

NOTICE OF COLLECTIVE ACTION SETTLEMENT

HEATH & FILLEKES V. GOOGLE LLC, NO. 5:15-CV-01824 (N.D. CAL.)

**** This Notice affects your legal rights. Please read it carefully. ****

This notice explains the terms of the settlement in the *Heath v. Google* age discrimination lawsuit. As an opt-in Plaintiff in this collective action, you have the right to participate in the settlement and receive approximately \$ _____ on a confidential basis. Or, if you decline to participate in the settlement, you will receive no payment or any of the other benefits in the settlement agreement, and your age discrimination claims against Google will be dismissed without prejudice by the Court. To participate in the settlement on the terms described below, you **MUST** timely submit the Confidential Settlement Agreement Acknowledgement and Consent form (“Acknowledgement and Consent”) by **July 13, 2019**.

Plaintiff Cheryl Fillekes initiated this collective action, alleging that Google has engaged in a systematic practice of discriminating against individuals who are age 40 or older in hiring for software engineering and related positions. You previously signed a Consent to Join form and joined this collective action as an opt-in Plaintiff. Plaintiff Cheryl Fillekes and Google have now reached a settlement of this case. Subject to the Court’s approval at a later date, the settlement will resolve the claims of Fillekes and all collective action Plaintiffs who participate in the settlement, including you. Settlement payments will be made only after the Court approves the settlement, and any appeals are waived.

If you submit the Acknowledgement and Consent form for this settlement, you will receive approximately \$ _____ or more upon approval of the settlement by the Court.

In return for this payment, you release and waive any age discrimination claims you may have against Google up until the time of the Court’s approval of the settlement, and you also agree not to re-apply for employment with Google for three (3) years after the “Effective Date” of the settlement.

You should keep the terms of the settlement agreement and this notice confidential and not make any public statements about them.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
Participate in the Settlement.	Participate in the settlement. Receive a monetary payment. Give up age discrimination claims against Google. To participate in the settlement and receive a monetary payment under the Settlement Agreement, you MUST timely submit an Acknowledgement and Consent form and an IRS Form W-9 online, by email, or by mail by July 13, 2019 . In doing so, you are releasing and waiving all age-based discrimination claims against Google and agreeing that you are not entitled to re-apply for employment with Google for three (3) years after the Effective Date of the settlement.
Withdraw from the Settlement.	Request to withdraw from the settlement. Receive no monetary payment. Keep rights. If you ask to be excluded from the settlement, your claims in this lawsuit will be dismissed without prejudice, and the statute of limitations on those claims will resume running on the date of the dismissal of the case by the Court. You keep any right to pursue the same legal claims in an individual lawsuit against Google, but you will lose the ability to recover any monetary payment or other benefits under the Settlement Agreement.
Do Nothing. Do Not Participate in the Settlement.	Take no action. Do not participate in the settlement. Receive no monetary award. Keep rights. If you do nothing, your claims in this lawsuit will be dismissed without prejudice, and the statute of limitations on those claims will resume running on the date of the dismissal by the Court. You keep any right to pursue the same legal claims in an individual lawsuit against Google, but will lose the ability to recover any monetary payment under the Settlement Agreement.

- Your options are explained in this notice. To participate in the settlement, you must act by **July 13, 2019** by completing and submitting a release and waiver form to the Claims Administrator.

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BASIC INFORMATION

1. Why did I get this notice?

You previously submitted a Consent to Join form and became a party Plaintiff in the collective action age discrimination lawsuit known as *Heath & Fillekes v. Google LLC*, No. 5:15-cv-01824 (N.D. Cal.). This notice informs you that the Parties in the case have reached a settlement, subject to Court approval. This settlement entitles you to a monetary payment and other benefits under the Settlement Agreement, and affects your legal rights. This notice provides you with instructions on the options available to you and how you can make a claim for payment under the Settlement Agreement.

2. What is this lawsuit about?

This lawsuit involves allegations by approximately 234 Plaintiffs (including you) that Defendant Google LLC, through its hiring practices, violated the federal Age Discrimination in Employment Act (ADEA). Specifically, Plaintiffs allege that Google has engaged in a systematic practice of discriminating against individuals who are age 40 and older in hiring for software engineering and related positions.

3. Why is there a settlement?

Instead of proceeding to trial, lead Plaintiff Cheryl Fillekes entered into a settlement with Google on behalf of all Plaintiffs, including you, who wish to participate in the settlement. The settlement is subject to approval by the Court at a later date. The settlement allows the Parties, including you, to avoid the costs and risks of a trial.

4. Who is the Claims Administrator?

The Claims Administrator is a third party appointed by the parties to: send this notice, process and issue settlement checks; withhold, remit, and report Plaintiffs' and Google's share of payroll taxes; and otherwise administer the settlement. The Parties have retained KCC Class Action Services for the purpose of administering the settlement after soliciting bids from five companies.

You may contact the Claims Administrator at:

Heath & Fillekes v. Google LLC Claims Administrator
P.O. Box 404041
Louisville, KY 40233-4041
Email: info@googleagediscriminationlawsuit.com

SETTLEMENT TERMS AND EACH INDIVIDUAL'S ENTITLEMENT TO COMPENSATION

5. What are the settlement terms and how much can I expect to receive if I participate?

a. Overall Summary of Settlement Terms.

Google will pay \$11,000,000 to settle this case (the "Settlement Sum"). From that amount, payments will be made to: (1) each of the 234 Plaintiffs who return their signed Acknowledgement and Consent form within sixty (60) days by July 13, 2019; (2) Plaintiffs' counsel, Kotchen & Low LLP and DVG Law Partner LLC, for attorneys' fees and costs incurred in litigating this case (\$2,750,000 or twenty-five percent (25%) of the Settlement Sum, plus their litigation costs and expenses); (3) the Claims Administrator for administration costs (approximately \$21,400); and (4) an incentive award to Plaintiff Fillekes for her participation in prosecuting and settling this action (\$10,000). One-third of the amount anticipated to be available for distribution to Plaintiffs, \$2,683,000, will be divided equally among those Plaintiffs who timely execute and submit a release and waiver form, or a minimum of approximately \$11,465 (if every eligible Plaintiff participates). The remaining funds will be distributed to each eligible Plaintiff who suffered lost wages damages on a pro rata basis based on the estimated amount of his or her lost wages (as calculated by Plaintiffs' counsel based on the information previously provided to them). The payments will be valid for ninety (90) days from original issuance. Payments will not be re-issued unless requests are received within the ninety (90) day period.

If funds exceeding twenty-five thousand dollars (\$25,000) remain in the Settlement Fund ninety (90) days after the settlement payments are made to Plaintiffs or after all re-issued payments have been deposited or voided, those funds (less reasonable administration costs for the Claims Administrator to issue the payments) will be distributed equally among the Plaintiffs who cashed their original payments in the settlement. If less than twenty-five thousand dollars (\$25,000) remains in the Settlement Fund or if any funds remain in the Settlement Fund ninety (90) days after the second round of

disbursements, the remaining funds will be donated to the AARP Foundation, and the Claims Administrator shall request that the donation be used to promote the employment of individuals over 40 years of age in technology jobs.

b. Calculation of Each Individual's Payment.

\$2,683,000 of the Settlement Sum will be distributed equally to each Plaintiff who timely executes and submits the Acknowledgement and Consent form. If you participate in the settlement, your share of the Settlement Sum will total, at a minimum, approximately \$11,465. In addition, Plaintiffs who previously provided information to Plaintiffs' counsel indicating that they may have suffered lost wages damages will divide the amount remaining in the Settlement Sum (after all other payments required by the Settlement Agreement have been made) on a pro rata basis, based on the amount of their lost wages damages calculated by Plaintiffs' counsel in good faith, based on the information made available to them.

c. How Much Can I Expect to Receive?

Each Plaintiff who agrees to participate in the settlement by signing the Acknowledgement and Consent form can expect to receive, at a minimum, approximately \$11,465 before tax deductions.

Because you earned _____ than you would have earned had you been hired by Google following your on-site interview, you _____ lost wages damages. _____. If you choose to participate in the settlement, you can therefore expect to receive approximately \$ _____ before the employer-side and employee-side tax deductions are applied.

d. Applicable Tax Withholding and Responsibility for Taxes.

The Settlement Agreement allocates how payments made to you under this settlement should be treated for tax purposes. Accordingly, payments to Plaintiffs are allocated for tax purposes as follows: fifty percent (50%) of all payments to Plaintiffs will be allocated as wages, and normal payroll taxes and withholdings will be deducted from this portion of these monetary payments pursuant to applicable law. This portion of monetary payments will be reported on an IRS Form W-2. The remaining fifty percent (50%) will be allocated as liquidated damages and interest, and will be reported on an IRS Form 1099. You will be responsible for correctly reporting this for tax purposes and for paying any taxes on the amounts received.

You will also be responsible for the tax obligations and consequences of all payments received from the Settlement Sum, for filing returns and reporting all income received to state and federal taxing authorities, and for payment of any other applicable taxes due. The Parties cannot provide, and will not provide, any advice regarding tax obligations. You may want to seek advice from your own tax advisor concerning these responsibilities.

e. Attorneys' Fees and Costs for Plaintiffs' Counsel.

You elected to be represented by Plaintiffs' counsel, Kotchen & Low LLP and DVG Law Partner LLC, when joining the collective action lawsuit. Plaintiffs' Counsel was not paid as the matter proceeded, and they funded the expenses of conducting this litigation. The settlement provides that Plaintiffs' counsel will receive, subject to Court approval, an award of attorneys' fees of twenty-five percent (25%) of the Settlement Sum, or \$2,750,000, plus reimbursement of expenses they incurred in litigating this action. These expenses amount to approximately \$185,000 so far.

f. Settlement Administration Costs.

Reasonable costs of administering the settlement, including the Claims Administrator's fees and expenses (approximately \$21,400), will be paid out of the Settlement Sum.

g. Service Payment to Plaintiff Fillekes.

Subject to Court approval, Named Plaintiff Cheryl Fillekes will receive a service payment of \$10,000, which will be paid out of the Settlement Sum. This award is intended to compensate Plaintiff Fillekes for her risk incurred and time and efforts spent advancing the prosecution of this lawsuit on behalf of Plaintiffs.

6. Court approval of the settlement

The terms and conditions of this settlement are subject to Court approval. The Parties will jointly petition the Court for an Order approving this settlement as fair, reasonable, and adequate and approving the terms of this Settlement Agreement. If the Settlement Agreement is approved by the Court, the Claims Administrator will make payment to each eligible Plaintiff by mailing a check or making electronic payment to him or her. If the Court does not approve the Settlement Agreement, no payment will be distributed to any individual, the entire Settlement Agreement will be void and unenforceable, and the Parties shall be restored to the status quo ante, that is, their respective positions that existed in this lawsuit prior to entering into this Settlement Agreement.

YOUR RIGHTS AND OPTIONS REGARDING PARTICIPATION IN THE SETTLEMENT

7. What are my options?

You have three options under this settlement:

a. Participate in the Settlement and Receive Payment.

If you wish to participate in the settlement and receive a monetary payment from the Settlement Sum, **you must submit the Acknowledgement and Consent form and IRS Form W-9 online at www.googleagediscriminationlawsuit.com, by email, or by mail postmarked by July 13, 2019.** The form may be signed electronically or in hard copy and may be mailed to the Claims Administrator at the address listed below or submitted through the Claims Administrator's website, **www.googleagediscriminationlawsuit.com**.

Heath & Fillekes v. Google LLC Claims Administrator
P.O. Box 404041
Louisville, KY 40233-4041

In order to be valid, the executed release and waiver form must be filed online, emailed, or postmarked no later than **July 13, 2019**. In executing this form, you agree to be bound by the Settlement Agreement and waive all known and unknown claims, promises, causes of action, or similar rights of any kind that you may presently have for age discrimination against Google.

b. Withdraw from the Settlement.

You may affirmatively request to withdraw from the settlement within sixty (60) days from the initial distribution of this notice. If you withdraw, you will not receive any monetary payment from this settlement, you will not be bound by the terms of the Settlement Agreement, including the release and waiver and no reapplication provision. The parties will ask that your claims be dismissed by the Court without prejudice, and the statute of limitations on your individual claims for relief will resume running on the date of your dismissal.

To withdraw from the settlement, you must mail or email a signed statement to Plaintiffs' counsel stating that you understand that you will not receive any monetary benefits from the settlement, and that the statute of limitations on your claims for individual relief will resume running on the date of your dismissal.

The signed statement may be emailed to Plaintiffs' counsel at googlesettlement@kotchen.com or mailed to the following address:

Kotchen & Low LLP
1745 Kalorama Road NW, Suite 101
Washington, DC 20009

c. Do Nothing / Fail to Timely Return the Release and Waiver Form.

If you do not wish to participate in the settlement or if you fail to submit the Acknowledgement and Consent form within sixty (60) days from the initial distribution of this notice, you will not receive any monetary payment from the Settlement Sum, the parties will ask the Court to dismiss your claims without prejudice, and the statute of limitations on your individual claims for relief will resume running on the date of your dismissal.

8. Release of claims. What will I give up if I participate in the settlement?

Plaintiffs who participate in the settlement must complete and submit an Acknowledgement and Consent form to the Claims Administrator within sixty (60) days of the initial distribution of this notice. In completing this form, you are knowingly and voluntarily releasing and waiving the following claims against Google: all known and unknown claims, promises, causes of action, or similar rights of any kind that you may presently have for discrimination because of age based on claims or allegations that were raised or could have been raised in this lawsuit, in the Second Amended Complaint, or in any Complaint filed in this lawsuit, including, without limitation, claims under ADEA or parallel state or local laws. In executing this form, you also understand that the claims you are releasing may arise under many different foreign, domestic, federal, state, or local laws (including statutes, regulations, other administrative guidance, and common law doctrines) such as all common law contract, tort, or other claims you may have. You are not releasing or waiving any claims that applicable law does not permit you to release or waive.

In addition, you are agreeing that you are not entitled to re-apply for employment with Google for three (3) years after the Effective Date of the settlement.

ADDITIONAL INFORMATION

9. Plaintiffs' Counsel

You are represented by Plaintiffs' counsel, Kotchen & Low LLP and DVG Law Partner LLC, in this matter. More information about these lawyers, their experience, and their law firm is available at www.kotchen.com and www.dvglawpartner.com. Inquiries may be directed to:

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10. Copies of Important Documents

A copy of the Settlement Agreement and copies of important documents are available on the Claims Administrator's website: www.googleagediscriminationlawsuit.com.

**PLEASE DO NOT TELEPHONE OR OTHERWISE WRITE THE COURT,
THE OFFICE OF THE CLERK, GOOGLE, OR COUNSEL FOR GOOGLE
FOR INFORMATION REGARDING THIS SETTLEMENT.**