

**F I L E D**  
Superior Court of California  
County of San Francisco

MAR 27 2018

CLERK OF THE COURT  
BY: *Alan Harte*  
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 305

KELLY ELLIS, HOLLY PEASE, and KELLI  
WISURI, and HEIDI LAMAR individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

GOOGLE, LLC (formerly GOOGLE, INC.),

Defendant.

Case No. CGC-17-561299

ORDER OVERRULING DEFENDANT'S  
DEMURRER TO FIRST AMENDED  
COMPLAINT AND DENYING  
ALTERNATIVE MOTION TO STRIKE

Defendant Google, LLC ("Google") demurred to Plaintiffs Kelly Ellis, Holly Pease, Kelly Wisuri, and Heidi Lamar's ("Plaintiffs") (1) class allegations on behalf of Google employees in "Engineer Covered Positions" and "Program Manager Covered Positions," and (2) intentional discrimination claim within Plaintiffs' Third Cause of Action for Unlawful and Unfair Business Practice in their First Amended Complaint ("FAC") pursuant to Code of Civil Procedure sections 430.10(e) and (f). In the alternative, Google moved to strike these portions of the FAC. The demurrer came on for hearing on March 26, 2018, and appearances are as noted in the record. Having considered the materials submitted in support and opposition and the oral argument of counsel, the Court concludes, for the reasons stated below, that the demurrer should be overruled, and the alternative motion to strike denied.

1 **I. FIRST AMENDED COMPLAINT**

2 Plaintiffs Kelly Ellis, Holly Pease, Kelli Wisuri, and Heidi Lamar are former female employees of  
3 Google who worked as a software engineer, business systems manager, sales specialist, and  
4 preschool/toddler teacher, respectively. FAC ¶¶ 13-16. They filed this action on behalf of themselves  
5 and a class consisting of “all women employed by Google in California” at any time from September 14,  
6 2013 through the date of trial in this action, and who have held a “Covered Position”<sup>1</sup> falling within one  
7 of the following six categories: “Software Engineer Covered Positions,” “Software Manager Covered  
8 Positions,” “Engineer Covered Positions,” “Program Manager Covered Positions,” “Sales Covered  
9 Positions,” and “Early Childhood Education Covered Positions.” *Id.* ¶ 2. Plaintiffs allege that Google  
10 systematically (a) assigns women to lower “Levels” (i.e. salary bands) than it assigns men; (b) assigns  
11 women to jobs that do not compensate as highly as those populated largely by men; (c) promotes women  
12 more slowly and at lower rates than it promotes men; and (d) pays women less than it pays men  
13 performing substantially equal or substantially similar work. *Id.* ¶ 3.

14 In support of their claim that women are assigned to lower job levels (i.e. salary bands) and are  
15 paid less for performing substantially equal or similar work, Plaintiffs allege that Google maintains a  
16 uniform set of policies and/or practices for determining employees’ compensation throughout California,  
17 including centralized policies and/or practices relating to employees’ base pay, raises, bonuses, and  
18 company equity. *Id.* ¶ 22. For example, Google organizes employees by job levels and ladders, for which  
19 compensation ranges are set on a company-wide basis. *Id.* Google also considers each new hire’s prior  
20 compensation when determining that employee’s compensation, as well as in deciding which job level to  
21 place that new hire. *Id.* ¶¶ 26-27. Because women are historically paid less than men, Plaintiffs allege  
22 that Google’s use of prior compensation to set starting compensation for its employees perpetuates this  
23 historic pay disparity between men and women, and results in men receiving higher starting salaries than  
24 women for performing substantially equal or similar work. *Id.* ¶ 40. In addition, because Google also  
25 considers prior salary when deciding which job level to assign an employee, women are routinely  
26 assigned to lower salary levels than men who are in the level above them even though they perform the  
27

28 <sup>1</sup> The “Covered Positions” are listed in paragraph 1 of the FAC.

1 same jobs. *Id.* ¶ 41. Plaintiffs allege that Google has known or should have known of the substantial pay  
2 disparities between female and male employees in Covered Positions who perform substantially equal or  
3 similar work. *Id.* ¶ 43. This is because Google performs internal pay equity analyses on an annual basis.  
4 *Id.*

5 In support of Plaintiffs claim that women are assigned to lower paying job positions (as opposed  
6 to job levels), Plaintiffs allege that Google channeled women into lower paying job positions than men  
7 because of Google's stereotypes about what men and women can or should do. *Id.* ¶ 49. For example,  
8 women are placed into lower paying Operations jobs instead of higher paying Engineer jobs. *Id.*

9 Plaintiffs reference a pay equity analysis performed by the Office of Federal Contract Compliance  
10 Program ("OFCCP") based on the compensation data for all approximately 21,000 employees at Google's  
11 Mountain View headquarters for the year 2015. *See id.* ¶¶ 31-35. The OFCCP analysis included all  
12 "Covered Positions" at Google's Mountain View office; compared persons performing substantially equal  
13 or similar work; and controlled for neutral factors that might account for potential explanations for pay  
14 differences. *Id.* ¶¶ 32, 34, 35. Plaintiffs allege that OFCCP's analysis showed six to seven standard  
15 deviations between pay for men and women in nearly every job classification in 2015, which means there  
16 is a one in 100 million chance that the disparity occurred randomly or by chance. *Id.* ¶ 32.

17 Based upon these allegations, Plaintiffs assert causes of action for: (1) Violation of the California  
18 Equal Pay Act; (2) Violation of Labor Code §§ 201-203; (3) Violation of Business and Professions Code  
19 §17200 *et seq.*; and (4) declaratory judgment.

## 20 **II. LEGAL STANDARD**

21 A demurrer lies where "the pleading does not state facts sufficient to constitute a cause of action."  
22 Code Civ. Proc., § 430.10, subd. (e). The plaintiff "must set forth factual allegations that sufficiently state  
23 all required elements of [a] cause of action ... and, [a]llegations must be factual and specific, not vague or  
24 conclusory." *Rakestraw v. Cal. Physicians' Serv.* (2000) 81 Cal.App.4th 39, 43, citation omitted. In  
25 general, "material facts alleged in the complaint are treated as true for the purpose of ruling on the  
26 demurrer." *C&H Foods Co. v. Hartford Ins. Co.* (1984) 163 Cal.App.3d 1055, 1062. A pleading is  
27 adequate so long as it apprises the defendant of the factual basis for plaintiff's claim. *McKell v.*

1 *Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1469-70. Finally, allegations in a pleading must be  
2 liberally construed, with a view to substantial justice between the parties. Code Civ. Proc., § 452.

3 With regard to the sufficiency of class allegations, there is a policy in favor of allowing class  
4 allegations to survive the pleading stage. *Gutierrez v. California Commerce Club, Inc.* (2010) 187  
5 Cal.App.4th 969, 976-79 citing *Tarkington v. California Unemployment Insurance Appeals Board* (2009)  
6 172 Cal.App.4th 1494, 1510-11; *Beckstead v. Sup. Ct.* (1971) 21 Cal.App.3d 780, 783. Indeed, courts  
7 have declined to determine class sufficiency at the pleading stage where it appears from the face of the  
8 complaint that all liability issues can be determined on a class-wide basis. *See e.g., Gutierrez, supra*, 187  
9 Cal.App.4th at 979. A demurrer to class allegations may only be sustained where, “assuming the truth of  
10 the *factual allegations* in the complaint, there is no reasonable possibility that the requirements for class  
11 certification will be satisfied.” *Schermer v. Tatum* (2016) 245 Cal.App.4th 912, 923 (emphasis in  
12 original).

13 Although a defendant may not demur to portions of a cause of action, section 436 of the Code of  
14 Civil Procedure provides: “The court may, upon a motion ..., or at any time in its discretion, and upon  
15 terms it deems proper ...[s]trike out any irrelevant, false, or improper matter inserted in any pleading....”  
16 Cal. Code Civ. Proc. § 436.

### 17 **III. ANALYSIS**

18 Google demurs to (1) the class allegations in the FAC on behalf of Google employees in  
19 “Engineer Covered Positions” and “Program Manager Covered Positions,” and (2) the class-wide  
20 intentional discrimination claim asserted under Plaintiffs’ UCL claim. In the alternative, Google seeks to  
21 strike these portions of the FAC. For the reasons set forth below, the Court overrules the demurrer, and  
22 denies the alternative motion to strike.

23 The requirements for a class action are as follows: a) an ascertainable and sufficiently numerous  
24 class; b) a well-defined community of interest; and c) substantial benefits from certification that render  
25 proceeding as a class superior to the alternatives. Code Civ. Proc. § 382. In turn, the community of  
26 interest requirement embodies three factors: a) predominant common questions of law or fact; b) class  
27 representatives with claims or defenses typical of the class; and c) class representatives who can  
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1 adequately represent the class.” *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.  
2 Class certification is not defeated simply because each member of the class may be required to  
3 individually prove her eligibility for recovery. *Sav-on Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319,  
4 333.

5 Here, Google does not challenge the class allegations, generally, but only to the extent it includes  
6 female employees in “Engineer Covered Positions,” and “Program Manager Covered Positions.”  
7 According to Google, Plaintiff’s failure to include allegations of Google’s alleged violations specific to  
8 “Engineer Covered Positions” and “Program Manager Covered Positions” means that Plaintiffs cannot,  
9 even at the pleading stage, assert claims on behalf of a class that includes persons in those job categories.  
10 The Court is not persuaded by Google’s argument. None of the cases cited by Google in its papers stand  
11 for the particular proposition that a plaintiff must include specific allegations as to individual class  
12 members, or groups of class members who are alleged to be members of the class, in order to assert  
13 claims on behalf of an asserted class. Indeed, class action complaints are not required to allege individual  
14 violations, but may instead allege a “pattern or practice” of violations. *See Alch v. Sup. Ct.* (2004) 122  
15 Cal.App.4th 339, 378. It is enough for Plaintiffs to allege a numerous and ascertainable class with a well-  
16 defined community of interest, as well as a pattern or practice of gender discrimination across all Covered  
17 Positions in Google.

18 The Court finds that Plaintiffs have done that. Plaintiffs allege that Google has a company-wide  
19 policy for setting compensation that includes considering an employee’s prior salary in deciding her  
20 starting salary and/or job level. FAC ¶¶ 22, 26-27. This company-wide policy applied to all Google  
21 employees in Covered Positions. *Id.* ¶ 23. Plaintiffs allege that as a result of Google’s policy of using  
22 prior pay to determine starting salary and job level, female employees in Covered Positions receive a  
23 lower starting salary than men in the same job position and level, and who perform substantially equal or  
24 similar work. *Id.* ¶ 37. Plaintiffs also allege that as a result of Google’s complained of policies and  
25 practices, female employees in Covered Positions are assigned to lower job levels with lower salary  
26 ranges, while the men in the levels above them perform substantially equal or similar work. *Id.* ¶ 41.  
27 Plaintiffs further allege that Google’s decision to place a female employee in a lower paying job position  
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1 is at least in part due to Google's stereotypes about women. *Id.* ¶ 49. The Court finds these allegations  
2 are sufficient at this stage to demonstrate that common issues of law and fact predominate over  
3 individualized questions. The class is ascertainable in that class members can be easily identified based  
4 on whether they held a "Covered Position." Plaintiffs' claims are typical of the entire class, regardless of  
5 whether they held an "Engineer Covered Position" or "Program Manager Covered Position" because the  
6 entire class was subject to the same compensation policies and practices.


7 Finally, the Court finds that Plaintiffs adequately alleged their intentional discrimination claim as  
8 part of their UCL cause of action. "A claim of discrimination against a class requires the plaintiffs to  
9 establish by a preponderance of the evidence that 'discrimination was the company's standard operating  
10 procedure—the regular rather than the unusual practice.'" *Alch, supra*, 122 Cal.App.4th at 380 (citation  
11 omitted). Google argues that Plaintiffs' claims arise entirely from their individual experiences that are  
12 unique to them, and that do not implicate any company policy or practice. As stated above, however,  
13 Plaintiffs allege that Google's company-wide policy of considering an employee's prior pay when  
14 deciding her starting salary and/or job level, as well as Google's "stereotypes" regarding what jobs  
15 women can or cannot do, result in women receiving lower salaries than men. Moreover, Plaintiffs allege  
16 that Google knew or should have known of the differences in pay between men and women in Covered  
17 Positions, and yet they continue to set compensation and make job placement decisions based on the same  
18 policies and practices. The Court finds these allegations sufficient to state a claim for intentional  
19 discrimination.

#### 20 IV. CONCLUSION

21 For the foregoing reasons, Google's demurrer is overruled, and its alternative motion to strike is  
22 denied. Google's answer to the complaint is due 20 days from the date this order is filed.

23 IT IS SO ORDERED.

24 Dated: March 27, 2018

25   
26 \_\_\_\_\_  
27 Mary E. Wiss  
28 Judge of the Superior Court

**Superior Court of California**  
County of San Francisco

KELLY ELLIS, HOLLY PEASE, and KELLI  
WISURI, and HEIDI LAMAR individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

GOOGLE, LLC (formerly GOOGLE, INC.),

Defendants.

Case Number: CGC-17-561299

**CERTIFICATE OF  
ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.260(g))

I, T. Michael Yuen, Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On March 27, 2018, I electronically served the ORDER OVERRULING DEFENDANT'S DEMURRER TO FIRST AMENDED COMPLAINT AND DENYING ALTERNATIVE MOTION TO STRIKE via File&ServeXpress® on the recipients designated on the Transaction Receipt located on the File&ServeXpress® website.

Dated: March 27, 2018

T. MICHAEL YUEN, Clerk

By: 

Sean Kane, Deputy Clerk