SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Brian C. Walsh Presiding

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LAW AND MOTION TENTATIVE RULINGS
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LINE 2	2014-1-CV262174	In Re Apple Inc. Shareholder Derivative Litigation (TPRSSL vs. Cook)	CLICK on Line 2 for Ruling
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Case Name: *James Damore, et al. v. Google, LLC, et al.*
Case No.: 18-CV-321529

This is a putative employment class action alleging harassment, discrimination, and retaliation by defendant Google, LLC. Before the Court are (1) Google's demurrer to or motion to strike class allegations associated with plaintiffs' claims under Labor Code sections 1101 and 1102 and (2) Google's motion for judgment on the pleadings as to plaintiff Michael Burns's claims under the Fair Employment and Housing Act ("FEHA") on behalf of Asian job applicants. Plaintiffs oppose both motions.

I. Factual and Procedural Background

Plaintiffs James Damore, David Gudeman, Stephen McPherson, and Michael Burns are former Google employees and job applicants Google did not hire. (First Amended Complaint ("FAC"), ¶¶ 12-16.) They allege that Google employees who expressed views deviating from the majority of their colleagues on political subjects raised in the workplace and relevant to Google's employment policies and business—including diversity hiring policies, bias sensitivity, and social justice—were singled out, mistreated, and systematically punished and/or terminated in violation of the law. (*Id.* at ¶ 4.) They further allege that Google utilizes unlawful hiring quotas to reach its desired percentages of female and favored minority candidates and openly denigrates employees who are male, white/Caucasian, and/or Asian. (*Id.* at ¶ 9.)

Based on these and more detailed allegations concerning events at Google that plaintiffs believe reflect its biases against individuals who share their race, gender, and/or political beliefs, plaintiffs bring individual Labor Code, FEHA, and related claims. They also allege claims on behalf of a putative class comprised of four subclasses: the "Political Subclass" of employees and job applicants discriminated against for their politically conservative viewpoints, the "Gender Subclass" of individuals discriminated against for being male, the "Race Subclass" of those discriminated against for being Caucasian or Asian, and the "Hostile Work Environment Subclass" of Gender and Race Subclass members who were Google employees. (FAC, ¶ 338.)

The FAC, filed on April 18, 2018, sets forth twelve causes of action by Damore, Gudeman, McPherson, Burns, and former plaintiff Manuel Amador. On November 30, 2018, the parties filed a stipulation agreeing that former employees Damore and Gudeman would submit their claims to arbitration, Amador would dismiss his claims without prejudice, and the action would proceed as to the claims asserted by job applicants McPherson and Burns only. The Court subsequently entered a stipulated order dismissing Amador's claims and staying the action as to the claims by Damore and Gudeman pending arbitration. Following this order, the claims pending before the Court are as follows: (1) violation of Labor Code section 1101 by taking adverse employment action against individuals for engaging in political activities (by McPherson, Burns, and the Political Subclass); (2) violation of Labor Code section 1102 by coercing or influencing individuals' political activities (by McPherson, Burns, and the Political Subclass); (3) hiring and workplace discrimination due to gender and/or race in violation of FEHA (by Burns and the Gender and Race Subclasses); (4) disparate impact discrimination due to gender and/or race in violation of FEHA (by Burns and the Gender and Race

Subclasses); (9) failure to prevent discrimination, harassment, and retaliation in violation of FEHA (by Burns); (11) unfair business practices (by McPherson, Burns, and the class); and (12) declaratory relief (by McPherson, Burns, and the class).

Before the Court are two motions by Google attacking portions of those claims.

II. Demurrer to or Motion to Strike Class Allegations Associated with the First and Second Causes of Action Under Labor Code Sections 1101 and 1102

Google demurs to the class allegations associated with plaintiffs' claims under Labor Code sections 1101 and 1102—which are the remaining claims asserted on behalf of the Political Subclass—for failure to state a claim and uncertainty. (Code Civ. Proc., § 430.10, subds. (e) and (f).) Alternatively, it moves to strike allegations related to the Political Subclass.

As an initial matter, plaintiffs contend that Google's motion is procedurally improper because the notice of motion fails to set forth "[e]ach ground of demurrer … in a separate paragraph and … state whether it applies to the entire complaint … or to specified causes of action or defenses." (Cal. Rules of Court, rule 3.1320(a).) While the notice of motion technically fails to comply with this requirement, it nevertheless adequately advises plaintiffs of the issues raised by the motion, which they have thoroughly addressed in their opposition. The Court will therefore disregard the technical defect in Google's notice of motion. (See *Carrasco v. Craft* (1985) 164 Cal.App.3d 796, 807–08 [when papers and the record support a particular ground, the matter is properly before the court and any related defect in the notice of motion should be disregarded]; *Tarman v. Sherwin* (1961) 189 Cal.App.2d 49, 51-52 [a notice of motion will be deemed adequate if it fairly advises the opposing party of the issues to be raised].)[1]

In a related argument, plaintiffs correctly urge that Google's demurrer for uncertainty is unsupported. (See *Fenton v. Groveland Cmty. Services Dist*. (1982) 135 Cal.App.3d 797, 809 [demurrer based on uncertainty must distinctly specify exactly how or why the pleading is uncertain and where such uncertainty appears], disapproved of on another ground in *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300.) The demurrer for uncertainty also lacks merit. Demurrers on this ground are disfavored and are typically sustained only where the challenged pleading is so unintelligible that the defendant cannot reasonably respond. (See *Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 616 ["A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures."].) Here, the FAC is more than clear enough to enable Google to respond.

The remaining ground for Google's motion is that the class claims asserted on behalf of the Political Subclass fail to state a cause of action. The Court will now turn to that central issue.

A. Legal Standard

[1] Google further urges that the notice of motion fails to comply with the requirement under Code of Civil Procedure section 430.60 that a demurrer "distinctly specify the grounds upon which any of the objections to the complaint … are taken." However, the motion complies with this more general requirement.

As explained by the Court of Appeal for the Sixth Appellate District:

> Class certification is generally not decided at the pleading stage of a lawsuit. The preferred course is to defer decision on the propriety of the class action until an evidentiary hearing has been held on the appropriateness of class litigation. However, if the defects in the class action allegations appear on the face of the complaint or by matters subject to judicial notice, the putative class action may be defeated by a demurrer or motion to strike.

(*Tellez v. Rich Voss Trucking, Inc.* (2015) 240 Cal.App.4th 1052, 1062, citing *In re BCBG Overtime Cases* (2008) 163 Cal.App.4th 1293, 1298-1299, internal citations and quotations omitted.)

A court may decide the propriety of class certification on the pleadings " 'only if it concludes as a matter of law that, assuming the truth of the factual allegations in the complaint, there is no reasonable possibility that the requirements for class certification will be satisfied.' " (*Tucker v. Pacific Bell Mobile Services* (2012) 208 Cal.App.4th 201, 211, citing *Bridgeford v. Pacific Health Corp.* (2012) 202 Cal.App.4th 1034, 1041-1042.) This is most commonly the case in circumstances where it is apparent that individual issues will predominate. (See *ibid.* [no commonality regarding putative fraud claim where reliance and materiality varied among individuals and disclosures were provided that were likely seen by some putative class members]; *Prince v. CLS Transportation, Inc.* (2004) 118 Cal.App.4th 1320, 1325 ["It is only in mass tort actions (or other actions equally unsuited to class action treatment) that class suitability can and should be determined at the pleading stage. In other cases, particularly those involving wage and hour claims, class suitability should not be determined by demurrer."]; *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 976-977 ["A review of the cases in which courts have approved the use of demurrers to determine the propriety of class actions … reveals that the majority of those actions involved mass torts or other actions in which individual issues predominate."].)

B. Plaintiffs' Allegations Regarding the Political Subclass

Plaintiffs allege that Google has adopted "a pattern and practice" of adversely treating similarly situated job applicants because of their political affiliations. (FAC, ¶ 254.) Its hiring practices, "including the ample discretion afforded to hiring personnel in determining whether a prospective employee is a 'cultural fit' within Google," combined with Google's culture of hostility towards political conservatives, "negatively and disparately impact job applicants … who are, or are perceived to be, … conservative." (*Id.* at ¶ 256.)

Plaintiffs McPherson and Burns are both white male conservatives who allege Google did not hire them for this reason, and because of their race and gender. McPherson is a lawyer, consultant, commercial-rated pilot, and former United States Navy pilot with over a decade of proven leadership experience, as well as a member of the Republican party. (FAC, ¶ 286.) He served as a staffer for a Republican congressman from 1996-1998, experience which is reflected on his resume. (*Id.* at ¶ 287.) In 2016, while stationed in San Diego, McPherson transitioned out of the Navy and applied for a project manager position with the Google Fiber project. (*Id.* at ¶ 292.) He met all the qualifications for the position and was referred by a Google employee. (*Id.* at ¶ 293.) After completing initial phone interviews, McPherson was flown by Google to its Mountain View headquarters for a day of in-person interviews, and was

subsequently contacted by Google Human Resources employees with questions related to his compensation and willingness to relocate. (*Id.* at ¶ 296.) McPherson indicated that he would be willing to relocate to Texas and had a telephone interview with a member of the Google Fiber team in Austin. (*Id.* at ¶ 298.) Ultimately, however, a Google staffing employee informed McPherson that he was no longer being considered for the project manager position because Google requires unanimity in its hiring decisions and was unable to achieve it with regard to his application. (*Id.* at ¶ 299.) The Google employee who referred him stated that McPherson's experience of being interviewed and proceeding almost to the point of an offer "rarely happens," and suggested that McPherson re-apply in a year's time. (*Id.* at ¶ 300.) The position for which McPherson had applied remained open at the time his application was rejected, and he alleges that his application was rejected because of his lack of "cultural fit" within Google as a white male conservative. (*Id.* at ¶¶ 301-303.)

Plaintiff Burns is an accomplished copywriter, marketer, consultant, and entrepreneur, and a conservative white male. (FAC, ¶¶ 304-305.) In his spare time, he publishes or shares material on social media platforms, including Twitter and LinkedIn, that is or is likely to be perceived as conservative. (*Id.* at ¶ 306.) For example, he "follows" conservative and libertarian groups and individuals such as the Cato Institute, Reason Foundation, Heartland Institute, Independent Women's Forum, and the Heritage Foundation. (*Id.* at ¶ 307.) This material is publicly available, and Burns includes a hyperlink to his LinkedIn profile at the base of his email signature block. (*Id.* at ¶¶ 306, 308.) From 2015 to 2017, Burns applied for numerous content, marketing, communications, and copywriter positions with Google. (*Id.* at ¶ 309.) In June of 2017, he applied for a copywriting position based in Google's Sunnyvale facilities. (*Id.* at ¶ 310.) He satisfied all of the qualifications specified in the job description, and successfully completed three telephone interviews. (*Id.* at ¶¶ 312-315.) He was then interviewed by a Google Managing Director, who would have been his supervisor had he received an offer. (*Id.* at ¶ 316.) About a week after this interview, Burns shared an article on Twitter titled "What to Learn from Google's Mission Leadership on the Diversity Memo," which criticized Google CEO Sundar Pichai's firing of plaintiff Damore and offered suggestions on how he could have better handled that situation. (*Id.* at ¶¶ 318-320.) Ultimately, Burns was not offered the copywriter position, although it remained open at the time his application was rejected, or any subsequent role with Google, including contractor positions. (*Id.* at ¶¶ 323-324.) Like McPherson, Burns alleges that he was rejected because of his lack of "cultural fit" within Google as a white male conservative. (*Id.* at ¶¶ 325-326.)

Based on these allegations, McPherson and Burns allege claims on behalf of a putative "Political Subclass" of Google job applicants who

> identified themselves as having conservative viewpoints through their words, actions, and/or conduct, who were discriminated against by Google due to their perceived conservative viewpoints and/or activities ….

(FAC, ¶ 338.)

They bring claims for violations of Labor Code sections 1101 and 1102, which prohibit employers from implementing "any rule, regulation, or policy: (a) Forbidding or preventing employees from engaging or participating in politics … [or] (b) Controlling or directing, or tending to control or direct the political activities or affiliations of employees" (Lab. Code, § 1101) and from coercing or influencing employees "to adopt or follow or refrain from adopting

or following any particular course or line of political action or political activity" (Lab. Code, § 1102). These protections established by these provisions have been applied to job applicants as well as employees. (See *Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 487, fn. 16.)

C. Analysis

Google contends that the Political Subclass is not ascertainable because plaintiffs plead no objective criteria to identify applicants who engaged in "conservative" activity; they allege no rule, regulation, policy, or practice common to the class and thus no community of interest; and the class proceedings they propose are not manageable because such proceedings would require extensive inquiry into millions of applicants' public and application information.

The Court indeed has doubts regarding the viability of the putative Political Subclass claims on each of these grounds. However, it is not prepared to find at the pleading stage that there is "no reasonable possibility that the requirements for class certification will be satisfied" as to these claims. (*Tucker v. Pacific Bell Mobile Services*, *supra,* 208 Cal.App.4th at p. 211.)

As an initial matter, the propriety of class certification is considered in the context of the plaintiffs' theory of recovery. (See *Department of Fish and Game v. Superior Court (Adams)* (2011) 197 Cal.App.4th 1323, 1349.) The FAC characterizes Google's practice of screening applicants for "cultural fit" as both embodying a "pattern and practice" of discrimination against conservative applicants and as having a "disparate impact" on such applicants. Class actions have been certified on these theories (which are distinct) in the context of alleged discrimination based on race, gender, and age, although certification is by no means routine. However, Google does not address in any detail how the large body of case law in this area informs the Court's analysis of plaintiffs' novel claims.[2]

Google does note that "[i]n race and gender discrimination cases, the identification of class members is straightforward," while courts have declined to certify class actions in disability discrimination cases where "it is difficult to identify and certify the class" and "[t]he question of whether the employer must provide reasonable accommodation involves a case-by-case inquiry." (*McCullah v. Southern California Gas Co.* (2000) 82 Cal.App.4th 495, 500.) In the Court's view, the novel theories proposed by plaintiffs fall somewhere between these two scenarios: while identifying a "political conservative" will certainly prove more difficult than identifying a person who belongs to a given race or gender in the typical case, it does not necessarily involve the type of case-by-case inquiries required to determine whether individuals with a range of different potential disabilities are in fact disabled and whether they were denied a reasonable accommodation. In any event, the Court expects both Google and plaintiffs to provide a more thorough discussion of the law in this area in connection with any future motion addressing the certification of the Political Subclass or the viability of the section 1101 and 1102 claims.

[2] The parties have not cited, and the Court has not located in its own research, any case in which class claims were brought under Labor Code sections 1101 and/or 1102 on these theories, and the Court expresses no opinion as to whether this is appropriate as a general proposition. Google does not address the merits of plaintiffs' theories in its briefing, or provide any discussion of the standard for liability under these Labor Code provisions other than in a single, brief footnote.

Turning to Google's present arguments, Google first contends that the proposed Political Subclass is not ascertainable. This is not the typical ground on which courts reject class claims at the pleading stage, perhaps because discovery frequently informs modifications to the class definition and reveals the means available for identifying class members. Google cites *Aulson v. Blanchard* (1st Cir. 1996) 83 F.3d 1 for the proposition that a vaguely defined political group, or a group defined only by its opposition to another political group, is unascertainable. However, that case—which addressed whether a single plaintiff stated a claim under a federal statute prohibiting conspiracy to deprive a "class of persons" of equal protection—acknowledged that several appellate courts have found a political class to be cognizable under the statute at issue. (*Id.* at p. 4.) Google also cites *Bartlett v. Hawaiian Village, Inc.* (1978) 87 Cal.App.3d 435, a case that was largely decided based on lack of commonality, addressed wholly different and more vaguely defined subclasses, and arose in the distinct factual context of denial of access to a business. (See *id.* at p. 437, fns. 1 and 2 [trial court's holding on failure to allege an ascertainable class applied to subclasses of men excluded from a bathhouse due to "effeminacy," "association with effeminate men," "prior permanent exclusion," and "other arbitrary reasons"].) *Bartlett* provides little reasoning on the issue of ascertainability and is factually distinguishable from this case. Ultimately, Google provides no authority clearly supporting the proposition that a class of individuals with shared political views is unascertainable. While the Court makes no ruling as to whether the Political Subclass as currently defined is ascertainable, Google fails to show that there is "no reasonable possibility" that a political group along the same lines could be identified. In the Court's view, the issue is best decided following the "preferred course" of an evidentiary hearing on class certification.

Google also contends that the number of Google job applicants and the lack of available means to identify Political Subclass members render the class unascertainable; these arguments raise factual issues not appropriately addressed on demurrer. Finally, Google urges that the class is unascertainable because it is defined based on who Google discriminated against; as urged by plaintiffs, however, a class may still be ascertainable "even if the definition pleads ultimate facts or conclusions of law." (*Hicks v. Kaufman and Broad Home Corp.* (2001) 89 Cal.App.4th 908, 915; see also *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 303, citing *Hicks*.) Again, this issue is not appropriately resolved at this juncture based on the sparse briefing before the Court and in the absence of an evidentiary record.

The second issue raised by Google's demurrer is commonality. As discussed above, this issue often—but not always—precludes certification in employment discrimination actions arising in other contexts. Again, however, Google provides no meaningful discussion of the law in that area and its interplay with the standard for liability under Labor Code sections 1101 and 1102. Instead, it relies largely on another older, inapposite case relating to denials of entry to a business. (See *Weaver v. Pasadena Tournament of Roses Ass'n* (1948) 32 Cal.2d 833.) The Court is not prepared to find that there is "no reasonable possibility" plaintiffs will be able to establish commonality based on this argument.

Finally, Google contends that *class discovery* on the Political Subclass will be unmanageable. It points to practical issues with regard to identifying members of the putative class that are real and may well prove insurmountable for plaintiffs. Still, for the reasons already discussed, the Court will not bar plaintiffs from attempting to prove that a class can be certified on the novel theory they allege. Notably, many of the sources of information that

Google contends cannot be manageably searched, such as historical social media data and other public platforms, are likely not within Google's possession, custody, or control in the first place; others, such as applications, resumes, and applicants' communications with Google, are equally relevant to the putative class claims alleging race and gender discrimination. For these reasons, it is unlikely that leaving the putative Political Subclass in the mix will dramatically impact class discovery. In any event, the parties are reminded that all discovery must be reasonable and proportional, and may be restricted upon a showing of undue burden or expense. (See, e.g., Code Civ. Proc., § 2019.030, subd. (a)(2) [court shall restrict discovery that is "unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation"].)

Ultimately, it will be plaintiffs' burden to show that certification of the Political Subclass is appropriate. The Court anticipates that this will not be an easy burden to satisfy; however, the pleadings do not establish that there is no reasonable possibility it can be met.

D. Conclusion and Order

Google's demurrer to the putative Political Subclass claims is OVERRULED, and its alternative motion to strike the allegations supporting those claims is DENIED.

III. Motion for Judgment on the Pleadings

In addition to its demurrer, Google brings a motion for judgment on the pleadings as to Burns's FEHA claims for racial discrimination (the third and fourth causes of action), insofar as he alleges discrimination against Asian job applicants. Plaintiffs oppose Google's motion on procedural and substantive grounds.

Google's request for judicial notice of Burns's administrative complaint, which plaintiffs do not oppose, is GRANTED. (Evid. Code, § 452, subd. (c).)

A. Legal Standard

Under Code of Civil Procedure section 438, a defendant may move for judgment on the pleadings on the ground that a pleading fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) "A motion for judgment on the pleadings, like a general demurrer, confines the court's consideration to the face of the pleading under attack and to matters outside the pleading that are judicially noticeable. No extrinsic evidence can be considered." (*Jayasinghe v. Lee* (1993) 13 Cal.App.4th Supp. 33, 36.) On such motions, "[t]he court accepts as true all material factual allegations, giving them a liberal construction, but it does not consider conclusions of fact or law, opinions, speculation, or allegations contrary to law or judicially noticed facts." (*Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254.)

B. Procedural Issues

Plaintiffs contend that Google's motion was prematurely filed in violation of both Code of Civil Procedure section 438, subdivision (f) and the Court's scheduling order. Subdivision (f)(2) of section 438 provides that a defendant may move for judgment on the pleadings only where "the defendant has already filed his or her answer to the complaint and the time for the

defendant to demur to the complaint has expired." Here, Google has not yet filed its answer, so the motion is indeed premature. Likewise, the motion is arguably premature under the Court's scheduling order, which provides that responsive pleadings such as answers, demurrers, and motions to strike shall not be filed until a date is set for such filings at the parties' first case management conference.[3]

Plaintiffs further urge that Google's motion is improperly addressed to a portion of two causes of action, rather than to "[t]he entire complaint or cross-complaint or … any of the causes of action stated therein," as required by the statue. (Code Civ. Proc., § 438, subd. (c)(2)(A).) In this respect also, a motion for judgment on the pleadings is generally treated like a demurrer, which "does not lie as to a portion of a cause of action": if any part of a cause of action is properly pleaded, the motion will be denied. (*Fire Ins. Exchange v. Superior Court (Altman)* (2004) 116 Cal.App.4th 446, 452.)

While Google's motion would be appropriately denied on either or both of these grounds, this outcome is not necessarily required. As an initial matter, courts have held that a nonstatutory motion for judgment on the pleadings may survive the enactment of Code of Civil Procedure section 438. (See *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5 [motion to dismiss "may be treated as a nonstatutory motion for judgment on the pleadings"]; *Cordova v. 21st Century Ins. Co.* (2005) 129 Cal.App.4th 89, 109 ["when a defendant's motion for summary judgment depends on the untenability of the plaintiff's case as pleaded and not on extrinsic evidence … it may be treated as a common law motion for judgment on the pleadings"].) Moreover, the Court is authorized by the statute to grant judgment on the pleadings on its own motion, and it has broad discretion to employ this and other suitable methods of practice to manage complex litigation. (See *Fire Ins. Exchange v. Superior Court*, *supra,* 116 Cal.App.4th at pp. 451, fn. 2 & 452, citing Code Civ. Proc., § 438, subd. (b)(2).) Under this authority, the Court could grant judgment on the pleadings to facilitate the management and resolution of this case.

Here, however, Google's motion fails on the merits for the reasons discussed below. The Court accordingly declines to resolve the procedural issues raised by plaintiffs.

C. Analysis

"Before filing a civil action alleging FEHA violations, an employee must exhaust his or administrative remedies with [the Department of Fair Employment and Housing ("DFEH")] … [by filing] an administrative complaint with DFEH identifying the conduct alleged to violate FEHA." (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 153.) This requirement is "a jurisdictional prerequisite to resort to the courts."[4] (*Johnson v. City of Loma Linda* (2000) 24

[3] Here, a date was set for Google to file its demurrer/motion to strike addressed above, but not for a motion for judgment on the pleadings.

[4] On June 4, 2019, Google filed a notice of supplemental authority regarding a recent decision by the United States Supreme Court, *Fort Bend County, Texas v. Davis* (June 3, 2019, No. 18-525), --- U.S. ---, 2019 WL 2331306. *Fort Bend* held that the administrative claim requirement associated with Title VII of the Civil Rights Act of 1964 is not jurisdictional: while it is a mandatory rule, it may be forfeited if not timely asserted. The Supreme Court's ruling may impact the California courts' characterization of FEHA's similar requirement as "jurisdictional." However, this issue does not affect the Court's analysis here. Plaintiffs do not contend that

Cal.4th 61, 70, internal citation and quotations omitted.) The failure to file an administrative charge before commencing suit is grounds for dismissal of a FEHA claim. (See *Okoli v. Lockheed Technical Operations Co.* (1995) 36 Cal.App.4th 1607, 1613.)

The DFEH complaint required by FEHA must set forth the "particulars" of the alleged discrimination. (Gov. Code, § 12960, subd. (b); see also *Martin v. Lockheed Missiles & Space Co., supra,* 29 Cal.App.4th at p. 1724 [in order to exhaust administrative remedies as to a particular act made unlawful by FEHA, the claimant "must specify that act in the administrative complaint, even if the complaint does specify other cognizable wrongful acts"].) The purpose of this requirement "is to ensure DFEH is provided the opportunity to resolve disputes and eliminate unlawful employment practices through conciliation." (*Wills v. Superior Court*, *supra,* 195 Cal.App.4th at p. 156.) The action's permissible scope is consequently tied "to the information brought to DFEH's attention when it conducts an administrative investigation, *or to information DFEH reasonably should have discovered during its investigation*." (*Ibid.*, italics added.) Accordingly, the claims made in court must be "like" or "reasonably related to" the DFEH claims or be "likely to be uncovered in the course of a DFEH investigation." (*Okoli v. Lockheed Technical Operations Co.*, *supra,* 36 Cal.App.4th at p. 1617.) "[W]hat is submitted to the DFEH must … be construed liberally in favor of plaintiff," (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 268), who is "not held to specify the charges with literary exactitude" (*Soldinger v. Northwest Airlines, Inc.* (1996) 51 Cal.App.4th 345, 381). "Some authorities state the more specific the original charge filed with the administrative agency, the less likely a civil lawsuit may be expanded into other areas"; however, "even if this is an accurate statement of the law, all recognize that a DFEH charge is not intended as a limiting device." (*Soldinger v. Northwest Airlines, Inc.*, *supra,* 51 Cal.App.4th at p. 381, internal citations and quotations omitted.)

Here, there is no dispute that Burns's administrative complaint specifies the act of alleged discrimination at issue: racial discrimination in hiring. Google contends that because the complaint identifies Burns as a "white," "Caucasian" man, it does not encompass claims by Asian job applicants. However, while Burns's administrative complaint described his own race as "white" or "Caucasian," his allegations of discrimination against Asian job applicants arise from the same theory as his allegations of discrimination against white applicants like himself, and are thus sufficiently "like" and "reasonably related to" his DFEH claims to satisfy the exhaustion requirement. Burns alleges that both of these races were discriminated against due to Google's preference for candidates from other, "favored minority" backgrounds perceived as categorically distinct within the company. (See *Sandhu v. Lockheed Missiles & Space Co.* (1994) 26 Cal.App.4th 846, 857 [DFEH complaint alleging discrimination based on Asian race satisfied administrative exhaustion as to claim for discrimination based on race and East Indian national origin, notwithstanding that plaintiff would historically be characterized as Caucasian; racial classifications are not scientific, and "Sandhu's allegation that he was subject to a discriminatory animus based on his membership in a group which is perceived as distinct when measured against other Lockheed employees … is sufficient to make out a cognizable claim for racial discrimination under FEHA"].) Finally, in a FEHA class action, "so long as one plaintiff timely files an administrative complaint, a class of similarly-situated plaintiffs may 'piggyback' on that complaint, thereby satisfying the exhaustion requirement." (*Harris v.*

Google waived its argument regarding the scope of Burns's administrative complaint; to the contrary, they argue that Google has raised this issue prematurely.

County of Orange (9th Cir. 2012) 682 F.3d 1126, 1136.) Here, plaintiffs allege that white and Asian job applicants are similarly situated in this regard.

Google accordingly fails to show that Burns did not satisfy FEHA's administrative exhaustion requirement with regard to his allegations on behalf of Asian job applicants.

D. Conclusion and Order

Google's motion for judgment on the pleadings is DENIED.

The Court will prepare the order.

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