

1 Joseph R. Saveri (State Bar No. 130064)
Steven N. Williams (State Bar No. 175489)
2 Kevin Rayhill (State Bar No. 267496)
3 Elissa A. Buchanan (State Bar No. 249996)
Abraham A. Maggard (State Bar No. 339949)

4 **JOSEPH SAVERI LAW FIRM, LLP**

601 California Street, Suite 1000

5 San Francisco, CA 94108

Telephone: (415) 500-6800

6 Facsimile: (415) 395-9940

7 Email: jsaveri@saverilawfirm.com

swilliams@saverilawfirm.com

8 krayhill@saverilawfirm.com

eabuchanan@saverilawfirm.com

9 amaggard@saverilawfirm.com

10 Daniel H. Charest (admitted *pro hac vice*)

11 **BURNS CHAREST LLP**

900 Jackson Street, Suite 500

12 Dallas, TX 75202

13 Telephone: (469) 904-4550

14 Facsimile: (469) 444-5002

Email: dcharest@burnscharest.com

Patrick D. Murphree (admitted *pro hac vice*)

Harry R. Yelton (admitted *pro hac vice*)

BURNS CHAREST LLP

365 Canal Street, Suite 1170

New Orleans, LA 70130

15 Telephone: (504) 799-2845

16 Facsimile: (504) 881-1765

Email: pmurphree@burnscharest.com

ryelton@burnscharest.com

17 *Attorneys for Plaintiff and the Proposed Class*

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20 **JANE DOE**, individually and on behalf of all
others similarly situated,

21 *Plaintiffs,*

22 v.

23 **YOUTUBE, INC.**

24 *Defendant.*

Civil Case No. 4:20-CV-07493-YGR

**CO-LEAD COUNSEL FOR THE CLASS'S
NOTICE OF MOTION AND MOTION FOR
AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES AND
SERVICE AWARD**

Date: February 21, 2023

Time: 2:00 p.m.

Judge: Hon. Yvonne Gonzalez Rogers

Location: Courtroom 1

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that at 2:00 p.m. on February 21, 2023, Counsel for the Class will, and hereby does, move before the Honorable Yvonne Gonzalez Rogers, United States District Judge, at the United States Courthouse, 1301 Clay Street, Courtroom 1 – 4th Floor, Oakland, California, pursuant to Fed. R. Civ. P. 23(h) and 54(d) for the following:

- an award of attorneys’ fees in the amount of \$1,416,163.44 (30 % of the \$4,720,544.80 Settlement Fund) plus interest;
- reimbursement of litigation expenses in the amount of \$41,234.97; and
- a service award for the Class Representative in the amount of \$20,000.00.

This Motion is made on the grounds that (a) such fees are fair and reasonable in light of Plaintiff’s Counsel’s efforts in creating the Settlement Fund; (b) the requested fees comport with Ninth Circuit law in common fund cases; (c) the expenses for which reimbursement is sought were reasonably and necessarily incurred in connection with the prosecution of this action; and (d) a service award to the Class Representative is warranted for bringing this case.

This Motion is based upon this Memorandum of Points and Authorities, the Declaration of Steven N. Williams, the Declaration of Daniel H. Charest, the proposed order submitted herewith, all other records, pleadings and papers filed in this action; and upon such argument and further pleadings as may be presented to the Court at the hearing on this Motion.

Upon filing with the Court, this Motion will be available for review by Class Members on the settlement website established for this case, <http://contentmoderatorysettlement.com>.

STATEMENT OF THE ISSUES TO BE DECIDED

Whether the Court should (1) award the requested attorneys’ fees in the amount of \$1,416,163.44, which represents 30% of the Settlement Fund of \$4,720,544.80; (2) order payment from the Settlement Fund of Class Counsel’s expenses totaling \$ 41,234.97 and (3) approve a service award to the Class Representative in the amount of \$20,000.00.

///

///

1 Dated: November 18, 2022

Respectfully Submitted,

2 JOSEPH SAVERI LAW FIRM, LLP

3 By: /s/ Steven N. Williams
4 STEVEN N. WILLIAMS

5 Joseph R. Saveri (State Bar No. 130064)
6 Steven N. Williams (State Bar No. 175489)
7 Kevin Rayhill (State Bar No. 267496)
8 Elissa A. Buchanan (State Bar No. 249996)
9 Abraham A. Maggard (State Bar No. 339949)
10 **JOSEPH SAVERI LAW FIRM, LLP**
11 601 California Street, Suite 1000
12 San Francisco, CA 94108
13 Telephone: (415) 500-6800
14 Facsimile: (415) 395-9940
15 Email: jsaveri@saverilawfirm.com
16 swilliams@saverilawfirm.com
17 krayhill@saverilawfirm.com
18 eabuchanan@saverilawfirm.com
19 amaggard@saverilawfirm.com

20 Daniel H. Charest (admitted *pro hac vice*)
21 **BURNS CHAREST LLP**
22 900 Jackson Street, Suite 500
23 Dallas, TX 75202
24 Telephone: (469) 904-4550
25 Facsimile: (469) 444-5002
26 Email: dcharest@burnscharest.com

27 Patrick D. Murphree (admitted *pro hac vice*)
28 Harry R. Yelton (admitted *pro hac vice*)
BURNS CHAREST LLP
365 Canal Street, Suite 1170
New Orleans, LA 70130
Telephone: (504) 799-2845
Facsimile: (504) 881-1765
Email: pmurphree@burnscharest.com
ryelton@burnscharest.com

Attorneys for Plaintiff and the Proposed Class

TABLE OF CONTENTS

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

I. PRELIMINARY STATEMENT..... 1

II. SUMMARY OF WORK BY PLAINTIFF’S COUNSEL.....2

 a. Pre-filing Investigation.....2

 b. Complaint and Motion to Dismiss Briefing.....3

 c. Informal Discovery3

 d. Settlement.....4

III. THE REQUESTED FEE AWARD IS REASONABLE.4

 a. The Common Fund Doctrine Applies and the Percentage-of-the-Fund Method for Calculating Fees is Appropriate.4

 b. An Upward Adjustment of the Benchmark is Justified.....5

 i. Class Counsel achieved an excellent result.....6

 ii. Class Counsel undertook risk on a contingent fee basis for a challenging case with little guiding precedent.....7

 iii. Class Counsel undertook a financial burden to prosecute the action.....8

 iv. Courts have awarded similar fees in less complex cases8

 v. There is no windfall.....9

IV. CLASS COUNSEL’S EXPENSES ARE REASONABLE AND NECESSARY 10

V. PAYMENT OF A SERVICE AWARD TO THE CLASS REPRESENTATIVE IS APPROPRIATE. 11

VI. CONCLUSION 12

TABLE OF AUTHORITIES

		Page(s)
1		
2		
3	Federal Cases	
4	<i>In re Anthem, Inc. Data Breach Litig.</i> ,	
5	No. 15-MD-02617-LHK 2018 WL 3960068 (N.D. Cal. 2018).....	7
6	<i>In re Bluetooth Headset Prods. Liab. Litig.</i> ,	
7	654 F.3d 935 (9th Cir. 2011).....	9
8	<i>Boeing Co. v. Van Gemert</i> ,	
9	44 U.S. 472 (1980).....	4
10	<i>Garcia v. Schlumberger Lift Solutions</i> ,	
11	No. 1:18-cv-01261-DAD JLT, 2020 WL 6886383 (E.D. Cal. Nov. 24, 2020).....	9
12	<i>In re Omnivision Techs., Inc.</i> ,	
13	559 F. Supp. 2d 1036 (N.D. Cal. 2008).....	10
14	<i>In re Online DVD-Rental Antitrust Litig.</i> ,	
15	779 F.3d 934 (9th Cir. 2015).....	5, 6, 10
16	<i>In re Rite Aid Corp Sec. Litig.</i> ,	
17	396 F.3d 294 (3d Cir. 2005).....	9
18	<i>Rodriguez v. West Publ’g Corp.</i> ,	
19	563 F.3d 948 (9th Cir. 2009).....	11
20	<i>Roes, 1-2 v. SFBSC Mgmt., LLC</i> ,	
21	944 F.3d 1035 (9th Cir. 2019).....	7
22	<i>Spears v. First Am. Eappraiseit</i> ,	
23	No. 08-CV-00868-RMW, 2015 WL 1906126 (N.D. Cal. Apr. 27, 2015).....	7
24	<i>Staton v. Boeing Co.</i> ,	
25	327 F.3d 938 (9th Cir. 2003).....	4, 11
26	<i>Torrisi v. Tucson Elec. Power Co.</i> ,	
27	8 F.3d 1370 (9th Cir. 1993).....	6
28	<i>Vincent v. Hughes Air West</i> ,	
	557 F.2d 759 (9th Cir. 1977).....	10
	<i>Vizcaino v. Microsoft Corp.</i> ,	
	290 F.3d 1043 (9th Cir. 2002).....	5, 9, 10
	<i>Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.</i> ,	
	396 F.3d 96 (2d Cir. 2005).....	5

1 *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
2 19 F.3d 1291 (9th Cir. 1994)..... 4

3 **Rules**

4 Fed. R. Civ. P. 1 6

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

This is a novel case regarding legal claims that have not been fully adjudicated by any prior tribunal. The results obtained are entirely the result of the efforts and resources of the Class Representative and Class Counsel, all of which were expended with no assurance of success. Joseph Saveri Law Firm, LLP (“JSLF”) and Burns Charest, LLP (collectively, “Class Counsel”) are the first two firms to bring suit on the theory underlying this case and have been at the forefront of developing the legal claims of social-media content moderators who suffer from unsafe work environments. In addition to their expertise in this subject matter, both firms also have expertise in complex federal court class action litigation, and the financial wherewithal and determination to take on the largest companies in the world, represented by some of the finest law firms in the world.

While the Class Representative and Class Counsel believe that the claims presented are strong under California law, it is also true that this Court granted YouTube, Inc.’s (“YouTube”) motion to dismiss the complaint with leave to amend, and that the pleadings were never closed. Contemporaneous with the Court’s motion to dismiss ruling, the parties explored and then negotiated the framework of the settlement before the Court and the Class. Confirmatory discovery, both focused on fact issues and non-party Accenture’s role in the case as well as expert analysis focused on the workplace changes that ultimately were included in the settlement.

The Class Representative and Class Counsel are proud of the result obtained here and believe that settlement is in the best interests of the Class. The settlement provides a recovery that, on a per capita basis, equals that achieved in the groundbreaking settlement *Selena Scola et al. v. Facebook*, a prior case brought by the same counsel on behalf of content moderators.¹

The result achieved is excellent. Not only does each Class Member receive monetary compensation, but YouTube is also required to implement workplace changes that are intended to minimize, mitigate and alleviate the harms suffered by content moderators while performing their jobs.

¹ No. 18-CIV-05135 (Sup. Ct. Cal. San Mateo Cty.).

1 Due to the novelty of the claims, the risk of further litigation and non-recovery, and the
2 excellent results obtained, Class Counsel respectfully requests that the Court grant this Motion

3 **II. SUMMARY OF WORK BY PLAINTIFF’S COUNSEL**

4 Class Counsel has performed substantial work and dedicated significant money, time and
5 resources over the past two years to facilitate the prosecution of the Class’s claims against YouTube.
6 Declaration of Steven N. Williams, ¶ 11 (“Williams Decl.”); Declaration of Daniel Charest (“Charest
7 Decl.”), ¶ 7-8. This work included significant pre-filing investigations, full motion practice (including
8 drafting two complaints and opposing a motion to dismiss), informal discovery, consultation with
9 experts, and settlement negotiations to obtain both monetary and non-monetary compensation for the
10 class. Williams Decl. ¶¶ 11-17; Charest Decl., ¶ 8.

11 **a. Pre-filing Investigation**

12 Class Counsel invested significant resources and time prior to filing Plaintiff’s complaint. In
13 2018, Class Counsel brought the groundbreaking *Scola* case on behalf of content moderators working
14 for Facebook; that case raised new and novel legal claims, which focused on preventing and remedying
15 the significant physical, emotional, and mental effects, particularly Post-Traumatic Stress Disorder
16 (“PTSD”) that certain forms of content moderation may cause. Williams Decl., ¶ 14, Charest Decl., ¶¶
17 5-6. Work on that case involved identifying the standard of care applicable to content moderation and
18 the safeguards that could be implemented to protect moderators. Williams Decl., ¶ 14, Charest Decl., ¶¶
19 5-6. Although the *Scola* case gave Class Counsel experience with the world of content moderation, the
20 present case required a distinct investigation to identify YouTube’s relevant business practices and the
21 workplace conditions of YouTube’s content moderators. Williams Decl. at ¶ 15. This investigation also
22 involved engaging preeminent experts to assist Class Counsel in understanding issues arising from
23 exposure to graphic content and the treatment necessary to address those issues. *Id.*, at ¶ 16; Charest
24 Decl., ¶ 8. In addition, Class Counsel conducted substantial fact investigation through conversations
25 and interviews with numerous current and former content moderators for YouTube. Williams Decl., ¶
26 12; Charest Decl., ¶ 8. Class Counsel engaged in this extensive investigative work to ensure that they
27 had sufficient knowledge to effectively prosecute the Class’s novel legal claims. Indeed, because of
28

1 Class Counsel's subject matter expertise and experience in complex class action litigation, they brought
2 about an excellent result in this case for a relatively low cost, relatively low lodestar, and with a
3 minimum burden on Court resources.

4 **b. Complaint and Motion to Dismiss Briefing**

5 On September 21, 2020, Plaintiff filed a complaint in San Mateo Superior Court alleging that
6 YouTube failed to meet its obligations to content moderators on its platform, resulting in heightened
7 risk for and actual development of PTSD and other traumatic disorders. (ECF No. 1-1 at 4-32). On
8 October 24, 2020, YouTube removed the case to this Court. (ECF No 1). The case was reassigned to the
9 Hon. Yvonne Gonzalez Rogers on November 10, 2020. (ECF No. 9).

10 YouTube filed a motion to dismiss on December 2, 2020. (ECF No. 16). Plaintiff filed an
11 opposition on January 25, 2021, (ECF No. 25), and YouTube replied on February 22, 2021, (ECF No.
12 26). The Court held a hearing on the motion to dismiss on July 13, 2021, (ECF No. 31) and granted the
13 motion the next day (ECF No. 32). The parties then engaged in extensive informal discovery and
14 settlement negotiations, including two sessions before the Hon. Rebecca Westerfield (ret.) of JAMS.
15 The result of these sessions was an agreement on a settlement structure, to be informed by and having
16 the unknowns filled in by informal discovery and investigation.

17 **c. Informal Discovery**

18 While conducting settlement discussions, Class Counsel also engaged in extensive informal
19 discovery to ascertain sufficient information to make an informed decision regarding the pending
20 settlement. Williams Decl. ¶ 12 Charest Decl. ¶ 8. Major objects of discovery were the number of Class
21 Members (to ensure that the monetary relief was adequate), the employment arrangement and status of
22 Class Members (to ensure notice for Class Members and to probe the relationship between YouTube
23 and its vendor), and the current working environment for YouTube's content moderators (to ensure that
24 the non-monetary relief would help to redress deficiencies in that environment). Williams Decl. ¶ 12.
25 Class Counsel's efforts included significant information exchanges through calls and videoconferences
26 with YouTube and its counsel, review of documents provided by YouTube, a subpoena to a non-party,
27 meet-and-confer discussions with counsel for the non-party and resolution of objections, review of
28

1 information produced by non-parties, discussions with YouTube employees, and discussions with many
2 members of the proposed class. Williams Decl. ¶ 12; Charest Decl. ¶ 8. While formal discovery has not
3 been conducted in this case, Class Counsel spent significant time, energy, and resources to fully
4 understand the situation of Class Members and ensure the adequacy of the settlement.

5 **d. Settlement**

6 While the initial mediation proceeded before and under the guidance of Judge Westerfield, the
7 parties continued negotiations — through many contentious and detailed discussions about the
8 settlement, specific issues in dispute, and pathways to success. Eventually, Plaintiff filed a motion for
9 preliminary approval of settlement on July 12, 2022. (ECF 49). After a hearing on the proposed
10 settlement, Plaintiff filed an amended complaint and supplement to the motion. (ECF Nos. 57 and 58).
11 The Court granted preliminary approval and the certification of the class for settlement purposes on
12 September 29, 2022, and appointed JSLF and Burns Charest as Class Counsel. (ECF No. 62).

13 **III. THE REQUESTED FEE AWARD IS REASONABLE.**

14 **a. The Common Fund Doctrine Applies and the Percentage-of-the-Fund Method**
15 **for Calculating Fees is Appropriate.**

16 Class Counsel has conferred a significant benefit on the Class in the form of both a common
17 cash fund and workplace changes to ameliorate the conditions causing harm to content moderators. The
18 Supreme Court has explained that a “litigant or lawyer who recovers a common fund for the benefit of
19 persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a
20 whole.” *Boeing Co. v. Van Gemert*, 44 U.S 472, 478 (1980); *Staton v. Boeing Co.*, 327 F.3d 938, 967
21 (9th Cir. 2003). The purpose of this doctrine is to encourage those who benefit from the creation of a
22 common fund to “share the wealth with the lawyer whose skill and effort helped create it.” *In re Wash.*
23 *Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994).

24 The settlement is of great benefit to the Class, providing total cash consideration of
25 \$4,720,544.80 and resulting in a gross award of \$3,296.47 per Class Member. Each Class Member will
26 receive a per capita distribution. The settlement also provides non-monetary compensation for the
27 benefit of current and future content moderators that Plaintiff’s experts estimate to be worth
28

1 approximately \$3,900,000.00. Williams Decl. ¶ 8; ECF No. 58-3 at 6; ECF No. 58-4 at 5. Paying
2 reasonable attorneys' fees from the common fund compensates Class Counsel for bringing and
3 prosecuting this action and providing concrete relief to over 1,400 workers.

4 In common-fund cases, courts in the Ninth Circuit have discretion to determine attorneys' fees
5 by either the "percentage-of-the-fund" method or the "lodestar" method. *Vizcaino v. Microsoft Corp.*,
6 290 F.3d 1043, 1047 (9th Cir. 2002); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th
7 Cir. 2015). Most courts have preferred the percentage-of-the-fund method, as it

8 directly aligns the interests of the class and its counsel and provides a powerful incentive
9 for the efficient prosecution and early resolution of litigation. In contrast, the lodestar
10 create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up
their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item
fee audits.

11 *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (alterations in original)
12 (citations and internal quotation marks omitted). When using the lodestar method, it is appropriate to
13 conduct a lodestar cross-check to "confirm that a percentage of [the] recovery amount does not award
14 counsel an exorbitant hourly rate." *Online DVD*, 770 F.3d at 949 (citation and internal quotation marks
15 omitted).

16 Focusing only on the cash consideration, Class Counsel's efforts have created a common fund
17 of \$4,720,544.80. Class Counsel seek 30% of the common fund as fee award, which amounts to
18 \$1,416,163.44. Williams Decl., ¶ 8, Charest Decl., 12. Under either a "percentage-of-the-fund" or a
19 "lodestar" method, Class Counsel's requested fee is deserved in light of the value of the extensive work
20 performed, the result achieved for the Class, and the risk and expense of contingent-fee representation.

21 **b. An Upward Adjustment of the Benchmark is Justified.**

22 "[I]n this circuit, the benchmark percentage is 25%", which is a "helpful 'starting point'" for
23 analysis. *Online DVD*, 779 F.3d at 949, 955 (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654
24 F.3d 935, 942 (9th Cir. 2011); and quoting *Vizcaino*, 290 F.3d at 1048). Because the benchmark is
25 merely a starting point, the percentage award ultimately selected must be based on the circumstances of
26 the individual case. *Vizcaino*, 290 F.3d at 1048. "This benchmark percentage should be adjusted, or
27 replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery
28

1 would be either too small or too large” *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th
2 Cir. 1993) (citation and internal quotation marks omitted). When evaluating a percentage-of-the-fund
3 request for attorneys’ fees, the Ninth Circuit requires district courts to consider the following factors:
4 (1) whether counsel “achieved exceptional results for the class”; (2) “whether the case was risky for
5 class counsel”; (3) “whether counsel’s performance ‘generated benefits beyond the cash settlement
6 fund’”; (4) “the market rate for the particular field of law”; (5) “the burdens class counsel experienced
7 while litigating the case (*e.g.*, cost, duration, foregoing other work)”; and (6) “whether the case was
8 handled on a contingency basis.” *Online DVD*, 779 F.3d at 954-55. (*citing Vizcaino*, 290 F.3d at 1048-
9 50). In this case, these factors support an upward adjustment of the attorneys’ fee award to 30% of the
10 Settlement Fund.

11 **i. Class Counsel achieved an excellent result**

12 Class Counsel secured a substantial recovery that is available to all Class Members. Under the
13 settlement’s terms, each Class Member is entitled to a pro rata gross payment of \$3,296.47. The non-
14 monetary consideration is well-considered and provides meaningful relief, going to the heart of the
15 issues the Class Representative and Class Counsel sought to address: the impact of reviewing of
16 graphic content on content moderators. Williams Decl., ¶ 6. This portion of the settlement includes
17 expanded access to and availability of regular sessions with licensed and experienced clinicians trained
18 in treating individuals suffering from trauma, peer support groups, access to an employee assistance
19 plan, protection from retaliation for using these services, improved onboarding procedures, and
20 provides transparent job descriptions. ECF No. 60-1 at 7-9. The significance of the non-monetary
21 portion of the settlement is confirmed by Class Counsel’s experts’ \$3,900,000.00 valuation of these
22 benefits. Williams Decl., ¶ 8. Class Counsel was two firms of experienced lawyers. There was no need
23 for unwieldy and potentially inefficient committees of plaintiff lawyers. Staffing this case with the two
24 firms exclusively made it much more efficient than many other class cases, thereby fulfilling the
25 mandate to “secure the just, speedy, and inexpensive” resolution of disputes. Fed. R. Civ. P. 1.

26 The settlement is also fair to the Class despite the early stage of the proceedings. When
27 approving a pre-certification settlement, a court should engage in a probing inquiry for evidence of
28

1 collusion or other conflicts of interest in order to ensure that class representatives and their counsel do
 2 not secure a disproportionate benefit at the expense of the unnamed plaintiffs. *See, e.g., In re Apple Inc.*
 3 *Device Performance Litig.*, 50 F.4th 769, 782 (9th Cir. 2022); *see also Roes, 1-2 v. SFBSC Mgmt., LLC*,
 4 944 F.3d 1035, 1048-49 (9th Cir. 2019). This includes looking for “subtle signs” of collusion such as
 5 “(1) ‘when counsel receive a disproportionate distribution of the settlement;’ (2) ‘when the parties
 6 negotiate a “clear sailing” arrangement’ (i.e., an arrangement where defendant will not object to a
 7 certain fee request by class counsel); and (3) when the parties create a reverter that returns unclaimed
 8 [funds] to the defendant.” *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015) (quoting *Bluetooth*, 654
 9 F.3d at 947). None of those pitfalls (or any others) are here. In this settlement, every Class Member will
 10 receive a substantial and equal pro rata share. There is no basis to suggest that there has been any
 11 collusion or conflict interest; rather, Class Counsel and the Class Representative believe that this
 12 settlement is in the very best interests of the Class.

13 The excellent recovery obtained for the Class thus supports the requested fee award.

14 **ii. Class Counsel undertook risk on a contingent fee basis for a challenging**
 15 **case with little guiding precedent**

16 Class Counsel assumed significant risk in undertaking this litigation. The duration and
 17 complexity of the case, and the novel legal theories on which it is based exacerbated the risk beyond
 18 that typical of a contingent-fee representation in a class action case. Williams Decl. ¶ 19; Charest Decl.,
 19 ¶ 7. The case is being settled prior to a ruling on an anticipated renewed motion to dismiss, class
 20 certification, summary judgment, trial, and potential appeals, each of which posed a risk that Class
 21 Members would receive no recovery. *See In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-
 22 LHK, 2018 WL 3960068, at *12 (N.D. Cal. Aug 17, 2018) (describing the risks associated with
 23 potential adverse decisions “outside of the pleading stage.”). Moreover, the absence of a decision on the
 24 merits of Plaintiff’s novel claims in any prior litigation increased the risk of bringing the litigation in
 25 the first place. *See id.* (finding increased when a case presents a novel issue of first impression. Novel
 26 claims, especially unprecedented issues, support a larger percentage award of attorney fees. *See Spears v.*
 27 *First Am. Eappraiseit*, No. 08-CV-00868-RMW, 2015 WL 1906126, at *2 (N.D. Cal. Apr. 27, 2015)
 28

1 (awarding 35% of \$7,557,096.92 net settlement fund in a case where class counsel “faced at least three
2 significant novel issues of law”).

3 Class Counsel were and remain confident in Plaintiff’s case and believe its strength helped lead
4 to settlement, but the novelty of the legal claims at issue nevertheless increased the risk. Although the
5 *Scola* case also resulted in a class settlement, the legal claims common to both cases have never been
6 tested even on the pleadings, let alone at class certification or trial.² Class Counsel did not have the
7 benefit of following successful analogous actions or government prosecutions, but instead took the risk
8 to bring a case on the cutting-edge of legal development, on behalf of a client who bravely sought to
9 protect a class of workers who were being treated less than fairly. Indeed, this Court already dismissed
10 the claims once before the settlement, but Class Counsel maintained the effort and pressed the case
11 forward. (ECF No. 32). That acceptance of risk and effort in the face of adversity achieved the result for
12 the Class.

13 The risk Class Counsel willingly assumed supports an award of 30% of the Settlement Fund.

14 **iii. Class Counsel undertook a financial burden to prosecute the action**

15 In bringing this case, Class Counsel utilized their own funds and resources to prosecute the
16 action. To date, Class Counsel has incurred expenses of \$41,234.97. Williams Decl., ¶ 9; Charest Decl.,
17 ¶ 10. These expenses were incurred without any guarantee of recovery. All costs and expenses were
18 directly advanced by Class Counsel. Williams Decl. ¶ 28; Charest Decl. ¶ 7, 10. Because only two firms
19 worked on this case, the burden on Class Counsel was higher than that found in cases in which multiple
20 firms participated.

21 **iv. Courts have awarded similar fees in less complex cases**

22 Class Counsel’s requested fee is further supported by the complexity and difficulty of the case.
23 As mentioned previously, no case involving the same legal issues and claims has been adjudicated on
24 the merits. While it is well established that novel claims can support a fee request, courts still grant
25 upward departures from the 25% benchmark in significantly easier cases that do not confront novel
26

27 _____
28 ² In *Scola*, the parties had litigated intensely and had many discovery disputes. The case was settled while a fully briefed motion for judgment on the pleadings was pending.

1 issues of law. *See e.g., Garcia v. Schlumberger Lift Solutions*, No. 1:18-cv-01261-DAD JLT, 2020 WL
 2 6886383, at * 18, 21 (E.D. Cal. Nov. 24, 2020) (granting attorneys’ fees of one-third of the gross
 3 settlement fund even though there were no “recent changes to wage and hour law that complicated the
 4 issues or created novel issues.”), *report and recommendation adopted*, No. 1:18-CV-01261-DAD-JLT,
 5 2020 WL 7364769 (E.D. Cal. Dec. 15, 2020). Here, Class Counsel have developed the legal and factual
 6 basis for Plaintiff’s claims, worked with experts to fully understand the potential harms of moderating
 7 graphic content and the safeguards that can be put in place to lessen that harm, identified the applicable
 8 standards of care for social media platforms using content moderators, and argued in support of those
 9 claims before the Court. Williams Decl., ¶¶ 14-15. This effort in a case involving novel legal claims
 10 thus supports Class Counsel’s fee request.

11 **v. There is no windfall.**

12 A cross-check of the requested fee with Class Counsel’s lodestar shows that the requested fee is
 13 reasonable. The lodestar method requires that the Court determine the number of hours reasonably
 14 spent by counsel on a matter, multiply it by counsel’s reasonable hourly rates, and then adjust the
 15 lodestar up or down based on various factors similar to those relevant to the percentage method.
 16 *Bluetooth*, 654 F.3d, at 941-42. A lodestar cross-check ensures that class counsel has done the work
 17 necessary to justify the fee sought. *Vizcaino*, 290 F.3d at 1050; *see also In re Rite Aid Corp Sec. Litig.*,
 18 396 F.3d 294, 306-07 (3d Cir. 2005) (“[T]he lodestar cross-check calculation need entail neither
 19 mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the
 20 attorneys and need not review billing records.” (footnote omitted)).

21 Based on their hours worked at their standard hourly rates, JLSF’s lodestar is \$445,747.50 and
 22 Burns Charest’s lodestar is \$263,647.50. Williams Decl. 26; Charest Decl. ¶ 9. Class Counsel’s total
 23 lodestar is thus \$709,395.00. Williams Decl., ¶ 26. The requested fee of 30% of the common fund
 24 therefore amounts to a multiplier of 2.00. Courts “routinely enhance[] the lodestar to reflect the risk of
 25 non-payment in common fund cases.” *Vizcaino*, 290 F.3d at 1051 (quoting *Wash. Pub. Power Supply*,
 26 19 F.3d at 1300). When performing a lodestar cross-check in percentage-of-the-fund cases, courts
 27 commonly approve percentages that produce an award equivalent to the lodestar with a multiplier
 28

1 between 1.5 and 3.0. *See id.* at 1051 & n.6. Therefore, in light of the excellent results obtained for the
2 Class, the novelty of the legal claims, and the risks undertaken by Class Counsel, the lodestar cross-
3 check confirms the appropriateness of the requested fee award.

4 **IV. CLASS COUNSEL’S EXPENSES ARE REASONABLE AND NECESSARY**

5 Class Counsel seeks payment from the Settlement Fund of \$41,234.97 in expenses necessarily
6 incurred in the prosecution of this action, an amount representing 0.87% of the Settlement Fund.³
7 Williams Decl., ¶ 9; Charest Decl., ¶10. The Ninth Circuit has recognized that in contingency-fee class
8 actions “litigation expenses make the entire action possible.” *Online DVD*, 779 F.3d at 953. Attorneys
9 who create a common fund for the benefit of a class are entitled to be reimbursed for out-of-pocket
10 expenses incurred in creating the fund so long as the submitted expenses are reasonable, necessary, and
11 directly related to the prosecution of the action. *Vincent v. Hughes Air West*, 557 F.2d 759, 769 (9th Cir.
12 1977); *see In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008) (“Attorneys may
13 recover their reasonable expenses that would typically be billed to paying clients in non-contingency
14 matters.”).

15 The Williams and Charest Declarations provide an accounting of all costs for which
16 reimbursement is sought. The primary expenses in this case were for experts, who were an essential
17 component to securing robust and reliable non-monetary relief, and for JAMS, which bridged the gap
18 and got the parties past several significant issues. Rather than large committees of attorneys from
19 numerous law firms, JSLF and Burns Charest were the only law firms involved in investigating the
20 case, prosecuting the action, and reaching settlement. As a result, Class Counsel have been able to
21 avoid inefficiencies and duplication of work. Their ability to reign in hours and expenses has preserved
22 the maximum benefit for the Class.

23 Class Counsel advanced these expenses, interest free, with no assurance that they would ever be
24 recouped. Their request for reimbursement is therefore reasonable.

25
26
27 ³ Class Counsel notes that this total does not include the costs of settlement administration. However,
28 those costs are estimated not to exceed \$150,000. ECF No. 49 at 23. With those costs included,
expenses would not exceed 4.05% of the Settlement Fund.

1 **V. PAYMENT OF A SERVICE AWARD TO THE CLASS REPRESENTATIVE IS**
2 **APPROPRIATE.**

3 Class Counsel requests that the Court approve a service award to the sole Class Representative
4 in this action in the amount of \$20,000.00. But for this Class Representative, there would have been no
5 case, and no relief to the Class. It took courage to be the Class Representative. In a similar action, the
6 Defendant is alleged to have fired a plaintiff who brought a claim like the one here that challenged
7 unhealthy workplace conditions. Williams Decl. ¶ 23; *see also Young et al., v. ByteDance Inc., et al.*,
8 No. 3:22-cv-01883VC (ND Cal. Nov. 9, 2022) (ECF No. 50, ¶ 67). This Class Representative had every
9 reason to be concerned that she might face retaliation as well when she took on not only one of the
10 world's most powerful corporations, but also one of the greatest amassers of data in history. There was
11 no way for the Class Representative to be assured that her identity could be kept confidential. Still, the
12 Class Representative chose to work diligently with Class Counsel to assist in helping her fellow content
13 moderators improve their working conditions and mental health. The Class Representative worked
14 closely with Class Counsel on this case from its inception to the present.

15 Service awards encourage people to be plaintiffs in class actions where wrongs might go
16 unremedied if no one were willing to take on powerful interests. "Incentive awards are fairly typical in
17 class action cases" as they are intended "to compensate class representatives for work done on behalf of
18 the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes,
19 to recognize their willingness to act as a private attorney general." *Rodriguez v. West Publ'g Corp.*, 563
20 F.3d 948, 958-59 (9th Cir. 2009). Service awards are evaluated in light of "the actions the plaintiff has
21 taken to protect the interests of the class, the degree to which the class has benefitted from those actions
22 . . . [and] the amount of time and effort the plaintiff expended in pursuing the litigation." *Staton*, 327
23 F.3d at 977 (citation and internal quotation marks omitted).

24 The Class Representative assisted Class Counsel by consulting regularly with attorneys,
25 providing input regarding litigation and settlement strategy, producing informal discovery, consulting
26 with counsel during mediation sessions, monitoring media coverage and research, and discussing
27 parameters for settlement. Williams Decl., ¶ 22. This was all done at great personal risk to the Class
28

1 Representative, who feared retaliation, which would deprive her of her primary source of income.
2 Williams Decl. ¶ 22. This work was further conducted without promise of a service award. Williams
3 Decl. ¶ 22. The Class Representative spent significant time, energy, and effort in assisting Class
4 Counsel in this case, including over 50 hours of her own time. Williams Decl. ¶ 22. The Class
5 Representative still fears retaliation by YouTube, and thus Class Counsel will seek leave with the Court
6 to file a motion to have the Class Representative’s declaration provided for in camera review so as to
7 continue to protect her identity. Williams Decl. ¶ 23.

8 For all of these reasons, this Court should approve a service award of \$20,000 for the Class
9 Representative.

10 **VI. CONCLUSION**

11 For the reasons set forth above, Class Counsel requests the Court grant their Motion for
12 payment of \$1,416,163.44 in attorneys’ fees, \$41,234.97 in reimbursable costs, and a service award of
13 \$20,000.00 to the Class Representative.

14 ///

15 ///

16 ///

1 Dated: November 18, 2022

Respectfully Submitted,

2 JOSEPH SAVERI LAW FIRM, LLP

3 By: /s/ Steven N. Williams
4 STEVEN N. WILLIAMS

5 Joseph R. Saveri (State Bar No. 130064)
6 Steven N. Williams (State Bar No. 175489)
7 Kevin Rayhill (State Bar No. 267496)
8 Elissa A. Buchanan (State Bar No. 249996)
9 Abraham A. Maggard (State Bar No. 339949)
10 **JOSEPH SAVERI LAW FIRM, LLP**
11 601 California Street, Suite 1000
12 San Francisco, CA 94108
13 Telephone: (415) 500-6800
14 Facsimile: (415) 395-9940
15 Email: jsaveri@saverilawfirm.com
16 swilliams@saverilawfirm.com
17 krayhill@saverilawfirm.com
18 eabuchanan@saverilawfirm.com
19 amaggard@saverilawfirm.com

20 Daniel H. Charest (admitted *pro hac vice*)
21 **BURNS CHAREST LLP**
22 900 Jackson Street, Suite 500
23 Dallas, TX 75202
24 Telephone: (469) 904-4550
25 Facsimile: (469) 444-5002
26 Email: dcharest@burnscharest.com

27 Patrick D. Murphree (admitted *pro hac vice*)
28 Harry R. Yelton (admitted *pro hac vice*)
BURNS CHAREST LLP
365 Canal Street, Suite 1170
New Orleans, LA 70130
Telephone: (504) 799-2845
Facsimile: (504) 881-1765
Email: pmurphree@burnscharest.com
ryelton@burnscharest.com

Attorneys for Plaintiff and the Proposed Class

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel or parties of record electronically by CM/ECF.

/s/ Steven N. Williams
Steven N. Williams

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