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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

JOSEPH TAYLOR, et al., individually and on behalf of all others similarly situated, Plaintiff, v. GOOGLE LLC, Defendant.	Case No.: 5:20-cv-07956-VKD **ADMINISTRATIVE MOTION FOR LEAVE TO FILE SUR-REPLY**

ADMINISTRATIVE MOTION FOR LEAVE TO FILE SUR-REPLY

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Objector Nathan Byars moves this Court, the Honorable Virginia K. DeMarchi presiding, for leave to file the accompanying Sur-Reply in response to new evidence and argument presented in the proponents' June 12, 2026 filings. This Motion is based on the following memorandum, the accompanying proposed Sur-Reply and [Proposed] Order, the pleadings and papers on file, and any further argument the Court may permit.

MOTION FOR LEAVE

Objector Nathan Byars respectfully moves, pursuant to Civil Local Rules 7-11 and 7-3(d) and the Court's inherent authority to manage its docket, for leave to file the accompanying short Sur-Reply. The grounds are narrow and specific. Mr. Byars does not seek to appear at the Final Approval Hearing; consistent with his Objection (ECF No. 288), he seeks leave only to file a written response to new evidence and argument presented for the first time in the proponents' June 12, 2026 filings.

Both responses to objections—Defendant Google LLC's Response to Objections to Settlement (ECF No. 329) ("Google Response") and Plaintiffs' Motion for Final Approval of Class Action Settlement and Response to Objections (ECF No. 330) ("Final Approval Motion")—were filed June 12, 2026, eleven days before the Final Approval Hearing. Both rely on evidence and argument that were not before the Court when Mr. Byars filed his Objection and that Mr. Byars has had no opportunity to address:

1. The Declaration of Sundeep Sancheti ("Sancheti Declaration"), filed in support of the Google Response, asserts new factual claims about the functionality of the background-data toggle (Sancheti Decl. ¶ 10) and the consequences of disabling the challenged transfers (*id*. ¶¶ 4-7).

2. The Declaration of Glen E. Summers (Final Approval Motion, Summers Decl. ¶¶ 5-7), that advances a new theory that the *Csupo* preclusion right was already unavailable when the Settlement waived it.

Civil Local Rule 7-3(d)(1) permits a party to bring new evidence or argument in a reply to the Court's attention; this Court routinely grants leave for a short sur-reply where the reply or response introduces new matter the objector could not previously have addressed. The proposed Sur-Reply is limited to those new matters and does not re-argue the Objection.

WHEREFORE, Mr. Byars respectfully requests that the Court grant leave to file the accompanying Sur-Reply.

By: /s/ Mark L. Javitch

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DECLARATION OF MARK L. JAVITCH PURSUANT TO CIVIL LOCAL RULE 7-11(a)

I, Mark L. Javitch, declare as follows:

1. I am counsel for Objector Nathan Byars in this action and have personal knowledge of the facts set forth in this declaration.

2. I submit this declaration pursuant to Civil Local Rule 7-11(a). Because the parties' positions on final approval of the proposed Settlement are directly adverse, Objector did not contact counsel for the proponents to request a stipulation to the filing of the accompanying Sur-Reply, and a stipulation could not be obtained.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the date stated below at San Mateo, California.

Dated: June 17, 2026

/s/ Mark L. Javitch
Mark L. Javitch

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: June 17, 2026

/s/ Mark L. Javitch
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Attorney for Objector Nathan Byars

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INTRODUCTION

The proponents' responses confirm, rather than cure, two independent defects in the proposed Settlement — either of which requires that final approval be denied on this record.

First, the Settlement is built on a structural conflict. To close a global deal, the *Taylor* class was made to surrender a valuable litigation asset — its right to assert the *Csupo* verdict as issue preclusion against Google — and that surrender helped secure the $350 million paid to the *Csupo* class. One class's asset funded another class's recovery, yet no separate counsel, subclass, or independent valuation protected the class that gave something up; the Special Settlement Counsel the proponents retained reviewed the finished bargain rather than negotiating the *Taylor* class's share against the *Csupo* class's.

Second, the Court does not have enough information to determine whether the injunctive relief is adequate. The proposed injunctive relief removes a user control that the proponents do not agree on what it does. Google states the background-data toggle is functional and reduces the challenged transfers to zero; Plaintiffs argue that it does not work. If Google is right, the Settlement strips the class of a working control and announces the conduct cannot be stopped; if Plaintiffs are right, removing it confers nothing while the release extinguishes the claims. Either way the class receives no benefit, and the record cannot show the relief is adequate.

The Court should therefore decline to grant final approval at this time.

ARGUMENT

I. The *Csupo* and *Taylor* Classes Have a Conflict of Interest.

A. Heightened Scrutiny, Not the Presumption of Fairness, Governs This Settlement.

The proponents invoke an initial presumption of fairness where a settlement is recommended by class counsel after arm's-length bargaining, but that presumption does not apply here. Where, as here, a settlement precedes class certification or proceeds on a settlement-only class basis, the governing standard is not the presumption of fairness but heightened scrutiny. *In re Apple Inc. Device Performance Litig.*, 50

F.4th 769, 782 (9th Cir. 2022) (district court must apply "an even higher level of scrutiny" when a settlement "precedes class certification"); *McKinney-Drobnis v. Oreshack*, 16 F.4th 594, 609 (9th Cir. 2021) ("even a recognition that the substantive claims present a weak case cannot cure a district court's failure to apply the requisite heightened scrutiny" to pre-certification settlements).

Moreover, heightened scrutiny applies independently where, as here, structural conflicts threaten to misalign counsel's incentives. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011) (requiring heightened scrutiny where fee structure creates incentive misalignment). The *Taylor* class was certified for settlement purposes only (Settlement Agreement ¶ 2.2; Preliminary Approval Order), triggering the heightened-scrutiny regime that *Apple* and *McKinney-Drobnis* mandate. The proponents' presumption of fairness argument thus rests on an inapplicable legal standard.

B. Approval Requires a Structural Assurance That the Conflict Was Neutralized.

Where a settlement's terms reflect "essential allocation decisions" that favor one group of class members over another, the Supreme Court requires a "structural assurance of fair and adequate representation for the diverse groups and individuals affected." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 627 (1997) (holding a settlement-only asbestos class inadequate where a single representation spanned differently situated classes); *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 856 (1999) (reversing approval of a limited-fund settlement and holding that where holders of distinct claims compete for shares of a single fund); accord *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242, 251 (2d Cir. 2011) (vacating approval where a capped fund was divided among three categories of claims and the lowest-value category was subordinated to enlarge the others' recovery); *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 184–85 (3d Cir. 2012) (holding that a settlement splitting the class into a primary reimbursement group and a residual group, where the representatives' own recovery came at the residual group's expense, created a fundamental conflict allocative in nature that demanded separate representation); *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1167 (9th Cir. 2013) (finding representation inadequate under where the incentive awards conditioned on the representatives' support for approval aligned the representatives with the deal rather than the class).

C. The Architecture of the Global Settlement Created the Structural Conflict.

The *Csupo* and *Taylor* classes have a conflict of interest, and it appears in the architecture of the deal itself. A single defendant resolved both cases in one global settlement through a single Class Counsel. A settling defendant is "concerned only with its total liability," so how recovery is divided "is of little or no interest to the defense." *Greenberg v. Procter & Gamble Co. (In re Dry Max Pampers Litig.)*, 724 F.3d 713, 717–18 (6th Cir. 2013).

Class Counsel is to be paid measured against the combined recovery rather than either class's separate share. Counsel do not have the incentive to advocate for the each class separately. The only interests the structure aligned were Class Counsel's interest and Google's interest in a global resolution that would extinguish the *Taylor* class's claims by a single payment; neither party at the table had a stake in protecting the *Taylor* class's share against the *Csupo* class's. *Cf. In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 827 F.3d 223, 236 (2d Cir. 2016) (expressing concern that "counsel will trade the interests of one class for another").

Worse, Google conditioned the entire settlement on the *Taylor* class surrendering a valuable litigation asset, and openly states that it would not have entered without it. The deal, and the $350 million it delivered to the *Csupo* class, could close only if the *Taylor* class gave that up, yet the class with reason to resist had no separate voice at the table. The point requires no charge of bad faith: even where a court does "not impugn the motives or acts of class counsel," counsel placed in this position is "charged with an inequitable task." *Id.* at 234.

D. The Combined Fee Left Counsel Indifferent to Allocation.

Plaintiffs' 'no divergence of interests' answer — that counsel and the class shared an interest in maximizing the common fund (*Final Approval Motion* at 25-26) — actually confirms the conflict. Yes, Plaintiffs and Class Counsel shared that interest: the fee is fixed on the combined $485 million recovery, not either class's separate share — a combined fee Plaintiffs defend as "an average combined fee of 32%." *Final Approval Motion* at 29.

But a shared interest at the aggregate level is precisely why counsel had no incentive to protect the *Taylor* class's share within that aggregate. The more valuable the *Taylor* asset became, the more attractive it was to trade away to the *Csupo* class. Counsel's 32% came out the same either way: whether the preclusion right's value was credited to the *Taylor* class or flowed, through the global deal, to the *Csupo* class.

That is the conflict: a shared interest in the combined fund left counsel with no financial incentive to value or protect the *Taylor* asset, or to insist that the *Taylor* class be compensated for what it surrendered. The "shared interest in maximizing the common fund" Plaintiffs invoke exists only in the aggregate; at the level that matters to the *Taylor*-only members — their own class's recovery — counsel's compensation was untethered from the outcome. That is the divergence Rule 23 guards against, and it went unprotected: no separate counsel or subclass represented the members whose asset was spent. *Fed. R. Civ. P. 23(e)(2)(A)*.

Plaintiffs' remaining defenses describe ordinary settlements, not this one. They invoke the principle that a class trades "certainty over magnitude" in any settlement (*Final Approval Motion* at 26), but the authorities they cite each describe a single class accepting a discount on its own recovery — not the surrender of one class's asset to fund another's payment.

They also deny any "agency-cost problem," recasting the Objection's analogy as a broker who "accepts the first offer" and answering that counsel instead negotiated "multiple rounds" with Google over more than a year. *Final Approval Motion* at 27. But the Objection's point was marginal incentive, not a failure to bargain: a broker on commission stops pushing once an offer is good enough for the broker, because the broker's marginal return on further effort is bounded even where that effort would substantially benefit the principal. Counsel's rounds with Google went to enlarging the combined recovery that fixes counsel's fee — not to pricing the *Taylor* class's preclusion right, where counsel's marginal incentive was zero because the fee was identical however the value was divided.

Dewey draws precisely this line, explaining that counsel's "incentive to maximize the aggregate size of the [settlement] fund is separate from their interests in allocating that fund amongst the class," where the conflict "is allocative in nature." *Dewey*, 681 F.3d at 187 n.15. And because adequacy "provides structural protections during the process of bargaining for settlement," a favorable result does not excuse a structural defect — that a class's interests turned out unharmed "does not permit" a bypass of "structural requirements." *Id.* at 190 n. 19. That vigor is consistent with the agency cost, not a refutation of it.

E. The Two Classes' Interests in the *Csupo* Verdict Were Directly Opposed.

Worse, the two classes' interests in the *Csupo* verdict were not merely left unprotected; they were directly opposed. The *Taylor* class needed that verdict to ripen into a final, preclusive judgment it could invoke — which required the *Csupo* case to proceed to judgment — while the *Csupo* class's interest was to settle for $350 million and surrender the verdict and the appeal. Settling *Csupo*, the path the global resolution took, is precisely what produced the $350 million and destroyed the preclusion the *Taylor* class needed. Plaintiffs answer only that counsel "determined that it was the interests of both classes to accept Google's required contingencies." *Final Approval Motion* at 27. But a determination that a conflict is tolerable is not arm's-length bargaining between two separately represented classes.

F. Recognizing the Conflict Did Not Cure It.

Counsel recognized the conflict. They retained Special Settlement Counsel "representing exclusively the interests of the *Taylor* class" (*Final Approval Motion* at 14) — a step needed only where a class's own counsel cannot represent it, and thus a concession that Class Counsel, negotiating across both classes for one combined fee, could not.

But recognizing a conflict is not resolving it, and there is no evidence the Special Settlement Counsel did. The ordinary cure is separate counsel who litigates and negotiates each class's interest at arm's length; Special Settlement Counsel did neither. It reviewed and blessed a finished bargain — it did not negotiate either class's share against the other's. Rule 23(a)(4)'s guarantee of adequate representation runs to the negotiation itself, not to an after-the-fact opinion that a completed deal was reasonable.

Nor can the usual presumption that a negotiated settlement reflects arm's-length bargaining supply the protection that separate representation would have. The Supreme Court has held that "no such assumption may be indulged" in "any class action settlement with the potential for gigantic fees," where counsel has "incentive to reach any agreement" that might "survive a Rule 23(e) fairness hearing, rather than the best possible arrangement for the global settlement class[.]" *Ortiz*, 527 U.S. at 852. The proponents' own insistence that there was "no conflict" (*id.* at 27) cannot be squared with the precaution they took against one.

The proponents' disclosure answer is also incomplete. They show that Special Settlement Counsel's involvement was posted to the settlement website (*Final Approval Motion* at 28), but they do not answer the Objection's separate showing that its compensation was never disclosed. Special Settlement Counsel's fees are covered by any award to Class Counsel and excluded from the lodestar (ECF No. 288 at 13), so the amount Class Counsel paid the counsel retained to bless their bargain has never been put before the class or the Court. That omission goes to the safeguard the proponents invoke: a reviewer paid by Class Counsel, in an undisclosed amount, is not the independent check an arm's-length review requires, and their answer leaves no way to assess whether it was.

Plaintiffs' remaining responses do not cure the structural problems the Objection identifies; they confirm them. Plaintiffs argue that Special Settlement Counsel "did take the preclusion issue into account" (*Final Approval Motion* at 28), but their own evidence shows that consideration consisted of reviewing the stay briefing and the order denying it, with no valuation of the surrendered right (*Bush Decl.*, ECF No. 260-25 ¶ 4) — the same incomplete premise on which the worthlessness theory rests.

The Second Circuit rejected materially the same defense in *Literary Works*, 654 F.3d at 253. There, a capped settlement was the product of a protracted, adversarial mediation before highly respected mediators, and institutional plaintiffs advanced the interests of the class as a whole — yet those safeguards did not satisfy Rule 23(a)(4), because oversight that "safeguarded the negotiation process" could not "compensate for the absence of independent representation" where "no one advanced the strongest arguments in favor of" the disadvantaged group's recovery. *Id.*

As the court asked, "how can the value of any subgroup of claims be properly assessed without independent counsel pressing its most compelling case?" *Id.* Special Settlement Counsel's review of the stay papers is the same posture: it confirmed that a completed bargain appeared reasonable, but no one pressed the *Taylor* class's preclusion right as that class's own most compelling case. And Plaintiffs explain the cross-conditioning by stating that Google "refused to settle either case without comprehensive resolution" (*id.* at 27), which confirms rather than dispels the conflict: by Plaintiffs' own account, the *Taylor* class surrendered a litigation asset to secure a settlement that delivered $350 million to the *Csupo* class.

II. One Class's Asset Was Surrendered to Serve Another.

The proponents' responses do not answer the Objection's challenge to how this Settlement was assembled. To clear the way for a global resolution paying $350 million to the *Csupo* class, the Settlement extinguishes a litigation asset belonging to the *Taylor* class — its right to assert the *Csupo* verdict as issue preclusion — a right Google deemed material enough to make a deal-breaker. The right is a settled one: under *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979), a plaintiff who was a stranger to an earlier action may assert the judgment offensively against a defendant that litigated and lost, subject to the trial court's discretion. Once the *Csupo* verdict became final, the *Taylor* class could have used it against Google to establish liability without relitigating it — which is why Google made surrender of that right a condition of the deal. Plaintiffs' new arguments defending that structure confirm, rather than dispel, each defect the Objection identified.

Plaintiffs' principal new argument is that losing the motion to stay left the *Csupo* preclusion right unavailable when the Settlement waived it, so the waiver cost the class nothing. *Final Approval Motion* at 26-27. That is true only in the narrowest sense: with the *Csupo* verdict on appeal and the *Taylor* trial set for April 1, 2026, the verdict could not have supplied issue preclusion at that one trial. But that fixes the timing of a single trial, not the value of the right.

Three facts confirm that the right had value, and Plaintiffs dispute none of them. First, the waiver is permanent: Paragraph 17.5 ensures there will be "no final judgment entered in the *Csupo* matter and no appeal," bars the class from asserting preclusion based on the verdict, and remains effective "regardless of whether any Party otherwise terminates this Settlement." *Settlement Agreement* ¶ 17.5. Second, absent the approval Plaintiffs seek, the verdict would have ripened into a preclusive judgment. Plaintiffs' own authority — that a judgment on appeal "has no preclusive effect until the appellate process is complete," *Samara v. Matar*, 5 Cal. 5th 322, 335 (2018) is invoked to prove worthlessness but proves the opposite: once the appeal concluded, which Plaintiffs estimate at "at least 17 months," *Final Approval Motion* at 26, the verdict would have become preclusive, the very asset the Settlement extinguishes. Third, Google made the waiver a deal-breaker, reciting that it "is a material term" without which "Google would not have entered into this Settlement." *Settlement Agreement* ¶ 17.5. A defendant does not condition an entire class settlement on the waiver of a worthless right.

The worthlessness theory thus measures the right by Plaintiffs' April 1 trial date rather than by the right itself. Trial settings move; the waiver does not. The right retained value in every posture but the one Plaintiffs happened to face — and beyond this class as well, because ensuring "no final judgment entered in the *Csupo* matter" destroys at its source the preclusive judgment any litigant might later have invoked.

A right unavailable for one scheduled trial is not worthless; it is a valuable one the Settlement is engineered to destroy before it can ripen — and the incentive to call it worthless is the conflict Section I addresses.

To the extent Plaintiffs invoke Dr. Stec's valuation, it does not reach the surrender at issue. The economist valued the ongoing data consumption and the injunctive relief — and nothing else; his declaration is silent on the value of the *Csupo* preclusion right the *Taylor* class surrendered. *Stec Decl.*, ECF No. 260-26, ¶¶ 6–11. The independent valuation of the surrendered asset was thus never performed.

III. The Injunctive Relief Has Not Been Shown to Benefit the Class

A. The Proponents Cannot Agree on What the Toggle Does.

The record does not sufficiently demonstrate that relief is adequate. The proponents do not even agree on what the relief is. The proponents bear the burden of demonstrating that the relief is adequate. *Fed. R. Civ. P. 23(e)(2)(C); Briseño v. Henderson*, 998 F.3d 1014, 1023-24 (9th Cir. 2021). To determine whether greying out the background-data toggle benefits the class, the Court would have to conclude that removing it improves the class's position.

Rather than rest on the record submitted with the motion, Google answered the Objection by coming forward with a new declaration — sworn testimony, offered for the first time at final approval, on exactly what the toggle does and what removing it accomplishes. A party that must supplement the record with new evidence to defeat an objection has conceded that its original showing did not carry the burden the Rule places on it. And having elected to put that sworn account before the Court, Google is bound by it — an account that, as shown below, establishes the opposite of a benefit to the class.

The proponents' differing responses prove the evidence is unclear. Google swears it is "functional" and reduces the challenged background transfers "to zero." *Sancheti Decl.* ¶ 10. Plaintiffs represent the opposite — that "the toggle doesn't work." *Final Approval Motion* at 23. Google's own response acknowledges the rift, conceding that Plaintiffs' counsel "strenuously argued . . . that the toggle created a misleading illusion of control," producing "only a limited reduction of the challenged transfers." *Google Response* at 6.

B. On the Proponents' Own Evidence, the Settlement Removes a Working Control.

Google's declarant, Sundeep Sancheti, swears that the toggle "in its current form, is functional," and that turning it off "reduces Google Play services' usage of cellular data while it is in the background . . . to zero." *Sancheti Decl.* ¶ 10. That sworn concession made to answer the Objection establishes that the toggle is a working control: with it on, the challenged background transfers occur; with it off, they go to zero. The Settlement removes that control.

Taking Google's declaration at face value, the Settlement strips the class of a functioning control it currently has and replaces it with a screen stating the conduct "cannot be turned off." Plaintiffs invoke the least-disruptive-remedy principle to defend the scope of the relief, but that principle does not support their argument. Instead, it requires a court to adopt the narrowest remedy adequate to cure the violation, leaving existing functionality undisturbed. The defect Plaintiffs and Google identify is one of scope — a control that works but that users may misread as doing more than it does.

The least disruptive cure for a working-but-misunderstood control is to correct the description of what it does, not to delete the control: relabeling resolves the asserted confusion while preserving the function, whereas deletion is strictly more disruptive, eliminating the control and the protection it affords on top of changing the disclosure. A remedy that destroys a working function to fix a labeling problem is not the least disruptive remedy but the most disruptive one.

The new disclosure is accurate only because the Settlement concedes that Plaintiffs give up the ability to reduce background use of their data. Google describes this as "additional accurate information," but it is not describing an existing state of affairs; it is removing the user's existing ability to disable the transfers so that the statement that they "cannot" be disabled becomes true. A provision that takes away a working off-switch in order to announce that there is no off-switch does not benefit the class.

C. The Record Does Not Show the Class Is Better Off Than With No Injunction at All.

The relief subtracts a working control and adds a disclosure, so whether it benefits the class turns on whether what the class gains exceeds what it loses. On this record the Court cannot make that comparison.

The burden to show that this exchange leaves the class better off than the status quo — retaining the toggle and receiving no injunctive provision at all — rests on the proponents, and an unquantified benefit traded for an established loss cannot be found to carry it. *Fed. R. Civ. P. 23(e)(2)(C)*. That uncertainty is itself dispositive: relief that cannot be shown to leave the class better off than no relief at all is not the adequate relief the Rule requires, and warrants denial of approval.

D. Plaintiffs' Authority Cannot Validate Relief That Resolves the Merits Against the Class.

Plaintiffs lean on *Campbell v. Facebook, Inc.*, 951 F.3d 1106 (9th Cir. 2020), but the comparison is inapt. *Campbell* upheld an injunctive-relief settlement that was the whole of what the class received, *id.* at 1114, and the class kept its damages claims rather than releasing them; indeed, "damages were . . . not part of the class release," *id.* at 1126. Because the class there received disclosures and surrendered nothing in exchange for the relief, its adequacy carried no risk of a forfeited claim.

Here the exchange is reversed: the Settlement releases the class's conversion claims in return for the injunctive relief, so that relief's adequacy is decisive, not incidental.

This Settlement is the opposite on both counts — it pays the class a damages award and releases the class's conversion claims in exchange. A decision approving stand-alone injunctive relief, given to a class that surrendered nothing else, does not validate injunctive relief bundled with a claim release; and in any event the injunctive component here is not merely of limited value but adverse, removing a control the class had while the release extinguishes the claims that control protected.

Underlying all of this is a single point the proponents cannot answer: eliminating a working control and disclosing that the conduct "cannot be turned off" is not the same as remedying the problem. The central issue in this litigation is whether users can prevent the challenged transfers — whether they have control over the conversion of their cellular data.

The Settlement does not deliver that control; it removes the control users had and resolves the question against them. The Settlement deletes the toggle and, in its place, requires Google to disclose that the transfers "cannot be turned off." That does not resolve the disputed control issue in the class's favor; it resolves it against the class — adopting the defendant's position on the very question the class litigated — while the Settlement's consent mechanism renders the conduct lawful going forward. The control is eliminated while the injury (the unconsented taking) is left intact and legitimized. Relief that ratifies the defendant's answer to the core merits question, rather than delivering the control the class sought, does not benefit the class and is not adequate under Rule 23(e)(2)(C).

E. The Record Contains No Valuation.

Plaintiffs respond that the Court "has already recognized that 'the injunctive relief is significant and provides meaningful value' . . . without regard to Dr. Stec's economic assessment," citing the Court's statement that it declined to rely on Dr. Stec's calculation. *Final Approval Motion* at 30 (citing *Prelim. Approval Order* at 21 & n.10). That response confirms the Objection's point rather than rebutting it. The Objection's argument is not that the Court must adopt Dr. Stec's $599.4 million figure; it is that the record contains no documented valuation of the injunctive relief at all. If the Court declined to rely on the only valuation in the record (Dr. Stec's), then the relief Plaintiffs tout as "significant" has never been valued by any methodology this Court has credited.

The gap reaches past the adequacy finding. The fee the proponents seek rewards what counsel achieved — "the most critical factor is the degree of success obtained," *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) — and the Court cannot measure what counsel achieved when the proponents cannot agree whether the central piece of injunctive relief benefits the class or Google. Whether the fee is tested as a percentage of a recovery that counts the relief's value, which must "take into account all of the circumstances of the case," *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002), or as a lodestar enhanced for counsel's success, the same unanswered question controls. Indeed, Rule 23(e)(2)(C) folds the fee terms into the adequacy of the relief itself. A record too thin to show the relief benefits the class is too thin to support the fee that relief is said to justify.

CONCLUSION

For the foregoing reasons, and those stated in the Objection, the Court should decline to grant final approval of the proposed Settlement at this time.

Dated: June 17, 2026

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UNITED STATES DISTRICT COURT
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SAN JOSE DIVISION

JOSEPH TAYLOR, et al., individually and on behalf of all others similarly situated, Plaintiff, v. GOOGLE LLC, Defendant.	Case No.: 5:20-cv-07956-VKD **PROPOSED ORDER GRANTING MOTION FOR LEAVE TO FILE SUR-REPLY**

Before the Court is Objector Nathan Byars's Motion for Leave to File Sur-Reply (the "Motion"). Having considered the Motion and the proposed Sur-Reply, and good cause appearing, the Court ORDERS as follows:

The Motion is GRANTED. The Sur-Reply attached to the Motion is deemed filed as of the date of this Order.

IT IS SO ORDERED.

Dated: __________, 2026

Hon. Virginia K. DeMarchi
United States Magistrate Judge