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June 17, 2016

VIA EMAIL (huang.agnes@dol.gov)
PRIVILEGED & CONFIDENTIAL

Ms. Agnes Huang
Assistant District Director
United States Department of Labor
Office of Federal Contract Compliance Programs
1640 S. Sepulveda Blvd, Ste 440
Los Angeles, CA 90025

Re: OFCCP Compliance Evaluation: Google Mountain View Facility

Dear Assistant District Director Huang:

Thank you for your time earlier this week. As you requested, we are writing on behalf of Google Inc. ("Google" or the "Company"), to summarize the Company's concerns regarding OFCCP's June 1, 2016 post-onsite requests for additional data, information and/or documentation related to compensation in connection with the above referenced compliance evaluation.

I. Brief Summary

As discussed on our June 14, 2016 conference call, OFCCP's June 1, 2016 requests for additional information related to compensation substantially increases the scope and scale of this compliance review. Since Google already has provided a significant amount of compensation data to OFCCP, including total compensation data for all 21,114 employees within Google's Mountain View affirmative action plan as of September 1, 2015, the Company understandably wishes to better understand the basis and need for the Agency's recent requests. To date, OFCCP has not disclosed any information about what compensation issues, if any, it has identified during the first eight months of this review. This lack of transparency unreasonably prevents Google from evaluating the relevance of the Agency's requests, working collaboratively with OFCCP to identify potential alternative, more efficient means of resolving such issues, and/or determining whether any reasonable limitations might be appropriate.

We outline below in greater detail Google's concerns with OFCCP's requests and ask that OFCCP agree to be more forthcoming regarding the issues, if any, it may have identified regarding compensation. In addition, as you requested, we have categorized the Agency's requests into five different groups in the hope of facilitating future collaborative discussions about the relevance and scope of the requests.

II. History of Audit Prior to OFCCP's Post-Onsite Data Requests

On September 30, 2015, OFCCP sent a scheduling letter to Google announcing a compliance evaluation of the Company's Mountain View facility. In accordance with the scheduling letter, Google submitted its current Executive Order 11246, Vietnam Era Veterans' Readjustment Act of 1974 and Section 503 of the Rehabilitation Act of 1973 affirmative action plans to the Agency for review. In addition, Google provided OFCCP with a complete response to Item 19 of the scheduling letter, providing 31 items of individualized compensation data for more than 21,000 employees.

OFCCP subsequently made a series of requests for additional information and documentation from Google, including, *inter alia*, a description of each item of compensation data included in the Item 19 submission, equity data for all employees, and various policies and procedures. In addition, OFCCP requested the applicant flow logs applicable to 27 of Google's job groups. Google has complied with all of these requests in full.¹

In March 2016, OFCCP requested a two day onsite to interview various Google management and human resources employees regarding the Company's policies and procedures related to compensation and hiring. Google fully cooperated with the Agency during the onsite, which took place on April 27, 2016 and April 28, 2016. OFCCP interviewed numerous management and human resources officials who provided the Agency with detailed, consistent and clear descriptions of Google's hiring and compensation processes.

III. Detailed Description of Google's Concerns with OFCCP's Post-Onsite Requests Related to Compensation

On June 1, 2016, OFCCP sent two separate post-onsite requests for additional information and documentation to Google. Google already has provided complete responses to the first set of requests, which sought additional information related to Google's hiring practices.

However, Google's concerns described in this letter relate to the second set of requests (hereinafter "the Second Set of Post-Onsite Requests") related to compensation. (For

¹ OFCCP also demanded a list of the names of all 21,114 employees contained in the Item 19 submission. Google objected to this request on the basis of relevance and confidentiality. Ultimately, OFCCP agreed not to require the submission of the names, but reserved its right to revisit the issue later in the audit.

case of reference, a copy of the Second Set of Post-Onsite Requests is attached hereto as Exhibit "A.") The Second Set of Post-Onsite Requests seeks the following: (1) 36 additional data points for each of Google's 21,114 employees on the September 1, 2015 current year snapshot; (2) a second compensation data base for the 19,539 Google employees on the September 1, 2014 prior year snapshot, including all factors previously requested, in addition to the 36 new data points requested on June 1, 2016; (3) six additional data points *as of the current date* for all Google employees in the workforce as of September 1, 2015; and (4) 19 additional document request/records related to both compensation and non-compensation personnel policies. The Second Set of Post-Onsite Requests include, without limitation, the name, personal contact information, complete salary and job history, education, prior experience, prior salary, date of birth, competing offers, locality, and numerous other data points for *all* of Google's employees within the Mountain View AAP as of both September 1, 2015 and September 1, 2014. (See Exhibit A for a complete list of all of items contained in the Second Set of Post-Onsite Requests). All told, OFCCP's Second Set of Post-Onsite Requests would require Google to produce well in excess of *two million* items of additional data to OFCCP by a due date of June 22, 2016.

On June 14, 2016, the parties held a teleconference to discuss Google's concerns with the relevance and sheer size of the Second Set of Post-Onsite Requests. During the call, Google noted that OFCCP's requests significantly and, perhaps, unnecessarily expand the scope and scale of this compliance evaluation, notwithstanding that the Agency had yet to disclose to Google the reasons for its requests or the existence of any issues related to the substantial compensation data already provided to the Agency. Understandably, Google respectfully requested OFCCP to provide a brief, but specific, description of the potential issues it had observed in the data provided to date. OFCCP responded that it was "not able to let [us] know exactly what [the Agency was] looking at." Google then requested OFCCP to at least identify the particular areas (e.g., job titles or job groups) where OFCCP was seeing issues, if any, as well as to identify the type of potential discrimination issues (e.g., gender, race, ethnicity issues). OFCCP responded that it had "no findings it was able to share," and that it would not limit the scope of its request in any way.

OFCCP's decision not to share any information regarding the compensation issues it has identified is extremely disappointing and runs contrary to OFCCP's recent pronouncements encouraging transparency between the Agency and federal contractors. Moreover, OFCCP cannot expand the scope of its investigation beyond the limitations set forth in Item 19 of the current Scheduling Letter without providing a reasonable basis for doing so. Google has the right to understand the specific nature and scope of the potential issues OFCCP claims to have identified to date before it undertakes such massive disclosure. The Company cannot be expected to take on faith the Agency's mere general statement that "issues" allegedly exist, without any description whatsoever of those same issues.

Accordingly, Google respectfully requests that the Agency identify: (1) the nature and extent of the purported issues, if any, OFCCP has found in the data/information already provided to the Agency, and (2) each specific area where these potential issues are found (e.g., a

list of the specific job groups, job titles, or other groupings where OFCCP purportedly has identified issues). We understand and do not object at this time to the fact that the Agency will not provide its actual analyses.

Google believes that such transparency is in the best interest of both parties. Not only is it consistent with the Agency's stated objective of fostering transparency between the Agency and contractors, but it will allow both parties to: (1) engage in a productive discourse regarding potential issues, (2) appropriately limit the investigation to areas where potential problems have been identified, (3) lessen the burden and costs of production for Google and unnecessary review by OFCCP; and (4) work to expeditiously resolve outstanding questions in a collaborative and efficient manner. Finally, open discourse facilitates a fair evaluation of the extent to which the Second Set of Post-Onsite Requests is warranted in light of any identified issues, and ensures that Google's due process and other rights are being appropriately protected.

IV. Categorization of Each Item of OFCCP's Second Set of Post-Onsite Requests

During the parties' June 14, 2016 teleconference, Google agreed to categorize each item in OFCCP's Second Set of Post-Onsite Requests into the following five groups in order to facilitate transparent discussions between the parties: (A) items irrelevant to OFCCP's investigation of compensation issues; (B) items not available or not readily available to Google and, therefore, carrying a high burden and cost of collection; (C) items needing clarification from OFCCP for Google to appropriately respond; (D) items Google already has provided to OFCCP; and (E) items Google is willing to provide to OFCCP, if available.

These categorizations are as follows:

A. Items Irrelevant to OFCCP's Investigation of Compensation Issues

- Current Compa Ratio
- Current Job Code
- Current Job Family
- Current Level
- Current Manager
- Current Organization
- Name
- Date of Birth
- Referral Bonus
- Market, Salary or Industry Surveys
- Employee Contact Information
- Public Access Files and LCAs Filed from 9/1/13 to 8/31/15

B. Items Not Available or Not Readily Available to Google and, Therefore, Carrying a High Burden and Cost of Collection²

- New Compensation Snapshot as of 9/1/2014
- Campus or Industry Hire
- Competing Offers
- Education
- Department Hired Into
- Long Term Incentive eligibility and grants
- Prior Experience
- Prior Salary
- Job and Salary History
- Equity Adjustments
- Short-Term Incentive Eligibility and Grants
- Starting Salary
- Starting Compa Ratio
- Listing of All Job Families Job Codes and Positions Within
- Hiring Manager
- Starting Job Code
- Starting Job Family
- Starting Level
- Starting Organization
- Starting Position/Title

C. Items Needing Clarification from OFCCP for Google to Appropriately Respond

- Market Target
- Screenshot and instruction on GComp, Workday, Prosper and Perf
- External/Internal Complaints Filed in Past Three Years
- Manager Guides for Compensation (Base, Merit, Stock Bonus, Performance Appraisals, Hiring)

D. Items Google Has Already Provided to OFCCP

- Bonus Earned
- Bonus Period Covered
- FMLA Policy

² Google acknowledges that if OFCCP clearly identifies specific issues with the compensation data it has submitted to OFCCP to date, that it may be appropriate for the Company to produce, to the extent available, some or all of the items listed in Section IV, Subsection B as they relate to the specific subset of employees identified by OFCCP as having been potentially impacted.

- Stock Monetary Value (Google has provided information sufficient for OFCCP to calculate a hypothetical value on the unvested stock)
- New Hire Guideline for Equity Award
- Total Cash Compensation (OFCCP can calculate from data already provided)
- Job Pay Level Listing/Education/Experience Equivalency

E. Items Google Is Willing to Provide to OFCCP, to the Extent Available and Not Already Provided

- Locality
- Market Reference Point
- Performance Ratings for Past Three Years.
- Target Bonus
- Bonus Targets for the Past Three Years
- Compensation Policies, Guidelines and Training Materials
- Employee Guide for Compensation, Performance Appraisals
- Merit Algorithm or Matrix for Past 3 Years
- Organizational Chart – Compensation, Global Business, People Operations
- Pay locality guide
- Performance Review Policy and Guidelines, and Training Materials
- Recruiter Guides – for Recruiting and Hiring

V. Conclusion

Based on the foregoing, Google respectfully requests that OFCCP review the substantial concerns the Company has outlined in detail above and provide the information related to any potential issues sought by the Company at this time. We are available to discuss this information with the Agency at its earliest convenience.

In the meantime, Google already has begun to collect the items, set forth in Section III, Subsection E above, to the extent they are available and have not already been provided, and will endeavor to produce them as soon as possible. Google will hold the remainder of OFCCP's Second Set of Post-Onsite Requests in abeyance pending the parties' future discussions regarding the issues set forth herein.

We appreciate the Agency's careful consideration of these issues and trust that reasonable solutions can be identified.

Very truly yours,

JACKSON LEWIS P.C.



Matthew J. Cardella

MJC/mjr

cc: Farha Haq Haq, (via e-mail - Haq.Farha@dol.gov)
Carolyn J. Mcham-Menchyk, (Mcham-Menchyk.Carolyn@dol.gov)
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U.S. Department of Labor

Office of Federal Contract
Compliance Programs
Los Angeles District Office
1640 S. Sepulveda Boulevard, Suite 440
Los Angeles, CA 90025



VIA EMAIL

June 23, 2016

Mr. Matthew Camardella
Attorney
Jackson Lewis P.C.
58 South Service Road, Suite 250
Melville, NY 11747

Re: Google, Inc. Compliance Evaluation

Dear Mr. Camardella:

We are in receipt of your June 17, 2016 letter in which you detailed Google's concerns regarding OFCCP's June 1, 2016 request for additional information.

As discussed during our June 14, 2016 telephone conference, OFCCP has the authority to request information that is relevant to a determination of whether a contractor has complied with the requirements of the Executive Order and its accompanying regulations. Again, at this stage of the compliance evaluation, OFCCP is unable to share any preliminary findings or internal analyses. We assure you the reason is not due to "lack of transparency" or to "unnecessarily expand the scope and scale of this compliance evaluation," as you have argued. Rather, during the onsite review, OFCCP learned that it was missing critical pieces of information necessary to properly assess the data and information provided by Google.

We will address each category of documents that were outlined in your June 17 response:

A. Items Irrelevant to OFCCP's Investigation of Compensation Issues

All items requested in OFCCP's June 1, 2016 letter, are based on information obtained during the onsite interviews and documents provided by Google. Based on the onsite interviews with Google's compensation managers, OFCCP learned that compa ratio, market or industry surveys and job families are important factors that affect compensation—however, these were factors deemed "irrelevant" in your letter to OFCCP. A federal contractor's submission of complete, accurate, and consistent data is not voluntary; rather, it is a contractual obligation. "Where a compliance evaluation has been initiated, all personnel and employment records...are relevant until OFCCP makes a final disposition of the evaluation." (41 CFR §60-1.12). Given the disclosure by Google managers of factors important to compensation, we do not agree with your position that providing the data items requested are irrelevant to this review.

B. Items Not Available or Not Readily Available to Google and, Therefore, Carrying a High Burden and Cost of Collection

According to interviews conducted onsite, most of the compensation factors requested by the agency are stored electronically. For instance, Ms. Soo Jin Park, HCM Project Manager, stated that Workday contains job history and compensation history. Additionally, Mr. Ionas Porges-Kiriakou, Product Manager for People View, stated that gHire contains the applicant's resume. Mr. Frank Wagner stated that prior pay for new hire would be the type of information recruiters obtain and it may be stored in the applicant tracking system. Mr. Porges-Kiriakou further explained that reports are created "by writing SQL code for fields in the reporting system by way of a query and it produces a report." Given that we are requesting electronically stored data and there are reporting functions available that will eliminate the need for manual data entry, we do not agree with your position that providing the data carries a high burden and cost of production. Google must indicate, with specificity, the burden or cost of our information request.

C. Items Needing Clarification from OFCCP for Google to Appropriately Respond

- Market target: Please confirm whether market target is equivalent to market reference point. If so, we will retract this item.
- Screenshot and instruction on use of gComp, Workday, Prosper and Perf: Please provide screenshots showing how the data is stored. Please also provide user instructions for each system.
- External/Internal Complaints Filed in Past Three Years: Please provide all EEO complaints filed in past three years (internal and external by name, race, gender, job title, manager, department, basis and status).
- Manager Guides for Compensation (Base, Merit, Stock Bonus, Performance Appraisals, Hiring): Onsite interviews indicate Google created online guides for managers on these topics. We are requesting copies of the guides.

D. Items Google Has Already Provided to OFCCP

We will retract our request for:

- Bonus Earned
- Bonus Period Covered
- FMLA Policy

These items have not been provided:

- Stock Monetary Value: Google has provided information sufficient for OFCCP to calculate a hypothetical value on the unvested stock. However, Mr. Frank Wagner stated in his interview that Google "knows the value of the stock at the time of award." We are asking for actual value instead of hypothetical value because the data is known.
- New Hire Guideline for Equity Award: We were provided with a prepared narrative instead of actual guidelines. We are asking for the actual guidelines.
- Total Cash Compensation: Please provide the total compensation that includes base, bonus, equity, and other financial incentives.

- Job Pay Level Listing/Education/Experience Equivalency: Please provide policies/guidelines for new hires listing each pay level and the education/years of experience associated with each level.

Google cannot place a condition on its compliance with its federal obligations in exchange for disclosure of OFCCP's preliminary findings. Such condition from a contractor would constitute a denial of access in violation of 41 CFR §60-1.43, §60-300.81 and §60-741.81. Since 2007, Google has been the subject of five OFCCP compliance evaluations and has received over \$141 million dollars in federal contracts. During the course of this review alone, Google has been the recipient of over \$29 million dollars in federal contracts. By entering into a covered contract with the federal government and accepting taxpayer dollars, Google voluntarily agreed to the scope of any compliance evaluation of its headquarters' establishment. (41 CFR §60-2.1).

OFCCP will make every effort to take Google's concerns into consideration and engage in productive dialogue where possible. However, Google cannot engage in denial of access as a strategy to compel OFCCP to limit the scope of its review. The record of this review reflects that OFCCP has been reasonable in its prior requests and has narrowed the scope of information requests where possible.

As such, OFCCP is renewing its June 1, 2016 request with the addition of "Section D" and "Section E" which detail additional applicant flow data and information that is being requested.

In an effort to avoid issuance of a Show Cause Notice, please submit all information detailed in the attachment by COB, July 1, 2016. Thank you.

Sincerely,



Agnes Huang
Assistant District Director

cc: Daniel Duff, Attorney, Jackson Lewis P.C (daniel.duff@jacksonlewis.com)
Scott Williamson, Integrity Program Manager, Google, Inc. (scwilliamson@google.com)

ATTACHMENT

A. Compensation Factors to be added to Existing Database

- Campus Hire or Industry Hire
- Competing Offer
- Current Compa Ratio
- Current Job Code
- Current Job Family
- Current Level
- Current Manager
- Current Organization
- Date of Birth
- Department hired into
- Education
- Equity adjustment
- Hiring Manager
- Job History
- Locality
- Long-term incentive eligibility and grants
- Market Reference Point
- Market Target
- Name
- Performance Rating for past 3 years
- Prior Experience
- Prior Salary
- Referral Bonus
- Salary History
- Short-term incentive eligibility and grants
- Starting Compa Ratio
- Starting Job Code
- Starting Job Family
- Starting Level
- Starting Organization
- Starting Position/Title
- Starting Salary
- Stock Monetary Value at award date
- Target Bonus
- Total Cash Compensation
- Any other factors related to compensation

B. Compensation Database with 9/1/2014 Snapshot

Please provide a compensation database with a 9/1/2014 snapshot, including the compensation factors previously requested and the additional factors listed above.

C. Additional Data with Effective Dates Included

- Bonus targets for the past three years
- Complaints filed in the past three years (internal and external by name, race, gender, job title, manager, department, basis and status)
- Complete, un-redacted or altered compensation policies and guidelines and training materials maintained in the course of business
- Copy of market survey, salary survey, or industry survey used by Google to determine salary, grade, level, or other forms of pay
- Employee contact information
- Employee Guide – for Compensation, Performance Appraisals
- Hiring / promotion / termination policies and guidelines and training materials
- Job/Pay Level Listing – Education/Experience equivalency
- Listing of all Job Families, job codes, and positions within
- Manager Guides – for Compensation (base, merit, stock, bonus, performance appraisals, hiring)
- Merit algorithm or matrix for past three years
- New hire guideline for equity award
- Organization charts – Compensation, Global Business, People Operations (Recruiting, Staffing, etc.)
- Pay Locality Guide
- Performance review policy and guidelines, and training materials
- Public Access Files and LCAs filed during 9/1/2013 – 8/31/2015
- Recruiter Guides – for Recruiting and Hiring
- Screenshot and instruction on gComp, Workday, Prosper and Perf

D. Applicants/Hires Database for Job Groups 211-216 only

Please add the following columns of data onto the existing applicant flow logs for all applicants in job groups 211-216:

- Department applied to
- Department hired into (if hired)
- Education
- Job Family
- Job Function
- Prior relevant work experience
- Requisition applied to
- Requisition hired into (if hired)

E. Interview Notes

- Please submit all applicant interview notes for job groups 211-216.



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June 30, 2016

VIA EMAIL (suhr.jane@dol.gov)
PRIVILEGED & CONFIDENTIAL

Ms. Jane Suhr
Deputy Regional Director
United States Department of Labor
Office of Federal Contract Compliance Programs
90 7th Street
Suite # 18-300
San Francisco, CA 94103-1516

Re: Re: OFCCP Compliance Evaluation: Google Mountain View Facility

Dear Deputy Regional Director Suhr:

On behalf of Google Inc. ("Google" or the "Company"), we are writing in response to OFCCP's June 23, 2016 letter in connection with the above-referenced compliance review.¹

As described in detail below, Google repeatedly has expressed its concerns, both orally and in writing, regarding the Agency's ongoing refusal to provide *any* meaningful information to the Company regarding its preliminary findings related to compensation in this compliance evaluation. Without this information, Google cannot properly evaluate OFCCP's extraordinarily broad and burdensome data and information requests sent on June 1, 2016. Moreover, failing to share such information deprives OFCCP and the Company of the opportunity to engage in a collaborative and open dialogue regarding alternative, yet sensible means of providing OFCCP the information it needs to conduct its compliance evaluation.

Accordingly, we write not only to respond to OFCCP's June 23, 2016 correspondence, but to request a teleconference with the Regional Office at its earliest convenience in an attempt to find a way to address the Company's concerns while preserving the Agency's ability to effectively evaluate Google.

¹ Copies of all correspondence referred to in this letter are attached hereto as Exhibit "A."

I. OFCCP's Erroneous Citations to Regulatory Provisions

In its June 23, 2016 correspondence, OFCCP first cites to 41 C.F.R. § 60-1.12 as justification for its data and information requests. However, § 60-1.12 is simply a record retention provision. It governs the types of records that a contractor must maintain, not what a contractor may have to produce during a compliance review. OFCCP also cites to 41 C.F.R. § 60-2.1 which addresses the scope and application of the requirement to prepare an Executive Order AAP for certain contractors. Since Google prepares AAPs in accordance with this section, we do not understand the relevance of this reference.

More appropriately, OFCCP later cites to 41 C.F.R. §§ 60-1.43, 60-300.81, 60-741.81 for a contractor's obligations to produce records during a compliance evaluation. However, contrary to OFCCP's position, these sections do not allow OFCCP to request anything the Agency wishes during a compliance evaluation. To the contrary, these sections make clear that Agency requests are subject to reasonable boundaries. Specifically, § 60-1.43 provides in pertinent part that "[e]ach contractor shall permit the inspecting and copying of such books and account and records, including computerized records, and other material *as may be relevant to the matter under investigation and pertinent to compliance with [Executive Order 11246].*"² In taking the position that the Agency has the unfettered right to any data or records a contractor may possess during a compliance review, regardless of the need for such information, OFCCP renders this standard meaningless.

While Google does not claim to be the final arbiter of what records are both relevant and pertinent, the Company does have the right to determine if it believes the regulatory standards of relevance and pertinence have been satisfied. By refusing to share the underlying basis for its requests, OFCCP leaves Google with the choice of blindly accepting that the Agency's burdensome requests related to *everyone* in its over 21,000 employee workforce in scope for this compliance evaluation are reasonable and consistent with due process, or risk the issuance of the notice to show cause the Agency has threatened if Google does not fully comply with all of its requests by July 1, 2016.

Furthermore, Google simply does not understand why OFCCP would not act in a forthcoming and transparent manner. We fail to see any benefit the Agency derives from hiding the basis for its information requests. To the contrary, by unilaterally deciding not to share the basis for its requests, OFCCP appears to (1) run afoul of the very regulations OFCCP cites to support its position not to provide such information; (2) remove the ability to collaborate with Google to find the most effective and efficient manner of producing information needed to complete the current compliance review; (3) violate the Company's due process rights to be free from unreasonable searches and seizures; and (4) contradict recent statements from National Office officials calling for more open and transparent dialogue between OFCCP and contractors.

² §§ 60-300.81 and 60-741.81 contain similar language as it relates to reviews conducted pursuant to Section 503 and VEVRAA, respectively.

II. Further Explanation of the Grossly Burdensome Nature of Many of OFCCP's Requests

In its June 23, 2016 correspondence, OFCCP asks Google to further explain how its requests are overly burdensome. We do so below.

First, as stated in Google's June 17, 2016 correspondence, OFCCP seeks (1) 36 additional data points *for each of Google's 21,114 employees* as of the September 1, 2015 current year snapshot; (2) a second compensation data base for the 19,539 Google employees on the September 1, 2014 prior year snapshot, including all factors previously requested and the 36 new data points requested on June 1, 2016; and (3) six additional data points *as of the current date* for all Google employees in the workforce as of September 1, 2015. Accordingly, as indicated previously, OFCCP's Second Set of Post-Onsite Requests would require Google to produce well in excess of *two million* items of additional data by a due date of July 1, 2016.³

Second, OFCCP's vague and inaccurate references to purported statements made by Google representatives at the on-site in no way lessens the overly burdensome nature of OFCCP's requests. The Agency's statement that "most of the compensation factors are stored electronically" ignores the fact that a massive amount of the information requested by OFCCP is contained in hard copy documents that are merely scanned into Google's systems for recordkeeping purposes. For example, while gHire contains resumes and notes from applicants, the data that OFCCP has requested is contained within these documents, such as education, prior experience, competing offers, prior salary, etc., are not contained in unique data fields within gHire. Mr. Porges-Kirakou's statement regarding reports that may be created by "writing SQL code *for fields in the reporting system* by way of a query" refers only to running queries for *actual preexisting data fields* in gHire (e.g., date of hire). It does not refer to any process to somehow pull the data OFCCP seeks from scanned documents. Similarly, Frank Wagner's purported statement that prior pay for new hires "would be the type of information recruiters obtain and it *may* be stored in the ATS" in no way suggests that electronic queries can be run to obtain this data. The fact that recruiters *may* inquire into prior pay of applicants, and that such information *may* be recorded in notes that are scanned into and maintained in gHire, does not in any manner "eliminate the need for manual data entry" as OFCCP erroneously concludes.

Contrary to the Agency's mistaken belief, a significant portion of the data OFCCP has requested is not kept in unique data fields within Google's systems. The Company would need to manually pull such data from its systems, tabulate them, and enter them into a data base. For example, data requiring manual review and entry for employees on the September 1, 2015 and September 1, 2014 snapshot include:

³ This figure does not even include the millions of additional items of data and documentation requested by OFCCP in its June 23, 2016 correspondence related to over 235,000 applicants, including each applicant's prior experience and education, in Job Groups 211, 212, 213, 214, 215 and 216. OFCCP has provided Google *a mere seven* days to produce this additional data.

- **Competing Offer:** Would require a manual review of notes that would need to be pulled from gHire for each of the over 21,000 employees to determine what, if anything, was noted regarding competing offers, and then entry of same into a database. Assuming an average of 10 minutes per employee to pull, review and enter the information, this would take 3,500 hours.
- **Education:** Would require a manual review of resumes and notes that would need to be pulled from gHire for each of the over 21,000 employees to determine level of education achieved, and then entry of same into a database. Assuming an average of 10 minutes per employee to pull, review and enter the information, this would take 3,500 hours.
- **Prior Experience:** Would require a manual review of resumes and notes from gHire for each for each of the over 21,000 employees, in addition to the manual calculation of total prior experience from the job history section of each resume or from the notes, and then entry of same into a database. Assuming an average of 20 minutes per employee to make these calculations and enter them into a database, this would take 7,000 hours.
- **Prior Salary:** Would require a manual review of notes from gHire for each for each of over 21,000 employees to determine the prior salary, if provided, and then entry of same into a database. Assuming an average 10 minutes per employee for review and entry of the information obtained from the notes, this would take 3,500 hours.

As another example, data requiring manual review and entry for the over 235,000 applicants to Job Groups 211, 212, 213, 214, 215 and 216 include:

- **Education:** Would require a manual review of resumes and notes that would need to be pulled from gHire for each of over 235,000 employees to determine education and enter into a database. Assuming an average of 10 minutes per applicant to pull, review and enter the information, this would take 39,116 hours.
- **Prior relevant work experience:** Would require a manual review of resumes and notes from gHire for each for each of over 235,000 applicants in addition to the determine of what "relevant experience" is for each job applied to, followed by the manual calculation of total prior relevant experience from the job history section of each resume and from notes. Assuming an average of 25 minutes per applicant to make these determinations/calculations, and enter them into a database, this would take 97,916 hours.

In total, complying with just the requests listed above involves over 154,000 hours. Even assuming a 10 person team working on the project for 24 hours every day of the week including weekends, nonstop until completion, it would take a minimum of 641 days (more than 1.7 years) to complete this project. Moreover, even if the employees responsible for gathering this information earned only the California minimum wage, the cost to Google in producing this information could exceed 1.5 million dollars.

Google respectively submits that that the foregoing overwhelmingly demonstrates not only the burdensome nature of OFCCP's requests, but why both sides should work collaboratively to identify potential alternative, far more efficient means of resolving issues, and/or determining whether any reasonable limitations might be appropriate.

III. Items Needing Clarification

Google appreciates the clarification OFCCP provided in the Agency' June 23, 2016 correspondence relating to some of its data/document requests. With that clarification, the Company can share the following information.

First, Google does not utilize the terms "market target" and that any reference during the interviews to same in all likelihood was a reference to "market reference point."

Second, as noted below, Google will produce: (1) the market reference point for employees on the September 1, 2015 snapshot date; (2) a list of any formal EEO charges/complaints filed with federal, state or local fair employment practice agencies alleging race, gender, sexual harassment, disability, religious accommodation or national origin discrimination during the past three years; and (3) Manager Guides for Compensation (Base, Merit, Stock Bonus, Performance Appraisals, Hiring).

Third, Google remains unclear as to the meaning of OFCCP's request for "screenshots showing how data is stored in "GComp, WorkDay, Prosper and PERF," as well as to the relevance of OFCCP's request for user instructions for each system. We look forward to the opportunity to discuss these items with OFCCP during the teleconference requested herein.

IV. Items Google Already Has Produced

In its June 23, 2014 correspondence, OFCCP acknowledged that Google already provided bonus earned, bonus period covered and its FMLA policy, but challenges whether certain other items have been produced. These items are addressed below.

A. Stock Monetary Value

Agreeing that Google has produced sufficient data to calculate a hypothetical value of restricted stock units awarded, OFCCP seeks that "actual" monetary value of Google stock unit awards. As previously explained to the Agency, Google restricted stock vests in increments over time. Accordingly, the stock has no actual value at the time the award is

granted. Frank Wagner's purported statement that an employee "knows the value of the stock at the time of the award" refers only to the fact that a hypothetical value of the award can be calculated. As OFCCP states in its correspondence, Google already has provided the Agency with sufficient data to calculate this hypothetical value. Accordingly, the Company has fully responded to the Agency's request.

B. New Hire Guideline for Equity Award

With respect to the New Hire Guideline for Equity Award, the document provided to OFCCP is the actual guideline and not a narrative of same. Therefore, Google has fully responded to this request.

C. Total Cash Compensation

Google already has provided OFCCP with all the components that make up total compensation. Accordingly, the Agency has all the data necessary to calculate total cash compensation.

D. Job Pay Level Listing/Education/Experience Equivalency

Finally, regarding OFCCP's request for "Job Pay Level Listing/Education/Experience/Equivalency, please see Google's January 11, 2016 e-mail containing all documents Google maintains related to this request. Therefore, the Company has fully responded to this request.

V. Schedule for Production

Notwithstanding the significant concerns raised by Google with respect to OFCCP's production requests above, Google wishes to continue to cooperate with OFCCP in connection with this evaluation. Accordingly, Google will produce the following for all employees on the September 1, 2015 current year snapshot date, and to the extent it is available in its HRIS systems, by August 1, 2016:

- Campus or Industry Hire
- Date of Birth
- Department Hired Into
- Hiring Manager
- Locality
- Long Term Incentive Eligibility

- Market Reference Point
- Performance Rating for Past Three Years
- Short Term Eligibility
- Target Bonus
- Target Bonus for Past Three Years

Google also will produce the following documents, if any, by August 1, 2016:

- A list of any formal EEO charges/complaints filed with federal, state or local fair employment practice agencies alleging race, gender, sexual harassment, disability, religious accommodation or national origin discrimination during the past three years
- Compensation policies, guidelines and training materials, including manager guides for compensation (base, merit, stock, applicable to the period under review)
- Employee guides related to compensation & performance appraisals
- Hiring, promotion and termination policies, guidelines and training materials
- Merit algorithm/matrix for the past three years
- Pay locality guide
- Performance appraisal policies, guidelines and training materials
- Recruiter guides for recruiting and hiring

Google also will provide, to the extent available, the following fields of information for all applicants to Job Groups 211, 212, 213, 214, 215 and 216, by August 1, 2016:

- Department Applied To
- Department Hired Into (if hired)
- Job Family
- Job Function

- Requisition Applied To
- Requisition Hired Into (if hired)

VI. Conclusion

Google reiterates its desire to move this review forward in an efficient and effective matter. To that end, the Company respectfully asks that the Region carefully consider the concerns raised above and in its June 17, 2016 letter, and agree to a mutually agreeable date and time to discuss both the basis for, and possible ways to alleviate the burdens associated with, the Agency's requests. We are available to engage in such discussions with the Agency at its earliest convenience.

We appreciate the Agency's careful consideration of these issues and trust that reasonable solutions can be identified.

Very truly yours,

JACKSON LEWIS P.C.



Matthew J. Cathardella

MJC/mjr

cc: Agnes Huang (via e-mail - Huang.Agnes@dol.gov)
Farha Haq Haq (via e-mail - Haq.Farha@dol.gov)
Carolyn J. Mcham-Menchyk (Mcham-Menchyk.Carolyn@dol.gov)
Scott Williamson (scwilliamson@google.com)

Huang, Agnes H - OFCCP

From: Mcham-Menchyk, Carolyn J - OFCCP
Sent: Thursday, August 25, 2016 6:16 PM
To: Camardella, Matthew J. (Long Island); 'Daniel.Duff@jacksonlewis.com'
Cc: Haq, Farha - OFCCP; Huang, Agnes H - OFCCP; 'scwilliamson@google.com'
Subject: Recap of Meeting 8 25 16

Dear Mr. Carmadella and Mr. Duff:

Thank you both for the opportunity to meet earlier today to discuss the outstanding items that 1) Google has not provided and 2) items that need further clarification for the OFCCP and Google. We look forward to your written response due by September 2, 2016 and any outstanding items that Google will provide. The following are listings of all outstanding items and responses requested/provided:

**GOOGLE COMPENSATION FACTORS
NOT PROVIDED:**

1. Any other factors related to compensation
2. Compensation Database with 9/1/2014 Snapshot
3. Competing Offer
4. Education
5. Equity adjustment
6. Job History
7. Long-term/short-term incentive eligibility grants*
8. Name
9. Prior Experience
10. Prior Salary
11. Salary History
12. Starting Compa Ratio
13. Starting Job Code
14. Starting Job Family
15. Starting Level
16. Starting Organization
17. Starting Position/Title
18. Starting Salary
19. Stock Monetary Value at award date

**Google said it doesn't characterize its compensation into long-term v. short term incentive. They requested that we identify the items of compensation for which we want this information. Provide any additional incentives that Google gives to employees that have not been provided to the OFCCP. Include the eligibility requirements to receive these incentives and employee level and status.*

HIRING INFORMATION NOT PROVIDED

1. Applicant interview notes (job groups: 211-216)
2. Department applied to*
3. Department hired into*
4. Education
5. Prior relevant work experience

Applicant Flow Log

Multiple thousands of applicants are not identified by race, only gender. Please provide race information and a written explanation

**Data will be provided.*

OTHER DOCUMENTS NOT PROVIDED

1. Internal complaints filed within the last three years (name, race, gender, job title, manager, department, basis and status)
2. Market, salary or industry surveys
3. Employee contact information
4. Public access files and LCA's (9/1/13-8/31/15)
5. Screenshot of gComp/Workday/Prosper/and Perf

ITEMS THAT NEED CLARIFICATION:

Please Include Effective Date for these Policies:

1. Calibration Lead Cheat Sheet
2. Manager Calibration Cheat Sheet
3. Compensation Policy
4. Hiring Policy
5. Equity Policy
6. Google's Performance Management Program
7. Recognition Policy
8. Total Compensation Policy

Incomplete Submission:

1. Org Charts-Organization charts were provided for: Compensation, Global Business and People Operations. Please submit organization charts for the rest of Google's departments (Recruiting, etc.).
2. Merit Algorithm or Matrix-Confusing submission – Google will clarify.

Compensation

Unidentified symbols appear in the spreadsheet in your August 1, 2016 submission, “◆◆” Please send a clean worksheet.

Carolyn M. Menchyk | US Department of Labor | Office of Federal Contract Compliance Programs | 1640 S. Sepulveda Boulevard, Suite 440 | Los Angeles, CA 90025 | Phone (310) 268-1790 | Fax (310) 268-1790 | mcham-menchyk.carolyn@dol.gov | www.dol.gov/ofccp |

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*through an affiliation with Jackson Lewis PC, a Law Corporation

September 2, 2016

VIA EMAIL (huang.agnes@dol.gov)
PRIVILEGED & CONFIDENTIAL

Ms. Agnes Huang
Assistant District Director
United States Department of Labor
Office of Federal Contract Compliance Programs
1640 S. Sepulveda Blvd, Ste 440
Los Angeles, CA 90025

**Re: OFCCP Compliance Evaluation; Google Mountain
View Facility**

Dear Assistant District Director Huang:

As we agreed during our conference call with Compliance Officers Farha Haq and Carolyn Mcham-Menchyk, on August 25, 2016, Google Inc. ("Google" or the "Company") hereby: (1) produces additional disclosures and explanations in response to OFCCP's disclosure requests; (2) sets forth a schedule for responsive disclosures related to OFCCP's other requests for documentation/data, as well as explanations for the time needed to produce same; and (3) reiterates in writing the reasons Google is not prepared make certain disclosures at this time.

All data and documents referenced below for supplementation contemporaneous with this letter are being sent to OFCCP via Biscom, a secure web-based file transfer system.¹

¹ The information and documentation referenced in and transmitted with letter are submitted pursuant to the conditions of confidentiality that have attached to the Company's previous submissions and only are on loan to the OFCCP. If a request for disclosure is made by any person or entity pursuant to the Freedom of Information Act or otherwise, the Company must be advised in sufficient time to consider and challenge such disclosure. By accepting this information, the OFCCP agrees to these conditions. By providing the enclosed information to the OFCCP, the Company does not waive and expressly reserves any and all objections relating to this disclosure of information.

I. Supplementation of Additional Data/Documents/Information Contemporaneous with This Letter

Google has produced a supplemental Item 19 Submission correcting the “◆◆” symbols herewith.

II. Explanation of Certain Items Responsive to OFCCP’s Requests

Google also provides the following additional information in response to OFCCP’s requests:

A. Equity Increases

Google did not make any equity increases during the period under review.

B. Referral Bonuses

Google already has produced all referral bonuses in its Item 19 submission (see Column Z).

C. “Stock Value at Award Date”

Google already has provided OFCCP with all information in that is necessary for OFCCP to calculate the “stock monetary value at award date.”

D. LTI/STI Eligibility

After our discussion last week, OFCCP requested that Google “provide any additional incentives that Google gives employees that have not been provided to OFCCP.” We have confirmed that Google already has provided in its Item 19 submissions all forms of incentives that Google provides to employees,

E. “Any other items related to compensation”

In response to this request, Google refers OFCCP to the policies and procedures it has produced to date as well as the descriptions of Google’s compensation practices described to OFCCP during the onsite.

F. Organizational Charts

During our call on August 25, 2016, OFCCP expressed concern that the organizational charts previously provided to the Agency did not include the recruiting function. Please note that the recruitment function is found on the People Operations organization chart previously provided to OFCCP – specifically, please see the following list of staffing managers

reporting to Sunil Chandra, VP, Staffing & Operations: (1) Brendan Castle, Director, Staffing & Channels; (2) Kyle Ewing, Director, Global Staffing Programs; (3) Olga Donnelly, Director, Staffing – Global Sales and G&A; (4) Melissa Karp, Director, Staffing Services; (5) Brian Ong, Director, Staffing Effectiveness; (6) Dave Beuerlein, Director, Leadership Staffing; (6) and Matthew Worby, Director, Staffing – Engineering & Technology.

G. Department Applied to for Job Groups 211 to 216

As explained in our August 1, 2016 correspondence, as well as on our teleconference on August 25, 2016, Google does not regularly maintain Department Applied To as part of its applicant tracking system.

H. Listing of All Job Families, Job Codes and Positions Within

Google does not maintain a list of all job families, job codes and positions therein as of the September 1, 2016 snapshot date.

I. Competing Offer

Google does not maintain competing offer data in its HRIS systems.

J. Total Cash Compensation

Google does not maintain a total cash compensation field in its HRIS systems. However, OFCCP can calculate total cash compensation from the Item 19 data Google already has provided to the Agency.

K. Prior Salary

Google continues to research the extent to which this data is available and will follow up with OFCCP regarding same by September 15, 2016.

III. Items Google Will Provide to OFCCP by September 15, 2016

Google will provide the following disclosures to OFCCP by September 15, 2016:

- Instruction Manuals, including screenshots, of the gComp, Workday, Prosper and Perf HRIS systems.
- Key for merit algorithm
- Effective dates for policies produced on August 1, 2016

IV. Items Google Will Produce to OFCCP by December 15, 2016

Google will provide education and prior experience, where available, for all 21,114 employees on the September 1, 2015 snapshot, and for all 235,000 plus applicants to Job Groups 211 to 216, to OFCCP by December 15, 2016.

Please note that the process for Google to pull the education and prior experience data for 21,114 employees on the September 1, 2015 current year snapshot, in addition to the education and prior experience for the 235,000 applicants to Job Groups 211 to 216, will take several months. In addition to pulling this voluminous data, Google must ensure that each record is tied to individual identifiers on the September 1, 2015 snapshot and on the applicant flow logs so that OFCCP can easily match the records to appropriate individuals listed thereon. Moreover, Google must ensure that all of the data is readable and understandable. Accordingly, Google requires until December 1, 2016 to provide this information. We will produce education and prior experience data from resumes in Excel format.

V. Items Google Is Not Prepared to Provide to OFCCP at This Time

A. Interview Notes for All Applicants to Job Groups 211 to 216

We have consulted with Google's e-Discovery team regarding the time, cost and burden of producing interview notes for the applicants to Job Groups 211 and 216. The team estimates a total cost of over \$1 million and no less than 6 months to collect the relevant data and produce same to OFCCP. The cost involves not only pulling the notes for the correct applicants, but ensuring that the notes correlate to the period under review and to the specific positions applied to in Job Groups 211 to 216.

Due to the enormous burdens and costs associated with this request, Google respectfully requests the Agency analyze the voluminous applicant flow data Google already has provided to the Agency to ascertain whether it is truly necessary to require the Company to gather and produce interview notes related to any of the 235,000 plus applicants. From our review of the data, we estimate that more than 54,000 of these applicants were interviewed either by phone or on-site. Accordingly, we anticipate responding to this request would necessitate the production of hundreds of thousands of pages of interview notes. Once the Agency has completed its analyses, OFCCP can revisit this request in order to determine if there is a more cost effective and efficient alternative, including whether the request can be limited to certain job titles or other groups rather than all applicants.

B. Job and Salary History

OFCCP has requested that Google produce the entire job and salary history for all 21,114 employees on the September 1, 2015 snapshot date. This represents a massive amount of data. However, OFCCP has failed to explain any issue it has found in the voluminous Item 19 data the Company has provided to the Agency. Absent such explanation, the Company does

not understand how OFCCP's request for such voluminous information can be relevant or reasonable.

C. Names and Personal Contact Information for All 21,114 Employees on the September 1, 2015 Snapshot Date

As described in our February 22, 2016 e-mail to OFCCP, Google is not prepared to provide the names and personal contact information for the 21,114 employees in its workforce as of September 1, 2015 at this time due to significant privacy and confidentiality concerns. As previously explained to the Agency and as demonstrated by its actions to date, Google takes the safeguarding of its employees' personal information extremely seriously.

While the Company recognizes that there may be a point during this compliance review that the disclosure of some employee names may be necessary, we do not believe the Agency's current activities require such disclosure at this time. This is especially true since OFCCP has not communicated any legitimate rationale for obtaining employee name – certainly not one that the Agency cannot achieve using the employee ID numbers already provided.

We continue to believe that OFCCP can effectively and efficiently move forward with the roster provided at this time, which does identify each specific employee by a unique ID number. Of course, the Company would be happy to reconsider the Agency's request for employee names on one or more reports should OFCCP supply a necessary rationale for such information that overrides Google's privacy concerns and that cannot be accomplished with employee ID number.

D. Market Surveys

As explained during the on-site, the Company developed Market Reference Points ("MRP") from Market Surveys. Since Google already has provided the Agency with the MRP for each position, the market surveys offer no additional probative value to OFCCP's investigation into the still yet to be disclosed compensation issues. However, Google is willing to reconsider this position if OFCCP identifies a reason why market surveys are relevant to its compliance evaluation.

E. A Second Compensation Snapshot Based on the Prior Year Snapshot Date

Notwithstanding that the Agency has refused to provide any information regarding any compensation issues it purports to have identified in connection with Google's Item 19 submission for the 21,114 employees as of September 1, 2015, the Agency continues to insist that Google provide a *second* compensation database for the 19,539 Google employees on the September 1, 2014 prior year snapshot. Absent any explanation regarding the issues it purports to have identified with the current year snapshot data, we fail to see the relevance of or the need for OFCCP's request for a second compensation snapshot.

However, once again, Google is willing to reconsider this position if OFCCP identifies, in writing, particular issues that would justify the production of a second compensation submission based on the prior year snapshot date.

F. Internal Employee Complaints Filed in the Last Three Years

The Company does not maintain a centralized repository for complaints. As a result, the burden of pulling information regarding all EEO complaints over a three year period for a workforce of over 21,000 employees is far outweighed by any probative value such complaints might provide in connection with this compliance evaluation. However, if OFCCP provides in writing a reasonable explanation why such disclosure is necessary, the Company will take this under advisement.

G. Public Access Files and LCAs from 9/1/13 to 8/31/15

Google objects to OFCCP's continued request for Public Access Files and LCAs for the period From September 1, 2013 to August 31, 2015. Notwithstanding our requests, OFCCP has not provided any reasonable basis for the disclosure of these documents. During the course of the onsite, all managers consistently confirmed that applicants/employees requiring a visa of any type are treated *no differently* in terms of compensation, benefits or any other terms and conditions of employment than other applicants/employees.

However, again, Google is willing to reconsider this position if OFCCP identifies in writing a particular issue at Google that would make the disclosure of such records reasonable.

H. Starting Compa-Ratio, Job Code, Job Family, Level and Organization

During our teleconference earlier this month, OFCCP stated that Starting Compa Ratio, Job Code Job Family, Level and Organization referred to these data as of the September 1, 2015 snapshot date, and not as of the date of hire. Google already has provided this data as of September 1, 2015 to OFCCP.

VI. Conclusion

Google reiterates again its desire to move this review forward in an efficient and effective manner. To this end, we look forward to the Agency's response to the proposed schedule set forth herein as well as the Agency's responses to Google's requests for any reasonable bases that would justify the disclosure of the items listed in Section V herein.

jackson|lewis
Attorneys at Law

Ms. Agnes Huang
U.S. Department of Labor
September 2, 2016
Page 7

Very truly yours,

JACKSON LEWIS P.C.



Matthew J. Camardella

MJC/mjr

cc: Farha Haq Haq, (via e-mail - Haq.Farha@dol.gov)
Carolyn J. Meham-Menchyk, (MeHam-Menchyk.Carolyn@dol.gov)
Scott Williamson (scwilliamson@google.com)

Attachment C

COMPENSATION FACTORS NOT PROVIDED

1. Compensation Database (9/1/2014 snapshot)
2. Competing Offer
3. Employee Education
4. Employee Name
5. Equity Adjustment
6. Job History
7. Job Function
8. Long-term/short-term incentive eligibility grants
9. National Origin/ Citizenship/ Visa Status/ Place of Birth
10. Prior Experience
11. Prior Salary
12. Salary History
13. Starting Compa Ratio
14. Starting Job Code
15. Starting Job Family
16. Starting Job Function
17. Starting Level
18. Starting Organization
19. Starting Position/Title
20. Starting Salary
21. Stock Monetary Value (at award date)
22. Any other factors related to compensation
23. Any other job classifications/categories maintained

HIRING INFORMATION NOT PROVIDED

1. All expressions of interest
2. Applicant interview notes (job groups: 211-216)
3. Applicant profile
4. Department applied to
5. Department hired into
6. Education
7. Prior work experience
8. Resumes
9. Any other employee characteristics maintained
10. Applicant flow data: multiple thousands of applicants are not identified by race and gender. Please provide race and gender data for all applicants and all expressions of interest.

OTHER DOCUMENTS NOT PROVIDED

1. Internal employee complaints or concerns about any unfair treatment raised within the last three years (name, race, gender, national origin, job title, manager, department, organization, basis and status)
2. Market, salary or industry surveys
3. Employee contact information
4. Public access files and LCA's (9/1/13-8/31/15)
5. Automated resume screen system

INCOMPLETE SUBMISSION

1. Organizational Charts - All Organizational charts by department
2. Equity Policy, including all Stock Agreements

EXHIBIT H

Duff, Daniel V., III (Long Island)

From: Huang, Agnes H - OFCCP <Huang.Agnes@dol.gov>
Sent: Monday, September 19, 2016 7:58 PM
To: Camardella, Matthew J. (Long Island)
Cc: Haq, Farha - OFCCP; Mcham-Menchyk, Carolyn J - OFCCP; 'scwilliamson@google.com'; Duff, Daniel V., III (Long Island)
Subject: RE: RE; OFCCP Compliance Review of Google Mountain View
Attachments: Google Inc. SCN 9.16.16 R00197955_Amended Attachment C.pdf

Dear Mr. Camardella:
Please see attached Amended Attachment C to the Show Cause Notice issued on September 16, 2016. #6 was added to "Other Documents Not Provided." Thank you.

Agnes Huang | Assistant District Director
US Dept of Labor
Office of Federal Contract Compliance Programs
Phone: 310.268.1467 | Fax: 310.268.1620
Email: huang.agnes@dol.gov
1640 S. Sepulveda Blvd, Ste 440
Los Angeles, CA 90025

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From: Mcham-Menchyk, Carolyn J - OFCCP
Sent: Friday, September 16, 2016 4:39 PM
To: 'Daniel.Duff@jacksonlewis.com'; Camardella, Matthew J. (Long Island) (CamardeM@jacksonlewis.com); 'scwilliamson@google.com'
Cc: Huang, Agnes H - OFCCP; Haq, Farha - OFCCP
Subject: RE; OFCCP Compliance Review of Google Mountain View

Dear Mr. Duff:

Attached is OFCCP's latest response for Google regarding the compliance review. Please contact us within five (5) business days of receipt of this notice.

Carolyn M. Menchyk | US Department of Labor | Office of Federal Contract Compliance Programs | 1640 S. Sepulveda Boulevard, Suite 440 | Los Angeles, CA 90025 | Phone (310) 268-1790 | Fax (310) 268-1790 | mcham-menchyk.carolyn@dol.gov | www.dol.gov/ofccp |

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Attachment C – Amended 9/19/2016

COMPENSATION FACTORS NOT PROVIDED

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2. Competing Offer
3. Employee Education
4. Employee Name
5. Equity Adjustment
6. Job History
7. Job Function
8. Long-term/short-term incentive eligibility grants
9. National Origin/ Citizenship/ Visa Status/ Place of Birth
10. Prior Experience
11. Prior Salary
12. Salary History
13. Starting Compa Ratio
14. Starting Job Code
15. Starting Job Family
16. Starting Job Function
17. Starting Level
18. Starting Organization
19. Starting Position/Title
20. Starting Salary
21. Stock Monetary Value (at award date)
22. Any other factors related to compensation
23. Any other job classifications/categories maintained

HIRING INFORMATION NOT PROVIDED

1. All expressions of interest
2. Applicant interview notes (job groups: 211-216)
3. Applicant profile
4. Department applied to
5. Department hired into
6. Education
7. Prior work experience
8. Resumes
9. Any other employee characteristics maintained
10. Applicant flow data: multiple thousands of applicants are not identified by race and gender. Please provide race and gender data for all applicants and all expressions of interest.

OTHER DOCUMENTS NOT PROVIDED

1. Internal employee complaints or concerns about any unfair treatment raised within the last three years (name, race, gender, national origin, job title, manager, department, organization, basis and status)
2. Market, salary or industry surveys
3. Employee contact information
4. Public access files and LCA's (9/1/13-8/31/15)
5. Automated resume screen system
6. Instruction manual and screenshots for gHire.

INCOMPLETE SUBMISSION

1. Organizational Charts - All Organizational charts by department
2. Equity Policy, including all Stock Agreements

EXHIBIT I



October 19, 2016

VIA E-MAIL (Wipper.Janette@dol.gov) &
FEDERAL EXPRESS

PRIVILEGED & CONFIDENTIAL

Ms. Janette Wipper
Regional Director
United States Department of Labor
Office of Federal Contract Compliance Programs
Pacific Regional Office
90 Seventh Street, Suite 18-300
San Francisco, CA 94103

**Re: OFCCP Compliance Evaluation: Google Mountain
View Facility**

Dear Regional Director Wipper:

On behalf of Google Inc. ("Google" or the "Company"), we are responding to Office of Federal Contract Compliance Programs' ("OFCCP" or the "Agency") September 16, 2016 Notice to Show Cause, including Attachment A alleging a violation of 41 CFR §§ 60.1.43 and 60-1.12, and "Attachment C - Amended 9/19/2016" (collectively "Notice to Show Cause") in connection with the above-referenced matter.¹

As described in detail herein, OFCCP and Google have reached an impasse with respect to a few of the items OFCCP has requested for production in connection with this Compliance Evaluation. This impasse is the result of OFCCP's repeated refusal to accept Google's invitations to engage in collaborative discussions regarding the relevancy and scope of

¹ In submitting this response, Google does not waive any rights, defenses, or objections it may have in any further proceedings or litigation, all of which are reserved. This response is confidentially provided to OFCCP and the Company requests that the Agency protect and not disclose this private information. The response is based upon the information now known by the Company and may be supplemented, as necessary and appropriate, upon the discovery of any additional information.

requests. However, we believe that Google's concerns can be appropriately addressed while preserving OFCCP's ability to effectively evaluate Google's compliance with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Accordingly, Google re-extends its invitation to OFCCP to engage in collaborative discussions to address the Company's significant concerns addressed herein.

The Company sincerely hopes that we can reach a practical resolution to the current impasse. Nevertheless, Google respectfully requests that the Notice to Show Cause be rescinded in its entirety, and that an enforcement proceeding should not be initiated against the Company since for the reasons briefly summarized below and set forth in detail later in this correspondence, OFCCP's denial of access allegations are without merit.

First, OFCCP fails to acknowledge that Google has cooperated in good faith with OFCCP throughout the course of this Compliance Evaluation. In fact, Google has produced complete responses to over ninety percent (90%) of OFCCP's information, data and document requests (hereinafter "Administrative Subpoena Requests") in this Compliance Evaluation. For example, Google has produced over 884,000 items of compensation data regarding all of the Company's 21,114 employees in its Mountain View affirmative action plan workforce (hereinafter "workforce") as of September 1, 2015. Moreover, the Company has produced over 6.7 million items of applicant flow data regarding the applicants to twenty-seven (27) of Google's job groups during the period from September 1, 2014 to August 31, 2015. Furthermore, prior to the issuance of the Notice to Show Cause, Google agreed to produce additional information to OFCCP in accordance with a reasonable schedule. Google remains willing to do so.

Second, Google has not denied access to any of the information OFCCP has requested in the Administrative Subpoena Requests, but merely has asked that the Agency provide explanations for a limited number of them (hereinafter "the Remaining Requests"). As described in more detail below, absent such explanations these Remaining Requests are irrelevant to OFCCP's Compliance Evaluation, are unreasonable, and/or are unduly burdensome.

Third, OFCCP has failed to date to satisfy the elements necessary under its own regulations and/or for the issuance of an administrative subpoena with respect to the Remaining Requests due to: (1) OFCCP's repeated refusal to provide *any* explanation whatsoever regarding the relevance of the Remaining Requests, and/or (2) the unduly burdensome nature of the Remaining Requests. Accordingly, any requirement to produce information in response to the Remaining Requests, without further showings by OFCCP, would violate Google's Fourth Amendment rights under the U.S. Constitution. Indeed, were Google to respond to the Remaining Requests at this time, it could potentially waive its Fourth Amendment rights.

Fourth, OFCCP has included in its Notice to Show Cause numerous new items that OFCCP did not request previously, thus rendering the Notice to Show Cause invalid on its face.

I. BACKGROUND AND OVERVIEW

OFCCP's Notice to Show Cause ignores that Google has cooperated in good faith with the Agency throughout this Compliance Evaluation. Google already has produced well in excess of 90% of the data and documentation sought by the Agency. In addition, Google granted OFCCP access to its facilities for a two day onsite. Moreover, Google never informed OFCCP that it would not provide the information sought in the Remaining Requests, but has either proposed a reasonable schedule for doing so or asked that OFCCP simply articulate the basis on which the Agency claims the Remaining Requests are relevant to the Compliance Evaluation. To set the record straight with respect to these matters, we have provided the following brief history of the Compliance Evaluation to date, as well as a summary of Google's good faith cooperation with OFCCP throughout this matter.

A. History of the Compliance Evaluation and the Parties' Current Impasse

On September 30, 2015, OFCCP sent a Scheduling Letter to Google announcing a Compliance Evaluation of the Company's Mountain View facility. Google subsequently submitted its affirmative action plans and a complete response to Item 19 of the Scheduling Letter, providing 31 items of individualized compensation data for more than 21,000 employees in its Mountain View workforce as of September 1, 2015.

OFCCP subsequently made a series of requests for additional information and documentation from Google, including, *inter alia*, a description of each item of compensation data included in the Item 19 submission, equity data for all employees, and various policies and procedures. To date Google has provided OFCCP with *in excess of 884,000* items of compensation data. In addition, OFCCP requested the applicant flow logs for 27 of Google's job groups. To date Google has produced *over 6.7 million* items of applicant flow data to OFCCP.

In March 2016 OFCCP requested a two day onsite to interview various Google management and human resources employees regarding the Company's policies and procedures related to compensation and hiring. Google fully cooperated with the Agency during the onsite, which took place on April 27, 2016 and April 28, 2016. Google's management and human resources officials provided OFCCP with detailed, consistent and clear descriptions of Google's hiring and compensation processes.

On June 1, 2016, OFCCP sent two separate post-onsite requests for additional information and documentation to Google. Google provided complete responses to the first set of requests, which sought additional information related to Google's hiring practices.

OFCCP's second set of post-onsite requests sought: (1) thirty-six (36) additional data points for each of Google's 21,114 employees in its September 1, 2015 workforce; (2) a second compensation data base for each of Google's 19,538 employees in its September 1, 2014 workforce, including all factors previously requested, and the 36 new compensation data points requested on June 1, 2016; (3) six additional data points as of June 2016 for all Google

employees in the workforce as of September 1, 2015; and (4) nineteen (19) additional document requests related to both compensation and non-compensation personnel policies. These requests include, without limitation, the name, personal contact information, complete salary and job history, education, prior experience, prior salary, date of birth, competing offers, locality and numerous other data points for all of Google's employees as of September 1, 2015 and September 1, 2014. All told, OFCCP post-onsite requests required Google to produce well in excess of two million additional items of data to OFCCP within only a three week period of time.

On June 14, 2016, the parties held a teleconference to discuss Google's concerns with the relevance and sheer size of the requests. Google noted that OFCCP's requests significantly, and perhaps, unnecessarily expanded the scope and scale of the Compliance Evaluation, notwithstanding that the Agency had yet to disclose to Google the reasons for its requests or the existence of any issues related to the substantial compensation data already provided to the Agency. Understandably, Google respectfully requested OFCCP provide a brief, but specific, description of the potential issues it had observed in the data already provided. OFCCP responded that it "was not able to let [us] know exactly what the Agency was looking at." Google then requested OFCCP to, at least, identify the particular areas (e.g., job title or job groups) where OFCCP was seeing issues (e.g., gender, race, or ethnicity issues). OFCCP responded that it had "no findings it was able to share," and that it would not limit the scope of its requests in any way whatsoever.

B. Google Has Produced the Vast Majority of All the Information OFCCP Requested in its Administrative Subpoena Requests

Conspicuously absent from the Notice to Show Cause is any acknowledgement by OFCCP of Google's complete responses to well in excess of 90% of the OFCCP's Administrative Subpoena Requests in this matter. The eight page chart attached hereto as Exhibit A summarizes each Administrative Subpoena Request to which Google has responded to date, including the date of the request, the date Google responded or plans to respond within a reasonable timeframe, and the volume of the production in terms of number of documents and/or items of data produced. The chart demonstrates not only Google's good faith cooperation with OFCCP throughout this Compliance Evaluation, but evidences the massive volume of information the Company already has provided to the OFCCP. In sum, Google has produced *over 7.5 million items of data* to OFCCP, and has produced or agreed to produce *over 271,000 documents* to OFCCP.

C. The Impasse Regarding the Remaining Requests

As a result of Google's complete responses to the overwhelming majority of OFCCP's requests to date, the following are the only items still in question (i.e., the Remaining Requests): (1) interview notes for an estimated 54,000 applicants to Job Groups 211, 212, 213, 214, 215 and 216; (2) complete job salary and history, including without limitation starting salary, starting position/job title, compa-ratio, starting job family, starting level and starting organization for all 21,114 employees on the September 1, 2015 snapshot date, as well as all

19,539 employees on the September 1, 2014 prior year snapshot; (3) the names and personal contact information for all 21,114 employees on the September 1, 2015 snapshot date, as well as all 19,539 employees on the September 1, 2014 prior year snapshot; (4) market surveys; (5) a second compensation data set for all Google employees in the workforce as of September 1, 2014, including the production of all data items requested in connection with all employees as of the September 1, 2015 snapshot date; (6) internal employee "complaints filed during the past three years"; and (7) Public Access Files and LCAs from 9/1/13 to 8/31/15.

As explained in detail in Section II below, OFCCP has failed to comply with the elements necessary under its own regulations and/or for the lawful issuance of an administrative subpoena with respect to each of these Remaining Requests.

D. Google Has Made Multiple Good Faith Efforts to Work Collaboratively with OFCCP to Resolve Differences

Google has made numerous written requests that the Agency share information regarding the relevance and reasonableness of the Remaining Requests. Notwithstanding Google's efforts, OFCCP repeatedly has declined to do so. Google needs this information to be able to determine appropriate next steps to protect its Fourth Amendment rights. The following is a summary of Google's repeated requests for good faith cooperation in this matter, and OFCCP's rejection thereof, following the parties' June 14, 2016 teleconference described above:

- Google's June 17, 2016 Correspondence to Assistant Director Agnes Huang:

Following up on the parties' June 14, 2016 teleconference, Google wrote to OFCCP to confirm that "the Company understandably wishes to better understand the basis and need for Agency's recent [post-onsite] requests," and confirms that to date "OFCCP has not disclosed any information about what compensation issues, if any, [OFCCP] has identified during the first eight months of the review." Google properly notes that "[t]his lack of transparency unreasonably prevents Google from evaluating the relevance of the Agency's requests, working collaboratively with OFCCP to identify potential alternative, more efficient means of resolving such issues, and/or determining whether any reasonable limitations might be appropriate." Google made clear that it "understand[s] and do[es] not object at this time to the fact that the Agency will not provide its actual analyses." This remains Google's position.

- OFCCP's June 23, 2016 Response:

Assistant District Director Huang responded that "at this stage of the Compliance Evaluation, OFCCP is unable to share any preliminary findings or internal analyses." OFCCP failed to provide any explanation as to why the information requested was relevant to its Compliance Evaluation.

- Google's June 30, 2016 Correspondence to Deputy Regional Director Suhr:

Google reiterated its concern regarding "the Agency's ongoing refusal to provide any meaningful information to the Company regarding its preliminary findings related to compensation," and that "failing to share such information deprives OFCCP and the Company of the opportunity to engage in a collaborative and open dialogue regarding alternative, yet sensible means of providing OFCCP the information it needs to conduct its Compliance Evaluation." Google requests a teleconference with OFCCP Regional Office at its earliest convenience "to address the Company's concerns while preserving the Agency's ability to effectively evaluate Google." Ms. Suhr did not respond to this invitation.

- Google's July 2016 Attempt to Speak with Regional Director Janette Wipper:

In July 2016, Google, through its undersigned counsel, left a phone message for OFCCP Regional Director Janette Wipper requesting a teleconference with the Region regarding Google's ongoing concerns. Like Ms. Suhr, Ms. Wipper did not respond to this invitation. To the contrary, Google's counsel received an e-mail dated July 8, 2016 from a Trial Attorney in the Solicitor's office stating that the Agency expected to receive all outstanding requested information by July 15, 2016.

- The August 25, 2016 Teleconference:

On August 25, 2015 Google, through its undersigned counsel, and Assistant Regional Director Agnes Huang, Compliance Officers Farha Haq and Carolyn Mcham-Menchyk, participated in a teleconference to review "outstanding items." Google again requested information regarding why OFCCP believed certain items were relevant to the review, and also agreed to provide certain additional disclosures by September 2, 2016. Following the conference, Ms. Mcham-Menchyk sent an e-mail to Google listing items that purportedly had yet to be provided and items that "need clarification." No information regarding why the Remaining Requests are relevant to the Compliance Evaluation was provided.

- Google's September 2, 2016 Correspondence to OFCCP:

On September 2, 2016, Google supplemented its disclosures as agreed during the August 25, 2016 conference, set forth a schedule for additional supplemental disclosures, and listed those items it remained unable to produce due to OFCCP's failure to provide any reasonable basis for their disclosure. Google notes that it "looks forward to the Agency's response to the proposed schedule . . . as well as the Agency's responses for any reasonable bases that would justify the disclosures" listed in Section V of the correspondence.

- September 16, 2016 Notice To Show Cause:

OFCCP failed to respond to Google's September 2, 2016 correspondence. Instead, OFCCP Regional Director Janette Wipper issued the September 16, 2016 Notice to Show Cause erroneously claiming that Google denied OFCCP access to records. In the Notice to Show Cause, OFCCP: (1) fails to provide any information regarding the relevance of the Remaining Requests; and (2) makes a significant number of additional requests for information for the first time.

II. THE NOTICE TO SHOW CAUSE SHOULD BE RESCINDED SINCE: (1) GOOGLE HAS NOT DENIED THE AGENCY ACCESS TO INFORMATION RESPONSIVE TO THE REMAINING REQUESTS; (2) OFCCP HAS NOT SATISFIED THE STANDARD SET FORTH UNDER 41 C.F.R. § 60-1.43 AND/OR THE REQUIREMENTS FOR THE FOR THE LAWFUL ISSUANCE OF AN ADMINISTRATIVE SUBPOENA; AND (3) OFCCP'S NOTICE TO SHOW CAUSE IS INVALID ON ITS FACE.

OFCCP's Notice to Show Cause should be rescinded and/or administrative proceedings should not be commenced against Google for the following reasons: (1) Google has never refused to produce responses to the Remaining Requests, and, therefore, the Company has not denied access to OFCCP; (2) to date OFCCP has failed to satisfy (a) its own regulatory standard for its demands related to the Remaining Requests and/or (b) its burden, under the administrative subpoena standard, of showing that the Remaining Requests are relevant to the Compliance Evaluation, reasonable, and not unduly burdensome; and (3) the Notice to Show Cause is facially invalid since OFCCP claims that Google denied access to information that OFCCP never previously requested. For these reasons, which are described in greater detail below, Google respectfully requests that the Notice to Show Cause be rescinded and an administrative proceeding not commence against the Company.

A. Google Has Never Denied OFCCP Access to Any Remaining Request

Contrary to the allegations in the Notice to Show Cause, Google has never denied OFCCP access to any Remaining Request. Rather, Google repeatedly has requested that OFCCP articulate the relevance of the Remaining Requests so that it can properly evaluate whether OFCCP has complied with the standards for issuance of an administrative subpoena described in Section II, Subsection b. below. Notwithstanding Google's good faith requests, OFCCP repeatedly has refused to provide Google with any explanation, other than to state in a conclusory and circular manner that the production is being made so that Agency can conduct its Compliance Evaluation. When asked at the parties' last teleconference on September 22, 2016 whether OFCCP was willing to provide any information regarding the relevance of the information to its investigation, OFCCP responded that it "would not provide any additional information."

OFCCP's lack of transparency with respect to the relevance of the Remaining Requests leaves Google in a difficult position – incur the significant burdens of producing all the information and data OFCCP has requested, thereby potentially waiving its right to object to the Remaining Requests, or protect its Fourth Amendment rights by ensuring that the Agency complies with the standards applicable to administrative subpoenas set forth below. OFCCP's repeated refusal to provide any reason why the Remaining Requests are reasonable and relevant to its Compliance Evaluation fully justifies Google's decision to protect its rights, especially when Google can potentially waive such rights by producing responses to the Remaining Requests. Cf. EBOC v. County of Hennepin, 623 F. Supp. 29, 31-32 (D. Minn. 1985) (failure to object to an administrative subpoena can act as a waiver of objections).

Throughout the course of the Compliance Evaluation and to this date, Google has informed OFCCP that it is ready, willing, and able to consider responding to all of the Remaining Requests, provided OFCCP complies with its own regulations and the standards for the issuance of an administrative subpoena set forth below. Accordingly, since Google has never denied OFCCP access to records, but has merely appropriately protected its rights, OFCCP's claim fails as a matter of law.

B. OFCCP Has Not Met Its Own Regulatory Standard Applicable to the Administrative Requests, and/or the Standard Necessary for the Lawful Issuance of an Administrative Subpoena, as a Matter of Law

OFCCP's regulations require that “[e]ach contractor shall permit the inspecting and copying of such books and account and records, including computerized records, and other material *as may be relevant to the matter under investigation and pertinent to compliance* with [Executive Order 11246].” 41 C.F.R. § 60-1.43 (emphasis added). Further, OFCCP's requests for information are subject to the Fourth Amendment constitutional standards for administrative subpoenas set forth in Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 66 S. Ct. 494, 90 L. Ed. 614 (1946) and its progeny. See United Space Alliance, LLC v. Solis, 824 F. Supp.2d 68, 91 (D.D.C. 2011) (applying administrative subpoena standard in denial of access case brought by OFCCP). Thus, “when an administrative agency subpoenas corporate books or records, the Fourth Amendment requires that the subpoena be sufficiently limited in scope, relevant in purpose and specific in directive so that compliance will not be unreasonably burdensome.” United Space Alliance, 824 F. Supp.2d at 91, citing Donovan v. Lone Steer, Inc., 464 U.S. 408, 415, 104 S. Ct. 769, 773, 78 L. Ed. 2d 567, 573 (1984).

“The gist of the protection is in the requirement, *expressed in terms*, that the disclosure sought shall not be *unreasonable*.” Id., citing Oklahoma Press at 66 S. Ct. at 505 (other citations omitted) (emphasis added). The line of cases establishing the administrative subpoena standard “in no way leaves an employer defenseless against an unreasonably burdensome administrative subpoena requiring the production of documents.” Id., citing Lone Steer, Inc., 104 S. Ct. at 773. “Rather, it ‘provide[s] protection for a subpoenaed employer by allowing [it] to question the reasonableness of the subpoena, before suffering any penalties for

refusing to comply with it, by raising objections in an action in district court.” *Id.*, at 92, citing Lone Steer, Inc., 104 S. Ct. at 773.

In addition to the relevant and reasonable standard, an administrative subpoena must be “sufficiently limited in scope” and “specific in directive so that compliance will not be “unreasonably burdensome.” United Space Alliance, 824 F. Supp.2d at 91, quoting Lone Steer, Inc., 104 S. Ct. at 773 (emphasis added). Indeed, it is well established that “[a]n administrative subpoena may not be so broad so as to be in the nature of a ‘fishing expedition.’” Peters v. U.S., 853 F.2d 692, 700 (9th Cir. 1988); cf., Cook v. Howard, 484 Fed. Appx. 805, 813 (4th Cir. 2012) (stating that while the party seeking the disclosure asserted that the materials may have led to discovery of admissible evidence, they present “no intelligible explanation of how that is so, nor can we detect any; the requests have every indicia of the quintessential fishing expedition”) (emphasis added).

OFCCP repeatedly has refused to articulate to Google *any* explanation for why the Remaining Requests are reasonable and are relevant to its Compliance Evaluation. Accordingly, the Agency cannot meet its own regulatory standard set forth in 41 C.F.R. § 60-1.43, nor the standard described in United Space Alliance as a matter of law. In addition, OFCCP’s unreasonably excessive and overly-broad disclosure requests go far beyond the relevant facts and issues in this Compliance Evaluation, and constitute nothing more than an impermissible “fishing expedition” into Google’s records.

In its Notice to Show Cause, OFCCP cites to 41 C.F.R. § 60-1.12 as justification for its data and information requests. However, § 60-1.12 is simply a record retention provision. It governs the types of records that a contractor must maintain, not what a contractor may have to produce during a compliance evaluation. OFCCP has never alleged that Google has failed to preserve any record required to be maintained in this matter.

More appropriately, OFCCP also cites to 41 C.F.R. § 60-1.43 for a contractor’s obligations to produce records during a compliance evaluation. However, this section does not permit OFCCP *unfettered discretion* to obtain records and information during a compliance evaluation. § 60-1.43 provides, in pertinent part, that “[e]ach contractor shall permit the inspecting and copying of such books and account and records, including computerized records, and other material *as may be relevant to the matter under investigation and pertinent to compliance* with [Executive Order 11246]” (emphasis added).

Accordingly, 41 C.F.R. § 60-1.43 requires that the records OFCCP seeks for review are both *relevant* and *pertinent*. Beyond the regulations, as noted above, the Fourth Amendment to the United States Constitution, protects contractors like Google from unreasonable searches and seizures.

As described below, OFCCP has not met its burden under 41 C.F.R. §§ 60-1.43 and/or the administrative subpoena standard set forth above with respect to any of the Remaining Requests:

- Interview Notes:

OFCCP requests that Google produce interview notes related to an estimated 54,000 applicants who interviewed for positions in Job Groups 211, 212, 213, 214, 215 and 216. In response to this request, Google consulted with its e-Discovery team regarding the time, cost and burden of producing interview notes for these applicants. The team estimates a total cost of over \$1 million and no less than 6 months to collect the relevant data and produce same to OFCCP. The cost involves not only pulling the notes for the correct applicants, but ensuring that the notes correlate to the period under review and to the specific positions applied to in Job Groups 211 to 216.

Due to the enormous burden associated with this request, Google respectfully has requested the Agency to analyze the voluminous applicant flow data Google already has provided to the Agency to ascertain whether it is truly necessary to require the Company to gather and produce interview notes related to the 54,000 applicants we estimate were interviewed either by phone or on-site. Accordingly, we anticipate responding to this request would necessitate the production of hundreds of thousands of pages of interview notes. Once the Agency has completed its analyses of information already in its possession, OFCCP can revisit this request in order to determine if there is a more cost effective and efficient alternative, including whether the request can be limited to certain job titles or if sampling might suffice. Unfortunately, OFCCP never responded to this suggestion, instead deciding to issue the Notice to Show Cause. Accordingly, as it stands, this request is clearly overbroad and unduly burdensome.

- Job and Salary History, As Well As Starting Salary, Starting Position/Title, Compa-Ratio, Starting Job Code, Starting Job Family, Starting Job Level and Starting Organization:

OFCCP requests that Google produce the entire job and salary history, including starting salary, starting position/title, starting compa-ratio, starting job family, starting job level and starting organization, for all 21,114 employees on the September 1, 2015 snapshot, as well as all 19,539 employees on the September 1, 2014 prior year snapshot. This request seeks a massive amount of additional compensation data, with no attempt by OFCCP to limit the requests to an appropriate subset of employees. For example, OFCCP has not limited its requests to employees in areas where the Agency may have found some preliminary indicator of compensation disparities on the basis of gender, race, ethnicity or sex. To date OFCCP has failed to articulate any issue it may have found in the 844,560 items of compensation data for 21,114 employees that Google already has produced to OFCCP. Moreover, it strains credibility to claim that the Agency would need the massive amount of sought after information for all 21,114 employees. Absent such explanation, OFCCP's request for such voluminous data is unreasonable and unduly burdensome, and constitutes nothing more than an impermissible fishing expedition.

- Employee Names and Personal Contact Information:

OFCCP requests that Google produce the names and personal contact information (including phone numbers, addresses, e-mails, etc.) for all 21,114 employees on the September 1, 2015 snapshot, as well as all 19,539 employees on the September 1, 2014 prior year snapshot.

As described in our February 22, 2016 e-mail and September 2, 2016 correspondence to OFCCP, Google is not prepared to provide the names and personal contact information for its *entire* workforce at this time due to a lack of relevance, its unduly burdensome nature, and significant privacy and confidentiality concerns it raises. See Grey v. Sup. Ct., 63 Cal. App. 3d 698, 703-704 (1976) (speculation alone is not sufficient to warrant the disclosure of private information). As previously explained to the Agency and as demonstrated by its actions to date, Google takes the safeguarding of its employees' personal information extremely seriously.

While the Company recognizes that there may be a point during this Compliance Evaluation that the disclosure of *some* employee names may be necessary, the Company does not believe the Agency's current activities require such disclosure. This is especially true since OFCCP has *not* communicated any legitimate rationale for obtaining employee name – certainly not one that the Agency cannot achieve using the employee ID numbers already provided.

OFCCP can effectively and efficiently move forward with the roster provided at this time, which identifies each specific employee by a unique ID number. Of course, the Company would be happy to reconsider the Agency's request for employee names on one or more reports should OFCCP supply a necessary rationale for such information that overrides Google's privacy concerns and that cannot be accomplished with employee ID number.

- Market Surveys

OFCCP requests that Google produce all "Market Surveys." As explained during the on-site and in Google's September 2, 2016 correspondence to OFCCP, the Company developed Market Reference Points ("MRP") from Market Surveys. Since Google already has provided the Agency with the MRP for each position, the market surveys offer no additional probative value to OFCCP's investigation into still yet to be disclosed compensation issues. However, Google is willing to reconsider this position if OFCCP identifies a reason why market surveys are relevant to the Compliance Evaluation.

- A Second Compensation Snapshot Based on the Prior Year Snapshot Date:

OFCCP requests that Google provide a *second* compensation database for the 19,539 in Google's workforce as of September 1, 2014. Notwithstanding that the Agency has refused to provide any information regarding any compensation issues it purports to have

identified in connection with Google's Item 19 submission for the 21,114 employees as of September 1, 2015, the Agency continues to insist that Google provide a *second* compensation database for the 19,539 Google employees as of September 1, 2014. Absent any explanation regarding the issues it purports to have identified with the current year snapshot data, OFCCP's request for compensation data for a second snapshot date is not relevant to the Compliance Evaluation, is unreasonable, and overly burdensome, and constitutes nothing more than an impermissible fishing expedition. However, once again, Google is willing to reconsider this position if OFCCP identifies the particular issues that would justify the production of a second compensation submission based on the prior year snapshot date.

- Internal Employee Complaints Filed in the Last Three Years:

OFCCP requests that Google produce all "Complaints filed in the past three years, including (internal and external² by name, race gender, job title manager, department, basis and status.)" OFCCP's request is overbroad given (1) the lack of any substantiation by OFCCP for the need for "internal complaints" and (2) Google's production of all complaints filed with external fair employment practice agencies. The burden of locating information regarding any internal EEO complaints over a three year period for a workforce of over 21,000 employees is far outweighed by any probative value such complaints might provide in connection with this Compliance Evaluation. See, e.g., *EEOC v. Morgan Stanley & Co.*, 132 F. Supp.2d 146, 161 (S.D.N.Y. 2000) (administrative subpoena found unduly burdensome where request for all informal or formal complaints would require "a massive and unduly burdensome effort to interview practically everyone who works or recently has worked in a supervisory position, in order to determine whether any employees ever questioned the fairness of their treatment."). However, if OFCCP provides, in writing, a reasonable explanation why such disclosure is necessary, the Company will take this under advisement.

- Public Access Files and LCAs from 9/1/13 to 8/31/15

OFCCP requests the Public Access Files and LCAs for the period from September 1, 2013 to August 31, 2015. Notwithstanding Google's requests, OFCCP has not provided any reasonable basis for the disclosure of these documents. During the course of the onsite, all managers consistently confirmed that applicants/employees requiring a visa of any type are treated *no differently* in terms of compensation, benefits or any other terms and conditions of employment than other applicants/employees. OFCCP has never stated that it has any information to the contrary. Accordingly, OFCCP's request for this information is not relevant

² Google already has provided OFCCP with formal EEO charges/complaints filed with federal, state or local fair employment practice agencies alleging race, gender, sexual harassment, disability, religious accommodation or national origin discrimination during the past three years.

to the Compliance Evaluation, is unreasonable and unduly burdensome, and constitutes nothing more than an impermissible fishing expedition.³

* * *

Based on the foregoing, Google submits that since OFCCP has not satisfied the elements necessary under its own regulations and/or for the issuance of an administrative subpoena as a matter of law, the Notice to Show Cause should be rescinded in its entirety and an administrative proceeding should not be commenced against the Company.

C. The Notice to Show Cause Is Facially Invalid Since It Seeks the Production of Information That OFCCP Has Never Previously Requested

On September 19, 2016, OFCCP e-mailed to Google Inc. an "Attachment C – Amended 9/16/16," supplementing the original Attachment C to the Notice to Show Cause. In its original and/or Amended Attachment C to the Notice to Show Cause, OFCCP requests the following ten (10) items *for the first time*:

- National origin/citizenship/visa status/place of birth for all 21,114 employees in Google's workforce as of September 1, 2015, and all 19,539 employees in Google's workforce as of September 1, 2014.
- "Job Function" for all 21,114 employees in Google's workforce as of September 1, 2015, and all 19,539 employees in Google's workforce as of September 1, 2014. (Prior to the Notice to Show Cause, OFCCP had only requested Job Function with respect to the applicant flow logs for Job groups 211, 212, 213, 214, 215 and 216).
- "Starting Job Function" for all 21,114 employees in Google's workforce as of September 1, 2015, and all 19,539 employees in Google's workforce as of September 1, 2014.
- "All Stock Agreements" for all 21,114 employees in Google's workforce as of September 1, 2015, and all 19,539 employees in Google's workforce as of September 1, 2014.
- "All expressions of interest" for job openings in Job Groups 211, 212, 213, 214, 215 and 216.

³ Notwithstanding Google's position with respect to the Public Access Files and LCAs, in the spirit of the Company's ongoing good faith and cooperation, the Company will produce these documents to OFCCP by November 1, 2016 on the basis that these documents are available to the public upon request. It is worth noting that the LCAs for the past 3 years are readily accessible on a web-site maintained by the U.S. Department of Labor. See <https://lcr-pjr.doleta.gov/index.cfm?event=ehicjexternal.dspierlanding>.

- Race and gender “for all expressions of interest” to Job Groups 211, 212, 213, 214, 215 and 216.
- Applicant profile for each of the over 245,000 applicants to Job Groups 211, 212, 213, 214, 215 and 216.
- “Any other employee characteristics maintained” for each of the over 245,000 applicants to Job Groups 211, 212, 213, 214, 215 and 216.
- “Automated Resume Screen System”
- Instructional manual and screenshots for gHire.

The Notice to Show Cause is invalid on its face since OFCCP threatens the commencement of enforcement proceedings against the Company based, in part, on these items that OFCCP never requested prior to the issuance of the Notice to Show Cause. Google cannot have denied OFCCP access to items that it has not previously requested Google to produce.

In addition to invalidating the Notice to Show Cause, OFCCP’s demand for the first time in the Notice to Show Cause for a significant amount of additional information further illustrates the continuing refusal of OFCCP to engage in an open dialogue with Google in this Compliance Evaluation. For example, had OFCCP discussed these new requests with Google prior to issuance of the Notice to Show Cause, Google would have explained to the Agency, as it did during the parties’ teleconference on September 22, 2016, that the Company does not use the terms or have any data related to “job function” or “starting job function.”⁴ Similarly, Google would have explained that consistent with its compliance with Title VII of the Civil Rights Act of 1964 and Executive Order 11246, Google does not maintain comprehensive data related to national origin or place of birth in its HRIS systems. The Notice to Show Cause also highlights OFCCP’s pattern of refusing to provide to Google any information regarding the relevance of the Remaining Requests, and asking the Company to produce even further information without explanation. Nevertheless, as with every other request made by OFCCP, the Company will certainly consider producing any records or information that are both relevant to the Compliance Evaluation and not unduly burdensome.

III. CONCLUSION

Based on the foregoing, it is clear that Google has made every reasonable effort to cooperate with OFCCP during the Compliance Evaluation. In fact, it is only because of the Agency’s unreasonableness and refusal to work cooperatively and collaboratively with the Company that we find ourselves at this point. To this end, the Company again requests the

⁴ Google does have business units where different jobs are located – for example, General Business Operations (GBO), Engineering, etc. Accordingly, in the spirit of good faith cooperation, Google provided this general business organization in connection with the applicant flow logs for Job Groups 211 to 216, and is willing to do the same for the 21,114 employees on the September 1, 2015 workforce snapshot.

opportunity to engage in a collaborative and productive dialogue regarding alternative, yet sensible means of providing OFCCP the information it needs to complete its Compliance Evaluation. Accordingly, we request that the parties schedule a teleconference at a mutually convenient date and time. In addition, Google respectfully requests that the Notice to Show Cause should be rescinded in its entirety, and that an enforcement proceedings should not be initiated in this matter, so that we may move forward to conclude this Compliance Evaluation in an efficient and effective manner.

Very truly yours,

JACKSON LEWIS P.C.



Matthew J. Camardella

MJC/dvd

cc: Farha Haq (Haq.Farha@dol.gov)
Carolyn J. Mcham-Menchyk (Mcham-Menchyk.Carolyn@dol.gov)
Scott Williamson (scwilliamson@google.com)

EXHIBIT A

GOOGLE – MOUNTAINVIEW COMPLIANCE EVALUATION – PRODUCTION TO OFCCP TO DATE

EXHIBIT A

<u>Administrative Subpoena Request</u>	<u>Month Requested</u>	<u>Month Produced/To Be Produced</u>	<u>Volume of Production</u>
Item 19 Data	September 2015	November 2015 and supplemented, as noted below, at various times during compliance review	844,560 items of compensation data for 21,114 employees produced to date
2015 EEO-1 Report; Compensation Policy; Race Definitions	December 2015	December 2015	4 pages produced
Salary Ranges; description of job grades; descriptions of certain forms of compensation; race codes	December 2015 and January 2016	January 2016	19 pages produced
Questions regarding personnel activity reports	January 2016	January 2016	Not applicable
Descriptions of Google's EEO-1 reports; description of Google's hiring and promotion processes	December and January 2016	January 2016	Not Applicable
Questions regarding job titles and compensation	January 2016	January 2016	Not Applicable
Google's Consolidated 2015 EEO-1 Report	January 2016	January 2016	1 page produced
Questions regarding Item 19 data	January 2016	January 2016	Not Applicable

<u>Administrative Subpoena Request</u>	<u>Month Requested</u>	<u>Month Produced/To Be Produced</u>	<u>Volume of Production</u>
Stock Awards for all 21,114 employees in workforce as of September 1, 2015	January 2016	January 2016 and supplemented in April 2016	274,482 items of data produced
Employee Roster as of September 1, 2015 in Excel	February 2016	February 2016	126,684 items of data produced
Questions regarding applicant flow log, hiring and recruiting processes	February 2016	February 2016	Not Applicable
Applicant Flow Data for 27 Job Groups	February 2016	March, April and May 2016	Over 6.7 million items of applicant flow data produced to date
Bonus Earned	June 2016	OFCCP retracted request since Google had already produced the data to the Agency	Not Applicable
Bonus Period Covered	June 2016	OFCCP retracted request since Google had already produced the information to the Agency	Not Applicable
Campus or Industry Hire	June 2016	August 2016	21,114 items of data produced
Current Compa Ratio	June 2016	August 2016	21,114 items of data produced
Current Job Code	June 2016	August 2016	21,114 items of data produced
Current Job Family	June 2016	August 2016	21,114 items of data produced

<u>Administrative Subpoena Request</u>	<u>Month Requested</u>	<u>Month Produced/To Be Produced</u>	<u>Volume of Production</u>
Current Level	June 2016	August 2016	21,114 items of data produced
Current Manager	June 2016	August 2016	21,114 items of data produced
Current Organization	June 2016	August 2016	21,114 items of data produced
Date of Birth	June 2016	August 2016	21,114 items of data produced
Department Hired Into	June 2016	August 2016	21,114 items of data produced
Education	June 2016	December 2016	Google has agreed to provide resumes for all 21,114 employees in workforce by December 15, 2016
Equity Adjustment	June 2016	September 2016	None – no equity increases were made
Hiring Manager	June 2016	August 2016	21,114 items of data produced
Locality	June 2016	August 2016	21,114 items of data produced
Long/Short Term Incentive Eligibility and Grants	June 2016	November 2015	Included in original Item 19 submission
Market Reference Point	June 2016	August 2016	21,114 items of data produced
Market Target	June 2016	August 2016	None – term market target does not exist at Google
Performance Rating for the Last Three Years	June 2016	August 2016	63,342 items of data produced

<u>Administrative Subpoena Request</u>	<u>Month Requested</u>	<u>Month Produced/To Be Produced</u>	<u>Volume of Production</u>
Prior Experience	June 2016	December 2016	Google has agreed to provide resumes for all 21,114 employees in workforce by December 15, 2016
Prior Salary	June 2016	Not Applicable	Google does not regularly maintain prior salary information in its HRIS systems
Referral Bonus	June 2016	November 2015 (Google provided this data with its original Item 19 submission)	Not applicable
Stock Monetary Value at Award Date	June 2016	January 2016 and supplemented in April 2016	Data already provided to OFCCP allows for calculation of hypothetical value.
Target Bonus	June 2016	August 2016	21,114 items of data produced
Total Cash Compensation	June 2016	November 2015 and supplemented in April and August 2016	Data already provided in connection to Item 19 submission and supplements thereto allows for calculation of total cash compensation.
Any Other Factors Related to Compensation	June 2016	April 27-28, 2016	Not applicable; provided during interviews at April 27-28, 2016 onsite

<u>Administrative Subpoena Request</u>	<u>Month Requested</u>	<u>Month Produced/To Be Produced</u>	<u>Volume of Production</u>
Bonus Targets for the Past Three Years	June 2016	August 2016	63,342 items of data produced
Competing Offer	June 2016	September 2016	Google informed OFCCP that it does not regularly maintain this data in its HRIS
Compensation Policies, Guidelines and Training Materials; Employee Guide – Compensation, Performance Appraisals; Hiring, Promotion and Termination Policies; Guidelines and Training Materials; Manager Guides for Compensation; Performance Review Policy/Guidelines, and Training Materials; Recruiter Guides – for Recruiting and Hiring	June 2016	August 2016	374 pages from 26 policies or other documents produced
FMLA Policy	June 2016	OFCCP retracted request since Google had already produced the policy to the Agency	Not applicable
Job Pay Level Listing – Education	June 2016	January 2016	Google produced this information to OFCCP prior to the onsite

<u>Administrative Subpoena Request</u>	<u>Month Requested</u>	<u>Month Produced/To Be Produced</u>	<u>Volume of Production</u>
Listing of all Job Families, Job Codes and Positions Within	June 2016	September 2016	Google does not maintain a list of all job families, job codes and positions therein as of the September 1, 2015 snapshot date.
Merit Algorithm or Matrix for Past Three Years	June 2016	August 2016	3 spreadsheets produced
Organization Charts -- Compensation, Global Business, People Operations (Recruiting, Staffing, etc.)	June 2016	August 2016	2 org charts produced covering Compensation, Global Business and People Operations, including Recruiting and Staffing)
Pay Locality Guide	June 2016	August 2016	1 spreadsheet
Screenshots/instructions for GComp, Workday, Prosper, Perf	June 2016	September 2016	17 documents; 436 pages
Confirmation that "Market Target" is equivalent to market reference point	June 2016	June 2016	Google confirmed there is no term "market target" at Google.
Effective Dates for Calibration Lead Cheat Sheet, Manager Calibration Cheat Sheet, etc.	August 2016	September 2016	Not applicable
Key for Merit Algorithm	August 2016	September 2016	1 page
Correction of "◆◆" symbols Google's Item 19 Submission	August 2016	September 2016	Not Applicable

<u>Administrative Subpoena Request</u>	<u>Month Requested</u>	<u>Month Produced/To Be Produced</u>	<u>Volume of Production</u>
Additional Organizational Charts Related to Recruiting and Staffing	August 2016	September 2016	None – Google confirmed that the recruiting and staffing function was already included on the organization chart provided to OFCCP previously
Department Applied To For Job Groups 211 to 216	June 2016	August 2016	None – Google explained that applicants do not apply to particular departments at Google
Department Hired Into (if hired) for the Applicant Flow for Job Groups 211 to 216	June 2016	October 2016	3031 items of data produced
Job Family for the Applicant Flow for Job Groups 211 to 216	June 2016	August 2016	Over 245,000 items of data produced
Job Function for the Applicant Flow for Job Groups 211 to 216	June 2016	August 2016	Over 245,000 items of data produced (Google does not use the term job function but provided the business unit for each position)
Education for the Applicant Flow for Job Groups 211 to 216	June 2016	December 2016	Google has agreed to produce resumes for over 245,000 applicants to Job Groups 211 to 216 by December 15, 2016

<u>Administrative Subpoena Request</u>	<u>Month Requested</u>	<u>Month Produced/To Be Produced</u>	<u>Volume of Production</u>
Prior Relevant Work Experience for the Applicant Flow for Job Groups 211 to 216	June 2016	December 2016	Google has agreed to produce resumes for over 245,000 applicants to Job Groups 211 to 216 by December 15, 2016
Requisition Applied To for the Applicant Flow for Job Groups 211 to 216	June 2016	August 2016	Over 245,000 items of data produced
Requisition Hired Into (if hired) for the Applicant Flow for Job Groups 211 to 216	June 2016	August 2016	2921 items of data produced

EXHIBIT J

EXHIBIT J



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*through an affiliation with Jackson Lewis P.C., a Law Corporation

December 6, 2016

VIA E-MAIL (Wipper.Janette@dol.gov)

PRIVILEGED & CONFIDENTIAL

Ms. Janette Wipper
Regional Director
United States Department of Labor
Office of Federal Contract Compliance Programs
Pacific Regional Office
90 Seventh Street, Suite 18-300
San Francisco, CA 94103

Re: OFCCP Compliance Evaluation: Google Mountain View Facility

Dear Regional Director Wipper:

On behalf of Google Inc. ("Google" or the "Company"), we are following up on the parties' November 29, 2016 teleconference regarding the September 16, 2016 Notice to Show Cause in connection with the above-referenced matter.¹ At the end of this teleconference, OFCCP requested Google inform the Agency by today of its position with respect to any outstanding Agency requests for information (hereinafter the "Remaining Requests"). Accordingly, we have set forth herein: (1) a summary of parties' November 29, 2016 teleconference; (2) a list of those Remaining Requests which Google will produce; (3) a list of those Remaining Requests for which Google already has responded; and (4) a list of three Remaining Requests which Google will consider producing if OFCCP complies with its obligations under 41 C.F.R. § 60-1.43 and the standards for the issuance of an administrative subpoena.

¹ In submitting this response, Google does not waive any rights, defenses, or objections it may have in any further proceedings or litigation, all of which are reserved. This response is confidentially provided to OFCCP and the Company requests that the Agency protect and not disclose this private information. The response is based upon the information now known by the Company and may be supplemented, as necessary and appropriate, upon the discovery of any additional information.

I. SUMMARY OF THE NOVEMBER 29, 2016 TELECONFERENCE

As OFCCP is aware, Google requested the November 29, 2016 teleconference as a continuation of the Company's good faith efforts to engage in collaborative discussions to determine if Google's concerns can be appropriately addressed while preserving OFCCP's ability to effectively evaluate Google's compliance with federal affirmative action requirements. During the call, through its undersigned counsel, Google reviewed most of the Remaining Requests in the hope that compromise solutions could be found.

As described below, the parties made progress on a limited number of items. However, in large part, OFCCP continued its pattern of refusing to: (1) consider modifying its Remaining Requests in any form; and (2) disclose any information regarding why the Remaining Requests are relevant to any preliminary findings made by OFCCP concerning compensation.

The facts at issue here are extreme and create a unique case. OFCCP seeks massive amounts of additional compensation data that is not authorized by the Scheduling Letter approved by the Office of Management and Budget ("OMB") and is seemingly unnecessary to or not tailored to any specific issues in the compliance review. In addition, by refusing to provide *any* information regarding the relevancy of its compensation-related requests, and/or any information regarding the preliminary compensation findings the Agency has made, *if any*, OFCCP has circumvented Google's right to determine if OFCCP is engaging in an unlawful fishing expedition and trampling on its Fourth Amendment rights. To simply state, as OFCCP has during the parties' teleconference, that Google should trust that the Agency is not abusing its authority is insufficient to assuage the Company's concerns.

OFCCP also stated during the parties' teleconference that the Remaining Requests are relevant *to the matter under investigation* because OFCCP is authorized to examine compensation issues *in general*.² This circular reasoning is insufficient as a matter of law to meet OFCCP's own regulatory standards. Essentially, the Agency argues that since it has the general authority to investigate compensation matters, there is no boundary on the volume and scope of the compensation data/documentation it may seek related to the period under review, and in some cases, beyond the period under review. In other words, OFCCP takes the position that everything related to compensation is "a matter under investigation," and that the Agency has no obligation whatsoever to identify any issues before making data/document requests that are beyond that which is required to be produced pursuant to the Scheduling Letter.

No court or administrative tribunal would uphold this reasoning since it nullifies the standards set forth in 41 C.F.R. § 60-1.43 and for the issuance of an administrative subpoena under the Fourth Amendment. In fact, should such an extreme argument prevail, OFCCP would

² 41 CFR 60-1.43 provides that a contractor shall permit the inspecting and copying of material "as may be relevant to the matter under investigation and pertinent to the compliance with [Executive Order 11246]" (emphasis added).

have unfettered discretion to circumvent the limitations set forth by OMB in the Scheduling Letter as well as violate the regulatory and constitutional rights of all federal contractors in this and in future cases. Simply put, OFCCP must identify issues that have become "matters under investigation" before it is authorized to mandate the disclosure of data/documentation beyond those required by the Scheduling Letter and any requests for additional information must be relevant to those issues.

In sum, as demonstrated below, OFCCP's lack of transparency prevents Google from weighing the relevance of the information requested against the extreme burdens and costs of producing same. The following table summarizes the Remaining Requests discussed by the parties during their November 29, 2016 teleconference, and OFCCP's refusal to compromise on most of them:

<u>Remaining Request</u>	<u>Google's Concerns</u>	<u>Google's Proposed Solution/Compromise</u>	<u>OFCCP Response</u>
Interview Notes	<p>There are approximately 54,000 interviewees.</p> <p>The cost to Google to identify and pull the relevant notes is estimated at over \$1 million, and will require no less than 6 months to produce due to the need to extract the notes relevant to the period under review and to the specific positions to which applicants applied.</p>	<p>OFCCP should first analyze the massive amount of applicant flow data already provided to determine if the scope can be appropriately narrowed.</p> <p>Google is willing to provide a sample of interview notes so OFCCP can get a sense of what is contained within them and determine the appropriate scope of any further requests.</p>	OFCCP refused any potential alternative.
Job & Salary History for all Employees on 9/1/15 and 9/1/14 Snapshots, Including Starting; (1) Salary; (2) Position; (3) Compa Ratio; (4) Job Code; (5) Job Family; (6) Job	OFCCP's request is grossly overbroad in that it seeks a massive amount of additional data for all employees on both snapshots without identifying any compensation issues it	If OFCCP is willing to share where it has identified preliminary findings, the parties can work to narrow the scope to something more reasonable.	OFCCP failed to disclose where it has identified preliminary findings and refused any potential

<u>Remaining Request</u>	<u>Google's Concerns</u>	<u>Google's Proposed Solution/Compromise</u>	<u>OFCCP Response</u>
Level; and (7) Organization	has found to date. A question exists as to whether the Agency is even entitled to look at compensation decisions outside a two year period.		alternative.
Employee Names and Personal Contact Information for all Employees on 9/1/15 and 9/1/14 Snapshots	Lack of relevance; confidentiality. OFCCP can refer to Employee ID number and request to speak to employees with relevant information by notifying counsel.	If, and when, OFCCP determines the need to contact individuals, we can provide contact information.	OFCCP refused any potential alternative.
Stock Agreements for all Employees on 9/1/15 and 9/1/14 snapshots	Google already has provided all data necessary to evaluate stock awards. The Agreements themselves add no probative value to the evaluation.	Provide OFCCP with a sample stock agreement.	OFCCP agreed to the production of a sample stock agreement, but requested: (1) W-2 (Box 5) data as of 12/31/15; and (2) separation of new hire, refresh and spot awards in the data Google already has provided to OFCCP.

<u>Remaining Request</u>	<u>Google's Concerns</u>	<u>Google's Proposed Solution/Compromise</u>	<u>OFCCP Response</u>
National Origin/Citizenship/Visa Status/ Place of Birth for all Employees on the 9/1/15 and 9/1/14 snapshots	<p>This is a new request made for the first time in the Show Cause Notice.</p> <p>Lack of relevance and/or outside OFCCP's jurisdiction.</p> <p>As Google informed OFCCP on the teleconference, it does not maintain comprehensive data related to national origin, citizenship, visa status or place of birth in its HRIS systems, consistent with its obligations under Title VII and Executive Order 11246.</p> <p>OFCCP has not identified any issues at Google that would make this information relevant to the compliance review.</p>	N/A	N/A
Internal Complaints Filed in the Last Three Years (by Name, Race, Gender, Job Title Manager, Department, Basis and Status)	This request is not limited to written EEO complaints.	Google will reconsider if OFCCP can provide some limitation to the type of complaint sought in its request.	OFCCP has limited its request to EEO complaints.

<u>Remaining Request</u>	<u>Google's Concerns</u>	<u>Google's Proposed Solution/Compromise</u>	<u>OFCCP Response</u>
"Automated Resume Screen System"	<p>This is a new request made for the first time in the Show Cause Notice.</p> <p>Google did not make use of an automated resume screen system for applicants during the period under review.</p>	N/A	N/A
Provide "Job Function" and "Starting Job Function" for all Employees on the 9/1/15 and 9/1/14 Snapshots	<p>This is a new request made for the first time in the Show Cause Notice.</p> <p>Google already has informed OFCCP that the Company does not use these terms in its HRIS system.</p>	N/A	OFCCP requested instead that Google disclose any unit between "Job Family" and "Department"
Applicant Profiles for Job Groups 211 to 216	<p>This is a new request made for the first time in the Show Cause Notice.</p> <p>Most of the information in the applicant profiles is contained on the applicant flow logs Google already provided.</p> <p>Profiles also contain information such as interview notes, so the same concerns noted above apply here.</p>	<p>OFCCP should first analyze the applicant flow data already provided.</p> <p>Google is willing to provide a sample of applicant profiles.</p>	Unable to address since OFCCP needed to end call.

<u>Remaining Request</u>	<u>Google's Concerns</u>	<u>Google's Proposed Solution/Compromise</u>	<u>OFCCP Response</u>
"Any Other Employee Characteristics Maintained" for Job Groups 211 to 216	This is a new request made for the first time in the Show Cause Notice. The applicant flow data Google already produced, in addition to the resumes Google will be producing, cover this request.	If OFCCP will specify any particular "characteristics" it wishes produced in addition to those already provided, the Company can revisit this request.	Unable to address since OFCCP needed to end call.

II. IN THE SPIRIT OF GOOD FAITH COOPERATION, GOOGLE WILL RESPOND TO A NUMBER OF THE REMAINING REQUESTS

While Google remains disappointed with OFCCP's continued refusal to entertain alternatives to its burdensome, costly, and seemingly irrelevant information requests and the Agency's lack of transparency, it will respond to several of the Remaining Requests as indicated below without waiving any objections it has already asserted with respect to them.

<u>Remaining Request</u>	<u>Future Production</u>
Interview Notes and Applicant Profiles for Applicants to Job Groups 211 to 216	Google will determine the time period it will take to identify and provide the interview notes associated with applicants to Job Groups 211 to 216 from 9/1/14 to 8/31/15. Google will provide to OFCCP a schedule for production of same by January 15, 2017.
Market Surveys	Google will provide by January 15, 2017.

<u>Remaining Request</u>	<u>Future Production</u>
Stock Agreements	As OFCCP agreed, Google will provide: (1) a sample generic agreement; (2) W-2 Box 5 information for all employees on the 9/1/15 snapshot; and (3) separate the refresh, spot and new hire awards in the stock award data already provided to OFCCP. Google will provide this information by January 15, 2017.
OFCCP request that Google disclose any unit between "Job Family" and "Department"	Google will provide a response by end of this week.

III. ITEMS FOR WHICH GOOGLE ALREADY HAS RESPONDED OR NEEDS FURTHER CLARIFICATION

Google has already responded to the Remaining Requests identified in the chart below. If OFCCP requires any additional information regarding Google's responses, please let us know.

<u>Remaining Request</u>	<u>Prior Responses</u>
Any Other Employee Characteristics Maintained"	Google already has provided OFCCP with all employee characteristics maintained for applicants to Job Groups 211 to 216. If OFCCP believes that Google maintains some other specific characteristic, it can identify same and the Company will consider the request.
"National Origin/Citizenship/Visa Status/Place of Birth" for all Employees on the 9/1/15 and 9/1/14 Snapshots.	As Google informed OFCCP during the November 29, 2016 call, the Company does not maintain data for all of its employees related to national origin, citizenship, visa status and place of birth. If OFCCP requires further information, please let us know.
"Automated Resume Review System"	Google did not make use of an automated resume screen system for applicants during the period under review. If OFCCP requires further information, please let us know.

<u>Remaining Request</u>	<u>Prior Responses</u>
<p>"All Expressions of Interest"/Gender and Race Related to Same for Job Groups 211 to 216</p>	<p>As noted above, Google has no record keeping obligations with respect to expressions of interest where the individual expressing interest was not considered for a particular position. Moreover, the Company need only solicit race and gender from applicants as defined under the regulations. Accordingly, we ask that OFCCP clarify this request.</p>

IV. ITEMS GOOGLE WILL NOT PRODUCE AT THIS TIME ABSENT THE DISCLOSURE OF FURTHER INFORMATION FROM OFCCP

For the reasons set out previously, and until such time as OFCCP satisfies its own regulatory standards and/or the standards for the issuance of an administrative subpoena, Google will not respond to the following Remaining Requests:

- A Second Compensation Snapshot as of September 1, 2014
- Job and Salary History for All Employees as of the September 1, 2015 and September 1, 2014 Snapshots, Including Starting: (1) Salary, (2) Position, (3) Compa Ratio, (4) Job Code; (5) Job Family; (6) Job Level; and Organization
- Employee Names and Personnel Contact Information for All Employees on the 9/1/15 and 9/1/14 Snapshots

V. CONCLUSION

As discussed during the parties' November 29, 2016 teleconference, Google wishes to work with OFCCP to complete the current compliance review and avoid the filing of an administrative complaint in this matter. The record overwhelmingly reflects Google's good faith cooperation throughout this compliance review, including the provision to OFCCP of massive amounts of data to date, and agreeing to produce even more information as described herein. However, the Company has and will continue to protect its Fourth Amendment rights and insist that the Agency faithfully adhere to its own regulations. Accordingly, Google urges OFCCP to carefully reconsider its positions to date with respect to the three remaining requests set forth in Section IV above.

Very truly yours,

JACKSON LEWIS P.C.

Matthew J. Camardella
by *WJD*

Matthew J. Camardella

MJC/dvd

cc: Farha Haq (Haq.Farha@dol.gov)
Carolyn J. Mcham-Menchyk (Mcham-Menchyk.Carolyn@dol.gov)
Scott Williamson (scwilliamson@google.com)
Ian Eliasoph, Esq. (Regional Solicitor's Office – Counsel for Civil Rights)
(Eliasoph.Ian@dol.gov)

EXHIBIT K

Duff, Daniel V., III (Long Island)

From: Haq, Farha - OFCCP <Haq.Farha@dol.gov>
Sent: Wednesday, February 10, 2016 6:25 PM
To: Duff, Daniel V., III (Long Island); Camardella, Matthew J. (Long Island)
Cc: scwilliamson@google.com; Mcham-Menchyk, Carolyn J - OFCCP
Subject: Information Request

Hello Mr. Duff.

As discussed during our telephone call on Friday, please find my request for additional information as follows:

1) Applicant Flow Log

Please submit an Excel spreadsheet with data for all applicants during the review period. Please use the following items as column headers:

- a) Last Name
- b) First Name
- c) Race
- d) National Origin (if possible)
- e) Gender
- f) Referral
- g) Referral Source
- h) College Recruitment (Was candidate recruited from a college fair or other on-campus recruitment?)
- i) College Recruitment Source
- j) Application Date
- k) Job Title, Job Group, Labor Grade applied to (separate columns)
- l) Job Title, Job Group, Labor Grade hired into, as applicable (separate columns)
- m) Department
- n) Candidate Disposition (Hired, Rejected, Withdrawn, etc.)
- o) Detail for Disposition (reason candidate was rejected, etc.)
- p) Disposition Date (including date of hires)
- q) Last step of selection process passed (phone interview, onsite interview, etc.)

Please also submit the following items:

2) Current Employee Roster

- a. Please include: i) last name, ii) first name, iii) race, iv) gender, v) job title, vi) department, vii) date of hire

3) Employee Handbook

4) Self-Identification Form

- a. Please provide the self-id forms for both applicants and hires.

5) Organization Chart

- a. Companywide: Please include names of all top managers, job titles and departments
- b. Human Resources: Please provide a specific organizational chart for HR containing names of all top managers, job titles and departments
- c. Compensation: Please provide a specific organizational chart for all management involved in compensation containing names of all top managers, job titles and departments

Please provide this information by COB, Friday, February 19, 2016. Feel free to contact me if you have any questions.
Thank you.

-Farha

Duff, Daniel V., III (Long Island)

From: Haq, Farha - OFCCP <Haq.Farha@dol.gov>
Sent: Friday, February 12, 2016 9:59 PM
To: Duff, Daniel V., III (Long Island)
Cc: Camardella, Matthew J. (Long Island); Mcham-Menchyk, Carolyn J - OFCCP; Scott Williamson
Subject: RE: Google Inc. - Mountain View Audit - OFCCP

Dear Mr. Duff,

Thank you for your response. I appreciate the thought you put into the proposed plan.

As previously discussed, Google submitted its personnel activity data by job group, with no other information. In order to conduct an accurate and meaningful analysis, OFCCP has requested additional information for all applicants. We understand the challenge of a large applicant pool. Therefore, as discussed and agreed, I will submit my applicant data requests in batches. This accommodation in no way limits or modifies the scope of OFCCP's initial request submitted on 2/10/2016.

Please submit the requested applicant flow data for the following three **Job Groups: 114, 216 and 405** no later than February 26, 2016.

The employee roster request is standard. We can grant an extension in light of any extra time needed to obtain the information.

Thank you for your continued cooperation. Please do not hesitate to contact me if there are any additional questions.

Best Regards,

Farha

From: Duff, Daniel V., III (Long Island) [mailto:Daniel.Duff@jacksonlewis.com]
Sent: Thursday, February 11, 2016 4:36 PM
To: Haq, Farha - OFCCP
Cc: Camardella, Matthew J. (Long Island); Mcham-Menchyk, Carolyn J - OFCCP; Scott Williamson
Subject: Google Inc. - Mountain View Audit - OFCCP

PRIVILEGED AND CONFIDENTIAL

Dear Ms. Haq:

Thank you for speaking with me yesterday regarding OFCCP's requests below. As promised, I have discussed these requests with my client and have set forth a proposed plan for responding in red font below.

As I mentioned yesterday, Google Inc. wishes to provide OFCCP with both meaningful and manageable information and documentation to assist OFCCP in understanding Google's recruitment and hiring processes. At the same time, it recognizes the heavy expense and burden associated with such responses and wishes to ensure that Google is provided with realistic timeframes for responding. This is especially true given the enormity of the Mountain View workforce, and the even larger applicant flow data associated therewith.

In this spirit, we hope that OFCCP will agree to the proposal below. We fully understand that in doing so, OFCCP is not waiving any rights to request additional information related to other job groups or other topics for investigation during this audit.

Thank you for your consideration of this proposal.

From: Haq, Farha - OFCCP [<mailto:Haq.Farha@dol.gov>]
Sent: Wednesday, February 10, 2016 6:25 PM
To: Duff, Daniel V., III (Long Island); Camardella, Matthew J. (Long Island)
Cc: scwilliamson@google.com; Mcham-Menchyk, Carolyn J - OFCCP
Subject: Information Request

Hello Mr. Duff.

As discussed during our telephone call on Friday, please find my request for additional information as follows:

1) Applicant Flow Log

Please submit an Excel spreadsheet with data for all applicants during the review period. Please use the following items as column headers:

- a) Last Name
- b) First Name
- c) Race
- d) National Origin (if possible)
- e) Gender
- f) Referral
- g) Referral Source
- h) College Recruitment (Was candidate recruited from a college fair or other on-campus recruitment?)
- i) College Recruitment Source
- j) Application Date
- k) Job Title, Job Group, Labor Grade applied to (separate columns)
- l) Job Title, Job Group, Labor Grade hired into, as applicable (separate columns)
- m) Department
- n) Candidate Disposition (Hired, Rejected, Withdrawn, etc.)
- o) Detail for Disposition (reason candidate was rejected, etc.).
- p) Disposition Date (including date of hires)
- q) Last step of selection process passed (phone interview, onsite interview, etc.)

Google will provide the applicant flow data it has available related to each of the sub-points (a) to (q) set forth above for the applicants in the following three job groups:

Job Group 114 (Technical & Engineering Directors)

Job Group 405 (Sales Workers II)

Job Group 512 (Administrative Support Workers I)

These job groups were chosen because they represent the different functional organizations within Google's Mountain View workforce, and will assist OFCCP in understanding Google's recruitment and hiring processes within these areas. These three job groups have *in excess of 20,000 applicants*. Accordingly, Google will provide this data to OFCCP by no later than Friday, February 26, 2016.

Please also submit the following items:

2) Current Employee Roster

- a. Please include: i) last name, ii) first name, iii) race, iv) gender, v) job title, vi) department, vii) date of hire. **Due to the enormous expense and burden of pulling data outside of the affirmative action plan period under review, Google respectfully requests that OFCCP provide an explanation for why a current employee roster is necessary and relevant to the audit at this time.**
- 3) Employee Handbook: Please be advised that Google does not maintain an employee handbook. Rather, its employment-related policies and procedures are maintained online. Google has included relevant employment policies in its original Executive Order 11246 submission. If there are additional policies relevant to this audit that OFCCP is seeking, kindly let us know and we will supplement same.
- 4) Self-Identification Form
 - a. Please provide the self-id forms for both applicants and hires. **Google will provide a response by Friday, February 19, 2016.**
- 5) Organization Chart
 - a. Companywide: Please include names of all top managers, job titles and departments. **Google will provide a response by Friday, February 19, 2016.**
 - b. Human Resources: Please provide a specific organizational chart for HR containing names of all top managers, job titles and departments. **Google will provide a response by Friday, February 19, 2016.**
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Please provide this information by COB, Friday, February 19, 2016. Feel free to contact me if you have any questions. Thank you.

-Farha

Daniel Duff
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Jackson Lewis P.C.
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Representing management exclusively in workplace law and related litigation

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EXHIBIT L

Duff, Daniel V., III (Long Island)

From: Haq, Farha - OFCCP <Haq.Farha@dol.gov>
Sent: Friday, February 19, 2016 4:42 PM
To: Duff, Daniel V., III (Long Island); Camardella, Matthew J. (Long Island)
Cc: scwilliamson@google.com; Mcham-Menchyk, Carolyn J - OFCCP
Subject: Google-Applicant Flow Data Schedule

Mr. Duff,

Below is a schedule for submission of the applicant flow data. Per my February 10, 2016 request and our subsequent conversations, I trust this schedule will be the most efficient way for submission of the data.

Due Date:	Job Groups:
2/26/2016	114, 216, 405
3/4/2016	112, 123, 131, 132, 511, 512
3/11/2016	212, 213, 225
3/18/2016	133, 142, 226, 304, 406, 141, 223
3/25/2016	204, 205, 206, 211, 214, 143

Please feel free to email me with any questions. I look forward to receiving the requested data.

Thank you.

Farha Haq
Senior Compliance Officer
United States Department of Labor
Office of Federal Contract Compliance Programs
1640 S. Sepulveda Blvd., Suite 440
Los Angeles, CA 90025
Phone: (310) 268-1252 Fax: (310) 268-1620
haq.farha@dol.gov

From: Haq, Farha - OFCCP
Sent: Friday, February 12, 2016 6:58 PM
To: 'Duff, Daniel V., III (Long Island)'
Cc: Camardella, Matthew J. (Long Island); Mcham-Menchyk, Carolyn J - OFCCP; Scott Williamson
Subject: RE: Google Inc. - Mountain View Audit - OFCCP

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Daniel Duff
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