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# UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

In re GOOGLE REFERRER HEADER PRIVACY LITIGATION

This Document Relates To: All Actions

# SAN JOSE DIVISION

Case No. 5:10-cv-04809-EJD

#### AMENDED PRELIMINARY APPROVAL ORDER

WHEREAS, Plaintiffs Paloma Gaos, Anthony Italiano, and Gabriel Priyev ("Plaintiffs") and Defendant Google Inc. ("Google" or "Defendant") (collectively, the "Parties"), entered into a Settlement Agreement (ECF No. 165-2) on August 24, 2022, which, together with the exhibits and appendices thereto, sets forth the terms and conditions for a proposed resolution of this litigation and for its dismissal with prejudice;

WHEREAS, this Court has reviewed the Settlement entered into by the Parties, all exhibits thereto, the record in this case, and the Parties' arguments;

WHEREAS, this Court preliminarily finds, for the purpose of settlement only, that the Settlement Class meets all the prerequisites of Federal Rule of Civil Procedure 23 for class certification, including numerosity, commonality, typicality, predominance of common issues, superiority, and that the Plaintiffs and Class Counsel are adequate representatives of the Settlement Class;

1. All terms and definitions used herein have the same meanings as set forth in the Settlement Agreement.

#### Preliminary Certification of Settlement Class for Purpose of Settlement Only

2. The Settlement is hereby preliminarily approved as fair, reasonable, and adequate such that notice thereof should be given to members of the Settlement Class. Under Federal Rule of Civil Procedure 23(b)(3), the Settlement Class, as set forth in § 1.49 of the Settlement Agreement and defined as follows, is preliminarily certified for the purpose of settlement only:

All Persons in the United States who submitted a search query to Google and clicked on a search result at any time during the period commencing on October 25, 2006, up to and including September 30, 2013.

The Settlement Class excludes: (i) Google, its subsidiaries and affiliates, officers, and directors; (ii) the judge(s) to whom these cases are or have been assigned and any member of the judges' staff or judges' immediate family; (iii) Persons who have settled with and released Google from individual claims substantially similar to those alleged in the Consolidated Complaint; (iv) Persons who submit a valid and timely Request for Exclusion pursuant to Section 7; and (v) Class Counsel.

- 3. If the Final Order and Judgment is vacated, modified in a manner deemed material by any Party, or reversed, in whole or in part, the Agreement will be deemed terminated (except with respect to rulings on any Fee Award or Service Award), unless all Parties who are adversely affected thereby, in their sole discretion within thirty (30) days of receipt of such ruling, provide written notice through counsel to Class Counsel and Google of their intent to proceed with the Agreement as modified by the Court or on appeal.
- 4. Lead Counsel and the Plaintiffs are appointed as adequate representatives of the Settlement Class. Kassra Nassiri of Nassiri & Jung LLP, Michael Aschenbrener of KamberLaw, LLC, and Mark Bulgarelli of Progressive Law Group are hereby appointed as Lead Class Counsel.

#### **Notice to the Settlement Class**

5. The Court approves the Notice Plan, detailed in the Declaration of Jeanne C. Finegan attached to the Motion for Preliminary Approval of Class Action Settlement as

Exhibit C (ECF No. 165-3). The Court further approves the Notice of Proposed Class Action Settlement (ECF No. 176-8), Claim Form (ECF No. 176-4), Objection Form (ECF No. 176-6) and Opt-Out Form (ECF No. 165-7), which are attached to the Motion for Preliminary Approval of Class Action Settlement and to the Declaration of Michael Aschenbrener. The Court finds that the dissemination of the Notice Plan, Notice of Proposed Class Action Settlement, Claim Form, Objection Form, and Opt-Out Form substantially in the manner and form set forth in the papers supporting the Motion for Preliminary Approval of Class Action Settlement meets the requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice practicable under the circumstances, and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Actions, the effect of the proposed Settlement (including the releases contained therein), the anticipated Motion for a Fee and Expense Award and for Service Awards, and their rights to participate in, opt out of, or object to any aspect of the proposed Settlement.

6. The Notice Plan will be implemented, and all announcements at least initially posted on the Settlement Website, within seven (7) days of the entry of the Preliminary Approval Order.

#### **Settlement Administration**

- 7. The Court appoints Kroll to serve as the Settlement Administrator. Kroll shall supervise and administer the notice procedures, establish and operate the Settlement Website, administer the claims processes, distribute cash payments according to the processes and criteria set forth in the Settlement Agreement, and perform any other duties that are reasonably necessary and/or provided for in the Settlement Agreement.
- 8. Settlement Class Members who wish to make a Claim must do so by submitting a Claim Form by July 31, 2023, in accordance with the instructions contained therein. The Settlement Administrator shall determine the eligibility of Claims submitted and allocate the Settlement Funds in accordance with the Settlement Agreement.

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9. Settlement Class Members who wish to object to the Settlement must object in writing and: (i) clearly identify the case name and number; (ii) state the Settlement Class Member's full name, address, email address, and telephone number; (iii) include the full name, address, telephone number, and email address of the Objector's counsel (if any); (iv) state whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) state with specificity each objection, as well as the specific reasons, if any, for each objection, including any evidence and legal authority the Settlement Class Member wishes to bring to the Court's attention and any evidence the Settlement Class Member wishes to introduce in support of his/her objection(s); (vi) identify the number of class action settlements objected to by the Settlement Class Member in the last three years, and list those cases by case name and number; and (vii) be verified by an accompanying declaration submitted under penalty of perjury or a sworn affidavit demonstrating that the Settlement Class Member is entitled to be included as a member of the Settlement Class. Objections must be filed with the Court or postmarked by July 31, 2023 at: Class Action Clerk, United States District Court for the Northern District of California, 280 South 1<sup>st</sup> Street, San Jose, California 95113.

10. Any Settlement Class Member who seeks to be excluded from the Settlement Class must submit a request for exclusion, either using the electronic Opt-Out Form or providing other written request, which must be sent electronically or postmarked by July 31, 2023.

## Final Approval Hearing

a.m., to determine whether the requirements for certification of the Settlement Class have been met; whether the proposed Settlement of the Actions on the terms set forth in the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class Members; whether Class Counsel's motion or application for Fees and Expense Award and application for the Service Awards should be approved; and whether final judgment approving the Settlement and dismissing the Actions on the merits with prejudice against the Named Plaintiffs and all other Settlement Class Members should be entered. The Final Approval

 Hearing may, without further notice to the Settlement Class Members (except those who have filed timely and valid objections and requested to speak at the Final Approval Hearing), be continued or adjourned by order of the Court.

- 12. Any Objector who timely submits an Objection has the option to appear and request to be heard at the Final Approval Hearing, either in person or through the Objector's counsel. Any Objector wishing to appear and be heard at the Final Approval Hearing must include a Notice of Intention to Appear in the body of the Objector's Objection. Objectors who fail to submit or include such timely Notice of Intention to Appear may not speak at the Final Approval Hearing without permission of the Court.
- 13. By June 26, 2023, Class Counsel shall file all papers in support of any Motion for a Fee and Expense Award and/or for Service Awards, and shall serve copies of such papers upon Defense Counsel and upon any Objectors who have validly complied with this Order and have filed their objections prior to the date and time of Class Counsel's fee motion. All opposition papers shall be due by July 31, 2023, and any reply papers shall be filed by August 21, 2023.
- 14. By August 24, 2023, Class Counsel shall file all papers in support of the application for the Final Approval Order and Final Judgment, and shall serve copies of such papers upon Defense Counsel and upon any Objectors who have validly complied with this Order. All opposition papers shall be filed by September 7, 2023, and any reply papers shall be filed by September 21, 2023.
- 15. Class Counsel's motion or application for a Fee and Expense Award and for Service Awards will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. Any appeal from any order relating solely to Class Counsel's Motion for a Fee and Expense Award, and/or for Service Awards, or any reversal or modification of any such order, shall not operate to terminate, vacate, or cancel the Settlement.
- 16. Defense Counsel and Class Counsel are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement that are not materially inconsistent with either this Order or the Settlement Agreement.

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### **Schedule and Next Steps**

## 17. The Court sets the following schedule:

Event	Deadline/Date
Notice Date	June 1, 2023
Opening Brief for Fees	June 26, 2023
Claims Deadline	July 31, 2023
Objection Deadline	July 31, 2023
Opt-Out Deadline	July 31, 2023
Opposition Brief for Fees	July 31, 2023
Reply Brief for Fees	August 21, 2023
Opening Briefs for Final Approval	August 24, 2023
Opposition Brief for Final Approval	September 7, 2023
Reply Brief for Final Approval	September 21, 2023
Final Approval Hearing	October 12, 2023 at 9 a.m.

IT IS SO ORDERED.

Dated: May 30, 2023

EDWARD J. DAVILA United States District Judge