

Haggan v Google, LLC

2023 NY Slip Op 33877(U)

October 26, 2023

Supreme Court, Kings County

Docket Number: Index No. 518739/2022

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 26th day of October, 2023.

P R E S E N T:

HON. RICHARD VELASQUEZ,

Justice.

-----X
SHEREE HAGGAN and EMI NIETFIELD, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

GOOGLE, LLC,

Defendant.
-----X

Index No. 518739/2022

mot. seq. 2, 3.

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) _____

26, 28-34, 38-41, 35, 45

Upon the foregoing papers in this proposed employment, race and gender discrimination class action, plaintiffs Sheree Haggan (Haggan) and Emi Nietfield (Nietfield), individually and on behalf of all others similarly situated (collectively, Plaintiffs), move (in motion sequence [mot. seq.] two), for an order granting their motion for Final Approval of Class and Collective Action Settlement (NYSCEF #26). Plaintiffs also move (in mot. seq. three) for an order granting them attorneys' fees, litigation costs and service awards for class representatives (NYSCEF #35).

The Proposed Class Action

On June 29, 2022, Plaintiffs, former female employees of Google, LLC (Google), commenced this proposed class action by filing a summons and a “Class and Collective Action Complaint” alleging that Google violated federal, state, and local law in the application of its pay, leveling, performance calibration, and promotion practices. Specifically, the complaint alleges violations of “the Equal Pay Act of 1963 (‘Federal EPA’), 29 U.S.C. § 206 (d); Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq*; New York’s Equal Pay Law (‘NY EPL’), as amended, Labor Law § 194; New York State Human Rights Law (‘NYSHRL’), Executive Law §§ 296-301, and the New York City Human Rights Law (‘NYCHRL’), N.Y. Admin. Code § 8” on behalf of themselves and “similarly-situated women and Googlers of Color¹ currently or formerly employed by Google in New York, who hold or have held a position identified as Job Level 3-7” from October 15, 2014 to through the present” (NYSCEF #1 at ¶¶ 1 and 44).

The complaint alleges that “Google has violated the Federal EPA through the implementation of common compensation policies and practices that result in a gender pay disparity” (*id.* at ¶ 43). The complaint alleges that “Plaintiffs . . . and the Collective have been paid less than their male colleagues in the same establishment for work requiring equal skill, effort, and responsibility and performed under similar working conditions” and

¹ The “Race Class” consists of “all individuals who identify as Black or Latin X employed by Google in New York in a Qualified Position from October 15, 2017 through the resolution of this action and all individuals who identify as Native American, including Native Alaskan, employed by Google in New York in a Qualified Position from April 22, 2018 through the resolution of this action” (NYSCEF # 1 at ¶ 51).

“[t]his unequal pay is not justified by seniority, a merit system, a system that measures earnings by quality or quantity of production, or any factor other than sex” (*id.* at ¶ 48). The complaint also alleges that “Google’s discriminatory policies or practices . . . have denied women and “Googlers of Color” business opportunities and compensation, in the form of lost past and future wages and other job benefits, as compared to similarly-situated male and white Googlers” (*id.* at ¶ 72).

The complaint asserts the following eight causes of action: (1) pay discrimination based on sex; (2) disparate treatment discrimination in violation of the Civil Rights Act; (3) disparate impact discrimination in violation of the Civil Rights Act; (4) unlawful pay disparity in violation of NY EPL; (5) disparate treatment discrimination in violation of NYCHRL; (6) disparate impact discrimination in violation of NYCHRL; (7) disparate impact discrimination in violation of NYSHRL; and (8) disparate impact discrimination in violation of NYSHRL.

On June 30, 2022, Plaintiffs filed a motion for Preliminary Approval of Class and Collective Action Settlement (NYSCEF #2). By a November 21, 2022 order, this court granted Plaintiffs’ motion on default, without opposition and “for settlement purposes only” (NYSCEF #19).

Plaintiffs’ Motion For Final Approval

On June 6, 2023, Plaintiffs moved for Final Approval of the Class and the Collective Action Settlement and for an award of attorneys’ fees, costs and service awards for class representatives (NYSCEF # 26 and # 35). Plaintiffs submit an attorney affirmation in which counsel describes the experience of the attorneys at her and her co-counsel’s law

firms and asserts that they are “experienced, highly regarded members of the plaintiffs’ bar with extensive expertise in complex class action and pay equity litigation” (NYSCEF # 28 at ¶¶ 4-6; *see also* ¶¶ 7-9).

Plaintiffs also submit a memorandum of law arguing that “[t]he Court has already taken the first steps in the settlement approval process by granting preliminary approval on November 21, 2022, preliminarily certifying the Settlement Classes *upon finding the prerequisites and considerations of CPLR 901 and 902 satisfied . . .*” (NYSCEF # 27 at 1 [emphasis added]).

The June 14, 2023 Hearing

On June 14, 2023, the court held a hearing regarding certifying the proposed class, at which the parties’ counsel appeared along with April Christina Curley (Curley), her counsel and Emily Margaret Franklin (Franklin), two objectors to class certification (NYSCEF # 45, June 14, 2023 Transcript). Curley claims that Google is engaged in a pattern and practice of race discrimination against black employees, and she commenced a pending class action against Google in California. Curley argues that “[t]o lump race claims with sex discrimination is inherently flawed, because there are examples where black men were treated differently or experienced their time at Google very differently than, for example, a white woman” (*id.* at 10:5-9). The objectors urged that the court first determine whether Plaintiffs’ proposed class of mixed gender and race is appropriate because “New York law requires that before you even look at a class certification, the Court determines whether the class certification is appropriate” (*id.* at 14:21-25). The objectors

argued that class certification is not appropriate because of “the unique and unprecedented class that is proposed to be certified and settled here today” (*id.* at 15:1-6).

Essentially, the objectors contend that a class comprised of sex discrimination claims, race discrimination claims and National origin claims, and which includes subclasses of women, African-Americans, LatinX, Latino/Latina, Native Americans and Native Alaskans, lacks the requisite commonality and typicality and that conflicts may rise as a result (*id.* at 15:4-20). Counsel for Curley asserted that there may be gender discrimination towards women at Google, but those proposed class members have nothing in common with those affected by race-based claims asserted against Google (*id.* at 16:8-13). Additionally, they argued that there is no independent representation of the various race subclasses proposed (*id.* at 16:14-17). They argued that the proposed settlement treats the class members differently based on their sex or race, which creates an actual conflict because they are fighting over the same pool of settlement funds (*id.* at 17:5-18:24).

Discussion

In moving for class certification, “[t]he proposed class representative bears the burden of establishing compliance with the requirements of both CPLR 901 and 902” (*Krobath v South Nassau Comm. Hosp.*, 178 AD3d 805, 806 [2019]). “The [five] prerequisites articulated in CPLR 901 (a) include proof that the proposed class is so numerous that joinder of all members is impracticable, that common questions of law and fact applicable to the class predominate over questions affecting only individual members, that claims or defenses of the representative parties are typical of the claims or defenses of the class, and that the class action is superior to other available methods for the fair and

efficient adjudication of the controversy” (*Globe Surgical Supply v GEICO Ins. Co.*, 59 AD3d 129, 135-136 [2008]). “A class action may be maintained in New York only after the five prerequisites of CPLR 901 have been satisfied [and] [o]nce those prerequisites are satisfied, the court ‘shall consider’ the factors set forth in CPLR 902” (*Cooper v Sleepy’s LLC*, 120 AD3d 742, 743 [2014], quoting CPLR 902). “New York’s statutory class certification provisions are to be liberally construed” (*Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 183 [2019]; *see also Krobath*, 178 AD3d at 806). The determination of whether to grant or deny class certification is vested in the trial court’s sound discretion (*Cooper*, 120 AD3d at 743).

CPLR 901 (a) (1) requires a showing that the class is so numerous that joinder of all members is impracticable. Although there is no set number which establishes numerosity, “[i]t has been held that the threshold for impracticability of joinder seems to be around forty” (*Globe Surgical Supply* 59 AD3d at 138, quoting *Dornberger v Metropolitan Life Ins. Co.*, 182 FRD 72, 77 [SDNY 1999]). Here, there is no issue regarding numerosity since Plaintiffs have advised the court that there are approximately 10,423 class members (NYSCEF # 27 at 13).

CPLR 901 (a) (2) requires that there be “questions of law or fact common to the class which predominate over any questions affecting only individual members.” The objections regarding the lack of commonality for an overlapping class consist of both female Google employees subjected to gender discrimination and all Black, LatinX, Native American and Alaskan male and female Google employees subjected to racial discrimination. These various subgroups, while they may overlap, do not have common

and uniform claims regarding their disparate treatment while employed at Google. Indeed, certifying such a class with various subgroups may create conflicts when the same individual qualifies for damages in two different class categories (i.e., a female black Google employee).

CPLR 901 (a) (3) requires that the “claims and defenses of the representative parties [be] typical of the claims or defenses of the class.” “Typical claims are those that arise from the same facts and circumstances of the claims of the class members” (*Globe*, 59 AD3d at 143). CPLR 901 (a) (4) requires that a party moving for class certification demonstrate that the representative plaintiff “will fairly and adequately protect the interests of the class.” “The three essential factors to consider in determining adequacy of representation are potential conflicts of interest between the representative and the class members, personal characteristics of the proposed class representative . . . and the quality of the class counsel” (*Globe*, 59 AD3d at 144).

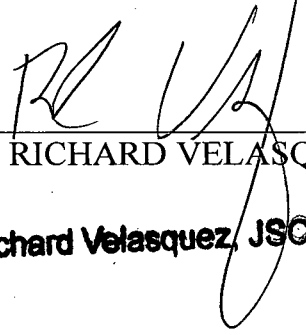
Here, the proposed class representatives, Haggan and Nietfield, have failed to demonstrate that their gender discrimination claims are typical of the proposed class and/or how they can effectively represent proposed class members with whom they lack commonality, such as Black, LatinX, Native Americans or Alaskan male Google employees with potential racial-based discrimination claims. Accordingly, it is

ORDERED that Plaintiffs’ motion (mot. seq. two) for Final Approval of Class and Collective Action Settlement is denied; and it is further

ORDERED that Plaintiffs' motion (mot. seq. three) for an award of attorneys' fees, litigation costs and service awards for class representation is denied.

This constitutes the decision and order of the court.

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ, J.S.C.

OCT 26 2023

Hon. Richard Velasquez, JSC