

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JANE DOE,
Plaintiff,
v.
YOUTUBE, INC.,
Defendant.

CASE No. 20-cv-07493-YGR

**ORDER GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT
AND GRANTING MOTION FOR ATTORNEY’S
FEES, COSTS, AND SERVICE AWARD AND**

JUDGMENT

Re: Dkt. Nos. 65, 67, 76

United States District Court
Northern District of California

The Court previously granted plaintiffs’ Motion for Preliminary Approval of the Class Action Settlement in this matter on September 30, 2022. (Dkt. No 63, Amended Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”).) As directed by the Preliminary Approval Order, plaintiffs filed their Motions for Final Approval and for Attorney’s Fees, Costs, and Service Award. (Dkt. Nos. 65 and 67.) The motions are unopposed. The Court held a hearing on May 12, 2023 on the pending motions.

Having considered the motion briefing, the terms of the Settlement Agreement (attached here as Exhibit A), the arguments of counsel, and the other matters on file in this action, the Court **GRANTS** the motions. The Court finds the settlement fair, adequate, and reasonable. The provisional appointments of the class representative and class counsel are confirmed. The Motion for Attorney’s fees, Costs, and Service Award is also **GRANTED**. The Court **ORDERS** that class counsel be paid 30% of the Settlement Fund and \$41,234.97 in litigation costs, that Class Representative Jane Doe receive an incentive award of \$20,000, and that administrator KCC LC Group be paid an amount not to exceed \$150,000.

I. BACKGROUND

A. PROCEDURAL HISTORY

Plaintiff, on behalf of herself and all others similarly situated, commenced this class action

1 lawsuit against YouTube on September 21, 2020, in the Superior Court of California, County of
2 San Mateo. (Dkt. No. 1-1.) On October 24, 2020, YouTube removed the case to the United States
3 District Court for the Northern District of California. The operative complaint alleges Negligence
4 (Abnormally Dangerous Activity); Negligence (Negligent Exercise of Retained Control);
5 Negligence (Negligent Provision of Unsafe Equipment); violation of the California Unfair
6 Competition Law (“UCL”); and violation of the UCL as a “special employer.” (*See* Dkt. No. 57,
7 Amended Complaint (“Comp.”)). The focus of this action is common to all class members, namely
8 whether defendant failed to provide adequate resources to mitigate and address trauma
9 experienced by moderators as a result of viewing graphic content. Plaintiff sought both damages
10 and injunctive relief.

11 On December 2, 2020, YouTube filed a motion to dismiss. (Dkt. No. 16.) Plaintiff
12 opposed the motion, filing her response on January 25, 2021. (Dkt. No. 25.) YouTube filed its
13 reply in support of its motion on February 22, 2021. (Dkt. No. 26.) On July 13, 2021, the Court
14 held a hearing on the motion to dismiss. (Dkt. No. 31.) On July 14, 2021, the Court granted
15 YouTube’s motion to dismiss with leave to amend. (Dkt. No. 32.)

16 Thereafter, the parties conferred through counsel and agreed to discuss potential resolution
17 outside of Court. (Dkt. No. 67-1, Williams Decl. at ¶ 6.) The Parties retained the Hon. Rebecca
18 Westerfield (Ret.) of JAMS as a neutral to assist in their settlement efforts. *Id.* In March 2022, the
19 parties engaged in two sessions with Judge Westerfield. (*Id.*) On March 8, 2022, the parties
20 agreed to settlement terms subject to plaintiff’s experts’ satisfaction with the scope of injunctive
21 relief and confirmation of the class size. (*Id.*) The parties worked on and resolved those issues,
22 and the settlement terms were memorialized in the Settlement Agreement dated May 23, 2022.
23 (Dkt. No. 49-2.) On July 12, 2022, plaintiff moved for preliminary approval of class action
24 settlement and appointment of settlement class counsel. (Dkt. No. 49.) On July 25, 2022,
25 YouTube filed its notice of non-opposition and requested that the Court grant plaintiff’s motion.
26 (Dkt. No. 51.) At the hearing on the motion held on August 18, 2022, the Court advised the
27 parties of several elements of the settlement about which the Court required additional information
28 before it could grant plaintiff’s Motion. On August 19, 2022, plaintiff filed documents addressing

1 the Court's concerns, including an amended complaint. (Dkt. Nos. 57–58.) The Court granted the
2 motion. (Dkt. No. 62.)

3 On October 26, 2022, the plaintiff filed a notice advising the Court that pursuant to the
4 Settlement Agreement, the settlement fund had increased to account for a larger class size than
5 anticipated when the parties agreed to the initial settlement. (Dkt. No. 64.) This agreement, made
6 pursuant to the provisions of a confidential supplement to the Settlement Agreement, was a pro
7 rata increase to reflect the increase in class size during the time between negotiating the final
8 Settlement Agreement and the date of preliminary approval, thereby assuring the class members'
9 individual recoveries would not be reduced as a result of the larger class size. (*Id.*)

10 On November 18, 2022, in accordance with the Court's schedule established in the order
11 granting preliminary approval, Plaintiff filed for an award of attorney fees, reimbursement of
12 expenses, and service awards. (Dkt. No. 65.) YouTube filed a notice of no position on this
13 motion on December 21, 2022. (Dkt. No. 66.) On January 12, 2022, notice required under 28
14 U.S.C. § 1715 was mailed to the appropriate government officials by the Settlement
15 Administrator. A hearing was set for February 21, 2023. (Dkt. No. 67.) The hearing was moved
16 to May 12, 2023, in response to an administrative motion by defendant raising concerns that
17 CAFA Notices were not timely sent to government officials. (Dkt. Nos. 69; 71.)

18 **B. INVESTIGATION AND DISCOVERY**

19 Throughout the course of three years of litigation, plaintiff engaged in extensive discovery.
20 This included a pre-filing investigation and consultation with experts, and extensive informal
21 discovery. (Dkt. No. 65-1, Williams Decl. at ¶¶ 11-15.)
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1 **II. TERMS OF THE SETTLEMENT AGREEMENT**

2 **A. MONETARY RELIEF**

3 The Settlement Agreement provides for a cash payment totaling \$4,702,544.80 to be
4 distributed as a Per Capita Payment to each class member. (Dkt. No. 63 at 15; Dkt. No. 64 at 1.)
5 This is a gross award of \$3,296.47 per Class Member. (Dkt. No. 65 at 4.) In addition, the
6 Settlement Agreement provides for valuable non-monetary consideration in the form of business
7 practice enhancements to address the potential for harm arising from moderating YouTube
8 content. The monetary recovery combined with the injunctive relief represents a significant benefit
9 to class members, not only insuring recovery without the risks of further litigation and trial, but
10 also in relation to the similar case of *Scola v. Facebook, Inc.*, No. 18CIV05135 (Cal. Sup. Ct., San
11 Mateo Cty.). (Williams Decl., ¶¶ 12, 18.) Further, as the Settlement Agreement does not require
12 class members to present individualized proof of a diagnosis or of damages in order to claim
13 additional compensation, class members here will receive payments more swiftly.

14 Any funds remaining following the Per Capita Payments, including payments due to
15 expired or returned checks or rejected electronic payments, will be distributed to the cy près
16 recipient International Society for Traumatic Stress Studies.

17 **B. ATTORNEY FEES**

18 Class Counsel seeks an award of attorneys' fees equal to 30% of the Settlement Fund or
19 \$1,416,163.44. (Dkt. No. 65 at i.) They seek reimbursement of litigation expenses in the amount of
20 \$41,234.97. (*Id.*)

21 **C. CLASS MEMBER RELEASE**

22 In exchange for the settlement award, class members will release claims as set forth in the
23 Settlement Agreement. (Ex. A, at § 6.)

24 **D. CLASS NOTICE AND CLAIMS ADMINISTRATION**

25 The Court approved the parties' proposed notice procedures when it granted preliminary
26 approval.

27 **III. DISCUSSION**

28 Class actions may be settled upon the Court's approval. Fed. R. Civ. P. 23(e). Rule 23(e)

1 “requires the district court to determine whether a proposed settlement is fundamentally fair,
2 adequate, and reasonable.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). Any fairness
3 determination requires courts to “focus[] primarily upon whether the particular aspects of the
4 decree that directly lend themselves to pursuit of self-interest by class counsel and certain
5 members of the class—namely attorney's fees and the distribution of any relief, particularly
6 monetary relief, among class members—strictly comport with substantive and procedural
7 standards designed to protect the interests of class members.” *Id.* at 960. Courts evaluate the
8 “settlement as a whole, rather than assessing its individual components.” *Lane v. Facebook, Inc.*,
9 696 F.3d 811, 818 (9th Cir. 2012). Specifically, Rule 23(e)(2) provides that a court may approve a
10 proposed class action settlement after considering whether:

- 11 (A) the class representatives and class counsel have adequately represented the class;
- 12 (B) the proposal was negotiated at arm’s length;
- 13 (C) the relief provided for the class is adequate, taking into account:
 - 14 (i) the costs, risks, and delay of trial and appeal;
 - 15 (ii) the effectiveness of any proposed method of distributing relief to the class,
16 including the method of processing class-member claims;
 - 17 (iii) the terms of any proposed award of attorney's fees, including timing of
18 payment; and
 - 19 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 20 (D) the proposal treats class members equitably relative to each other.

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

22 The Court’s analysis of the settlement is further informed by the numerous proceedings
23 over which the Court has presided both substantively and procedurally.

24 **A. ADEQUACY OF REPRESENTATION**

25 Rule 23(e)(2)(A) requires the Court to consider whether “the class representatives and
26 Class Counsel have adequately represented the class.” Fed. R. Civ. P. 23(e)(2)(A). As laid out in
27 the background above, counsel has litigated this case for years, through discovery, motion
28 practice, and settlement negotiations. Lead plaintiff has also been engaged in the litigation.

1 Accordingly, the Court finds the class was adequately represented.

2 **B. ARMS-LENGTH NEGOTIATION**

3 The Settlement Agreement appears to have been the product of arm's length and informed
4 negotiations. The settlement occurred only after motion practice and extensive informal
5 discovery. Thus, the parties have vetted their claims and know the strengths and weaknesses of
6 their case. The Court notes that the full-day mediation was followed by eight months of continued
7 negotiations. Further, retention of the Hon. Rebecca Westerfield (Ret.) of JAMS as a neutral to
8 assist in their settlement efforts that the settlement reached by the parties was a result of serious,
9 informed, non-collusive, and arms-length negotiation. Counsel for both parties are highly
10 experienced. Accordingly, the Court finds that the record does not indicate collusion or self-
11 dealing. *See In re Bluetooth*, 654 F.3d at 946-47.

12 The relief provided for the Class appears to be adequate, taking into account:

- 13 (i) the costs, risks, and delay of trial and appeal;
14 (ii) the effectiveness of any proposed method of distributing relief to the class;
15 (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
16 (iv) any agreements required to be identified under Rule 23(e)(3).

17 Moreover, the Settlement Agreement treats Class members equitably relative to each other.

18 **C. ADEQUACY OF RELIEF**

19 The Court finds settlement here is fair and reasonable. Rule 23(e)(2)(C). Proceeding to
20 trial would have been costly and recovery was not guaranteed, especially given the novelty of the
21 claims at issue.

22 Additionally, the reaction of the class has been positive. The notice packet was delivered
23 to 95% of Class Members. (Dkt. No. 67 at 5.) Over one-third of the members of the class
24 accessed the settlement website maintained by the settlement administrator to obtain information
25 about the Settlement. (*Id.*) None of the Class Members opted out or objected to the Settlement.
26 (*Id.*) “[T]he absence of a large number of objections to a proposed class action settlement raises a
27 strong presumption that the terms of a proposed class settlement action are favorable to the class
28 members.” *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1043 (N.D. Cal. 2008) (citation

1 omitted); *see also Churchill Vill.*, 361 F.3d at 577 (holding that approval of a settlement that
2 received 45 objections (0.05%) and 500 opt-outs (0.56%) out of 90,000 class members was
3 proper).

4 **D. ADEQUACY OF NOTICE**

5 The Court must direct notice “in a reasonable manner to all class members who would be
6 bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “The class must be notified of a proposed
7 settlement in a manner that does not systematically leave any group without notice.” *Officers for*
8 *Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982). Adequate notice requires: (i) the
9 best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class
10 members of the proposed settlement and of their right to object or to exclude themselves as
11 provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient
12 notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due
13 process and any other applicable requirements under federal law. *Phillips Petroleum Co. v. Shutts*,
14 472 U.S. 797, 812 (1985). Due process requires “notice reasonably calculated, under all the
15 circumstances, to apprise interested parties of the pendency of the action and afford them an
16 opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306,
17 314 (1950).

18 The Court finds the notice provided adequately meets the above criteria and that the
19 Claims Administrator has shown it adequately performed its duties in reaching out to and
20 responding to class members. As already noted, notice was successfully received by 95% of the
21 class.

22 **E. NOTICE TO GOVERNMENT AGENCIES**

23 The Settlement Administrator provided the required notice to federal and state attorneys
24 general under the Class Action Fairness Act (“CAFA”). 28 U.S.C. § 1715(b). Notice occurred on
25 January 12, 2023, more than 90 days before the date of this order, as required by 28 U.S.C. §
26 1715(d).

1 **IV. MOTION FOR ATTORNEY’S FEES, COSTS, AND CLASS REPRESENTATIVE AWARDS**

2 **A. ATTORNEY’S FEES**

3 Attorney’s fees and costs may be awarded in a certified class action under Federal Rule of
 4 Civil Procedure 23(h). Such fees must be found “fair, reasonable, and adequate” in order to be
 5 approved. Fed. R. Civ. P. 23(e); *Staton*, 327 F.3d at 963. To “avoid abdicating its responsibility to
 6 review the agreement for the protection of the class, a district court must carefully assess the
 7 reasonableness of a fee amount spelled out in a class action settlement agreement.” *Id.* “[T]he
 8 members of the class retain an interest in assuring that the fees to be paid class counsel are not
 9 unreasonably high,” since unreasonably high fees are a likely indicator that the class has obtained
 10 less monetary or injunctive relief than they might otherwise. *Id.* at 964.

11 The Court analyzes an attorney’s fee request based on either the “lodestar” method or a
 12 percentage of the total settlement fund made available to the class, including costs, fees, and
 13 injunctive relief. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The Ninth
 14 Circuit encourages courts to use another method as a cross-check in order to avoid a “mechanical
 15 or formulaic approach that results in an unreasonable reward.” *In re Bluetooth*, 654 F.3d at 944–45
 16 (citing *Vizcaino*, 290 F.3d at 1050–51.)

17 Under the percentage-of-the-fund method, courts in the Ninth Circuit “typically calculate
 18 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in
 19 the record of any ‘special circumstances’ justifying a departure.” *In re Bluetooth*, 654 F.3d at 942
 20 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)).
 21 The benchmark should be adjusted when the percentage recovery would be “either too small or
 22 too large in light of the hours devoted to the case or other relevant factors.” *Six (6) Mexican*
 23 *Workers*, 904 F.2d at 1311. When using the percentage-of-recovery method, courts consider a
 24 number of factors, including whether class counsel “‘achieved exceptional results for the class,’
 25 whether the case was risky for class counsel, whether counsel’s performance ‘generated benefits
 26 beyond the cash settlement fund,’ the market rate for the particular field of law (in some
 27 circumstances), the burdens class counsel experienced while litigating the case (e.g., cost,
 28 duration, foregoing other work), and whether the case was handled on a contingency basis.” *In re*

1 *Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (quoting *Vizcaino*, 290
2 F.3d at 1047-50. “[T]he most critical factor [in determining appropriate attorney’s fee awards] is
3 the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

4 Under the lodestar approach, a court multiplies the number of hours reasonably expended
5 by the reasonable hourly rate. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016) (“A
6 reasonable hourly rate is ordinarily the ‘prevailing market rate [] in the relevant community.’”).

7 Here, class counsel advocates applying the percentage-of-the-fund method. (Dkt. No. 65 at
8 4.) Class Counsel request 30% of the Settlement Fund. They argue this percentage is warranted
9 for six reasons. One, the settlement is a strong result for Class Members who will receive a gross
10 award of \$3,296.47. (*Id.*) Two, the case was brought at significant risk to counsel. The case
11 raises novel theories that have not yet been fully adjudicated. *See Spears v. First Am. Eappraiseit*,
12 No. 08-CV-00868-RMW, 2015 WL 1906126, at *2 (N.D. Cal. Apr. 27, 2015). Counsel litigated
13 this case entirely on contingency and with the risk of receiving no payment should the case fail.
14 Here, defendants strongly contested their liability. Three, success was achieved due to counsel’s
15 high level of skill in this area in a context of highly-skilled opposing counsel. Four, the length of
16 the case, over three years, supports a higher award for counsel. Five, in addition to the monetary
17 settlement, counsel obtained non-monetary relief that plaintiff’s expert values at roughly
18 \$3,900,000. (*Id.* at 6.) When taken into consideration, counsel seeks considerably less than 30%
19 of the value received by the class.

20 The Court finds that the risk taken by counsel, novelty of the claims, and exceptional
21 results for class members makes an award of 30% appropriate.

22 Lastly, applying the lodestar method as a cross-check indicates 30% is reasonable. *In re*
23 *Bluetooth*, 654 F.3d at 944–45. Class Counsel’s total lodestar is \$836,003.00. (Dkt. No. 78 at ¶ 5.)
24 The requested fee of 30% of the common fund therefore amounts to a multiplier of 1.7, which is
25 reasonable.

26 **B. COSTS AWARD**

27 Class Counsel is entitled to reimbursement of reasonable out-of-pocket expenses. Fed. R.
28 Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may

1 recover reasonable expenses that would typically be billed to paying clients in non-contingency
2 matters). Costs compensable under Rule 23(h) include “nontaxable costs that are authorized by
3 law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). Here, class counsel seeks reimbursement
4 for litigation expenses, and provides records documenting those expenses in the amount of
5 \$41,234.97. The Court grants counsel’s request for costs.

6 C. SERVICE AWARDS

7 The district court must evaluate requested awards using relevant factors including “the
8 actions the plaintiff has taken to protect the interests of the class, the degree to which the class has
9 benefitted from those actions . . . [and] the amount of time and effort the plaintiff expended in
10 pursuing the litigation.” *Staton*, 327 F.3d at 977. “Such awards are discretionary . . . and are
11 intended to compensate class representatives for work done on behalf of the class, to make up for
12 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
13 willingness to act as a private attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d
14 948, 958-959 (9th Cir. 2009). The Ninth Circuit has emphasized that district courts must
15 “scrutiniz[e] all incentive awards to determine whether they destroy the adequacy of the class
16 representatives.” *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1163 (9th Cir. 2013).
17 Here, class representative Doe spent significant time representing the Class over three plus years.
18 As this case was against an employer, she took on personal risk to do so. Thus, the Court
19 approves the requested payment.

20 V. CONCLUSION

21 Based upon the foregoing, the motions for settlement approval and attorney fees are
22 **GRANTED**. The Court also **GRANTS** plaintiff’s motion to file her declaration under seal. (Dkt. No.
23 76.)

24 Without affecting the finality of this order in any way, the Court retains jurisdiction of all
25 matters relating to the interpretation, administration, implementation, effectuation and enforcement
26 of this order and the Settlement.

27 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that final judgment is **ENTERED** in
28 accordance with the terms of the Settlement, the Amended Order Granting Preliminary Approval of


1 Class Action Settlement issued on September 30, 2022, and this Order. This document will
2 constitute a final judgment (and a separate document constituting the judgment) for purposes of Rule
3 58, Federal Rules of Civil Procedure.

4 The parties shall file a post-distribution accounting in accordance with this District's
5 Procedural Guidance for Class Action Settlements no later than **DECEMBER 1, 2023**. The Court
6 **SETS** a compliance deadline on **DECEMBER 8, 2023** on the Court's 9:01 a.m. calendar to verify
7 timely filing of the post-distribution accounting.

8 This terminates docket numbers 65, 67, and 76.

9 **IS SO ORDERED.**

10 Dated: May 15, 2023


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

United States District Court
Northern District of California

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Exhibit A

CLASS SETTLEMENT AND RELEASE AGREEMENT

Dated: September 8, 2022

This Class Settlement and Release Agreement (“**Agreement**”) is entered into by and among Plaintiff Jane Doe (“**Plaintiff**”) and Defendant YouTube, LLC (“**Defendant**” or “**YouTube**”). Plaintiff and Defendant are referred to herein individual as a “**Party**” and collectively as the “**Parties**”.

This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Plaintiff Claims and Released Class Claims (as those terms are defined below), upon and subject to the terms and conditions of this Agreement and subject to preliminary and final approval of the Court.

RECITALS

(a) On September 21, 2020, Plaintiff filed a complaint (the “**Complaint**”) against Defendant in the Superior Court of the State of California, County of San Mateo. On October 24, 2020, YouTube removed the Complaint to the United States District Court for the Northern District of California, in a civil action captioned *Doe v. YouTube, Inc.*, Case No. 4:20-cv-7493 (N.D. Cal.) (the “**Action**”).

(b) On July 14, 2021, the Court granted YouTube’s motion to dismiss the Complaint with leave to amend. The Parties stipulated to three extensions to facilitate settlement discussions.

(c) On August, 18, 2022, Plaintiff filed an Amended Complaint (the “**Amended Complaint**”) in support of this Settlement Agreement. The Amended Complaint is the operative complaint in respect to this Settlement Agreement.

(d) This Agreement is the result of arm’s-length settlement discussions between the Parties, including two private mediation sessions with the Honorable Judge Rebecca J. Westerfield (Ret.) of JAMS on March 2, 2022, and March 8, 2022.

(e) The Parties, without any admission or concession whatsoever, have entered into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to put to rest this controversy, and to avoid the risks inherent in complex litigation;

(f) Class Counsel have conducted the arm’s-length settlement negotiations on behalf of the proposed class;

(g) Based upon those negotiations and Class Counsel’s investigation of the facts, review of applicable law, and analysis of the benefits that this Agreement affords to Plaintiff and Class Members, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to Plaintiff and Class Members and that it is in the best interests of Plaintiff and Class Members to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

Plaintiff and Defendant, through their undersigned counsel and subject to final approval of

the Court after notice to the Settlement Class and an opportunity for the Class Members to object or exclude themselves, stipulate and agree to finally and fully compromise, settle, and release the Released Claims and to dismiss this Action with prejudice, upon and subject to the terms and conditions set forth below.

SECTION 1: DEFINITIONS

Capitalized terms not defined elsewhere in this Agreement shall have the following meanings:

- 1.1 “**Affiliates**” means, with respect to any Person, any other Person that from time to time directly or indirectly controls or is controlled by or is under common control with such first Person.
- 1.2 “**Amended Complaint**” means the Amended Class Action Complaint filed on August 18, 2022, in the Action.
- 1.3 “**Attorneys’ Fees Award**” means the attorneys’ fees, reimbursement of expenses, and any and all other costs awarded by the Court to Class Counsel out of the Settlement Fund.
- 1.4 “**Claim**” or “**Claims**” means any and all manner of allegations of wrongdoing, actions, causes of action, claims, counterclaims, damages whenever and however incurred (whether actual, punitive, treble, compensatory, or otherwise), demands (including, without limitation, demands for arbitration), judgments, liabilities of any kind (including costs, fees, penalties, or losses of any kind or nature), and suits, whether direct, indirect, or otherwise in nature, known or unknown, suspected or unsuspected, accrued or unaccrued, asserted or unasserted, whether in law, in equity, or otherwise.
- 1.5 “**Class Counsel**” means the law firms listed on the signature page of this Agreement as representing Plaintiff.
- 1.6 “**Class Member**” means an individual who is a member of the Settlement Class and is not an Excluded Person under Section 2.2.
- 1.7 “**Class Release**” has the meaning set forth in Section 6.1.
- 1.8 “**Class Representative**” means Plaintiff, in her capacity as class representative of the Settlement Class.
- 1.9 “**Class Representative Service Award**” means any amount awarded by the Court to Plaintiff for her time and effort bringing the Action and serving as Class Representative.
- 1.10 “**Content Moderator**” means any individual who works in a group whose principal responsibility is to review user-generated content uploaded to YouTube to determine whether such material violates YouTube’s Community Guidelines.
- 1.11 “**Court**” means the United States District Court for the Northern District of California, Honorable Yvonne Gonzalez Rogers or any judge who shall succeed her in the Action, presiding.

- 1.12 “**Covered Conduct**” means any act, omission, fact, or matter occurring or existing on or prior to the Final Approval Order and Final Judgment and that arises out of (a) the allegations involved, set forth, or referred to in the Amended Complaint or any other pleading in the Action, including without limitation allegations of bodily, emotional, or psychological injury; or (b) Claims asserted or that could have been asserted in the Action against Defendant based upon the allegations involved, set forth, or referred to in the Amended Complaint or any other pleading in the Action.
- 1.13 “**Cy Pres Recipient**” means the entity approved by the Court to receive any funds remaining in the Settlement Fund after all other distributions under this Agreement, as set forth in Section 4.3.
- 1.14 “**Defense Counsel**” means Munger, Tolles & Olson LLP.
- 1.15 “**Effective Date**” means the first date after the Final Approval Order and Final Judgment have been entered and either (a) the time to appeal the Final Approval Order and Final Judgment has expired with no appeal having been filed; or (b) the Final Approval Order and Final Judgment is affirmed on appeal by a reviewing court and is no longer reviewable by any court.
- 1.16 “**Execution Date**” means the date this Agreement has been signed by all signatories hereto.
- 1.17 “**Fairness Hearing**” means the hearing at or after which the Court determines whether to finally approve this Agreement as fair, reasonable, and adequate.
- 1.18 “**Final Approval Order**” means the order entered by the Court finally approving this Agreement as fair, reasonable, and adequate, following Preliminary Approval, Notice, and the Fairness Hearing, as further described in Section 10.
- 1.19 “**Final Judgment**” means the Final Order of judgment entered by the Court dismissing the Action with prejudice as to Defendant.
- 1.20 “**Final Order**” means, with respect to any order of a court (including a judgment), that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes a “Final Order” when (a) no appeal has been filed and the prescribed time for commencing, filing, or noticing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and any prescribed time for commencing, filing, or noticing any further appeal has expired; or (ii) the order has been affirmed in its entirety and any prescribed time for commencing, filing, or noticing any further appeal has expired. For purposes of this definition, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus and any other proceedings of like kind, together with all proceedings ordered on remand and all proceedings arising out of any subsequent appeal or appeals following decisions on remand.
- 1.21 “**Net Settlement Fund**” means the Settlement Fund, reduced by the sum of the amounts of any award, fee, cost, or payment described at Section 4.1(a)–(c).

- 1.22 “**Non-Monetary Consideration**” has the meaning set forth in Section 5.1.
- 1.23 “**Notice**” means the notice disseminated pursuant to the Notice Plan.
- 1.24 “**Notice Plan**” means the plan for providing notice of this Settlement to the Settlement Class.
- 1.25 “**Objection/Exclusion Deadline**” means the date to be designated by the Court by which a written objection to this Agreement or a submitted request for exclusion must be filed or postmarked.
- 1.26 “**Opt-Out Threshold**” has the meaning set forth in Section 13.2.
- 1.27 “**Person**” means any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.
- 1.28 “**Preliminary Approval**” and “**Preliminary Approval Order**” mean the order issued by the Court provisionally (a) granting preliminary approval of this Agreement; (b) certifying the Settlement Class for settlement purposes; (c) appointing Class Representatives and Class Counsel; (d) approving the Notice Plan and appointing a Settlement Administrator; (e) establishing deadlines for the filing of objections to or exclusions from the proposed settlement contemplated by this Agreement; and (f) scheduling the Final Approval Hearing.
- 1.29 “**Released Claims**” means, to the fullest extent that the law permits their release, all past, present, and future Claims of any nature whatsoever arising out of the (a) the Action; (b) the conduct, transactions, or occurrences set forth in any pleading in the Action; (c) the Covered Conduct; and (d) the conduct of the settlement negotiations and the negotiations of this Agreement (except for representations or obligations expressly included in this Agreement).
- 1.30 “**Released Defendant Parties**” means (a) Defendant; (b) Defendant’s past and present parents, subsidiaries, divisions, and Affiliates; and (c) each of the foregoing’s past, present and future officers, directors, insurers, employees, agents, attorneys, Affiliates, contractors, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing).
- 1.31 “**Releasing Class Member Parties**” means (a) Plaintiff; (b) each Class Member; and (c) each of the foregoing’s agents, representatives, attorneys, heirs, administrators, executors, assigns, predecessors and successors in interest, and any other Person claiming by, through, on behalf of, or for the benefit of any of them.
- 1.32 “**Settlement**” means (a) the Release of the Released Claims by the Releasing Class Member Parties, as provided in Section 6; and (b) the dismissal of the Action with prejudice as to Defendant as contemplated by this Agreement.

- 1.33 “**Settlement Administrator**” means a third-party class action settlement administrator to be proposed by Plaintiff and approved by the Court.
- 1.34 “**Settlement Amount**” means the total of four million two hundred sixty-nine thousand seventy U.S. dollars (\$4,269,070) that YouTube will pay in connection with this Agreement, deposited into the Settlement Fund.
- 1.35 “**Settlement Class**” has the meaning set forth in Section 2.1.
- 1.36 “**Settlement Fund**” means the common fund into which YouTube shall deposit the Settlement Amount for payment of (a) costs payable to the Settlement Administrator; (b) distributions to Plaintiff and Class Members; (c) any award of Attorneys’ Fees and reimbursement of costs; (d) any Class Representative Service Award; and (e) any distribution to the Cy Pres Recipient. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of § 468B of the Internal Revenue Code and the Treasury regulations thereunder and agree not to take any position for tax purposes inconsistent therewith.
- 1.37 “**YouTube Vendor**” means a vendor (a) with whom YouTube has contracted to provide Content Moderator services to YouTube in the United States; and (b) who either (i) directly employed an individual as a Content Moderator; or (ii) subcontracted with an individual to provide services as a Content Moderator. “YouTube Vendor” also means any subcontractor of a YouTube Vendor who has contracted to provide Content Moderator services to YouTube in the United States and who (y) directly employed an individual as a Content Moderator; or (z) subcontracted with an individual to provide services as a Content Moderator.

SECTION 2: SETTLEMENT CLASS

- 2.1 Definition of the Settlement Class. For purposes of this Settlement only, the “**Settlement Class**” consists of all Content Moderators (other than Excluded Persons) who performed work in the United States as an employee or subcontractor of a YouTube Vendor from January 1, 2016, to the date of Preliminary Approval.
- 2.2 Excluded Persons. The following Persons (each, an “**Excluded Person**”) are excluded from the Settlement Class and are not Class Members: (a) the Settlement Administrator; (b) employees, officers, and directors of YouTube; (c) any judge presiding over the Action and that judge’s immediate family members; and (d) Persons who properly and timely opt out of the Settlement Class by submitting a Request for Exclusion in accordance with Section 8.1.
- 2.3 Stipulation to Certification of the Settlement Class. The Parties hereby stipulate, solely for settlement purposes and in consideration of the Settlement set forth herein, to (a) certification of the Settlement Class; (b) appointment of Class Counsel as counsel for the Settlement Class; and (c) conditional approval of the Class Representative as a suitable representative of the Settlement Class.

However, if (i) the motion for Preliminary Approval is denied in whole or in part; (ii) the

Final Judgment does not become a Final Order for any reason; (iii) this Agreement or the Settlement is terminated as provided herein; or (iv) the Final Approval Order is reversed or vacated following any appeal taken therefrom, then the stipulations in this Section 2.3 will automatically become null and void ab initio and may not be cited or referred to for any other purpose in the Action. It is expressly understood and agreed by the Parties that the stipulations in this Section 2.3 are binding only with respect to the Settlement and this Agreement, and Defendant expressly denies that the Action met or meets the requisites for class certification for any purpose other than this Settlement.

SECTION 3: SETTLEMENT FUND

- 3.1 Settlement Payment. In consideration of the Class Release, the dismissal of the Action with prejudice, and the other consideration specified herein, Defendant agrees to place the Settlement Amount into an interest-bearing Settlement Fund in the following amounts at the following times: (a) \$150,000.00 within sixty (60) days after the later of (i) the date of Preliminary Approval and (ii) the date Defendant receives wire instructions and a Form W-9 for the payment; and (b) the remainder within fifteen (15) days after the Effective Date. The Settlement Administrator will be the administrator of the Settlement Fund and will cause the filing of all tax returns required to be filed by or with respect to the Settlement Fund, including by any escrow agent.
- 3.2 No Additional Payment by Defendant. The Settlement Amount constitutes the full monetary consideration provided by Defendant for the Settlement and is the limit and full extent of Defendant's monetary obligation under the Agreement to Plaintiff, Class Members, Class Counsel, and the Settlement Administrator. Defendant has no other financial obligation under this Agreement. No portion of the Settlement Fund will revert to Defendant unless the Settlement is terminated, is not finally approved, or does not become effective for any reason.

SECTION 4: DISTRIBUTION OF SETTLEMENT FUND

- 4.1 Administrative Payments.
- a. Payment of Settlement Administrator Expenses. The reasonable costs of performing the functions required of the Settlement Administrator by this Agreement will be paid to the Settlement Administrator exclusively out of the Settlement Fund.
 - b. Distribution of Class Representative Service Award. The Settlement Administrator will distribute any Class Representative Service Award within thirty (30) days after the later of (a) the Effective Date; or (b) receipt of a completed IRS Form W9 from the Class Representative Service Award recipient(s). The Class Representative Service Award will be paid exclusively out of the Settlement Fund.
 - c. Distribution of Attorneys' Fee Award. The Settlement Administrator will distribute any Attorneys' Fee Award within thirty (30) days after the later of (a) the Effective Date; or (b) receipt of a completed IRS Form W9 from the

Attorneys' Fee Award recipient(s). The Attorneys' Fee Award will be paid exclusively out of the Settlement Fund.

- 4.2 Per Capita Payments. Within thirty (30) days after the Effective Date, the Settlement Administrator will pay the Net Settlement Fund to the Class Members in equal, per capita shares (each share a “**Per Capita Payment**”) by check or electronic payment, to the extent Class Members have requested electronic payment and provided electronic payment information to the Settlement Administrator. The Per Capita Payment serves as redress and as consideration for the Class Release. Each Per Capita Payment will be valid for ninety (90) days. For any Class Members whose Per Capita Payment is returned as undeliverable, the Settlement Administrator will make best efforts to identify a valid mailing address for that Class Member, using standard industry methods.
- 4.3 Remaining Funds. Any remaining amounts in the Settlement Fund after the distribution of Per Capita Payments, including those attributable to expired or returned checks or to electronic payments that have been rejected, will be distributed to a Cy Pres Recipient as approved by the Court. Subject to Court approval, the Parties have agreed that the Cy Pres Recipient will be the International Society for Traumatic Stress Studies. In no event will any remaining amounts in the Settlement Fund be returned to Defendant unless a Party has terminated this Agreement in accordance with Section 13.

SECTION 5: NON-MONETARY CONSIDERATION

- 5.1 Non-Monetary Consideration. In further consideration of the Class Release, the dismissal of the Action with prejudice, and other consideration specified herein, Defendant agrees to implement the following business practice enhancements no later than sixty (60) days after the Effective Date (the “**Non-Monetary Consideration**”):
- a. YouTube shall require all YouTube Vendors to implement the following interventions to promote the wellness of Content Moderators:
 - i. Each YouTube Vendor will provide Content Moderators with access to onsite counseling services provided by a licensed and experienced clinician trained in treating individuals suffering from trauma. Said counseling services will be staffed such that each Content Moderator will have access to onsite counseling for at least 45 minutes of individual time bi-weekly and additional onsite and virtual counseling on an as-needed basis.
 - ii. Each YouTube Vendor will provide Content Moderators with access to an employee assistance plan with features including 24/7 support, virtual counseling, and critical incident response.
 - iii. Each YouTube Vendor will make available peer support groups and/or peer listening sessions to enable Content Moderators to meet at their discretion to discuss mental health and wellbeing and will provide reasonable resources to enable these peer support groups and/or peer listening sessions. These support groups and/or listening sessions must be made available on

at least a monthly basis.

- iv. No YouTube Vendor will make any employment decision adverse to a Content Moderator on the basis of a Content Moderator's use of the resources described in (i) to (iii) above.
 - v. Each YouTube Vendor will provide Content Moderators with onboarding training that includes an overview of the YouTube Vendor's wellness program and resources, psychological coping skills, and process to request an alternative work assignment. Each YouTube Vendor will also make this information available to Content Moderators who have been onboarded prior to the time that the YouTube Vendor begins to provide the onboarding training described above.
 - vi. Each YouTube Vendor will provide transparent job descriptions that (1) state that the job involves content moderation and (2) accurately reflect the scope of the activities a Content Moderator is expected to perform, with sensitive content moderation activities involving potentially offensive or disturbing materials explicitly identified.
 - vii. To the extent that it is the beneficiary of any non-disclosure agreement entered into by a Class Member, YouTube shall not enforce any rights it may have against any Class Member who has disclosed the conditions of their work to any person to whom the Class Member believed in good faith such disclosure was necessary or important to their well-being and/or legal rights so long as the recipient of that information has a confidential relationship with the Content Moderator (e.g., the Class Member's healthcare provider, attorney, spouse, and/or priest). For clarity, the foregoing sentence shall not prevent or modify in any way YouTube's ability to enforce the provisions of any Confidential Information and Invention Assignment Agreement entered into between YouTube and any Class Member.
- b. All Content Moderators in the United States will have access to YouTube's anonymous whistleblower hotline and will be able to use this hotline to report any violation by YouTube or a YouTube Vendor of the requirements imposed in Section 5 of this Settlement Agreement. Content Moderators will be informed of their ability to access this hotline during onboarding training. Each YouTube Vendor will also make this information available to Content Moderators who have been onboarded prior to the point at which the YouTube Vendor begins to provide the onboarding training described above.
 - c. YouTube will make reasonable commercial efforts to ensure that each YouTube Vendor complies with requirements imposed by this Section 5, including by periodically reviewing each YouTube Vendor's compliance with these requirements. However, the Parties agree that any action by any YouTube Vendor that is not under YouTube's legal control cannot constitute a breach of this

Agreement by YouTube. If Plaintiff, Class Members, or Content Moderators inform YouTube that a YouTube Vendor is engaging in acts inconsistent with the requirements described in this Section 5, YouTube will make commercially reasonable efforts to cause the YouTube Vendor to remedy such conduct.

- 5.2 No Additional Non-Monetary Consideration. The Non-Monetary Consideration constitutes the full non-monetary consideration provided by Defendant for the Settlement and is the limit and full extent of Defendant's non-monetary obligation to Plaintiff, Class Members, Class Counsel, and the Settlement Administrator(s). Defendant has no other non-monetary obligation under this Agreement.

SECTION 6: RELEASES AND COVENANTS NOT TO SUE

- 6.1 Release and Covenant Not to Sue. On the Effective Date, and without any further action, each of the Releasing Class Member Parties fully, finally and forever releases, covenants not to sue, and discharges each of the Released Defendant Parties from any and all Released Claims held by, on behalf of, for the benefit of, or in the name of the Releasing Class Members and is forever barred and enjoined from commencing, instituting, prosecuting, maintaining or seeking monetary or other relief in an action asserting any of the Released Claims against any of the Released Defendant Parties (the "**Class Release**").
- 6.2 Section 1542 Waiver. The Parties stipulate and agree that, upon the Effective Date, the Releasing Class Member Parties shall be deemed to have and, by the operation of the Final Judgment, shall have to the fullest extent allowed by law waived the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides as follows:

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

- 6.3 Other Unknown Claims. Upon the Effective Date, the Releasing Class Member Parties also shall be deemed to have and shall have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, by principle of common law, or by the law of any jurisdiction outside of the United States that is similar, comparable, or equivalent to Section 1542 of the California Civil Code.
- 6.4 Mistake of Fact. Plaintiff and Class Counsel acknowledge that they may discover facts in addition to or different from those they now know or believe to be true with respect to the Covered Conduct but that it is their intention to finally and forever settle and release the Released Claims.
- 6.5 Finality of Release. This Agreement provides the sole and exclusive remedy for any Released Claim against the Released Defendant Parties, and the obligations incurred pursuant to this Agreement shall be a full and final disposition of the Action and of any

and all Released Claims as against all Released Defendant Parties. No Released Defendant Party shall be subject to any liability or expense of any kind to any Releasing Party with respect to any Released Claim.

SECTION 7: CLASS NOTICE

- 7.1 Notice Plan. Notice will be disseminated in a manner approved by the Court. Class Counsel shall propose to the Court a Notice Plan for approval in the Preliminary Approval Order.
- 7.2 Contact Information Required for Notice. YouTube shall provide the Settlement Administrator with a complete and accurate list of all Class Members within 14 days of the granting of the Motion for Preliminary Approval. This list will include each Class Member's full name and that Class Member's available contact information, including (to the extent available) email address, last known mailing address, and dates of employment with the YouTube Vendor(s) as Content Moderators for YouTube. YouTube shall compare any records in YouTube's possession that identify Content Moderators with records in the possession of YouTube Vendor(s).
- 7.3 Defendant's Input. Prior to submission of the Notice Plan to the Court for approval, Plaintiff shall provide Defendant with the opportunity to comment on the Notice Plan, the short- and long-form Notice, and the content of any settlement website.

SECTION 8: EXCLUSIONS AND OBJECTIONS

- 8.1 Exclusions from the Settlement Class. A Person may opt out of the Settlement Class by requesting exclusion on or before the Objection/Exclusion Deadline (a "**Request for Exclusion**"). To file a Request for Exclusion, the Person must write to the Settlement Administrator at the address provided in the Notice stating a request to "opt out" or be "excluded" from the Settlement Class. In order to be effective, the request must be (a) signed by the Person making the request; and (b) postmarked on or before the Objection/Exclusion Deadline. Each Request for Exclusion must be made individually by the Person requesting the opt-out or exclusion; no generic or "class" opt-outs are allowed. The Settlement Administrator will process Requests for Exclusion received pursuant to this Section 8.1 and promptly provide to Class Counsel copies thereof upon receipt.
- 8.2 Challenges to Exclusion. Within five (5) days after the Objection/Exclusion Deadline, the Settlement Administrator will provide to Defense Counsel and Class Counsel a list of all Persons who opted out by filing a Request for Exclusion pursuant to Section 8.1.
- 8.3 Objections by Class Members. To be considered, any objection must be made in writing and be filed with the Court; All written objections and supporting papers must (a) clearly identify the case name and number (*Jane Doe v. YouTube*, 4:20-CV-07493-YGR), (b) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Suite 400S, Oakland, CA 94612, and (c) be filed or postmarked on or before the Objection/Exclusion Deadline.

- 8.4 Responses to Objections. Any Party may respond to any objection no later than fourteen (14) days after the Objection/Exclusion Deadline by filing a response with the Court and serving a copy on the objector (or counsel for the objector) and counsel for the other Parties.

SECTION 9: SETTLEMENT AND ADMINISTRATION

- 9.1 Selection of Settlement Administrator. Class Counsel shall select and retain the Settlement Administrator, subject to approval by the Court. As part of the Preliminary Approval Order, Class Counsel shall seek appointment of the Settlement Administrator.
- 9.2 Duties of the Settlement Administrator. The Settlement Administrator will perform its obligations in a rational, responsive, cost effective, and timely manner, acting under the supervision of Class Counsel. The Settlement Administrator will maintain reasonably detailed records of its or their activities under this Agreement, as well as all records required by applicable law, in accordance with its or their normal business practices.
- 9.3 Privacy Protections. The Settlement Administrator will protect the privacy of any personally identifiable information received in the course of administering the duties undertaken pursuant to this Agreement, and the Settlement Administrator will comply with all laws regarding data privacy protection and data security, including the protective order entered by the Court in this Action. The Settlement Administrator will use personally identifiable information received in the course of administering the duties provided by this Agreement solely for the purpose of administering those duties. Within one hundred twenty (120) days after the later of (a) ninety (90) days from the sending of any Per Capita Payment to Class Members; and any time period for an appeal related to the Settlement has expired and any appeals relating to the Settlement have been resolved, the Settlement Administrator will delete any personally identifiable information received in the course of administering the duties undertaken pursuant to this Agreement and will certify in writing to the Parties that the deletion has been completed.

SECTION 10: PRELIMINARY APPROVAL, FINAL APPROVAL, AND FINAL JUDGMENT

- 10.1 Motion for Preliminary Approval. After the Execution Date, Class Counsel shall submit this Agreement to the Court and shall apply for entry of an order requesting preliminary approval of this Agreement, approval of the forms of Notice and of the Notice Plan, and entry of a stay of all proceedings in the Action until the Court renders a final decision on approval of the Settlement. Along with the Motion for Preliminary Approval, Class Counsel shall submit the proposed form of an order preliminarily approving the Settlement. Class Counsel shall provide Defense Counsel with an opportunity to review and comment on the draft Motion for Preliminary Approval, including all supporting materials, before it is submitted to the Court.
- 10.2 Motion for Final Approval. No later than thirty (30) days following the Objection/Exclusion Deadline, Class Counsel shall submit a motion for final approval by the Court of the Settlement. Class Counsel shall provide Defense Counsel with an opportunity to review and comment on the Motion for Final Approval, including all

supporting materials, no less than five business days prior to the filing of the Motion for Final Approval. In connection with the Motion for Final Approval, Class Counsel shall ask the Court to set a date for the Fairness Hearing.

- 10.3 Final Approval Order Requirements. The entry of a Final Approval Order and the Settlement becoming effective are material terms of the Settlement and of this Agreement. Defendant's obligations hereunder (with the exception of any amounts spent out of the Settlement Fund by the Settlement Administrator to provide Notice to Class Members pursuant to a court-ordered Notice Plan) are expressly conditioned upon the entry of a Final Approval Order and the Settlement becoming effective.

SECTION 11: ATTORNEYS' FEES AWARD; CLASS REPRESENTATIVE SERVICE AWARD

- 11.1 Attorneys' Fees Award and Class Representative Service Award. Class Counsel may seek an award from the Court, to be paid exclusively out of the Settlement Fund, for (a) an Attorneys' Fees Award; and (b) a Class Representative Service Award for the Class Representative. For the avoidance of doubt, any Attorneys' Fee Award or Class Representative Service Award will be paid out of the Settlement Fund and will not be separately payable, in whole or in part, by YouTube. The Parties acknowledge and agree that (a) the payment of any Attorneys' Fees Award and/or Class Representative Service Award is solely in the discretion of the Court; (b) the Settlement and this Agreement do not depend on the Court's approval of any such application by Class Counsel; and (c) neither an Attorneys' Fees Award nor a Class Representative Service Award is a necessary term of this Agreement or a condition of the Settlement embodied herein.
- 11.2 Payment of Attorneys' Fees Award and Class Representative Service Award. Plaintiff shall pay and be responsible for all taxes, if any, due and payable as a result of the receipt of any Class Representative Service Award and represents and warrants that she has not relied on Defendant for any tax advice regarding taxability or the tax status of said awards. Other than as provided in this Section 11, Defendant is not liable for any costs, fees, or expenses of Class Counsel, Plaintiff, the Class Representative, any Class Member, or any of the Class Members' attorneys, experts, advisors, agents, or representatives.

SECTION 12: EFFECTIVE DATE; CONDITIONS OF SETTLEMENT

- 12.1 Effective Date. This Agreement is expressly contingent upon the completion of all of the following events and shall be effective on the date (the "**Effective Date**") that is one business day following the completion of all of the following events: (a) this Agreement has been executed and delivered by Class Counsel and Defense Counsel; (b) the Court has entered the Preliminary Approval Order; (c) the Court has entered the Final Approval Order approving this Agreement, following notice to the Settlement Class and a Fairness Hearing, and has entered the Final Judgment; (d) an order has been issued in connection with any Attorneys' Fees Award or Class Representative Service Award approved by the Court and has become a Final Order; and (e) the Final Approval Order and the Final Judgment have each become a Final Order.

- 12.2 Failure of Effective Date to Occur. If all of the conditions specified in Section 12.1 are not able to be satisfied, then a Party may terminate this Agreement, subject to and in accordance with Section 13, unless the Parties mutually agree in writing to continue this Agreement for a specified period of time.

SECTION 13: TERMINATION; EFFECT OF TERMINATION

- 13.1 Rights of Termination. This Agreement may be terminated, subject to the limitation in Section 13.3, by any Party, within twenty-one (21) business days after any of the following events: (a) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (b) the Court's refusal to grant Final Approval of this Agreement in any material respect; (c) the Court's refusal to enter the Final Judgment in the Action in any material respect; or (d) the entry of an order by a court that modifies or reverses the Final Judgment in any material respect.

- 13.2 Adjustment of Settlement Amount based on Class Size; Right to Withdraw Based on Opt-Outs.

- a. Based on information from YouTube and its vendor, the Parties understand that there are approximately 1,300 Class Members in the Settlement Class. If the Settlement Class increases from that amount, the Settlement Amount will increase as set out in the Confidential Supplemental Agreement between the Parties. Similarly, if the Settlement Class increases beyond a threshold set out in the Confidential Supplemental Agreement, the Confidential Supplemental Agreement will govern the rights of the Parties on how to proceed. Should any Class Member seek to access the Confidential Supplemental Agreement, Class Counsel may provide the Confidential Supplemental Agreement on a confidential basis.
- b. YouTube shall have the option to withdraw from, and terminate, this Agreement and the Settlement in the event valid Requests for Exclusion exceed a specified threshold ("**Opt-Out Threshold**"). The specified threshold and the details of the option are contained in the Confidential Supplemental Agreement between the Parties, which shall be filed with the Court under seal, and which shall not be disclosed to Class Members other than the Class Representative. Other than as set forth above, the Parties will keep the terms of the Confidential Supplemental Agreement confidential, subject to any exceptions set out therein and unless compelled to disclose them by the Court.
 - i. In the event valid Requests for Exclusion exceed the Opt-Out Threshold, not later than ten (10) business days after receipt of the complete and final list of all known Class Members that have excluded themselves from the Class, YouTube shall notify Class Counsel whether YouTube elects to withdraw from the Settlement.
 - ii. In the event that YouTube elects to withdraw from the Settlement pursuant to this provision, this Agreement and the Settlement will become null and void and of no further force and effect.

- 13.3 Notice of Termination. A Party electing to terminate this Agreement pursuant to Section 13.1 shall provide written notice of its election to do so to all other Parties.
- 13.4 Effect of Termination. In the event of a termination of this Agreement pursuant to Section 13.1 or if this Agreement and the Settlement proposed herein are canceled or otherwise fail to become effective for any reason whatsoever, then (a) any order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, nunc pro tunc; and (b) the Parties shall be returned to the status quo ante with respect to the Action as of the Execution Date as if the Parties had never entered into this Agreement and with all of their respective legal claims and defenses preserved as they existed on that date. For the avoidance of doubt and without limiting the foregoing, the Parties acknowledge and agree in the event of a termination of this Agreement (i) that this Agreement and all the provisions of the Preliminary Approval Order shall be vacated; (ii) that the Parties shall retain all rights that they had immediately preceding the Execution Date; and (iii) that nothing in this Agreement or other papers or proceedings related to this Settlement shall be used as evidence or argument by any Party concerning whether the Action was or may properly be certified or maintained as a class action for any purpose other than settlement in accordance with this Agreement.
- 13.5 Payments for Notice. In the event of a termination of this Agreement under this Section 13 or if this Agreement fails to become effective for any other reason, any amounts of the Settlement Fund spent to provide notice to Class Members pursuant to the Notice Plan will not revert to Defendant.

SECTION 14: MISCELLANEOUS PROVISIONS

- 14.1 Final Resolution. The Parties intend this Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims against the Released Defendant Parties. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant in bad faith or without a reasonable basis.
- 14.2 Representation by Counsel. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their rights and obligations with respect to the Settlement. The Parties have read and understand fully the above and foregoing Agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.
- 14.3 Res Judicata. Except as provided herein, if this Agreement is approved by the Court, any Party and any of the Released Defendant Parties may file and otherwise rely upon this Agreement in any action that may be brought against such Party and/or Released Defendant Party in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.
- 14.4 No Admission. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the

Releases given herein, nor any consideration therefor, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability or of the validity of any claim, defense, or any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party, whether or not the Effective Date occurs or this Agreement is terminated. Neither this Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, may be used as an admission of any fault or omission by the Released Defendant Parties or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Defendant Parties in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this Agreement.

- 14.5 Counterparts. The Parties may execute this Agreement in one or more counterparts and by facsimile or electronic signature. If the Agreement is executed in counterparts, all executed counterparts and each of them will be deemed to be one and the same instrument.
- 14.6 Waiver and Amendment. The waiver by one Party of any breach of this Agreement by any other Party does not waive any other prior or subsequent breaches of this Agreement. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.
- 14.7 Expenses. Except as otherwise provided herein, each Party shall bear his, hers, or its own attorney's fees and costs.
- 14.8 Representations and Warranties. Plaintiff represents and warrants that she has not assigned any claim or right or interest therein as against the Released Defendant Parties to any other Person and that she is fully entitled to release the same. Each counsel or other Person executing this Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto hereby warrants and represents to the other Parties hereto that such counsel or other Person has the authority to execute and deliver this Agreement, its Exhibits, and related settlement documents, as applicable.
- 14.9 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the successors and assigns of the Parties hereto and the Released Defendant Parties.
- 14.10 Jurisdiction. The Court has and retains jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.
- 14.11 Governing Law. The laws of the United States of America and the State of California govern this Agreement and any interpretation thereof, excluding any conflicts or choice-of-law rule or principle that might otherwise refer construction or interpretation to the substantive law of any other jurisdiction.
- 14.12 Drafting. All Parties have contributed substantially and materially to the preparation of this Agreement, and it shall not be construed more strictly against one Party than another.

- 14.13 Notice. Where this Agreement requires notice to the Parties, the Parties shall send such notice to the undersigned counsel at the addresses listed below.
- 14.14 Entire Agreement. This Agreement and the Confidential Supplemental Agreement set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein and in the Confidential Supplemental Agreement. No representations, warranties, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized herein and in the Confidential Supplemental Agreement.

Dated: September 8, 2022

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Dated: September 8, 2022

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Dated: September 8, 2022

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