

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

Michael W. Sobol (SBN 194857)
msobol@lchb.com
Melissa Gardner (SBN 289096)
mgardner@lchb.com
Ian R. Bensberg (*pro hac vice*)
ibensberg@lchb.com
275 Battery Street, 29th Floor San
Francisco, CA 94111-3339
Telephone: 415.956.1000
Facsimile: 415.956.1008

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

Nicholas Diamand (*pro hac vice*)
ndiamand@lchb.com
Douglas Cuthbertson (*pro hac vice*)
dcuthbertson@lchb.com
250 Hudson Street, 8th Floor New
York, NY 10013 Telephone:
212.355.9500
Facsimile: 212.355.9592

Counsel for Plaintiffs and the Proposed Class

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JONATHAN DIAZ and LEWIS
BORNMANN, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 5:21-cv-03080-NC

**PLAINTIFFS' BRIEF IN SUPPORT OF
PRELIMINARY SETTLEMENT
APPROVAL**

TABLE OF CONTENTS

		Page
1		
2		
3	NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT	1
4	MEMORANDUM OF POINTS AND AUTHORITIES	2
5	I. INTRODUCTION	2
6	II. FACTUAL BACKGROUND	2
7	III. PROCEDURAL HISTORY	5
8	A. Pleadings, Motion Practice, and Early Discovery	5
9	B. The Parties Design a Collaborative and Rigorous Early Resolution Process to Explore Resolving Plaintiffs' Claims.	6
10	C. The Parties Mediate before Judge Ambler	7
11	IV. THE SETTLEMENT	7
12	V. LEGAL STANDARD	10
13	VI. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	10
14	A. The Class Has Been Vigorously Represented	11
15	B. The Settlement Was Negotiated at Arm's Length.	11
16	C. The Settlement Provides Meaningful Relief to the Settlement Class.	12
17	1. The Costs, Risks, and Delay of Trial And Appeal	12
18	2. Counsel Will Seek Reasonable Attorneys' Fees and Expenses.	14
19	D. The Settlement Treats Class Members Equitably.	14
20	E. The Settlement Satisfies the District's Procedural Guidance.	15
21	1. The Releases Mirror the Allegations in the Amended Complaint (Procedural Guidance 1(c))	15
22	2. Settlement Administration Selection Process (Procedural Guidance 2)	16
23	3. The Proposed Notice Plan (Procedural Guidance 3 & 5).	17
24	4. Service Awards (Procedural Guidance 7)	18
25	5. CAFA Notice (Procedural Guidance 10)	19
26	6. Electronic Versions (Procedural Guidance 12)	19
27	VII. THE SETTLEMENT CLASS WARRANT CERTIFICATION.	19
28	1. Rule 23(a) is Satisfied	19
	2. The Requirements of Rule 23(b)(2) are Satisfied	21
	VIII. PROPOSED SCHEDULE FOR NOTICE AND FINAL APPROVAL	21
	IX. CONCLUSION	22

TABLE OF AUTHORITIES

Page(s)

CASES

1		
2		
3		
4	<i>Armstrong v. Davis</i> ,	
5	275 F.3d 849 (9th Cir. 2001).....	20
6	<i>Beltran v. Olam Spices & Vegetables Inc.</i> , 2021 WL 2284465, at *14 (E.D. Cal. June 4, 2021),	
7	report and recommendation adopted by 2021 WL 4318141 (E.D. Cal. Sept. 23, 2021)	12
8	<i>Camilo v. Ozuna</i> ,	
9	2020 WL 1557428(N.D. Cal. Apr. 1, 2020)	12
10	<i>Campbell v. Facebook</i> ,	
11	315 F.R.D. 250 (N.D. Cal. 2016).....	21
12	<i>Campbell v. Facebook</i> ,	
13	No. 4:13-05996-PJH-SK (N.D. Cal. Apr. 26, 2017).....	21
14	<i>Churchill Vill. L.L.C. v. Gen. Elec.</i> ,	
15	361 F.3d 566 (9th Cir. 2004).....	18
16	<i>In re Bluetooth Headset Prods. Liab. Litig.</i> ,	
17	654 F.3d 935 (9th Cir. 2011).....	10, 12
18	<i>In re Facebook Biometric Info. Privacy Litig.</i> ,	
19	326 F.R.D. 535 (N.D. Cal. 2018).....	20
20	<i>In re Vizio, Inc., Consumer Privacy Litig.</i> ,	
21	No. 8:16-ml-02693 (C.D. Cal. Jan. 4, 2019).....	20
22	<i>In re Volkswagen “Clean Diesel” Mktg., Sales Practices & Prods. Liab. Litig.</i> ,	
23	2017 WL 672727 (N.D. Cal. Feb. 16, 2017)	20
24	<i>In re Yahoo! Inc. Customer Data Sec. Breach Litig.</i> ,	
25	2019 WL 387322 (N.D. Cal. Jan. 30, 2019)	18
26	<i>Jordan v. Los Angeles Cty.</i> ,	
27	669 F.2d 1311 (9th Cir. 1982).....	20
28	<i>Matera v. Google Inc.</i> ,	
	No. 5:15-cv-04062-LHK (N.D. Cal. Aug. 31, 2017).....	21
	<i>Rodriguez v. Hayes</i> ,	
	591 F.3d 1105 (9th Cir. 2010).....	21
	<i>Rodriguez v. W. Publ’g Corp.</i> ,	
	563 F.3d 948 (9th Cir. 2009).....	19
	<i>Roes, 1–2 v. SFBCS Mgmt. LLC</i> ,	
	944 F.3d 1035 (9th Cir. 2019).....	10, 12
	<i>Saucillo v. Peck</i> ,	
	25 F.4th 1118 (9th Cir. 2022)	10
	<i>The Civil Rights Educ. & Enf’t Ctr. v. RLJ Lodging Tr.</i> ,	
	2016 WL 314400 (N.D. Cal. Jan. 25, 2016)	19
	<i>Wal-Mart Stores, Inc. v. Dukes</i> ,	
	564 U.S. 338 (2011).....	17, 20

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28**TABLE OF AUTHORITIES**
(continued)**Page****STATUTES**

28 U.S.C. § 1715 19

RULES

Fed. R. Civ. P. 15(a)(1) 5

Fed. R. Civ. P. 23 17

Fed. R. Civ. P. 23(a)(2) 20

Fed. R. Civ. P. 23(a)(3) 20

Fed. R. Civ. P. 23(a)(4) 20

Fed. R. Civ. P. 23(b)(2) 21

Fed. R. Civ. P. 23(c)(2) 17, 18

Fed. R. Civ. P. 23(e)(1)(B) 10

Fed. R. Civ. P. 23(e)(1)(B)(ii) 19

Fed. R. Civ. P. 23(e)(2) 10

Fed. R. Civ. P. 23(e)(2)(C) 12

Fed. R. Civ. P. 23(e)(2)(C)(ii) 12

Fed. R. Civ. P. 23(e)(2)(C)(iv) 12

Fed. R. Civ. P. 23(e)(4) 10

Fed. R. Civ. P. 23(e)(5) 10

Fed. R. Evid. 408 6

Local Civil Rule 7.2(c) 21

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.