

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ROBERT HEATH, et al.,
Plaintiffs,
v.
GOOGLE INC.,
Defendant.

Case No. [5:15-cv-01824-BLF](#) (HRL)

**ORDER RE DISCOVERY DISPUTE
JOINT REPORT NO. 5**

Re: Dkt. No. 174

Plaintiff Cheryl Fillekes claims that, in violation of the federal Age Discrimination in Employment Act (“ADEA”), Google did not hire her for an engineer position for which she was qualified, because of her age. She says Google has a company-wide policy and practice of age discrimination in hiring, and she seeks to maintain a collective action on behalf of other unsuccessful over-40 job applicants for several engineering classifications in the company.

The presiding judge has at this point in the litigation granted conditional certification of a class. Under the ADEA, potential members of a collective action must “opt-in” to the suit by filing a written consent, and only then would they be bound by any judgment. To date 269 persons have opted in, and a few more may be expected before the deadline to do so expires.

Following the conditional certification, on several occasions the presiding judge and the parties have discussed what level of discovery Google may be allowed to obtain from the opt-ins.

1 The presiding judge made clear her belief that it should be limited discovery, not the full discovery
2 that might be taken from a “full-fledged” (this court’s word) named plaintiff. What’s to be
3 allowed? Google wants lots. Plaintiffs’ counsel urges moderation, pleading both burden and
4 proportionality. The two sides could not agree, and now come to this court for a decision.

5 In Discovery Dispute Joint Report (DDJR) #5, the parties seek an order delineating the
6 scope and extent of discovery Google may obtain from the opt-ins. Google wants to propound
7 written discovery to 120 randomly selected opt-ins. It proposes 8 Requests for Production of
8 Documents (“RFPs”) and 4 Interrogatories. It then wants to take “up to” 72 depositions, in
9 person, up to 3 hours each. Plaintiffs propose a sample of 30 opt-ins who would respond to 3
10 discovery requests (any combination of RFPs or Interrogatories). Then, plaintiffs say 25
11 depositions of up to 3 hours each, conducted by video, would be reasonable.

12 This court has carefully considered the respective arguments of each side in the DDJR #5,
13 and conducted a lengthy hearing on July 26 with brisk give and take from all participants. The
14 court wants to be fair and give Google limited discovery that will inform it on areas of legitimate
15 interest, but not impose a undue burden on the opt-ins or their attorneys to respond to discovery
16 that may only be tangentially relevant.

17 **A. Written Discovery**
18 **Interrogatories**

19 As it observed at the hearing, the court feels that some of the RFPs and Interrogatories
20 proposed by Google cast much too wide a net. The following is what the court will permit in
21 place of the 8 RFPs and 4 Interrogatories Google proposed:

- 22 1. Identify and describe in detail all facts of any kind that support your claim that Google
23 failed to hire you because of your age.
- 24 2. With respect to your answer to Interrogatory 1, identify any witness(es) that you
25 believe can attest to any of the facts, and, as to each witness, indicate which fact(s) he
26 or she can attest to.
- 27 3. Describe your best estimate of all damages or other compensation that you seek from
28 Google in this action, including all calculations, a breakdown of different categories

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and components, and any assumptions you made.

4. Describe your efforts to mitigate the damages you estimated in your answer to Interrogatory 3 as well as the result(s) of those efforts.

Request for Production of Documents

1. All documents supporting any of the facts you identified in your answer to Interrogatory 1.
2. All documents you referred to in preparing your answers to Interrogatories 3 and 4.
3. A copy of your birth certificate or other government-issued document showing your date of birth.

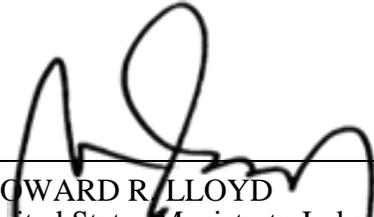
The parties shall agree on a process to randomly select 75 persons from the opt-in class to whom Google may propound this written discovery.

B. Depositions

Google may select from the opt-in class 35 persons for a deposition not to exceed 3 hours. (Google can choose persons to whom written discovery was propounded, or not.) At least 30 of the depositions will be conducted by video. At Google’s option, it may take 5 in person depositions so long as all 5 are located within close geographic proximity and the depositions can be taken seriatim. To be clear, questions to the deponents are not limited to the subjects covered in the written discovery.

SO ORDERED.

Dated: July 27, 2017



HOWARD R. LLOYD
United States Magistrate Judge

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5:15-cv-01824-BLF Notice has been electronically mailed to:

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