BEN CRUMP
TRIAL LAWYER FOR JUSTICE

July 21, 2022

VIA EMAIL AND MESSENGER

The Honorable Richard Velasquez
New York Supreme Court, Kings County
360 Adams Street
Brooklyn, NY 11201
KSCCVPART66@nycourts.gov

Re: *Haggan v. Google, LLC*, No. 518739/2022 (Sup. Ct.)

Dear Hon. Judge Velasquez:

We write on behalf of April Curley, Desiree Mayon, Ronika Lewis, Rayna Reid, Anim Aweh, Ebony Thomas, and the putative class of African American and Black Google employees they seek to represent in their nationwide race discrimination class action lawsuit pending in California, *Curley, et al. v. Google LLC*, No. 4:22-cv-1735-YGR (N.D. Cal.)(Rodriguez, J).[1] Ms. Curley and many of her co-plaintiffs have spoken out bravely and publicly about the systemic race discrimination at Google that they are working to remedy. Their *Curley* lawsuit alleges that Google placed African American employees into lower-level positions, downgraded their performance reviews, denied them advancement and promotions, and paid them less because of their race, all in a racially hostile work environment. With the *Curley* lawsuit, plaintiffs seek real reform and recompense for class members' substantial losses.

We understand that this Court will hear shortly a motion for preliminary approval of a pre-filing settlement in *Haggan v. Google, LLC*, No. 518739/2022, a lawsuit filed on June 29, 2022 (after the *Curley* case was filed) and presented for settlement and "expedited approval" one day later on June 30, 2022. The *Haggan* settlement falls on the heels of Google's $118 million settlement of a California sex discrimination-only class, *Ellis v. Google, LLC*, No. CGC-17-561299 (Cal. Sup. Ct.). While the *Ellis* settlement is limited to California gender claims, the *Haggan* settlement case appears to be a sex discrimination class in which Google convinced the plaintiffs to add and release not only gender claims but also the race discrimination claims of an entire class of New York "Googlers of Color."[2]

[1] We have attached copies of the original and amended complaints in *Curley v. Google* for the Court's convenience.

[2] The Joint Stipulation of Settlement and Release defines the released "Race Claims" as broadly as possible: "any suits, actions, causes of action, complaints, charges, grievances, claims, rights, demands, debts, losses, damages, punitive or statutory damages, penalties, expenses, obligations and/or liabilities arising from alleged race-based employment discrimination relating to pay, leveling, promotions, or performance calibration under any federal, state or local law, including but not limited to Title VII; the NY EPL; the NYSHRL; and the NYCHRL." Doc. 5 at 5, 1.33.

We respectfully submit that the Court should be concerned and deny the motions for a number of reasons.

First, the monetary value of the settlement is plainly inadequate for class members' serious and valuable race discrimination claims. Google jobs are sought out because of their prestige and high pay. Google pays its professionals in the high six figures, and more in equity. Public reports estimate that pay for class members ranges from $150,000 to $700,000 for the Level 3–7 employees covered by the *Haggan* class.[3] Nevertheless, the *Haggan* settlement would provide each class member, on average, a payment of only $1,765 (after fees and expenses) for their pay and promotion claims and four to eight years of losses. While Google admittedly has not produced workforce data to the *Curley* plaintiffs, settlements in other cases demonstrate the inadequate recovery in *Haggan*. For example, the *Haggan* estimated *pro rata* gross recovery of $2,656 pales in comparison to recoveries in other gender and race employment discrimination cases resolved by co-counsel in the *Curley* case:

Class Action	Settlement Fund	Class Size	Per Capita Benefit
Cremin v. Merrill Lynch, No. 96-cv-3773 (N.D. Ill.) (gender)	$250 million	900	$277,778
McReynolds v. Merrill Lynch, No. 05-cv-6583 (N.D. Ill.) (race)	$160 million	1,433	$111,654
Slaughter v. Wells Fargo Advisors, LLC, No. 13-cv-6368 (N.D. Ill.) (race)	$35.5 million	365	$97,260
Senegal v. JPMorgan Chase & Co., No. 18-cv-6006 (N.D. Ill.) (race)	$24 million	273	$87,912
Martens v. Smith Barney, No. 96-cv-3779 (S.D.N.Y.) (gender)	$150 million	1,900	$78,947
Creighton v. Metropolitan Life Ins. Co., No. 15-cv-8321 (S.D.N.Y.) (race)	$32.5 million	653	$49,770
Bland v. Edward Jones, No. 18-cv-3673 (race)	$34 million	811	$41,924

Indeed, the $2,656 average gross settlement recovery per class member is far less than the $7,600 in the California sex discrimination class action against Google.

Second, there is an inherent and unresolvable conflict of interest in the *Haggan* class settlement with respect to African American class members. Our clients take no position on the merits of the sex discrimination class claims or settlement. They contend instead that the race discrimination claims of Black Googlers are worthy of their own independent and zealous advocacy and their own prosecution, analysis, and recompense, rather than assuming there is no

[3] https://careerkarma.com/blog/software-engineering-salary-google/; https://6figr.com/us/salary/google; https://www.levels.fyi/companies/google/salaries

difference in treatment by race.[4] It does not appear that class counsel ensured that the African American class was adequately represented by a class representative who was not also a member of the gender class. In addition, the sole class representative for race discrimination claims has not worked for Google in New York since November 2017, so was not a race class member for most of the period. The proposed class period for race and national origin claims dates back to October 2017 (African American and Latino) and April 2018 (Native American and Alaskan Native), while the gender class dates back to October 2014. Thus, while Black male New York Googlers will participate in only the race discrimination fund, the named plaintiff will participate in the gender and race New York funds, in addition to her $25,000 service award. While we do not doubt the sincerity of the named plaintiff, 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.[5]

Most importantly, when the *Haggan* lawsuit and settlement was filed, Black employees at Google (including those subsumed in the *Haggan* class) were already adequately represented by committed class representatives, before a fine Judge in the Northern District of California, the Honorable Yvonne Gonzalez Rogers, and two law firms who have dedicated decades of their careers prosecuting race discrimination claims on behalf of African Americans. The *Curley* lawsuit is focused solely on the race discrimination claims and issues facing Black Googlers; it does not include non-Black women, or Latin-X or Native American current and former Google employees.

Finally, we are concerned that the parties failed to accurately inform the Court of the *Curley* case and overlap of claims. Google knew of *Curley v. Google*, which was filed over three months before *Haggan*. The motion for preliminary approval inaccurately tells 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." Doc. 3 at 21. But the *Curley* lawsuit seeks recovery for the same wages, and more, denied to Black Googlers in New York and nationwide.[6] And the *Haggan* settlement would release *all* race discrimination claims, not simply wage claims. The parties failed to inform the Court that the *Haggan* settlement directly implicates the first-filed *Curley* case by releasing all federal, state, and local race discrimination claims of New York-based Black Google employees, who would otherwise be class members in the nationwide

[4] Though nothing filed by the parties indicates how many of the 8,283 total class members are race class members, the settlement allocates 20% of the fund for race class members while allocating 80% to the gender class.

[5] Similarly, the settlement results in unexplained differences even between Black employees. For example, women get credit for work weeks during a period of 8 years; African Americans and Latin-X for less than 5 years; and Native Americans for 4 years. As we read the settlement, Black women will receive a payout from both the gender and race funds, but Black male Googlers receive a settlement from only the race fund.

[6] The *Curley* claims under 42 U.S.C. § 1981 have a greater potential recovery, as that law has a longer statute of limitations and no cap on compensatory damages; the *Curley* plaintiffs will also add Title VII claims after exhausting their administrative remedies. Although the *Haggan* case does not allege Section 1981 claims, class members who do not opt-out are required to release these race discrimination claims.

Curley class action. The decision in *Haggan* to plead *federal* Equal Pay Act and Title VII claims, but not the more valuable 42 U.S.C. Section 1981 claims, in a New York state court action, is a plain end-run around the *Curley* action. The negotiated release would extinguish the race claims of *Curley* class members under Section 1981 in any event.

For these, and other, reasons, we respectfully ask that the Court:

1. Deny certification of a class that includes current and former Black employees at Google, who are not adequately represented, lack commonality with other class members, with whom their interests conflict;

2. Deny preliminary approval of the settlement as unfair and inadequate with respect to African American class members;

3. Provide *Curley* plaintiffs 14 days to appear and be heard and present a short brief setting forth their position and to move to intervene if appropriate;

4. Should the Court authorize notice to the Class, allow *Curley* counsel to participate in the drafting of the notice to fully inform class members of their rights so that they may make fully informed decisions, including by disclosing the *Curley* litigation and providing contact information of *Curley* counsel;

We understand that the timing and form of our objections may be unusual, but respectfully submit that the special circumstances of this case warrant their consideration prior to preliminary approval. According to the papers filed by the parties, any class members who opt out of the settlement lose their right to object to the settlement or to present any information for the Court's consideration at final approval. Because the proposed settlement is unfair to the race class, many African Americans and *Curley* class members who are members of the *Haggan* class will be forced to opt out and under the current terms of the settlement sacrifice their right to challenge the terms of the proposed settlement. As a result, if the Court does not hear these objections prior to preliminary approval, we fear it will be deprived of critical information about the inadequacy of the proposed settlement, and our putative class members' belief that it marginalizes the claims of Black Google employees who are improperly included in this settlement. .

We appreciate the Court's important role in this case, and we thank you for your consideration.

Very truly yours,

/s/ Benjamin L. Crump
Benjamin L. Crump

Benjamin L. Crump
Nabeha Shaer
BEN CRUMP LAW, PLLC

/s/ Suzanne E. Bish
Suzanne E. Bish

Linda D. Friedman
Suzanne E. Bish
George S. Robot

122 S. Calhoun St.
Tallahassee, FL 32301
(800) 713-1222
court@bencrump.com

STOWELL & FRIEDMAN, LTD.
303 W. Madison St., Ste. 2600
Chicago, IL 60606
(312) 431-0888
lfriedman@sftld.com
sbish@sfltd.com
grobot@sfltd.com

cc: Cara E. Greene
Michael C. Danna
Adam T. Klein
Nantiya Ruan
Shira S. Gelfand
OUTTEN & GOLDEN LLP
685 3rd Ave.
New York, NY 10017
ceg@outtengolden.com
mdanna@outtengolden.com
atk@outtengolden.com
nr@outtengolden.com
sgelfand@outtengolden.com

Jahan C. Sagafi
OUTTEN & GOLDEN LLP
One California Street, 12th Floor
San Francisco, CA 94111
jsagafi@outtengolden.com

Chris Baker
Deborah Schwartz
BAKER CURTIS AND SCHWARTZ, P.C.
One California Street, Suite 1250
San Francisco, CA 94111
cbaker@bakerlp.com
dschwartz@bakerlp.com

Attorneys for Haggan Plaintiffs

Emily R. Pidot
Sara B. Tomezsko
Kenneth W. Gage
PAUL HASTINGS LLP
200 Park Ave.
New York, NY 10166
emilypidot@paulhastings.com
saratomezsko@paulhastings.com
kennethgage@paulhastings.com

Attorneys for Defendant Google, LLC