

Jahan C. Sagafi (SBN 224887)
Molly Frandsen (SBN 320094)
OUTTEN & GOLDEN LLP
One California Street, 12th Floor
San Francisco, CA 94111
Telephone: (415) 638-8800
Facsimile: (415) 638-8810
Email: jsagafi@outtengolden.com
Email: mfrandsen@outtengolden.com

Michael J. Scimone *
Julio Sharp-Wasserman *
685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060
Email: mscimone@outtengolden.com
Email: jsharp-wasserman@outtengolden.com

* admitted pro hac vice

*Attorneys for Plaintiffs and Aggrieved
Employees*

Chris Baker (SBN 181557)
Deborah Schwartz (SBN 208934)
BAKER CURTIS & SCHWARTZ, P.C.
One California St., Suite 1250
San Francisco, CA 94111
Telephone: (415) 433-1064
Fax: (415) 422-9966
Email: cbaker@bakerlp.com
Email: dschwartz@bakerlp.com

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

**PLAINTIFFS' NOTICE OF UNOPPOSED
MOTION AND MOTION FOR
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS; MEMORANDUM
OF POINTS & AUTHORITIES IN
SUPPORT THEREOF**

REDACTED

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

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

1 TO DEFENDANTS GOOGLE, INC., ALPHABET, INC., ADECCO USA INC., AND THEIR
2 ATTORNEYS OF RECORD:

3 Please take notice that on November 2, 2023, or as soon thereafter as the matter may be
4 heard, in Department 304 of the above-entitled Court, the *Doe* Plaintiffs (“Plaintiffs”) on behalf of
5 themselves, the State, and the Aggrieved Employees, will, and hereby do, move this Court:

6 1. To approve the payment of Attorneys’ Fees to Plaintiffs’ Counsel in the amount
7 of one third of the Total Settlement Amount, i.e., \$9,000,000.

8 2. To approve the reimbursement of out-of-pocket litigation costs in the amount of
9 \$125,522.95.

10 3. To approve service awards for the Plaintiffs and PAGA Representative in the
11 amounts of \$40,000 each for John Doe and DeWayne Cassel and \$20,000 each for Paola Correa
12 and David Gudeman.

13 4. To approve reimbursement from the Total Settlement Amount of the Settlement
14 Administrator’s costs of \$153,900.00.

15 This unopposed motion is based on this Notice of Motion and Motion; the accompanying
16 Memorandum of Points and Authorities; the Declarations of Jahan Sagafi, Chris Baker, John Doe,
17 Dwayne Cassell, and Paola Correa; all exhibits attached hereto; all pleadings and papers on file in
18 this Action, and such further evidence and argument as the Court may allow at the time of hearing.

19 DATED: October 11, 2023

BAKER CURTIS & SCHWARTZ, P.C.

20
21 By: 

Chris Baker

22
23 Chris Baker (SBN 181557)
24 Deborah Schwartz (SBN 208934)
25 BAKER CURTIS & SCHWARTZ, P.C.
26 One California St., Suite 1250
27 San Francisco, CA 94111
28 Telephone: (415) 433-1064
Email: cbaker@bakerlp.com
Email: dschwartz@bakerlp.com

Jahan C. Sagafi (SBN 224887)
Molly Frandsen (SBN 320094)
OUTTEN & GOLDEN LLP
One California Street, 12th Floor
San Francisco, CA 94111
Telephone: (415) 638-8800
Facsimile: (415) 638-8810
Email: jsagafi@outtengolden.com
Email: mfrandsen@outtengolden.com

Michael J. Scimone *
Julio Sharp-Wasserman *
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060
Email: mscimone@outtengolden.com
Email: jsharp-wasserman@outtengolden.com
* admitted pro hac vice

Attorneys for Plaintiffs as Proxies for the State
and Aggrieved Employees

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INTRODUCTION

In connection with Plaintiffs' Unopposed Motion for Approval of the PAGA Settlement ("Approval Motion"), filed simultaneously with this Motion, Plaintiffs and their counsel respectfully move for an award of fees of one third of the Total Settlement Amount¹ (\$9,000,000.00) and \$125,522.95 in costs that Plaintiffs' Counsel have incurred since 2016 in successfully prosecuting and settling the remaining claims as to Google and Alphabet (collectively "Google"). Plaintiffs further request that the Court approve service payments of \$40,000 each to John Doe and DeWayne Cassel, and \$20,000 each to Paola Correa and David Gudeman (for a total of \$120,000), as detailed below, in recognition of the services they have rendered and the risks they have undertaken on behalf of the State of California and Aggrieved Employees. Finally, Plaintiffs request approval of the Settlement Administrators' projected costs.

Defendants Google LLC and Alphabet Inc. (collectively, "Google" or "Defendants") do not oppose these requests.

To date, Plaintiffs' Counsel have spent 8,285 hours, at a reasonable lodestar value of approximately \$5,893,032.80 and \$125,522.95 in out-of-pocket costs, investigating, prosecuting, and resolving this action over the past seven years. These figures will increase in the coming months, due to additional work Plaintiffs' Counsel will perform for the benefit of the approximately 97,000 PAGA Group Members – including securing settlement approval, overseeing the Settlement Administrator's distribution of the Notice and PAGA payments to PAGA Group Members, assisting PAGA Group Members with questions about the settlement process, and preparing a report regarding final distributions of the settlement.

Plaintiffs' Counsel's lodestar and costs to date have been incurred without reimbursement, and their entitlement to payment has been wholly contingent upon the result achieved.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs prosecuted the claims released by the Settlement in this Court, Santa Clara Superior Court (in the related *Cassel* case), the Court of Appeal, the California Supreme Court

¹ Unless otherwise indicated, all capitalized terms have the definitions set forth in the settlement agreement (Ex. 1 to the Declaration of Jahan C. Sagafi).

1 (where one justice dissented from the denial of Google’s request for review), and the United States
2 Supreme Court (which ordered Plaintiffs to respond to Google’s petition for certiorari before
3 denying the petition). The Court initially expressed significant skepticism about Plaintiffs’
4 admittedly novel claims, calling Plaintiffs’ argument “frivolous” and stating “Google should be rid
5 of this litigation expeditiously.”² *Cf. Hamilton v. Juul Labs* (N.D. Cal. Nov. 11, 2021) 2021 WL
6 5331451, at *11 (noting the novel nature of the claims).

7 Plaintiffs – especially John Doe and DeWayne Cassel – faced highly unusual scrutiny. For
8 example, in a companywide meeting shortly after the termination of John Doe, [REDACTED]

9 [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 (Baker Dec., Ex. 2).

19 Similarly, in the litigation, Google threatened sanctions against Cassel more than once for
20 asserting claims in Santa Clara Superior Court.³ At work, Google removed Cassel’s access to
21 Google’s communication platforms because he sought to share information about his claims with
22 counsel. (Baker Decl, Ex. 5).

23 Given the stakes, the litigation was hard fought in every forum. There are 847 entries on
24 the *Doe* Superior Court docket and 318 entries on the *Cassel* docket. (Baker Dec., Ex. 2). The
25

26 ² See 2017.06.23 Demurrer Hearing Transcript p. 7; 2019.02.22 Judgment. *Cf. Doe v. Google* (2020) 54 Cal.App.5th
27 948, 961 (citing *Iskanian v. CLS Transportation Los Angeles LLC* (2014) 59 Cal.4th 348 in reversing the superior
28 court’s judgment).

³ As this Court accurately observed, Cassel could *only* file the overlapping claims in a separate action because this
Court had already sustained Google’s demurrer as those claims.

1 appellate dockets similarly reveal the contentious nature of the litigation and the careful
2 consideration given by the appellate and supreme courts on the issues presented. (*Id.*). In the
3 whole litigation (including *Cassel*), Plaintiffs' Counsel have spent \$7,283,832.30 in time measured
4 at their regular rates (counsel's total "Gross Lodestar"). Conservatively, excluding all time entries
5 that use either the terms "Adecco" or "Moniz," (to capture time spent on claims against Adecco) or
6 the terms "adult content liability," "ACL," or "medical release," and subtracting the \$10,900 in
7 sanctions awarded by the *Cassel* court as sanctions for Google's discovery conduct, Plaintiffs'
8 Counsel's lodestar is \$5,882,132 (counsel's total "Net Lodestar"). (Sagafi Dec. ¶¶ 30-31; Baker
9 Dec. ¶ 23).

10 For purposes of this motion, the litigation can be broken down into the following phases.

11 **I. Phase A: May 2016 through December 2017**

12 In the first phase, Plaintiffs investigated the claims and engaged in pre-litigation settlement
13 discussions with Google. The *Doe* plaintiffs filed and amended their complaints as the relevant
14 PAGA exhaustion periods expired and in response to the Court's demurrer orders. The *Doe*
15 plaintiffs also propounded and moved to compel discovery on the merits, on Google's preemption
16 defense, and, after the Court sustained Google's second demurrer based on *Garmon*, and Google's
17 policies changed during the litigation, on the catalyst fee issue.

18 In November 2017, Cassel filed his complaint in Santa Clara, alleging claims that partially
19 overlapped with the *Doe* claims that had been dismissed and were subject to appeal. (Baker Decl ¶
20 24, Ex. 2; Sagafi Dec., Exs A-B).

21 **II. Phase B: January 2018 through February 2019**

22 During this phase, the parties unsuccessfully mediated the claims before David Rotman,
23 one of the preeminent mediators of complex employment disputes in the country, and engaged in
24 much-disputed discovery related to Google's policies, agreements, and practices. Google staunchly
25 opposed Plaintiffs' discovery for the most part, arguing (among other things) that the catalyst fee
26 discovery improperly addressed the merits and the substantive claims had been dismissed. During
27 this period, the Court granted a protective order restricting Google's conduct in deposition,
28 compelled the depositions of Google's PMK, Chief People Officer, and a stopleaks investigator,

1 and compelled the production of various versions of Google’s confidentiality agreements, policies,
2 and training programs, as well as a limited number of communications about the policy changes
3 Google enacted during the litigation. Plaintiffs also obtained an admission that the PAGA claims
4 were *a* cause (but not the *sole* cause) of Google’s March 2017 policy changes (the start of “Period
5 B” referenced in the approval motion).

6 Except for information gleaned from the depositions of its Chief People Officer, stopleaks
7 investigator, and *Doe* arbitration documents, Google successfully opposed Plaintiffs efforts to
8 obtain discovery about its interpretation, enforcement, or implementation practices.⁴

9 Also during this time period, and after resolving the medical release claim pled only *Cassel*,
10 Google successfully stayed Cassel’s overlapping speech suppression claims, and, by compelling
11 arbitration of Cassel’s individual claims, stayed his non-overlapping PAGA claims as well. (Baker
12 Dec. ¶ 24, Ex. 2; Sagafi Dec., Exs A-B).

13 **III. Phase C: March 2019 through January 2021**

14 During this period, the *Doe* parties litigated the *Garmon* issue in the Court of Appeal and
15 the California Supreme Court. Google also announced its decision to no longer enforce arbitration
16 agreements with employees who sued it in court. Thus, *Cassel* returned to litigation in Santa Clara
17 County, and the *Cassel* court, after considerable motion practice, lifted the stay as to all of Cassel’s
18 claims, even those that entirely overlapped with *Doe*. The *Cassel* court also overruled Google’s
19 demurrer to Cassel’s complaint on manageability grounds.

20 Cassel served discovery and Google objected. On January 27, 2021, the Court of Appeal
21 issued its *Doe* remittitur. (Baker Dec. ¶ 24, Ex. 2; Sagafi Dec., Exs A-B).

22 **IV. Phase D: February 2021 through August 2022**

23 In this period, the United Supreme Court considered and denied Google’s petition for a
24 writ of certiorari. The *Doe* parties also litigated Plaintiffs’ post-appeal C.C.P. § 170.6 challenge to
25 the prior judge, and the Court deferred further discovery in *Doe* pending Plaintiffs’ motion for
26 summary adjudication. After extensive briefing, the Court denied Plaintiffs’ adjudication motion in

27 ⁴ The Court denied Plaintiffs’ catalyst fee motion on all grounds, finding, among other things, that Plaintiffs failed to
28 present sufficient evidence that Google had changed its enforcement practices. After their successful appeal in *Doe v.*
Google (2020) 54 Cal.App.5th 948, Plaintiffs dismissed their appeal of the catalyst order without prejudice.

1 an amended order (though it did find, significantly, that two versions of Google’s confidentiality
2 agreement were invalid under Business & Professions Code § 16600). The parties also engaged in a
3 second mediation, with renowned mediator Tony Piazza and his colleague Stephanie Chow. This
4 mediation was unsuccessful.

5 Also during this time frame, the *Cassel* court granted three motions to compel discovery
6 and sanctioned Google for discovery violations. It also granted Google’s motion to bifurcate
7 discovery as to Cassel’s PAGA claim to the extent the claims arose from employee-specific
8 instances of retaliation.

9 The *Cassel* parties continued to have discovery disputes over Google’s compliance with the
10 *Cassel* court’s discovery orders and otherwise. On August 29, 2022, the *Doe* case was assigned to
11 this Department. (Baker Dec. ¶ 24, Ex. 2; Sagafi Dec., Exs A-B).

12 **V. Phase E: September 2022 to the Present**

13 The Court is familiar with the proceedings since September 2022. The *Doe* and *Cassel*
14 actions were restructured via the filing of a Sixth Amended and Supplemental Complaint here,
15 which focused the representative litigation in this Court and Cassel’s individual claims in Santa
16 Clara. The Court established and closely supervised a discovery process that: (1) avoided formal
17 discovery requests, objections, and motion practice; (2) facilitated an intensive period of discovery,
18 via in-depth case management conferences and case management orders; and (3) resulted in the
19 production of extensive meaningful information about Google’s interpretation, implementation,
20 and enforcement practices, to supplement the detailed discovery regarding its policies.

21 On July 7, 2023, the Court confirmed that the parties had reached impasse in their
22 negotiations regarding Google’s production of Aggrieved Employee contact information and the
23 appropriate form of *Belaire-West* notice. On July 25, 2023, Plaintiffs filed their *Belaire* motion.

24 Simultaneously, the parties were engaged in renewed settlement discussions, through
25 mediator Stephanie Chow. On August 8, 2023, with the help of the mediator, the parties reached a
26 settlement in principle. (Baker Dec. ¶ 24, Ex. 2; Sagafi Dec., Exs. A-B).

27 Throughout this time, Plaintiffs have undertaken substantial risk and devoted massive
28 amounts of time and effort for the benefit of the State and PAGA Group in this litigation without

1 compensation for the work represented by the Net Lodestar. (See Sagafi Dec. at ¶ 26, Baker Dec. ¶
2 24)

3 For the reasons set forth below, Plaintiffs' Counsel respectfully submits that the attorneys'
4 fees and costs and service awards sought herein are fair and reasonable under the applicable legal
5 standards, and should be awarded in light of the risk undertaken, the effort expended, and the result
6 achieved in this case.

7 ARGUMENT

8 I. The Court Should Approve the Requested Attorneys' Fees

9 California law provides for a prevailing plaintiff to recover attorneys' fees and costs in both
10 PAGA cases and common fund class actions. *E.g.*, Cal. Labor Code § 2699(g)(1); Code Civ. Proc.
11 § 1021.5. "California has long recognized, as an exception to the general American rule that
12 parties bear the costs of their own attorneys, the propriety of awarding an attorney fee to a party
13 who has recovered or preserved a monetary fund for the benefit of himself or herself and others."
14 *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 488-89. "The purpose of the fee award is to
15 compensate the successful lawyer for the benefit he has conferred on the class [or the State], for
16 the risk he has taken in prosecuting a frequently long and complex case, and for the hours and
17 expenses he has spent on the case." *Muehler v. Land O'Lakes, Inc.* (D. Minn. Sept. 10, 1985) 617
18 F.Supp. 1370, 1379.

19 In awarding fees in a class or PAGA action, courts have the discretion to use either the
20 percentage of the recovery or the lodestar approach. *See e.g., Laffitte* at 489-97; *Basiliali v.*
21 *Allegiant Air, LLC* (C.D. Cal. Jul. 1, 2019) 2019 WL 8107885, at *4 (PAGA action quoting
22 *Laffitte*, 1 Cal.5th at 503). "The choice of a fee calculation method is generally one within the
23 discretion of the trial court, the goal under either the percentage or lodestar approach being the
24 award of a reasonable fee to compensate counsel for their efforts." *Id.* at 504.

25 Consistent with this law, Plaintiffs' Counsel seek a fee award of one third of the common
26 fund, or \$9,000,000. This award is reasonable under either the percentage-of-recovery and lodestar
27 methods.
28

1 **A. The Fee Request Is Reasonable Under the Percentage-of-Recovery Method,**
2 **Which Is the Preferable Method to Promote PAGA Enforcement**

3 In *Laffitte*, the California Supreme Court confirmed that the percentage-of-recovery method
4 is appropriate, fair, and efficient. *Id.* at 503 (“the percentage method is a valuable tool” to calculate
5 the fee in a common fund case). The Court noted that “most courts and commentators now believe
6 that the percentage method is superior.” *Id.* at 494 (quoting the American Law Institute (2010)
7 Principles of the Law of Aggregate Litigation § 3.13). There are numerous “recognized advantages
8 of the percentage method—including relative ease of calculation, alignment of incentives between
9 counsel and the class, a better approximation of market conditions in a contingency case, and the
10 encouragement it provides to counsel to seek an early settlement and avoid unnecessarily
11 prolonging the litigation.” *Id.* at 503.

12 The percentage method encourages counsel to spend their time efficiently and focus on
13 maximizing the size of the class’s recovery, rather than their own lodestar hours. By making a
14 percentage fee award in a common fund case, “any and all inducement or inclination [of plaintiffs’
15 counsel] to increase the number of hours will be reduced, since the amount of work performed will
16 not be permitted to alter the contingent fee” and plaintiffs’ counsel has “substantial inducement . . .
17 to settle the matter quickly” because the compensation will not be enhanced by a delay. *Id.* at 493
18 (quoting *Court Awarded Attorney Fees: Third Circuit Task Force* (1985) 108 F.R.D. 237, 242).

19 Plaintiffs’ one-third request is reasonable because it is consistent with the percentages
20 awarded in comparable PAGA and California class action settlements. “Empirical studies show
21 that, regardless [of] whether the percentage method or the lodestar method is used, fee awards in
22 class actions average around one-third of the recovery.” *Consumer Privacy Cases* (2009) 175
23 Cal.App.4th 545, 557 n.13; *see also Laffitte*, 1 Cal.5th at 506 (upholding decision to approve fee
24 award of one-third of a \$19 million settlement); *Basiliali*, *supra*, 2019 WL 8107885, at *4
25 (applying one-third percentage in PAGA case); *Abelar v. American Residential Services, L.L.C.*
26 (C.D. Cal. Nov. 14, 2019) 2019 WL 6054607, at *6 (same).⁵

27 ⁵ California federal courts also frequently award one third of the common fund in attorneys’ fees. *See, e.g., In re Mego*
28 *Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 460 (affirming award of 33.3 percent); *Yanez v. HL Welding, Inc.*
(S.D. Cal. Mar. 15, 2022) 2022 U.S. Dist. LEXIS 46169, at *34-35 (awarding fees of one third of the common fund).

1 **B. The Lodestar Crosscheck Confirms the Reasonableness of the Percentage**
2 **Recovery**

3 When applying the percentage of the fund method, California trial courts have discretion to
4 conduct a lodestar “crosscheck” to confirm the reasonableness of a percentage-based fee. *Laffitte*, 1
5 Cal.5th at 503-04. When conducting lodestar crosschecks, trial courts may use counsel declarations
6 summarizing overall time spent, rather than scrutinizing individual time entries. *Id.* at 505. “It is
7 not necessary to know the exact number of minutes spent nor the precise activity to which each
8 hour was devoted nor the specific attainments of each attorney.” *Muehler*, 617 F.Supp. at 1379.

9 **1. Plaintiffs’ Counsel Reasonably Expended 8,285 “Net” Hours Over**
10 **Seven Years to Achieve the Settlement Result**

11 Plaintiffs’ Counsel spent 8,285 “net” hours (out of 9762.8 “gross” hours, before the
12 subtractions described above) prosecuting the released claims against Google. These hours were
13 reasonably expended “in pursuit of the ultimate result achieved in the same manner that an attorney
14 traditionally is compensated by a fee-paying client.” *Hensley v. Eckhart* (1983) 461 U.S 424, 431;
15 *see also Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1111 (“The number of hours
16 to be compensated is calculated by considering whether . . . the time could reasonably have been
17 billed to a private client.”).

18 As detailed above, in the Approval Motion, and in the supporting declarations, the seven
19 years of litigation involved substantial time drafting and responding to many motions, extensive
20 discovery motion practice and document review, legal research and investigation, appellate
21 litigation, and extensive settlement negotiations, including two private mediations. Sagafi Dec. ¶¶
22 28-31 & Exs. A and B; Baker Dec. ¶ 24, Ex. 2). Plaintiffs’ Counsel litigated the released claims
23 efficiently as a coordinated team of one small firm and one large firm working together. Plaintiffs’
24 Counsel from both firms were careful to litigate this matter efficiently.

25 For the first four years, Baker Curtis & Schwartz LLP (“BCS”) litigated the claims in a
26 focused and efficient manner. “The ‘small shop model allows for streamlined coordination, rapid
27 decision making, and concentration of expertise. It also requires seasoned attorneys to perform a
28 range of legal tasks.’” *Chaid v. Glickman* (N.D. Cal. Nov. 17, 1999) 1999 WL 33292940, *14.
29 Seasoned attorneys tend to be more efficient and, as with defense firms, they do not bill different

1 rates for different tasks. *Davis v. City of San Francisco* (9th Cir. 1992) 976 F.2d 1536, 1548.

2 For its part, Outten & Golden deployed a small team of core attorneys and support staff at
3 any given time in order to minimize duplication of efforts and maximize billing judgment and
4 made every effort to have the work performed by the attorney with the lowest hourly rate who was
5 able to perform it effectively. (Sagafi Dec. ¶ 32). Courts recognize that pyramidal staffing within a
6 larger firm has its efficiencies. *Chaid, supra*, 1999 WL 33292940 * 16. In the end, “[c]ompetent
7 plaintiffs’ counsel are in the best position to determine how their time and the time of their
8 associates can best be allocated.” *Muehler, supra*, 617 F.Supp. at 1379. Courts need not “become
9 embroiled in decisions involved in staffing individual cases or the structuring of the firms before
10 it.” *Chaid, supra*, at *15.

11 In the initial phases, from June 2016 through January 2021, BCS, a small firm, spent 2,784
12 total hours from June 2016 through the *Doe* remittitur. The vast majority of these hours were
13 worked by “seasoned” attorney Chris Baker. After the remittitur and through today, Outten &
14 Golden (O&G), a large firm, took the laboring oar. It expended a total of 4,627 hours (compared to
15 874 additional hours by BCS). Consistent with its large firm model, O&G pushed work down to a
16 team of more junior attorneys and personnel where it deemed appropriate. While junior attorneys
17 may be less efficient, and require more supervision, they bill out at lower rates.

18 Plaintiffs’ Counsel will continue to work on this case for several more months, at a
19 minimum. For example, Plaintiffs’ Counsel must prepare for the Approval Hearing and will spend
20 time on this case after the Hearing overseeing the Settlement Administrator, answering PAGA
21 Group Member questions, communicating with Google as necessary regarding any settlement
22 administration issues that may arise, and reporting to the Court regarding the final distribution of
23 the settlement. Sagafi Dec. ¶ 33.

24 **2. Plaintiffs’ Counsel’s Rates Are Consistent with Market Rates and Are** 25 **Actually Paid by Clients.**

26 Plaintiffs’ Counsel’s hourly rates are also “within the range of reasonable rates charged by
27 and judicially awarded comparable attorneys for comparable work.”⁶ *Children’s Hosp. & Med.*

28 ⁶ Consistent with case law and common practice, Plaintiffs’ Counsel calculate their lodestar at their current billing rates. *Copeland v. Marshall* (D.D.C. 1980) 641 F.3d 880, 893 n.23.

1 *Ctr. v. Bonta* (2002) 97 Cal.App.4th 740,783; *see also Center for Biological Diversity v. County of*
2 *San Bernardino* (2010) 188 Cal.App.4th 603, 616 (generally, the reasonable hourly rate “is that
3 prevailing in the community for similar work”). An attorney’s billing rate carries a presumption of
4 reasonableness. *Mun. Court v. Bloodgood* (1982) 137 Cal.App.3d 29, 47 (“The value of an
5 attorney’s time generally is reflected in his normal billing rate.”). They are consistent with the
6 market and, in fact, are actually paid by clients who have retained them on an hourly basis. (Sagafi
7 Dec. ¶ 34; Baker Dec. ¶ 22)

8 In support of this Motion, Plaintiffs’ Counsel have submitted declarations setting forth the
9 current hourly rates for all of the attorneys and staff who contributed to this litigation.⁷ *See* Sagafi
10 Dec. ¶¶ 28 (showing attorney rates of \$400 to \$1100 per hour and support staff rates of \$325-350
11 per hour); Baker Dec. ¶¶ 22 (showing rates from \$280 to \$1000 an hour). Plaintiffs’ Counsel’s
12 rates have routinely been approved by courts in California, are actually paid on an hourly basis by
13 clients, and fall well within the range of those in the prevailing community. Sagafi Dec. ¶ 35-36;
14 Baker Dec. ¶ 22 They are also reasonable given Plaintiffs’ Counsel’s particular experience and
15 expertise. Sagafi Dec. ¶ 5; Baker Dec. ¶¶ 17-18.

16 **C. The Requested Fee Is Reasonable in Light of the Multiplier Factors and a**
17 **Modest Lodestar Multiplier of 1.53**

18 Under either the percentage-of-recovery or lodestar methods, the fee can be
19 adjusted up or down based on identified factors. While the factors are formulated somewhat
20 differently depending on the method, their substance is basically the same: Among other things,
21 the Court may consider: (1) the results achieved; (2) the risks involved in litigation; (3) the novelty
22 and difficulty of the litigation; (4) the skill required and the quality of the work; and (5) the
23 contingent nature of the fee. *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal. Jul. 11, 2013) 2013 WL
24 3541217, *8; *Laffitte*, 1 Cal.5th at 489 (citing *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th
25 19, 26). “Of these factors, ‘the overall result and the benefit to the class from the litigation is the

26 ⁷ *E.g., Hamilton, supra*, 2021 WL 5331451 *12 (approving BCS’s then current rates, particularly in light of the finding
27 affirmed in *Laffitte* that 2009 hourly rates ranged from \$775 to \$950 an hour with respect to complex employment
28 matters in California); *Smith v. Kaiser Found. Hosps.* (S.D. Cal. June 15, 2021) 2021 U.S. Dist. LEXIS 112179, at *29
(approving Outten & Golden’s rates ranging from \$280 to \$950 per attorney hour and \$270 per legal support staff
hour).

1 most critical factor in granting a fee award.” *Lazarin, supra*, at *8.

2 In this case, Plaintiffs do not seek an upward adjustment under the percentage-of-recovery
3 method. They seek a percentage that is presumptively reasonable, and there are no factors
4 supporting a downward adjustment. The lodestar crosscheck results in a lodestar multiplier of 1.53,
5 which strongly supports the reasonableness of the percentage-method-based fee. *Chavez v. Netflix,*
6 *Inc.* (2008) 162 Cal.App.4th 43, 66 (affirming multiplier of 2.5); *In re Sutter Health Uninsured*
7 *Pricing Cases* (2009) 171 Cal.App.4th 495, 503 (multiplier “of 2.52 is fair and reasonable”);
8 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051-1052 (holding a multiplier of
9 3.65 was appropriate after surveying 34 common-fund cases and finding the average multiplier for
10 those cases was 3.32); *Dyer v. Wells Fargo Bank, N.A.* (N.D. Cal. 2014) 303 F.R.D. 326, 334
11 (finding that “2.83 multiplier falls within the Ninth Circuit’s presumptively acceptable range of
12 1.0-4.0”). When the lodestar method is applied, “multipliers ranging from one to four are
13 frequently awarded in common fund cases.” *Wershba v. Apple Computer, Inc.* (2001) 91
14 Cal.App.4th 224, 255, *disapproved of on other grounds by Hernandez v. Restoration Hardware*
15 (2018) 4 Cal.5th 260.

16 Here, the lodestar multiplier of 1.53 is also supported by the multiplier factors.
17 Specifically:

18 Results Obtained. According to data provided by the LWDA and cross-referenced by
19 Plaintiffs’ Counsel, this is the largest PAGA-only settlement in history and the second largest
20 PAGA recovery ever. Baker Dec. ¶ 9, Ex. 8. In addition to this exceptional monetary amount,
21 virtually all of Google’s current and former employees will receive a notice stating that Google’s
22 agreements, policies, and practices do not prohibit the exercise of their speech rights and that
23 Google will not retaliate against them for the exercise of these rights. It is extremely rare that a
24 settlement will include such a clear, concrete, detailed affirmation of the rights at issue in the
25 litigation. As described in the Approval Motion, the Settlement fund represents an excellent
26 recovery in light of the complexity of the litigation, the novelty of Plaintiffs’ speech suppression
27 claims, and the likelihood that even if Plaintiffs prevailed on the merits, the Court might exercise
28 its discretion to reduce civil penalties. (Sagafi Dec. ¶ 23.)

1 This is an excellent result that supports a multiplier.

2 The Contingency Nature of the Case, the Risks of Litigation, and Novelty and Difficulty of
3 the Questions Involved. “A fee enhancement reflecting the risk that the attorney will not receive
4 payment if the suit does not succeed . . . is intended to approximate market-level compensation for
5 such services, which typically includes a premium for the risk of nonpayment.” *Ketchum v. Moses*
6 (2001) 24 Cal.4th 1122, 1138. Plaintiffs’ Counsel brought this case on contingency and have
7 shouldered it for seven years. The novel claims present numerous difficult issues about federal
8 preemption, the meaning of ambiguous statutes, the application of PAGA, and the proper
9 balancing of competing rights.

10 Everything about this litigation, as described at greater length in the Approval Motion,
11 involved very unusual claims that have rarely been litigated before. Therefore, the entire litigation
12 was and remains highly risky. Among other things, Plaintiffs overcame significant skepticism in
13 the trial court, the very real possibility of an adverse appellate ruling on *Garmon* preemption, a
14 determination that the case was unmanageable, a finding that implementation or enforcement
15 evidence was irrelevant to the Labor Code provisions at issue, and a Defendant willing and able to
16 zealously oppose discovery and liability. Still, they achieved the present settlement.

17 These factors support the reasonableness of the crosscheck multiplier.

18 Preclusion of Other Work. Plaintiffs’ Counsel’s commitment to this case precluded both
19 firms from accepting other profitable or otherwise worthwhile cases, both because of the number
20 of hours this case required and because Plaintiffs’ Counsel needed to limit acceptance of other
21 work that could jeopardize their commitment of adequate resources to litigate the case in the
22 future. Committing resources to this case necessitated turning down other contingency cases. *Id.* ¶
23 26; Baker Dec. ¶ 24. The fact that Plaintiffs’ Counsel was precluded from accepting other work as
24 a result of their work in this case also supports their fee request. *See Ketchum*, 24 Cal.4th at 1132.

25 Experience and Skill of Counsel. Plaintiffs’ Counsel’s experience and ability were essential
26 to the successful result here. O&G is a nationwide and California leader in advocating for workers’
27 rights. It is nationally recognized for its excellence in employment litigation, and is experienced in
28 the litigation, certification, settlement, and trial of class and representative actions similar to this

1 case. (Sagafi Dec. ¶¶ 5-21). This expertise directly contributed to the favorable settlement in this
2 case, and therefore supports the award of fees. *Rieckborn v. Velti PLC* (N.D. Cal. Feb. 3, 2015)
3 2015 U.S. Dist. LEXIS 13542, at *76 (noting that “the skill required to perform such work”
4 favored the fee award). Google, for its part, was represented by a team at Paul Hastings who
5 included (at various times) the head of its Los Angeles office, the Chair of its San Francisco
6 Employment Law Department and Co-chair of its Wage and Hour Group, the Chair of its Los
7 Angeles Employment Law Department, the Chair of its Employee Mobility and Trade Secret
8 Practice, and the Co-chair of its Appellate Practice Group. (Baker Dec. ¶ 18); *In re Equity Corp. of*
9 *Am. Sec. Litig.* (C.D. Cal. 1977) 438 F.Supp. 1303, 1337 (recognizing that “plaintiff’s attorneys
10 have been up against established and skillful defense lawyers and should be compensated
11 accordingly”).

12 This factor also supports a lodestar multiplier.

13 **II. The Court Should Approve the Service Awards**

14 “An incentive [or service] award is appropriate if it is necessary to induce an individual to
15 participate in the suit.” *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394
16 (cleaned up). These awards “are intended to compensate class [or PAGA] representatives for work
17 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
18 action, and, sometimes, *to recognize their willingness to act as a private attorney general.*” *Id.*
19 (emphasis added). “[C]ourts recognize the ‘unique risks’ named plaintiffs in employment class
20 actions face with respect to future employment.” *Walsh v. CorePower Yoga LLC* (N.D. Cal. Oct.
21 3, 2017) 2017 U.S. Dist. LEXIS 163991, at *40; *see also Lopez v. Mgmt. & Training Corp.* (S.D.
22 Cal. Apr. 20, 2020) 2020 U.S. Dist. LEXIS 70029, at *30 (class representatives “face stigma upon
23 future employment opportunities having sued a former employer”). Courts may also consider
24 whether the named plaintiff had reasonable fears of workplace retaliation in determining the size of
25 a service award. *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 978.

26 Other the typical factors in determining a service award are: (1) the amount of time and
27 effort spent by the [PAGA] representative, the duration of the litigation, and the actions they took
28 to protect the interests of the class; (2) the degree to which the [State and aggrieved employees

1 have] benefitted from those actions; (3) the personal benefit received by the [PAGA] representative
2 as a result of the litigation; (4) the risk, both financial and otherwise, the [PAGA] representative
3 faced in bringing the suit; and (5) the notoriety and personal difficulties encountered by the
4 [PAGA] representative. *See Clark v. Am. Res. Servs. LLC* (2009) 175 Cal.App.4th 785, 804.

5 In accordance with the above law, Plaintiffs respectfully request that the Court approve
6 service awards of \$40,000 each for Plaintiffs John Doe and DeWayne Cassel, and \$20,000 each for
7 Paola Correa and David Gudeman.⁸ This totals \$120,000, only 0.4% of the common fund. See
8 *Palacios v. Penny Newman Grain, Inc.* (E.D. Cal. May 26, 2016) 2016 U.S. Dist. LEXIS 70050, at
9 *33 (approving service awards that totaled 5% of the gross settlement); *Rabin v. PWC LLP* (N.D.
10 Cal. Feb. 4, 2021) 2021 WL 837626, at *10 (approving service awards of \$20,000 to each named
11 plaintiff where the aggregate proposed incentive award was 0.34% of the gross fund).

12 The requested awards for Correa and Gudeman fall well within the standard range.⁹ The
13 requested awards for Doe and Cassel are arguably above standard, but far below the top of the
14 range. *E.g., Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (\$300,000 service
15 awards where representatives directly participated in the mediation process, vigorously asserted the
16 interests of the class, took risks, bore hardships, and made sacrifices that absent class members did
17 not); *Cuena v. Kaiser Foundation Health Plan* (Alameda Superior Court Oct. 28, 2021, Case No.
18 RG-2294426) (\$75,000 service award); *del Toro Lopez v. Uber Tech.* (N.D. Cal. Nov 14, 2018)
19 2018 WL 5982506, at *3 (\$50,000 service award); *Van Vranken v. Atl. Richfield Co.* (N.D. Cal.
20 1995) 901 F.Supp. 294, 300 (\$50,000 service award). The higher awards for Doe and Cassel are
21 appropriate in the circumstances of this case.

22 First, Plaintiffs made the Settlement possible for the State and all other PAGA Group
23 Members. Without them, it literally would not have happened. Each Plaintiffs' participation in the

24 ⁸ Each Plaintiff resolved their individual claims, if any, against Google months or years prior to the PAGA settlement.
25 Though Gudeman was recently dismissed from the lawsuit without prejudice, he may still seek a service award as a
26 PAGA Representative in light of the material aid he provided to the lawsuit over most of its life. *Hamilton, supra*,
27 2021 WL 5331451 *8 (granting service award to PAGA Representative).

28 ⁹ Trial courts frequently order service awards at or above \$20,000. *See, e.g., Johnson v. York Claims Serv.* (Sac.
Super. Ct. 2018) 2018 Cal. Super. LEXIS 21703, at *3 (approving service awards of \$25,000 each to two
representatives); *Bottlebrush Invs., L.P. v. Lambeth Co.* (L.A. Super. Ct. 2017) 2017 Cal. Super. LEXIS 7819, at *5
(approving service awards of \$25,000 each to two representatives); *Boudreau v. Primeritus Fin. Servs.* (Sac. Super. Ct.
2021) 2021 Cal. Super. LEXIS 40436, at *8 (approving \$25,000 award).

1 case was imperative to its success; and the settlement might not have been reached if each named
2 Plaintiff had not participated. (Baker Dec. ¶¶ 28-29, Exs. 4-6). *Particularly* in cases brought under
3 the Private Attorney General Act, the Court should recognize and reward a plaintiff's willingness
4 to act as a *private attorney general*. *Cellphone Termination Fee Cases*, *supra*, 186 Cal.App.4th at
5 1394. The purpose of PAGA is to enlist aggrieved employees in the task of civil enforcement of the
6 Labor Code. *Iskanian v. CLS Transportation Los Angeles LLC* (2014) 59 Cal.4th 348, 390.
7 Aggrieved employees are the lifeblood of the statute. But in order for a service award (or the
8 promise of a possible service award) to successfully induce initial or continued participation in a
9 PAGA case – again, the purpose of the award – it must be of sufficient magnitude to actually
10 induce participation. In making this determination, Plaintiffs propose the Court utilize the well-
11 established, and objective “reasonable person in the employee’s position” standard. *Cf.*
12 *Pennsylvania State Police v. Suders* (2004) 542 U.S. 129, 141. Under this standard, Plaintiffs’
13 proposed service awards are especially reasonable.

14 Second, Doe remains a Google employee, and Cassel remained a Google employee through
15 May of this year. During the years of this litigation, both individuals lived day-to-day with fears of
16 retaliation and antagonism due to their role in prosecuting these claims as private attorneys general.
17 (Baker Decl, Exs 4-5). [REDACTED]

18 [REDACTED]
19 [REDACTED] Still, Doe and Cassel, like Correa and Gudeman, actively
20 participated in the prosecution of this case.

21 As for the other factors, and as detailed in the declarations, all of the PAGA Representatives
22 committed significant time and effort to the case, the litigation was long, they received no personal
23 benefit from prosecuting the claims, and they each, in their own way, encountered notoriety and
24 personal difficulties as a result. Through their perseverance, they provided a significant benefit to
25 both the State and their fellow aggrieved employees by vindicating their right to speak,
26 whistleblow, and compete. (Baker Dec. ¶¶ 28-29, Exs. 4-6).

27 For these reasons, the Court should approve the requested awards.
28

1 **III. The Court Should Approve the Requested Costs**

2 **A. Plaintiffs' Litigation Costs Are Reasonable**

3 A "prevailing party is entitled as a matter of right to recover costs in any action or
4 proceeding." Cal. Civ. Proc. Code § 1032(4)(b). "'Prevailing party' includes the party with a net
5 monetary recovery[.]" *Id.* In the PAGA context, the "common fund doctrine provides that a private
6 plaintiff, or his attorney, whose efforts create . . . a fund to which others also have a claim is
7 entitled to recover from the fund the costs of his litigation[.]" *Vincent v. Hughes Air W., Inc.* (9th
8 Cir. 1977) 557 F.2d 759, 769. Reimbursement for reasonable out-of-pocket expenses that were
9 "incidental and necessary to the effective representation of the State is appropriate."¹⁰

10 In accordance with this principle, Plaintiffs' Counsel seeks reimbursement of \$125,522.95
11 in out-of-pocket litigation costs expended in pursuing the released claims. (Sagafi Dec. ¶ 37 & Ex.
12 C; Baker Dec. ¶ 25). Plaintiffs' Counsel also estimate spending an additional amount in connection
13 with the filing of this Motion and the Approval Motion but are not requesting reimbursement for
14 these costs because the actual cost was not yet incurred as of the preparation of these papers.
15 (Sagafi Dec. ¶ 33).

16 **B. The Settlement Administrator's Projected Costs Are Reasonable**

17 Plaintiffs request approval of the Settlement Administrator's costs of \$153,900. *See* Baker
18 Dec. ¶ 27). The majority of the costs for settlement administration will be the postage costs for
19 mailing the Notice and settlement checks to the approximately 97,000 PAGA Group Members. If
20 Approval of the settlement is granted, the Settlement Administrator will: (a) process and mail
21 settlement award checks; (b) handle tax withholdings as required by the Settlement and the law; (c)
22 prepare, issue, and file tax returns and other applicable tax forms as required by law; and (d) handle
23 the distribution of any unclaimed funds pursuant to the terms of the Settlement. *Id.* ¶ 19. The
24 Settlement Administrator's work is crucial to effectuate this settlement. *See* 4 Newberg on Class
25 Actions § 12:20 (5th ed.).

27 ¹⁰ *See, e.g., Millan v. Cascade Water Servs., Inc.* (E.D. Cal. May 31, 2016) 2016 U.S. Dist. LEXIS 72198, at *36 ("An
28 attorney is entitled to recover as part of the award of attorney's fees those out-of-pocket expenses that would normally
be charged to a fee-paying client.") (internal citations omitted).

1 **CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court approve Plaintiffs'
3 Counsel's motion for fees, costs, and service awards.

4 Respectfully submitted

5 DATED: October 11, 2023

BAKER CURTIS & SCHWARTZ, P.C.

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7 By: 

Chris Baker

8
9 Chris Baker (SBN 181557)
Deborah Schwartz (SBN 208934)
10 BAKER CURTIS & SCHWARTZ, P.C.
One California St., Suite 1250
11 San Francisco, CA 94111
Telephone: (415) 433-1064
12 Fax: (415) 422-9966
Email: cbaker@bakerlp.com
13 Email: dschwartz@bakerlp.com

14
15 Jahan C. Sagafi (SBN 224887)
Molly Frandsen (SBN 320094)
OUTTEN & GOLDEN LLP
One California Street, 12th Floor
16 San Francisco, CA 94111
Telephone: (415) 638-8800
17 Facsimile: (415) 638-8810
Email: jsagafi@outtengolden.com
18 Email: mfrandsen@outtengolden.com

19
20 Michael J. Scimone *
21 Julio Sharp-Wasserman *
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
22 New York, NY 10017
Telephone: (212) 245-1000
23 Facsimile: (646) 509-2060
Email: mscimone@outtengolden.com
24 Email: jsharp-wasserman@outtengolden.com
25 * admitted pro hac vice

26
27 *Attorneys for Plaintiffs as Proxies for the State*
28 *and Aggrieved Employees*