SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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SHEREE HAGGAN and EMI NIETFELD, on behalf of Themselves and all others similarly-situated

Plaintiffs,

-against-

GOOGLE LLC,

Defendant.

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**Index No.: 518739/2022**

**OBJECTIONS OF APRIL CURLEY TO**
**CLASS CERTIFICATION AND PROPOSED CLASS SETTLEMENT**

April Curley, a former Google LLC ("Google") employee and a named plaintiff and class representative in the first-filed race discrimination class action, *Curley et al v. Google*, 3:22-cv-1735-AMO (N.D. Cal.) ("*Curley*"), through her counsel Ben Crump Law PLLC and Stowell & Friedman Ltd., hereby objects to the certification and settlement of a class in *Haggan, et al. v. Google LLC* that includes Black and African American Google employees. Ms. Curley intends to appear at the final approval hearing and respectfully requests the opportunity to address the Court.

On March 18, 2022, more than three months before *Haggan* was filed, Ms. Curley filed a nationwide class action lawsuit against Google in federal court in California to reform and recover for Google's systemic discrimination against its Black employees. Ms. Curley was joined by five other African American Google applicants and employees from across the country who were also harmed by Google's discriminatory practices. These six *Curley* plaintiffs allege that under company-wide discriminatory policies and practices and racially hostile work

environment, Google systematically assigns Black professionals to lower-level roles, pays them less, unfairly evaluates their performance, and denies them advancement because of their race, among other things. (Second Amended Complaint, *Curley et al. v. Google LLC*, ECF No. 43, ¶¶ 19, 23–30 (N.D. Cal. Sept. 15, 2022).) As a result, Black employees at Google earn substantially less and suffer higher rates of attrition than non-Black Google employees. (*Id.* ¶¶ 2, 27, 30). The *Curley* plaintiffs seek class-wide injunctive, make-whole and other relief on behalf of a class of all Black and African American Google employees—both nationwide under federal antidiscrimination laws and in New York under New York state law—dating back to March 2018. (*Id.* ¶¶ 104, 106; *id.* at pp. 46–47.)

Rather than meaningfully address the important civil rights claims of its African American employees in *Curley*, Google secretly negotiated, settled, and added race discrimination claims of Black New York Googlers to a sex discrimination class action settled before it was ever filed in court. By including race discrimination claims and a Black/Latinx/Native American/Native Alaskan class to the sex discrimination class in the proposed *Haggan* Settlement, Google seeks to cut Black New York Googlers out of the *Curley* class and release their race discrimination claims without adequate compensation. *Haggan* seeks to eliminate the race discrimination claims of Black and African American New York Google employees, who are putative *Curley* class members, without ever disclosing to them that their serious race discrimination claims are currently being litigated on their behalf in *Curley*. Black and African American *Haggan* class members, most of whom earn between $150,000 to $700,000 annually, will receive pennies on the dollar for their race discrimination claims—class members receive, on average, $1,391 from the net settlement fund for potentially over five years' worth of discriminatory underpayment because of race discrimination and, inexplicably, eight

years' worth of sex discrimination. According to the *Haggan* settlement papers, 80% of the class recovery is allotted to sex discrimination claims, suggesting that race discrimination claims receive far less. The settlement may extinguish Black and African American Googlers' claims under 42 U.S.C. § 1981—currently pending in *Curley* but not pled here—which has a prospect for more significant relief because of a longer statute of limitations and unlimited compensatory damages. The Parties have asked the Court to hold a hearing on the adequacy of the settlement before the class members' deadline to register their reaction.

While Ms. Curley does not doubt the hard work, sincerity, and advocacy of Sheree Haggan, the *Haggan* settlement was reached without an unconflicted and adequate representative with typical claims of Black and African American class members. The proposed class of women, Latinx, Black, Native American, and Alaskan Native lacks commonality and otherwise does not meet the standards for class certification. Black Googlers and their important race discrimination claims are worthy of their own independent and zealous advocacy and their own class and prosecution, analysis, and relief of their own case.

Curley therefore respectfully requests that the Court deny certification of a class and final approval of a settlement that includes and seeks to release the race discrimination claims of current and former Black employees at Google. In the alternative, Curley requests an extended opt-out period with reissued notice disclosing the *Curley* race discrimination class action, informing the Black and African American class members that their participation in the *Haggan* Settlement will extinguish their rights to participate in the *Curley* race discrimination class action, and providing contact information of *Curley* counsel so that class members can make fully informed decisions.

## BACKGROUND

Google hired Curley, an African American woman, as a University Programs Specialist in its New York office in 2014. Second Amended Complaint, *Curley et al. v. Google LLC*, ECF No. 43, ¶ 11 (N.D. Cal. Sept. 15, 2022). Under Google's centralized "leveling" system, Curley was hired with the experience and education of a Level 5 employee, yet Google assigned her only to Level 3 and refused to adjust her Level throughout her tenure. In Curley's role championing recruitment from Historically Black Colleges and Universities, Curley uncovered and sought to rectify systemic race discrimination within Google against African Americans. She was met with open hostility, including hostile and stereotypical comments about her race, and subjected to an escalating campaign of discrimination and retaliation culminating in her unlawful firing in September 2020. (*Id.* ¶¶ 44–52.)

On March 18, 2022, Curley filed a nationwide class action on behalf of Black and African American current and former Google employees in the U.S. District Court for the Northern District of California, challenging Google's pattern and practice of systemic race discrimination against African American and Black employees. *Curley v. Google LLC*, No. 3:22-cv-1735-AMO (N.D. Cal. Mar. 18, 2022), ECF No. 1. The *Curley* complaint originally raised individual and class claims under 42 U.S.C. § 1981 and New York State and City Human Rights Laws. Complaint, *Curley v. Google LLC*, No. 3:22-cv-1735-AMO (N.D. Cal. Mar. 18, 2022), ECF No. 1, ¶¶ 58–87. Among other things, the *Curley* class complaint alleged that under company-wide discriminatory policies and practices, Google systematically assigns Black professionals to lower-level roles, pays them less, unfairly rates their performance, and denies them advancement, resulting in lower earnings and higher rates of attrition, in addition to individual claims. *Id.* ¶ 2.

After Google suggested that Curley's New York claims were untimely—without disclosing that the claims were subject to tolling—Curley filed an amended complaint on June 30, 2022 withdrawing the individual and class New York claims and adding the individual and class claims of additional plaintiffs and class representatives. Amended Complaint, *Curley v. Google LLC*, No. 3:22-cv-1735-AMO (N.D. Cal. June 30, 2022), ECF No. 32. That complaint further indicated that the plaintiffs "intend[ed] to amend this complaint to add individual and class-wide claims against Google of race discrimination against employees and job applicants under Title VII . . . under both the disparate treatment and disparate impact theories," pending administrative exhaustion. *Id.* at 4 n1. On September 15, 2022, the *Curley* Plaintiffs filed a second amended complaint adding the administratively exhausted claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Second Amended Complaint, *Curley v. Google LLC*, No. 3:22-cv-1735-AMO (N.D. Cal. Sept. 15, 2022), ECF No. 43. Plaintiffs also repleaded New York State and City Human Rights Law claims after learning that Google had misled Plaintiffs into believing Plaintiff Curley's New York state and local claims were time barred by failing to disclose that her claims were tolled pursuant to a class-wide tolling agreement entered in the *Haggan* matter.

More than three months after the original *Curley* complaint was filed, on June 29, 2022, the *Haggan* Plaintiffs filed a class action lawsuit that included virtually identical claims to *Curley*, namely that Google discriminates against racial minorities in pay, leveling, and promotions. However, the *Haggan* complaint sought to settle the claims of a class of women, Black, Latinx, Native American, and Native Alaskan Google employees. The *Haggan* complaint was filed only after the parties had reached a settlement. One day after the *Haggan* lawsuit was filed, on June 30, the parties moved for preliminary approval and "expedited approval" of the

settlement. Under the terms of the settlement, Curley is a class member in the *Haggan* settlement.

Curley and other plaintiffs in the *Curley* action objected to *Haggan* Plaintiffs' motion for preliminary approval by letter motion on July 22, 2022, Doc. 15, with a supporting memorandum filed on August 4, 2022. Doc. 17. The *Haggan* Plaintiffs and Google responded in relevant part that the objections were procedurally improper and should instead be considered before final approval. Doc. 16 at 1–2; Doc. 18 at 1. On November 21, 2022, the Court preliminarily certified the class and preliminarily approved the settlement and proposed notice, which did not advise Black and African American members that participation in the settlement might affect their rights under the *Curley* action. Doc. 19. In its preliminary approval order, the Court did not purport to rule on the *Curley* Plaintiffs' objections to the substance of the settlement. *Id.* ¶ 1 (granting preliminary approval based solely on "the Preliminary Approval Motion and supporting materials").

On April 19, 2023, the Court preliminarily approved an amended settlement that corrected a scrivener's error in the original and set the final approval hearing for June 14, 2023. Doc. 25. Because notice of the settlement did not issue until May 5, 2023 and, per the settlement agreement's requirement of two months' notice, *see* Doc. 30, Amended Settlement Agreement § 11, the opt-out and objection period does not end until July 5, 2023—three weeks after the final approval hearing. In an abundance of caution, Curley submits this objection nearly a month before the deadline to ensure the Court may consider it before the final approval hearing.

## ARGUMENT

All involved in class litigation must vigilantly consider the rights and interests of the absent class members, including and especially the Court. "[B]ecause the disposition of a class

action binds class members who do not directly participate in the action, the trial court must act as 'the protector of the rights of absent class members.'" *Klein v. Robert's Am. Gourmet Food, Inc.,* 28 A.D.3d 63, 70, 808 N.Y.S.2d 766 (2d Dept 2006) (quoting *Polar Int'l Brokerage Corp. v. Reeve*, 187 F.R.D. 108, 112 (S.D.N.Y. 1999)). Thus, under the Civil Practice Law and Rules (CPLR), class representatives cannot settle claims on behalf of a class without court approval: "[a] class action shall not be dismissed, discontinued or compromised without the approval of the court." CPLR § 908. The Court should approve a class action settlement only if it is satisfied both that the case is properly suited for class treatment and that the settlement is fair, adequate, reasonable, and in the best interest of class members. *Klein,* 28 A.D.3d at 70 (2d Dept 2006). "Where, as here, a class is certified for settlement purposes only, these prerequisites—and particularly those designed to protect absentee class members—must still be met and, indeed, 'demand undiluted, even heightened, attention.'" *Klein,* 28 A.D.3d at 70 (2d Dept 2006) (quoting *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997))

April Curley, too, must safeguard the rights of the Black and African American Google employees on whose behalf she prosecutes the first-filed race discrimination claim *Curley v. Google* in the Northern District of California. She is also a member of both *Haggan* settlement classes. In this unique role, while Curley takes no position on the settlement for the gender claims or race discrimination claims of Latinx, Native American, and Native Alaskan employees, she must object to the settlement on behalf of herself and the Black and African American New York Google employees she seeks to represent. The amalgamated claims of race and sex discrimination do not sufficiently cohere to be treated as a class. Although Ms. Haggan appears to be a serious advocate who suffered real discrimination, her claims are not typical of all the myriad groups she seeks to represent, and she is not an adequate representative of their interests.

These very deficiencies that should prevent this case from proceeding as a class led to a settlement that is unfair and unreasonable to Black and African American class members. Because Black and African American class members were lumped in with disparate groups with separate and often adverse interests, they will receive inadequate compensation for broad releases of valuable claims, and programmatic relief that is not tailored to their interests. What's more, they are asked to accept or reject this settlement without being told that more valuable claims are currently being prosecuted on their behalf in California, and the Court is asked to approve it before hearing their reaction.

## I. The Proposed Class of Female, Black, Latinx, Native American, and Native Alaskan Google Employees Raising Sex and Race Discrimination Claims Does Not Meet the Criteria for Class Certification.

The class action is a strong procedural device that allows representatives to litigate on behalf of absent parties, whose rights and responsibilities are then adjudicated without their active participation. Courts therefore must ensure that the case is appropriate for class treatment—that the claims should not be litigated individually, and that the absent parties have the same claims as the representatives, such that it is fair, reasonable, and preferable to proceed by representation. Thus, before considering approval of a class settlement prior to class certification, the Court must conclude that the proposed class meets all requirements for class certification, including numerosity, commonality, typicality, adequacy of representation, and superiority. CPLR §§ 901–902; *City of New York v. Maul*, 14 N.Y.3d 499, 508, 929 N.E.2d 366, 371 (2010). These requirements are heightened in the case of pre-filing, and pre-certification, class settlements, in which no formal discovery has been exchanged, and the case has not been actively litigated. "Where, as here, a class is certified for settlement purposes only, these prerequisites—and particularly those designed to protect absentee class members—must still be met and, indeed, 'demand undiluted, even heightened, attention.'" *Klein,* 28 A.D.3d at 70 (2d

Dept 2006) (quoting *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)).[1] The court must also consider the interest of class members in individually controlling the prosecution of separate actions and the extent and nature of any litigation concerning the controversy already commenced by or against members of the class. CPLR § 902.

The proposed class does not meet the above requirements for certification. The proposed settlement class of women, African Americans, Latinx, Native Alaskan, and Native American employees and for claims of sex and race discrimination fails to meet commonality and typicality and was not adequately represented by class representatives with claims typical of the class as a whole and free from conflict with the class.

A class action may be maintained only if "the representative parties will fairly and adequately protect the interests of the class." CPLR 901(a). This requirement is "essential to meet due process standards, [and] must be satisfied at all stages of a class action, because the final judgment in a class action is binding on all those whom the court determines are members of the class." NEWBERG ON CLASS ACTIONS, Sect. 3:21. "The rule that the representative must fairly and adequately represent the class is one of constitutional magnitude." *Guenther v. Pacif. Telecom, Inc.*, 123 F.R.D. 341, 344 (D. Ore. 1987). This "inquiry serves to uncover conflicts of interest between named parties and the class they seek to represent. Representatives must be part of the class and possess the same interest and suffer the same injury as the class members." *Amchem Prod., Inc.*, 521 U.S. at 594–95 (internal citations omitted).

Here, the discrete classes of racial and ethnic groups deserved independent and zealous representation of their own interests. Ms. Curley does not question Ms. Haggan's integrity or the

[1] New York's courts have recognized that its class action statute is similar to Federal Rule of Civil Procedure 23 and have looked to federal case law for guidance. *Fiala v. Metro. Life Ins. Co.*, 27 Misc. 3d 599, 607, 899 N.Y.S.2d 531, 538 (Sup. Ct. 2010).

validity of her discrimination claims against Google. But because she seeks to represent each of the different racial groups contained within the umbrella race class *and* the gender group, Ms. Haggan's claims were not typical of either. The result of a single representative straddling five different protected classes and seeking to represent them all—female, African American, Latinx, Native American, and Native Alaskan—resulted in a settlement that does not distinguish between the claims of female, African American, Latinx, Native American, and Native Alaskan employees in any meaningful way, including in allocation. There is no evidence that each group was analyzed individually to discern the differences in treatment across different groups, resulting in an assumption, for instance, that Google discriminated equally against Black men and white women. Such distinctions would not have motivated Ms. Haggan, who will participate in the formulaic recovery of both the gender and race funds and therefore stands to recover the same no matter the allocation between the classes. But there is serious doubt that this would have been the result if each class and subclass had its own representative advocating solely for the interests of that group.

Moreover, there is an inherent and unresolvable conflict of interest in the *Haggan* Settlement with respect to Black and African American class members that renders Ms. Haggan an inadequate representative, despite her integrity and advocacy. The Race Class consists of both male and female African American employees claiming that they were underpaid relative to their white peers—including white members of the Gender Class. The Gender Class claims that female employees were underpaid relative to their male peers—including male members of the Race Class. Courts have held that such a conflict within a class warrants denial of final approval. For example, in *Payne v. Travenol Labs., Inc.*, 673 F.2d 798 (5th Cir. 1982), the court held, as here, that Black female class representatives were inadequate representatives for Black males in

a mixed sex and race discrimination suit, noting that "The females . . . sought to establish that males were favored at their expense" which "plainly draws the interests of males into conflict with the interests of females". *Id.* at 810. The court noted that it was not aware of any case "holding that a black female plaintiff is an adequate representative of black males in a sex and race discrimination suit when the interests of the two groups conflict." *Id.* at 811, n.13 (citing "a host of district court[] [cases that] have refused to permit black females to represent black males in class actions alleging both race and sex discrimination"). Here, as in *Payne*, a real and substantive conflict exists between the female and male African American class members, where women claim they were paid less than their male counterparts, including African American men, and who stand to recover from both settlement funds, unlike their Black male peers.

To be sure, Ms. Curley does not contend that having individual claims disqualifies a person from representing a class. Every representative of a race class has a gender, and every representative of a gender class has a race. The problem is not that Ms. Haggan is a woman of color, nor even that she alleges that she was discriminated against for multiple reasons. Rather, she seeks to represent *both* women *and* people of color, discrete and at times adversarial groups. And although the gender class has a representative representing and advocating for only that class, the Race Class does not, nor do any of the distinct racial and ethnic groups bound together within that class.

Finally, Ms. Haggan was employed by Google in its New York office for approximately one month of the over 5-year race class period. *See* Doc. 1 at 6 (alleging Ms. Haggan worked in New York from October 2015 to November 2017); Doc. 5 at 1.32 (noting that the race class period is from October, 15, 2017 to the date of preliminary approval). As a race class member, Ms. Haggan could hope to recover only a single month of wage damages related to her race

discrimination claim. However, Ms. Haggan is also permitted to recover from a gender settlement fund, where she can recover wage damages related to her gender discrimination claim back to the date she became employed,[2] in addition to the $25,000 proposed service award for being a class representative. It is likely that a class representative who was not a member of all of the classes would have advocated for different interests and outcomes with regard to both monetary and programmatic relief. *Amchem Prods., Inc.*, 521 U.S. at 626 (finding class representative who suffered current injury could not adequately represent a class that included people who might suffer future injury because the interests of the two groups "tug against" each other).

Further, considering Ms. Haggan's brief tenure within the class period, she lacks knowledge as to the practices at issue during the vast majority of the class period and of the experiences of her fellow class members during that same time. As a result of her limited tenure in New York during the class period, she lacks sufficient knowledge of current practices necessary to critically assess the proposed injunctive relief (which will only apply prospectively to current and future employees). *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1083 (6th Cir. 1996) ("The adequate representation requirement overlaps with the typicality requirement because in the absence of typical claims, the class representative has no incentives to pursue the claims of the other class members.").

## II. The *Haggan* Settlement Is Not Fair, Adequate, or Reasonable for Black and African American Class Members.

### A. The Common Fund Is Inadequate to Compensate Class Members for Race Discrimination Claims as Well as Sex Discrimination Claims.

[2] It is unclear why the gender class is permitted to recover damages for work weeks during a period of 9 years while African Americans may recover for a period less than 6 years.

The settlement fund is inadequate compensation for the valuable race discrimination claims of Black and African American employees. "Where, as here, the action is primarily one for the recovery of money damages, determining the adequacy of a proposed settlement generally involves balancing the value of that settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *Klein*, 28 A.D.3d at 73 (citing *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995)). Google seeks to extinguish all race discrimination claims—state or federal, pleaded in the complaint or not—of every Black or African American Google employee who works or worked in New York from October 2017 to the present. (Doc. 30, Amended Settlement §§ 1.33, 13 (defining released race claims to include "alleged race-based employment discrimination relating to pay, leveling, promotions, or performance calibration under any federal, state or local law").) In exchange, Google has agreed to pay $22 million in total, but most of that fund will not be available to redress Black and African American class members' race discrimination claims. The Settlement first deducts attorney's fees ($7,333,333.33) and costs ($169,736.37), service awards ($50,000), and the cost of administration (not yet finished accruing, but Curley will subtract nothing for the sake of argument), leaving $14,446,930.30 to be shared among 10,384 total class members.[3] (*Id.* §§ 7–9; *cf.* Doc. 33.) On average, therefore, each class member will therefore receive about $1,391.27. But the fund is not evenly divided based on claims. Each class member is guaranteed a minimum payment of $100, what remains of the fund ($13,408,530.30) will be split 80% to the gender class ($10,726,824.24), and 20% to the race class ($2,681.706.06). (Settlement § 5.2.) There is

[3] The *Haggan* Plaintiffs represent that there were 10,423 class members and 79 have already opted out. (Doc. 28 ¶ 50.)

no explanation for this 80/20 breakdown. Regardless, this leaves just over $2.68 million, or 12% of the total recovery, allocated to the Race Class, to be shared among thousands of Black, Latinx, Native American, and Native Alaskan Race Class members.[4]

That monetary allotment is grossly inadequate for African American or Black class members. Even if Black and African American class members recovered an average payment, despite being allotted a portion of 1/5 of the settlement fund, $1,391 is trivial compared to the losses suffered by class members making between $150,000 and $700,000 annually over the nearly 5-year damages-window,[5] considering Google's rampant discrimination and high pay for Googlers. A class member who worked at the lowest salary level throughout the Race Class period of October 2017 to present would have earned approximately $762,500 in base salary in the 5 years and 1 months of the class period. The per capita payment of $1,391 therefore represents approximately 0.2% of that class member's earnings over the time period, which is substantially less than the "anticipated recovery following a trial on the merits," even after discounting for the risks of litigation. *Klein*, 28 A.D.3d at 73. Such a monetary recovery will not provide meaningful relief or adequate compensation to the victims of Google's systemic racial discrimination, nor will it provide any incentive for Google to address its entrenched discriminatory practices and culture.

[4] Although it is impossible to determine based on the parties' filings how many of the 10,384 remaining class members are African American or Black or what percentage of the lost wages are due to African American or Black Google employees, the *Haggan* Plaintiffs represent that 1,452 individuals are members of both classes. Doc. 3 at 5. Even if men and women were represented at equal rates (and there were no nonbinary members) within the Race Class, there would be at least 2,904 Race Class members dividing a $2.68 million fund.

[5] Based on publicly available information, the salary ranges from $150,000 to $700,000 for the Level 3–7 employees covered by the *Haggan* class. https://careerkarma.com/blog/software-engineering-salary-google/; https://6figr.com/us/salary/google; https://www.levels.fyi/companies/google/salaries.

Curley's projected recovery serves as a concrete example. Curley's notice advised that her "estimated share of the Net Settlement Amount is $2,509.32" (subject to change depending on participation rates). Exhibit A, April Curley's Settlement Notice. The formula that reached this result is unclear from the Notice or the Settlement Agreement. Regardless, $2,509.32 would be a bargain-basement price to extinguish *only* the race discrimination claims Curley has already brought in the Northern District of California, including that despite having Level 5 qualifications, she was hired at Level 3 and remained there for her six-year tenure because of her race. The backpay, emotional distress, and punitive damages potentially recoverable from such claims is worth orders of magnitude more than $2,509.32, let alone whatever fraction of that is attributable to Ms. Curley's recovery from the Race Class fund.

Another helpful metric to estimate the potential recovery is to compare to settlements with similar potential recoveries, which have settled for many multiples more than the *Haggan* settlement proposes. For instance, Curley's counsel have obtained much higher settlements for professionals in similar salary ranges:

| **Class Action** | **Monetary Settlement Fund** | **Class Size** | **Per Capita Benefit** |
|---|---|---|---|
| *Cremin v. Merrill Lynch*, No. 96 C 3773 (gender) | $250 million | 900 | $277,778 |
| *McReynolds v. Merrill Lynch*, No. 05-C-6583 (race) | $160 million | 1,433 | $111,654 |
| *Slaughter v. Wells Fargo Advisors, LLC*, No. 13-CV-6368 (race) | $35.5 million | 365 | $97,260 |
| *Senegal v. JPMorgan Chase & Co.,* No. 18-cv-6006 (race) | $24 million | 273 | $87,912 |
| *Martens v. Smith Barney*, No. 96 Civ. 3779 (gender) | $150 million | 1,900 | $78,947 |

| | | | |
|---|---|---|---|
| *Creighton v. Metropolitan Life Ins. Co.*, No. 15-cv-8321 (race) | $32.5 million | 653 | $49,770 |
| *Bland v. Edward Jones*, No. 18-cv-3673 (race) | $34 million | 811 | $41,924 |

In response to this argument at the preliminary approval phase, the *Haggan* Plaintiffs insisted that those settlements with 10- to 100-times greater per capita recovery were in different industries. Doc. 15 at 2. But the Google employees in the *Haggan* Class were compensated with similarly significant salaries. Publicly available information reveals the annual earnings of class members may have ranged from $150,000 to $700,000 for the Level 3–7 employees covered by the *Haggan* class. It is inconceivable that a settlement of a few thousand dollars is sufficient.

Moreover, Google itself recently settled a gender-only class in California for $110,000,000 with 15,500 class members—achieving a 2.5x greater per capita recovery for only gender discrimination than the *Haggan* Plaintiffs propose to accept to extinguish *both* gender and race discrimination claims. Experts in the *Ellis* litigation found that because of "under-leveling"—hiring women into lower-paid roles than men with equal experience and credentials, which is part of both *Haggan* classes' potential recovery—"compared to men who have the same characteristics when they start at Google, women, on average, earn $16,794 less per year." Expert Report of David Neumark, *Ellis v. Google LLC*, Case No. CGC-17-561299, at 7 (S.F. Cnty. Sup. Ct. July 23, 2020).

Finally, in response to Curley's objections to preliminary approval, the *Haggan* Plaintiffs dismissed her objection to the settlement fund as speculative. But Curley has the same information as the Court about the potential recovery in the *Haggan* race class. The Court, like Curley, is asked to trust that damages estimates were performed, experts were consulted, risks were assessed, and the fair result was a settlement in a race-and-gender case worth 60% less per capita than a gender-only case against the same employer, and 10 to 100 times less than putative

class counsel in an earlier-filed case raising the same claims routinely obtain. The Court should not find that such a recovery is fair, adequate, or reasonable.

**B. The Distribution Method Is Flawed.**

In addition to the settlement fund itself being inadequate, and likely as a consequence of its inadequacy, the distribution method is fatally flawed. The settlement is allocated based solely on the number of weeks class members worked during the class period. (Settlement § 5.2.) This distribution method results in a fundamentally unfair treatment to African American and Black class members who are forced to release their race discrimination claims, not just their pay claims. Doc. 5 at ¶ 13 ("It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all Released Claims *which were or which could have been asserted* in this Class Litigation against the Released Parties, whether known or unknown, liquidated or unliquidated, *relating to their employment* in a Qualified Position.") (emphasis added).

Further, this method fails to account for disparities between and among class members. For example, a white woman who worked the same number of weeks in the class period as a Black man will presumably receive the same award, without any consideration into the pay disparities between white women and Black men. On the other hand, a Latina woman will be compensated from both the gender and race funds for ostensibly the same discriminatory treatment without consideration of whether there are pay disparities between Black and Latinx employees. Nor does the formula account for the widely divergent income the class members earned based on their Level and the corresponding higher damages they likely suffered.

Though the formulaic approach is not inherently inappropriate for pay claims, the scope of the release must match the limited recovery. However, the *Haggan* settlement provides Google with the broadest possible release of class members' claims in exchange for minimal

relief. The formula does not permit consideration for the myriad of other injuries class members suffered, including denial of promotion, termination and emotional distress.

### C. The Programmatic Relief Is Not Tailored to Rectifying Discrimination Against African Americans.

Similarly, the programmatic relief is not tailored to rectifying discrimination against African Americans. Consistent with the treatment of the class as an amalgamated "diverse" group, the programmatic relief inadequately reforms the policies and practices that impact Black and African American Google employees specifically. The programmatic relief concerns leveling policies that seek undifferentiated "diversity," such as "mak[ing] best efforts to ensure that the makeup of interview panels and hiring committees are diverse." (Settlement § 14.2.2), training employees on "bias mitigation, anti-discrimination, and anti-harassment," (*id.* § 14.4.1), and retaining consulting experts on undifferentiated "equity." (*Id.* § 14.5.) The use of the amorphous terms like "diverse" and "anti-discrimination" and "equity" contain no safeguards to ensure that the needs of African American or Black employees specifically are addressed. Indeed, the only provision specific to the needs of the Black and African American class members is a reaffirmation—that is, not a change—of a public-relations "Racial Equity Commitments" statement. (*Id.* § 14.4.5.)

## III. Final Approval Is Premature and Procedurally Inappropriate at This Juncture.

### A. Because the Notice and Objection and Opt-Out Period Has Not Yet Ended, the Court Cannot Assess the Reaction of the Class Members.

Final approval—even conditional final approval—would be procedurally inappropriate at this juncture because the Court cannot assess "the extent of support from the parties," as it must. *Klurfield v. Equity Enters.*, 79 A.D.2d 124, 133, 436 N.Y.S.2d 303, 308 (2d Dep't 1981). Here, the approved class notice directs that class members' "objection must be received no later than

July 5, 2023," with the same deadline to opt out. (Exhibit A, § 11.) Similarly, opt-out rates will not be set until July 5, 2023. (*Id.* § 10.) Yet the final approval hearing is on June 14, 2023. The "extent of support from the parties" will therefore be unknown and unknowable for at least three weeks after the parties have asked this Court to make a final fairness decision. It would be both procedurally and substantively inappropriate to advise putative class members that they may assess the fairness of the settlement until July 5, only to find that on June 14 it became final.

The notice's disclosure of the fairness hearing date does not cure the confusion. The objection section setting a July 5 deadline is entitled "Can I Tell the Court that I don't Agree with the Settlement or Some Part of It?," strongly suggesting that the deadline to advise *the Court* is July 5. Regardless, Section 16 of the Notice, which discloses that the fairness hearing will take place on June 14, directs the class members back to Section 11 to explain the procedure for objection, again suggesting that objections may be lodged until July 5, long after the final approval hearing. *Id.* §§ 11, 16.

"Conditional" final approval, as the *Haggan* Plaintiffs request (Doc. 27 at 11), would make final approval a fait accompli before class members have the opportunity to object. An order "conditionally" approving the settlement three weeks before class members are entitled to opt out and object likely will discourage future opt-outs and objections. It likely will confuse class members who may misunderstand that the process is complete and objections and opt-outs are no longer welcome, or at least suggest to them that the Court prefers to approve the settlement notwithstanding their reaction. The approve-first-object-later procedure has allowed the *Haggan* Plaintiffs to represent that there are no objections in a filing nearly a month before objections are due. (*Id.* at 15.)

Moreover, even though class members have three more weeks to opt out, 79 members have already opted out of the settlement, and the parties have not disclosed how many of the 79 opt-outs thus far are part of the gender class or race class. (Doc. 27 at 10.)

Curley therefore respectfully requests that the Court reschedule the final approval hearing until all class members can make their opinions known through both objections and opt-outs. At a minimum, the Court should defer final ruling until it can assess the reaction of the class.

**B. The Notice of the Settlement Was Inadequate Because It Did Not Advise Race Class Members that They May Be Waiving Actively Litigated *Curley* Claims.**

New York law requires that courts consider "the extent and nature of any litigation concerning the controversy already commenced by or against members of the class." CPLR § 902. New York courts also recognize the first-filed rule, *White Light Prods., Inc. v. On the Scene Prods., Inc.*, 231 A.D.2d 90, 96, 660 N.Y.S.2d 568, 572 (1997), and permit dismissal on the grounds that "there is another action pending between the same parties for the same cause of action in a court of any state or the United States," CPLR § 3211. The parties knew of *Curley*, which was filed over three months before *Haggan.*

The Plaintiffs' motion for preliminary approval inaccurately represented to the Court that "no other individual has instituted an action against Defendant alleging the same claims to recover the wages Plaintiffs seek in this case" and attempted to assert that the *Curley* claims concerned different issues. Doc. 3 at 21 & n.3. But the *Curley* lawsuit did raise most of the same claims and sought recovery for the same wages, and more, denied to Black Googlers in New York and nationwide. The *Curley* lawsuit, like the later filed *Haggan* lawsuit, challenges and seeks damages for lost wages related to discriminatory pay, job leveling practices, advancement and promotions, and performance assessment review, among others. The *Curley* suit, like the *Haggan* suit, brings race discrimination claims under Title VII, NYSHRL and NYCHRL. And

regardless of the statutory vehicle for recovering discrimination damages, the *Haggan* Settlement seeks to recover for and extinguish the identical claims of the race discrimination challenged in *Curley*.

The only real distinction between the two cases with regard to racial discrimination is that *Haggan* opted not to include Section 1981 race discrimination claims. The decision in *Haggan* to plead federal Title VII claims but not the more valuable Section 1981 claims, in a New York state court action, is a plain end-run around the *Curley* action, with real harm to the race class. Had counsel for *Haggan* brought claims under Section 1981, the race class would extend back four years from the date the parties entered into the tolling agreement, adding an additional year to the class period, allowing more Black and African American class members to be included and recover, and securing an additional year of damages and "work weeks" for the formulaic recovery. Worse, even though not plead, the negotiated release might extinguish the Section 1981 race claims of *Curley* class members.

Despite the significant similarities between *Curley* and *Haggan*, the *Haggan* Notice does not mention *Curley* at all, potentially misleading and confusing class members about the rights they are waiving if they do not opt out. Under related circumstances, federal courts often insist on notice of the pendency of a putative class action before obtaining waivers. *Cornet v. Twitter*, No. 22-cv-6857, 2022 WL 18396334, at *1–2 (N.D. Cal. Dec. 14, 2022) (ordering employer to disclose putative class action before seeking releases from laid-off employees); *Lynch v. Tesla, Inc.*, No. 22-cv-597, 2022 WL 4295295, at *4 (W.D. Tex. Sept. 16, 2022) (same); *Burford v. Cargill, Inc.*, No. 05-cv-283, 2007 WL 81667, at *2 (W.D. La. Jan. 9, 2007) ("[T]he use of the general receipt and release which is being used by the Defendant in regards to putative class members, without notification of the pending putative class action, is misleading as a matter of

law."); *Friedman v. Intervet Inc.*, 730 F. Supp. 2d 758 762, 766 (N.D. Ohio Aug. 6, 2010) (ordering defendant to provide notice of putative class action before tendering settlement offers through customer service communications); *Westerfield v. Quizno's Franchise Co.*, No. 06-cv-1210, 2007 WL 1062200, at *3–4 (E.D. Wis. Apr. 6, 2007) (ordering notice because the releases' failure to "mention[] the instant action" created "potential for unknowing waivers")

Curley respectfully submits that Black and African American members of the Race Class should, at a bare minimum, be given an opportunity to make an informed decision about whether their participation in the *Haggan* Settlement will impact their ability to recover from the *Curley* putative class by (1) re-issuing notice that identifies that Black and African American class members' claims under *Curley v. Google* may be released; (2) providing contact information for *Curley* Class Counsel to address any questions; and (3) extending the notice period accordingly.

## CONCLUSION

For the reasons set forth above, Curley respectfully requests that the Court: (1) deny certification of a class that includes current and former Black and African American employees at Google, who are not adequately represented and lack commonality with other class members, with whom their interests conflict; (2) deny approval of the settlement as unfair and inadequate with respect to Black and African American class members; (3) or in the alternative, defer final approval of the settlement until either (a) the end of the current notice period on July 5, 20223, or (b) after notice is reissued identifying that Black and African American class members' claims under *Curley v. Google* may be impacted, with contact information for *Curley* counsel, and extend the notice period accordingly.

Dated: June 13, 2023

Respectfully Submitted on behalf of the *Curley* Plaintiffs,

*/s/ Nabeha Shaer*
Nabeha Shaer

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# Exhibit A

[redacted]

---------- Forwarded message ---------
From: **Haggan Settlement Administrator** <HagganSettlement@class-action-administrator.com>
Date: Fri, May 5, 2023 at 1:58 PM
Subject: OFFICIAL COURT NOTICE OF PROPOSED CLASS AND COLLECTIVE ACTION SETTLEMENT AND FAIRNESS HEARING
To: <aprilchristinacurley@gmail.com>



APRIL CHRISTINA CURLEY
Claimant Id: 0000036740

**If you worked at Google LLC in a Level 3-7 role located in New York, you may be eligible for a payment from this class and collective action settlement (subject to other eligibility criteria described below).**

- A settlement was reached in the lawsuit *Haggan v. Google LLC*, which is pending in the Supreme Court of the State of New York, County of Kings. The lawsuit alleges that Google has treated the below-described groups less favorably than their similarly-situated white and/or male comparators with respect to pay, leveling, promotion, and performance calibration, in violation of New York City, New York State, and federal equal pay and anti-discrimination law. Google denies the allegations. The Court has not made any findings on the merits of Plaintiffs' claims.

- The settlement provides for, among other things, a total payment of $22,000,000.00, which includes funds to compensate Class and Collective Members.

- This settlement affects the rights of all individuals who hold or have held a Level 3-7 position located in New York at Google (a "Qualified Position") who also meet the following criteria:

    - Identify as female according to Google's records, and held a Qualified Position from October 15, 2014 through November 21, 2022.

    - Identify as Latino/Latina/Hispanic, African American/Black, or multiracial employees who are in part one of the foregoing races (regardless of gender) according to Google's records, and held a Qualified Position from October 15, 2017 through November 21, 2022.

    - Identify as Native American, Alaskan Native, or multiracial employees who are in part one of the foregoing races (regardless of gender) according to Google's records, and held a Qualified Position from April 22, 2018 through November 21, 2022.

- **If you fall into one or more of these categories, you are considered a "Class Member" for purposes of this settlement.**

- Read this notice carefully. Your legal rights are affected regardless of whether you act.

| **YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:** | |
|---|---|
| **DO NOTHING** | If you do nothing, you will receive a check for an amount from Fund A and/or B. (See Section 5 below.) |
| **EXCLUDE YOURSELF** | If you want to exclude yourself ("opt out") from the settlement, you must follow the directions outlined in Section 10 below. If you exclude yourself, you will not receive payment and you cannot object to the settlement. Deadline for Exclusion Requests: **JULY 5, 2023**. |
| **OBJECT** | If you want to object to the settlement, you must write to the Court about why you believe the settlement is not fair or reasonable. You must object in writing in order to appear at |

| | |
|---|---|
| | the Fairness Hearing to speak to the Court about the fairness of the settlement and follow all other directions outlined in Section 11 below. If the Court rejects your objection, you will still be bound by the terms of the settlement. Deadline to Object: **JULY 5, 2023**. |

## BASIC INFORMATION

### 1. WHY DID I RECEIVE THIS NOTICE?

The purpose of this notice is to let you know that there is a class action lawsuit pending in the Supreme Court of the State of New York called *Haggan v. Google, LLC*, Index No. 518739/2022 (the "Lawsuit"). You have received this notice because Google's records show that you are a Class Member as that term is defined on page 1.

The Court authorized this notice because you have a right to know about a proposed settlement of the Lawsuit (the "Settlement"), and about your options, before the Court decides whether to grant final approval of the Settlement. If the Court finally approves the Settlement, after any objections and appeals are resolved, a third-party administrator appointed by the Court will make the payments that the Settlement allows. You will be informed of the progress of the Settlement.

This notice explains the Lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

### 2. WHAT IS THIS LAWSUIT ABOUT?

In the Lawsuit, Plaintiffs claimed that Google's policies and practices regarding compensation, leveling, promotion, and performance calibration violated federal, New York State, and New York City laws by unlawfully discriminating against individuals identifying as female and/or Latino/Latina/Hispanic, African American/Black, Native American, Alaskan Native (including multiracial individuals who are in part one of the foregoing races) who work or worked in a Qualified Position during a time period relevant to the Lawsuit. The Lawsuit asked the Court to require Google to provide financial compensation to those employees (or former employees). The Lawsuit also sought to make Google change its policies and practices so that such conduct does not happen in the future.

Google denies that it did anything wrong and contends that, among other things, it has complied at all times with applicable federal, State and City law. It also denies

that the claims can proceed on a class or collective basis or are appropriate for class or collective treatment, except for purposes of this Settlement only.

## 3. WHAT ARE CLASS AND COLLECTIVE ACTIONS?

In a class or collective action, one or more people, called Representatives (in this case, Sheree Haggan and Emi Nietfeld) sue on behalf of people who they allege have similar claims.

In a class action, all people whom the Court determines have similar claims to the Representatives are Class Members. Class members do not need to do anything to be part of the class action. Once a judge decides that a case can proceed as a class action (as the judge here has done for purposes of this Settlement only), all Class Members are included in the Settlement, except for those who exclude themselves (as described in Section 10 below). The court then resolves the issues for all Class Members together in one legal proceeding for purposes of this Settlement.

Collective actions are very similar to class actions. Some cases, like this one, have a class action component and a collective action component. Here, the federal Equal Pay Act claim is brought as a collective action, on behalf of all Class Members who identify as female according to Google's records and who affirmatively opt in (*i.e.*, state in writing their interest in joining). Everyone who opts in is a Collective Member. Unlike a class action, no one is included by default or by doing nothing; a person has to opt in to be included. Similar to a class action, one court resolves the issues for all Collective Members together in one legal proceeding. Here, you can choose to opt into the Collective by depositing your settlement check (which requires you to sign the back of the check). You do not need to do anything else to opt in.

## THE SETTLEMENT BENEFITS—WHAT YOU GET

## 4. WHAT ARE THE TERMS OF THE SETTLEMENT AGREEMENT?

The parties have agreed to settle this matter for the total sum of $22,000,000.00 ("Gross Settlement Amount"), which will cover settlement payments to Class Members, Court-approved service payments to the Class Representatives in recognition of their services to the Class Members, Court-approved payment of Class Counsel's attorneys' fees and costs, and payment of the costs of administering the Settlement.

The parties have also agreed to specific policy changes, also called "programmatic relief," that Google will undertake as part of the Settlement. These include:

- Retention of an independent labor economics expert to assess Google's pay equity analysis methodology and issue recommendations to Google for modification;
- Retention of an independent industrial organizational psychology (IOP) expert to analyze Google's leveling policies and practices and issue recommendations to Google for modification and/or enhancement of these policies and practices, and related practices for investigating and addressing disputes regarding leveling;
- Annual evaluation of employee compensation to identify unexplained pay differences based on race or gender, which may result in upward compensation adjustments to address unexplained pay differences;
- Maintenance of leveling policies and practices designed to ensure fair and equitable leveling decisions, based on legitimate and consistently applied criteria;
- Maintenance of multiple methods for employees to report concerns related to the terms and conditions of their employment, including leveling or pay concerns, and reporting to employees about the outcome of related investigations;
- Use of best efforts to ensure the diverse makeup of interview panels and hiring committee members;
- Inclusion of salary ranges for job postings for positions in New York City, including transfers and promotions;
- No mandatory arbitration provisions for employment-related disputes during the two-year programmatic period; and
- Retention of an external monitor to ensure Google's good-faith compliance with the terms of this Settlement.

## 5. HOW WILL MY SHARE OF THE SETTLEMENT FUND BE CALCULATED?

The monetary relief provided by the settlement is divided into two funds: Fund A and Fund B. Funds A and B cover lost compensation and damages resulting from alleged discrimination and unequal pay.

The Settlement Administrator will first deduct from the Gross Settlement Amount any court-ordered payments to Representatives, Class Counsel, and the fees and costs of administering the Settlement. The remainder (the "Net Settlement Amount") will be distributed to Class Members who do not exclude themselves from the Settlement as follows:

**Fund A** will comprise 80% of the Net Settlement Amount, and will be paid out automatically to all Class Members who are identified in Google's records as female (regardless of race or ethnicity) who held a Qualified Position during the relevant time frame (the "Gender Class").

**Fund B** will comprise 20% of the Net Settlement Amount, and will be paid out automatically to all Class Members who are identified in Google's records as Latino/Latina/Hispanic, African American/Black, Native American, Alaskan Native, and/or multiracial individuals (who are in part one of the foregoing races or ethnicities, regardless of gender) who held a Qualified Position during the relevant time frames (the "Race Class").

Individuals who belong to both the Gender and Race Classes will receive money from both Funds A and B. You do not need to do anything to receive money from Fund A or Fund B. Individuals who exclude themselves from the Settlement will not receive any money.

**Your estimated share of the Net Settlement Amount is $2,509.32.** This amount is subject to change based on the number of Class Members that exclude themselves from the Settlement, and the payment is subject to applicable tax withholdings. Each Class Member's share of Funds A and/or B depends on the length of time they were employed in a Qualified Position during the relevant time frames.

## 6. TAX TREATMENT

For tax purposes, 50% of each Class Member's individual settlement payment will be considered payment for alleged back wages subject to lawful deductions and W-2 reporting, like a paycheck. For this amount, normal payroll taxes and withholdings will be deducted from your settlement check pursuant to applicable law. The remaining 50% of each Class Member's individual settlement payment will be considered payment for alleged liquidated damages and interest subject to 1099 reporting as non-wage income. At the end of the calendar year, the

Settlement Claims Administrator will issue each Class Member who has cashed a check both an IRS Form W-2 and an IRS Form 1099.

*Plaintiffs' Counsel and Defendant's Counsel do not intend this notice to constitute tax advice, and to the extent that this notice is interpreted to contain or constitute advice regarding any federal, state or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.*

## HOW YOU GET A PAYMENT

### 7. HOW CAN I GET MY PAYMENT?

You do not need to do anything to receive a payment from Funds A and/or B.

### 8. WHEN WILL I GET MY PAYMENT?

The date you receive your settlement check will depend on the date that the Court approves the Settlement. We estimate that payments will be made within 120 days after the Court approves the settlement. You can check the status of the settlement at https://HagganSettlement.com.

You must deposit or cash your settlement check within 90 days from the date on the face of the settlement check. Any uncashed amounts after that date will be redistributed to Class Members who cashed their checks or, if a redistribution is not economically feasible, the amount will be donated to a relevant non-profit organization selected by the Representatives and Google.

### 9. WHAT AM I GIVING UP BY STAYING IN THE CLASS?

Unless you exclude yourself, you will remain as part of the Class and receive a payment, which means that you cannot sue, continue to sue, or be part of any other lawsuit against Google over the federal, New York state, and New York City gender and race discrimination claims alleged in the Lawsuit. However, if you are a member of the Gender Class and you do not opt into the Lawsuit by cashing your check, you will not release your federal Equal Pay Act claim.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 10. HOW DO I OPT OUT OF THE SETTLEMENT?

If you do not want a payment from this Settlement, and you want to keep the right to sue Google, on your own, about the legal issues in this case, then you need to take steps to remove yourself from the case. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately, because you may have to exclude yourself from this Settlement to continue your own lawsuit. This is called excluding yourself from—or opting out of—the Settlement.

To exclude yourself from the Settlement, you must send a letter by First Class U.S. mail, fax, or email to the settlement administrator:

Haggan Settlement Administrator
c/o Rust Consulting- 7866
PO BOX 2396
Faribault, MN
55021-9096
Telephone: (877) 906-1597
Facsimile: (877) 884-5906
Email: admin@HagganSettlement.com

Your request for exclusion must state the following: "I opt out of the *Haggan et al. v. Google LLC* class settlement". Be sure to include your name, address, telephone number, and your signature. Your exclusion request must be received by **JULY 5, 2023**.

If you ask to be excluded, you will not receive a settlement check, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this Lawsuit. You may also be able to sue (or continue to sue) Google in the future regarding the same claims asserted in this Lawsuit.

## OBJECTING TO THE SETTLEMENT

### 11. CAN I TELL THE COURT THAT I DON'T AGREE WITH THE SETTLEMENT OR SOME PART OF IT?

You can object to the Settlement if you don't like any part of it. You must give reasons why you think the Court should not approve it. The Court will consider your views if you follow the instructions in this Section 11. To object, you must send a letter via U.S. Mail, fax, or email stating "I object to the class settlement in *Haggan, et al. v. Google LLC*," as well as all reasons for the objection. Any reasons you do not include in the statement will not be considered. Be sure to include your name, address, telephone number, and signature. Mail, fax, or email the objection to:

Haggan Settlement Administrator
c/o Rust Consulting- 7866
PO BOX 2396
Faribault, MN 55021-9096
Telephone: (877) 906-1597
Facsimile: (877) 884-5906
Email: admin@HagganSettlement.com

Your objection must be received no later than **JULY 5, 2023**. If you intend to appear in Court when the Court considers your objection, you must indicate that in your written objection. Otherwise, you or your representative will not be allowed to appear.

### 12. WHAT'S THE DIFFERENCE BETWEEN OBJECTING TO THE SETTLEMENT AND EXCLUDING MYSELF?

Objecting is simply telling the Court that you do not like something about the Settlement. You can only object if you remain in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

## YOUR PRIVACY

### 13. WILL MY MANAGER KNOW WHETHER OR HOW I RESPONDED TO THIS NOTICE?

All administration of the Settlement (including handling of opt out requests and objections, and processing of settlement checks) is being handled by an independent, experienced, Court-appointed settlement administrator called Rust Consulting Inc. (the "Settlement Administrator"). The Settlement Administrator will report to your lawyers (called Class Counsel) and to Google's outside lawyers (who are not employed by Google, but representing Google) regarding which exclusion requests and objections were submitted.

Participating in this Settlement will not affect your employment. Federal, state, and local law prohibits employers from discriminating or retaliating against individuals who participate in a Settlement of claims like those at issue here.

## THE LAWYERS REPRESENTING YOU

### 14. DO I HAVE A LAWYER IN THIS CASE?

The Court decided that the lawyers at the law firms of Outten & Golden LLP, Baker Curtis & Schwartz, P.C., and Roche Freedman LLP are qualified to represent you and all Class Members. These lawyers have been designated as "Class Counsel" in this Lawsuit.

OUTTEN & GOLDEN LLP
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Adam T. Klein
Nantiya Ruan
Michael C. Danna
Shira S. Gelfand
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New York, New York 10017
Telephone: (212) 245-1000

Jahan C. Sagafi
One California Street, 12th Floor
San Francisco, CA 94111
Telephone: (415) 638-8800

BAKER CURTIS AND SCHWARTZ, P.C.
Chris Baker
Deborah Schwartz
One California Street, Suite 1250
San Francisco, CA 94111
Telephone: (415) 433-1064
Facsimile: (415) 366-2525

FREEDMAN NORMAND FRIEDLAND, LLP
Maya S. Jumper
99 Park Avenue, Suite 1910
New York, NY 10016
Telephone: (646) 970-7524

## 15. HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to approve payment of one-third (1/3) of the settlement fund to them for their attorneys' fees. The fees would pay Class Counsel for investigating the facts and negotiating the Settlement. Class Counsel will also ask the Court to approve payment for service payments totaling no more than $50,000 to the Representatives for the risks they took and their service to Class Members. The Court will ultimately decide the amount that will be paid to Class Members and Class Counsel for their services.

## THE COURT'S FAIRNESS HEARING

### 16. WILL THERE BE A COURT HEARING?

The Court will hold a Fairness Hearing to decide whether to approve the settlement on June 14, 2023 at 10:00 a.m., Supreme Court of the State of New York, County of Kings, Brooklyn, New York, 11201 in Courtroom 469.

At the hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. If you wish to bring anything to the Court's attention about the Settlement, you must provide it in writing to the Settlement Administrator according to Section 11 above. The Settlement Administrator will provide your letter to Class Counsel, who will file it with the Court before the Fairness Hearing. You may attend and ask to speak at the Fairness Hearing if you indicated your desire to do so in your objection, but you don't have to. The judge will listen to people who have asked to speak at the hearing in their objection submitted to the Settlement Administrator. The judge will also decide how much to pay Class Counsel. After the Fairness Hearing, the judge will decide whether to approve the Settlement. We do not know how long these decisions will take.

### 17. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will represent you at the Fairness Hearing. Provided you indicated your desire to do so in your objection, you are welcome to come at your own expense, or pay your own lawyer to attend, but it is not necessary. Even if you send an objection, you do not have to come to Court. As long as you followed all of the instructions in Section 11 above, the Court will consider your objection.

### 18. MAY I SPEAK AT THE HEARING?

If you file a timely objection to the Settlement, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include the words "I intend to appear at the Fairness Hearing" or words to that effect in your written objection, which must be submitted according to the procedure described in Section 11 above. Your testimony at the Fairness Hearing will be limited to those reasons that are included in your written objection. You cannot speak at the hearing if you exclude yourself from the Settlement.

## GETTING MORE INFORMATION

## 19. HOW CAN I GET MORE INORMATION ABOUT THE SETTLEMENT?

This notice summarizes the Settlement. More details are in the Settlement Stipulation. You are encouraged to read it. To the extent there is any inconsistency between this Notice and the Settlement Stipulation, the provisions of the Settlement Stipulation control. You can obtain more information about the Settlement or obtain a copy of the Settlement Stipulation by contacting the Settlement Administrator at the contact information listed at Sections 10 and 11 or Class Counsel at the contact information listed at Section 14.

By Order of the Court
Dated: May 5, 2023