

## SETTLEMENT AGREEMENT

### Exhibit A

### Exhibit B

### Exhibit C

### Exhibit D

### Exhibit E

This Settlement Agreement (“**Agreement**”) is made between Plaintiffs Chasom Brown, William Byatt, Jeremy Davis, Christopher Castillo, and Monique Trujillo (“**Plaintiffs**”), and Google LLC (“**Google**”), a Delaware limited liability company with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California. Each Plaintiff and Google may be referred to herein singularly as a “**Party**” or collectively as the “**Parties**.” This Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein) as against the Released Parties (as defined herein), subject to the approval of the Court and the terms and conditions set forth in this Agreement.

### **Recitals**

WHEREAS, the Complaint was filed on June 2, 2020 (ECF 1) against Google and Alphabet Inc. in the Northern District of California, in the action entitled *Brown, et al. v. Google LLC*, Case No. 4:20-cv-03664-YGR-SVK (the “**Action**”) to bring claims for damages and injunctive relief on behalf of the named plaintiffs and purported classes of similarly situated users;

WHEREAS, the Parties filed a stipulation of voluntary dismissal of Defendant Alphabet, Inc. on August 20, 2020 (ECF 51, which the Court granted on August 24, 2020 (ECF 57));

WHEREAS, a First Amended Complaint was filed against Google on September 21, 2020 (ECF 68);

WHEREAS, Google moved to dismiss the First Amended Complaint on October 21, 2020 (ECF 82), which the Court denied on March 12, 2021 (ECF 113);

WHEREAS, the Parties filed a Stipulation and Proposed Order granting Plaintiffs’ request for leave to file a Second Amended Complaint on April 14, 2021 (ECF 136), granted on April 15, 2021 (ECF 138);

WHEREAS, a Second Amended Complaint was filed against Google on April 14, 2021 (ECF 136-1);

WHEREAS, Google filed a motion to dismiss counts six and seven of the Second Amended Complaint on May 17, 2021 (ECF 164), which the Court denied on December 22, 2021 (ECF 363);

WHEREAS, Google filed an Answer to the Second Amended Complaint on January 14, 2022 (ECF 387);

WHEREAS, Plaintiffs filed a Motion for Leave to Amend their Complaint on February 3, 2022 (ECF 395), and the Court granted the Motion for Leave to Amend on March 18, 2022 (ECF 504);

WHEREAS, Plaintiffs’ Third Amended Complaint attached as Exhibit A to the Motion for Leave to Amend (ECF 395-2) was deemed filed as of March 18, 2022 (ECF 504);

WHEREAS, Google filed an answer to Plaintiffs’ Third Amended Complaint on April 8, 2022 (ECF 531);

WHEREAS, the Court denied Plaintiffs’ motion to certify a Rule 23(b)(3) class and granted Plaintiffs’ motion to certify two Rule 23(b)(2) classes on December 12, 2022 (ECF 803);

WHEREAS, the Parties filed a Stipulation on February 28, 2023 that Plaintiffs may file a Fourth Amended Complaint solely amending the Prayer for Relief to clarify which remedies apply to each claim (ECF 880), which the Court adopted on March 2, 2023 (ECF 885)

WHEREAS, Plaintiffs filed their Fourth Amended Complaint on March 18, 2023 (ECF 886);

WHEREAS, Google's Answer to the Third Amended Complaint (ECF 531) was deemed applicable to the Fourth Amended Complaint by Stipulation and Order on March 16, 2023 (ECF 897);

WHEREAS, Google moved for summary judgment as to all of Plaintiffs' claims on March 21, 2023 (ECF 908), which the Court denied on August 7, 2023 (ECF 969);

WHEREAS, the Court held a pre-trial conference on November 29, 2023 (ECF 1077), and trial was scheduled to begin January 29, 2024 (later moved to February 5, 2024 (ECF 1088));

WHEREAS, prior to commencing any mediation, this Action was the subject of extensive litigation and discovery;

WHEREAS, the Parties held a first mediation session with the Hon. Layn R. Phillips (Ret.) on September 29, 2023 and held continued arm's-length settlement negotiations and exchanges of information over the next two months, under the supervision of Judge Phillips and his staff;

WHEREAS, the Parties had previously discussed the possibility of settlement discussions but decided that such discussions were premature and would have been futile prior to any class certification and summary judgment rulings;

WHEREAS, the Parties are entering into the Settlement to avoid the risk, burdens, and expense of continued litigation and trial;

WHEREAS, without Google admitting liability or that its practices and policies were wrongful, the Parties agree that this Settlement requires certain changes by Google that will provide benefits to members of the two classes certified by the Court;

WHEREAS, the Parties are entering into this Settlement without having discussed or agreed upon any amount of attorneys' fees, costs, or expenses that might be awarded or any service awards;

WHEREAS, the Parties agree that by entering into this Settlement, Google is not admitting any liability, fault, or violation of law, and that Google denies all allegations and claims asserted against it;

WHEREAS, each Party has independently determined that it is desirable and beneficial for the Action to be fully and finally resolved in the manner and upon the terms and conditions set forth in this Agreement;

WHEREAS, on December 26, 2023, the Parties reached an agreement in principle on terms and conditions of Settlement and executed a term sheet regarding the claims on behalf of the Classes and a term sheet regarding Plaintiffs' individual damages claims; and

WHEREAS, the Parties, by and through their respective undersigned counsel, have agreed to this Settlement on the terms and conditions set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs (for



themselves and the Class Members) and Google, by and through their counsel, that, subject to the approval of the Court, the Action and the Released Claims will be finally and fully compromised, settled, and released, and the Action will be dismissed with prejudice as to all Parties, upon and subject to the terms and conditions of the following Agreement.

IT IS HEREBY AGREED as follows:

## **I. DEFINITIONS**

For purposes of this Agreement, the following terms shall have the meanings given:

1. **“Class Counsel”** shall mean each of the law firms of Boies Schiller Flexner LLP, Susman Godfrey LLP, and Morgan & Morgan, P.A.
2. **“Class Member”** shall mean any individual who is a member of either or both of the classes certified by the Court’s December 12, 2022 order:

Class 1: All Chrome browser users with a Google account who accessed a non-Google website containing Google tracking or advertising code using such browser and who were (a) in “Incognito mode” on that browser and (b) were not logged into their Google account on that browser, but whose communications, including identifying information and online browsing history, Google nevertheless intercepted, received, or collected from June 1, 2016 through the present.

Class 2: All Safari, Edge, and Internet Explorer users with a Google account who accessed a non-Google website containing Google tracking or advertising code using such browser and who were (a) in a “private browsing mode” on that browser and (b) were not logged into their Google account on that browser, but whose communications, including identifying information and online browsing history, Google nevertheless intercepted, received, or collected from June 1, 2016 through the present.

3. **“Costs”** Costs shall encompass any out-of-pocket costs that would reasonably be paid by a fee-paying client, including expert fees. All challenges as to reasonableness are reserved by Google.
4. **“Court”** shall mean the Honorable Yvonne Gonzalez-Rogers of the United States District Court for the Northern District of California.
5. **“Effective Date for Class Claims”** shall mean the date on which the time for filing an appeal from the Court’s issuance of an order granting final approval of this Agreement has either expired without an appeal being filed, or if later, after any appeal has been fully resolved upholding the Agreement (including requests for rehearing, rehearing *en banc*, and petitions for certiorari), at which time the obligations set forth in this Agreement and the terms of this Agreement become binding on Google, the Plaintiffs, the Class Members, Class Counsel, and anyone else who has undertaken an obligation under this Agreement.
6. **“Effective Date for Individual Claims”** shall mean the date on which the office of the Hon. Layn Phillips (Ret.) issues a final arbitral award on the Plaintiffs’ damages claims.
7. **“Final Approval Order”** shall mean the order entered by the Court providing final approval to this Settlement Agreement.
8. **“Google Affiliates”** shall mean (i) all entities now or in the future controlling, controlled by or

under common control with Google (ii) all entities in the past controlling, controlled by or under common control with Google, for the period of time that such control exists or existed; and (iii) predecessors, successors or successors in interest thereof, including all entities formed or acquired by Google in the future that come to be controlled by Google. For purposes of this definition, “control” means possession directly or indirectly of the power to direct or cause the direction of management or policies of a company or entity through the ownership of voting securities, contract, or otherwise, and “entities” includes all persons, companies, partnerships, corporations, associations, organizations, and other entities. For purposes of this Agreement, Google Affiliates shall not include CapitalG, or any entities that otherwise would be deemed an Affiliate of Google as a result of an investment by CapitalG or GV even where such investment may afford CapitalG or GV some level of control over the entity.

9. **“Google Agents”** shall mean all agents, advisors, attorneys, and representatives of Google and/or Google Affiliates.
10. **“Individual Claims”** shall mean any and all claims, matters, or rights that Plaintiffs have asserted or could have asserted in the Action related to Google’s collection, storage, or use of data generated while the Plaintiffs were using a private browsing mode, including all Plaintiffs’ damages claims and the right to appeal the denial of a Rule 23(b)(3) class.
11. **“Released Claims”** shall mean the Released Class Claims and the Individual Claims.
12. **“Released Class Claims”** shall mean any and all certified claims asserted on behalf of the certified Classes for injunctive, declaratory, or any other equitable non-monetary relief. Released Class Claims expressly excludes Plaintiffs’ and other Releasing Class Members’ claims for damages that they may pursue on an individual basis. The Released Class Claims do not include any claim for monetary relief of any kind, including but not limited to any claims for statutory penalties, damages, unjust enrichment, disgorgement, restitution, punitive damages, or any other monetary claim within the scope of the Rule 23(b)(3) classes for which Plaintiffs sought and were denied certification.
13. **“Released Parties”** shall mean Google, Google Affiliates, and Google Agents.
14. **“Releasing Class Members”** shall mean Class Members and anyone claiming through or on behalf of any of them, including but not limited to each of their respective heirs, estates, predecessors, successors, agents, and assigns.
15. **“Releasing Plaintiffs”** shall mean Plaintiffs and anyone claiming through or on behalf of any of them, including but not limited to each of their respective heirs, estates, predecessors, successors, agents, and assigns.
16. **“Settlement”** shall mean the terms and conditions of settlement embodied in this Agreement.

## **II. SCOPE AND EFFECT OF SETTLEMENT**

1. **Scope of Settlement.** This Settlement Agreement comprises and resolves only the Released Claims.
2. **Binding Effect of Settlement Upon Class Members.** If this Settlement is approved by the Court, at the Effective Date for Class Claims, all persons within the Classes will be bound by the terms of the Agreement.
3. **Objections.** Any Class Member who wishes to object to the fairness, reasonableness, or adequacy



of the Settlement, or the application of Class Counsel for an award of attorneys' fees, costs, expenses, and/or for service awards for Plaintiffs, must do so timely within 35 days after Plaintiffs file their motion seeking final approval or 35 days after Plaintiffs file their application for attorneys' fees, costs, and expenses.

4. **No Additional Notice to Class Members.** Based on their review of Rule 23, the Court's prior rulings concerning class settlements involving only Rule 23(b)(2) injunctive relief, and the fact that the disclosure changes (*see* Section III.1 below) will provide certain notice to the Classes, the Parties agree that no additional notice plan is required. The Parties will ultimately defer to the Court on that determination. To the extent any additional notice is required, Google will provide and/or bear the costs of such notice.
5. **Final Approval Proceedings.** Plaintiffs will promptly request that the Court hold the Final Approval Hearing. Based on their review of Rule 23 and the Court's prior rulings, the Parties agree that Plaintiffs should and will file an unopposed motion seeking final approval of the Settlement. The Parties agree that no motion for preliminary approval is required. Google will not oppose Plaintiffs' motion seeking final approval of this Settlement, and Plaintiffs will provide Google reasonable opportunity to comment on the approval documents before they are filed. Any comment from Google will be considered by Plaintiffs but such comments are neither binding on Plaintiffs nor a condition precedent to Google's agreement not to oppose Plaintiffs' motion seeking final approval of this Settlement. At the Final Approval Hearing, Plaintiffs will request entry of an order granting final approval of this Agreement, including:
  - (a) finally approving the Settlement as fair, reasonable, and adequate, within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation pursuant to this Agreement;
  - (b) directing that the Action be dismissed with prejudice, and releasing the Released Claims as set forth below;
  - (c) reserving jurisdiction with respect to implementation and enforcement of the terms of the Agreement; and
  - (d) containing such other and further provisions consistent with the terms of the Settlement to which the Parties expressly consent in writing.
6. **Effect of Non-Approval or Material Modification.** In the event the Court does not grant final approval or requires any material modification to the Settlement to which any Party does not assent, the litigation will return to the status quo before submission of the Settlement for approval.
7. **Extinguishment of Released Class Claims.** Upon the Effective Date for Class Claims, all Releasing Class Members will be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Class Claims against Released Parties. Upon the Effective Date for Class Claims, all Releasing Class Members will be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting any Released Class Claim against any of the Released Parties. As to the Released Class Claims only, all Releasing Class Members hereby expressly, knowingly, and voluntarily waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR



RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Releasing Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable, or equivalent to Section 1542, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Class Claims. In connection with such waiver and relinquishment, Releasing Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to the Released Class Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Class Claims known or unknown, suspected or unsuspected, matured or unmatured, disclosed or undisclosed, contingent or absolute, liquidated or unliquidated, accrued or unaccrued, apparent or unapparent, that they have against the Released Parties. In furtherance of such intention, the Release herein given by Releasing Class Members to the Released Parties shall be and remain in effect as a full and complete general release as to the Released Class Claims, notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Parties expressly acknowledges that he/she/it has been advised by his/her/its attorney of the contents and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement of which this Release is a part.

8. **Binding Arbitration of Plaintiffs' Damages Claims and Waiver of Right to Appeal Order Denying Plaintiffs' Motion to Certify a Rule 23(b)(3) Class (ECF 803).** Upon the Settlement of the Released Class Claims becoming effective on the Effective Date for Class Claims, Plaintiffs shall (1) submit to confidential and binding arbitration, per the terms below, the determination of monetary relief for all of their individual claims for monetary relief of all kinds, including but not limited to their claims for statutory penalties, damages, unjust enrichment, disgorgement, restitution, punitive damages, or any other monetary claim arising out of their claims in this case (collectively, "Individual Claims"); and (2) waive any right to appeal the Court's order denying the Plaintiffs' motion to certify a Rule 23(b)(3) class (ECF 803). For the avoidance of doubt, upon the Effective Date for Class Claims, Plaintiffs' right to appeal the Court's order denying certification of a Rule 23(b)(3) class (ECF 803) is extinguished. Should the Settlement of the Class Claims not become effective (either because it is rejected by the Court or on appeal), the litigation will return to the status quo before submission of the Settlement for approval.
9. **Arbitration Procedures.** Plaintiffs and Google agree to resolve Plaintiffs' individual claims for monetary relief in amounts to be determined by the office of Judge Phillips in separate confidential, binding arbitration proceedings to be conducted on the papers after the Effective Date for Class Claims. For the avoidance of doubt, the arbitration proceedings will determine only the amount of monetary relief to be awarded to the Plaintiffs. Within three business days of the Effective Date for Class Claims, the parties shall jointly request the office of Judge Phillips to issue a schedule of proceedings. Such arbitrations shall be concluded within 90 days after the Effective Date for Class Claims. The arbitrations shall be conducted on the papers, except for (1) examination of the Plaintiffs, if either the Plaintiff or Google so elects; and (2) closing argument or other equivalent presentation by counsel.



10. **Extinguishment of Individual Claims.** Upon the Effective Date for Individual Claims, all Releasing Plaintiffs, will be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Individual Claims against Released Parties. Upon the Effective Date for Individual Claims, all Releasing Plaintiffs, will be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting any Released Claim against any of the Released Parties. As to the Released Claims only, all Releasing Plaintiffs hereby expressly, knowingly, and voluntarily waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Releasing Plaintiffs expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable, or equivalent to Section 1542, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, Releasing Plaintiffs hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, matured or unmatured, disclosed or undisclosed, contingent or absolute, liquidated or unliquidated, accrued or unaccrued, apparent or unapparent, that they have against the Released Parties. In furtherance of such intention, the Release herein given by Releasing Plaintiffs to the Released Parties shall be and remain in effect as a full and complete general release as to the Released Claims, notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Parties expressly acknowledges that he/she/it has been advised by his/her/its attorney of the contents and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Plaintiffs acknowledge that the foregoing waiver was separately bargained for and a material element of the Settlement of which this Release is a part.

### **III. SETTLEMENT CONSIDERATIONS**

1. **Disclosure Changes.** Google will streamline and clarify disclosures that describe the purpose and functionality of Incognito and other private browsing modes to address Plaintiffs' claim that Google's disclosures are misleading. Any changes are subject to subsequent modification to adapt to legal or regulatory requirements and changes in Google's policies, practices or technology. The Parties jointly represent to the Court that the specified disclosure changes that Google makes as part of this Settlement are sufficient to notify Class Members of Google's data collection at issue. Google will immediately start the process of implementing the disclosure changes to complete the disclosure changes by March 31, 2024. The changes are depicted in Exhibit A and are summarized below:
  - a. Modify the Incognito Screen to make clear that Incognito mode won't change how data is collected by websites you visit and the services they use, including Google.

- b. Modify the Chrome Incognito Privacy Tour linked to the Incognito Screen's "Learn more" button (the "Chrome Incognito Privacy Tour" page) to clarify that the websites users visit and the third party resources on those websites are among the entities to whom users' activity may be visible in Incognito mode.
    - c. Modify the Privacy Policy to (1) remove or modify the language that Plaintiffs claim is misleading to clarify that the data collection that occurs when users visit third party websites using Google services, described in the Privacy Policy, is not contingent on which browser or mode is being used; and (2) specifically state that using Incognito or another browser's private browsing mode does not block the data collection (including by Google).
    - d. Deprecate the Chrome Privacy Notice.
    - e. Deprecate the Chrome White Paper.
2. **Data Remediation.** By the later of either Final Court Approval of the Settlement or 275 days after Google completes the disclosure changes described above, Google will substantially remediate the at issue data by taking the following steps:
  - a. Field-based remediation for at issue private browsing data older than nine months in certain logs, as explained in more detail in Exhibit B. Field-based remediation includes: (1) generalizing UA strings; (2) deleting detailed URLs (while retaining domain and URL parameters); and (3) deleting the X-client data header value. Google will remediate these fields in the Display Ads logs identified in Exhibit B, with IP addresses already truncated at nine months. Google's current estimate is that this field-based remediation will impact billions of event records, which would include records of data received by Google in connection with all of the at-issue private browsing modes.
  - b. As further reflected in Exhibit B, Google will shorten the retention period of certain logs such that data older than the new retention period will be deleted wholesale. Data that is retained but older than nine months will be subject to the field-based remediation described in Subsection 2(a). Google's current estimate is that this deletion will impact billions of event records, which would include records of data received by Google in connection with all of the at issue private browsing modes.
  - c. Google agrees not to repopulate the deleted or remediated data in these logs from other sources.
  - d. Google agrees that the additional representations contained in Exhibit C for its Analytics logs are accurate and incorporated herein.
  - e. Google will timely deprecate the four detection bits identified in Exhibit D (*i.e.*, Google will remove them from the code such that the bits will not be logged in the future). Google further represents a good faith effort has been made to confirm that no other detection bits exist for inferring Chrome's Incognito mode and that no other such detection bits have been identified pursuant to such good faith effort.
3. **Quantification of Remediation and Deprecation Efforts.** Google will track the efforts required to implement the Data Remediation and deprecation of the four detection bits identified in Exhibit D, and quantify the amount of data deleted or remediated, at the order of magnitude level and provide that information to the extent the Court or objectors request it.
4. **Catalyst Recognition.** Google agrees that Plaintiffs' lawsuit and/or this Settlement were a



substantial catalyst for (1) all of the above disclosure changes and data remediation and (2) the deployment of certain Chrome enhancements through Chromeguard, which was fully rolled out following the filing of this lawsuit in 2020, including Google's deployment of a third-party cookie blocker toggle on the Chrome Incognito New Tab Page "on" by default for all Chrome users.

5. **Maintaining Chromeguard.** Google agrees to maintain the functionality to block third-party cookies in Incognito mode for five years following the Final Approval Order, subject to reasonably necessary subsequent modifications to adapt to legal or regulatory requirements and changes in Google's policies, practices, or technology.
6. **Preservation of Data if Legally Required.** Notwithstanding any of the above, Google may preserve a copy of the data for the purposes required by law or Court order. Nothing in this Settlement or Agreement shall be read to excuse Google from any other obligation to preserve data imposed by law or Court order. If all such legal obligations to preserve the data above expires or terminates, Google shall promptly delete or remediate the data pursuant to the above provisions.

#### **IV. ATTORNEYS' FEES AND COSTS; SERVICE AWARDS**

1. **Attorneys' Fees and Costs.** Google agrees to bear its own fees and costs. Google does not dispute that class counsel are entitled to some award of attorneys' fees and costs, but reserves the right to contest the reasonableness of the amounts requested. Class Counsel will apply for an award of attorneys' fees and reimbursement of expenses either in conjunction with or after the Final Approval Hearing. Any fee and cost award must be approved by the Court. Google will pay any fees and costs to Class Counsel in the amount awarded by the Court. Google, Plaintiffs, and Class Counsel agree further that neither will appeal the fact or amount of any fees and costs awarded by the Court. A fee and cost award by the Court that is less than the amount Class Counsel seek is no basis to withdraw from this Agreement.
2. **Service Awards.** In conjunction with their application for attorney's fees and reimbursement of expenses, Class Counsel may request that the Court approve service awards to the Plaintiffs. Google will pay the service awards in the amount ordered by the Court. Google, Plaintiffs, and Class Counsel agree that neither will appeal the fact or amount of any service awards awarded by the Court. A service award by the Court that is less than the amount sought will not provide a basis to withdraw from this Agreement.
3. **Payment of Fees, Costs and Service Awards.** Google shall pay attorneys' fees and costs and service awards by ACH within thirty (30) business days of the Effective Date for Class Claims where Class Counsel has provided the account name, account number, and other necessary payment information in Exhibit E. Plaintiffs and Class Counsel will be responsible for any duties, taxes, or levies to which they are subject as a result of such payments and Google shall not be liable at any time for any of the Plaintiffs or Class Counsel taxes incurred in connection with or related to such payments.

#### **V. DESTRUCTION OF NON-PUBLIC MATERIAL**

1. **Stipulated Protective Order.** The Parties and their respective counsel will comply with the terms concerning the destruction of Protected Material in the Stipulated Protective Order As Modified by the Court ("Stipulated Protective Order") entered in this Action (Dkt. 81) and their continuing obligation to not disclose in any manner any information or item that is subject to the Stipulated Protective Order to any person or entity except in strict compliance with its provisions. The Stipulated Protective Order provides that "final disposition" of the Action triggers the duty to

destroy or return all Protected Material. For purposes of the Stipulated Protective Order, “final disposition” is the Effective Date for Individual Claims.

2. **Other Non-Public Information.** In addition to the Parties’ respective obligations with respect to the destruction of Protected Materials under the Stipulated Protective Order entered in this Action, the Parties further agree that within thirty (30) days of the Effective Date for Individual Claims, the Parties will destroy or return, except as indicated below, all non-public information acquired from the other Party during the course of the Action. Unless otherwise requested by Google in writing, all material marked as relating to Google’s Source Code produced during the Action will be destroyed within thirty (30) days of the Effective Date for Class Claims.
3. **Verifications.** The Parties’ respective counsel will each issue verifications certifying that the provisions of this paragraph have been complied with within forty-five (45) days of the relevant Effective Date for Class Claims.

## **VI. NO ADMISSION OF LIABILITY**

1. **No Admission of Liability.** This Settlement is the resolution of a dispute between the Parties. Nothing in or required by this Agreement, or anything that any of the Parties stated or did during the negotiation of this Settlement or this Agreement, will be construed or used in any manner as an admission of liability or evidence of either Party’s fault, liability or wrongdoing. The Parties expressly deny any liability or wrongdoing whatsoever.
2. **Limitation on Use of Settlement Terms.** Except as otherwise provided or in connection with the settlement approval process (including Class Counsel’s anticipated motion for an award of attorneys’ fees and reimbursement of costs and expenses) or to enforce the Settlement, neither the Parties nor their counsel will attempt to use any aspect of this Settlement or Agreement as evidence in this or any other matter. For instance, (1) neither Plaintiffs nor their counsel will argue that the disclosure changes provided in this Settlement are evidence of the prior disclosures’ inadequacy and (2) neither Google nor its counsel will argue that Plaintiffs’ or their counsel’s agreement to remedial measures evidence that they are sufficient to fully remedy Google’s past conduct.

## **VII. GENERAL PROVISIONS**

1. **Entire Understanding.** This Agreement and its Exhibits constitute the complete, final and exclusive embodiment of the entire agreement between the Parties with regard to the subject matter herein. It is entered into without reliance on any promises, warranties or representations, written or oral, other than those expressly contained herein, and it supersedes any other promises, warranties or representations. This Agreement and its Exhibits cannot be modified or amended except by a written agreement, signed by the Parties to be bound by such modification or amendment, and which specifically mentions this Agreement.
2. **Severability.** Except as otherwise provided in this Agreement, the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.
3. **No Construction Against Any Party.** This Agreement shall be construed as if the Parties jointly prepared it. Any uncertainty or ambiguity shall not be interpreted against any one Party, even if that Party prepared the Agreement.
4. **Parties’ Knowledge and Advice of Counsel.** The Parties execute this Agreement freely and voluntarily and without acting under any duress or in reliance upon any threat made by or on behalf



of the other Party. Each Party has consulted with or has had an opportunity to consult with counsel of its own choice about the legal effect of entering into this Agreement, and executes this Agreement being fully informed as to its terms, content and legal effect.

5. **No Waiver.** Neither Party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement. Moreover, a waiver of any breach of this Agreement by any Party shall not be deemed to be a waiver by any Party of any other breach of this Agreement.
6. **Authority to Execute.** Each counsel or other person executing the Agreement on behalf of a party hereto warrants that such Person has the full authority to do so. Class Counsel, on behalf of the Class, are expressly authorized to take all appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms. All Parties covenant and represent that they have consulted with competent counsel prior to entering into this Agreement.
7. **No Prior Assignments.** The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or that are rights released or discharged in this settlement except as set forth in this Agreement.
8. **Choice of Law and Continuing Jurisdiction.** This Agreement should be interpreted, enforced, construed and controlled by the laws of the State of California, without reference to principles of conflicts or choice of law provisions. The Court will retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Agreement and matters related to this settlement.
9. **Counterparts.** This Agreement may be executed by the Parties in counterparts and exchanged by electronic means, with the same effect as if all Parties had signed the same instrument.

\* \* \* \* \*

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

DocuSign Envelope ID: 265CD9F1-BDAA-4BEB-B1A4-608B3F39EBFC

Dated: March 1, 2024  
~~February~~

Signature Andrew H. Schapiro

Printed: Andrew H. Schapiro.

Title: Partner, Quinn Emanuel LLP

Counsel for Google LLC

Dated: February   , 2024  
3/9/2024

Signature David Boies

Printed: David Boies

Title: Partner, Boies Schiller Flexner LLP

Counsel for Plaintiffs & Certified Class

Dated: February , 2024  
3/11/2024

Signature John Yanchunis

Printed: John A. Yanchunis

Title: Partner, Morgan & Morgan

Counsel for Plaintiffs & Certified Class

Dated: February , 2024  
3/11/2024

Signature Bill Camody

Printed: Bill Camody

Title: Partner, Susman Godfrey LLP

Counsel for Plaintiffs & Certified Class



**Executed By:**

Dated: February , 2024

DocuSigned by:  
Signature *Cassandra Knight*  
DUADFBBA5B5Z49E...

Printed: Cassandra Knight

Title: Vice President, Legal, Google LLC

**March 1**  
Dated: ~~February~~, 2024

Signature *Chasom Brown*

Printed: Chasom Brown

Title: Plaintiff

**March 1**  
Dated: ~~February~~, 2024

Signature *William Byatt*

Printed: William Byatt

Title: Plaintiff

**March 1**  
Dated: ~~February~~, 2024

Signature *Christopher Castillo*

Printed: Christopher Castillo

Title: Plaintiff

**March 1**  
Dated: ~~February~~, 2024

Signature *Jeremy Davis*

Printed: Jeremy Davis

Title: Plaintiff

**March 1**  
Dated: ~~February~~, 2024

Signature *Monique Trujillo*

Printed: Monique Trujillo

Title: Plaintiff