

1 Ben Crump (pro hac vice)
2 Nabeha Shaer (pro hac vice)
3 BEN CRUMP LAW, PLLC
4 122 S. Calhoun St.
5 Tallahassee, FL 32301
6 Telephone: (800) 713-1222
7 court@bencrump.com

8 Linda D. Friedman (pro hac vice)
9 Suzanne E. Bish (pro hac vice)
10 George Robot (pro hac vice)
11 Mark S. Current (pro hac vice)
12 STOWELL & FRIEDMAN LTD.
13 303 W. Madison St., Suite 2600
14 Chicago, Illinois 60606
15 Telephone: (312) 431-0888
16 sbish@sfltd.com

17 Sam Sani (SBN 2733993)
18 SANI LAW, APC
19 15720 Ventura Blvd., Suite 405
20 Encino, CA 91436
21 Telephone: (310) 935-0405
22 ssani@sanilawfirm.com
23 *Attorneys for Plaintiffs and the Putative Class*

24 **IN THE UNITED STATES DISTRICT COURT**
25 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

26 APRIL CURLEY, DESIREE MAYON,
27 RONIKA LEWIS, RAYNA REID, ANIM
28 AWEH, and EBONY THOMAS, individually
and behalf of all others similarly situated,

Plaintiffs,

v.

GOOGLE, LLC,

Defendant.

CASE NO: 4:22-cv-01735-YGR

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANT'S
PARTIAL MOTION TO DISMISS AND
STRIKE**

TABLE OF CONTENTS

		Page
1		
2		
3	I. Introduction.....	1
4	II. Issues to be Decided.....	2
5	III. Key Factual Allegations.....	2
6	IV. Legal Standards.....	4
7	A. Motions to Strike Class Allegations Are Disfavored and Must Be Denied	
8	Where No Conspicuous Pleading Defect is Apparent From the Face of the	
9	Pleadings.....	4
10	B. Rule 12(b) (6) Does Not Permit Dismissal of Class Allegations	5
11	C. Rule 8 Provides for “Liberal Treatment” of a Complaint at the Pleading Stage	6
12	D. The Court Has Subject Matter Jurisdiction Over New York Claims of Plaintiffs	
13	and Class Members Who Worked for or Applied to Google in New York.....	6
14	V. Google Has Failed To And Cannot Identify Any Conspicuous Pleading Defect	
15	Precluding Certification Of An Employee Class As a Matter Of Law.....	7
16	A. Google Ignores Plaintiffs’ Disparate Impact Claims, Which Are Proved Through	
17	Common Statistical and Expert Evidence and Are Thus Routinely Certified.....	7
18	B. Plaintiffs’ Proposed Class Definition Provides No Basis for Striking the Class.....	8
19	C. Google Fails to and Cannot Show Any Conspicuous Pleading Defect with	
20	Respect to Plaintiffs’ Challenges to Google’s Job Leveling, Job Assignment,	
21	and Performance Review Practices.....	9
22	D. Google Fails to Show that Plaintiffs’ Claims Are “Mired in Conflict”	12
23	E. Google Fails to Show that Discrimination and Hostile Work Environment	
24	Claims Are “Inherently Individualized” as a Matter of Law	13
25	F. Google Fails to Show that Plaintiffs Are Incapable of Demonstrating	
26	Predominance.....	16
27	1. Google’s Extensive Reliance on <i>Kevari</i> Is Fundamentally Flawed.....	16
28	2. Plaintiffs Can Demonstrate Commonality and Predominance	17
	3. Predominance Is Not Required for Plaintiffs’ Rule 23(b)(2) and Rule	
	23(c)(4) Classes	19
	VI. Google Has Failed To Identify Any Conspicuous Pleading Defect	
	Precluding Certification of a Hiring Class.....	19
	VII. Google Has Not Identified Any Basis for Dismissing Plaintiff Curley’s	
	New York Claims	21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VIII. Aweh States Individual and Class Hiring Claims Based on Google’s
Rejecting Her Applications in New York and California.....23

IX. The Court Should Not Alter the Class’s Temporal Scope.....24

X. To the Extent the Court Grants the Motion in Any Part, Plaintiffs Should be
Allowed Leave to Amend25

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Ali v. Amazon.com, Inc.</i> , No. 18-CV-04086, 2018 WL 11467270 (N.D. Cal. Aug. 22, 2018)	30
<i>Amchem Prod., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	24
<i>Anderson v. HotelsAB, LLC</i> , No. 15-cv-712, 2015 WL 5008771 (S.D.N.Y. Aug. 24, 2015).....	30
<i>Asarco, LLC v. Union Pac. R.R. Co.</i> , 765 F.3d 999 (9th Cir. 2014)	27
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	7
<i>Austin v. Univ. of Oregon</i> , 925 F.3d 1133 (9th Cir. 2019)	8, 29
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	7
<i>Bennett v. Nucor Corp.</i> , 656 F.3d 802 (8th Cir. 2011)	18
<i>Brand v. Comcast Corp.</i> , 302 F.R.D. 201 (N.D. Ill. 2014).....	19
<i>Briseno v. ConAgra Foods, Inc.</i> , 844 F.3d 1121 (9th Cir. 2017)	2, 11, 14, 26
<i>Brown v. Nucor Corp.</i> , 785 F.3d 895 (4th Cir. 2015).....	14, 18, 19
<i>Buchanan v. Tata Consultancy Servs., Ltd.</i> , No. 15-cv-01696, 2018 WL 3537083 (N.D. Cal. July 23, 2018)	19
<i>Cahill v. Nike, Inc.</i> , No. 3:18-cv-1477, 2019 WL 2179575 (D. Or. Feb. 26, 2019).....	5, 7, 14
<i>Chau v. Donovan</i> , 357 F. Supp. 3d 276 (S.D.N.Y. 2019)	9
<i>Chin v. CH2M Hill Cos.</i> , No. 12-cv-4010, 2012 WL 4473293 (S.D.N.Y. Sep. 28, 2012).....	8
<i>Clerkin v. MyLife.com</i> , No. 11-cv-527, 2011 WL 3809912 (N.D. Cal. Aug. 29, 2011)	7
<i>Collins v. Gamestop Corp.</i> , No. 10-cv-1210, 2010 WL 3077671 (N.D. Cal. Aug. 6, 2010)	6
<i>Cruz v. SEIU Loc. 32BJ</i> , No. 19-cv-11836, 2021 WL 3604661 (S.D.N.Y. Aug. 12, 2021)	29
<i>Ellis v. Costco Wholesale Corp.</i> , No. 3:04-cv-3341 (N.D. Cal. 2012).....	11, 14, 24
<i>Ellis v. Google, LLC</i> , No. CGC-17-561299 (Cal. Sup. Ct).....	2, 11, 12, 20
<i>Enoh v. Hewlett Packard Enter. Co.</i> , No. 17-cv-04212, 2018 WL 3377547 (N.D. Cal. July 11, 2018)	31
<i>Fairley v. McDonald's Corp.</i> , No. 20-cv-02273, 2021 WL 3054804 (N.D. Ill. July 20, 2021).....	6, 23
<i>Friends of Yosemite Valley v. Kempthorne</i> , 520 F.3d 1024 (9th Cir. 2008).....	10

1 *German v. Mercedes-Benz, LLC*, No. 2:21-cv-09587, 2022 WL 1407944 (C.D. Cal. Feb. 14,
 2 2022) 28
 3 *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) 10
 4 *Haggan v. Google, LLC*, No. 518739/2022 (N.Y. Sup. Ct.)..... 2, 11, 20
 5 *Harris v. City of Chicago*, 1998 WL 59873 (N.D. Ill. Feb. 9, 1998) 22
 6 *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299 (1977) 13
 7 *Henderson v. Physician Affiliate Grp. of New York P.C.*, No. 18-cv-3430, 2019 WL 3778504
 8 (S.D.N.Y. Aug. 12, 2019) 5, 29
 9 *Hill v. City of New York*, 136 F. Supp. 3d 304 (E.D.N.Y. 2015) 8, 20
 10 *Hoffman v. Parade Publ'ns*, 15 N.Y.3d 285 (N.Y. 2010) 9
 11 *Huddleston v. City & Cnty. of San Francisco*, No. 16-cv-01998-YGR, 2016 WL 4729175 (N.D.
 12 Cal. Sept. 12, 2016)..... 8
 13 *Hughes v. WinCo Foods*, No. 11-cv-0644, 2012 WL 34483 (C.D. Cal. Jan. 4, 2012)..... 17
 14 *Husser v. N.Y.C. Dep't of Educ.*, 137 F. Supp. 3d 253 (E.D.N.Y. 2015) 28
 15 *In re Johnson*, 760 F.3d 66 (D.C. Cir. 2014) 20
 16 *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324 (1977)..... 14
 17 *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161 (9th Cir. 2014)..... 26
 18 *Jones v. Bock*, 549 U.S. 199 (2007)..... 28
 19 *Kevari v. Scottrade, Inc.*, No. 18-cv-0819, 2018 WL 6136822 (C.D. Cal. Aug. 31, 2018) ... 20, 21
 20 *King v. UA Local 91*, 2020 WL 4003019 (N.D. Ala. July 15, 2020) 22
 21 *Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001)..... 16
 22 *Maduka v. Sunrise Hospitals*, 375 F.3d 909 (9th Cir. 2004) 8
 23 *McReynolds v. Merrill Lynch*, 672 F.3d 482 (7th Cir. 2012)..... 6, 10, 20, 24
 24 *Meyer v. Nat'l Tenant Network, Inc.*, 10 F. Supp. 3d 1096 (N.D. Cal. 2014) 5, 7, 22
 25 *Morgan v. United States Soccer Fed'n, Inc.*, No. 19-cv-01717, 2019 WL 7166978 (C.D. Cal.
 26 Nov. 8, 2019) 19
 27 *Moussouris v. Microsoft Corp.*, No. 15-cv-1483, 2018 WL 3328418 (W.D. Wash. June 25, 2018)
 28 17, 26

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.