

CLASS ACTION SETTLEMENT AGREEMENT

Free Range Content, Inc. v. Google LLC., No. 5:14-cv-02329-BLF

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PREAMBLE

This **Class Action Settlement Agreement** (“Settlement Agreement,” “Settlement,” or “Agreement”) is entered into by and among Free Range Content, Inc., Coconut Island Software, Inc., Taylor Chose, and Matthew Simpson (collectively, “Plaintiffs”), the Settlement Class (as defined in § 1.43), and Defendant Google LLC, as successor to Google Inc. (“Google” or “Defendant”) (together, the “Parties”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined in § 1.36) on the terms and conditions of this Agreement. It is subject to the final approval of the United States District Court for the Northern District of California (the “Court”).

RECITALS

The following recitals are incorporated by reference and are considered part of the Settlement Agreement:

- A. This putative class action was filed in the United States District Court for the Northern District of California under the caption *Free Range Content, Inc. et al. v. Google Inc.*, No. 5:14-cv-02329-BLF.
- B. Plaintiffs alleged claims against Google in connection with Google’s AdSense program for breach of contract; breach of the implied covenant of good faith and fair dealing; unjust enrichment; violations of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*; and for declaratory relief. Plaintiffs alleged that Google terminated AdSense publishers from the AdSense program and improperly withheld unpaid amounts in those publishers’ AdSense accounts. Google denied these allegations. (Dkt. Nos. 92, 94.) Plaintiffs sought to certify a class to bring these claims as a class action. (Dkt. No. 160.)
- C. Throughout the course of the litigation, the Parties engaged in formal and informal attempts at settlement, including one in-person mediation session with the Hon. Layn R. Phillips and Greg Lindstrom (“Phillips ADR”), on May 15, 2017. This

mediation occurred prior to the Court ruling on Plaintiffs' motion for class certification and was unsuccessful.

- D. On July 13, 2017, following discovery and briefing on class certification, the Court granted in part and denied in part Plaintiffs' motion for class certification. (Dkt. No. 224.) Specifically, the Court certified the "Rule 23(b)(3) Terms-of-Service Class only as to the claim for breach of the implied covenant of good faith and fair dealing" for publishers subject to the localized AdSense terms for United States publishers. The Court declined to certify any of Plaintiffs' other claims or proposed classes.
- E. Following the Court's ruling on class certification, the Parties engaged in further discussions with Phillips ADR. These discussions were successful, and the Parties came to an agreement in principle.
- F. Plaintiffs believe that Google is liable for the conduct at issue in the Action (defined below) and that Plaintiffs would have ultimately succeeded had this Action gone to trial. Nonetheless, Plaintiffs and Class Counsel (defined below) recognize that Google raised defenses as to both liability and damages, which created a material risk that Plaintiffs would not have prevailed. Plaintiffs and Class Counsel have considered this risk and the uncertain outcomes associated with upcoming events in this litigation, such as Google's forthcoming motion for summary judgment, trial, and any appeal that may have followed. As a result, Plaintiffs believe that it is desirable that the Released Claims (defined below) be fully and finally compromised, settled, resolved with prejudice, and barred pursuant to the terms of this Agreement.
- G. Based on their comprehensive examination and evaluation of the law and facts at issue in the Action, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to resolve the claims alleged by the Settlement Class. Class Counsel believe that it is in the best interests of the Settlement Class to settle the claims raised in this Action pursuant to the terms of this Agreement.

H. Google has at all times denied—and continues to deny—any and all alleged wrongdoing. Specifically, Google denies that its conduct concerning Google AdSense violates any law, and it is prepared to continue its vigorous defense, including at summary judgment and trial. Even so, taking into account the uncertainty and risks inherent in summary judgment and trial, Google has concluded that continuing to defend this Action would be burdensome and expensive. Google believes that it is desirable and beneficial to fully and finally settle and terminate this Action in the manner specified in and upon the terms of this Agreement.

IT IS THEREFORE HEREBY STIPULATED AND AGREED by and among Plaintiffs, the Settlement Class, and Defendant, by and through their respective counsel, that, subject to final approval of the Court after a hearing as provided for in this Agreement, or as otherwise ordered by the Court, and in consideration of the benefits flowing to the Parties from the Agreement, the Action and the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

1. Definitions

As used in this Settlement Agreement, the following terms have the special meanings below:

- 1.1. **“ACH Transfer”** means an electronic transfer of funds between banks through the Automated Clearing House (“ACH”) network.
- 1.2. **“Action”** means the case entitled Free Range Content, Inc. v. Google LLC, No. 5:14-cv-02329-BLF, pending in the United States District Court for the Northern District of California.
- 1.3. **“Amount Allegedly Withheld”** means the amount in dollars reflected in Google’s AdSense billing records at the time the account balance became zero, after Google terminated the AdSense account.

- 1.4. **“Claim”** means a Settlement Class Member’s written submission that may, if valid, entitle the Settlement Class Member to a Settlement Payment.
- 1.5. **“Claimant”** means a Settlement Class Member who has submitted a Claim that the Settlement Administrator has determined is valid and timely in accordance with the claims process described in § 3.
- 1.6. **“Claim Form”** means the document Settlement Class Members submit to make a Claim pursuant to this Agreement. The Claim Form will be available online at the Settlement Website, and the contents of the Claim Form will be approved by the Court.
- 1.7. **“Claims Deadline”** means the date by which Settlement Class Members must submit all Claim Forms on the Settlement Website for the Claim Forms to be timely. The Claims Deadline shall be 60 days after the Notice Date and shall be clearly stated in the Notice and on the Claim Form. For additional Settlement Class Members to whom Notice to Additional Settlement Class Members shall be given, as stated herein, the Claims Deadline shall be 60 days after the Notice Date for Additional Settlement Class Members and shall be clearly stated in the Notice to Additional Settlement Class Members and on the Claim Form.
- 1.8. **“Class Counsel”** means the law firm of Hagens Berman Sobol Shapiro LLP, by Steve W. Berman and Robert F. Lopez.
- 1.9. **“Class Representative(s)”** means each and all of the named Plaintiffs in this Action: Free Range Content, Inc., Coconut Island Software, Inc., Taylor Chose, and Matthew Simpson.
- 1.10. **“Court”** means the United States District Court for the Northern District Court of California, the Hon. Beth Labson Freeman presiding, or any judge who succeeds her as the judge in this Action.
- 1.11. **“Cy Pres Recipients”** means Public Counsel and Public Justice Foundation.
- 1.12. **“Defendant”** means Google LLC, as successor to Google Inc.
- 1.13. **“Defendant’s Counsel”** means Michael G. Rhodes and Jeffrey M. Gutkin of the law firm of Cooley LLP.

- 1.14. **“Distribution Date”** means the date that Settlement Payments are distributed to Claimants. The Distribution Date shall be no more than 30 days following the Effective Date of the Settlement.
- 1.15. **“Effective Date”** means the first business day after all the following conditions have occurred:
- (a) Class Counsel and Defendant’s Counsel have executed this Settlement Agreement.
 - (b) The Court has entered the Final Approval Order.
 - (c) The Final Approval Order has become a final, non-appealable judgment approving the Settlement Agreement in all respects and is no longer subject to review, reconsideration, rehearing, appeal, petition for permission to appeal, petition for a writ of certiorari, or any other appellate review of any kind.
- 1.16. **“Email Notice”** means the notice of the Settlement that is emailed to Settlement Class Members, providing a link to the Claim Form, a link to the Settlement Website, and contact information for the Settlement Administrator.
- 1.17. **“Exclusion List”** means the list of all persons and entities who have timely and validly excluded themselves from the Settlement.
- 1.18. **“Fee, Cost, and Expense Award”** means the amount of attorneys’ fees and reimbursement of costs and expenses awarded to Class Counsel by the Court from the Settlement Fund.
- 1.19. **“Final Approval Order”** means the final judgment and order to be entered by the Court, following the Final Fairness Hearing, which approves the Settlement and sets the amounts of the Fee, Cost, and Expense Award and the Service Awards.
- 1.20. **“Final Fairness Hearing”** means the Court hearing where the Parties will request the Final Approval Order be entered approving this Agreement, and where Class Counsel will request that the Court approve the Fee, Cost, and

Expense Award and the Service Awards. The Final Fairness Hearing must occur at least 30 days after the Claims Deadline and the Objection and Exclusion Deadline, on such date as set by the Court.

- 1.21. **“Net Settlement Fund”** means the Settlement Fund, reduced by the sum of the following amounts: Notice and Administrative Costs, any Service Awards, and any Fee, Cost, and Expense Award.
- 1.22. **“Notice”** means the notice of this proposed Settlement Agreement and of the Final Fairness Hearing, which will be disseminated to Settlement Class Members in accordance with the terms of this Agreement.
- 1.23. **“Notice and Administrative Costs”** means all costs and expenses actually incurred by the Settlement Administrator in the dissemination of Notice and Notice to Additional Settlement Class Members; the establishment of the Settlement Website; the administrative processing, handling, review, and payment of Claims; and all other expenses reasonably necessary for effective Notice and administration of the Settlement pursuant to the Preliminary Approval order.
- 1.24. **“Notice Date”** means the date on which Notice to Settlement Class Members is complete. The Notice Date shall be as soon as reasonably practicable, but no later than 60 days following Preliminary Approval.
- 1.25. **“Notice Date for Additional Settlement Class Members”** means the date on which Notice to Additional Settlement Class Members is complete. The Notice Date for Additional Settlement Class Members shall be as soon as reasonably practicable, but no later than 14 days after the date on which the Settlement Administrator sends Direct Email Notice to additional Settlement Class Members, per § 4.7 below.
- 1.26. **“Notice to Additional Settlement Class Members”** means the notice of the proposed Settlement Agreement and of the Final Fairness Hearing, which will be disseminated in accordance with the terms of this Agreement to the additional Settlement Class Members that Google identified following the Notice Date but before the Final Fairness Hearing.

- 1.27. **“Objection”** means the formal written notice that a Settlement Class Member may submit to the Settlement Administrator in order to object to the Settlement.
- 1.28. **“Objection and Exclusion Deadline”** means the date by which a Settlement Class Member must submit an Objection to this Agreement or an Opt-Out Form to the Settlement Administrator. The Objection and Exclusion Deadline shall be 60 days after the Notice Date; for additional Settlement Class Members to whom Notice to Additional Settlement Class Members shall be given, the Objection and Exclusion Deadline shall be 60 days after the Notice Date for Additional Settlement Class Members.
- 1.29. **“Objector”** means a person or entity who submits an Objection.
- 1.30. **“Opt-Out Form”** means the form provided by the Settlement Administrator that Settlement Class Members must use to request exclusion from the Settlement.
- 1.31. **“Parties”** means Plaintiffs Free Range Content, Inc., Coconut Island Software, Inc., Taylor Chose, and Matthew Simpson, the Settlement Class, and Defendant Google LLC, as successor to Google Inc.
- 1.32. **“Plaintiffs”** means Free Range Content, Inc., Coconut Island Software, Inc., Taylor Chose, and Matthew Simpson.
- 1.33. **“Preliminary Approval”** means the Court’s order preliminarily approving the Settlement Agreement, preliminarily certifying the Settlement Class, and authorizing the dissemination of the Notice.
- 1.34. **“PST”** means Pacific Standard Time. If a deadline with a time stated in PST occurs when Daylight Saving Time is in effect, this deadline’s time will instead be governed by Pacific Daylight Time (“PDT”).
- 1.35. **“Rejected Claimant”** means a person or entity who submitted a Claim that the Settlement Administrator deemed invalid or untimely.
- 1.36. **“Released Claims”** means any and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages, or liabilities, whether known, unknown, legal, equitable, or otherwise, that arise out of or relate to the allegations in the operative complaint and that occurred during the

Settlement Class Period, including, but not limited to, those relating to: 1) the termination of any Settlement Class Member's Google AdSense account or 2) the withholding of unpaid amounts in any Settlement Class Member's Google AdSense account at the time of termination.

1.37. **"Releasees"** means Defendant Google LLC, as well as all of Google's current or former directors, officers, members, administrators, agents, insurers, beneficiaries, trustees, employee benefit plans, representatives, servants, employees, attorneys, parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint venturers, predecessors, related entities, and assigns, and all other individuals and entities acting on Google's behalf.

1.38. **"Releasing Class Members"** means all Settlement Class Members, except those who appear on the Exclusion List, and each of their respective current or former directors, officers, trustees, beneficiaries, insurers, predecessors, successors, assigns, legatees, heirs, partners, agents, personal representatives, and all other individuals or entities acting on a Releasing Class Member's behalf.

1.39. **"Releasing Named Plaintiffs"** means the named Plaintiffs in this Action: Free Range Content, Inc., Coconut Island Software, Inc., Taylor Chose, and Matthew Simpson, on behalf of themselves and each of their respective current or former directors, officers, members, administrators, employees, employee benefit plans, servants, contractors, trustees, beneficiaries, insurers, predecessors, successors, assigns, legatees, heirs, parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors, attorneys, partners, related entities, joint venturers, agents, personal representatives, and all other individuals or entities acting on the Plaintiffs' behalf.

1.40. **"Residual Settlement Payment"** means the amount Settlement Class Members who submit Valid Claims and/or the *Cy Pres* Recipients identified in § 1.11 shall receive from the Net Settlement Fund if any funds remain after Settlement Payments are made.

- 1.41. **“Service Award”** means the award sought by each Class Representative in consideration for their service during the course of the Action and subsequently approved by the Court. Any such Service Award is separate and apart from any Settlement Payments the Class Representative may receive as a result of submitting a Claim as a Settlement Class Member.
- 1.42. **“Settlement Administrator”** means Garden City Group, LLC (“GCG”), the firm that will provide Notice and Claims administration services in connection with the Settlement Agreement.
- 1.43. **“Settlement Class”** means all persons or entities Google’s records indicate are located within the United States, American Samoa, Puerto Rico, the United States Minor Outlying Islands, the U.S. Virgin Islands, or Canada, whose AdSense account Google disabled or terminated on any date between May 20, 2010 and the date the Court grants Preliminary Approval of this Settlement, and whose last AdSense unpaid amounts Google withheld in their entirety, and permanently, on any date between May 20, 2010 and the date the Court grants Preliminary Approval of this Settlement in connection with such disablement or termination, and where the sum withheld totals \$10 or more.
- 1.44. **“Settlement Class Members”** means members of the Settlement Class.
- 1.45. **“Settlement Class Period”** means the period from May 20, 2010 through the date the Court grants Preliminary Approval of this Settlement.
- 1.46. **“Settlement Fund”** means a cash fund of \$11,000,000, to be paid by Google in accordance with the terms of this Settlement Agreement.
- 1.47. **“Settlement Payment”** means the amount a Claimant shall receive from the Net Settlement Fund in accordance with the formula outlined in § 2.4.
- 1.48. **“Settlement Website”** means a website created and maintained by the Settlement Administrator for the purpose of providing the Settlement Class with Notice of the proposed Settlement. This website will allow Settlement Class Members to submit Claims, update their contact information and payment method, and opt-out of the Agreement.

1.49. **“Valid Claim”** means a Settlement Class Member’s written Claim that the Settlement Administrator has deemed valid and timely and accepted for Settlement Payment.

1.50. **“Website Notice”** means the formal legal notice of the proposed Settlement terms that will be hosted on the Settlement Website, as approved by Class Counsel, Defendant’s Counsel, and the Court.

2. Settlement Relief

2.1. **Settlement Fund.** Subject to the terms of this Agreement, Google shall establish a Settlement Fund of \$11,000,000. Google’s total financial commitment under this Agreement shall be \$11,000,000.

2.2. **Payments from Settlement Fund.** Google shall make the following payments from the Settlement Fund in this order:

- (i) Notice and Administrative Costs Estimate to the Settlement Administrator, pursuant to § 4.10 below (set aside no later than 30 days following Preliminary Approval)
- (ii) Fee, Cost, and Expense Award (pursuant to § 8)
- (iii) Service Awards (pursuant to § 9)
- (iv) Settlement Payments to Settlement Class Members (pursuant to § 2.4)

2.3. **Deposits to Settlement Fund.** Google shall deposit funds into the Settlement Fund as necessary to make all payments in accordance with § 2.2 above, not to exceed its total financial commitment of \$11,000,000.

2.4. **Settlement Payments to Settlement Class Members.** Except as provided in Scenario 1 (defined below), the entire Net Settlement Fund will be distributed as Settlement Payments to Settlement Class Members who submit Valid Claims.

2.4.1. **Settlement Scenarios.** Depending on the total of the Amounts Allegedly Withheld for all Valid Claims, the amount of payment to each Claimant will vary. There are three possible payment scenarios: Scenario (1) the Net Settlement Fund exceeds the full amount of all Valid Claims; Scenario (2) the Net Settlement Fund is less than the full amount of all Valid Claims, but

exceeds the amount required to pay Claimants the “Adjusted Amount” (specified below) for each Claimant’s “Payment Group” (defined below); or Scenario (3) the Net Settlement Fund is equal to or less than the amount required to pay Claimants the Adjusted Amount specified for each Claimant’s Payment Group. The Settlement Payments to Claimants submitting Valid Claims under each scenario are discussed below.

2.4.2. **Scenario 1.** In the event that the Net Settlement Fund exceeds the total of the Amounts Allegedly Withheld for all Claimants submitting Valid Claims, Claimants submitting Valid Claims will be paid their Amount Allegedly Withheld, regardless of the Payment Group (defined below) to which they are assigned. Any remaining amount left in the Net Settlement Fund will be paid to the *Cy Pres* Recipients identified in § 1.11.

2.4.3. **Scenario 2.** In the event the Net Settlement Fund is less than the total of the Amounts Allegedly Withheld for all Claimants submitting Valid Claims, but greater than the amount needed to pay each Claimant submitting a Valid Claim his or her Adjusted Amount (specified below), Claimants submitting a Valid Claim will receive Settlement Payments of their Adjusted Amount. The “Adjusted Amount” for each Claimant, based on the Claimant’s “Payment Group” will be defined as follows:

- (i) **“Payment Group 1,”** Claimants who were bound by the 2013 Terms of Service for their country or territory and who timely sent a notice of dispute to Google. Payment Group 1 includes Claimants whose AdSense account Google disabled or terminated on any date between and including April 23, 2013 and the date the Court grants Preliminary Approval of this Settlement; whose last AdSense unpaid amounts, totaling \$10 or more, Google withheld in full in connection with such disablement or termination; and who, either

according to Google's records or as demonstrated by documentary evidence deemed genuine and sufficient by the Settlement Administrator, submitted a written notice of dispute (including but not limited to an appeal) to Google within 30 days of notice from Google of such termination or disablement of, or such withholding from, their AdSense publishers' accounts. The Adjusted Amount for each Claimant in Payment Group 1 shall be 100% of the Claimant's individual Amount Allegedly Withheld;

- (ii) **"Payment Group 2,"** Claimants who were bound by the 2010 Terms and Conditions for their country or territory and who timely sent a notice of dispute to Google. Payment Group 2 includes Claimants whose AdSense account Google disabled or terminated on any date from May 20, 2010 up until and including April 22, 2013; whose last AdSense unpaid amounts, totaling \$10 or more, Google withheld in full in connection with such disablement or termination; and who, either according to Google's records or as demonstrated by documentary evidence deemed genuine and sufficient by the Settlement Administrator, submitted a written notice of dispute (including but not limited to an appeal) to Google within 30 days of notice from Google of such termination or disablement of, or such withholding from, their AdSense publishers' accounts. The Adjusted Amount for each Claimant in Payment Group 2 shall be 50% of the Claimant's individual Amount Allegedly Withheld;
- (iii) **"Payment Group 3,"** Claimants who were bound by either the 2013 Terms of Service for their country or territory or the 2010 Terms and Conditions for their country or territory, but

who did not timely send a notice of dispute to Google. Payment Group 3 includes Claimants whose AdSense account Google disabled or terminated on any date from May 20, 2010 up until and including the date on which the Court grants Preliminary Approval of this Settlement; whose last AdSense unpaid amounts, totaling \$10 or more, Google withheld in full in connection with such disablement or termination; and who did not submit a written notice of dispute (including but not limited to an appeal) that can be verified by the means set forth in §§ 2.4.3 (i-ii) to Google within 30 days of notice from Google of such termination or disablement of, or such withholding from, their AdSense publishers' accounts. The Adjusted Amount for each Claimant in Payment Group 3 shall be 30% of the Claimant's individual Amount Allegedly Withheld.

- (iv) Thus, the Adjusted Amounts would create a default ratio of recovery between the three Payment Groups of 10 / 5 / 3 for Payment Groups 1, 2, and 3, respectively.
- (v) After the Adjusted Amounts to Claimants in each Payment Group have been allocated, the remainder of the Net Settlement Fund shall be distributed to Claimants in Payment Group 2, such that all members of that Payment Group will have their Adjusted Amount evenly increased to a higher percentage until the Net Settlement Fund is exhausted or until the Adjusted Amount for Payment Group 2 reaches 100%.
- (vi) If the Adjusted Amount for Payment Group 2 reaches 100% and funds remain in the Net Settlement Fund, the remainder shall be distributed to Claimants in Payment Group 3, such

that all members of that Payment Group will have their Adjusted Amount evenly increased to a higher percentage until the Net Settlement Fund is exhausted.

2.4.4. **Scenario 3.** If the total of the Adjusted Amounts for all Claimants with Valid Claims is equal to the Net Settlement Fund, Claimants with Valid Claims shall be paid their Adjusted Amounts. If the total of the Adjusted Amounts for all Claimants with Valid Claims exceeds the Net Settlement Fund, then the Adjusted Amount for each Claimant with a Valid Claim shall be the Adjusted Amount decreased to a lower percentage, on a pro-rata basis, until the total of the Adjusted Amounts equals the Net Settlement Fund. In this event, the Adjusted Amounts for each Payment Group will be reduced in a manner that maintains the 10 / 5 / 3 ratio of percentages between Payment Groups 1, 2, and 3, respectively, as specified in Section 2.4.3 (i-iii) above. To illustrate, if the total of the Adjusted Amounts for all Valid Claims were twice the Net Settlement Fund, Claimants in Payment Group 1 would receive 50% of their Amounts Allegedly Withheld, Claimants in Payment Group 2 would receive 25% of their Amounts Allegedly Withheld, and Claimants in Payment Group 3 would receive 15% of their Amounts Allegedly Withheld.

2.4.5. **Default Payment Method.** For each Claimant, the Settlement Administrator shall, by default, provide Settlement Payments through ACH Transfer to the Claimant's bank account.

- (i) Settlement Class Members with Valid Claims who elect to receive an ACH Transfer, but fail to provide sufficient or correct information to permit such ACH Transfer, shall, after a reasonable attempt to resolve any such Settlement Payment issues, relinquish their right to Settlement Payments.

2.4.6. **Option to Change Payment Method.** Claimants may elect to change the Default Payment Method by which they receive their Settlement Payment and instead receive a physical check mailed to their address; Claimants may make this change when they complete the Claim Form on the Settlement Website. The Claim Form will request any additional payment information necessary for the Settlement Administrator to provide the Settlement Payment through the method the Claimant elects.

- (i) Settlement Class Members who elect to receive a physical check shall have 90 days from its date within which to cash that check.

2.4.7. **Minimum Payment.** Notwithstanding §§ 2.4.1–2.4.4 above, no Settlement Payment shall be made to a Claimant who has elected to receive a physical check instead of an ACH Transfer if the total amount of that Settlement Payment would be less than \$3.00. Any such monies shall be distributed to other Claimants (those who either elected to receive an ACH Transfer or who elected to receive a physical check, but whose claims exceed \$3.00) on a *pro rata* basis (in accordance with §§ 2.4.3 and 2.4.4 above).

2.5. **Distribution of Residual Funds.** If, after the process outlined in § 2.4 above is completed, additional funds remain in the Net Settlement Fund, these funds, together with any funds from failed ACH Transfers and uncleared physical checks, shall be distributed as Residual Settlement Payments, as follows:

2.5.1 **Failed ACH Transfers and Uncleared Checks.** If 100% of the Net Settlement Fund is initially distributed to Claimants, any funds from failed ACH Transfers and uncleared physical checks shall be returned to the Net Settlement Fund and redistributed to Settlement Class Members for whom ACH Transfers were successful on a *pro rata* basis in accordance with § 2.4 above. Notwithstanding this provision, no

Settlement Payment shall be made to a Settlement Class Member under this section if the Settlement Class Member has already received 100% of the amount due for a Valid Claim pursuant to § 2.4.1– 2.4.4 above, or if the amount of this payment would be less than \$3.00 and the Claimant has elected to receive a physical check instead of an ACH Transfer. Any remaining funds, after completion of this process, shall be distributed to the *Cy Pres* Recipients.

2.5.2 If less than 100% of the Net Settlement Fund is initially distributed to Claimants, any funds from failed ACH Transfers and uncleared physical checks shall be distributed to the *Cy Pres* Recipients.

2.6. **Timing of Payment.** Settlement Payments from the Net Settlement Fund shall be distributed to Claimants within 30 days following the Effective Date. Residual Settlement Payments from the Net Settlement Fund shall be distributed in accordance with § 2.5 above within 120 days following the Distribution Date.

3. Claims Process

3.1. **Claim Form.** Each Settlement Class Member shall be entitled to submit a Claim for Settlement Payment as described in this section.

3.1.1. The Claim Form will be available on the Settlement Website and may be completed and submitted online or in hard copy sent by postal mail or facsimile to the Settlement Administrator.

3.1.2. The Claim Form shall, among other terms: require the Settlement Class Member to attest that he or she did not intentionally violate Google's policies or intentionally cause invalid clicks with regard to the funds that Google withheld in connection with termination or disablement of the Settlement Class Member's AdSense account; ask the Settlement Class Member to advise as to whether he or she submitted a written notice of dispute (including but not limited to an appeal) within 30 days of notice from Google of termination or disablement of,

or withholding in connection with termination or disablement of, the Claimant's AdSense publisher's account; invite the Settlement Class Member to attach whatever evidence, if any, of having submitted such a timely notice of dispute (including, but not limited to, a copy of such notice) that the Class Member would like the Settlement Administrator to consider; advise the Settlement Class Member that if he or she does not attach any evidence of having timely submitted a notice of dispute, the Settlement Administrator will rely solely on Google's records to make the determination as to whether the Settlement Class Member submitted such notice; and require Settlement Class Members to affirm under penalty of perjury that the information they submit is, to the best of their knowledge, true and correct.

3.2. **Deadline to File Claims.** The Claims Deadline shall be 60 days after the Notice Date and, for additional Settlement Class Members to whom Notice to Additional Settlement Class Members shall be given, 60 days after the Notice Date for Additional Settlement Class Members. To be considered timely, all Claims Forms must be submitted on the Settlement Website or mailed or faxed to the Settlement Administrator by the Claims Deadline, which shall be clearly stated in the Notice and the Notice to Additional Settlement Class Members, and on the Claim Form.

3.2.1. For Claim Forms submitted electronically on the Settlement Website, the deadline is 11:59 p.m. PST on the Claims Deadline.

3.2.2. For Claim Forms mailed or transmitted via facsimile to the Settlement Administrator, the Claims Form must be postmarked by the Claims Deadline or faxed by 11:59 p.m. PST on the Claims Deadline.

3.3. **Claims Review.** The Settlement Administrator shall review all Claims to determine their validity and to which Payment Group, as defined in § 2.4.3 above, each Claimant belongs. The Settlement Administrator shall reject any Claim that

does not comply in any material respect with the instructions on the Claim Form; is not submitted by a Settlement Class Member; is a duplicate of another Claim; is a fraudulent Claim; or is submitted after the Claims Deadline. The Settlement Administrator shall first attempt to determine whether a Settlement Class Member timely submitted a written notice of dispute (including but not limited to an appeal) to Google regarding Google's termination or disablement of, or withholding in connection with such termination or disablement of, the Settlement Class Member's AdSense account based on Google's own records of such written notice of dispute, which Google shall provide to the Settlement Administrator when it provides data regarding the unpaid amounts for each claimant per § 3.7 below, in the form of a table or chart indicating which Settlement Class Members submitted a written notice of dispute and which did not, and, second, if the Settlement Class Member has submitted a copy of the claimed notice of dispute, by reasonably attempting to confirm the authenticity and validity of that claimed notice, including by potential consultation with Google. The decision of the Settlement Administrator shall be final as to the validity of any claim of timely written notice of dispute, and as to the determination of the Payment Group into which the Settlement Class Member's Claim shall be placed. Finally, the Settlement Administrator shall cross-reference Claims against a list of Settlement Class Members provided by Google. Google, in consultation with Class Counsel, may, but is not obligated to, verify the Settlement Administrator's determinations on the validity of a Claim. However, the Settlement Administrator's determination as to the validity of a Claim shall be final, subject to § 3.6 below.

- 3.4. **Curable Deficiencies.** Notwithstanding § 3.3 above, prior to the rejection of a Claim Form, the Settlement Administrator shall communicate with the person or entity who submitted the Claim in an effort to remedy any curable deficiencies in the Claim Form.

- 3.5. **Notification of Rejected Claims.** Following any effort to resolve any curable deficiencies, the Settlement Administrator shall promptly notify all Rejected Claimants whose Claim Forms the Settlement Administrator proposes to reject, in whole or in part, and provide its reasons.
- 3.5.1. If the Claim Form was submitted online, the Rejected Claimant shall be notified by email at the email address provided.
- 3.5.2. If the Claim Form was submitted by postal mail or facsimile, the Rejected Claimant shall be notified by email if the Settlement Class Member has provided an email address, or, if not, by postal mail at the physical address provided.
- 3.6. **Claims Disputes and Inquiries.** The Settlement Administrator shall notify Class Counsel and Defendant's Counsel of any disputes regarding the rejection of a Claim. Class Counsel and Defendant's Counsel may review any Claims rejected by the Settlement Administrator. If Class Counsel and Defendant's Counsel agree that a Claim was improperly rejected, the Claim shall be deemed valid and paid. If Class Counsel and Defendant's Counsel do not agree as to whether a Claim was improperly rejected, the decision of the Settlement Administrator shall be final. Further, in response to an inquiry from, or dispute by, a Claimant after the Claimant received a Settlement Payment, the Settlement Administrator may advise such Claimant of the unpaid-amount sum it used to calculate the Claimant's Settlement Payment.
- 3.7. **Claims Processing.** As soon as reasonably possible after the Claims Deadline, after all Claims have been processed to determine their validity, the Settlement Administrator will provide Class Counsel and Defendant's Counsel with a list of Claimants with Valid Claims and a list of all Claims it deems invalid or untimely. Within ten (10) business days of receiving the list of Claimants with Valid Claims from the Settlement Administrator, Google shall provide to the Settlement Administrator all other data reasonably necessary to administer the

Claims process, including a table or chart indicating which Settlement Class Members submitted a written notice of dispute and which did not, and data regarding the Amount Allegedly Withheld from each Claimant's account. The Settlement Administrator will use this data to determine into which Payment Group each Claimant belongs.

- 3.8. **Reporting and Claims Database.** As soon as reasonably possible after receiving data regarding the Amount Allegedly Withheld from each Claimant's AdSense account, the Settlement Administrator will provide Class Counsel and Defendant's Counsel the total number of Claimants in each Payment Group, the total Amount Allegedly Withheld for each Payment Group, and its best estimate of the Adjusted Amount for each Payment Group. The Settlement Administrator will maintain a database of Claims, which will include all relevant information captured from Claimants' Claim Forms.

4. Notice and Administration

- 4.1. **Notice to the Settlement Class.** Direct Notice of the Settlement will be made to Settlement Class Members as set forth below.
- 4.1.1. Notice shall be completed as soon as reasonably practicable, but no later than 60 days following entry of the Preliminary Approval order.
- 4.1.2. Notice shall be conducted in accordance with the Notice Plan. The content of all forms of Notice, as specified in §§ 4.2—4.6 below, will be jointly agreed to by the Parties.
- 4.1.3. Within five (5) business days following entry of the Preliminary Approval order, Google shall provide to the Settlement Administrator a list of all Settlement Class Members, as well as their contact information (including both email and physical addresses as available) as reflected in Google's current records.

- 4.1.4. All Notice and Administrative Costs shall be paid from the Settlement Fund.
- 4.2. **Direct Email Notice.** Within five (5) days of receiving Settlement Class Members' contact information from Google, as specified in § 4.1.3 above, the Settlement Administrator shall email Notice of the Settlement to all Settlement Class Members for which it has email addresses.
- 4.2.1. The Email Notice will provide a link to a Claim Form where the Settlement Class Member can submit a Claim; will provide a link to the Settlement Website; and will list contact information for the Settlement Administrator.
- 4.2.2. The Email Notice will be sent to the most current email address listed in the Settlement Class Member's AdSense account.
- 4.2.3. The Settlement Administrator will monitor the Email Notice process and optimize the delivery of the Email Notice to maximize the distribution of the Email Notice.
- 4.2.4. For Email Notices sent to Settlement Class Members that the Settlement Administrator can reasonably determine were not opened, the Settlement Administrator will send one additional Email Notice to such Settlement Class Members prior to the Supplemental Postcard Notice provision below (see § 4.3).
- 4.3 **Supplemental Postcard Notice.** Within 14 days after the Email Notices in § 4.2 above have been completed, the Settlement Administrator will mail Supplemental Postcard Notice to all Settlement Class Members to whom Email Notice bounced (as reasonably determined by the Settlement Administrator) and for whom a physical address is available. The Postcard Notice will include the Settlement Website and contact information for the Settlement Administrator.

- 4.3.1. The Supplemental Postcard Notice will be mailed to the physical address listed in the Settlement Class Member's AdSense billing profile, per Google's current records.
- 4.4 **Website Notice.** Within five (5) business days of entry of the Preliminary Approval order, the Settlement Administrator will post the Website Notice in a user-accessible format on the Settlement Website.
- 4.4.1. Class Counsel, Defendant's Counsel, and the Settlement Administrator will jointly select the domain name for the Settlement Website.
- 4.4.2. The Settlement Website will include the Claims Form and Opt-Out Form; answers to frequently asked questions; a list of important deadlines; and case documents. Defendant's Counsel and Class Counsel must agree to any additions or revisions to the Settlement Website design or content.
- 4.4.3. The Settlement Website will remain active for at least 90 days following the Effective Date of the Settlement. However, the Settlement Administrator will disable online submissions through the Claim Form and the Opt-Out Form immediately following the Claims Deadline and the Objection and Exclusion Deadline.
- 4.5 **Press Release.** Within two (2) business days of entry of the Preliminary Approval order, Class Counsel will issue a Press Release, which Defendant's Counsel will have the opportunity to review and reasonably approve prior to publication, providing Notice of the Settlement, a link to the Settlement Website, and contact information for the Settlement Administrator.
- 4.5.1. The Press Release will be issued through PR Newswire's US1 commercial newswire service and will also be posted on the Settlement Website and Class Counsel's website.
- 4.6 **Supplemental Digital Notice.** In the unlikely event that the Settlement Administrator determines that less than 72% of the Settlement Class is

contacted through dissemination of the Direct Email Notice, the Supplemental Postcard Notice, the Website Notice, and the Press Release, then, within twenty-one (21) days after the Supplemental Postcard Notice in § 4.3 above has been completed, the Settlement Administrator will provide Supplemental Digital Notice to Settlement Class Members.

4.6.1. The Supplemental Digital Notice would include digital advertisements using programmatic purchasing, using an advertising network to be jointly agreed to by the Parties, to reach Settlement Class Members.

4.7 Notice to Additional Settlement Class Members. With respect to additional Settlement Class Members who were not included on the list Google provided to the Settlement Administrator per § 4.1.3 above, and who therefore did not receive Notice as specified in §§ 4.2 and 4.3 such that Notice to Additional Settlement Class Members has become necessary, such Notice to Additional Settlement Class Members shall be directly made as set forth below.

4.7.1. Notice to Additional Settlement Class Members shall be completed as soon as reasonably practicable, but no later than 14 days following the date when the Settlement Administrator sends Direct Email Notice to additional Settlement Class Members per this § 4.7 and § 4.2 above.

4.7.2. Notice to Additional Settlement Class Members shall be completed in accordance with the Notice Plan. The content of all forms of Notice, as specified in §§ 4.2 – 4.6 above, will be jointly agreed to by the Parties.

4.7.3. Google shall provide to the Settlement Administrator a list of all additional Settlement Class Members, as well as their contact information (including both email and physical addresses as available) as reflected in Google's current records, as soon as reasonably practicable.

4.7.4. The Settlement Administrator shall follow the procedures outlined in §§ 4.2 and 4.3 above to provide Direct Email Notice and Supplemental Postcard Notice, as applicable, to all additional Settlement Class Members who are entitled to receive Notice to Additional Settlement Class Members, with the following modifications of time:

- (a) The Settlement Administrator shall email Notice to Additional Settlement Class Members to all additional Settlement Class Members as soon as reasonably practicable after receiving the contact information for such additional Settlement Class Members from Google per §4.7.3 above; and
- (b) Within 7 days after the Settlement Administrator sends Direct Email Notice per §§ 4.7.4(a) and 4.2 above to additional Settlement Class Members, the Settlement Administrator will mail Supplemental Postcard Notice to all additional Settlement Class Members to whom Direct Email Notice bounced (as reasonably determined by the Settlement Administrator) and for whom a physical address is available.

4.7.5. All Notice and Administrative Costs shall be paid from the Settlement Fund.

4.8 **CAFA Notice.** Not later than 10 days after this Settlement Agreement is filed with the Court, the Settlement Administrator, at Defendant’s direction, shall serve notice of the Settlement and other required documents upon relevant government officials in accordance with the Class Action Fairness Act (“CAFA”), 28 U.S. § 1715. Prior to the Preliminary Approval hearing, the Settlement Administrator shall provide proof of service of such notice for filing with the Court.

4.9 **Settlement Administrator.** The Settlement Administrator shall help implement the terms of the Settlement Agreement. The Settlement Administrator shall be responsible for:

- (a) Establishing, designing, and maintaining the Settlement Website;
- (b) Disseminating Notice and Notice to Additional Settlement Class Members, including Direct Email Notice, Supplemental Postcard Notice, Website Notice, Supplemental Digital Notice, as needed, and CAFA Notice, in accordance with this Agreement, the Notice Plan, and the Court's orders;
- (c) Monitoring and responding to inquiries from Settlement Class Members in a timely fashion and, where necessary, forwarding such written inquiries to Class Counsel;
- (d) Accurately and objectively describing the terms of the Agreement in communications with Settlement Class Members, including training its employees and agents accordingly;
- (e) Receiving and compiling Opt-Out Forms and any other correspondence requesting exclusion from the Settlement;
- (f) Receiving and processing Claims, including by maintaining a database of Claims, and distributing Settlement Payments to Settlement Class Members;
- (g) Providing periodic reports on Claims, Objections, Opt-Out Forms and any other requests for exclusion from the Settlement, and any other such information that may be reasonably requested by Class Counsel and Defendant's Counsel;
- (h) Preparing a declaration attesting to compliance with the Notice and Notice to Additional Settlement Class Members requirements in this Agreement, and providing such declaration to Class Counsel and Defendant's Counsel;

- (i) Seeking further clarification or authorization from Class Counsel and Defendant's Counsel when necessary for performance of its duties and the expenditure of cash from the Settlement Fund; and
- (j) Otherwise assisting with implementation and administration of the terms of this Settlement Agreement.

4.10 **Administrative Costs Estimate.** The Parties will obtain from the Settlement Administrator its best estimate of such anticipated administrative costs, which shall then be set aside from the Settlement Fund.

5. Objections and Exclusions

5.1. **Objections.** Any Settlement Class Member who has not submitted a timely written Opt-Out Form and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, the Fee, Cost, and Expense Award, or the Service Awards must comply with the following requirements:

5.1.1. **Content of Objections.** All Objections and supporting papers must be in writing and must:

- (a) Clearly identify the case name and number, *Free Range Content, Inc. v. Google LLC.*, No. 5:14-cv-02329-BLF;
- (b) Include the full name, address, telephone number, email address, and AdSense publisher identification number (if known) associated with the Google AdSense account of the person or entity objecting;
- (c) Include the full name, address, telephone number, and email address of the Objector's counsel (if the Objector is represented by counsel);
- (d) Provide a detailed explanation stating the specific reasons for the Objection, including any legal and factual support and any evidence in support of the Objection; and
- (e) Be verified by an accompanying declaration submitted under penalty of perjury or a sworn affidavit.

5.1.2. **Submission of Objections.** Any comments or Objections from Settlement Class Members regarding the proposed Settlement Agreement must be submitted in writing. If a Settlement Class Member does not submit a timely written Objection, or if the Settlement Class Member does not request participation in the Final Fairness Hearing, the Settlement Class Member will not be able to participate in the Final Fairness Hearing. A Settlement Class Member may submit comments or Objections online to the Settlement Website or by mail to the address provided in the Notice and on the Settlement Website, referencing *Free Range Content, Inc. v. Google LLC*, Case No. 5:14-CV-02329.

5.1.3. **Deadline for Objections.** Objections must be submitted by the Objection and Exclusion Deadline, which is 60 days after the Notice Date and, for additional Settlement Class Members to whom Notice to Additional Settlement Class Members shall be given, is 60 days after the Notice Date for Additional Settlement Class Members.

- (a) If submitted through the Settlement Website, Objections must be submitted on this date by 11:59 p.m. PST.
- (b) If submitted by postal mail, Objections must be postmarked by the Objection and Exclusion Deadline. The date of the postmark on the envelope containing the written statement objecting to the Settlement shall be the exclusive means used to determine whether an Objection and/or intention to appear has been timely submitted. In the event a postmark is illegible, the date of mailing shall be deemed to be three days prior to the date that the Settlement Administrator received a copy of the Objection.
- (c) Settlement Class Members who fail to submit timely written Objections in the manner specified above shall be deemed to have waived any objections and shall be forever barred from making

any objection to the Agreement and the proposed Settlement by appearing at the Final Fairness Hearing, appeal, collateral attack, or otherwise.

5.1.4. **Attendance at Final Fairness Hearing.** Any Objector who timely submits an Objection has the option to appear and request to be heard at the Final Fairness Hearing, either in person or through the Objector's counsel. Any Objector wishing to appear and be heard at the Final Fairness Hearing must include a Notice of Intention to Appear in the body of the Objector's Objection. Objectors who fail to submit or include this Notice of Intention to Appear may not speak at the Final Fairness Hearing without permission of the Court.

5.1.5. **Objectors' Attorneys' Fees and Costs.** If an Objector makes an Objection through an attorney, the Objector shall be solely responsible for the Objector's attorneys' fees and costs.

5.1.6. **Court Approval for Payments to Objectors.** Unless approved by the Court after a hearing, no payment or other consideration may be provided to an Objector or an Objector's counsel in connection with foregoing or withdrawing an Objection or foregoing, dismissing, or abandoning an appeal from a judgment approving the Settlement, Service Awards, or the Fee, Cost, and Expense Award.

5.1.7. **No Solicitation of Settlement Objections.** At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written Objections to the Settlement or encourage an appeal from the Court's Final Approval Order.

5.2. **Requests for Exclusion.** The Notice shall advise all Settlement Class Members of their right to exclude themselves from the Settlement. This Settlement

Agreement will not bind Settlement Class Members who opt-out of the Settlement.

5.2.1. **How to Opt-Out.** To request to be excluded from the Settlement, Settlement Class Members must timely submit a completed Opt-Out Form. This Opt-Out Form may be completed electronically on the Settlement Website or timely faxed or sent by postal mail to the Settlement Administrator.

5.2.2. **Deadline to Opt-Out.** To be excluded from the Settlement, the Opt-Out Form must be completed by the Objection and Exclusion Deadline, which is 60 days after the Notice Date and, for additional Settlement Class Members to whom Notice to Additional Settlement Class Members shall be given, is 60 days after the Notice Date for Additional Settlement Class Members.

(i) If submitted electronically, the Opt-Out Form must be submitted no later than 11:59 p.m. PST on or before the Objection and Exclusion Deadline.

(ii) If submitted by facsimile or postal mail, the Opt-Out Form must be date-and-time-stamped, or postmarked, no later than the Objection and Exclusion Deadline. The Settlement Class Member must pay for Postage.

5.2.3. **Effect of Opt-Out.** Any person or entity who falls within the definition of the Settlement Class and who validly and timely requests exclusion from the Settlement shall not be a Settlement Class Member; shall not be bound by the Settlement Agreement; shall not be eligible to make a Claim for any benefit under the terms of the Settlement Agreement; and shall not be entitled to submit an Objection to the Settlement.

5.2.4. **Exclusion List.** No later than 7 days after the Objection and Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and

Defendant's Counsel with a list of all persons and entities who have timely and validly excluded themselves from the Settlement. The Exclusion List shall be filed with the Court as part of the Motion for Final Approval.

5.2.5. **Termination Clause.** If the Amount Allegedly Withheld from the Settlement Class Members requesting exclusion, in the aggregate, exceeds a sum agreed-to by the Parties in a Confidential Supplemental Settlement Agreement, then Google may, in its sole discretion, notify Class Counsel in writing that it has elected to terminate this Settlement Agreement. Such notification of intent to terminate the Settlement Agreement must be provided a minimum of 7 days before the filing deadline for the motion seeking Final Approval. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio* and § 7.5 below will apply. This confidential opt-out figure shall be communicated to the Court by the Parties via a sealed writing, in order to help discourage manipulation of the Settlement.

6. Releases

6.1. **No Admission of Liability.** This Settlement Agreement is made in compromise of a dispute. Neither the Agreement nor anything that the Parties stated or did during the negotiation of the Agreement shall be construed or used in any manner as an admission of liability or evidence of either party's fault, liability, or wrongdoing. Google expressly denies any liability or wrongdoing whatsoever.

6.2. **Named Plaintiffs' and Settlement Class Members' Release.** Upon the Effective Date of this Agreement, all the Named Plaintiffs and Releasing Class Members shall release, forever discharge, will not in any manner pursue this Action, and shall be forever barred from asserting, instituting, or maintaining against the Releasees, any and all Released Claims, as defined in § 1.36 of this Agreement.

6.3. **Release of Unknown Claims.** Releasing Named Plaintiffs and Releasing Class Members fully understand that the facts on which this Settlement Agreement is executed may be different from the facts now believed by Releasing Named Plaintiffs, Releasing Class Members, and their Counsel to be true. Releasing Named Plaintiffs and Releasing Class Members expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in facts. Releasing Named Plaintiffs and Releasing Class Members further agree that this waiver is an essential and material term of this release and the Settlement that underlies it and that without such waiver the Settlement would not have been agreed to.

6.4. **Waiver of California Civil Code § 1542.** Releasing Named Plaintiffs and Releasing Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, or any other similar provision under federal or state law. Releasing Named Plaintiffs and Releasing Class Members understand that California Civil Code § 1542 states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

6.5. **Enforcement.** The Named Plaintiffs' and Settlement Class Members' Release shall not bar a claim, complaint, action, or proceeding for breach of this Settlement Agreement, for which the Court shall retain jurisdiction to resolve and enforce.

7. Court Approval of the Settlement

7.1. **Cooperation to Obtain Court Approval.** The Parties will jointly take all reasonable steps necessary to secure the Court's approval of this Settlement. Class Counsel will draft and file the motions for Preliminary Approval and Final Approval. Defendant's Counsel will be provided with advance copies of these

papers approximately 5 calendar days prior to filing, and may join the motions or file separate briefs in support of Preliminary and Final Approval of the Settlement.

7.2. **Settlement Class.** The Parties agree that, for purposes of this Settlement, this Action should be certified and proceed as a class action under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only. Class Counsel shall serve as counsel for the Settlement Class.

7.3. **Preliminary Approval.** Within 30 days after the execution of this Agreement, Plaintiffs, in consultation with Defendant, shall move the Court for an order seeking:

- (a) Certification of the Settlement Class and appointment of the Class Representatives and Class Counsel;
- (b) Preliminary Approval of the Settlement, approving the terms of this Agreement as fair, reasonable, and adequate and in the best interest of Settlement Class Members;
- (c) Approval of the Notice, including the form, manner, and content of the Direct Email Notice, Supplemental Postcard Notice, and Website Notice; and
- (d) Placement of the Final Fairness Hearing on the Court's calendar, with the hearing being set approximately 150 days after entry of Preliminary Approval, subject to the Court's availability.

7.4. **Final Approval.** At least 14 days prior to the Final Fairness Hearing, Plaintiffs, in consultation with Defendant, shall move the Court for the Final Approval Order seeking:

- (a) Final Approval of the Settlement, approving the terms of this Settlement to be fair, reasonable, and adequate and in the best interest of Settlement Class Members;

- (b) A finding that the Notice complied with the Settlement Agreement, all applicable law, and due process;
- (c) Distribution of the Settlement Fund and approval of the Settlement Payments and Residual Settlement Payments; and
- (d) Dismissal of the Action and entry of a Final Approval Order.

7.5. **Effect If Settlement Not Approved.** The Settlement Agreement is being entered into for settlement purposes only. If the Court does not grant Preliminary Approval, does not grant Final Approval, or if the Effective Date does not occur, this Settlement Agreement will be deemed null and void *ab initio*. In that event:

- (a) The Preliminary Approval Order and the Final Approval Order, to the extent they have been entered by the Court, will be vacated by operation of law;
- (b) The Parties will be restored to their respective positions immediately preceding execution of the Agreement, and any intervening Court rulings or decisions shall be vacated;
- (c) No term or condition of the Agreement, or any draft thereof, or any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect; nor shall any such matter be admissible in evidence for any purpose in the Action or any other proceeding; nor shall any such matter be used in the Action for any purpose whatsoever;
- (d) Google will retain all of its rights to object to any attempt by Plaintiffs to reference, cite to, or rely upon, in any way, the Agreement or any factual or legal statement or conclusion within it, including as to the feasibility of the maintenance of the Action as a class action.

- 7.6. **Modifications Suggested by the Court.** If the Court suggests any modifications to the Agreement or conditions either Preliminary Approval or Final Approval on modifications to the Agreement, the Parties shall, working in good faith and consistent with the Agreement, endeavor to cure any such deficiencies identified by the Court. However, the Parties shall not be obligated to make any additions or modifications to the Agreement that would affect the benefits provided to Settlement Class Members, or the cost to or burden on Defendant, the content or extent of Notices required to Settlement Class Members, or the scope of any of the releases contemplated in this Agreement. If the Court orders or proposes such additions or modifications, the Parties will each have the right to terminate the Settlement Agreement within 7 days from the date of the Court's order or proposal. If either Party elects to terminate the Settlement Agreement pursuant to this section, the Agreement will be deemed null and void *ab initio* and the provisions of § 7.5 will apply.
- 7.7. Notwithstanding the foregoing, the Parties will not be entitled to terminate this Settlement Agreement based on any order relating to Class Counsel's anticipated motion for a Fee, Cost, and Expense Award or to Plaintiffs' anticipated motion for Service Awards to the Named Plaintiffs, nor any appeal from such order or reversal or modification thereof.

8. Class Counsel's Fees, Costs, and Expenses

- 8.1. **Fee, Cost, and Expense Award.** Class Counsel will file a motion with the Court seeking a portion of the Settlement Fund as payment of their reasonable attorneys' fees, as well as reimbursement of actual costs and expenses, including experts and consultants, incurred in connection with prosecuting this Action. Google expressly reserves the right to oppose the motion seeking a Fee, Cost, and Expense Award for any reason, at its discretion.
- 8.2. **Disclosure of Amounts Sought.** In its Motion for Preliminary Approval of the Settlement and supporting papers, Class Counsel will provide the maximum

amount of the Settlement Fund it will seek from the Court as attorneys' fees, as well as the total amount of costs and expenses (or best estimates for costs and expenses not yet charged) for which it will seek reimbursement. On or before the Notice Date, these amounts will also be disclosed in the Settlement Notice, which shall be posted on the Settlement Website.

- 8.3. **Motion for Attorneys' Fees, Costs, and Expenses.** At least 30 days prior to the Objection and Exclusion Deadline, Class Counsel will file a motion for award of attorneys' fees, costs, and expenses. Class Counsel's motion for attorneys' fees, costs, and expenses will also be posted on the Settlement Website.
- 8.4. **Timing of Payment.** If awarded by the Court, the Fee, Cost, and Expense Award shall be payable from the Settlement Fund within 30 days after the date of entry of the Final Approval Order, notwithstanding the existence of any Objections, pending or forthcoming appeals, or collateral attack on the Settlement, the Fee, Cost, and Expense Award, or the Service Awards. At least 30 days prior to payment of the Fee, Cost, and Expense Award, Class Counsel shall furnish Defendant's Counsel with all necessary payment and routing information to facilitate the transfer.
- 8.5. **Clawback of Fee, Cost, and Expense Award.** If the Final Approval Order is vacated, overturned, reversed, or rendered void or unenforceable as a result of an appeal, or if the Settlement Agreement is voided, rescinded, or otherwise terminated, then Class Counsel shall, within 30 days, repay to Google the Fee, Cost, and Expense Award it received, plus interest Class Counsel earned on that amount, if any. For avoidance of doubt, Class Counsel shall have no obligation under any circumstances to reimburse Google for any sums Google pays to, or that are billed by, the Settlement Administrator for Settlement administration, Notice, or any other reason.

8.6. **Partial Repayment.** If the Fee, Cost, and Expense Award is reduced on appeal, but all other terms of the Settlement Agreement remain in full effect, Class Counsel shall only repay the portion of the Fee, Cost, and Expense Award by which it is reduced. This partial repayment of the Fee, Cost, and Expense Award shall be applied to the Net Settlement Fund and distributed in accordance with the terms of this Settlement Agreement. For avoidance of doubt, Class Counsel shall have no obligation under any circumstances to reimburse Google for any sums Google pays to, or that are billed by, the Settlement Administrator for settlement administration, notice, or any other reason.

8.7. **Letter Agreement.** As a condition precedent to Google's obligation to pay the Fee, Cost, and Expense Award per the timing set forth in § 8.4, Class Counsel shall deliver to Google's Counsel a letter agreement executed by the law firm of Hagens Berman Sobol Shapiro LLP, acknowledging and agreeing to its obligations under this § 8 and agreeing to the jurisdiction of the Court for the purpose of enforcing this § 8.

8.8. **Distribution of Fee, Cost, and Expense Award.** Class Counsel shall have sole responsibility and discretion to distribute the Fee, Cost, and Expense Award to any other attorney or law firm that may claim they are owed attorneys' fees, costs, or expenses under the terms of this Settlement.

9. Service Awards

9.1. **Generally.** Class Counsel will seek Service Awards for each Class Representative in consideration for their service during the course of the Action and commensurate with their participation in the Action.

9.2. **Amount of Service Awards.** Any Service Awards are subject to the approval of the Court and shall not exceed \$5,000 per Class Representative. Any such Service Awards are separate and apart from any Settlement Payments the Class Representatives may receive as a result of submitting Claims as Settlement Class Members.

- 9.3. **Motion for Service Awards.** Class Counsel will provide the specific amounts it will seek in Service Awards for the Class Representatives at the same time it files its motion for attorneys' fees and expenses. This request for Service Awards will be filed at least 30 days prior to the Objection and Exclusion Deadline. It will also be posted on the Settlement Website.
- 9.4. **No Condition of Support.** Each Class Representative shall receive any Service Award they are awarded by the Court, irrespective of whether they support the terms of the Settlement.
- 9.5. **Payment of Service Awards.** If awarded by the Court, the Service Awards shall be payable from the Settlement Fund 30 days after the Effective Date of the Settlement. At least 30 days prior to payment of the Service Awards, Class Counsel shall furnish Defendant's Counsel with all necessary payment, routing, and tax information for the Class Representatives to facilitate the transfer.

10. Miscellaneous Terms

- 10.1. **Construction and Interpretation.** The following additional terms shall govern the construction and interpretation of this Agreement.
- 10.1.1. **Knowledge and Advice of Counsel.** Each party enters into the Settlement Agreement with the opportunity to seek the advice of counsel, and executes and delivers the Settlement Agreement being fully informed as to its terms, content, and effect.
- 10.1.2. **Entire Agreement.** The Agreement and attached exhibits set forth all terms agreed to by the Parties and supersede all previous or contemporaneous agreements between the Parties relating to the Agreement's subject matter. In entering into the Settlement Agreement, no Party has relied on, and no Party will have any right or remedy based on, any statement, representation, or warranty,

whether made negligently or innocently, except those expressly set forth in the Agreement.

10.1.3. **No Construction Against Any Party.** The terms of the Settlement Agreement have been negotiated at arm's-length among knowledgeable parties represented by experienced counsel. The Parties agree that the normal rule of construction that any ambiguity in a document is construed against the drafting party shall not apply to the interpretation or enforcement of the Settlement Agreement, as the Parties each participated in the drafting of the Settlement Agreement.

10.1.4. **Headings and Captions.** The headings and captions of sections in the Settlement Agreement are inserted for convenience, reference, and identification purposes only, and shall not control, define, limit, or affect any provisions of the Agreement.

10.1.5. **Severability.** If any term or part of a term of the Settlement Agreement is found to be invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect.

10.2. **Specific Prohibitions.** The following specific prohibitions shall apply to the Settlement Agreement as follows:

10.2.1. **No Assignment.** The Settlement Agreement, including any of the rights and duties of each party under the Agreement, may not be assigned without prior written approval by the other party.

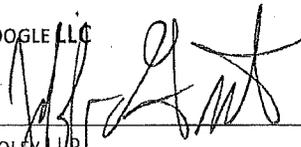
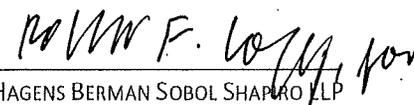
10.2.2. **No Waiver.** Neither party will be treated as having waived any rights or privileges, including attorney-client privilege, as the result of the Settlement Agreement. Additionally, a waiver of any breach of the Settlement Agreement by any party shall not be deemed to be a waiver by any party of any other breach of the Agreement.

10.2.3. **No Third-Party Beneficiaries.** The Settlement Agreement does not confer any benefits on any third party.

- 10.3. **Execution in Counterparts.** The Parties may execute the Settlement Agreement in counterparts, including PDF, facsimile, and any other electronic means, which, taken together, will constitute one instrument.
- 10.4. **Amendments.** Any amendment must be in writing, signed by Class Counsel and Defendant's Counsel, and expressly state that it is amending the Settlement Agreement.
- 10.5. **Governing Law.** All claims arising out of or relating to the Settlement Agreement will be governed by the laws of the State of California, without regard to, or application of, California's conflict of law rules.
- 10.6. **Enforcement and Jurisdiction.** The Court shall retain exclusive jurisdiction to enforce, interpret, and implement the Settlement Agreement, including any alleged violations, any disputes, and the terms of any order entered pursuant to this Agreement.

SIGNATORIES

IN WITNESS WHEREOF, each of the Parties hereto has reviewed and approved this Agreement and has caused this Agreement to be executed on its behalf by its duly authorized counsel of record or representative.

<p>DEFENDANT GOOGLE LLC</p> <p>AGREED TO: </p> <p>COOLEY LLP BY JEFFREY M. GUTKIN</p> <p>DATE: <u>10/4/18</u></p> <p><i>Attorneys for Defendant Google LLC, as authorized and on behalf of Defendant Google LLC</i></p>	<p>PLAINTIFFS FREE RANGE CONTENT, INC., COCONUT ISLAND SOFTWARE, INC., TAYLOR CHOSE, AND MATTHEW SIMPSON</p> <p>AGREED TO: </p> <p>HAGENS BERMAN SOBOL SHAPIRO LLP BY STEVE W. BERMAN</p> <p>DATE: <u>Oct. 4, 2018</u></p> <p><i>Attorneys for Plaintiffs and the Proposed Settlement Class</i></p>
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