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County of Santa Clara
19CV352557
By: tduarte

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

ATILLA CSUPO, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. GOOGLE LLC, Defendant.	Case No.: 19CV352557 ORDER GRANTING PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEY'S FEES, EXPENSES AND INCENTIVE AWARDS

After a jury trial spanning several weeks and a verdict in favor of Plaintiffs Atilla Csupo, Andrew Burke and Kerry Hecht for over $300 million, this class action has settled. Now before the court is a motion for approval of proposed attorney's fees, expenses, and incentive awards filed by Class Counsel. The court has carefully reviewed this matter, considering both the papers filed for this motion and its firsthand knowledge of what occurred before, during and after the trial, including its observations of Class Counsel's written and oral advocacy through critical stages of this litigation. Having done so, the court finds, concludes and orders as follows:

1. "Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (*Wershba v. Apple*

Computer, Inc. (2001) 91 Cal.App.4th 224, 254 (*Wershba*).) The percentage of recovery method "calculates the fee as a percentage share of a recovered common fund or the monetary value of plaintiffs' recovery. The lodestar method, or more accurately the lodestar-multiplier method, calculates the fee 'by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative "multiplier" to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.' [Citation.]" (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 489 (*Laffitte*).)

2. "The two approaches to determining a fee contrast in their primary foci" since the lodestar method " ' better accounts for the amount of work done' " while the percentage of the recovery method " 'more accurately reflects the results achieved.' " (*Laffitte, supra*, 1 Cal.5th at p. 489.) Moreover, "[e]ach has been championed and criticized for its respective advantages and disadvantages. The lodestar method has been praised as providing better accountability and encouraging plaintiffs' attorneys to pursue marginal increases in recovery, but criticized for discouraging early settlement and consuming too large an amount of judicial resources in its application. [Citation.] The percentage method 'is easy to calculate; it establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation. However, a percentage award may also provide incentives to attorneys to settle for too low a recovery because an early settlement provides them with a larger fee in terms of the time invested.' [Citation.]" (Id. at pp. 489-490.) Also, "[w]here the class settlement is for a very large amount, a percentage fee may be criticized as providing counsel a windfall in relation to the amount of work performed. [Citation.]" (*Id.* at p. 490.)

3. Nevertheless, the California Supreme Court has clarified "that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Laffitte, supra*, 1 Cal.5th at p. 504.) The reasonableness of this percentage and corresponding fee can then be confirmed through a lodestar cross-check, "which provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an imputed multiplier far outside the normal range, indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage." (*Ibid*.) "[T]rial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to 'focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.' " (*Id.* at p. 505.)

4. Here, the settlement agreement calls for the creation of a "common settlement fund" of $350,000,000. The agreement also specifies that "any attorney's fees, costs, incentive awards or other amounts claimed by Plaintiffs or their counsel" will be taken from the settlement fund. Class counsel requests an award of attorney's fees representing 33% of the fund, or $115,500,000. The lodestar figure through August 31, 2025, is approximately $48,800,000, which results in an multiplier of 2.36.

5. Because class counsel is requesting that their fees be calculated based on a percentage of the recovery, the court considers several factors to determine whether the amount is appropriate. They are: (1) the results achieved; (2) the risk of litigation; (3) the skill required and quality of work; (4) the contingent nature of the fee and the financial burden carried by the

plaintiffs; and (5) awards made in similar cases. (See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1050.)[1] These factors encompass those identified by California courts when considering fee awards in similar contexts. (See, e.g., *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (*Ketchum*) ["the lodestar . . . may be adjusted by the court based on factors including, as relevant herein, are: (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award"].)

6. **The Results Achieved:** Class counsel ultimately obtained exceptionally commendable, if not excellent, results on behalf of the class by first obtaining a jury verdict in the amount of $314,626,932, and then a post-verdict settlement fund exceeding that amount. Part of the settlement also includes injunctive relief through which Google will make modifications the Google Play Terms of Service, the setup flow for Android users, and the "Learn About Google Play Services" Help Center page. Moreover, the settlement requires Google to deactivate the Google Play Services mobile background data toggle and to provide clarification on the toggle screen, to the extent technically feasible.

7. **The Risk of Litigation:** The court recognizes that one purpose of awarding a percentage of the recovery beyond what may be calculated using the lodestar method "is primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases as a class." (*Ketchum, supra,* 24 Cal.4th at p. 1138.) To that end, "[t]he adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to

[1] Where, as appears to be the case with this precise issue, the state appellate courts have not directly addressed a class action question, California courts routinely look to comparable federal cases as persuasive authority. (*Collins v. Safeway Stores, Inc.* (1986) 187 Cal.App.3d 62, 73, fn. 6.)

approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees." (*Ibid*.) Here, class counsel's representation was on contingency with no guarantee of compensation. This case involved complex claims and defenses raising novel legal issues, including at least one issue of first impression under California law concerning the tort of conversion and its application to intangible items like cellular data. Pretrial discovery and pretrial motion practice were each substantial and extensive endeavors involving numerous hearings and conferences over more than five years. Moreover, this case was one of the few class actions to proceed to a jury trial, which was respectfully yet zealously contested, and itself presented considerable risk even apart from the preceding stages of this case. In short, the overall risk of this litigation is easily classified as substantial because, at several points, there was a real possibility that nothing might come of it.

8. **The Skill Required and Quality of Work:** As noted, this case was complex in many aspects. One notable aspect was the development of the factual record through discovery, which required class counsel to delve into Google's source code, review billions of other records, and file several successful motions to address discovery disputes. Class counsel also had to engage experts from different industries and develop their own technical knowledge. Furthermore, this case involved numerous dispositive motions, motions to exclude expert testimony, and ultimately a jury trial. Throughout these proceedings, class counsel demonstrated exceptional tenacity and skill, both in written submissions, oral presentations, and during the trial. The undersigned can easily say that class counsel represented the class by applying a level of advocacy at the top tier of all counsel previously observed.

9. **The Contingent Nature of the Fee and the Financial Burden:** According to their billing records, class counsel and their associated professionals spent over 50,000 hours and paid over $7,000,000 of their own funds throughout the roughly six-year span of this case. Since

class counsel took this case on contingency, this time was spent and these funds were used without any guarantee of ever being compensated or even reimbursed.

10. **Awards Made in Similar Cases:** Pertinent to this factor in the context of this case, "the court understands that some courts have approved fee awards representing a small percentage of the fund in cases involving very large settlements, the so-called megafunds, in view of the 'windfall' that would otherwise accrue to counsel." (*Laffitte, supra*, 1 Cal.5th at p. 495.) One "megafund" case referenced by the California Supreme Court in *Laffitte* was *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96 (*Wal-Mart*), which involved a settlement fund of $3.05 billion and a fees request of $609,012,000, which the district court ultimately reduced to $220,290,160.44 and was affirmed on appeal. In another federal case cited by the Laffitte court, *In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 943 (*In re Bluetooth*), the Ninth Circuit explained that were awarding a percentage of the recovery of a "megafund" would "yield windfall profits for class counsel in light of the hours spent on the case, courts should adjust the bench-mark percentage or employ the lodestar method instead."

This case is not *Wal-Mart*, which involved a settlement fund roughly eight and one-half times larger, and very obviously implicated a compelling concern about whether simply applying a benchmark percentage to calculate fees would result in a windfall. Nor does the court find, as raised in *In re Bluetooth*, that class counsel's request for a percentage of the fund constitutes a windfall in light of the hours spent on the case. As already indicated, this case was arduously litigated over several years and proceeded to a multi-week jury trial; recognizing those facts, this case cannot be fairly compared to others that settled earlier in the lifespan of the case, such as those that resolved after pleading challenges, after summary judgment motions were denied, or even on the eve of trial. Class counsel spent over 50,000 collective hours working on this arduously litigated case and the lodestar figure through August 31, 2025, is approximately

$48,800,000. Awarding fees of $115,500,000 results in a multiplier of 2.36, which is on the lower end of the permissible range approved in other cases. (*Wershba, supra*, 91 Cal.App.4th at p. 255 ["Multipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [surveying multipliers applied in common fund cases as between 0.6 and 19.6, "with most (20 of 24, or 83%) from 1.0 to 4.0 and a bare majority (13 of 24, or 54%) in the 1.5-3.0 range"].) Moreover, fee awards approved in other cases involving comparably large settlements reinforce the reasonableness of the request made here, as demonstrated by the Notice of Supplemental Authorities filed by Plaintiffs on December 1, 2025

11. In sum, while the court will still consider any objections at the final approval hearing and retains the ability to ultimately award a different amount, it preliminarily approves class counsel's request for an award of attorney's fees representing 33% of the fund, or $115,500,000. This is the total amount of fees approved; any interest generated on the settlement fund must be distributed to the class.

12. In addition, the preliminary approves the following items:

- Reimbursement of costs to class counsel in the amount of $7,030,986.20, which the court finds are reasonable in view of the complex, technical nature of this case and the length of time required to prosecute it;
- An incentive payment of $75,000 to class representative Kerry Hecht for Hecht's extensive pretrial participation in the litigation and testimony at trial;
- An incentive payment of $50,000 to class representative Attila Csupo for Csupo's extensive participation in the litigation; and

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- An incentive payment of $50,000 to class representative Andrew Burke for Burke's extensive participation in the litigation.

IT IS SO ORDERED.

DATED: February 18, 2026

CHARLES F. ADAMS
Judge of the Superior Court