

U.S. Department of Labor

Office of the Solicitor  
90 7th Street, Suite 3-700  
San Francisco, California 94103  
Tel: (415) 625-7740  
Fax: (415) 625-7772



SB<sup>3</sup>  
47  
12

April 14, 2017

**VIA HAND DELIVERY**

The Honorable Steven B. Berlin  
UNITED STATES DEPARTMENT OF LABOR  
Office of Administrative Law Judges  
90 Seventh Street, Suite 4-800  
San Francisco, CA 94103-1516

RECEIVED

APR 14 2017

Office of Administrative Law Judges  
San Francisco, Ca

Re: OFCCP v. Google Inc., Case No. 2017-OFC-00004, Excerpt of  
April 7, 2017 Hearing Transcript Containing Testimony of Frank  
Wagner

Your Honor:

To support OFCCP's opposition to Google's motion to seal, attached, please find a copy of an excerpt of the April 7, 2017 hearing transcript containing the testimony of Frank Wagner. OFCCP received the transcript this morning.

In OFCCP's opposition brief, the agency referred to certain points Mr. Wagner made during his testimony. Below, those points are restated, along with cites to the hearing transcript:

- When setting pay, Google distinguishes between college and experienced hires, *compare* Hrg. Tr. at 169-171 (summarizing procedure for college hires) *with id.* at 172-73 (summarizing same for non-college hires)
- Google considers applicants' existing salaries when setting starting pay and, depending on the circumstances, offers a higher starting salary at Google based on that applicant's prior salary, Hrg. Tr. at 175:8-176:18; and
- Google uses market reference points to set pay, and it attempts to set starting salaries at 80% of that market target, Hrg. Tr. at 171:4.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marc A. Pilotin", with a long horizontal flourish extending to the right.

Marc A. Pilotin  
Trial Attorney

Attachment

cc: Lisa Barnett Sween, Esq. (via e-mail)

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

S03  
47-17  
TR

In the Matter of: )  
)  
OFFICE OF FEDERAL CONTRACT ) Case No. 2017-OFC-08004  
COMPLIANCE PROGRAMS, UNITED )  
STATES, DEPARTMENT OF LABOR, )  
)  
Plaintiff, )  
)  
vs. )  
)  
GOOGLE, INCORPORATED, )  
)  
Defendant. )

RECEIVED

APR 14 2017

Office of Administrative Law Judges  
San Francisco, Ca

Friday,  
April 7, 2017

Office of Administrative Law Judges  
90 Seventh Street, Suite 4-800  
San Francisco, California

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:01 o'clock a.m.

BEFORE: THE HONORABLE STEVEN B. BERLIN,  
Administrative Law Judge

1 you're really done, so you may step down.

2 (Witness excused.)

3 MS. SWEEN: Your Honor, we're going to switch seats  
4 here. Would it make sense to take a quick bio-break?

5 JUDGE BERLIN: Sure, say 10 minutes.

6 (Off the record.)

7 JUDGE BERLIN: We'll go back on the record.

8 Ms. Sween, your next witness?

9 MS. SWEEN: Thank you, Your Honor. I'd like to  
10 call Frank Wagner, please.

11 Whereupon,

12 FRANK WAGNER,

13 having been first duly sworn by the Administrative Law Judge,  
14 was examined and testified as follows:

15 JUDGE BERLIN: Have a seat.

16 Ms. Sween?

17 MS. SWEEN: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. SWEEN:

20 Q Good afternoon, Mr. Wagner. Could you please state  
21 and spell your name for the record?

22 A My full name, my legal name?

23 Q Yes, sir.

24 A Francis, F-r-a-n-c-i-s, Howard, H-o-w-a-r-d,  
25 Torrance, T-o-r-r-r-a-n-c-e, Wagner, W-a-g-n-e-r, the Fourth,

1 I-V.

2 Q Thank you, Mr. Wagner.

3 Are you currently employed by Google?

4 A I am.

5 Q What was your date of hire?

6 A April 23rd, 2007.

7 Q What was the job you were hired into?

8 A Director of Compensation.

9 Q Have you held any other positions at Google since  
10 2007 and Director of Compensation?

11 A No, except my current title is Vice President of  
12 Compensation.

13 Q Can you please describe briefly your educational  
14 background?

15 A I have an undergraduate degree in business  
16 administration, specializing in accounting and finance from  
17 the University of California, Berkeley, with highest honors.

18 I have an MBA in finance from the University of California,  
19 Berkeley.

20 Q Can you briefly describe your employment history  
21 before joining Google in 2007?

22 A Would you like it in reverse or chronological  
23 order?

24 Q Whichever is easiest for you.

25 A Immediately prior, I was for 20 years a consultant

1 with Hewitt Associates, an international compensation  
2 benefits firm of which I was a partner.

3 And I worked for three other organization]s before  
4 that, but two of which were in the compensation field and one  
5 in the finance field.

6 Q Would you say that a majority of your work  
7 experience is in the compensation field?

8 A Over 90 percent. So, yes.

9 Q Are your job duties as VP of Compensation  
10 substantially similar to your job duties that you held when  
11 you were Director of Compensation?

12 A Yes.

13 Q Can you briefly describe your job duties as VP of  
14 Compensation for Google?

15 A I'm responsible for the design, the delivery --  
16 which is the allocation of compensation to employees -- and  
17 the implementation our compensation philosophy for all Google  
18 employees below the top 200 executives.

19 Q You just mentioned Google's compensation  
20 philosophy. Can you briefly describe what that compensation  
21 philosophy is?

22 A Yes. Our compensation philosophy follows  
23 essentially three distinct principles. Those principles are  
24 that we wish to attract and retain the world's best talent.  
25 And it manifests itself on that feature by paying highly

1 relative to the market. So we target well above the market  
2 point.

3 The second is we want to foster innovation and  
4 performance, so that any incremental compensation -- once  
5 someone joins Google, whether it is a salary increase or a  
6 bonus award or a stock grant, would all be based off of  
7 performance.

8 And the third principle that we follow is that we  
9 wish to share our results -- our success with employees  
10 broadly. So employees are all eligible for bonus awards, as  
11 well as stock grants. And, of course -- and the proportion  
12 of that grows that's variable and based on Google's  
13 performance with the level of their role.

14 Q Were these principles or philosophies in place or  
15 in effect from 2013 through 2015 at Google's Mountain View  
16 location?

17 A Yes.

18 Q Who at Google sets compensation for new hires?

19 A The compensation team.

20 Q Does a manager ever set compensation for a new hire  
21 right out of college?

22 A No.

23 Q When the compensation team is made aware of their  
24 need to set compensation for a new hire, are they given the  
25 candidate's name?

1           A     No.

2           Q     Are they given the candidate's gender?

3           MR. PILOTIN:  Objection, Your Honor, these are  
4 leading questions.

5           JUDGE BERLIN:  I'll allow them.

6           You can answer.

7           THE WITNESS:  So, was gender the question that you  
8 said?

9 BY MS. SWEEN:

10          Q     Sure.

11          A     No.

12          Q     How about race or ethnicity?

13          A     No.

14          Q     Did Google have compensation procedures in place  
15 during the 2013/2015 time period?

16          A     Yes.

17          Q     Can you briefly describe what those compensation  
18 procedures were for new hires that were recent college  
19 graduates?

20          A     This will be a somewhat lengthy explanation, if  
21 that's okay.  Let's take an example an entry level software  
22 engineer, which we call Job Code 3403.  So, for an entry  
23 level software engineer, we gather market data for that role  
24 and we review that market data every single year.  We set a  
25 target for that job based on a percentile of the market.

1           Many companies target the middle of the market,  
2           which they call the median of the market -- the middle. But  
3           we get -- there's a distribution that we get from our salary  
4           surveys and we target the 90th percentile. That is, the top  
5           of the market -- we call it the top of the market, the top 10  
6           percent of the market. And we set that as our target.

7           So in the example of a software engineer -- and  
8           this is -- I'll use round numbers for illustration. Let's  
9           say the market median is 60,000. The 90th percentile might  
10          be 100,000. When we bring in a new college grad, we bring  
11          them in at our baseline offer, which is 80 percent of that  
12          market reference point.

13          So in the case if our market reference point is  
14          \$100,000, we bring new college graduates in at approximately  
15          80,000. And these numbers are illustrative.

16          Q       So if I understand correctly, all new hires that  
17          are college graduates, are they paid the same starting salary  
18          for the same job and the same location?

19          A       That is correct.

20          Q       Is prior job history -- and by that phrase, I mean  
21          all jobs that a new hire held prior to joining Google -- is  
22          prior job history a factor that the compensation team  
23          considers when setting the base salary for new hires that are  
24          recent college graduates?

25          A       Well, we base it off the market reference point for

1 the job. So irrespective of what that individual as a new  
2 college graduate would be earning, most likely they don't  
3 have a job. So we bring everyone up to the minimum or the  
4 standard offer baseline, which is 80 percent. And the  
5 philosophy behind bringing people in at 80 percent is that we  
6 want to bring them in below anyone who is already in the job,  
7 so that they can earn incremental compensation and salary  
8 increase based on performance.

9 Q Let me just give you an example. For a recent  
10 college graduate who maybe their last job was a life guard,  
11 would that ever play any role in what Google decides to set  
12 as their base compensation?

13 A No, not for any job.

14 Q Okay. So prior job history for a new recent  
15 college graduate, does that play any factor when Google  
16 considers setting base salary for new hires that are college  
17 graduates?

18 A Well, new college graduates, we endeavor to treat  
19 them all the same and consistent within each job category.

20 Q This question also goes to recent college  
21 graduates: Is prior salary history -- and by that I mean all  
22 pay that they've received from prior jobs -- a factor that  
23 Google considers when setting their base salary?

24 A Again, for new college graduates, you're asking?

25 Q Yes.

1           A     No.

2           Q     So now I want to turn to compensation for new hires  
3 that are not new college grads, okay?

4           A     Um-hum.

5           Q     Can you please summarize for the Court Google's  
6 compensation procedures from 2013 to and including 2015 with  
7 respect to setting the base salary for new hires that are not  
8 recent college graduates?

9           A     We would generally follow the same principle. We  
10 would endeavor to bring them in as -- at our baseline rate of  
11 80 percent. And so the intent is we would try to bring in  
12 folks at our baseline, regardless of their current salary.

13                     So, in that prior example, let's say someone was  
14 making the market median of 60,000, we would give them the  
15 80,000 minimum. If they're making less than the market  
16 median, or 50, we'd give them 80. If they were making 70, we  
17 would give them 80. If they were already making 80, we might  
18 give a modest or small increase to bring them in.

19                     The principle is we try to bring them in as low as  
20 possible within our salary below the current employee, so  
21 that they can earn future increases based on performance.

22           JUDGE BERLIN: And if they were making 90?

23           THE WITNESS: If they were making 90, we would  
24 endeavor to bring them certainly no more than 90, because we  
25 don't want them to -- we use the term "leap frog." We don't

1 want them to leap past the current employees who are already  
2 in that job and performing well.

3 BY MS. SWEEN:

4 Q And candidates -- new hire candidates typically  
5 offered 80 percent of the market reference point?

6 A I would say the majority of cases.

7 Q And could a candidate be offered less than 80  
8 percent of the market reference point?

9 A We wouldn't, no.

10 Q And could a candidate -- I think you just mentioned  
11 at least one instance in which a candidate could be offered  
12 more than 80 percent of the market reference point. Are  
13 there any other circumstances, other than what you've  
14 described, in which a candidate might be offered more than 80  
15 percent of the market reference point?

16 A It would be -- if someone was -- had a high salary  
17 already, they were already at the top of the market. For  
18 instance, 95,000 or 90, we might try to offer them 90 or even  
19 slightly less.

20 Q Does negotiation play any role in setting a new  
21 hire's base salary?

22 A Candidate negotiation?

23 Q Yes.

24 A No.

25 Q Is a job family the same thing as a job code?

1           A     No.

2           Q     What is a job family?

3           A     A job family is a professional category of job at  
4 Google. So those that are doing similar job duties and  
5 responsibilities, but stratified at different levels of  
6 capability or skill sets. So a job family could be a  
7 software engineer. It could be a product manager. It could  
8 be a financial analyst. And there would be different levels  
9 within Google within that family.

10          Q     And what is a job code?

11          A     A job code is the numeric identifier we have for a  
12 job family at a specific level. So, in my prior example, a  
13 software engineer at Level 3, which is what we call our  
14 entering new college grad, is Google Job Code 3403. Level 4  
15 is 3404 and Level 5 is 3405, et cetera.

16          Q     Is the market reference point that you explained  
17 earlier ever tied to a job family?

18          A     No.

19          Q     Is the market reference point ever tied to -- what  
20 is a job level?

21          A     A job level can be thought of as a salary grade.  
22 And using common compensation vernacular, it is a level at  
23 which the people at that job are performing like level of  
24 duties and responsibilities within that job family.

25          Q     And is a job level ever tied to the market

1 reference point?

2 A A job level? No, no.

3 Q Is the job code tied to the market reference point?

4 A Not by itself. It's a combination of job code and  
5 location. So job code and location for the Bay Area has a  
6 market reference point. A job code and location for London  
7 would have a separate market reference point.

8 Q So we were just talking about base salary for new  
9 hires that are not recent college grads. Is the prior job  
10 history a factor that Google considers when considers base  
11 salary for new hires that are not recent college grads?

12 A We only consider their current compensation.

13 Q Is the compensation team even made aware of a new  
14 hire's job history when setting new hire compensation?

15 A No.

16 Q Is prior salary history a factor Google considers  
17 when setting base salary for new hires that are not recent  
18 college graduates?

19 A No.

20 Q Is it ever relevant to what Google pays them, their  
21 prior salary history?

22 A No.

23 Q And why is that?

24 A We only base -- what we offer new hires what  
25 they're currently making at the time we send the offer to

1       them.

2           Q       Is there ever a circumstance where a new hire  
3 candidate's most recent salary with another employer -- so  
4 the salary that exists just before they come to Google -- is  
5 there ever a circumstance in which their most recent salary  
6 would be relevant to their starting pay at Google?

7           A       If the current -- if it's the current salary for  
8 the job that they're in, is that what you mean?

9           Q       Yes, sir.

10          A       Yes, that would be relevant.

11          Q       And how would that be relevant?

12          A       That would be relevant if -- if they are exceeding  
13 our baseline offer of 80 percent of MRP -- or market  
14 reference point. Sorry, that's our vernacular.

15          Q       And you testified to that earlier with the examples  
16 of if they would be already at 80 percent or 90 percent,  
17 correct?

18          A       Correct.

19          Q       Are there circumstances where a Google candidate  
20 was offered above 80 percent of the market reference point,  
21 but it had absolutely nothing to do with his or her salary  
22 with another employer?

23                    So, for example -- well, I'll just ask you the  
24 question.

25          A       Could you repeat that?

1           Q     Sure. Are there any circumstances you can think of  
2 where a Google candidate was offered above 80 percent of the  
3 MRP, but it had nothing to do with their immediate, prior  
4 salary?

5           A     No, I wouldn't think so. I can't think of a  
6 circumstance.

7           Q     I want to turn now to the process by which Google  
8 employees' compensation may change over time. And we're  
9 going to first talk about promotions and then we're going to  
10 talk about transfers.

11          A     Um-hum.

12          Q     How did that work? So, how does an employee's  
13 compensation change over time -- actually, let's talk about  
14 performance increases first. How does an employee's  
15 compensation change over time with respect to metric-based  
16 performance increases?

17          A     So, we do performance-based salary increases at  
18 Google on an annual basis. It is based off a formula that we  
19 have and it's probably best, again, to do an illustration.

20                 It is based off of the employee's performance  
21 ratings and then their current ratio to the market reference  
22 point. So, let's illustrate and say that we have employees  
23 in that prior example who are at 80 percent of the market, or  
24 \$80,000. We have several performance ratings. The most  
25 common of which is "meets expectations."

1           If one meets expectations, we may increase that  
2 person's salary, say from \$80,000, say, up to \$82,000 or  
3 \$83,000. So that might be a two and a half to three percent  
4 increase.

5           If they're at that same rate of pay, but they're at  
6 the next level of performance, which we call "exceeding  
7 expectations," that same person might be allocated a five  
8 percent salary increase and that might go to 84,000.

9           The next highest level is called "significantly  
10 exceeding expectations." And if that person is at \$80,000 at  
11 that level of pay, they may get a six or \$7,000 increase.

12           And our highest level is called "superb," and that  
13 person might get a 10 percent salary increase at that point.

14           We do have a low performance rating, called "needs  
15 improvement," and that person would not be allocated a salary  
16 increase.

17           Now, if those -- let's assume that person was paid  
18 much higher, they're at 90 percent of MRP. We can go through  
19 that same category. At 90 percent of MRP, we stop funding  
20 our people who meet expectations. So they would be allocated  
21 a zero percent salary increase. A person who exceeds, may  
22 get two to three percent or four percent salary increase.  
23 "Significantly exceeds" might be five or six. "Superb" might  
24 get eight or 10.

25           And what we're trying to do in this philosophy is,

1 A, have whatever rate of pay people are at, their performance  
2 affects the magnitude of the increase, But, also, we want  
3 to move people in to get them consistent with categories of  
4 comparable performance. So if we have people who are meeting  
5 expectations, the goal is to move those people together in a  
6 cadre and "exceeds," we move them up into a separate cadre.  
7 And "significantly exceeds" and "superb" and so forth.

8 Q Does prior job history either prior job history  
9 prior to joining Google or prior jobs held at Google have any  
10 bearing on what an employee receives in their merit  
11 increases?

12 A No.

13 Q And does their prior salary history -- base salary  
14 -- either to joining Google or in salaries -- or the salary  
15 they held in jobs at Google have any bearing on merit  
16 increases?

17 A No.

18 Q So, does the history of an employee's merit  
19 increase over time have any relevance to their most recent  
20 merit increases?

21 A No.

22 JUDGE BERLIN: Does the -- do the merit increases  
23 top out when you hit, say, the 90th percentile of the market  
24 reference point?

25 MR. PILOTIN: Only for "meets expectations." But

1 if someone exceeds expectations, we continue funding them at  
2 a lesser and lesser amount until they -- but we always will  
3 fund people who exceed expectations, significantly exceed  
4 expectations at at least one half of how much the market is  
5 moving.

6 So, for example, in the United States pay levels in  
7 general have been moving about three percent. We always  
8 allocate one and a half percent to people, regardless -- who  
9 exceed or significantly exceed, regardless of how much  
10 they're paid. And in our superb category, we continue to  
11 fund them aggressively until we hit 110 percent of the market  
12 reference point, but then we allocate them only whatever the  
13 market is moving, the three percent.

14 So, people -- we never fully cap out people, except  
15 those who meet expectations or those who need improvement.

16 BY MS. SWEEN:

17 Q Does compensation ever look backwards? Does the  
18 compensation team ever look backwards to learn an employee's  
19 historical merit increase in order to determine what they  
20 should be given in a current year?

21 A No.

22 Q So, for example, would a 2008 performance-based  
23 merit increase have any impact on a pay decision made during  
24 the 2013 through 2015 time period?

25 A None whatsoever.

1           Q     I want to now move to promotions. Can you please  
2 describe the compensation process as it relates to  
3 promotions?

4           A     Well, we treat promoted employees who are moving  
5 into a new job in the same way that we treat new hires from  
6 the outside. What we do is we move them from their level --  
7 their current level -- to the next level. But say that the,  
8 in this case, from the level three software engineer to the  
9 level four software engineer, and we automatically move them  
10 up to 80 percent of the next job -- the job into which  
11 they're promoted, that market reference point.

12                     So, let's say, for example -- I wish I could do the  
13 math and make it somewhat simple. Let's say -- and this is  
14 an extreme example, let's say the next level was \$150,000 was  
15 the market reference point, we would move them up to 120,000,  
16 because that's 80 percent of that number.

17                     And the only caveat is it is subject to -- during  
18 this time frame, it was subject to a minimum and maximum in  
19 the United States of a minimum five percent and a maximum 20  
20 percent salary increase. But only a small fraction of  
21 employees would hit either the mins or the maces.

22                     So if you think about that, it's only that person  
23 that might be already at or above their current MRP who gets  
24 promoted that might hit above the 80 percent at the next  
25 level, they might get the minimum five percent.

1           Q     For those employees whose compensation increases  
2 are due to a promotion, is their job history at Google taken  
3 into consideration in setting compensation?

4           A     No.

5           Q     And why is that?

6           A     Well, we believe that we're rewarding people with a  
7 promotion for performance at Level N, but they have not  
8 performed yet to the expectations at Level N plus one, the  
9 job into which they're promoted. So what we want to do,  
10 philosophically, is treat them just like we would treat a new  
11 intern into that job and allow -- bring them to a minimum and  
12 allow them to earn future increases based on performance into  
13 this new job that they're being placed into.

14          Q     For those employees whose compensation increase is  
15 due to a promotion, is their salary history -- and by that I  
16 mean each of the salaries associated with each of the jobs  
17 they've previously held at Google -- taken into consideration  
18 in setting compensation?

19          A     No, we have a -- we call it a formula or an  
20 algorithm that says they get to move up to 80 percent,  
21 regardless of their history or what they're currently paid.

22          Q     Is their compensation in the job that they held  
23 immediately before the promotion taken into consideration  
24 when setting compensation?

25          A     No.

1 Q Are there any instances in which that might happen?

2 So the job they held immediately before the promotion taken  
3 into consideration when setting their compensation?

4 A No, I can't think of any.

5 Q Can you think of any circumstance in which an  
6 employee's job or salary from two years prior to the  
7 promotion decision would ever be relevant to setting their  
8 compensation in their new job?

9 A No.

10 Q I want to move to a new topic and that is the on-  
11 site interview that took place at Google in April of 2016.  
12 Were you part of that on-site interview process?

13 A Yes.

14 Q And do you recall being interviewed by an OFCCP  
15 representative during that time?

16 A Yes, I do.

17 Q Do you happen to recall who you were interviewed  
18 by?

19 A I'm bad with name, but if you said the name I'd  
20 probably recall it.

21 Q Was it Jane Suhr?

22 A I don't recall.

23 Q That's all right. Were you under oath during that  
24 interview?

25 A No.

1           Q     But you understand you're under oath today,  
2 correct?

3           A     Yes.

4           Q     Did Jane Suhr ask you the level and detail of  
5 questions that I've asked you today with respect to job  
6 history and salary history and their impact on compensation?

7           MR. PILOTIN:  Objection as to relevance, Your  
8 Honor.

9           JUDGE BERLIN:  I'll allow it.  Let's see where it  
10 goes.

11          THE WITNESS:  No, she did not.

12 BY MS. SWEEN:

13          Q     Do you recall being interviewed by Carolyn McHam-  
14 Menchyk?

15          A     I remember the name "Carolyn," yes.

16          Q     Okay.  And did Ms. Menchyk ask you the types of  
17 questions that I've asked you today, for example with respect  
18 to job history and salary history as they pertain to recent  
19 college grads, recent hires, promotions?

20          A     She did not ask me questions about salary history.

21          Q     Did she ask you any questions about job history?

22          A     She did not ask about job history.

23          Q     During your interview with the OFCCP during the on-  
24 site, do you recall saying anything to Ms. Menchyk or any  
25 other OFCCP representative that is inconsistent with your

1 testimony today?

2 A I -- let me make sure I answer this correctly. I'm  
3 testifying consistent with what I recall I told them back in  
4 -- when they interviewed me.

5 Q Thank you.

6 Can you tell the Court who Ajit Naimbiar is?

7 A Ajit Naimbiar is -- reports to me directly. He is  
8 a Director of Compensation and he manages the day-to-day  
9 consulting activities with the different business units at  
10 Google.

11 Q Do you know if he was interviewed by the OFCCP  
12 during the on-site?

13 A Yes, he was.

14 Q And how do you know that?

15 A He told me.

16 Q Do you have any reason to believe that during his  
17 interview with the OFCCP that he said anything to the OFCCP  
18 representatives regarding how Google sets its compensation  
19 that's inconsistent with what you've testified to today?

20 MR. PILOTIN: Objection, Your Honor, calls for  
21 speculation.

22 JUDGE BERLIN: You'll need to lay a foundation.

23 MS. SWEEN: Sure.

24 BY MS. SWEEN:

25 Q Did Mr. Ajit tell you about his conversations with

1 the OFCCP representatives?

2 A He did.

3 Q And did he tell you that they asked him questions  
4 with respect to whether job history or salary history is  
5 relevant to setting compensation?

6 A I don't recall discussing job history or -- or that  
7 the questions related to job history to Ajit. Rather, he  
8 told me that they asked questions related to the structure  
9 and operation of our compensation program.

10 Q And did you ask him what he told the OFCCP in  
11 response to those inquiries?

12 A No.

13 Q And just to clarify, during the on-site interview,  
14 just to be very clear, Ms. Menchyk didn't ask you any  
15 questions with respect to whether prior job history with  
16 respect to new hires was relevant to compensation, did I  
17 understand your testimony correctly?

18 A Yes, you understand it correctly.

19 Q And she didn't ask you any questions whether  
20 Google's job history was relevant to compensation at Google,  
21 is that correct?

22 A She did not ask that.

23 Q Did she ask you any questions about whether prior  
24 salary history was relevant to compensation at Google?

25 A No, he didn't.

1           Q     Did she ask you -- oh, at any time prior to or  
2 after the OFCCP on-site, have you spoken to any current or  
3 former OFCCP representatives about any matter?

4           A     No.

5           MS. SWEEN: Your Honor, I'm going to ask -- I've  
6 been given some information that is significant that I need  
7 to confer with my counsel on before I can close this  
8 testimony. Would you give me two minutes?

9           JUDGE BERLIN: Certainly.

10          MS. SWEEN: Thank you.

11          (Off the record.)

12          JUDGE BERLIN: Let's go back on the record.

13                I had a conference with Counsel off the record and  
14 an issue has surfaced which raises potential questions about  
15 the process within the department on this particular  
16 investigation and what stage it's at. The information  
17 includes some hearsay quotes from people. I don't know how  
18 reliable the information is. And it can be understood in  
19 different ways. It has a certain level of ambiguity to it,  
20 which I'm not going to make any attempt to resolve at this  
21 point.

22                But I believe that it is potentially significant  
23 enough that it has to be resolved before we can proceed.

24                I understand that Google might have a motion that  
25 they might choose to make concerning this information. And

1 so I'm going to ask Google to have whatever motion it wants  
2 to file on file in this office under seal no later than this  
3 coming Wednesday.

4 I'll give OFCCP and the Department one week to  
5 respond, under seal.

6 And then I'll give them an opportunity -- and you  
7 should go serve each other with just attorneys only, not the  
8 entire service list, just counsel on this case.

9 And once I've received these, I've reviewed them  
10 and see what I think we need to do next, I think I'll just  
11 issue an order and maybe we'll resume the hearing at that  
12 point, maybe something else will be needed. I really have no  
13 idea, because I don't even know what the motion would be. So  
14 I don't want to suggest what my ruling might be on this.

15 So, I have tried very hard to get this expedited  
16 and completed and I've resisted things that caused even minor  
17 delays in the process and tried to bring it to a conclusion  
18 at the hearing today. So, I've done my best in that regard,  
19 but I just don't think I can do anything more and I think my  
20 only choice is to adjourn and to allow the motions to -- the  
21 motion, if any, to be heard.

22 Ms. Sween, if Google decides that no motion is  
23 needed and we can just resume, please just alert me and the  
24 Solicitor to your choice. But, otherwise, I'll look forward  
25 to your motion by Wednesday.

1 Any --

2 MS. SWEEN: Can I -- a point of clarification?

3 JUDGE BERLIN: Yes. Well, I was going to say does  
4 anyone want to be heard?

5 MS. SWEEN: Yes, Your Honor.

6 JUDGE BERLIN: Yes?

7 MS. SWEEN: Two things. One, would it be possible  
8 for you to give the moving party an equal amount of time as  
9 the opposition party? If you're giving them a week, can we  
10 have until Friday to get the motion to Your Honor?

11 JUDGE BERLIN: Yes.

12 MS. SWEEN: Number two, Your Honor had also  
13 requested additional briefing that was due next week. Can we  
14 get a stay on that?

15 JUDGE BERLIN: Yes.

16 MS. SWEEN: Thank you, Your Honor.

17 JUDGE BERLIN: That deadline is vacated. All  
18 right.

19 So I was asked to review a document with respect to  
20 this issue. Counsel are aware of what the document is. I've  
21 marked that document as ALJ-3 for the record.

22 (Administrative Law Judge  
23 Exhibit No. 3 was marked for  
24 identification and received into  
25 evidence.)

1 JUDGE BERLIN: So I'm going to include it in the  
2 record.

3 Anything else anyone wants to be heard on at this  
4 point?

5 MS. SWEEN: No, Your Honor. Thank you very much.

6 MR. PILOTIN: Not at this time, Your Honor. Thank  
7 you.

8 JUDGE BERLIN: All right. We're adjourned.

9 (Whereupon, the proceedings recessed at 4:16  
10 o'clock p.m.)

11 ---o0o---

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REPORTER'S CERTIFICATE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

TITLE: Office of Federal Contract Compliance Programs,  
US Department of Labor versus Google, Inc.

CASE NUMBER: 2017-OFC-08004

OWCP NUMBER: N/A

DATE: APRIL 7, 2017

LOCATION: SAN FRANCISCO, CALIFORNIA

This is to certify that the attached proceedings  
before the United States Department of Labor, were held  
according to the record and that this is the original,  
complete, true and accurate transcript which has been  
compared to the reporting or recording accomplished at the  
hearing.

\_\_\_\_\_

SIGNATURE OF REPORTER

DATE