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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
IN AND FOR THE COUNTY OF SANTA CLARA

17 IN RE ALPHABET INC. SHAREHOLDER
18 DERIVATIVE LITIGATION
19 This Document Relates To:
20 ALL ACTIONS.
21
22
23
24

Lead Case No.: 19CV341522
**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
SETTLEMENT**
Hearing Date: October 22, 2020
Time: 1:30 p.m.
Judge: Hon. Brian C. Walsh
Department: 1

25 **PUBLIC REDACTS MATERIALS FROM CONDITIONALLY SEALED RECORD**
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1 **I. INTRODUCTION**

2 Co-Lead Plaintiffs Northern California Pipe Trades Pension Plan (“NCPTPP”), Teamsters
3 Local 272 Labor Management Pension Fund (“Local 272”), and James Martin (“Plaintiffs”) move
4 for preliminary approval of the proposed settlement (“Settlement”) as set forth in the Stipulation
5 and Agreement of Settlement dated August 20, 2020 (“Stipulation”).¹ The Settlement resolves the
6 claims brought in this shareholder derivative action (“California Action”) on behalf of Alphabet
7 Inc. (“Alphabet” or the “Company”) and against certain current and former officers and directors
8 of the Company (“Individual Defendants”). It also resolves substantially similar derivative actions
9 pending in the U.S. District Court for the Northern District of California (“Federal Action”) and
10 Delaware Court of Chancery (“Delaware Action”) (collectively, the “Litigations”), as well as
11 certain litigation demands (“Demands”) (together with the Litigations, the “Settled Matters”).

12 The Settlement is an excellent result for Alphabet and its current shareholders, avoids
13 further lengthy and costly litigation, and mitigates the risk and expense of proceeding in multiple
14 fora. It is the product of extensive arm’s-length negotiations between the Settling Parties with the
15 assistance of mediator, the Hon. James P. Kleinberg (Ret.). As detailed below, the Settlement is
16 unquestionably fair, reasonable, and adequate, and warrants preliminary approval.

17 Through the Settlement, Alphabet has agreed to implement holistic workplace reforms,
18 including governance reforms to the Company’s Board of Directors (“Board”). These Workplace
19 Measures and Corporate Governance reforms address and are designed to prevent sexual
20 harassment, sexual misconduct, discrimination, and retaliation. Further, Alphabet will establish
21 and maintain for at least five years a *Diversity, Equity, and Inclusion Advisory Council* (“DEI
22 Advisory Council”), which will be responsible for overseeing the creation, implementation, and
23 ongoing operation of the initiatives that support diversity, equity, and inclusion described in
24 paragraph 1.2 of the Stipulation, and whose membership will consist of both external experts and
25 internal members, including, in its first year, Alphabet’s CEO (Sundar Pichai). Alphabet will also
26

27 ¹ The Stipulation is attached as Exhibit 1 to the Joint Declaration of Francis A. Bottini, Jr. and
28 Julie Goldsmith Reiser (“Joint Declaration” or “JD”), filed concurrently herewith. Unless
otherwise noted, all capitalized terms have the same meaning as defined in the Stipulation, all
internal citations and quotation marks have been omitted, and all emphasis has been added.

1 fund a **\$310 million** commitment to workplace initiatives and programs (“Workplace Initiative”)
2 spanning 10 years focusing on (1) expanding the pool of historically underrepresented
3 technologists; (2) hiring, progression, and retention of historically underrepresented talent at
4 Alphabet and, in particular, Google; (3) fostering respectful, equitable, and inclusive workplace
5 cultures; and (4) helping historically underrepresented groups and individuals succeed with their
6 businesses and in the digital economy and tech industry.

7 The Settlement is an excellent resolution of the multi-jurisdictional stockholder litigation
8 on behalf of Alphabet, particularly because it includes specific reforms designed to increase
9 transparency surrounding claims of sexual misconduct and the consequences when such
10 misconduct occurs, thereby reducing the likelihood that the Company will face these types of
11 breach-of-fiduciary-duty claims in the future. Accordingly, Plaintiffs, on behalf of the Settling
12 Parties, respectfully request that the Court (1) grant preliminary approval of the proposed
13 Settlement as within the range of what is fair, reasonable, and adequate, (2) approve the form of
14 notice to Alphabet’s current shareholders, and (3) schedule a Settlement Hearing at which the Court
15 will consider final approval of the Settlement, the application for an award of attorneys’ fees and
16 expenses, and entry of a final judgment.

17 **II. BACKGROUND**

18 **A. Summary of Allegations**

19 Plaintiffs allege that Alphabet is a male-dominated company with a male-dominated culture,
20 like the tech industry at large. ¶ 7.² According to numerous critics, the gender imbalance in the
21 tech industry is not just the result of a “pipeline” problem; rather, persistent sexism and
22 discrimination have kept women out, held them back, and, ultimately, forced them to leave the
23 industry altogether. *Id.* Alphabet’s leadership in the tech industry also has regrettably included a
24 leadership culture that limited opportunities for women. ¶ 8. Complaints about the Company
25 demonstrate that, for years, management fostered a “brogrammer” culture, where women were
26 sexually harassed and valued less than their male counterparts. ¶¶ 8, 169–171. Reports indicate
27

28 ² All “¶ ___” references are to Plaintiffs’ August 16, 2019 Consolidated Stockholder Derivative
Complaint.

1 that the Company’s procedures for investigating complaints about sexual harassment and
2 discrimination were grossly inadequate if higher level executives were implicated. ¶¶ 8, 174–177.
3 And Alphabet’s former policy of forcing sexual harassment claims into arbitration helped to keep
4 formal challenges to those policies out of the public eye. ¶ 8.

5 Touting its mottos of “Don’t Be Evil” and “Do the Right Thing,” Google frequently states
6 that the Board is held to the highest level of ethics. ¶¶ 9; 100–102. Plaintiffs allege, however, that
7 in practice, under the Individual Defendants’ leadership, Alphabet employed a *dual and*
8 *contradictory standard*. For low-level employees, Google acted decisively, firing for cause and
9 without payouts. ¶ 10. But when faced with allegations about a high-level male executive
10 responsible for generating millions of dollars in revenue, Google looked the other way (¶¶ 113,
11 118–119, 122) or, if that failed, allowed the male executive to quietly resign with severance
12 packages exceeding tens of millions of dollars (¶¶ 129–130, 151–153). Through this double
13 standard, Alphabet and the Board maintained superficial compliance with Alphabet’s code of
14 conduct, internal rules, and laws regarding sexual harassment. ¶ 10. By appearing to take swift
15 action against low-level employees, the Board hoped to avoid a much bigger scandal. ¶¶ 10, 105.

16 This toxic culture was exposed by an October 25, 2018 article in *The New York Times*,
17 which revealed that certain of the Company’s officers and directors knew that senior Google
18 executives had been credibly accused of sexual harassment and that internal investigations
19 substantiated the accusations. ¶¶ 14, 107; *see also* ¶¶ 112–114, 117, 121, 127, 148–149, 158–160,
20 165. Despite this misconduct, the Individual Defendants awarded lucrative exit packages to
21 Defendant Andrew E. Rubin (the creator of Android mobile software), who received \$90 million,
22 and Defendant Amit Singhal (another senior executive), who received \$15 million, and concealed
23 their harassment. ¶¶ 128–130, 140–147, 150–153. No mention was made about the true reason for
24 Rubin’s “resignation”—his egregious sexual harassment while at Google. ¶¶ 131, 138. Worse yet,
25 after Rubin left, Google invested millions of dollars in his next venture. ¶ 132. Similarly, Singhal
26 was allowed to quietly resign rather than be fired for cause. ¶ 155. Unaware of the real reason for
27 Singhal’s “resignation,” Uber then hired him. ¶¶ 156–157. In February 2017, when the true reasons
28 for Singhal’s departure from Google were revealed, he resigned from Uber. *Id.*

1 Plaintiffs allege that Defendant David C. Drummond, Alphabet’s Chief Legal Officer,
2 began an extramarital affair with at least one woman whom he supervised (there have been rumors
3 of additional affairs), all the while violating the Company’s policies requiring that executives report
4 romantic relationships with other employees. ¶¶ 112–114. Amidst public scrutiny, and during the
5 pendency of this litigation, Drummond “retired” in January 2020, after being allowed to sell **\$222**
6 **million** of Google stock in the three preceding months **while under investigation for sexual**
7 **harassment.**

8 Alphabet has also struggled with other indicators of sex discrimination in its workplace. A
9 class action filed in San Francisco Superior Court on behalf of female Google employees employed
10 in California, where the Company has its headquarters, asserts that the Company persistently
11 discriminates against women by, among other things, assigning them to jobs in lower compensation
12 “bands” than similarly situated men, promoting women more slowly and at lower rates than
13 similarly situated men, and simply paying women less. ¶¶ 12, 178–180. On March 27, 2018, the
14 Court found that the plaintiffs alleged sufficient facts to state a claim for intentional discrimination.
15 *Id.*

16 The practices described above—which epitomize the Company’s cultural complacency
17 concerning credible accounts of unlawful sex-discrimination—prompted immediate employee
18 outrage. Alphabet, however, failed to act promptly to respond to employees’ concerns. Alphabet
19 management’s “dismissive” response sparked a historic reaction—on November 1, 2018, 20,000
20 Alphabet employees around the globe staged a “Google Walkout” to protest the events described
21 in *The New York Times* article as well as the Company’s generally inadequate approach to sexual
22 harassment and discrimination in its workforce. ¶¶ 15, 192–199.

23 Following the Walkout and under the pressure of significant public backlash and the filing
24 of the derivative lawsuits, a few changes occurred at the Company: Chief Legal Officer Drummond
25 resigned; and Defendant Eric Schmidt—whose open affairs and flouting of Company policies set
26 the tone for Google’s executives—left the Board. Additionally, Alphabet has refreshed its Board,
27 adding Robin L. Washington, an African American woman and preeminent business executive, and
28 Frances Arnold, the first American woman to win the Nobel Prize in chemistry.

1 These belated actions, however, failed to remedy Google’s systemic, cultural problems,
2 including pay inequity and discrimination that officers and directors long permitted to fester.
3 Underscoring the inadequacy of the Company’s response, several organizers of the Walkout
4 claimed they faced retaliation as a result of their participation in the event, prompting over a
5 thousand Alphabet employees to hold a “sit in” protest in mid-2019. ¶¶ 16, 205. In September
6 2019, a document leaked to *Vice Media* revealed 45 employees’ alleged claims of retaliation. By
7 December 2019, allegedly five organizers of the Walkout also claimed they were fired because of
8 their efforts.

9 **B. Procedural History**

10 **1. California Actions**

11 This action is a consolidation of several related shareholder derivative actions filed on behalf
12 of Alphabet and against certain of the Individual Defendants. On May 16, 2019, this Court
13 consolidated the related actions for all purposes and appointed NCPTPP, Local 272, and Martin as
14 Co-Lead Plaintiffs and Bottini & Bottini, Inc. and Cohen Milstein Sellers & Toll PLLC as Plaintiffs’
15 Co-Lead Counsel. On August 16, 2019, the Co-Lead Plaintiffs filed a consolidated complaint. At
16 a status conference on June 14, 2019, Alphabet’s counsel advised the Court that the Board had
17 formed a Special Litigation Committee (“SLC”) to evaluate and investigate Plaintiffs’ claims. The
18 parties agreed to delay the response date to the operative complaints pending an investigation by
19 the SLC and then—subsequent to a request from the SLC that the parties attempt to resolve the
20 dispute—to allow the parties to engage in the mediation process.

21 **2. Federal Actions**

22 The Federal Actions were commenced between January and March 2019, asserting claims
23 for breach of fiduciary duty, corporate waste, unjust enrichment, and violations of the federal
24 securities laws. On February 5, 2020, the federal court granted Defendants’ motion to stay the
25 Federal Actions pending resolution of this action.

26 **3. Delaware Action**

27 On May 14, 2019, Plaintiff Irving Fire commenced the Delaware Action, containing the
28 same allegations as alleged in the California Action. On June 14, 2019, Defendants moved to stay

1 the Delaware Action in favor of this action, which was denied. On July 22, 2019, the SLC moved
2 to stay the Delaware Action pending completion of the SLC’s process, which was granted. The
3 parties agreed to extend the stay in the Delaware Action while the parties engaged in mediation.

4 **III. SETTLEMENT DISCUSSIONS AND TERMS**

5 Counsel for certain of the Settling Parties engaged in extensive efforts to resolve the Settled
6 Matters, including participating in a two-day mediation on January 22 and 23, 2020 before Judge
7 Kleinberg in San Francisco and in another full-day mediation on February 25, 2020 before Judge
8 Kleinberg in Palo Alto. Prior to that, the Settling Parties exchanged and provided to
9 Judge Kleinberg detailed mediation statements addressing liability and damages. Although the
10 participants were not able to reach a settlement at the mediations, they continued arm’s-length
11 negotiations in the months that followed the mediations, and ultimately reached an agreement-in-
12 principle to resolve the Settled Matters on the terms set forth in the Stipulation.

13 **A. Industry-Leading Commitment to Workplace Equity**

14 The Settlement is broad in scope and designed to address all aspects of workplace equity.
15 It modifies Alphabet’s policies and procedures, funds a *\$310 million* contribution to the Workplace
16 Initiative, and forms a DEI Advisory Council, which includes external members with expertise in
17 diversity, inclusion, equity, and/or sexual harassment. Stipulation ¶¶ 1.3, 1.4(b).

18 The DEI Advisory Council is one of the most important features of the Settlement. It will
19 include Alphabet’s CEO for the first year and will report directly to the Board’s Leadership,
20 Development, and Compensation Committee (“LDCC”), whose mandate, formalized by this
21 Settlement, is to oversee management’s efforts to promote a workplace environment that is
22 respectful and free from employment discrimination, including harassment, and retaliation. The
23 three external members of the DEI Advisory Council are nationally recognized for their expertise
24 in diversity, inclusion, equity, and/or sexual harassment.

25 The Settlement also provides for an historic \$310 million commitment to DEI initiatives
26 over ten years, with accountability at the Board level and public reporting available to stockholders.

27 Furthermore, the Settlement substantially increases transparency surrounding executive
28 misconduct arising from sexual harassment, discrimination, and retaliation at Alphabet through the

1 waiver of mandatory arbitration of harassment, discrimination, and retaliation claims across *all*
2 Alphabet entities. Additionally, Google has agreed to limit confidentiality restrictions when settling
3 sexual harassment and retaliation claims, so that complainants can publicly discuss underlying facts
4 and circumstances of incidents, which will reduce the likelihood of executives repeatedly engaging
5 in sexual misconduct. Stipulation ¶ 1.2(b). The Settlement also precludes Google from paying
6 severance and accelerating unvested equity awards for all employees, including Senior Executives
7 (defined as a member of the C-Suite, Senior Vice President, Country Manager, Head of a Business
8 Unit, or Site Lead) who are the subject of an investigation or have been terminated for sexual
9 harassment, misconduct, or retaliation, and requires the LDCC to report to the Board compensation
10 decisions for any Senior Executive found to have engaged in serious misconduct involving sexual
11 harassment, sexual misconduct, or retaliation (along with the substantiated complaints, underlying
12 allegations, and any corrective action).

13 Beyond these terms that promote a more equitable and transparent workforce, Alphabet also
14 has agreed to focus on attracting and retaining diverse employees, with Board-level oversight over
15 these initiatives. These commitments provide an extraordinary benefit to the workforce, which the
16 Company recognizes is “among our best assets,” and, correspondingly, to Alphabet’s long-term
17 value. The benefit Alphabet will derive from this Settlement cannot be overstated.

18 At a policy level, the Board has agreed to make numerous changes to enhance its oversight
19 of legal and regulatory compliance, sexual harassment, and other aspects of workplace equity, all
20 with the intent of improving communications and transparency, which will lead to stronger
21 decision-making by the Board. The changes include:

- 22 • additional meetings of the Audit and Compliance (“AC”) Committee, focused on
23 legal and regulatory compliance matters, and a formal reporting structure from the
24 Google heads of compliance and investigations to the AC Committee;
- 25 • providing the LDCC with data regarding reports and resolution of claims of sexual
26 harassment, discrimination, and retaliation, and requiring the LDCC to report
27 annually to the Board regarding workforce equity issues and compensation decisions
28 for any senior executive found to have engaged in serious misconduct involving
sexual harassment, sexual misconduct, or retaliation; and
- requiring the Nominating and Corporate Governance Committee to annually review
Board committee membership and to review every three years chairs of every Board

1 committee to consider whether rotation of members is appropriate.

2 **B. The Attorneys' Fees and Expense Award**

3 Following the execution of the Stipulation, the Settling Parties separately negotiated, with
4 the assistance of the Hon. Layn Phillips (Ret.), reasonable attorneys' fees and expenses for the
5 Stockholders' Counsel (other than Delaware Counsel) to be paid by Defendants and/or their
6 insurance carriers. Pursuant to the Settling Parties' agreement, Defendants have agreed not to
7 oppose an application by Plaintiffs' Counsel for an award of attorneys' fees and expenses not to
8 exceed [REDACTED], reflecting less than [REDACTED] of the concrete value conferred on Alphabet by the
9 Settlement, including the reforms, the DEI Advisory Council, and Workplace Initiative funding
10 commitment (\$310 million).

11 The agreed-to fees are fair and reasonable under both the "percentage of the fund" approach
12 and a "lodestar cross-check" because they represent a multiplier of approximately [REDACTED] of Plaintiffs'
13 lodestar, which is well within the acceptable range. *See* JD ¶¶ 69–72; *see also In re Yahoo! Inc.*
14 *S'holder Litig.*, Lead Case No. 17CV307054 (Cal. Super. Ct., Cty. of Santa Clara Jan. 9, 2019)
15 (Walsh, J.) (JD, Ex. 4) (awarding fees amounting to 30% of the settlement amount in a derivative
16 action and performing a lodestar cross-check); *In re McKesson Corp. Derivative Litig.*, No. 4:17-
17 cv-0185-CW (N.D. Cal. Apr. 22, 2020) (JD, Ex. 5) (finding a 2.9 multiplier reasonable in a
18 derivative action); *Cohn v. Nelson*, 375 F. Supp. 2d 844, 862 (E.D. Mo. 2005) ("In shareholder
19 litigation, courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk of
20 contingent representation.") (collecting cases); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051–
21 54 & n.6 (9th Cir. 2002) (surveying the range of multipliers approved by other courts and finding
22 that multiples ranging from 1.0 to 4.0 are frequently awarded in common fund cases); *Buccellato*
23 *v. AT&T Operations, Inc.*, No. C10-00463-LHK, 2011 WL 3348055, at *2 (N.D. Cal. June 30,
24 2011) (awarding 4.3 lodestar multiplier) (collecting cases).

25 **IV. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

26 At the preliminary approval stage, the sole issue before the court is whether the proposed
27 settlement *is within a range* of what might be found fair, reasonable, and adequate, so that notice
28 of the proposed settlement can be given to shareholders and a date set for a final hearing to consider

1 final settlement approval. See MANUAL FOR COMPLEX LITIGATION §§ 21.632, 21.633 (4th ed.
2 2016). Thus, preliminary approval does not require the court to answer the ultimate question of
3 whether a proposed settlement is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.*, 48 Cal.
4 App. 4th 1794, 1801 (1996). Rather, this determination is made only after notice of the settlement
5 has been given to shareholders and after they have been given the opportunity to comment on the
6 settlement. See MANUAL FOR COMPLEX LITIGATION §§ 21.633, 21.634.

7 In determining whether a proposed derivative settlement is fair, the criteria for evaluating
8 the fairness of a class action settlement provide a useful analogy. *Robbins v. Alibrandi*,
9 127 Cal. App. 4th 438, 449 n.2 (2005). To that end, the Court “should consider relevant factors,
10 such as the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
11 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
12 the extent of discovery completed and the stage of the proceedings, the experience and views of
13 counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement.”
14 *Dunk*, 48 Cal. App. 4th at 1801. This list of factors “is not exhaustive and should be tailored to
15 each case.” *Id.* Notably, “a presumption of fairness exists where: (1) the settlement is reached
16 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and
17 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
18 of objectors is small.” *Id.* at 1802; see also *Luckey v. Super. Ct.*, 228 Cal. App. 4th 81, 94 n.13
19 (2014). Here, the consideration of the *Dunk* factors warrants preliminary approval.

20 **A. The Settlement Was Reached Following Extensive Arm’s-Length Bargaining**

21 The Settlement is the product of difficult and vigorous arm’s-length negotiations between
22 the parties, who were represented by highly experienced attorneys. Moreover, the negotiations
23 were conducted for over a year, and benefited from the assistance of an independent mediator, Hon.
24 James P. Kleinberg, who presided over three full days of in-person mediations (on January 22–23,
25 2020 and February 25, 2020) and has attested to the hard-fought nature of the settlement
26 negotiations. See JD, Ex. 2. The involvement of a retired judge serving as an independent mediator
27 is strong evidence of the integrity of the settlement negotiations. For example, in *Dunk*, the Court
28 of Appeal found the settlement to be fair and reasonable where, *inter alia*, “[t]he independent

1 mediator, a retired superior court judge and appellate justice with substantial experience and respect
2 in the legal community, recommended the settlement.” 48 Cal. App. 4th at 1802-03.

3 **B. The Settlement Was Negotiated After Substantial Investigation by Counsel**
4 **with Extensive Experience in Complex Derivative Litigation**

5 Plaintiffs’ Counsel has determined that the proposed Settlement confers significant benefits
6 to Alphabet and that it is fair, reasonable, and in the best interests of Alphabet and its shareholders.
7 Plaintiffs’ Counsel reached this conclusion after: (1) researching the applicable law with respect to
8 the claims asserted (or which could be asserted) in the Settled Matters and the potential defenses
9 thereto; (2) reviewing and analyzing information in Alphabet’s public filings with the SEC, press
10 releases, announcements, and transcripts of investor conference calls, and securities analyst,
11 business, and financial media reports; (3) researching and drafting fact-specific and detailed
12 complaints; (4) preparing a detailed mediation statement and participating in three days of in-person
13 mediations; (5) consulting with experts; and (6) engaging in months-long settlement discussions
14 with counsel for the Settling Defendants. Thus, Plaintiffs’ Counsel were able to fully assess the
15 strengths and weaknesses of the claims asserted in the Settled Matters.

16 Plaintiffs’ Counsel also reviewed over 7,200 pages of documents produced by Alphabet that
17 included meeting minutes, agendas, Board packages, communications, and other materials of the
18 Board, and information provided by the SLC. Plaintiffs’ Counsel also conducted a confirmatory
19 interview of the SLC’s counsel as to the SLC’s independence and investigation.

20 Further, the arm’s-length negotiations of the Settlement were conducted on both sides by
21 highly qualified counsel experienced in shareholder derivative litigation. Cohen Milstein and
22 Bottini & Bottini have extensive experience in shareholder derivative litigation and sexual
23 harassment and employment litigation, which supported their appointment as Co-Lead Counsel.
24 *See* May 16, 2019 Order Appointing Co-Lead Counsel. Based on their considerable prior litigation
25 experience and similar settlements obtained for the benefit of many other public companies,
26 Plaintiffs’ Counsel submit that the Settlement provides substantial benefits to Alphabet and its
27 current shareholders. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App.
28

1 4th 1135, 1152 (2000).³ The “experience and views of counsel” thus favor preliminary approval.
2 *See Dunk*, 48 Cal. App. 4th at 1801–02.

3 **C. The Strength of Plaintiffs’ Claims Weighs in Favor of Preliminary Approval**

4 The law is well-settled that the merits of the underlying claims “are not a basis for upsetting
5 the settlement of a class action.” *7-Eleven*, 85 Cal. App. 4th at 1150. As such, “the settlement or
6 fairness hearing is not to be turned into a trial or rehearsal for trial on the merits.” *Id.* at 1145; *see*
7 *also Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed Settlement
8 is not to be judged against a hypothetical or speculative measure of what might have been achieved
9 had plaintiffs prevailed at trial”). Here, Plaintiffs believed and continue to believe their claims are
10 strong on the merits. At the same time, Plaintiffs recognize that further litigation of the complex
11 issues presented in this Action would be accompanied by great cost, delay, and uncertainty for all
12 parties involved, including Alphabet. Moreover, throughout this Action, Defendants have
13 vigorously defended the claims with the assistance of several experienced and well-regarded law
14 firms. Accordingly, as discussed in more detail in the next section, Plaintiffs faced the risk,
15 expense, and complexity of prolonged litigation as well as formidable hurdles to securing and
16 recovering any judgment in Alphabet’s favor.

17 In agreeing to settle the case, Plaintiffs and Plaintiffs’ Counsel seriously considered the
18 case’s specific risks and circumstances including the high and difficult burden of proving the
19 Individual Defendants’ breaches of fiduciary duty under applicable law and the evidentiary
20 challenge posed by this Action, including that: (1) the SLC had concluded its investigation and
21 determined that it was not in Alphabet’s interests to pursue any of the claims; and (2) two key fact
22 witnesses are deceased. *See* JD ¶¶ 57–68. Having presided over this Action, and given the Court’s
23 familiarity with Plaintiffs’ counsel and their efforts in this litigation, the Court may properly
24 determine that the Settlement “is reasonable in light of the strengths and weaknesses of the claims

25 ³ *See also Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)
26 (“‘Great weight’ is accorded to the recommendation of counsel, who are most closely acquainted
27 with the facts of the underlying litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
28 1043 (N.D. Cal. 2008) (“The recommendations of plaintiffs’ counsel should be given a presumption
of reasonableness.”); *Zepeda v. PayPal, Inc.*, No. C 10-2500 SBA, 2017 WL 1113293, at *14 (N.D.
Cal. Mar. 24, 2017) (where counsel “have significant experience ... handling complex litigation,
the Court accords weight to their opinion”).

1 and the risks of the particular litigation.” *See Luckey*, 228 Cal. App. 4th at 94 n.13.

2 **D. The Risk, Expense, Complexity, and Likely Duration of the Action Weighs in**
3 **Favor of Preliminarily Approving the Settlement**

4 The proposed Settlement provides for extensive remedial measures, including improved
5 information sharing at the Board level, stronger workplace protections, waiver of mandatory
6 arbitration, limits on confidentiality restrictions when settling sexual harassment and retaliation
7 claims, a DEI Advisory Council composed of external and internal members, and a \$310 million
8 funding commitment to the Workplace Initiative that will invest in future hiring and retention,
9 among other efforts to advance equity, at Alphabet and in the technology sector more broadly. *See*
10 *JD ¶¶ 43–48*. The global Settlement also resolves all of the pending Litigations and Demands, thus
11 providing additional benefits to Alphabet. *See, e.g., Frame v. Hillman*, No. 01-CV-2193 H(LAB),
12 2002 WL 34520817, at *10–11 (S.D. Cal. July 31, 2002) (approving global settlement and
13 attorneys’ fee award to counsel whose “combined efforts achieved remarkable results despite the
14 risks involved” where counsel “coordinated the information gathering by the many investors ... and
15 catalyzed the dialogue that ultimately led to this settlement” and noting that benefits beyond the
16 settlement terms are achieved where the settlement “resolved all the claims and contentions between
17 the interested parties”).

18 Without the Settlement, continued litigation would involve complex legal and factual issues
19 and would extend over several years. Even if Plaintiffs were successful in surviving demurrers,
20 summary judgment, and prevailed at trial, there would be complex issues regarding proof of
21 damages, and Defendants would have the opportunity to appeal, which would further delay final
22 resolution of the Settled Matters and would cause all parties to incur additional and significant costs.
23 In light of the complexity of the issues associated with Plaintiffs’ claims and the difficulties in
24 proving Defendants’ liability, there was also a substantial risk that the action would be dismissed,
25 and Alphabet might never have obtained *any* recovery.

26 Although Plaintiffs believe strongly in the merits of this Action, they recognize they faced
27 formidable hurdles before they could secure a judgment. As a threshold matter, Plaintiffs would
28 need to demonstrate demand futility. Only one derivative action regarding sexual misconduct and

1 board complicity in concealing that misconduct has overcome demand futility nationwide.
2 Additionally, the Board created an SLC, which retained well-qualified counsel from Cravath,
3 Swaine & Moore LLP. If the SLC were to recommend that the Action be dismissed, Plaintiffs
4 would have been forced to demonstrate that the SLC lacked independence or that it failed to conduct
5 a reasonable investigation before they could litigate the merits of their claims.

6 Even if they were able to prevail on their claims, Plaintiffs recognize that Defendants still
7 intended to aggressively limit the amount of recoverable damages. Plaintiffs believe they could
8 have established that the Board breached its fiduciary duties by improperly awarding Rubin a \$90
9 million severance package after Rubin was credibly accused of sexual harassment of a female
10 employee, and that certain Board members circumvented the LDCC's authority to review and
11 approve compensation packages for executive officers. Plaintiffs believe similarly strong evidence
12 of liability existed with respect to Amit Singhal's \$45 million severance package. Specifically,
13 they believe they could have shown that Company management approved the payment with
14 knowledge of the credible accusations of sexual harassment against Singhal and that directors
15 allegedly approved the payment without fully informing themselves of the circumstances of
16 Singhal's departure from the Company. In approving these severance packages and compensation
17 awards while knowing that these executives were credibly accused of sexual misconduct and could
18 have been fired for cause, or failing to inform themselves of this highly relevant information at the
19 time of key executives' departures, Plaintiffs believe these defendants breached their fiduciary
20 duties to the Company, were unjustly enriched by receiving compensation at the time they breached
21 their fiduciary duties, and were liable for corporate waste.

22 Defendants, on the other hand, would have argued that the severance packages awarded to
23 Defendants Rubin and Singhal, totaling \$135 million, were for agreements not to compete against
24 Alphabet, among other reasons, which provided a clear benefit to the Company. If Defendants
25 were successful, those payments would not have been recoverable damages at all.

26 Moreover, beyond the threshold obstacles addressed above, Plaintiffs also faced challenges
27 in establishing their theories of liability and were also handicapped by the fact that two key
28 individuals involved in Rubin's and Singhal's compensation, Bill Campbell and LDCC member

1 Paul Otellini, are now deceased. Their deaths leave substantial evidentiary gaps on critical fact
2 issues, including the LDCC's knowledge of the investigation into Rubin's misconduct.

3 Plaintiffs also would have sought damages related to Defendant Drummond's \$222 million
4 in stock sales while under investigation for misconduct and after altering his 10b5-1 trading plan in
5 the months preceding his departure from the Company. In response, Defendants could have
6 countered that Drummond did not sell his stock based on any non-public information and that,
7 because Drummond's stock had vested at the time of his sales, the Company had no ability to
8 prevent Drummond from selling a vested property interest, and that Google did not award any
9 severance package to Drummond upon his departure, and therefore Drummond's proceeds from
10 the sale of vested stock could not be considered recoverable damages.

11 Given these challenges, Plaintiffs estimate that realistic potential recoverable damages in
12 this case were in the range of \$50 to \$65 million. Singhal's \$45 million severance was reduced to
13 \$15 million because he joined a rival company, Uber. Thus, the total amount of the severance
14 payments actually paid was \$105 million, not \$135 million. Moreover, Defendants could contend
15 that the Company received significant value for the payments since, among other things, they
16 prevented Rubin and Singhal from competing against Google. Plaintiffs determined that securing
17 long-term meaningful commitments to workplace equity at Alphabet will achieve much greater
18 long-term value for investors and Alphabet employees.

19 Plaintiffs also alleged a claim of breach of fiduciary duty related to the Google+ breach and
20 privacy claim. All eleven director defendants were on the Board at the time that Alphabet allegedly
21 decided to conceal the breach from regulators, which Plaintiffs believe was likely in violation of an
22 FTC consent decree. Challenges in prevailing on this claim included that Google+, the product at
23 issue, was used by a small number of consumers and the breach did not involve sensitive data (such
24 as passwords or financial information). Additionally, regulatory inquiries into the matter were
25 resolved and none resulted in financial penalties and a securities class action involving these same
26 allegations was dismissed and judgment was subsequently entered. Plaintiffs believe that their
27 strongest argument for recoverable damages was the \$7.5 million for payment to settle a consumer
28 class action related to the breach. Thus, while Plaintiffs believe they had strong arguments on the

1 Google+ breach theory, it represented a comparatively small recovery relative to Google’s
2 agreement to implement changes to the processes for assessing the materiality of data incidents and
3 informing the Board where appropriate.

4 Close consideration of all the risks and circumstances of continuing the Action supports the
5 value and wisdom of the proposed Settlement. The Settlement eliminates these and other risks of
6 continued litigation, including the prospect of no recovery after several years of litigation, while
7 providing substantial benefits to Alphabet and its current shareholders that are specifically geared
8 at curbing the behavior that gave rise to this litigation. Thus, this factor also supports preliminary
9 approval of the Settlement. *See 7-Eleven*, 85 Cal. App. 4th at 1152.

10 **E. The Settlement Is in the Best Interests of Alphabet and Its Shareholders**

11 In evaluating a proposed settlement, the Court should not decide the merits of the case. *See*
12 *7-Eleven*, 85 Cal. App. 4th at 1145. Instead, the Court should review the settlement terms to confirm
13 that the presumption of fairness is not overcome as to the specific settlement at hand. *Id.* Here, the
14 Settlement provides holistic workplace reforms that will deter or require consistent consequences
15 for even the most senior executives who engage in sexual misconduct, an historic commitment to
16 diversity and inclusion efforts, including the CEO’s involvement in a DEI Advisory Council and a
17 record-breaking \$310 million commitment to the Workplace Initiative—the largest public
18 commitment that any tech company has made to diversity and inclusion efforts. These
19 commitments combined with the other governance and policy reforms detailed above reflect a
20 remarkable resolution of the claims at issue across the Settled Matters, reflecting both Alphabet’s
21 and Plaintiffs’ unprecedented commitment to bringing about positive change on these matters. In
22 sum, Plaintiffs and Plaintiffs’ Counsel have undertaken substantial efforts to ensure the Settlement
23 is in the best interest of Alphabet and its current stockholders. Given the substantial relief obtained
24 for the Company, the proposed Settlement is fair, reasonable, and adequate, and should be
25 preliminarily approved by the Court.

26 **V. THE PROPOSED NOTICE TO SHAREHOLDERS SHOULD BE APPROVED**

27 In the class action context, Rule 3.769 provides that “notice of the final approval hearing
28 must be given ... in the manner specified by the court.” CAL. R. CT. 3.769(f). “The notice must

1 contain an explanation of the proposed settlement and procedures ... to follow in filing written
2 objections to it and in arranging to appear at the settlement hearing and state any objections to the
3 proposed settlement.” *Id.*; see also *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
4 2004) (“Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail
5 to alert those with adverse viewpoints to investigate and to come forward and be heard.”).

6 The proposed Notice of Pendency and Proposed Settlement of Derivative Actions attached
7 as Exhibit B to the Stipulation includes all the information required by Rule 3.769 and that is
8 otherwise necessary for stockholders to make an informed evaluation of the proposed Settlement,
9 including: (1) an explanation of the nature of the Litigations and the claims asserted; (2) the
10 Settlement terms, including the amount of the Workplace Initiative funding commitment (\$310
11 million), and the scope of the releases that the Settling Defendants will obtain; (3) the Settling
12 Parties’ reasons for agreeing to the Settlement; (4) that, in recognition of the work performed and
13 the substantial benefits conferred on Alphabet by the Settlement, Plaintiffs’ Counsel intend to apply
14 for an award of attorneys’ fees and expenses not to exceed [REDACTED]; (5) how to appear at the
15 Settlement Hearing and the procedure for objecting to the Settlement; (6) how to object to the
16 Settlement by filing a written objection; (7) the deadlines for Settlement-related events; and (8) the
17 binding effect that entry of a final judgment approving the Settlement will have on current Alphabet
18 shareholders.

19 The Settling Parties believe that the form and the substance of the proposed Notice comports
20 with applicable law and due process. See CAL. R. CT. 3.769(f). Among other things, the proposed
21 Notice clearly states that “[i]t is unnecessary for objectors to appear personally at the settlement
22 hearing in order to have their written objections considered by the court.” See *Litwin v. iRenew Bio*
23 *Energy Solutions, LLC*, 226 Cal. App. 4th 877, 883–84 (2014).⁴ Further, the proposed Notice
24 indicates that the application for attorneys’ fees and expenses to Plaintiffs’ Counsel will be
25 presented for approval at the Settlement Hearing, and the details and reasons supporting Plaintiffs’
26

27 ⁴ Prior to posting or publishing the Notice, the Notice shall be updated to reflect the specifics of
28 the Court’s order granting preliminary approval of the Settlement and to conspicuously identify the
relevant dates and deadlines, as set forth in the Proposed Schedule of Events appended to this
memorandum, or as otherwise set by the Court.

1 Counsel's request for an award of attorneys' fees and expenses will be submitted before
2 shareholders are required to file a notice of appearance or submit any objection.

3 The Settling Parties also believe that the proposed method of providing notice is adequate.
4 Pursuant to the Stipulation, Alphabet will: (1) file a Form 8-K with the SEC which shall include
5 the Notice as an attachment, (2) cause the Summary Notice (Exhibit C to the Stipulation) to be
6 published through *Investor's Business Daily*, and (3) post the Notice and Stipulation on the
7 Company's investor relations website until the Judgment becomes Final. Plaintiffs' Co-Lead
8 Counsel will also post the Notice (Exhibit B) on their firms' websites. This form of notice has
9 previously been approved by the Court as satisfying the relevant standards. *See* JD, Ex. 3
10 (preliminary approval order from *In re Yahoo Shareholder Deriv. Litig.*).

11 **VI. CONCLUSION**

12 For the foregoing reasons, Plaintiffs, on behalf of the Settling Parties, request that the Court:
13 (1) grant preliminary approval to the Settlement; (2) approve the method for providing notice to
14 current Alphabet shareholders regarding the pendency of the Settlement and the form of the
15 proposed Notice and Summary Notice; (3) direct that the Notice and Summary Notice be published
16 and posted as provided in the Stipulation; and (4) set a date for the Settlement Hearing and a
17 schedule of events. The Proposed Schedule of Events is appended to this memorandum.

18
19 Dated: September 25, 2020

Respectfully submitted,

20 **BOTTINI & BOTTINI, INC.**

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PROPOSED SCHEDULE OF EVENTS

Date by which Notice shall be published, posted, or otherwise provided to current Alphabet shareholders in any manner as the Court may direct (“Notice Date”)	5 business days following the entry of the [Proposed] Order Preliminarily Approving Settlement and Providing for Notice
Date by which any Application for an Award of Attorneys’ Fees and Expenses and Service Award shall be filed	28 calendar days prior to the Settlement Hearing
Date by which any written objection from any current Alphabet shareholder to the Proposed Settlement or Application for an Award of Attorneys’ Fees and Expenses and Service Award must be received	10 calendar days prior to the Settlement Hearing
Date by which any intent by any current Alphabet shareholder to appear at the Settlement Hearing must be received	10 calendar days prior to the Settlement Hearing
Date by which reply papers, if any, shall be filed concerning any written objection filed by a current Alphabet shareholder	7 calendar days prior to the Settlement Hearing
Date of Settlement Hearing	November 30, 2020