

**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

GOOGLE, INC.,

Defendant.

OALJ Case No. 2017-OFC-00004

OFCCP No. R00197955

RECEIVED

MAR 28 2017

Office of Administrative Law Judges
San Francisco, Ca

PLAINTIFF'S WITNESS LIST

Case Subject to Expedited Proceedings under 41 C.F.R. § 60-30.31

Pursuant to the Court's Notice of Hearing and Pre-Hearing Order, Plaintiff Office of Federal Contract Compliance Programs ("OFCCP") submits the following witness list.

Based on the parties' stipulated facts and the Court's narrowing of issues in its March 15, 2017 Order on Summary Judgment, below is the witness OFCCP intends to call in its case-in-chief:

1. Regional Director Janette Wipper

Summary of Testimony and What Testimony Will Prove	Relevance of Testimony
Testimony regarding the Agency's mission and the purpose and scope of compliance reviews in light of that mission. This testimony will prove that OFCCP is fulfilling its mission in pursuing the Subject Items.	This testimony will provide background for the Court as to the purpose of OFCCP's reviews to place OFCCP's requests in context.
Testimony regarding Google's Affirmative Action Plans, and related authorities. This testimony will prove that Google defined the scope of the compliance evaluation and much of the burden Google claims now was of its own creation.	This testimony addresses the scope of OFCCP's ongoing compliance evaluation, which relates to the relevance of the Subject Items and Google's objection that producing the Subject Items imposes an unconstitutional burden on the company.

Summary of Testimony and What Testimony Will Prove	Relevance of Testimony
<p>Testimony regarding the number of years Google has been a federal contractor and its prior history of compliance reviews. This testimony will prove that Google is a long-standing federal contractor familiar with its obligations under Executive Order 11246.</p>	<p>This testimony is relevant with respect to Google's Fourth Amendment claims and this Court's burdens analysis.</p>
<p>Testimony regarding methods for determining whether a contractor is in compliance with its non-discrimination obligations with respect to compensation. Such testimony will include, without waiving any privileges and speaking generally without regard to any specific investigation,</p> <p>a) An explanation of the types of statistical evidence that is used to determine whether an employer engages in compensation discrimination. This testimony will show that OFCCP relies on regression analyses in analyzing differentials in pay and the reasons the information sought by OFCCP pertains to variables needed to determine compliance.</p> <p>b) An explanation of how, in addition to conducting a statistical analysis, OFCCP is also charged with determining if there is anecdotal evidence that is relevant to determining compliance. The testimony will demonstrate the importance of talking directly to employees in the development of such evidence.</p> <p>c) The reasons a second snapshot is necessary and appropriate to determine compliance during the review period.</p>	<p>This testimony addresses the requirement that requested information must be "reasonably relevant" to a government investigation for purposes of evaluating an administrative subpoena under the Fourth Amendment, the standard Google insists applies.</p>
<p>Testimony regarding the factors Google's hiring managers, directors of compensation, and other human resources professionals stated that Google considered and maintained with respect to compensation. This will prove that the requested information directly relates to Google's stated compensation practices.</p>	<p>This testimony addresses the requirement that requested information must be "reasonably relevant" to a government investigation for purposes of evaluating an administrative subpoena under the Fourth Amendment, the standard Google insists applies.</p>

2. Deputy Regional Director Jane Suhr

Summary of Testimony and What Testimony Will Prove	Relevance of Testimony
Testimony regarding Google's obligations as a federal contractor and subcontractor, including its history as a federal contractor and Contract No. GS07F227BA for "Advertising and Integrated Marketing Solutions," which the General Services Administration awarded Google on June 2, 2014 ("AIMS Contract") and Google valued at \$25 million.	This testimony addresses Google's status as a federal contractor and its awareness of its obligations. This testimony also addresses Google's objection that responding to OFCCP's requests imposes an unconstitutional burden on the company.

Below are the witnesses OFCCP may call in rebuttal to Google's case-in-chief on its purported undue burden. OFCCP may also present the testimony below in its case-in-chief, as necessary. OFCCP reserves its right to call other rebuttal witnesses based on Google's presentation of its case-in-chief.

1. Regional Director Janette Wipper

Summary of Testimony and What Testimony Will Prove	Relevance of Testimony
Testimony regarding the expected costs to the contractor with respect to complying with OFCCP's requests. This testimony will prove that Google has grossly exaggerated the cost of compliance.	This testimony is relevant to Google's unsubstantiated cost estimates for compliance.
Testimony regarding OFCCP's treatment of personal information obtained during a compliance review. This testimony will prove that any privacy concerns Google raises are unfounded.	This testimony is relevant to Google's claim that its withholding of employee contact information from an Agency designed to ensure that employees are protected from discrimination is unfounded.
Testimony regarding the parties' communications regarding the Subject Items, including that OFCCP offered to accept resumes and interview notes in lieu of Google harvesting information from such sources. This testimony will prove that OFCCP attempted to relieve Google of its purported burden.	This testimony addresses Google's objection that producing the Subject Items imposes an unconstitutional burden on the company.
Testimony regarding Google's statements during the compliance evaluation as to where the Subject Items are stored. This testimony will prove that many of the Subject Items are	This testimony addresses Google's objection that producing the Subject Items imposes an unconstitutional burden on the company.

stored electronically, minimizing any burden Google claims.	
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2. Deputy Regional Director Jane Suhr

Summary of Testimony and What Testimony Will Prove	Relevance of Testimony
Testimony regarding the parties' communications regarding the Subject Items, including that OFCCP offered to accept resumes and interview notes in lieu of Google harvesting information from such sources. This testimony will prove that OFCCP attempted to relieve Google of its purported burden.	This testimony addresses Google's objection that producing the Subject Items imposes an unconstitutional burden on the company.
Testimony regarding Google's statements during the compliance evaluation as to where the Subject Items are stored. This testimony will prove that many of the Subject Items are stored electronically, minimizing Google's cost of production.	This testimony addresses Google's objection that producing the Subject Items imposes an unconstitutional burden on the company.

3. Michael J. Brunetti, Ph.D.

Summary of Testimony and What Testimony Will Prove	Relevance of Testimony
Testimony on Google's finances, including data provided on Alphabet Inc.'s 2016 Form 10-K and other publicly available sources. This testimony will prove, among other things, that Google's purported cost of production is insignificant compared to its total operating costs, which totaled approximately \$61.6 billion.	This testimony addresses Google's objection that producing the Subject Items imposes an unconstitutional burden on the company. That analysis requires analysis of the "the cost of production in the light of the company's normal operating costs." <i>EEOC v. Randstad</i> , 685 F.3d 433, 451 (4th Cir. 2012).
Testimony on the amounts Google has received through federal contracts, subcontracts, and other federal business. This testimony will prove the amounts Google has received in federal business.	This testimony addresses the Court's focus on the federal funds Google has received.

4. Google's Person Most Knowledgeable about the Revenue and Operating Income Google Receives for Services Google Provides the Federal Government, Either Directly or Indirectly through Distributors and Resellers

Summary of Testimony and What Testimony Will Prove	Relevance of Testimony
Testimony regarding Google's business with the federal government, including the amounts Google has received or will receive through federal contracts, subcontracts, and other federal business. This testimony will prove the amount of federal business Google has.	This testimony addresses the Court's focus on the federal funds allocated to Google.

Respectfully submitted,

Date: March 28, 2017

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CERTIFICATE OF SERVICE

I am a citizen of the United States of America. I am over eighteen years of age and am not a party to the within action. My business address is 90 7th Street, Suite 3-700, San Francisco, California 94103.

On March 28, 2017, I served the attached **PLAINTIFF'S WITNESS LIST** on Defendant Google Inc. through serving its attorneys below via an in-person exchange with the attorneys' courier at my business address, pursuant to the parties' agreement:

Duff, Daniel V., III (Daniel.Duff@jacksonlewis.com);
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I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in Los Angeles, California on March 28, 2017.



MARC A. PILOTIN
Trial Attorney