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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JOHN DOE, PAOLA CORREA, and
DEWAYNE CASSEL, on behalf of the State of
California and aggrieved employees,

Plaintiffs,

vs.

GOOGLE, INC., ALPHABET, INC.,
ADECCO USA INC., ADECCO GROUP
NORTH AMERICA and ROES 1 through 10,

Defendants.

Case No. CGC-16-556034

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Date: November 2, 2023
Time: 2:00 p.m.
Dept: 304 (COMPLEX)
Judge: Hon. Ethan P. Schulman

Date Action Filed: December 20, 2016
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiffs John Doe, Paola Correa, and DeWayne Cassel seek approval of a Private
3 Attorneys General Act (“PAGA”) settlement with Defendant Google LLC (“Google” or
4 “Defendant”).¹ The Settlement provides for monetary relief of \$27,000,000 plus a clear
5 communication to all approximately 97,000 current and former Google employees covered by the
6 Settlement definitively confirming that they have the rights to speak about the topics protected by
7 California law that Plaintiffs focused on in this litigation.

8 As one of the largest PAGA recoveries in California history, and a rare case where there is
9 such fulsome communication to educate workers about their speech rights, the Settlement is
10 eminently fair, reasonable, and adequate. Plaintiffs have conducted an exhaustively deep and
11 extensive investigation of the facts and legal theories at issue. After almost seven years of
12 litigation – in this Court, related litigation in Santa Clara County Superior Court, and the Court of
13 Appeal – Plaintiffs have detailed knowledge of the factual and legal issues in this case. The
14 Settlement avoids the risk, time, and expense of further litigation, including the delays inherent in
15 discovery and litigation and appeal of the merits, the possibility of losing on some or all claims,
16 the Court’s discretion to reduce PAGA penalties, and other risks. It is well within the Court’s
17 discretion to approve the proposed settlement.

18 Accordingly, Plaintiff requests that the Court approve the Settlement Agreement, attached
19 as **Exhibit 1** to the Declaration of Chris Baker in Support of Plaintiffs’ Motions (“Baker Decl.”)
20 and enter Judgment in accordance with the settlement terms.

21 **II. PROCEDURAL AND FACTUAL BACKGROUND**

22 **A. Procedural Background**

23 On December 20, 2016, Plaintiff John Doe filed a PAGA complaint in San Francisco
24 Superior Court. Doe challenged Google’s policies and practices, alleging restrictions of
25 employee speech protected by the Labor Code, including protected speech about wages, working
26 conditions, and legal violations, as well as employee speech necessary for labor competition
27

28 ¹ Plaintiffs’ Counsel will submit a copy of the Settlement Agreement to the LWDA concurrently with this
 motion. Baker Decl. ¶ 30; Cal. Lab. Code § 2699(1)(2).

1 (collectively, “Alleged Speech Restrictions”).² Plaintiffs Paola Correa and DeWayne Cassel, and
2 PAGA Representative David Gudeman, were added to the case as plaintiffs later by amendment,
3 asserting substantially similar claims. *E.g.*, *Doe v. Google* (2020) 54 Cal.App.5th 948, 951-955;
4 Sixth Amended and Supplemental Complaint (Dec. 13, 2022).

5 This litigation has been long and hard-fought, involving so much discovery, motion, and
6 appellate practice that it needs to be divided into phases (or, one might say, eons) to capture the
7 work performed.

8 At the beginning of the case, National Labor Relations Act preemption was a significant
9 focus of the litigation and an existential threat to Plaintiffs’ claims. In addition, Plaintiffs litigated
10 the adult content liability release claim as well as catalyst fees based on Plaintiffs’ theory that
11 Google implemented improved policies in response to the litigation. As Google consistently
12 observed, even the catalyst discovery concerned the merits.

13 Google initially challenged the pleadings on the basis that Doe’s claims were preempted
14 by *San Diego Unions v. Garmon* (1959) 359 U.S. 236. (Memorandum of Points and Authorities
15 in Support of Demurrer to Plaintiff’s Third Amended Complaint (May 18, 2017)). On June 27,
16 2017, this Court granted Google’s demurrer, dismissing the claims that are now the subject of this
17 PAGA settlement. (Order Sustaining in Part and Overruling in Part Google’s Demurrers (June
18 27, 2017)). On March 22, 2018, the parties attended mediation with David Rotman, which was
19 unsuccessful. On March 19, 2019, Doe appealed the judgment sustaining the demurrer.

20 Meanwhile, on November 15, 2017, DeWayne Cassel filed individual discrimination and
21 retaliation claims premised in part on an analogous Alleged Speech Restrictions theory, as well as
22 PAGA claims substantially similar to those in *Doe*. *See Cassel v. Google LLC*, Case No. "
23 17CV319202. On February 9, 2021, the court in *Cassel* bifurcated discovery such that discovery
24 and summary adjudication regarding Cassel’s individual discrimination and retaliation claims
25 would proceed before discovery regarding the individualized PAGA claims. *See Cassel*, Order

26 ² The Court of Appeal in this action and Judge Chen in *Juul* have described the legal protections
27 invoked here as “antigag rule[s].” *Doe v. Google* (2020) 54 Cal.App.5th 948, 961 (“these statutes
28 establish as a minimum employment standard an employee antigag rule”); *Hamilton v. Juul Labs*
Inc. (N.D. Cal. Nov. 11, 2021, No. 20 Civ. 3710) 2021 U.S. Dist. LEXIS 221416, at *11 (“The
settlement resolves Plaintiff’s PAGA claims arising from the alleged ‘Gag Rules’”)
.

1 Concerning Google’s Motion to Bifurcate and Plaintiff’s Motion to Compel (Feb. 9, 2021). In
2 late 2022, Cassel was added as a Plaintiff in this action, while his counsel simultaneously
3 voluntarily dismissed his analogous PAGA claims in the Santa Clara action. (Plaintiffs’ Motion
4 for Leave to File Proposed Sixth Amended and Supplemental Complaint (Nov. 23, 2022); Order
5 Granting Joint Stipulation Regarding Plaintiffs’ Motion for Leave to Amend (Dec. 8, 2022)).

6 On September 21, 2020, the Court of Appeal reversed the *Doe* demurrer in a three-opinion
7 split decision that named and established the importance of California’s employee “antigag” rule
8 and new principles regarding the limits of *Garmon* preemption. *Doe v. Google, Inc.* (2020) 54
9 Cal.App.5th 948. On January 27, 2021, the remittitur issued.

10 Back in this Court, Google argued that the *Doe* catalyst discovery, coupled with the
11 *Cassel* merits discovery, was sufficient and that no further discovery should be allowed. The
12 Court initially agreed, ordering limited discovery followed by briefing on whether Google’s form
13 employment agreements and policy documents were facially unlawful. Summary adjudication
14 litigation was protracted and complex. On October 1, 2021, Plaintiffs moved for partial summary
15 adjudication, which the Court initially granted in part and otherwise largely denied. (Order
16 Granting in Part and Denying in Part Plaintiffs’ Motion for Partial Summary Adjudication (Jan.
17 13, 2022)). On March 24, 2022, after vigorous argument from the parties, the Court reconsidered
18 that order on its own motion and denied summary adjudication entirely. (Order re Court’s Own
19 Motion to Modify the January 13, 2022 Order (May 13, 2022)). This led to another round of
20 briefing and an additional hearing regarding the merits of Plaintiffs’ claims and the procedural
21 propriety of the Court’s *sua sponte* reconsideration. In the meantime, on April 19, 2022, the
22 parties participated in a second mediation, this time with Tony Piazza and Stephanie Chow,
23 which was unsuccessful.

24 Ultimately, the Court issued an amended summary adjudication order on June 3, 2022
25 denying Plaintiffs’ motion for partial summary adjudication. (Amended Order Denying in Part
26 Plaintiffs’ Motion for Partial Summary Adjudication (June 3, 2022) (“Amended SA Order”)).
27 But within that order, Plaintiffs prevailed on one issue: the Court held that the confidentiality
28 provisions in Google’s form employment agreement in effect from August 2015 to September

1 2016 were void under Business and Professions Code § 16600. *See id.* at 8-12.

2 Between June 2022 and May 2023, the parties litigated the structure of further discovery
3 in the wake of the Court’s Amended SA Order. Plaintiffs argued that they were entitled to seek
4 discovery regarding Google’s enforcement practice to obtain evidence about the meaning of
5 Google’s policies in implementation, while Google argued that this was inappropriate. After
6 extensive discovery negotiations and court conferences, the Court ordered Google to begin
7 producing documents regarding its enforcement practice. (Order after May 3, 2023 Case
8 Management Conference (May 3, 2023)). Between May and August 2023, the parties conducted
9 extensive discovery regarding, among other topics, Google’s corporate communications and
10 internal memoranda regarding its Alleged Speech Restrictions, and instances of Google’s
11 enforcement of its Alleged Speech Restrictions against Plaintiffs and other aggrieved employees.

12 On July 25, 2023, Plaintiffs filed a motion seeking contact information for a selection of
13 aggrieved employees pursuant to the process established in *Belaire-West Landscape, Inc. v.*
14 *Superior Court* (2007) 149 Cal.App.4th 554. During that time, the parties reengaged in
15 settlement discussions under the guidance of mediator Stephanie Chow. On August 4, 2023, the
16 parties reached a settlement in principle. After negotiating and executing a memorandum of
17 agreement, the parties then finalized the Settlement Agreement that is now before the Court.

18 **B. The Evolution of Google’s Policies**

19 Plaintiffs’ catalyst, summary adjudication and *Belaire* motions set forth in broad strokes
20 the nature and history of Google’s Alleged Speech Restrictions, so Plaintiffs do not restate that
21 history here. For purposes of settlement, there are three overarching periods:

- 22 • Period A: October 14, 2015 – March 16, 2017;
- 23 • Period B: March 17, 2017 – May 19, 2019;
- 24 • Period C: May 20, 2019 – September 15, 2023 (the end of the Covered Period
encompassed by the Settlement).

25 Period B began with a company-wide announcement of revised policies about three months
26 after Doe filed his PAGA complaint. Period C began with a company-wide announcement – an
27 email from Google’s Chief Legal Officer – of “re-revised” policies and an explanation of how
28 those policies would be applied.

1 Plaintiffs allege that there was a significant uptick in employee leaks during Period B.
2 Google's Chief People Officer testified that, contrary to its past practice, Google did not
3 investigate some of the most prominent leaks during this Period, though they caused Google
4 considerable harm. For example, in response to internal and external pressure arising from Period
5 B leaks, Google abandoned a contract with the Department of Defense valued at \$50,000,000
6 (Project Maven). It also abandoned its planned search engine for the China market, which has 1.4
7 billion users and is currently valued at \$21 billion (Project Dragonfly). In addition, following a
8 Period B leak about an undisclosed privacy breach, Google announced it would shut down an
9 entire business line: "Google+" (its social media platform). Also during Period B, there were
10 leaks of the names and contact information of rank-and-file Google employees, which led to
11 threats and harassment. And the United States (and numerous individual states) initiated wide-
12 ranging investigations into Google's business practices, including televised Congressional
13 hearings.

14 Period C (beginning on May 19, 2019) began in the same time frame as press reports that
15 the Department of Justice was launching an antitrust investigation into Google.

16 Plaintiffs note that Google disagrees with Plaintiffs' characterization of many events and
17 denies that Plaintiffs' claims have any merit. However, Google does not object to Plaintiffs'
18 proposal to segment the settlement class into these three time periods.

19 **III. TERMS OF THE PROPOSED SETTLEMENT**

20 **Total Settlement Amount.** The total Settlement amount of \$27,000,000 will be used to
21 pay all Individual Settlement Payments to PAGA Group Members, Administration Costs, the
22 PAGA Representative Service Awards, the LWDA Payment, and the Attorneys' Fees and Costs,
23 as set forth below. (Settlement Agreement § 1.32). No portion of Settlement amount will revert
24 to Google. *Id.*

25 **Net Settlement Amount.** The Net Settlement Amount is the Total Settlement Amount
26 minus the Administration Costs, Attorneys' Fees and Costs, and the PAGA Representative
27 Service Awards. *Id.* § 1.16. The Net Settlement Amount includes all Individual Settlement
28 Payments due to PAGA Group Members and the LWDA Payment. *Id.* The Net Settlement

1 Amount is the maximum amount that will be available for distribution to the LWDA and PAGA
2 Group Members. *Id.*

3 **LWDA Payment.** “LWDA Payment” refers to the seventy-five percent (75%) of the Net
4 Settlement Amount that constitutes the LWDA’s share of the settlement of civil penalties paid
5 under the Settlement pursuant to PAGA. *Id.* § 1.15.

6 **PAGA Distribution Fund.** “PAGA Distribution Fund” refers to the twenty-five percent
7 (25%) of the Net Settlement Amount that will be distributed to PAGA Group Members. *Id.* §
8 1.19.

9 **PAGA Group Members.** This settlement covers all current and former employees of
10 Defendants in California who were employed by Google at any time during the Covered Period.
11 The Settlement explicitly *excludes* (1) all temp workers, also known as “TVCs” (temporary
12 employees, vendors, or contractors), who performed work at Google but were formally employed
13 by entities other than Defendants or (2) employees of Defendants in positions of Senior Vice
14 President (job level 13) or higher. *Id.* § 1.21.

15 **Covered Period.** This settlement covers the time period from October 16, 2015 to
16 September 15, 2023. The Covered Period is subdivided, consistent with the factual background
17 described above, into three time periods, A, B, and C. *Id.* § 1.7.

18 **Eligible Pay Period.** “Eligible Pay Period” refers to a pay period during the Covered
19 Period in which a PAGA Group Member was employed by Defendants in California. *Id.* § 1.11.

20 **Released Parties.** The Released Parties are Google, its current and former, direct and
21 indirect owners, parents, subsidiaries, brother-sister companies, and all other affiliates and related
22 entities, as well as its current and former directors, executives, employees, attorneys and agents.
23 Notwithstanding the foregoing, the Released Parties do not include Adecco USA Inc. or any other
24 staffing firm that provides employees to the Released Parties to work at Google, and no such
25 staffing firm (including Adecco) is releasing any claims through this settlement. *Id.* § 1.28.

26 **PAGA Notice Letter.** Along with the Settlement Checks, the Settlement Administrator
27 will mail a letter to the PAGA Group Members detailing their speech rights under the California
28 Labor Code and confirming Google’s commitment to respecting those rights. *See id.* § 1.28, Ex.

1 A. This robust communication is a significant component of the Settlement. Whereas settlement
2 notices in other cases typically provide fairly spare information about the merits, this notice
3 includes a fairly lengthy discussion of the Alleged Speech Restriction concepts asserted by
4 Plaintiffs, including Google’s affirmative assurance that employees are allowed to speak freely
5 about various topics protected by California law, and that any suggestion to the contrary in any
6 policy or document does not trump those California rights.

7 **Settlement Administrator.** Plaintiffs sought bids from four third-party administrators
8 and, with Defendants’ consent, selected Rust Consulting (“Rust”), a neutral, third-party
9 administrator, to perform the administration of the settlement (“Settlement Administrator”). Rust
10 has agreed to administer the settlement for an amount not to exceed \$153,900. *Id.* § 1.30; Baker
11 Decl. ¶ 26.

12 **Service Awards.** “Service Awards” refers to any payment that the Court awards to the
13 PAGA Representatives as an incentive, service, or enhancement for their participation in the
14 Action with respect to Google, including their participation and resolution of the non-PAGA
15 claims against Google seeking public injunctive relief. *Id.* § 1.29. Defendants agree not to
16 oppose Plaintiffs’ motion for service awards so long as the motion does not seek Service Awards
17 that, in the aggregate, exceed \$120,000. *Id.* § 4.3. Those requests are the subject of Plaintiffs’
18 contemporaneously filed fee motion.

19 **Attorneys’ Fees and Costs.** Plaintiffs and their Counsel move for an award of fees and
20 costs to be paid from the Total Settlement Amount. *Id.* § 4.2. Defendants agree not to oppose
21 Plaintiffs’ motion for attorneys’ fees and costs so long as the motion does not seek fees above
22 one-third of the Gross Settlement Amount and (b) costs and expenses of suit supported by
23 adequate documentation by Plaintiffs’ Counsel. *Id.* Those requests are the subject of Plaintiffs’
24 contemporaneously filed fee motion.

25 **Allocation Formula.** As described above, Plaintiffs contend that Google’s Alleged
26 Speech Restrictions can be divided into three periods, with the strongest claims in Period A and
27 the weakest claims in Period B. Therefore, from the \$4,400,144.26 Net Distribution Fund (the
28 money to be paid to the PAGA Group Members after the LWDA’s share), each individual is

1 allocated a fixed payment of \$20, plus a variable payment proportional to the number of pay
2 periods worked within each period. *Id.* § 4.7.1. Period A pay periods are worth 5 points, Period
3 B zero points, and Period C 1 point. This allocation reflects the varying strength of the claims in
4 these different periods, while also ensuring a minimum payment for all employees to recognize
5 that all had valid claims.

6 **IV. ARGUMENT**

7 **A. A PAGA Settlement Must Be Fair, Reasonable, and Adequate**

8 *Moniz v. Adecco USA Inc.* (2021) 72 Cal.App.5th 56, an outgrowth of this litigation,³
9 establishes that “a trial court should evaluate a PAGA settlement to determine whether it is fair,
10 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
11 deter future ones, and to maximize enforcement of state labor laws,” *id.* at 77, including by
12 “augmenting the state’s enforcement capabilities,” *Basili v. Allegiant Air, LLC* (C.D. Cal. July
13 1, 2019, No. 18 Civ. 3888) 2019 U.S. Dist. LEXIS 228250, at *8 (quoting *Patel v. Nike Retail*
14 *Servs., Inc.* (N.D. Cal. May 8, 2019, No. 14 Civ. 4781) 2019 U.S. Dist. LEXIS 77988, at *6).
15 *Moniz* also holds that because “many of the factors used to evaluate class action settlements bear
16 on a settlement’s fairness—including the strength of the plaintiff’s case, the risk, the stage of the
17 proceeding, the complexity and likely duration of further litigation, and the settlement amount—
18 these factors can be useful in evaluating the fairness of a PAGA settlement.” *Moniz*, 72
19 Cal.App.5th at 77.

20 Thus, in considering both class and PAGA settlements, a “presumption of fairness exists
21 where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
22 discovery are sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is
23 experienced in similar litigation.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802;
24 *accord Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.

25
26
27
28 ³ In her objection and appeal in *Moniz*, Plaintiff Correa advocated for this standard, which the Court of Appeal adopted. This was the first appellate decision to so hold, providing extremely useful guidance to state and federal trial and appellate courts throughout California and beyond.

1 **B. The Terms of the Settlement Are Fair, Reasonable, and Adequate**

2 **1. The Settlement Is the Result of Extensive, Non-Collusive,**
3 **Arm's Length Negotiations Between the Parties**

4 “The court . . . should give considerable weight to the competency and integrity of counsel
5 and the involvement of a neutral mediator in assuring itself that a settlement agreement represents
6 an arm's-length transaction entered without self-dealing or other potential misconduct.” *Kullar*,
7 168 Cal.App.4th at 129. Here, the proposed settlement was reached through vigorous, arm's-
8 length negotiation between extremely experienced lawyers, assisted by multiple third-party
9 mediators at two separate mediations followed by months of additional negotiation. *See Baker*
10 Decl. ¶ 23. Furthermore, those negotiations followed and proceeded in parallel with vigorous
11 adversarial litigation. *Id.*

12 **2. The Parties Had Sufficient Information to Enter into an**
13 **Informed and Reasonable Settlement**

14 The parties engaged in extensive discovery, which has given the parties a thorough
15 understanding of the relevant facts and the litigation risks for both sides. Plaintiffs deposed six
16 individuals, including Google's Chief People Officer. They obtained dozens of form employment
17 agreements and policy documents, including all versions of each relevant agreement and policy in
18 effect throughout the liability period. Google also produced extensive ESI, including
19 communications among senior Google officials regarding the interpretation of the challenged
20 speech policies, communications among Google employees illuminating their perspective on
21 Google's Alleged Speech Restrictions, transcripts of internal meetings about speech issues,
22 trainings regarding Google's employee Alleged Speech Restrictions, and discovery regarding the
23 Plaintiffs' terminations.

24 The parties also exchanged robust mediation statements at both mediations, which
25 outlined the key arguments they would make during the course of the litigation and the relevant
26 facts. Further, Plaintiffs' Counsel also reviewed data from Google indicating the number of pay
27 periods and aggrieved employees at issue, which enabled Plaintiffs to estimate Google's
28 maximum exposure.

1 This exchange of information was more than sufficient to create “an understanding of the
2 amount that is in controversy and the realistic range of outcomes of the litigation.” *Kullar*, 168
3 Cal.App.4th at 120.

4 **3. Plaintiffs’ Counsel Are Highly Experienced in Complex Litigation**

5 Plaintiffs’ Counsel have considerable experience in PAGA and other complex
6 employment rights litigation and are eminently qualified to evaluate the PAGA claims, the value
7 of the settlement compared to the risks and costs of litigation, and the viability of Google’s
8 defenses. Baker Decl. ¶¶ 15-18; Sagafi Decl. ¶¶ 4-21. Plaintiffs’ Counsel believe that the
9 settlement is fair, reasonable, and adequate in light of the risks associated with the merits of
10 Plaintiffs’ claims, the uncertainties of complex litigation, the Court’s discretion to lower the
11 amount of penalties ultimately awarded, and the secured benefit to the LWDA and PAGA
12 Settlement Members.

13 **4. The Settlement Is Fair and Reasonable Based on the Strength of** 14 **Plaintiffs’ Case and the Risks and Costs of Further Litigation**

15 The settlement is reasonable in light of the litigation risks. Plaintiffs’ claims are novel,
16 which entails an unusual level of uncertainty as to Plaintiffs’ likelihood of success. There has
17 been very little PAGA litigation involving the Labor Code provisions at issue, many of which are
18 more commonly utilized for individual retaliation claims. *See, e.g., Zirpel v. Alki David Prods.,*
19 *Inc.* (2023) 93 Cal.App.5th 563, 566 (upholding jury verdict for retaliation under Labor Code §§
20 232.5 and 1102.5). There have been just a few PAGA cases involving these Labor Code
21 predicates. (Baker Decl., Ex. 7 (Order No. 2 Granting Approval of PAGA Settlement, *Moniz v.*
22 *Adecco*, Case No. 17CIV01736 (San Mateo Super. Ct., Feb. 10, 2023); *Abrishamcar v. Oracle*
23 *America, Inc.*, Case No. CIV 535490 (San Mateo Super. Ct., Aug 7, 2019); *Hamilton*, 2021 WL
24 5331451 *2021 U.S. Dist. LEXIS 221416, at *8-13 (approving PAGA settlement of “gag-rule”
25 claims challenging policies and practices of employee speech suppression and identifying other
26 cases). The claims in *Moniz* and *Abrishamcar* concerned the facial legality of employment
27 agreements and policy documents; what is especially untested is the specific type of Speech
28 Restriction PAGA claim here – one based on the theory that an employer violated the Labor
Code’s speech provisions through, not just policies and contracts, but also a pattern and practice

1 of Alleged Speech Restrictions. To the best of Plaintiffs’ knowledge, this is only the second
2 PAGA settlement involving this type of Alleged Speech Restriction theory – the first being
3 *Hamilton*, which was brought by Plaintiffs’ Counsel Baker Curtis & Schwartz. *See Hamilton v.*
4 *Juul Labs, Inc.* (N.D. Cal. Jan. 27, 2021) 2021 WL 275485, * 7 (plaintiffs stated a claim under
5 Labor Code § 1102.5(a) based on allegations of a “culture of concealment” that informed the
6 interpretation of contractual confidentiality provisions).

7 Google presented inventive defenses to Plaintiffs’ claims. Google successfully opposed
8 Plaintiffs’ summary judgment motion, which argued the policies were facially unlawful. Google
9 also contends that the Labor Code provisions at issue do not support Plaintiffs’ pattern-and-
10 practice theory, but rather by their text permit only challenges to the language of written
11 agreements and policy documents. *See* June 28, 2022 Case Management Statement at 9-10
12 (outlining this argument). Google also contends that Plaintiffs’ PAGA case is unmanageable,
13 appealing to developing case law regarding PAGA manageability. *See* Google’s August 12, 2022
14 Supplemental Case Management Statement at 3-6 (outlining this argument); *see also Estrada v.*
15 *Royal Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 697; *Wesson v. Staples the Office*
16 *Superstore, LLC* (2021) 68 Cal.App.5th 746, 762-63. While Plaintiffs believe they have strong
17 responses to these defenses, Plaintiffs also recognize that Google’s defenses are as novel as
18 Plaintiffs’ claims, making the outcome of litigation fundamentally uncertain. *See, e.g., Juarez v.*
19 *Soc. Fin., Inc.* (N.D. Cal. Jun. 8, 2023, No. 20 Civ. 03386) 2023 U.S. Dist. LEXIS 100118, at
20 *13-14 (concluding that “the amount offered in settlement is reasonable in light of the complexity
21 of this litigation and the substantial risk that Plaintiffs would face in litigating the case given the
22 nature of the asserted claims,” when plaintiffs had advance “a relatively novel theory with
23 numerous unsettled issues,” and defendant had in turn raised novel defenses).

24 Plaintiffs also understand that these defenses, if successful, could undermine liability or
25 significantly reduce the civil penalties available. Google’s argument that the Labor Code
26 provisions at issue do not permit pattern and practice claims could be wielded at summary
27 judgment to preclude liability entirely. Google already submitted a proposed motion for
28 summary adjudication containing these arguments, which permitted Plaintiffs to fully assess the

1 risks that this defense poses. *See* March 3, 2023 Joint Case Management Statement, Exhibit 1, p
2 5 (Google’s proposed motion for summary adjudication arguing that “[e]ach of Plaintiffs’ claims
3 relies on a statute that requires there to be a policy, rule or agreement that is alleged to be
4 unlawful”). Further, Google’s manageability arguments could reduce the civil penalties
5 available, by restricting the scope of the case at trial. *See Estrada*, 76 Cal.App.5th at 713 (“We
6 encourage counsel to work with the trial courts during trial planning to define a workable group
7 or groups of aggrieved employees for which violations can more easily be shown.”).

8 Additionally, Google would argue that the Court should reduce penalties to avoid an
9 award that would be “unjust, arbitrary and oppressive, or confiscatory.” *See* Labor Code §
10 2699(e)(2) (“In any action by an aggrieved employee seeking recovery of a civil penalty available
11 under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty
12 amount specified by this part if, based on the facts and circumstances of the particular case, to do
13 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”).
14 This is not theoretical. In practice, some courts have reduced PAGA penalties by substantial
15 percentages. *See, e.g., Carrington v. Starbucks Corp.* (2014) 30 Cal.App.5th 514, 529 (PAGA
16 penalties reduced by 90%, to \$5 per pay period, after trial where violations had been proved);
17 *Parr v. Golden State Overnight Delivery Serv., Inc.* (Alameda Super. Ct. Jul. 10, 2014) 2014 Cal.
18 Super. LEXIS 1551, at *16-17 (PAGA penalties reduced by 95%); *Fleming v. Covidien, Inc.*
19 (C.D. Cal. Aug. 12, 2011, No. 10 Civ 1487) 2011 U.S. Dist. LEXIS 154590, at *8-9 (reducing
20 penalty award by 82% where defendant was “not aware” that its actions violated the law).
21 Although Plaintiffs believe that they ultimately could have overcome these obstacles and
22 prevailed, they recognize the risks that they faced in proving the merits and establishing their
23 entitlement to sufficient civil penalties to punish the alleged violations.

24 Moreover, this settlement represents a significant percentage of Google’s maximum
25 exposure. Baker Decl. ¶¶ 10-13. Google’s maximum exposure for the entire Covered Period
26 could be calculated as \$4,518,514,600. *Id.* This calculation assumes stacking of each Labor
27 Code section and maximum penalties throughout the Covered Period. If stacking is done on a
28 “primary rights” basis (e.g., the prohibition on discussion of wages gives rise to a single penalty

1 though it violates both Labor Code §§ 232 and 1197.5(k)), the maximum exposure decreases to
2 \$3,122,052,900. *Id.* If Google were to prevail in its argument that there is no stacking at all, and
3 penalties are \$100 per pay period, then the maximum exposure would decrease to \$966,755,600.
4 The proposed settlement of \$27,000,000 is thus 2.8% of the maximum unstacked exposure. *Id.*
5 This is substantially higher than the levels that courts have approved. *See, e.g., See Order No. 2*
6 *Granting Approval of PAGA Settlement, Moniz v. Adecco*, Case No. 17CIV01736 (San Mateo
7 Super. Ct., Feb. 10, 2023) (approving settlement of less than 0.1% of the maximum exposure)
8 (Baker Decl. ¶ 8)); *Van Kempen v. Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017, No. 15 Civ.
9 660) 2017 U.S. Dist. LEXIS 137182, at *29-30 (approving 1.4%); *Slavkov v. Fast Water Heater*
10 *Partners I, LP* (N.D. Cal. Jul. 25, 2017, No. 14 Civ. 04324) 2017 U.S. Dist. LEXIS 116303, at
11 *4-5 (approving PAGA settlement of 2.2% of maximum exposure); *Chu v. Wells Fargo Invs.,*
12 *LLC* (N.D. Cal. Feb. 16, 2011, Nos. 05 Civ. 4526, 06 Civ. 7924) 2011 U.S. Dist. LEXIS 15821, at
13 *4 (approving less than 1%). Moreover, Google denied all liability and contended that no
14 penalties were awardable.

15 The above exposure analysis also ignores the fact that Google has stronger defenses
16 during parts of the Covered Period. First, as explained above and in Plaintiffs' *Belaire* motion, at
17 the start of Period B, Google announced material changes to the policies it had maintained during
18 Period A. If the case were to be litigated further, Google would argue – with some force – that
19 liability during Period B would be inappropriate. Second, Google would argue in litigation that it
20 thought carefully about how to craft Period C consistent with the law, in light of its experience
21 with employee speech during Periods A and B. Google has made clear its intent to stand by its
22 current rules as striking the proper balance among arguably conflicting rights and obligations.

23 In the face of significant litigation risks, and given the substantial monetary and
24 educational relief the settlement provides, the settlement is fair, reasonable, and advantageous to
25 Plaintiffs, the LWDA, and the PAGA Settlement Members.

26 **5. The Plan of Allocation Is Fair**

27 Consistent with the facts, the Plan of Allocation provides a baseline “fixed” recovery to
28 each PAGA Group Member plus a variable amount of 5x, 0x, and 1x points for proportional

1 allocation of money based on time worked during Periods A, B, and C, respectively. (Baker
2 Decl. ¶ 14.) Settlement Agreement § 4.7.1. As discussed above, this allocation directs the
3 penalties to workers in rough proportion to the violations to which they were subject.

4 **C. The Settlement Furthers PAGA’s Public Policies**

5 In addition to being fair in light of typical class action considerations, the Settlement
6 should also be approved because it furthers PAGA’s public policies.

7 First, it maximizes enforcement of the state’s labor laws by augmenting its enforcement
8 capabilities. Assuming the Court approves the request for fees, costs, and service awards, the
9 LWDA will still receive a net payment of \$13,200,432.79. Baker Decl. ¶ 14. In 2021, the State
10 recovered \$128,000,000 in PAGA penalties from *thousands* of PAGA suits. *See Adolph v. Uber*
11 *Tech.* CA S. CT. Briefs LEXIS 405, at *29 (Att’y General Amicus Brief Dec. 5, 2022) 2022.
12 This Settlement will provide LWDA with more than a tenth of its entire recovery for that whole
13 year.

14 Second, the claims and the settlement remediate alleged Labor Code violations. Here, the
15 major remediation occurred shortly after the case was filed (with the start of Period B). And
16 while Plaintiffs disagree that Google’s Period C rules fully comply with California law, Google
17 has agreed to a notice in which it emphasizes its employees have the right to speak, whistle blow
18 and compete in accordance with California law, and that Google will not retaliate against them
19 for the exercise of these rights. A similar notice was found adequate in *Hamilton, supra*, 2021,
20 U.S. Dist. LEXIS 221416, at *13.

21 Finally, the Settlement has the effect of deterring Labor Code violations by other
22 companies throughout California. As Plaintiffs explained to this Court in 2017: “This case seeks
23 to change . . . the unlawful and endemic restrictions on state law [speech] rights that many Silicon
24 Valley employers reflexively impose on their workforces. . . . As Google goes, so goes Silicon
25 Valley.” (2019.05.12 Reply ISO Motion to Compel). Consistent with this sentiment, knowledge
26 of this \$27,000,000 PAGA settlement against Google should serve to deter Alleged Speech
27 Restrictions by other employers. If it does not, then it should lead to additional public and private
28 enforcement of the California’s worker protections.

1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court approve the
3 proposed Settlement Agreement and enter Judgment consistent with the Settlement.

4
5 Dated: October 11, 2023

Respectfully submitted,

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