

10. Pursuant to Rule 53 of the Federal Rules of Civil Procedure, and with the consent of the parties, the Court hereby appoints former Magistrate Judge Elizabeth LaPorte of JAMS, or another neutral as decided by the Court as special master ("the Special Master") in this action for the limited purpose of reviewing applications and selecting at least one and up to ten recipients for cy pres distributions from the Settlement Fund. Anyone, including any party or their counsel, may invite an appropriate entity to submit an application to the Special Master to receive a cy pres distribution from the Settlement Fund. Such an application must be submitted to the Special Master within 30 days after entry of this Preliminary Approval Order and must include a sworn declaration

under penalty of perjury from an officer or director of the proposed recipient providing at least the following:

a. A statement identifying the legal name of the recipient, its state of incorporation and/or registration, and its principal street address;

b. A statement summarizing the nature of the recipient's business and its activities, including a description of any past or planned activities to promote public awareness and education, and/or to support research, development, and initiatives, related to Internet browsing safety and privacy;

c. A statement that the recipient agrees to devote any funds from the Settlement to promote public awareness and education, and/or to support research, development, and initiatives, related to the security and/or privacy of Internet browsers;

d. A statement either (i) disclosing any existing or prior relationship to the Special Master, to the assigned District Judge in this action, the named parties, or any attorney of any of the named parties, including disclosure of any prior donations or cy pres distributions received from the parties, or (ii) declaring that the declarant has inquired into the existence of such relationships and has no reason to believe that any such relationships exist; and

e. A statement that the applicant will produce a witness to testify on these topics at the hearing on the motion for final approval of the Settlement.

11. Following the application deadline, the Special Master shall proceed with all reasonable diligence to review the applications received and select between one and ten applicants, in the Special Master's broad discretion, that (1) submitted the sworn declaration described above by the application deadline, (2) have no significant prior affiliation with the Special Master, any party, counsel, or the Court that would raise substantial questions about whether the selection of the

recipient was made on the merits, and (3) are most likely to use Settlement funds efficiently for the intended purpose. Within 14 days after the application deadline, the Special Master shall prepare and file with the Court a brief report identifying the applicants selected and stating that the Special Master has reviewed the applications from these applicants and determined that they satisfy the criteria stated above. The report shall also include a list of the applicants who were not selected and shall attach copies of all applications received from all applicants. The report need not explain why any applicant was not selected. In performing the tasks described herein, the Special Master shall spend no more than five hours of the Special Master's time without written agreement from the parties and shall be compensated for time spent by submitting an invoice to the parties which will be paid from the Settlement Fund by the Settlement Administrator.

12. The Court orders Google to make an initial non-reversionary advance payment in the amount of seven hundred fifty thousand dollars ($750,000) ("Advance") by check or wire transfer to the Settlement Administrator within thirty (30) days following the entry of this Order. Should the Court grant Final Approval, the balance of the $7,500,000 Settlement Fund (i.e., $6,750,000) ("Balance") will be paid to the Settlement Administrator within 10 days after the entry of a Final Approval Order.

13. The Settlement Administrator shall maintain the Advance in an interest-bearing account to constitute a "qualified settlement fund" ("QSF") within the meaning of Section 1.468B-1 of the Treasury Regulations promulgated under the U.S. Internal Revenue Code of 1986, as amended. Google shall be the "transferor" to the QSF within the meaning of Section 1.468B-1(d)(1) of the Treasury Regulations with respect to the Advance or any other amount Transferred to the QSF pursuant to this Settlement Agreement. The Settlement Administrator shall be the "administrator" of the QSF within the meaning of Section 1.468B-2(k)(3) of the Treasury Regulations, responsible for causing the filing of all tax returns required to be filed by or with

respect to the QSF, paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable information reporting or tax withholding requirements imposed by Section 1.468B-2(*l*)(2) of the Treasury Regulations or any other applicable law on or with respect to the QSF. Google and the Settlement Administrator shall reasonably cooperate in providing any statements or making any elections or filings necessary or required by applicable law for satisfying the requirements for qualification as a QSF, including any relation-back election within the meaning of Section 1.468B-1(j) of the Treasury Regulations.

14. The Court approves the program for disseminating notice to Class Members set forth in the Agreement and Exhibits A and B thereto (herein, the "Notice Program"). The Court approves the form and content of the proposed forms of notice, in the forms attached as Exhibits A and B to the Agreement. The Court finds that the proposed forms of notice are clear and readily understandable by Class Members. The Court finds that the Notice Program, including the proposed forms of notice, is reasonable and appropriate and satisfies any applicable due process and other requirements, and is the only notice to the Class Members of the Settlement that is required.

15. Class List: Following entry of this Order, Google shall compile the list of known names and email addresses from its records which are reasonably calculated to inform U.S. consumer users of the Google+ service of the Settlement (the "Class List").

16. Google is hereby authorized to provide the Class List, including such information in the Class List that may be subject to 26 U.S.C. § 7216, to the Settlement Administrator. The Settlement Administrator is authorized to use the Class List, including such information in the Class List that may be subject to 26 U.S.C. § 7216, consistent with, and solely to effectuate, the terms of this Settlement. The Settlement Administrator shall maintain the Class List in a secure manner at all times and shall not disclose the Class List or any other personally identifiable information of Class Members to any third parties.

17. Email Notice: By no later than sixty (60) days after entry of this Order (the "Notice Deadline"), the Settlement Administrator shall effectuate email notice, substantially in the form attached as Exhibit B to the Agreement, as provided in the Notice Program.

18. Settlement Website: As soon as practicable, but no later than ten (10) business days following the entry of this Order, the Settlement Administrator shall establish an Internet website, at the URL, www.GooglePlusDataLitigation.com (the "Settlement Website"), where Class Members can obtain further information about this Action, the Settlement, and their rights. The Settlement Website shall be optimized for display on mobile devices. The Settlement Website shall include, and make available for download: a copy of the Agreement; the operative complaint in this Action; a long-form class notice ("Long-Form Notice") substantially in the form attached as Exhibit B to the Agreement; a claims form ("Claims Form") substantially in the form attached as Exhibit A to the Agreement; and such other case documents as agreed to by the Parties. The Settlement Website shall also include a list of deadlines, as well as contact information for the Settlement Administrator. The Settlement Website shall be operational until at least the Effective Date of the Settlement. The Settlement Website shall include an appropriate mechanism for Class Members to update their contact information.

19. Press Release: As soon as practicable, but no later than ten (10) business days following the entry of this Order, Class Counsel shall issue a press release ("Press Release"), which Google's counsel will have the opportunity to review and reasonably approve prior to publication. The Press Release will provide notice of the Settlement, a link to the Settlement Website, and contact information for the Settlement Administrator. The Press Release will be issued through PR Newswire's US1 commercial newswire service and will also be posted on the Settlement Website and Class Counsel's respective websites.

20. All costs and expenses of the Notice Program and other costs of the Settlement Administrator shall be paid from the Advance.

21. No later than seven (7) days before the Final Approval Hearing, the Settlement Administrator shall file an affidavit with the Court confirming its implementation of the Notice Program.

22. Any Class Member may comment on, or object to, the Settlement, Class Counsel's application for attorneys' fees and costs, and/or the request for Plaintiff service awards. To be considered, an objection must be in writing, must be filed with or mailed to the Court, and mailed to the Settlement Administrator at the addresses listed in the Long Form Class Notice, postmarked no later than one-hundred-fifty 150 days following entry of this Order (the "Objection Deadline"), and must include the following: (a) the case name and number; (b) the full name, address, telephone number, and email address of the person objecting; (c) the full name, address, telephone number, and email address of the Objector's counsel (if the Objector is represented by counsel); (d) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class, and also the specific grounds for the objection; (e) the number of class action settlements objected to by the Settlement Class Member in the last three years, and a list of those cases by case name and number; and (f) an accompanying declaration submitted under penalty of perjury or a sworn affidavit.

23. No Class Member may contest the approval of the terms and conditions of the Settlement, the Final Judgment, any request for or award of attorneys' fees and costs to Class Counsel, or any request for or award of Plaintiff service awards, except by filing and serving a written objection in accordance with the provisions set forth above. Any Class Member who fails to object in the manner prescribed above, shall be deemed to have waived, and shall be foreclosed

forever from raising, objections to the Settlement, Class Counsel's application for attorneys' fees and costs, and any application for Plaintiff service awards.

24. The Court directs that the Final Approval Hearing be scheduled for _____, to assist the Court in determining whether the Settlement should be finally approved as fair, reasonable and adequate to the Class Members; whether the Final Judgment should be entered; whether Class Counsel's application for attorneys' fees and costs should be approved; and whether any request for service awards for the Plaintiffs should be approved.

25. By no later than thirty-five (35) days before the Final Fairness hearing, Plaintiffs and Class Counsel shall file a motion for final approval of the Settlement and an application for attorneys' fees and expenses and for Plaintiff service awards. By no later than fourteen (14) days before the Final Approval Hearing, the Parties shall file any responses to any Class Member objections, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees and expenses and for Plaintiff service awards. After it is filed Class Counsel's application for attorneys' fees, costs, and Plaintiff service awards shall be posted on the Settlement Website.

26. The Court reserves the right to modify the date of the Final Approval Hearing and related deadlines set forth herein. In the event the Final Approval Hearing is moved, the new date and time shall be posted on the Settlement Website.

27. If the Settlement terminates for any reason, this Action will revert to its previous status in all respects as it existed before the Parties executed the Agreement. This Court's conditional certification of the Class and findings underlying the conditional certification shall be solely for settlement purposes. This Order will not waive or otherwise impact the Parties' rights or arguments.

28. Pending the final determination of whether the Settlement should be approved, all proceedings in this Action, except as may be necessary to implement the Settlement or comply with the terms of the Settlement, are hereby stayed.

29. Without further order of the Court, the Parties may agree to make non-material modifications in implementing the Settlement that are not inconsistent with this Order.

30. The following chart summarizes the dates and deadlines set by this Order:

Last day for Google to provide the Class List to the Settlement Administrator	20 days after Preliminary Approval Order
Notice Deadline	60 days after Preliminary Approval Order
Last day for: (a) Plaintiffs to file motion for final approval of the Settlement; and (b) Class Counsel to file their application for attorneys' fees, costs, and Plaintiff service awards	35 days before the Final Fairness Hearing
Objection and Exclusion Deadline	150 days after Preliminary Approval Order
Last day for the Parties to file any responses to objections, and any reply papers in support of motion for entry of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and Plaintiff service awards	14 days before Final Approval Hearing
Final Approval Hearing	TBD

HON. EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

MORGAN & MORGAN COMPLEX
LITIGATION GROUP
John A. Yanchunis
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: 813/223-5505
813/223-5402 (fax)
jyanchunis@ForThePeople.com

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE GOOGLE PLUS PROFILE LITIGATION	Case No. 5:18-cv-06164-EJD (VKD) DECLARATION OF JOHN A. YANCHUNIS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, John A. Yanchunis, declare pursuant to 28 U.S.C. § 1746 as follows:

1. Following consolidation of two cases before this Court, this Court appointed me as Plaintiffs' Interim Co-Lead Counsel in this matter, along with Ivy T. Ngo, Esquire.

2. Pursuant to the Court's Order Appointing Interim Lead Counsel, my court-appointed responsibilities include the daily management of the case, including the assignment of tasks, handling of offensive discovery (including taking depositions and preparing written discovery), and leading the drafting of all motions and supporting memoranda. (Dkt. No. 44).

3. Attached as **Exhibit 1** to the Motion for Preliminary Approval of Class Action Settlement is the Settlement Agreement entered into in this matter along with each of its exhibits ("Settlement Agreement" or "Settlement").[1]

[1] Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement and Release, which is being filed concurrently herewith.

4. The Settlement memorialized in the attached Settlement Agreement is the product of arms-length settlement negotiations following the parties' briefing of the legal bases underpinning this litigation, exchanging informal discovery, and participating in a day-long, arms-length mediation.

5. On October 8, 2018, following Google's announcement of a data leak occurring from 2015 to March 2018 affecting potentially hundreds of thousands of global Google+ users ("First Data Leak"), I filed the first class action case against Google for that First Data Leak, *Matic, et al. v. Google, Inc., et al.*, 5:18-cv-06164 (N.D. Cal. Oct. 8, 2018).

6. On October 17, 2018, Ivy T. Ngo filed the second class action against Google for that First Data Leak, *Olson, et al. v. Google, Inc., et al.*, 5:18-cv-06365 (N.D. Cal. Oct. 17, 2018).

7. On December 5, 2018, following *Olson*'s Administrative Motion to Consider whether Cases Should be Related, this Court ordered the cases related. (Dkt. No. 20).

8. On December 11, 2018, following Google's announcement of a data leak occurring from November 6, 2018 to November 13, 2018, in which Google was attempting to remediate vulnerabilities discovered in the Google+ platform, but instead permitted the personal information tens of millions of users to be disseminated to unauthorized third-party developers ("Second Data Leak"), I filed an amended class action complaint. (Dkt. No. 26).

9. For the purposes of litigation and this Declaration, the First Data Leak and Second Data Leak are collectively referred to as the "Data Leaks."

10. Shortly thereafter on December 19, 2018, I, as well as Ivy T. Ngo, moved for appointment as Interim Class Counsel. (Dkt. No. 27).

11. Following stipulation of all counsel to consolidate the cases—from *Matic*, *Olson*, and Google—this Court ordered *Matic* and *Olson* consolidated, and for Plaintiffs to file a

consolidated complaint, (Dkt. No. 31), which Ivy T. Ngo and I filed on February 6, 2019, (Dkt. No. 34), and which was subsequently amended on March 1, 2019. (Dkt. No. 37).

12. Moreover, in conjunction with their investigation of the Data Leaks, Plaintiffs utilized the services of cybersecurity expert Mary Frantz, and her team at Enterprise Knowledge Partners, to assist with formulating discovery requests, including targeted interrogatories, requests for production, requests for admissions, and initial identification of crucial Google witnesses for deposition.

13. These discovery efforts were developed to provide Plaintiffs with a thorough understanding of the Google+ social media platform, the interaction of Google's Application Program Interfaces ("API"), and the deficiencies within them and Google's information security department that Plaintiffs allege contributed to the Data Leaks.

14. Following briefing of Google's Motion to Dismiss, (Dkt. No. 45), Plaintiffs' Response in Opposition, (Dkt. No. 47), and Google's Reply thereto, (Dkt. No. 49), I, along with my co-lead counsel and Google's counsel, discussed the prospect of an early mediation to determine whether settlement could be reached, preserving economic resources for a potential settlement class, instead of spent on substantial litigation. By agreement of all counsel, including Google's in-house and outside counsel, the parties selected mediator Randall C. Wulff to mediate this matter on August 14, 2019, in California.

15. The mediation was held in Napa, California, on the agreed upon date of August 14, 2019.

16. As a result of the day-long mediation, on August 14, 2019, the parties reached an agreement in principle to resolve this action. The parties agreed to terms forming the substance of the Settlement. Negotiations of attorneys' fees, litigation costs, and expenses did not commence until agreement on behalf of the Settlement Class had been reached.

17. On August 14, 2019, the parties finalized and agreed to a written term sheet containing all material terms of their agreement to settle the case and provide substantial relief to the class.

18. Negotiation of the $7.5 million Settlement Fund was hard fought and at arms' length.

19. I have extensive leadership experience with litigation and discovery efforts in similar data breaches, which are reflected in the attached **Exhibit A**.

20. Due to my extensive experience with litigation and discovery efforts in similar data breaches, I, along with my Interim Co-Lead Counsel, know the strengths and weaknesses of the claims in this matter. We have worked extensively with experts to best understand those claims, as well as to value those claims.

21. I believe the proposed Settlement is extremely beneficial for Settlement Class Members, as it compensates Settlement Class Members for Google's providing third-party application developers access to their Personal Information, and as a result is a fair, adequate, and reasonable settlement of their claims.

22. Based on my knowledge of this case, knowledge gathered from working with the experts in this matter, and my knowledge of claims rates in other data breach cases, I believe the $7.5 million Settlement Fund will be more than ample to accommodate the amounts drawn from it—consisting of disbursements totaling potentially US$12.00 per account holder, notice and administration costs of approximately $265,000 but, in the event it is not, all claims will be reduced on a *pro rata* basis. *See* Settlement Agreement § 2(h). In addition, and subject to Court approval, the settlement amount will also be used to pay for Plaintiffs' attorneys' fees (not to exceed 25%) and litigation costs and expenses (not to exceed $200,000.00).

23. By settling now, the Settlement Class will be able to take advantage of the monetary relief provided herein.

24. Google, having permanently shuttered the Google+ social media platform on April 2, 2019, has sufficiently protected users' Personal Information from any further unauthorized disclosures, and no further business practice changes are required.

25. The Class Representatives have been integral to litigating this matter. All four have been significantly and personally involved in the case, including providing complete digital copies of their Google+ profiles for review, and preparing for intimate and detailed discovery and depositions anticipated if this matter were to proceed.

26. Importantly, each proposed Settlement Class Representative supports the Settlement reached here.

27. I have carefully examined the facts of each of the Settlement Class Representatives to ensure that none of them have any conflicts with the Settlement Class.

28. Plaintiffs have built a very strong liability case, compiling copious evidence concerning Google's numerous public statements, testimony to various governmental and regulatory bodies concerning the Data Leaks, and the failure to give notice of the First Data Leak despite contemporaneous knowledge thereof.

29. While I believe that Plaintiffs had a reasonably good chance of proving that Google's data security was inadequate, I am also cognizant of the risks Plaintiffs faced in further litigation, including at the certification stage.

30. Plaintiffs developed a sound framework for valuing the Data Leaks, supported by expert Ian Ratner. This framework and model are premised upon the concept that information including names, birthdates, hometowns, addresses, locations, interests, relationships, email addresses, and other private information ("Personal Information") should remain private and

exclusively enjoyed by Google+ users. However, as a result of the Data Leaks, Google essentially granted access to users' Personal Information freely, and conveyed value to unauthorized third-party application developers without proper compensation to the rightful owners.

31. Accordingly, that conveyance can be measured through the Income Method (a standard valuation method) by analyzing what third parties pay to access such information, chiefly through marketplaces on the Dark Web. The most comparable Dark Web transactions for the Personal Information exposed in the Data Leaks is access to social media accounts, or what would amount to login credentials and access to Facebook, Twitter, and similar social media accounts, including Google+ when it still existed. That type of access ranged between $0.20 and $29.60, with an average of $2.50.

32. Although an over-inclusive number of consumers are being provided with notice to all identifiable U.S. consumer Google+ users, it is estimated that approximately ten million of those accounts are associated with users that could potentially be eligible to make a claim if they had non-public information in their Google+ profile fields. Therefore, even if each of the approximate top-end-estimated ten million account holders made claims in this case, and the Court granted the full 25% of Plaintiffs' attorney's fees, as well as the $200,000 for litigation costs and expenses, each Settlement Class Member would recover, *pro rata*, more than the minimum value for their Personal Information.

33. Plaintiffs firmly believe in these models and the results they potentially produce here. Nonetheless, each of these theories is untested beyond the motion to dismiss setting, especially in a data breach case of this scope, and unproven before a jury.

34. Thus, while the legal theory behind the largest potential outcomes may be sound, it is untested, and, as a practical matter, Plaintiffs' counsel recognize that taking such large numbers to a jury presents substantial strategic risks. Most significantly, there isn't any evidence that any

class members' Personal Information was taken or misused. In any event and to guide me in the litigation, I retained a well-regarded expert to assist in the calculation of damages in the event that we had been able to establish that class members' Personal Information was taken. Based upon the calculation of the value of this Personal Information, as well as the range of the information that class members maintained in their accounts, and further based upon my assessment of the risks of litigation over three decades in the courtroom, I felt well-armed with information to engage in mediation and negotiate the Settlement achieved in this case. Certainly, compromise was required here, but the relief provided by this Settlement does address the types of damages that I have seen in my experience litigating privacy rights since 1999.

35. Accordingly, Plaintiffs seek the appointment of:

a. Lead Settlement Class Counsel: John Yanchunis of Morgan & Morgan Complex Litigation Group, and Ivy T. Ngo of Franklin D. Azar & Associates; and

b. Executive Settlement Class Counsel: Ryan J. McGee and Jonathan B. Cohen of Morgan & Morgan Complex Litigation Group, and Clayeo C. Arnold and Joshua H. Watson of Clayeo C. Arnold Professional Law Corporation,

Collectively, "Class Counsel." Firm Resumes for Morgan & Morgan Complex Litigation Group, and Franklin D. Azar & Associates, were previously filed with this Court. (Dkt. Nos. 27-2, 27-3).

36. The motion for an award of attorneys' fees, litigation costs, and expenses will be supported with detailed lodestar information and an accounting of expenses. As directed by the Court, I, along with Ivy T. Ngo, have implemented efficiency protocols and ensured that work performed in this matter was unnecessarily non-duplicative and contemporaneously recorded.

37. Having worked on behalf of the putative class since the Data Leaks were first announced—when the potential class was hundreds of thousands of global users, and well before that number eclipsed tens of millions of global users, of which U.S.-based users subject to this

Settlement are estimated to account for under ten million—and having dedicated time and financial resources to the case, proposed Class Counsel endorse the Settlement without reservation. I wholeheartedly endorse the resolution reached here on behalf of the Settlement Class, and believe it to be the best, most fulsome resolution of a data breach to date wherein the information was not accessed by hackers or malicious third parties, but was instead provided to unauthorized third-party developers, and an excellent outcome within the context of the facts here, specifically.

38. The parties solicited confidential bids from companies to provide notice and administration services in conjunction with the proposed settlement. These companies were provided the material terms of the settlement and asked to formulate a notice and media plan that would provide the best notice practical to reach the Settlement Class.

39. The parties ultimately chose Angeion Group ("Angeion"). My experience with Angeion includes a number of class action settlements, including *Preman v. Pollo Operations, Inc.*, No. 6:16-cv-443-ORL-41-GJK (M.D. Fla. 2017); *Black-Brown v. Terminix Int'l. Co. Ltd. Partnership*, No. 1:16-cv-23607-AOR (S.D. Fla. 2017); *Zyburo v. NCSPlus, Inc.*, 1:12-cv-06677-JSR (S.D. Fla. 2015). It is my belief that Angeion's proposed notice and administration plan will allow for the effective dissemination of notice to the Settlement Class, efficient administration of Class claims, and will do so in an economical matter.

40. I have reviewed the proposed Notice of Class Action Settlement and Claim Form (the "Notices"). The Notices clearly explain the background of the case, the terms of the settlement, the process and deadlines for filing claims, the deadlines for objecting or opting out and how to do so, and how to obtain additional information. Thus, the Notices provide all the information necessary for Settlement Class Members to make informed decisions with respect to whether they remain in or opt-out of the Settlement Class, or object to the proposed Settlement. I have also

reviewed the claims form, which was drafted with the goal of ensuring that it could be easily read and understood by class members.

41. I have also reviewed the Notice Plan and believe it will be effective in meeting and exceeding the requirements of Due Process for notifying Settlement Class Members. The Notice Plan was developed by Angeion, a provider with significant experience in designing notice plans in large and national class actions similar to this one. I am familiar with Angeion and believe Mr. Steven Weisbrot to be one of the best, most knowledge, class notice professionals in the world.

42. Angeion has reviewed the proposed Notices and offered Mr. Weisbrot's input as to tailoring them to clearly and effectively notify the Settlement Class Members of their rights under the Settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed January 6, 2020 in Tampa, Florida.

By: /s/ *John A. Yanchunis*
John A. Yanchunis

Exhibit A

Recent Data Breach and Privacy Cases in which Mr. Yanchunis Has Served in Leadership Positions

Case	Position	Description	Status
In re: Equifax, Inc. Customer Data Security Breach Litigation, No. 17-md-02800 (N.D. GA) Consumer Action	Steering Comm. – John Yanchunis	Litigation brought on behalf of consumers data breach announced by Equifax in Sept. 2017 exposing the names, Social Security numbers, birth dates, addresses, driver's license numbers, taxpayer ID cards and additional information of more than 147 million U.S. residents	Final Approval Hearing set for December 19, 2019
Jasper Schmidt et al. v. Facebook, Inc., No. C 18-05982 WHA (JSC) (N.D. Cal.)	Interim Co-Class Counsel – John Yanchunis	Litigation arising from data breach compromising personal information of approximately 30 million Facebook users, including name, contact details, user names, gender, locale/language, relationship status, religion, hometown, current city, birthdate, device types used to access Facebook, education and work history	Contested injunction class certified on November 26, 2019.
In re: Yahoo! Inc. Customer Data Security Breach Litigation, No. 16-md-02752 (N.D. CA)	Lead Counsel – John Yanchunis	Litigation following multiple data breaches involving Yahoo's 3 billion user accounts, compromising names, email addresses, telephone numbers, security questions and answers, dates of birth, passwords, and web cookies	Final Approval Hearing seeking approval of $117,500,000.00 common fund settlement set for April 2, 2020
In re: Home Depot Customer Data Security Breach Litigation, No. 14-md-02583 (N.D. GA) Consumer Action	Co-Lead – John Yanchunis	Litigation brought on behalf of consumers related to a data breach compromising credit and debit card information of more than 60 million Home Depot customers	Final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of $29,025,000
In re: Target Corp. Customer Data Security Breach Litigation, No. 14-md-2522 (D. MN) Consumer Action	Steering Comm. – John Yanchunis	Litigation brought on behalf of consumers related to a data breach compromising credit and debit card information of millions of Target customers	Final Judgment approving a settlement on behalf of a class of approximately 100 million consumers upheld by the 8th Circuit

Case	Position	Description	Status
In re: U.S. Office of Personnel Management Data Security Breach Litigation, No. 15-mc-01394-ABJ (D.D.C.)	Steering Comm. – John Yanchunis	Litigation arising from data breach exposing personal information of up to 21.5 million current, former and prospective government employees and contractors	Dismissal on standing grounds recently reversed on appeal by the D.C. Circuit
Scott et al. v. LifeBridge Health, Inc. No. 24Cl8006801 (Cir. Ct. Baltimore City)	Co-Lead – John Yanchunis	Litigation brought on behalf of approximately 500,000 patients who had their names, addresses, dates of birth, diagnoses, medications, clinical and treatment information, insurance information, and Social Security numbers exposed in a 2016 data breach	Motion to Dismiss pending; discovery underway
Morrow v. Quest Diagnostics, Inc., No. 2:17-cv-0948 (D. N.J.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of patients who had medical testing results – including containing their names, addresses, and treatment information – exposed in data breach	Preliminary Approval granted Oct. 25, 2019. Final Approval hearing set for Feb. 25, 2020
Abdelmessih v. Five Below, Inc., No. 2:19-cv-01487 (E.D. Pa.);	Lead Counsel – John Yanchunis	Litigation brought on behalf of consumers related to breach involving customers' payment card data.	Motion to Dismiss stayed pending mediation
Nelson v. Roadrunner Transportation Systems, Inc., No. 1:18-cv-07400 (N.D. Ill.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of employees after exposure of personal information via payroll system	Discovery stayed pending mediation
Hameed-Bolden v. Forever 21 Retail, Inc. et al., No. 2:18-cv-03019 (C.D. Cal.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of consumers related to breach involving customers' payment card data.	Motion for Preliminary Approval granted in part and denied in part August 12, 2019; Case currently stayed pending Defendant's bankruptcy proceedings
Hymes v. Earl Enterprises Holdings, Inc., No. 6:19-cv-00644 (M.D. Fla.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of consumers related to breach involving customers' payment card data.	Motion to Dismiss pending
Kuss v. American Homepatient, Inc., No. 8:18-cv-02348 (M.D. Fla.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of patients who had medical information exposed as a result of computer theft.	Motion for Preliminary Approval filed Nov. 8, 2019

Case	Position	Description	Status
Fulton-Green v. Accolade, Inc., 2:18-cv-00274-GEKP (E.D. Pa.)	Co-Lead Counsel – John Yanchunis	Litigation brought on behalf of employees after phishing scam resulted in theft of employee W-2 data	Final Approval of class settlement entered Sept. 24, 2019
Walters v. Kimpton Hotel & Restaurant, No. 3:16-cv-05387 (N.D. Cal.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of consumers related to breach involving customers' payment card data.	Final Approval of class settlement entered July 11, 2019
Ortiz v. UCLA Health System, No. BC589327 (Cal. Sup. Ct. Los Angeles Cnty.)	Executive Committee – John Yanchunis	Litigation brought on behalf of patients whose personal information was exposed in data breach	Final Approval of class settlement entered June 28, 2019
In Re: Arby's Restaurant Group, Inc. Data Security Litigation, No. 1:17-cv-1035 (N.D. GA) Consumer Action	Co-Liaison– John Yanchunis	Litigation brought on behalf of consumers related to a data breach compromising credit and debit card information from patrons in approximately 1,000 Arby's corporate locations at the point of sale	Final Approval of class settlement entered June 6, 2019
Foreman v. Solera Holdings, Inc., No. 6:17-cv-02002 (M.D. Fla.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of employees after phishing scam resulted in theft of employee W-2 data	Final Approval of class settlement entered April 10, 2019
Torres et al. v. Wendy's International LLC, No. 16-cv-210-PGB-DCI (M.D. Fla.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of consumers related to data breach of Wendy's computer system and point of service terminals at over 1,000 Wendy's locations which resulted in the theft of customers' credit and debit card data	Final approval of class settlement entered February 26, 2019
Albert v. School Board of Manatee County, Florida, No. 17-CA-004113, (Fla. 12th. Cir. Ct.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of employees after phishing scam resulted in theft of employee W-2 data	Final Approval of class settlement entered Nov. 19, 2018
Brady v. Scotty's Holdings, LLC, 1:17-cv-01313 (S.D. Ind.)	Co-Lead Counsel – John Yanchunis	Litigation brought on behalf of employees after phishing scam resulted in theft of employee W-2 data	Final Approval of class settlement entered October 16, 2018
Linnins v. TIMCO Aviation Services, Inc., 16-cv-486 (M.D.N.C.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of employees after phishing scam resulted in theft of employee W-2 data	Final Approval of class settlement entered June 1, 2018

Case	Position	Description	Status
Bishop v. Shorter University, No. 4:15-cv-00033-HLM (N.D. Ga)	Co-Lead Counsel – John Yanchunis	Litigation brought on behalf of students who had personally identifying information and financial exposed as a result of document theft.	Final Approval of class settlement entered Oct. 17, 2017
Ramirez v. ChenMed, LLC, No. 14-12319-CA-04 (Fla. 11th Cir. Ct.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of patients whose personal information was exposed in data breach	Final Approval of class settlement entered Feb. 2, 2016
Carsten v. Univ. of Miami, No. 1:14-cv-20497-KMW (S.D. Fla.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of patients whose personal information was exposed in data breach	Final Approval of class settlement entered Dec. 17, 2014
Burrows v. Purchasing Power, LLC, No. 1:12-cv-22800 (S.D. Fla.)	Lead Counsel – John Yanchunis	Litigation brought on behalf of employees after employer's vendor failed to protect personal information of employees	Final Approval of class settlement entered Oct. 7, 2013
Fresco v. R.L. Polk, No. 07-cv-60695-JEM (S.D. Fla.)	Co-Lead Counsel – John Yanchunis	Privacy class action cases involving the protection of privacy rights under the Driver's Protection Privacy Act (DPPA)	Final Approval of class settlement entered July 28, 2010
Fresco v. Automotive Directions, Inc., No. 0:03-cv-61063-JEM (S.D. Fla.)	Co-Lead Counsel – John Yanchunis	Privacy class action cases involving the protection of privacy rights under the Driver's Protection Privacy Act (DPPA)	Final Approval of class settlement entered Jan. 20, 2009
Davis v. Bank of America, No. 05-cv-80806 (S.D. Fla.)	Co-Lead Counsel – John Yanchunis	Privacy class action cases involving the protection of privacy rights under the Driver's Protection Privacy Act (DPPA)	Final Approval of $10 million class settlement entered June 21, 2006
Kehoe v. Fidelity Fed. Bank and Trust, No. 03-cv-80593 (S.D. Fla.)	Co-Lead Counsel – John Yanchunis	Privacy class action cases involving the protection of privacy rights under the Driver's Protection Privacy Act (DPPA)	Final Approval of $50 million class settlement entered Dec. 13, 2006

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE GOOGLE PLUS PROFILE LITIGATION	Case No. 5:18-cv-06164-EJD (VKD)
	DECLARATION OF STEVEN WEISBROT OF ANGEION GROUP, LLC IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Steven Weisbrot, Esq., declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner at the class action notice and settlement administration firm Angeion Group, LLC ("Angeion"). I am fully familiar with the facts contained herein based upon my personal knowledge.

2. I have been responsible in whole or in part for the design and implementation of hundreds of court-approved notice and administration programs including some of the largest and most complex notice plans in recent history. I have taught numerous accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital Media in Due Process Notice Programs, as well as Claims Administration, generally. I am the author of multiple articles on Class Action Notice, Claims Administration, and Notice Design in publications such as Bloomberg, BNA Class Action Litigation Report, Law360, the ABA Class Action and Derivative Section Newsletter, and I am a frequent speaker on notice issues at conferences throughout the United States and internationally.

3. I was certified as a professional in digital media sales by the Interactive Advertising Bureau ("IAB") and I am co-author of the Digital Media section of Duke Law's *Guidelines and Best Practices—Implementing 2018 Amendments to Rule 23*.

4. I have given public comment and written testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, broadcast media, digital media and print publication, in effecting Due Process notice, and I have met with representatives of the

Federal Judicial Center to discuss the 2018 amendments to Rule 23 and suggest an educational curriculum for the judiciary concerning notice procedures.

5. Prior to joining Angeion's executive team, I was employed as Director of Class Action services at Kurtzman Carson Consultants, an experienced notice and settlement administrator. Prior to my notice and claims administration experience, I was employed in private law practice.

6. My notice work comprises a wide range of settlements that include product defect, data breach, mass disasters, false advertising, employment, antitrust, tobacco, banking, firearm, insurance, and bankruptcy cases.

7. I have been at the forefront of infusing digital media, as well as big data and advanced targeting, into class action notice programs. For example, the Honorable Sarah Vance stated in her December 31, 2014 Order in *In Re: Pool Products Distribution Market Antitrust Litigation*, MDL No. 2328:

> To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web-based forms of communication in the plan…. The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process.
>
> The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement.

As detailed below, courts have repeatedly recognized my work in the design of class action notice programs:

(a) On February 24, 2017, The Honorable Ronald B. Rubin in *James Roy et al. v. Titeflex Corporation et al.*, No. 384003V (Md. Cir. Ct.), noted when granting preliminary approval to the settlement:

> What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm

> their citizens with knowledge and then the citizens can make a decision. To me that is a key piece of this deal. ***I think the notice provisions are exquisite.*** (Emphasis added).

(b) Likewise, on July 21, 2017, The Honorable John A. Ross in *In Re Ashley Madison Customer Data Security Breach Litigation*, MDL No. 2669 (E.D. Mo.), stated in the Court's Order granting preliminary approval of the settlement:

> The Court further finds that the method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program, dated July 13, 2017, and the Parties' Stipulation—including an extensive and targeted publication campaign composed of both consumer magazine publications in People and Sports Illustrated, as well as serving 11,484,000 highly targeted digital banner ads to reach the prospective class members that will deliver approximately 75.3% reach with an average frequency of 3.04 —***is the best method of notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and all Constitutional requirements including those of due process***. (Emphasis added).
>
> The Court further finds that the Notice fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process; provided, that the Parties, by agreement, may revise the Notice, the Claim Form, and other exhibits to the Stipulation, in ways that are not material or ways that are appropriate to update those documents for purposes of accuracy.

(c) In the *In Re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability Litigation*, Case No. 17-md-02777-EMC (N.D. Cal.), in the Court's February 11, 2019 Order, the Honorable Edward M. Chen ruled:

> [In addition] the Court finds that the language of the class notices (short and long-form) is appropriate and that the means of notice – which includes mail notice, electronic notice, publication notice, and social media "marketing" – is the "best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); see also Proc. Guidance for Class Action Sett. ¶¶ 3-5, 9 (addressing class notice, opt-outs, and objections). The Court notes that the means of notice has changed somewhat, as explained in the Supplemental Weisbrot Declaration filed on February 8, 2019, so that notice will be more targeted and effective. See generally Docket No. 525 (Supp. Weisbrot Decl.) (addressing, inter alia, press release to be distributed via national newswire service, digital and social media marketing

> designed to enhance notice, and "reminder" first-class mail notice when AEM becomes available).

(d) On June 26, 2018, in his Order granting preliminary approval of the settlement in *Mayhew v. KAS Direct, LLC, et al.*, Case No. 16-cv-6981 (VB) (S.D.N.Y.), The Honorable Vincent J. Briccetti ruled:

> In connection with their motion, plaintiffs provide the declaration of Steven Weisbrot, Esq., a principal at the firm Angeion Group, LLC, which will serve as the notice and settlement administrator in this case. (Doc. #101, Ex. F: Weisbrot Decl.) According to Mr. Weisbrot, he has been responsible for the design and implementation of hundreds of class action administration plans, has taught courses on class action claims administration, and has given testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, and digital media in due process notice. Mr. Weisbrot states that the internet banner advertisement campaign will be responsive to search terms relevant to "baby wipes, baby products, baby care products, detergents, sanitizers, baby lotion, [and] diapers," and will target users who are currently browsing or recently browsed categories "such as parenting, toddlers, baby care, [and] organic products." (Weisbrot Decl. ¶ 18). According to Mr. Weisbrot, the internet banner advertising campaign will reach seventy percent of the proposed class members at least three times each. (Id. ¶ 9). Accordingly, the Court approves of the manner of notice proposed by the parties as it is reasonable and the best practicable option for confirming the class members receive notice.

(e) A comprehensive summary of judicial recognition Angeion has received is attached hereto as **Exhibit A**.

8. By way of background, Angeion is an experienced class action notice and claims administration company formed by a team of executives that have had extensive tenures at five other nationally recognized claims administration companies. Collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over $10 billion to class members. The executive profiles as well as the company overview are available at http://www.angeiongroup.com/our_team.htm.

9. This declaration will describe the notice program that we will implement in this matter, including the considerations that informed the development of the plan and why it will provide Due

Process of Law to the Class. In my professional opinion, the Notice Plan described herein is the best practicable notice under the circumstances and fulfills all due process requirements as well as the Northern District of California's revised Procedural Guidance for Class Action Settlements.

SUMMARY OF THE NOTICE PROGRAM

10. The Notice Program is the best notice that is practicable under the circumstances, fully comports with due process, Fed. R. Civ. P. 23, and the Northern District's Procedural Guidance for Class Action Settlements. It provides individual notice via email to all potential Class Members who can be identified in the Defendant's records, combined with a national press release. The Notice Program also includes an informational website and toll-free telephone line where Class Members can learn more about their rights and responsibilities in the litigation. In short, the Notice Program is the best notice that is practicable under the circumstances and exceeds many notice campaigns routinely approved in other, similar settlements.

CLASS DEFINITION

11. The "Settlement Class" here is defined as follows: means all persons residing within the United States who: (1) had a consumer Google+ account for any period of time between January 1, 2015 and April 2, 2019; and (2) had their non-public Profile Information exposed as a result of the software bugs Google announced on October 8, 2018 and December 10, 2018. Excluded from the Settlement Class are: (1) Google, and its officers, directors, employees, subsidiaries, and Google Affiliates; (2) all judges and their staffs assigned to this case and any members of their immediate families; (3) the Parties' counsel in this litigation; and (4) any Excluded Class Member.

NOTICE PURSUANT TO 28 U.S.C. § 1715

12. Pursuant to 28 U.S.C. § 1715, Angeion shall cause notice of the settlement to be sent to the appropriate state and federal officials as required by the Class Action Fairness Act.

DIRECT NOTICE

13. The direct notice effort in this matter will consist of sending individual email notice to all potential Class Members who can be identified via the records of the Defendant. Angeion will work closely with Defendant to determine the most efficient way to send the emails, whether via Angeion's processes, or via email notices sent directly from Defendant to potential Class Members.

14. In the event that Defendant independently sends the notices, Angeion will both advise on the design of the email itself and monitor the distribution's results to confirm via a report to this court, detailing how many email addresses were "undeliverable" or resulted in a "bounce-back" and other agreed upon metrics, such that Angeion can opine on the sufficiency of the email campaign.

15. If the Defendant does not independently send the email notices and Angeion is tasked with effectuating the email campaign, Angeion will employ the following best practices to increase the deliverability rate of the email notice.

16. As an initial matter, Angeion designs the email notice to avoid many common "red flags" that might otherwise cause a potential Settlement Class Members' spam filter to block or identify the email notice as spam. For instance, Angeion does not include the Claim Form or Long Form Notice as an attachment to the email notice, because attachments are often interpreted by various Internet Service Providers ("ISP") as spam. Rather, in accordance with industry best practices, Angeion includes a link to all operative documents so that Class Members can easily access this information.

17. Angeion also accounts for the real-world reality that some emails will inevitably fail to be delivered during the initial delivery attempt. Therefore, after the initial noticing campaign is complete, Angeion, after an approximate 24-72-hour rest period, —which allows any temporary block at the ISP level to expire—causes a second round of email noticing to continue to any email addresses that were previously identified as soft bounces and not delivered. In our experience, this minimizes emails that may have erroneously failed to deliver due to sensitive servers and optimizes delivery.

18. At the completion of the email campaign, Angeion will report to the Court concerning the rate of delivered emails accounting for any emails that are blocked at the ISP level. In short, the Court will possess a detailed, verified account of the success rate of the entire direct notice campaign whether that campaign is undertaken by Angeion directly or by Google.

19. In summary, the direct notice effort in this matter is robust, sending individual notice to the e-mail addresses that have been identified via the defendant's records as potentially being a class member in this action.

PUBLICATION NOTICE

20. Angeion will cause a press release to be distributed over the general national circuit on PR Newswire to further diffuse news of the settlement. This distribution will help garner "earned media" separate and apart to supplement the direct notice efforts outlined herein which will lead to increased class member awareness and clams filing activity.

RESPONSE MECHANISMS

21. The Notice Program will also implement the creation of a case-specific website, where Class Members can easily view general information about this class action Settlement, review relevant Court documents, and view important dates and deadlines pertinent to the Settlement. The website will be designed to be user-friendly and make it easy for Class Members to find information about the case or file a claim. The website will also have a "Contact Us" page whereby Class Members can send an email with any additional questions to a dedicated email address. Likewise, Class Members will be able to file a claim directly on the website.

22. A toll-free hotline devoted to this case will be implemented to further apprise Class Members of the rights and options in the Settlement. The toll-free hotline will utilize an interactive voice response ("IVR") system to provide Class Members with responses to frequently asked questions and provide essential information regarding the Settlement. This hotline will be accessible 24 hours a day, 7 days a week.

PLAIN LANGUAGE NOTICE DESIGN

23. The proposed Notice forms used in this matter are designed to be "noticed," reviewed, and--by presenting the information in plain language—understood by Class Members. The design of the notices follow principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov. The notice forms contain plain-language summaries of key information about Class Members' rights and options pursuant to the Settlement. Consistent with normal practice, prior to being delivered and published, all notice documents will undergo a final edit for accuracy.

24. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be written in "plain, easily understood language." Angeion Group maintains a strong commitment to

adhering to this requirement, drawing on its experience and expertise to craft notices that effectively convey the necessary information to Class Members in plain language.

CONCLUSION

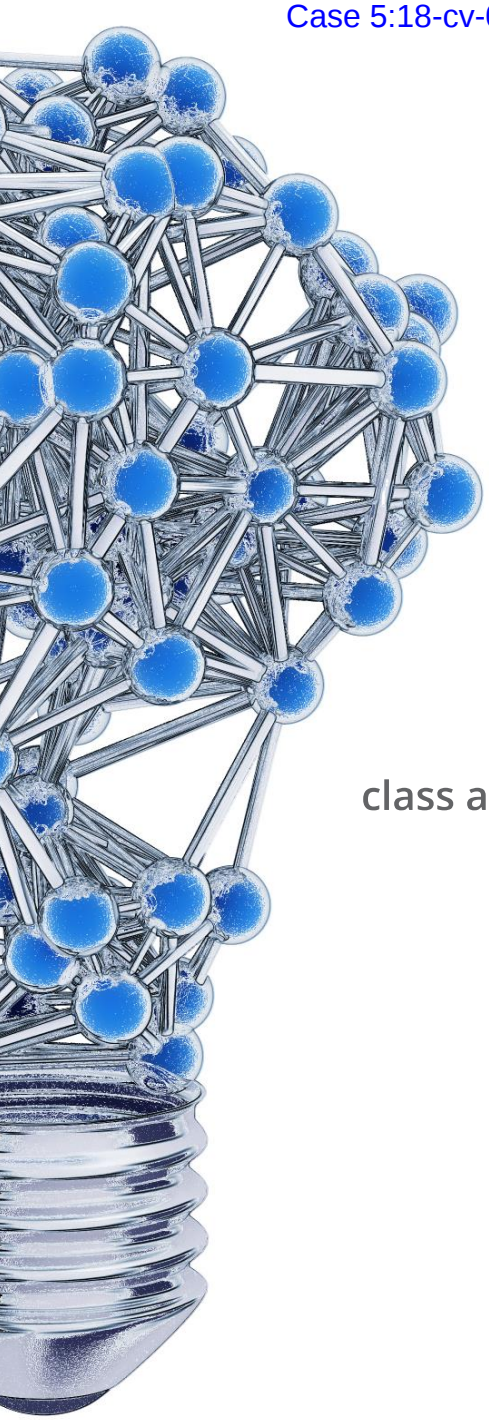
25. The Notice Program outlined above includes direct notice to all reasonably identifiable potential Settlement Class Members. Further, the Notice Program includes a national press release, coupled with the implementation of a dedicated Settlement Website and toll-free hotline to further inform Class Members of their rights and options in the litigation.

26. In my opinion, the Notice Plan will provide full and proper notice to Settlement Class Members before the claims, opt-out, and objection deadlines. Moreover, it is my opinion that Notice Program is the best notice that is practicable under the circumstances, fully comports with due process, Fed. R. Civ. P. 23, and the Northern District's Procedural Guidance for Class Action Settlements. After the Notice Plan has concluded, Angeion will provide a final report verifying its effective implementation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed January 6, 2020 in Parkland, Florida.

STEVEN WEISBROT

Exhibit A



INNOVATION
IT'S PART OF OUR DNA

class action | mass tort | legal noticing | litigation support

ANGEION GROUP
Changing the Rules

Judicial Recognition

Last Updated: November 6, 2019

JUDICIAL RECOGNITION

PATORA v. TARTE, INC.

Case No. 7:18-cv-11760

The Honorable Kenneth M. Karas, United States District Court, Southern District of New York (October 2, 2019): The Court finds that the form, content, and method of giving notice to the Class as described in Paragraph 9 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the Proposed Settlement, and their rights under the Proposed Settlement, including but not limited to their rights to object to or exclude themselves from the Proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clauses of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

CARTER, ET AL. v. GENERAL NUTRITION CENTERS, INC., and GNC HOLDINGS, INC.

Case No. 2:16-cv-00633

The Honorable Mark R. Hornak, United States District Court, Western District of Pennsylvania (September 9, 2019): The Court finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above and Section VII of the Agreement constitutes the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise proposed Settlement Class Members of the pendency of this action, the terms of the Agreement, and their right to object to or exclude themselves from the proposed Settlement Class. The Court finds that the notice is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process, Rule 23 of the Federal Rules of Ci vii Procedure, and any other applicable laws.

CORZINE v. MAYTAG CORPORATION, ET AL.

Case No. 5:15-cv-05764

The Honorable Beth L. Freeman, United States District Court, Northern District of California (August 21, 2019): The Court, having reviewed the proposed Summary Notice, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

MEDNICK v. PRECOR, INC.

Case No. 1:14-cv-03624

The Honorable Harry D. Leinenweber, United States District Court, Northern District of Illinois (June 12, 2019): Notice provided to Class Members pursuant to the Preliminary Class Settlement Approval Order constitutes the best notice practicable under the circumstances, including individual email and mail notice to all Class Members who could be identified through reasonable effort, including information provided by authorized third-party retailers of Precor. Said notice provided full and adequate notice of these proceedings and of the matter set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such

notice, and said notice fully satisfied the requirements of F.R.C.P. Rule 23 (e) and (h) and the requirements of due process under the United States and California Constitutions.

GONZALEZ v. TCR SPORTS BROADCASTING HOLDING LLP, ET AL.

Case No. 1:18-cv-20048

The Honorable Darrin P. Gayles, United States District Court, Southern District of Florida (May 24, 2019): The Court finds that notice to the class was reasonable and the best notice practicable under the circumstances, consistent with Rule 23(e)(1) and Rule 23(c)(2)(B).

ANDREWS ET AL. v. THE GAP, INC., ET AL.

Case No. CGC-18-567237

The Honorable Richard B. Ulmer Jr., Superior Court of the State of California, County of San Francisco (May 10, 2019): The Court finds that (a) the Full Notice, Email Notice, and Publication constitute the best notice practicable under the circumstances, (b) they constitute valid, due, and sufficient notice to all members of the Class, and (c) they comply fully with the requirements of California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

COLE, ET AL. v. NIBCO, INC.

Case No. 3:13-cv-07871

The Honorable Freda L. Wolfson, United States District Court, District of New Jersey (April 11, 2019): The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order. The Court finds that the Notice Plan constitutes: (i) the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this…, (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

DIFRANCESCO, ET AL. v. UTZ QUALITY FOODS, INC.

Case No. 1:14-cv-14744

The Honorable Douglas P. Woodlock, United States District Court, District of Massachusetts (March 15, 2019): The Court finds that the Notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits 2 and 6 thereto, as amended (the "Notice Program"), is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

IN RE: CHRYSLER-DODGE-JEEP ECODIESEL MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

Case No. 3:17-md-02777

The Honorable Edward M. Chen, United States District Court, Northern District of California (February 11, 2019): Also, the parties went through a sufficiently rigorous selection process to

select a settlement administrator. See Proc. Guidance for Class Action Sett. ¶ 2; see also Cabraser Decl. ¶¶ 9-10. While the settlement administration costs are significant – an estimated $1.5 million – they are adequately justified given the size of the class and the relief being provided.

In addition, the Court finds that the language of the class notices (short and long-form) is appropriate and that the means of notice – which includes mail notice, electronic notice, publication notice, and social media "marketing" – is the "best notice…practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); see also Proc. Guidance for Class Action Sett. ¶¶ 3-5, 9 (addressing class notice, opt-outs, and objections). The Court notes that the means of notice has changed somewhat, as explained in the Supplemental Weisbrot Declaration filed on February 8, 2019, so that notice will be more targeted and effective. See generally Docket No. 525 (Supp. Weisbrot Decl.) (addressing, inter alia, press release to be distributed via national newswire service, digital and social media marketing designed to enhance notice, and "reminder" first-class mail notice when AEM becomes available).

Finally, the parties have noted that the proposed settlement bears similarity to the settlement in the Volkswagen MDL. See Proc. Guidance for Class Action Sett. ¶ 11.

RYSEWYK, ET AL. v. SEARS HOLDINGS CORPORATION and SEARS, ROEBUCK AND COMPANY

Case No. 1:15-cv-04519

The Honorable Manish S. Shah, United States District Court, Northern District of Illinois (January 29, 2019): The Court holds that the Notice and notice plan as carried out satisfy the requirements of Rule 23(e) and due process. This Court has previously held the Notice and notice plan to be reasonable and the best practicable under the circumstances in its Preliminary Approval Order dated August 6, 2018. (Dkt. 191) Based on the declaration of Steven Weisbrot, Esq. of Angeion Group (Dkt. No. 209-2), which sets forth compliance with the Notice Plan and related matters, the Court finds that the multi-pronged notice strategy as implemented has successfully reached the putative Settlement Class, thus constituting the best practicable notice and satisfying due process.

MAYHEW, ET AL. v. KAS DIRECT, LLC, and S.C. JOHNSON & SON, INC.

Case No. 7:16-cv-06981

The Honorable Vincent J. Briccetti, United States District Court, Southern District of New York (June 26, 2018): In connection with their motion, plaintiffs provide the declaration of Steven Weisbrot, Esq., a principal at the firm Angeion Group, LLC, which will serve as the notice and settlement administrator in this case. (Doc. #101, Ex. F: Weisbrot Decl.) According to Mr. Weisbrot, he has been responsible for the design and implementation of hundreds of class action administration plans, has taught courses on class action claims administration, and has given testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, and digital media in due process notice. Mr. Weisbrot states that the internet banner advertisement campaign will be responsive to search terms relevant to "baby wipes, baby products, baby care products, detergents, sanitizers, baby lotion, [and] diapers," and will target users who are currently browsing or recently browsed categories "such as parenting, toddlers, baby care, [and] organic products." (Weisbrot Decl. ¶ 18). According to Mr. Weisbrot, the internet banner advertising campaign will reach seventy percent of the proposed class members at least three times each. (Id. ¶ 9). Accordingly, the Court approves of the manner of notice proposed by

JUDICIAL RECOGNITION

the parties as it is reasonable and the best practicable option for confirming the class members receive notice.

IN RE: OUTER BANKS POWER OUTAGE LITIGATION

Case No. 4:17-cv-00141

The Honorable James C. Dever III, United States District Court, Eastern District of North Carolina (May 2, 2018): The court has reviewed the proposed notice plan and finds that the notice plan provides the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities affected by or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. Thus, the court approves the proposed notice plan.

GOLDEMBERG, ET AL. v. JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

Case No. 7:13-cv-03073

The Honorable Nelson S. Roman, United States District Court, Southern District of New York (November 1, 2017): Notice of the pendency of the Action as a class action and of the proposed Settlement, as set forth in the Settlement Notices, was given to all Class Members who could be identified with reasonable effort, consistent with the terms of the Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law in the United States. Such notice constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

HALVORSON v. TALENTBIN, INC.

Case No. 3:15-cv-05166

The Honorable Joseph C. Spero, United States District Court, Northern District of California (July 25, 2017): The Court finds that the Notice provided for in the Order of Preliminary Approval of Settlement has been provided to the Settlement Class, and the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances, and was in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, and any other applicable law. The Notice apprised the members of the Settlement Class of the pendency of the litigation; of all material elements of the proposed settlement, including but not limited to the relief afforded the Settlement Class under the Settlement Agreement; of the res judicata effect on members of the Settlement Class and of their opportunity to object to, comment on, or opt-out of, the Settlement; of the identity of Settlement Class Counsel and of information necessary to contact Settlement Class Counsel; and of the right to appear at the Fairness Hearing. Full opportunity has been afforded to members of the Settlement Class to participate in the Fairness Hearing. Accordingly, the Court determines that all Final Settlement Class Members are bound by this Final Judgment in accordance with the terms provided herein.

JUDICIAL RECOGNITION

IN RE: ASHLEY MADISON CUSTOMER DATA SECURITY BREACH LITIGATION

MDL No. 2669/Case No. 4:15-md-02669

The Honorable John A. Ross, United States District Court, Eastern District of Missouri (July 21, 2017): The Court further finds that the method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program, dated July 13, 2017, and the Parties' Stipulation—including an extensive and targeted publication campaign composed of both consumer magazine publications in People and Sports Illustrated, as well as serving 11,484,000 highly targeted digital banner ads to reach the prospective class members that will deliver approximately 75.3% reach with an average frequency of 3.04 —is the best method of notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and all Constitutional requirements including those of due process.

The Court further finds that the Notice fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process; provided, that the Parties, by agreement, may revise the Notice, the Claim Form, and other exhibits to the Stipulation, in ways that are not material or ways that are appropriate to update those documents for purposes of accuracy.

TRAXLER, ET AL. v. PPG INDUSTRIES INC., ET AL.

Case No. 1:15-cv-00912

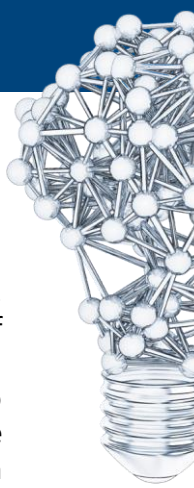
The Honorable Dan Aaron Polster, United States District Court, Northern District of Ohio (April 27, 2017): The Court hereby approves the form and procedure for disseminating notice of the proposed settlement to the Settlement Class as set forth in the Agreement. The Court finds that the proposed Notice Plan contemplated constitutes the best notice practicable under the circumstances and is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e). In addition, Class Notice clearly and concisely states in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Settlement Class; (iii) the claims and issues of the Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

IN RE: THE HOME DEPOT, INC., CUSTOMER DATA SECURITY BREACH LITIGATION

Case No. 1:14-md-02583

The Honorable Thomas W. Thrash Jr., United States District Court, Northern District of Georgia (March 10, 2017): The Court finds that the form, content, and method of giving notice to the settlement class as described in the settlement agreement and exhibits: (a) constitute the best practicable notice to the settlement class; (b) are reasonably calculated, under the circumstances, to apprise settlement class members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by settlement class members.

JUDICIAL RECOGNITION



ROY v. TITEFLEX CORPORATION t/a GASTITE and WARD MANUFACTURING, LLC

Case No. 384003V

The Honorable Ronald B. Rubin, Circuit Court for Montgomery County, Maryland (February 24, 2017): What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm their citizens with knowledge and then the citizens can make decision. To me that is a key piece of this deal. ***I think the notice provisions are exquisite*** [emphasis added].

IN RE: LG FRONT LOADING WASHING MACHINE CLASS ACTION LITIGATION

Case No. 2:08-cv-00051

The Honorable Madeline Cox Arleo, United States District Court, District of New Jersey (June 17, 2016): This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement and the joint motion for preliminary approval. The Court has reviewed the notices attached as exhibits to the Settlement, the plan for distributing the Summary Notices to the Settlement Class, and the plan for the Publication Notice's publication in print periodicals and on the internet, and finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances. The Court specifically approves the Parties' proposal to use reasonable diligence to identify potential class members and an associated mailing and/or email address in the Company's records, and their proposal to direct the ICA to use this information to send absent class members notice both via first class mail and email. The Court further approves the plan for the Publication Notice's publication in two national print magazines and on the internet. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy.

FENLEY v. APPLIED CONSULTANTS, INC.

Case No. 2:15-cv-00259

The Honorable Mark R. Hornak, United States District Court, Western District of Pennsylvania (June 16, 2016): The Court would note that it approved notice provisions of the settlement agreement in the proceedings today. That was all handled by the settlement and administrator Angeion. The notices were sent. The class list utilized the Postal Service's national change of address database along with using certain proprietary and other public resources to verify addresses. the requirements of Fed.R.Civ.P. 23(c)(2), Fed.R.Civ.P. 23(e) (l), and Due Process....

The Court finds and concludes that the mechanisms and methods of notice to the class as identified were reasonably calculated to provide all notice required by the due process clause, the applicable rules and statutory provisions, and that the results of ***the efforts of Angeion were highly successful and fulfilled all of those requirements*** [emphasis added].

JUDICIAL RECOGNITION

FUENTES, ET AL. v. UNIRUSH, LLC d/b/a UNIRUSH FINANCIAL SERVICES, ET AL.

Case No. 1:15-cv-08372

The Honorable J. Paul Oetken, United States District Court, Southern District of New York (May 16, 2016): The Court approves, as to form, content, and distribution, the Claim Form attached to the Settlement Agreement as Exhibit A, the Notice Plan, and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B-D, thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of the Actions, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. The Parties, by agreement, may revise the Notices and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

IN RE: WHIRLPOOL CORP. FRONTLOADING WASHER PRODUCTS LIABILITY LITIGATION

MDL No. 2001/Case No. 1:08-wp-65000

The Honorable Christopher A. Boyko, United States District Court, Northern District of Ohio (May 12, 2016): The Court, having reviewed the proposed Summary Notices, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

SATERIALE, ET AL. v. R.J. REYNOLDS TOBACCO CO.

Case No. 2:09-cv-08394

The Honorable Christina A. Snyder, United States District Court, Central District of California (May 3, 2016): The Court finds that the Notice provided to the Settlement Class pursuant to the Settlement Agreement and the Preliminary Approval Order has been successful, was the best notice practicable under the circumstances and (1) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, Due Process, and the rules of the Court.

FERRERA, ET AL. v. SNYDER'S-LANCE, INC.

Case No. 0:13-cv-62496

The Honorable Joan A. Lenard, United States District Court, Southern District of Florida (February 12, 2016): The Court approves, as to form and content, the Long-Form Notice and Short- Form Publication Notice attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits 1 and 2 to the Stipulation of Settlement. The Court also approves the procedure for disseminating notice of the proposed settlement to the Settlement Class and the Claim Form, as set forth in the Notice and Media Plan attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits G. The Court

finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution.

IN RE: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION

MDL No. 2328/Case No. 2:12-md-02328

The Honorable Sarah S. Vance, United States District Court, Eastern District of Louisiana (December 31, 2014): To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web- based forms of communication in the plan. The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process. The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement. Moreover, the plan to combine notice for the Zodiac and Hayward settlements should streamline the process and avoid confusion that might otherwise be caused by a proliferation of notices for different settlements. Therefore, the Court approves the proposed notice forms and the plan of notice.

SOTO, ET AL. v. THE GALLUP ORGANIZATION, INC.

Case No. 0:13-cv-61747

The Honorable Marcia G. Cooke, United States District Court, Southern District of Florida (June 16, 2015): The Court approves the form and substance of the notice of class action settlement described in ¶ 8 of the Agreement and attached to the Agreement as Exhibits A, C and D. The proposed form and method for notifying the Settlement Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Settlement Class Members of their rights.

OTT v. MORTGAGE INVESTORS CORPORATION OF OHIO, INC.

Case No. 3:14-cv-00645

The Honorable Janice M. Stewart, United States District Court, District of Oregon (July 20, 2015): The Notice Plan, in form, method, and content, fully complies with the requirements of Rule 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled thereto. The Court finds that the Notice Plan is reasonably calculated to, under all circumstances, reasonably apprise the persons in the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class.