

SOL: DS
(14) 00720

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

**Office of Federal Contract
Compliance Programs,**
United States Department of Labor,

Plaintiff,

v.

B&H Foto & Electronics Corp.,

Defendant.

Case No. _____

ADMINISTRATIVE COMPLAINT

Plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor (“OFCCP”), by its attorneys, alleges:

Introduction

1. B&H Foto & Electronics Corp. (“B&H”) establishes itself on its Facebook page as “the place to go for the best prices and service for photographic, audio, video, computer, and home entertainment needs.” “With the advent of the internet,” B&H touts, “the parameters of our NY SuperStore have expanded well beyond the corner of 9th Avenue and 34th Streets. Today the world is our store and it exists wherever you are when you log onto our website.” To maintain this preeminent status, B&H relies on the employees at its Brooklyn warehouse (the “Brooklyn Navy Yard Warehouse”), who are responsible for receiving, organizing, and shipping many of the company’s products.
2. On its website, B&H promotes itself as employing “an incredibly diverse group of people” who “lend color to our business.” The composition of the workforce in B&H’s Brooklyn Navy Yard Warehouse provides a different reality. There, B&H has no female

employees on staff. Additionally, between January 31, 2011, and January 31, 2013, a period during which B&H hired about 100 Hispanic individuals into entry-level positions, B&H did not hire a single Black individual or Asian individual into those positions. The facility's workforce is divided along racial lines, with management, supervisory, and mid-level positions filled predominantly by White men. Hispanic workers receive disproportionately lower compensation in comparison to fellow White workers, and the promotion of non-White workers into mid- and upper-level positions is scant.

3. As a result, B&H violated and continues to violate Executive Order 11246 (30 Fed. Reg. 12319), as amended by Executive Order 11375 (32 Fed. Reg. 14303), Executive Order 12086 (43 Fed. Reg. 46501), Executive Order 13672 (79 Fed. Reg. 42971), and Executive Order 13279 (67 Fed. Reg. 77141) ("Executive Order 11246" or the "Executive Order") by discriminating in its hiring, compensation, and promotion practices.
4. This action is brought by OFCCP to enforce the contractual obligations imposed by the Executive Order; section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Rehabilitation Act"); section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. § 4212 ("VEVRAA"); and the rules and regulations issued pursuant thereto at 41 C.F.R. Chapter 60.
5. This Court has jurisdiction of this action under Sections 208 and 209 of Executive Order 11246, 41 C.F.R. §§ 60-1.26, 60-250.65, 60-741.65, and 41 C.F.R. Part 60-30.

Background of Contractor

6. B&H is a corporation with a principal office at 420 Ninth Avenue, New York, New York, 10001-1603. B&H is a retailer of photography, video, audio, and digital imaging products, both domestically and internationally.

7. B&H maintains a warehouse, the Brooklyn Navy Yard Warehouse, at 63 Flushing Avenue, Building 664, Brooklyn, New York, 11205.
8. At all times relevant hereto, B&H has had 150 or more employees and held at least one contract with the federal government of \$150,000 or more. In particular, B&H is party to a supply contract with General Services Administration (GS03F0022R) and the Department of Justice/Federal Bureau of Investigation (DJF151200P0005109). Awarded amounts under these contracts, and others, are in excess of \$46,000,000.
9. As such, at all times relevant hereto, B&H has been a Government contractor within the meaning of the Executive Order, the Rehabilitation Act, and the VEVRAA, and has been subject to the contractual obligations imposed on Government contractors by the Executive Order, the Rehabilitation Act, the VEVRAA, and regulations issued pursuant thereto.
10. At all times relevant hereto, B&H has been required to comply with the program requirements set forth in 41 C.F.R. §§ 60-1.4(a), 60-2.17(b), 60-2.17(d), 60-3.4, 60-3.15, 60-300.5(a)(2) and (6), 60-1.12, 60-300.80(a), and 60-741.80(a).

Discrimination in Hiring, Compensation, and Promotion

11. Since at least January 31, 2011, without having a formal policy or procedure, officials of B&H responsible for hiring, compensation, and promotion decisions have exercised unfettered unilateral discretion when determining hiring, compensation, and promotions for female individuals, Hispanic individuals, Black individuals, and Asian individuals at the Brooklyn Navy Yard Warehouse.
12. Since at least January 31, 2011, B&H has violated the Executive Order and regulations promulgated thereto in carrying out its Government contracts by failing to identify and provide complete relief, including lost wages and salary adjustments, to female individuals, Hispanic individuals, Black individuals, and Asian individuals who have been adversely affected by B&H's discrimination, as described below.

Discrimination in Hiring

13. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-1.4, B&H has agreed not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
14. Since at least January 31, 2011, B&H has violated the Executive Order and regulations promulgated thereto in carrying out its Government contracts by discriminating against female individuals, Black individuals, and Asian individuals based on their sex, race, color, and/or national origin, with regard to hiring.
15. Specifically, from January 31, 2011 to January 31, 2013, B&H hired 101 individuals into Job Group 801 – an entry-level laborer position – at its Brooklyn Navy Yard Warehouse. The hires into this entry-level position consisted exclusively of Hispanic males. B&H failed to hire a single female individual into the Job Group during this time. This hiring disparity, which resulted in the complete exclusion of female individuals from Job Group 801 and, in fact, from all jobs at the Brooklyn Navy Yard Warehouse, remains after adjusting for differences in legitimate hiring factors.
16. B&H's complete exclusion of women from its warehouse workforce is confirmed by its failure to even provide a separate women's restroom or changing facilities for use by female individuals at its Brooklyn Navy Yard Warehouse.
17. Upon information and belief, these failures continue to the present.
18. From January 31, 2011 to January 31, 2013, B&H hired no Black individuals into Job Group 801, while exclusively hiring 101 Hispanic males into the Job Group. This hiring disparity, which resulted in the near exclusion of Black individuals from Job Group 801 at the Brooklyn Navy Yard Warehouse, remains after adjusting for differences in legitimate hiring-determining factors. Upon information and belief, this failure continues to the present.
19. From January 31, 2011 to January 31, 2013, B&H hired no Asian individuals into Job Group 801, while exclusively hiring 101 Hispanic males into the Job Group. This hiring

disparity, which resulted in the near exclusion of Asian individuals from Job Group 801 at the Brooklyn Navy Yard Warehouse, remains after adjusting for differences in legitimate hiring-determining factors. Upon information and belief, this failure continues to the present.

Discrimination in Compensation

20. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-1.4, B&H has agreed not to discriminate against any employee because of race, color, religion, sex, or national origin and has agreed to take affirmative action to ensure that employees are treated during employment without regard to their race, color, religion, sex, or national origin.
21. Since at least January 31, 2011, B&H has compensated its Hispanic Job Group 801 shipping workers at the Brooklyn Navy Yard Warehouse significantly less per year than its White Job Group 801 shipping workers at the same location. This compensation disparity remains after adjusting for differences in legitimate compensation-determining factors. Upon information and belief, this failure continues to the present.
22. Since at least January 31, 2011, B&H has compensated its Hispanic Job Group 800 laborers at the Brooklyn Navy Yard Warehouse significantly less per year than its White Job Group 800 workers at the same location. This compensation disparity remains after adjusting for differences in legitimate compensation-determining factors. Upon information and belief, this failure continues to the present.

Discrimination in Promotion

23. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-1.4, B&H has agreed not to discriminate against any employee because of race, color, religion, sex, or national origin and has agreed to take affirmative action to ensure that employees are treated during employment without regard to their race, color, religion, sex, or national origin.
24. Since at least January 31, 2011, B&H, without adherence to any formal or articulated promotion policy or procedures, has promoted Hispanic workers at the Brooklyn Navy Yard Warehouse into and within Job Groups 500, 501, and 101 – consisting of mid- and

upper-level clerical workers, managers, and supervisors – at a rate significantly lower than the rate of promotion of its White workers into and within those job groups at the same location. This disparity in promotions, which is reflected in the near exclusion of Hispanic workers in the 500, 501, and 101 Job Groups, remains after adjusting for differences in legitimate promotion-determining factors. Upon information and belief, this failure continues to the present.

Failure to Protect Workers from Workplace Harassment

25. Pursuant to 41 C.F.R. § 60-1.4(a)(1), B&H agreed to maintain a harassment-free work environment at all worksites and in all facilities at which B&H's employees are assigned to work.
26. Since at least January 31, 2011, B&H has violated the Executive Order and regulations promulgated thereto in carrying out its Government contracts by failing to ensure and maintain a working environment free of harassment, intimidation, and coercion. Specifically, B&H supervisors and other employees at the worksite subjected Hispanic employees to severe and/or pervasive verbal abuse — including excessive yelling, racist remarks, and degrading comments — because of the Hispanic employees' national origin, race, and/or color.
27. The offensive conditions pervaded the workplace where the Hispanic warehouse workers had unequal access to basic hygienic restroom facilities. Upon information and belief, Hispanic warehouse workers had no option but to use unsanitary and often inoperable restrooms, which were separate and apart from superior restrooms used by the White warehouse workers.
28. When Hispanic workers complained of harassing, intimidating, or coercive treatment to B&H managers, the managers took no action to stop it. Upon information and belief, these failures continue to the present.

Failure to Maintain Personnel and Employment Records

29. Pursuant to Section 202 of the Executive Order and 41 C.F.R. § 60-2.17(b) and (d), B&H agreed to perform in-depth analyses of its total employment processes to determine whether and where impediments to equal opportunity exist, and to develop and implement an auditing system that periodically measures the effectiveness of its total AAP.
30. Since at least January 31, 2011, B&H has violated the Executive Order and regulations promulgated thereto in carrying out its Government contracts by failing to perform in-depth analyses of its total employment processes to determine whether and where impediments to equal employment opportunity exist, and failing to develop and implement an auditing system to periodically measure the effectiveness of its total AAP.
31. Pursuant to Section 202 of the Executive Order and 41 C.F.R. §§ 60-3.4 and 60-3.15, B&H agreed to maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, and ethnic group in order to determine compliance with the OFCCP regulations. Furthermore, B&H agreed, where this information shows the total selection process for a job has an adverse impact, to evaluate the individual components of the selection process for adverse impact.
32. Since at least January 31, 2011, B&H has violated the Executive Order and regulations promulgated thereto in carrying out its Government contracts by failing to examine its total application and hiring process, promotion process, and termination process for adverse impact based on sex, race, or ethnic group, and failing to implement an accurate applicant tracking system for applicants and hires in order to collect data on applicants' race, sex, and ethnic group.
33. Pursuant to 41 C.F.R. § 60-300.5(a)(2) and (6), B&H has agreed to list all employment openings which exist at the time of the execution of its contract and those which occur

during the performance of its contract with the appropriate employment service delivery system where the opening occurs.

34. Since at least January 31, 2011, B&H has violated the VEVRAA and regulations promulgated thereto in carrying out its Government contracts by failing to list with the New York State Job Bank or with the New York Department of Labor all employment openings that existed at the time of the execution of its federal contracts and those that occurred during the performance of its contracts.
35. Pursuant to Section 202 of the Executive Order and 41 C.F.R. §§ 60-1.12, 60-300.80(a), and 60-741.80(a), B&H agreed that it will preserve for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later, any personnel or employment record made or kept by B&H.
36. Since at least January 31, 2011, B&H has violated the Executive Order, the Rehabilitation Act, the VEVRAA, and regulations promulgated thereto in carrying out its Government contracts by failing to preserve personnel and employment records for a period of not less than two years from the date of either the making of the record or the personnel action involved, whichever occurred later.

Violations

37. The acts and practices described in paragraphs 11 to 36, above, violate the Executive Order, the Rehabilitation Act, the VEVRAA, and regulations pursuant thereto, and violate B&H's contractual obligations to the federal Government.
38. Unless restrained by an administrative order, B&H will continue to violate the obligations imposed on it by the Executive Order, the Rehabilitation Act, the VEVRAA, and regulations issued pursuant thereto.
39. All procedural requirements prior to the filing of this Complaint have been met.
40. On or about January 31, 2013, OFCCP sent a scheduling letter to B&H stating that OFCCP had selected B&H's Brooklyn Navy Yard Warehouse for a compliance review under Executive Order 11246, the Rehabilitation Act, the VEVRAA, and their

implementing regulations (“Scheduling Letter”), attached hereto as **Exhibit A**. The Scheduling Letter was approved by the Office of Management and Budget and bore OMB No. 1250-0003.

41. On February 27, 2015, OFCCP issued to B&H a notice to show cause why enforcement proceedings should not be initiated based upon its findings of the above-cited violations of the Executive Order, the Rehabilitation Act, the VEVRAA, and regulations issued pursuant thereto, attached hereto as **Exhibit B**.
42. OFCCP has attempted to secure voluntary compliance through means of conciliation and persuasion. As part of these conciliation efforts, OFCCP provided evidence to B&H, including statistical evidence, demonstrating that female individuals, Hispanic individuals, Black individuals, and Asian individuals at the Brooklyn Navy Yard Warehouse were being discriminated against in hiring, compensation, and/or promotion because of their race, color, sex, and/or national origin. These efforts were unsuccessful.

WHEREFORE, plaintiff OFCCP prays for a Decision and Order pursuant to 41 C.F.R. §§ 60-30.27 and 60-30.30, permanently enjoining B&H, its successors, officers, agents, servants, employees, divisions, subsidiaries, and all persons in active concert or participation with it from:

- (1) failing and refusing to comply with the requirements of the Executive Order, the Rehabilitation Act, the VEVRAA, and regulations issued pursuant thereto;
- (2) discriminating against female individuals in hiring based on their sex;
- (3) discriminating against Black individuals in hiring based on their race, color, or national origin;
- (4) discriminating against Asian individuals in hiring based on their race, color, or national origin;
- (5) discriminating against Hispanic workers in compensation based on their race, color, or national origin;

(6) discriminating against Hispanic workers in promotion based on their race, color, or national origin;

(7) failing to identify and provide complete relief to the affected female individuals, Hispanic individuals, Asian individuals, and Black individuals including, but not limited to, lost wages, interest, front wages, salary adjustments, fringe benefits, seniority, and all other lost benefits of employment resulting from B&H's discrimination in hiring, compensation, and promotion; and

(8) failing to ensure and maintain a work environment free of harassment, intimidation, and coercion. Moreover, B&H shall be required to take at least the following actions:

(a) develop a corporate-wide, zero-tolerance policy prohibiting harassment, intimidation, threats, retaliation, and coercion against any employee at any worksite. B&H's zero-tolerance policy will be in writing and will list the name, job title, and telephone number of the management official who is responsible and accountable for the company's compliance with EEO and affirmative action obligations and include a detailed description of the process for employees to make complaints concerning allegations of harassment, intimidation, retaliation, and coercion based on race, color, religion, sex, national origin, disability, or protected veteran status. Additionally, B&H will distribute such policy in English and Spanish to all its employees and post and display the policy in both English and Spanish in a prominent location at each and every worksite where there are employees of B&H;

(b) provide to all B&H's managers and supervisors, and separately, to all B&H's other employees, training on equal opportunity and on the identification and prevention of harassment based on race, color, religion, sex, national origin, disability, or protected veteran status;

(c) in no way retaliate, harass, or engage in any form of reprisal against any of its employees for opposing harassment or other forms of discrimination or

participating in any investigation or inquiry into allegations of harassment or discrimination;

(d) monitor all worksites where B&H's employees are working for the presence of any forms of harassment, intimidation, or coercion based on race, color, religion, sex, national origin, disability, or protected veteran status, take corrective action to eliminate any such harassment, intimidation, or coercion found, and document monitoring and any corrective action taken;

(e) identify and inform employees of the name, job title, and telephone number of the B&H official for employees to contact to report and/or secure relief from such harassment;

(f) install and maintain appropriate physical facilities for female employees; and

(g) ensure that facilities provided for employees, including but not limited to restrooms, are not segregated, de facto or otherwise, on the basis of race, color, or national origin.

In the event B&H fails to provide relief as ordered, B&H will be subject to the following:

(1) an Order canceling all of its Government contracts and those of its officers, agents, successors, divisions and subsidiaries, and persons in active concert or participation with it, and declaring said persons and entities ineligible for the extension or modification of any such Government contracts; and

(2) an Order debarring B&H and its officers, agents, successors, divisions and subsidiaries, and persons in active concert or participation with it from entering into future Government contracts until such time as B&H satisfies the Director of OFCCP that it has undertaken efforts to remedy its prior noncompliance and is currently in compliance with the provisions of the Executive Order, the Rehabilitation Act, the VEVRAA, and regulations issued pursuant thereto.

Plaintiff further prays for such other relief as justice may require.

DATED: February 24, 2016
New York, New York

M. PATRICIA SMITH
Solicitor of Labor

JEFFREY ROGOFF
Regional Solicitor

SUMMER SILVERSMITH
Attorney

BY:


DUSTIN SaldARRIAGA
Attorney

U.S. Department of Labor
Attorneys for Plaintiff

EXHIBIT A

U.S. Department of Labor

Office of Federal Contract Compliance Programs
26 Federal Plaza, Rm. 36-116
New York, NY 10278-0002
Telephone No. (212) 264-7742
Fax No. (212) 264-8166



OMB NO. 1250-0003
Expires 1/31/13

**VIA CERTIFIED MAIL
70062760000216946569
RETURN RECEIPT REQUESTED**

January 31, 2013

Irvin Fisher
Manager
Brooklyn Navy Yard Warehouse
63 Flushing Avenue
Building 664
Brooklyn, New York 10016

Dear Mr. Fisher:

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) has selected your establishment located at 63 Flushing, Avenue, Building 664, Brooklyn, New York 10016 for a compliance review under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, and their implementing regulations at 41 CFR Chapter 60. In addition, the review will include an examination of your establishment's compliance with the Federal Contractor Veterans' Employment Report (VETS-100) requirements (38 U.S.C. 4212(d)).

OFCCP will conduct the compliance review as described in the regulations at 41 CFR 60-1.20(a)(1) and 60-250.60(a)(1), 60-300.60, and 60-741.60, which outline the three possible phases of the process. These phases may include a desk audit, an onsite review, and an offsite analysis.

For the desk audit, please submit the following information: (1) a copy of your Executive Order Affirmative Action Program (AAP) prepared according to the requirements of 41 CFR 60-1.40 and 60-2.1 through 602.17*; (2) a copy of your Section 503/38 U.S.C. 4212 AAP(s) prepared according to the requirements of 41 CFR Parts 60-741 and 41 CFR Parts 60-250 and/or 60-300, respectively; and (3) the support data specified in the enclosed Itemized Listing.

OFCCP will treat the information you submit in response to this letter as sensitive and confidential to the maximum extent permitted under the Freedom of Information Act. The findings OFCCP makes during the desk audit generally will determine whether an onsite review will be necessary, and if so, whether the onsite review will focus on one, two, or several issues. If an onsite review is necessary, we will notify you.

You should note that 41 CFR 60-2.2 authorizes the initiation of enforcement proceedings if the materials you submit for desk audit do not represent a reasonable effort* to meet the requirements of the regulations.

Please submit your AAPs and the support data specified in the enclosed Itemized Listing to the address listed on page one of this letter as soon as possible, but no later than 30 days from the date of your receipt of this letter. We encourage you to submit as much information as possible in electronic format as doing so may reduce the amount of time it takes to complete our review.

If you have any questions concerning the compliance review, please feel free to contact Compliance Office Navelle Wilson at (212) 264-7742.

Sincerely,



EDUARDO FONTAINE
District Director
New York District Office &
Caribbean Field Station

Cc: David Eisenberg, General Counsel

Enclosure: Itemized Listing

***See Itemized Listing, "NOTE 1."**

NOTE: The authority for requesting the following information is Executive Order (EO) 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended, 38 U.S.C. 4212. The information will be used in the compliance evaluation process. Furnishing the requested information is required. Failure to furnish the requested information may constitute noncompliance with the contractor's obligations per the above authorities.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1250-0003. The time required to complete this information collection is estimated to average 28.35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send any comments concerning this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Federal Contract Compliance Programs, Room C-3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

ITEMIZED LISTING

NOTE 1: The Executive Order AAP submission must demonstrate a reasonable effort to comply with 41 CFR Part 60-2. To do so, at a minimum, you must submit the following elements.

Both the AAP and support data are essential to conduct the desk audit phase of the compliance review. If any of the following information is computerized, you may submit it in an electronic format.

Executive Order AAP:

1. An organizational profile prepared according to 41 CFR 60-2.11.
2. The formation of job groups (covering all jobs) consistent with criteria given in 41 CFR 60-2.12;
3. For each job group, a statement of the percentage of minority and female incumbents, as described in 41 CFR 60-2.13;
4. For each job group, a determination of minority and female availability that considers the factors given in 41 CFR 602.14(c) (1) and (2);
5. For each job group, the comparison of incumbency to availability, as explained in 41 CFR 60-2.15.
6. Placement goals for each job group in which the percentage of minorities or women employed is less than would be reasonably expected given their availability, consistent with 41 CFR 60-2.16.

Support Data

7. A copy of your Employer Information Report EEO-1 (Standard Form 100 Rev., see 41 CFR 60-1.7) for the last three years.
8. A copy of your collective bargaining agreement(s), if applicable. Please also include any other information you have already prepared that would assist us in understanding your employee mobility system(s), e.g., promotion, etc.
9. Information on your affirmative action goals for the preceding AAP year and, where applicable (see below), progress on your goals for the current AAP year. See 41 CFR 60-1.12(b), -2.1(c) and -2.16.

ITEMIZED LISTING (continued)

- 2 -

For the preceding AAP year, this report must include information that reflects:

- (a) job group representation at the start of the AAP year, (i.e., total incumbents, total minority incumbents, and total female incumbents);
- (b) the percentage placement rates (% goals) established for minorities and/or women at the start of the AAP year; and
- (c) the actual number of placements (hires plus promotions) made during the AAP year into each job group with goals (i.e., total placements, total minority placements, and total female placements). For goals not attained, describe the specific good faith efforts made to achieve them.

If you are six months or more into your AAP year on the date you receive this listing, please also submit information that reflects progress on goals established in your current AAP, and describe your implementation of action-oriented programs designed to achieve these goals (see 41 CFR 60-2.17(c)).

10. Data on your employment activity (applicants, hires, promotions, and terminations) for the preceding AAP year and, if you are six months or more into your current AAP year when you receive this listing, for the current AAP year. These data must be presented either by job group (as defined in your AAP) or by job title (see 41 CFR 60-3.4 and 3.15).
 - a. Applicants and Hires: The regulations at 41 CFR 60-2.17(b) and (d) require an analysis of your selection process, including whether the process eliminates a significantly higher percentage of minorities or women than non minorities or men.

For each job group or job title, this analysis must consist of the total number of applicants and the total number of hires, as well as the number of minority and the number of female applicants and hires.

However, if some of your job groups or titles (most commonly, entry-level) are filled from the same applicant pool, you may consolidate your applicant data (but not hiring data) for those job groups or titles.

For example, where applicants expressly apply for or would qualify for a broad spectrum of jobs (such as "Production," "Office," etc.) that includes several job groups, you may consolidate applicant data.

- b. Promotions: The regulations at 41 CFR 60-2.17(b) and (d) require an analysis of your promotion practices to determine if upward mobility of minority or female employees is occurring at a lesser rate (compared to workforce mix) than non minority or male employees.

ITEMIZED LISTING (continued)

- 3 -

For each job group or job title, this analysis must consist of the total number of promotions, as well as the number of minority and the number of female promotions.

Please note that:

- (1) If you present promotions by job group, indicate how your company defines promotions and the basis on which the data were compiled (e.g., promotions to the job group, from and/or within the job group, etc.), or
- (2) If you present promotions by job title, include the department and job group from which and to which the person(s) was promoted.

- c. Terminations: The regulations at 41 CFR 60-2.17(b) and (d) require an evaluation of the degree to which non discrimination policy is carried out with respect to employee terminations.

For each job group or job title, this analysis must consist of the total number of employee terminations, as well as the number of minority and the number of female terminations.

Please note that if you present terminations by job title, include the department and job group from which the person(s) terminated.

11. Please provide annualized compensation data (wages, salaries, commissions, and bonuses) by either salary range, rate, grade, or level showing total number of employees** by race and gender and total compensation by race and gender. Present these data in the manner most consistent with your current compensation system. If you maintain the information in electronic format, please submit in that format. See 41 CFR 60-1.4(a)(1). You may also include any other information you have already prepared that would assist us in understanding your compensation system(s). Alternatively, under the voluntary guidelines for self-evaluation of compensation practices, 71 Fed. Reg. 35114 (June 16, 2006), you have the option of seeking compliance coordination. If you so choose, you need not submit the annualized compensation data outlined in Item 11. However, you must notify OFCCP that you "seek compliance coordination under the voluntary OFCCP compensation self-evaluation guidelines."

**For this purpose, the method used to determine employee totals by the contractor should be the same as that used to determine employee totals in the organizational profile for the AAP.

EXHIBIT B

U.S. Department of Labor

Office of Federal Contract
Compliance Programs
New York District Office
26 Federal Plaza, Room 36-116
New York, NY 10278-0002
(212) 264-7742
(212) 264-8166 FAX



Via Certified Mail
7003 0500 0003 0802 8608
Return Receipt Requested

February 27, 2015

Mr. Sam Goldstein
Chief Executive Officer
B&H Foto & Electronics Corp.
420 Ninth Avenue
New York, New York 10001

RE: Compliance Evaluation of B&H Foto & Electronics Corporation (aka B&H Photo Video)
at Brooklyn Navy Yard, New York, NY, OPCCP Case No. R00180228

Dear Mr. Goldstein:

On March 31, 2014, the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), sent you a Notice of Violations (NOV) specifying violations found during our compliance evaluation at your B&H Foto location (B&H Foto) at the Brooklyn Navy Yard facility, Brooklyn, New York.

As detailed below, we have attempted to conciliate and reach a satisfactory resolution of outstanding violations to no avail.

On June 9, 2014, OFCCP met with the General Counsel of B&H Foto and its outside counsel, the Jackson Lewis law firm, to discuss the NOV and conciliate the case. After this meeting, Jackson Lewis agreed to provide a settlement proposal to resolve the violations, and provide data that they said would rebut the compensation and promotion violations cited in the NOV. When they provided the rebuttal, B&H Foto stated that an EEOC consent decree filed in 2009 precluded OFCCP from recovering what B&H Foto claimed were many of the same violations. This is because B&H Foto believed that the EEOC had deemed their pay practices with regard to Hispanic employees to be non-discriminatory, for the period which the company was sending the EEOC quarterly reports detailing the pay data of its employees, which was from 2007 to 2012. Attorney Matthew Camardella of Jackson Lewis also stated that the employees who were also class members in the consent decree who received compensation were red-flagged, and that the non-minorities' pay was frozen at the rates they were at the time the Consent Decree was filed in 2009.

As a follow up to the June 9 meeting, on July 11, 2014 Regional Director (RD) Diana Sen spoke to Jackson Lewis stating that the consent decree did not in any way limit B & H Foto's liability

for the violations alleged in the Notice of Violations. She requested that B&H Foto provide a settlement offer. On July 23, 2014, the RD spoke to Attorney Camardella who indicated he was working to procure the necessary documents from his client in preparation for a follow up conciliation meeting with OFCCP.

Jackson Lewis provided a partial response to the NOV on August 14, 2014. The response only addressed the NOV's technical violations but also stated that Jackson Lewis was working to respond to discrimination violations 2-5 and 7-9 on the NOV.

Jackson Lewis provided a rebuttal to the remaining violations on October 23, 2014, asking OFCCP to rescind all discrimination violations. OFCCP declined to rescind all discrimination violations because B&H Foto's arguments were countered by the evidence and instead requested to meet again in-person with the company to conciliate the matter.

Another conciliation meeting was held on November 24, 2014 at the OFCCP Regional Office. OFCCP presented its case to the B&H Foto general counsel and Jackson Lewis Attorney Camardella. B&H Foto agreed to respond with another settlement offer by December 5, 2014. B&H Foto made what it termed a "good faith offer" of approximately \$112,000 that only partially addressed the hiring violations. OFCCP held a follow up conciliation conference call on December 15, 2014, with Jackson Lewis who told the RD Sen and Acting Deputy RD Mike Downing that the \$112,000 offer was a "take it or leave it good faith offer." The offer was rejected by OFCCP. Nonetheless, Jackson Lewis requested a victim list and a breakdown of settlement amounts for each category. This information was provided to Attorney Camardella on December 19, 2014. At that time, OFCCP gave B&H Foto one last opportunity to further conciliate OFCCP's findings by the end of December 2014. On December 30, 2014, Jackson Lewis stated that they would need more time to respond with a settlement offer and RD Sen provided them with an extension until January 6, 2015. Although Jackson Lewis requested yet another extension on January 6, 2015, RD Sen was unable to give them an extension because she was referring the matter to the Solicitor's Office for enforcement. She welcomed B&H Foto to provide a settlement offer after January 6, 2015 and stated that OFCCP would consider a serious good faith settlement offer at any time before and even after litigation is filed. To date, B&H Foto has not provided an additional settlement offer.

As detailed above, OFCCP has made many attempts to conciliate the violations listed on the NOV without avail. OFCCP has provided to Jackson Lewis a detailed written response to the arguments raised in its letters addressing the violations. Despite all of these attempts, our conciliation efforts have thus failed to resolve the violations.

Consequently, we are issuing this Notice to Show Cause, within 30 calendar days of your receipt of this Notice, why enforcement proceedings should not be initiated pursuant to 208 and 209 of Executive Order 11246, as amended, as implemented by 41 CFR 60-1.26.

The violations at issue are listed in the enclosure. You are required to correct these violations within 30 calendar days of your receipt of this Notice or we shall recommend the initiation of enforcement proceedings.

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact me at 646-264-3170 to schedule a meeting or telephone conference.

Sincerely,



DIANA S. SEN
OFCCP Northeast Regional Director

Enclosure: 1) Revised Notice of Violations
2) Multiple Regression Results

Cc: Matthew Camardella, Esq.

REVISED NOTICE OF VIOLATIONS

1. **VIOLATION:** B&H Foto failed to comply with its obligations to ensure that facilities provided for employees are in such a manner that segregation on the basis of race, ethnicity, color, religion, sex or national origin cannot result. Specifically, B&H Foto failed to ensure that work areas and restrooms were not segregated in violation of 41 CFR 60-1.8.

CORRECTIVE ACTION: B&H Foto must ensure that its facilities for employees, including, but not limited to restroom facilities, are not segregated on the basis of race, ethnicity, color, religion, sex or national origin.

2. **VIOLATION:** OFCCP finds B&H Foto's selection processes discriminatory. B&H Foto hired zero females into Job Group 801 positions. In making its finding of discrimination, OFCCP relied upon the complete absence of female employees and exclusive word-of-mouth recruitment conducted by B&H Foto, along with other evidence of applicant chilling, and did not find any legitimate explanation for the consistent failure to hire women. B&H Foto kept no applications despite being put on notice of their obligations in past compliance evaluations to maintain application and selection procedures in accordance with the requirements of 41 CFR 60-1.12 (a)(d), 41 CFR 60-3, 41 CFR 60-300.80(a) and 41 CFR 60-741. Accordingly, OFCCP presumes B&H destroyed or failed to preserve these records because they were unfavorable to B&H Foto.

B&H Foto at this facility has zero female employees. B&H Foto's practices have had a chilling effect on female applicants. B&H Foto took no affirmative action to recruit women to apply for Job Group 801 positions for which B&H Foto has previously excluded women in violation of 41 CFR 60-2.6 (a). OFCCP discovered that B&H Foto fails to provide separate restrooms and necessary changing facilities for the use of female employees in violation of 41 CFR 60-1.4 (a) (1) and 41 CFR 60-20.3(e).

In light of B&H Foto's failure to post positions; its reliance upon employee referral and word-of-mouth recruitment; lack of eligibility criteria and inconsistent application of subjective/informal interview and selection processes, the decision-making process must be analyzed as one employment practice. This analysis of B&H Foto's selection practices reveals disproportionate hiring rates adverse to female applicants for Job Group 801 positions. Personnel activity data provided by B&H Foto for the period of January 31, 2011 to January 31, 2013 established that B&H Foto hired 101 males and zero females into the 801 Job Group. Based on availability statistics for the New York City MSA, this disproportionate hiring rate is statistically significant at the level of 4.09 standard deviations with a shortfall of 15 female hires. Additionally, because B&H Foto failed to list bona fide employment openings with the State of New York, the state was unable to refer 2,581 registered and qualified female applicants to B&H Foto during the review period.

Accordingly, OFCCP finds that B&H Foto discriminated against 2,581 female workers who were not recruited for nor hired into Job Group 801 positions because of their gender, in violation of 41 CFR 60-1.4(a)(1).

CORRECTIVE ACTION: B&H Foto must: (a) attempt to locate all 2,581 Female Class Members and provide those located with a make whole remedy, including back pay and interest; (b) make job offers to Female Class Members until 15 are hired at the current rate of pay with retroactive benefits; (c) prevent retaliation, harassment and any form of reprisal or adverse action against the Class Members based on or in relation to the terms of this Remedy; (d) review B&H Foto's selection process and eliminate those practices that led to the discrimination; (e) develop procedures to review, at least annually, the selection process for the purpose of ensuring nondiscrimination; and (f) provide training on its equal employment opportunity programs for all persons involved in the selection process; and (g) take action to ensure that this violation ceases and does not recur.

Additionally, B&H Foto must: (h) list on an ongoing basis all bona fide employment openings, as defined by 41 CFR 60-300.5(a) 2 and 6, with New York State Job Bank or with the New York Department of Labor office serving the location where openings occur; (i) cease primary dependence on B&H Foto's word-of-mouth and employee referral recruitment practices that fail to produce a diverse pool of applicants; and (j) contact the sources listed below to recruit a diverse pool of applicants.

Women For Hire

www.womenforhire.com
Attn: Tory Johnson-CEO
155 W. 72nd Street, Suite 403
New York, NY 10023
(212) 290-2600

Nontraditional Employment for Women

www.new-nyc.org
Attn: Amy Peterson- President
240 W. 20th Street
New York, NY 10011
(212) 627-6252

YMCA/ Women's Empowerment Network

www.ywcanyc.org/wen
Attn: Anne Alfred
50 Broadway, 13th Floor
New York, NY 10004
(212) 735-9743

3. **VIOLATION:** OFCCP finds B&H Foto's selection processes discriminatory. B&H Foto hired zero Blacks into Job Group 801 positions. In making its finding of discrimination, OFCCP relied upon the complete absence of Black employees and exclusive word-of-mouth recruitment conducted by B&H Foto, along with other evidence of applicant chilling, and did not find any legitimate explanation for the consistent failure to hire Blacks. B&H Foto kept no applications despite being put on notice of their obligations in past compliance evaluations to maintain application and selection procedures in accordance with the requirements of 41 CFR 60-1.12 (a)(d), 41 CFR 60-3, 41 CFR 60-300.80(a) and 41 CFR 60-741. Accordingly, OFCCP presumes B&H destroyed or failed to preserve these records as they were unfavorable to B&H Foto.

B&H Foto's selection practices resulted in disproportionate hiring rates adverse to Black applicants for Job Group 801 positions. Personnel activity data provided by B&H Foto for the

period of January 31, 2011 to January 31, 2013 established that B&H Foto hired 101 Hispanics and zero Blacks into the 801 Job Group. Based on availability statistics for the New York City MSA, this disproportionate hiring rate is statistically significant at the level of 4.65 standard deviations with a shortfall of 18 Black hires. Additionally, because B&H Foto failed to list bona fide employment openings with the State of New York, the state was unable to refer 6,180 registered and qualified Blacks applicants to B&H Foto during the review period.

Accordingly, OFCCP finds that B&H Foto discriminated against 6,180 Black workers who were not recruited nor hired into Job Group 801 positions because of their race, in violation of 41 CFR 60-1.4(a)(1).

CORRECTIVE ACTION : B&H Foto must: (a) attempt to locate all 6,180 Black Class Members and provide those located with a make whole remedy, including back pay and interest; (b) make job offers to Black Class Members until 18 are hired at the current rate of pay with retroactive benefits; (c) prevent retaliation, harassment and any form of reprisal or adverse action against the Class Members based on or in relation to the terms of this Remedy; (d) review B&H Foto's selection process and eliminate those practices that led to the discrimination; (e) develop procedures to review, at least annually, the selection process for the purpose of ensuring nondiscrimination; and (f) provide training on its equal employment opportunity programs for all persons involved in the selection process; and (g) take action to ensure that this violation ceases and does not recur.

Additionally, B&H Foto must: (h) list on an ongoing basis all bona fide employment openings, as defined by 41 CFR 60-300.5(a) 2 and 6, with New York State Job Bank or with the New York Department of Labor office serving the location where openings occur; (i) cease primary dependence on B&H Foto's word-of-mouth and employee referral recruitment practices that fail to produce a diverse pool of applicants; and (j) contact the sources listed below to recruit a diverse pool of applicants.

Brooklyn Job Corps Center
Attn: Juan DeJesus, Career Transition
Specialist
585 DeKalb Avenue
Brooklyn, NY 11205
Telephone: (718) 623-4000

**Brooklyn Navy Yard Development
Corporation**
63 Flushing Avenue Bldg 92
Brooklyn, NY 11205
Telephone: (718) 907-5992

4. **VIOLATION**: OFCCP finds B&H Foto's selection processes discriminatory. B&H Foto hired zero Asians into Job Group 801 positions. In making its finding of discrimination, OFCCP relied upon the complete absence of Asian employees and exclusive word-of-mouth recruitment

conducted by B&H Foto, along with other evidence of applicant chilling, and did find any legitimate explanation for the consistent failure to hire Asians. B&H Foto kept no applications despite being put on notice of their obligations in past compliance evaluations to maintain application and selection procedures in accordance with the requirements of 41 CFR 60-1.12 (a)(d), 41 CFR 60-3, 41 CFR 60-300.80(a) and 41 CFR 60-741. Accordingly, OFCCP presumes B&H destroyed or failed to preserve these records because they were unfavorable to B&H Foto.

B&H Foto's selection practices resulted in disproportionate hiring rates adverse to Asian applicants for Job Group 801 positions. Personnel activity data provided by B&H Foto for the period of January 31, 2011 to January 31, 2013 established that B&H Foto hired 101 Hispanics and zero Asians into the 801 Job Group. Based on availability statistics for the New York City MSA, this disproportionate hiring rate is statistically significant at the level of 2.16 standard deviations with a shortfall of 5 Asian hires. Additionally, because B&H Foto failed to list bona fide employment openings with the State of New York, the state was unable to refer 750 registered and qualified Asians applicants to B&H Foto during the review period.

Accordingly, OFCCP finds that B&H Foto discriminated against 750 Asian workers not recruited for or hired into Job Group 801 positions because of their race, in violation of 41 CFR 60-1.4(a)(1).

CORRECTIVE ACTION: B&H Foto must: (a) attempt to locate all 750 Asian Class Members and provide those located with a make whole remedy, including back pay and interest; (b) make job offers to Asian Class Members until 5 are hired at the current rate of pay with retroactive benefits; (c) prevent retaliation, harassment and any form of reprisal or adverse action against the Class Members based on or in relation to the terms of this Remedy; (d) review B&H Foto's selection process and eliminate those practices that led to the discrimination; (e) develop procedures to review, at least annually, the selection process for the purpose of ensuring nondiscrimination; and (f) provide training on its equal employment opportunity programs for all persons involved in the selection process; and (g) take action to ensure that this violation ceases and does not recur.

Additionally, B&H Foto must: (h) list on an ongoing basis all bona fide employment openings, as defined by 41 CFR 60-300.5(a) 2 and 6, with New York State Job Bank or with the New York Department of Labor office serving the location where openings occur; (i) cease primary dependence on B&H Foto's word-of-mouth and employee referral recruitment practices that fail to produce a diverse pool of applicants; and (j) contact the sources listed below to recruit a diverse pool of applicants.

Chinatown Manpower Project, Inc.
70 Mulberry Street, 3rd Floor
New York, New York 10013
Tel: (212) 571-1690
Fax: (212) 571 1686
Email: cmpny@mindspring.com

Asian Americans for Equality
108-110 Norfolk Street
New York, New York 10002
Tel: (212) 979-1108
Fax: (212) 979-2219
Email: www.aafe.org

5. **VIOLATION:** At least since January 1, 2011 and continued thereafter, B&H Foto discriminated against Hispanics employed as Shipping Workers in 801 Job Group positions by paying them less than comparable Whites employed in 801 Job Group positions. OFCCP performed a regression analysis of base pay, based on information gathered during the compliance review, and found statistically significant race-based pay disparities after controlling for race and explanatory factors determined to be legitimate based on the investigation to date. Copies of the regression analysis conducted by OFCCP are attached hereto. In addition to base pay, OFCCP found evidence that Hispanics were excluded from certain workplace credits and perks available to White employees. Additionally, B&H Foto had no formal compensation system in place or oversight over subjective compensation practices that appear particularly susceptible to discrimination.

Accordingly, OFCCP finds that B&H Foto has discriminated against 54 Hispanic employees because of their race and/or ethnicity, in violation of 41 CFR 60-1.4(a)(1).

CORRECTIVE ACTION: B&H Foto must immediately modify its compensation system in order to eliminate the disparity between Hispanics and Whites in Shipping Worker, 801 Job Group positions. B&H Foto must provide back pay plus interest calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes for all Hispanics employed in Shipping Worker, 801 Job Group positions (current and former) to remedy the compensation discrimination that began no later than January 1, 2011 and continued thereafter. Additionally, B&H Foto must make salary adjustments to remedy any current pay disparity and provide all other retroactive monetary employment benefits. B&H Foto must also evaluate, modify or alter the compensation system for the 801 Job Group position in order to ensure all those employed in this position are paid in a non-discriminatory manner, provide training to its managers and all other employees involved in the compensation process, and develop, as well as implement, procedures to ensure proper application and self-monitoring of the revised compensation system.

6. **VIOLATION:** At least since January 1, 2012 (snapshot date) and continued thereafter, B&H Foto discriminated against Hispanics employed in 800 Job Group positions by paying them less than comparable Whites employed in 800 Job Group positions. Compensation data provided by B&H Foto revealed that B&H Foto provided lower compensation, lower bonuses and lower holiday pay to three Hispanic employees than to a similarly situated White employee in an 800 Job Group position. In addition to base pay, OFCCP found evidence that Hispanics were excluded from certain workplace credits and perks available to White employees. Time with B&H Foto, time in the current job title, and differences in job duties did not explain the disparities in compensation. All employees have similar job duties and have performed above an acceptable level of performance.

Accordingly, OFCCP finds that B&H Foto discriminated against three Hispanic employees employed in 800 Job Group positions because of their race and/or ethnicity in violation of 41 CFR 60-1.4 (a) (1).

CORRECTIVE ACTION: B&H Foto must provide back pay plus interest calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes for all Hispanics employed in 800 Job Group positions (current and former) to remedy the compensation discrimination that began no later than January 1, 2012 and continued thereafter. Additionally, B&H Foto must make salary adjustments to remedy any current pay disparity and provide all other retroactive monetary employment benefits. B&H Foto must also evaluate, modify or alter the compensation system for the 800 Job Group position in order to ensure all those employed in this position are paid in a non-discriminatory manner, provide training to its managers and all other employees involved in the compensation process, and develop, as well as implement, procedures to ensure proper application and self-monitoring of the revised compensation system.

7. **VIOLATION:** During the compliance evaluation of B&H Foto, OFCCP determined that B&H Foto's placement and promotion practices relegated Hispanic workers to lower status and lower paying 800 and 801 laborer job group positions. OFCCP's investigation revealed that B&H Foto has an overrepresentation of Hispanics in 800 and 801 laborer job group positions and a near exclusion of Hispanics in 500 and 501 clerical job group positions. Although, B&H Foto's workforce consisted of 69.6% Hispanic incumbents, the 500 and 501 clerical job group positions excluded 99% of Hispanic incumbents. B&H Foto failed to afford equal employment opportunity for Hispanic incumbents to be placed into or to advance into higher status and higher paying 500 and 501 clerical job group positions. In making its finding of discrimination, OFCCP relied upon the near exclusion by B&H Foto of the predominantly Hispanic workforce from 500 and 501 clerical job group positions, B&H Foto's subjective criteria, and B&H Foto not promoting from within causing racial divisions in the workforce.

Specifically, personnel activity provided by B&H Foto for the period January 31, 2011 through January 31, 2013, revealed the following: from a qualified pool of 202 Hispanic incumbents, B&H Foto promoted 1 Hispanic (.005%) out of the laborer job group. During the same time period, from a qualified pool of 69 non-minority incumbents, B&H Foto promoted 23 non-minorities (33.3%). This disparity in promotion rates, which is adverse to Hispanic incumbents, is statistically significant at the level of 8.29 standard deviations with a shortfall of 16 Hispanic promotions.

B&H Foto's placement and promotion practices resulted in disparate treatment against a class of Hispanics. Accordingly, OFCCP finds that B&H Foto has discriminated against 201 Hispanic incumbent employees by failing to place them into higher paying positions because of their race and/or ethnicity, in violation of 41 CFR 60-1.4(a)(1).

CORRECTIVE ACTION: B&H Foto must provide 201 Class Members make whole remedies, including back pay, interest, and benefits. As promotions become available, B&H Foto must offer promotions to qualified Class Members until at least 16 Class Members are placed into mid-level 500 and 501 clerical job group positions at a comparable rate of pay to others performing these mid-level positions. B&H Foto must prevent retaliation, harassment and any other form of reprisal or adverse actions to the participants of the training and/or to Class Members; review its selection process and eliminate those promotion and placement policies or

practices that led to the discrimination. Also, B&H Foto must develop procedures to review, at least annually, the corporate-wide selection process for the purpose of ensuring nondiscrimination. B&H Foto must take action to ensure that this violation ceases and does not recur.

8. **VIOLATION:** During the compliance evaluation of B&H Foto, OFCCP determined that B&H Foto's placement and promotion practices prevented the advancement of Hispanics into the upper-level job group 101 management positions. Specifically, B&H Foto's denial of advancement to Hispanic incumbents into mid-level 500 and 501 clerical job group positions results in a barrier for Hispanic incumbents to advance into corporate-wide upper-level job group 101 management positions. This is evidenced by the complete absence of Hispanics in 101 management positions for workforce consisting of 69.6% incumbents. This is in violation of 41 CFR 60-1.4(a)(1).

CORRECTIVE ACTION: B&H must institute a corporate-wide job advancement training and manager development program for the Hispanic incumbents to be able to advance into upper-level job group 101 management positions. B&H Foto must prevent retaliation, harassment and any other form of reprisal or adverse actions to the participants of the training; review its selection process and eliminate those promotion and placement policies or practices that led to the discrimination. Also, B&H Foto must develop procedures to review, at least annually, the corporate-wide selection process for the purpose of ensuring nondiscrimination. B&H Foto must take action to ensure that this violation ceases and does not recur.

9. **VIOLATION:** During the review period of January 31, 2011 through December 31, 2013, B&H Foto failed to provide equal employment opportunity to female employees in their condition of employment. Specifically, OFCCP discovered that B&H Foto failed to provide separate restrooms and necessary changing facilities for use by female employees in violation of 41 CFR 60 1.4 (a) (1) and 41 CFR 60-20.3(e).

CORRECTIVE ACTION: B&H Foto will provide adequate toilet and changing facilities to female employees to guarantee privacy between the sexes in accordance with 41 CFR 60-20.3(e).

10. **VIOLATION:** B&H Foto failed to ensure and maintain a working environment free of harassment, intimidation, and coercion in all areas at which B&H Foto's employees are assigned to work 41 CFR 60-1.4 (a). Documented evidence revealed that B&H Foto failed to correct a hostile work environment free of harassment and intimidation at worksite locations at where B&H Foto employees are assigned to work. Specifically, B&H Foto managers have made employees endure excessive yelling, racist remarks, and degrading comments at the worksite.

CORRECTIVE ACTION: B&H Foto must: a) Notify all employees of B&H Foto's non-tolerance of harassment on any B&H Foto work site based on gender, race, ethnicity, religion and/or national origin; b) Identify the name, job title, and telephone number of the B&H Foto official to contact to report and/or secure relief from such harassment; c) Provide training at a

cost of no less than \$25,000 in Equal Employment Opportunity (EEO) and in the identification and prevention of harassment based on gender, race, ethnicity, religion and/or national origin, to B&H Foto's supervisory managers and supervisors, including any employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions and, separately, to B&H Foto's other employees, to see that this violation ceases; d) Update this training at least once a year; e) Maintain a working environment free from harassment, intimidation, and coercion at all sites and in all facilities at which B&H Foto's employees are assigned to work; and f) Document B&H Foto's monitoring of its work environment for the presence of any forms of harassment, intimidation, or coercion, including but not limited to verbal and visual displays to assure that this violation does not recur.

11. **VIOLATION:** B&H Foto failed to immediately list with the New York State job Bank or with the New York Department of Labor all employment openings that existed at the time of the execution of its federal contracts and those which occurred during the performance of its contracts, as required by 41 CFR 60-300.5(a) 2-6. B&H Foto failed to do this despite being put on notice of their obligations in past compliance evaluations.

CORRECTIVE ACTION: B&H Foto must: a) list on an ongoing basis all employment openings, as defined by 41 CFR 60-300.5(a) 2 and 6, with the New York State Job Bank or with the New York State Department of Labor office serving the location where openings occur; and b) undertake outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified disabled Veterans, recently separated Veterans, other protected Veterans and Armed Forces service medal Veterans, including the following resources:

Hire Vets First-NYC Workforce 1 Career Center

Attn: Gregory Jones
Veterans Representative
215 West 125th Street, 6th Floor
New York, NY 10027
Telephone: (516) 572-8452

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12. **VIOLATION:** B&H Foto failed to implement an accurate applicant tracking system for applicants and/or Internet applicants and hires in accordance with the requirements of 41 CFR 60-3.4 and 60-3.15. Specifically, during the period of January 31, 2011 through January 31, 2013, B&H Foto failed to collect race and gender data on applicants.

CORRECTIVE ACTION: B&H Foto must immediately begin to implement an updated and refined accurate applicant tracking system for all applicants and/or Internet applicants that permits B&H Foto to analyze its pool of applicants for: (a) Affirmative action purposes to monitor whether the process is yielding an adequate pool of qualified female applicants; and (b) Nondiscrimination purposes to monitor for disparate treatment or unlawful adverse impact in the selection process.

13. **VIOLATION:** B&H Foto failed to preserve personnel and employment records for a period of not less than two years from the date of a) the making of the record or b) personnel action involved, whichever occurred later. Specifically, during the period of January 31, 2011 through January 31, 2013, B&H Foto failed to preserve complete and accurate records of its application and selection procedures in accordance with the requirements of 41 CFR 60-1.12 (a)(d), 41 CFR 60-3, 41 CFR 60-300.80(a) and 41 CFR 60-741.80(a).

CORRECTIVE ACTION: B&H Foto must ensure that its records are collected and maintained in accordance with the requirements of 41 CFR 60-1.12 and 41 CFR 60-3, 41 CFR 60-300.80(a) and 41 CFR 60-741.80(a).

14. **VIOLATION:** B&H Foto failed to examine B&H Foto's total applicant/hiring process, promotion process and termination process for adverse impact based on gender, race and/or ethnicity. 41 CFR 60-3.4 and 41 CFR 60-3.15A (2).

CORRECTIVE ACTION: B&H Foto must perform adverse impact determinations of its employment processes, at least annually. Where overall adverse impact of an employment process occurs, B&H Foto must maintain and have available for inspection, records or other information showing which components of that process have an adverse impact. B&H Foto must take corrective action, when appropriate, if adverse impact occurs. B&H Foto must maintain and have available the aforementioned information and continue to collect such information for at least two years after the adverse impact has been eliminated.

15. **VIOLATION:** B&H Foto failed to perform in-depth analyses of its total employment processes to determine whether and where impediments to equal employment opportunity exist. B&H Foto failed to develop and implement an auditing system to periodically measure the effectiveness of its total affirmative action program in violation of 41 CFR 60-2.17(b) and (d).

CORRECTIVE ACTION: B&H Foto must perform corporate-wide in-depth analyses of its total employment processes to determine whether and where impediments to equal employment opportunity exist. B&H Foto will evaluate: a) Personnel activity, including applicant flow, hires, terminations, promotions, and other personnel actions, to determine whether there are selection disparities; and b) Selection, recruitment, referral, and other personnel procedures to determine whether they result in disparities in the employment or advancement of minorities or women and c) Compensation system(s) to determine whether there are gender, race or ethnicity based disparities.

B&H Foto will incorporate these analyses and determinations into B&H Foto's current AAPs. B&H Foto will update these analyses annually and incorporate them into B&H Foto's future AAPs.

Multiple Regression Results

OFCCP conducted multiple regression analysis on data provided by B&H Foto during the investigation to analyze the hourly pay rate of Shipping Workers in the 801 Job Group, using the natural log transformed base annual rate as a dependent variable. The regression analyses controlled for race, the most recent performance evaluations and time in company. All of the employees analyzed were exempt and full-time employees. As displayed in the table below, the results of the regression analyses showed a statistically significant pay disparity for Hispanic Shipping Workers.

Results of Regression Analysis: Shipping Workers						
Year	Position	Victims	SD	Model R Square	b-Coefficient	n
2011	Shipping Worker	Hispanic (44)	6.34	.8853	-0.34	51
2012	Shipping Worker	Hispanic (43)	6.30	.8819	-0.34	49
2013	Shipping Worker	Hispanic (54)	6.54	.9103	-0.28	61

CERTIFICATE OF SERVICE

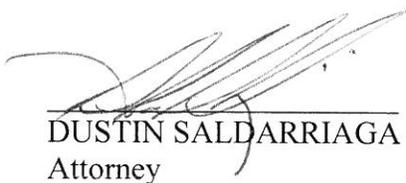
I certify that one copy of the foregoing ADMINISTRATIVE COMPLAINT has been served on the below-named individuals this 24 day of February, 2016, by sending said copy by electronic-mail and regular mail to:

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DUSTIN SALDARRIAGA
Attorney

U.S. Department of Labor