

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

**FILED UNDER SEAL**

**DECLARATION OF MARC A. PILOTIN IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO GOOGLE'S MOTION TO DISMISS**

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

I, MARC A. PILOTIN, hereby declare as follows:

1. I am a Trial Attorney in the Office of the Solicitor for the U.S. Department of Labor. In that capacity, I represent the Office of Federal Contract Compliance Programs, United States Department of Labor ("OFCCP"). If called as a witness, I could and would testify competently to the matters set forth in this Declaration.

2. Attached as **Exhibit A** is a true and correct copy of an excerpt from the transcript of the April 5, 2017 Pre-Hearing Conference.

3. Attached as **Exhibit B** are true and correct copies of excerpts from the transcript of the April 7, 2017 Hearing.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in San Francisco, California on April 25, 2017.



MARC A. PILOTIN  
Trial Attorney

# **EXHIBIT A**

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

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. )

**PROCEEDINGS TELEPHONICALLY HELD**

Wednesday,  
January 5, 2017

90 Seventh Street  
Suite 4-800  
San Francisco, California

The above-entitled matter came on for prehearing  
conference, pursuant to notice, at 11:04 o'clock a.m.

BEFORE: THE HONORABLE STEVEN BERLIN,  
Administrative Law Judge

1 that Google wants to contest the Agency's understanding, it  
2 can present its own witnesses to do that.

3 I don't understand, you know, what additional  
4 evidence calling two individuals from Los Angeles will add to  
5 that discussion. Ultimately, if Google disagrees with the  
6 Agency's understanding, it can present its witness to say the  
7 Agency has misunderstood.

8 JUDGE BERLIN: So, Ms. Sween, I think that -- first  
9 let me say that I view it as OFCCP's burden to demonstrate  
10 the -- that there is some relevance to the compensation issue  
11 of the data that they are seeking. And if they make no  
12 showing in that regard at all, I still have to be  
13 deferential, because I would most likely allow them the  
14 material unless it was plainly not related to compensation.

15 So, still, they are going to put on a witness that  
16 will talk about why these factors are relevant, according to  
17 what Mr. Pilotin just said.

18 I'm not sure, again, why Google would want to give  
19 them three chances to do that when they're satisfied to have  
20 one witness who, if she fails, she fails. It's their burden.

21 And as long as any of them can explain the relevance, I'm  
22 going to be satisfied with that. So why give them three  
23 shots at it?

24 MS. SWEEN: Thank you, Your Honor. Two comments:  
25 One, Ms. Wipper has not participated, except from a very high

# **EXHIBIT B**

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

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. )

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           A     In this region, it's the largest compliance  
2 evaluation we have opened currently. It could -- nationally,  
3 it's one of the largest. It's not the largest and probably  
4 in the last three or four years, it's one of the top 10  
5 largest that we've had at our agency.

6           Q     And what is the temporal scope of this compliance  
7 review?

8           A     Two years. September of 2013 to September 2015.

9           Q     And if you could just summarize briefly, there are  
10 certain requests that are the subject of this action,  
11 correct?

12          A     Yes.

13          Q     And what are those requests?

14          A     So, the first is a second snapshot. So, they  
15 provided a September 2015 snapshot in response to the Item 19  
16 attachment to the scheduling letter. And so we requested a  
17 2014 snapshot. We typically do that when we review and  
18 analyze the current year's snapshot and we find systemic  
19 compensation disparities. And so in order to determin  
20 whether there's a continuing violation, we will look back for  
21 the entire review period. So we ask for that prior year's  
22 snapshot to determine whether the systemic compensation  
23 disparities we found in the current year existed in the prior  
24 year.

25                   The second thing we asked for was the job and

1 salary history. Usually after you find a disparity in pay  
2 level, the second question you want to answer is the cause of  
3 the disparity. So, what you'll do is look back at every  
4 decision that impacted pay, from starting salary to every  
5 change going forward. This is something that not only we do,  
6 but Google itself says it does when they do pay equity  
7 analysis. There's public statements that they do that. So  
8 we requested fee salary and job history because of the pay  
9 level disparities and our second question, a follow-up, is to  
10 find out what the cause of those disparities are.

11 The third thing we asked for was the name and  
12 contact information for employees -- personal contact  
13 information. Within our compliance evaluation, which I  
14 stated was in a comprehensive analysis of all of the  
15 employment practices, we conduct confidential employee  
16 interviews, that's within our regulations. So we -- in order  
17 to understand compensation practices from both sides, not  
18 only the contractor, but also the employee's point of view,  
19 we need to talk to the employees about the practices and how  
20 they're applied, which is the reason why we asked for the  
21 employee contact information. The names of the employees, as  
22 well as their contact information.

23 JUDGE BERLIN: So the employees include managerial  
24 employees?

25 THE WITNESS: So, yes, and we're aware that if we

1           A       So, with respect to this evaluation, we reviewed  
2       and analyzed the 2014 snapshot and ran regressions on that --  
3       I'm sorry, the 2015, sorry. So we reviewed that and analyzed  
4       that.   And because we found systemic compensation disparities  
5       against women pretty much across the entire workforce, we  
6       wanted to look to see what happened the year before.

7                        So in order to -- if we're going to issue a  
8       violation for two full years, we want to make sure that we're  
9       using -- we're looking at the two full years to see whether  
10      the pattern exists against women in all components of pay.

11           Q       If you would, please turn to Exhibit 6 in your  
12      Joint Exhibit binder? And please let me know when you're  
13      ready.

14           A       I'm ready.

15           Q       Does Exhibit 6 -- what is Exhibit 6?

16           A       So, this is a supplemental request for compensation  
17      information that was sent to Jackson Lewis, the outside  
18      attorneys for Google, from Agnes Huang, who is the Assistant  
19      District Director in our Los Angeles office who's working on  
20      this audit.

21           Q       And does Exhibit 6 contain some of the factors that  
22      were requested as part of the September 1st, 2014, snapshot?

23           A       Yes.

24           Q       And where are those additional factors?

25           A       They're in the attachment.

1 period?

2 A No, because we haven't spoken to many employees.

3 Q Would you, as Regional Director, have the ability  
4 to determine whether or not there are any complaints lodged  
5 with the OFCCP by a Google employee without having talked --  
6 without having spoken to the employee?

7 A I believe we log our complaints in a data base.  
8 So, yes, I could have looked at the data base.

9 Q And did you do that?

10 A No.

11 Q You testified earlier that typically the OFCCP  
12 would request a second snapshot --

13 A Um-hum.

14 Q -- if it found systemic discrimination from the  
15 data it had received from the current year snapshot. Do you  
16 remember that testimony, generally?

17 A Um-hum.

18 Q So, did you actually do the analysis on the current  
19 year snapshot before requesting a second year snapshot?

20 A Without reviewing deliberative process, we did do a  
21 lot of analyses.

22 Q So, I'm asking you did you do it before you  
23 requested the second year snapshot?

24 A The first year snapshot was produced at the end of  
25 2015 and the second year snapshot was requested in June 2016.

1       So, yes.

2           Q     So just to be very clear, is it your testimony to  
3     this Court that you conducted a preliminary analysis -- a  
4     complete preliminary analysis -- of the first year snapshot  
5     before asking for the second year snapshot?

6           A     So, the complete preliminary analysis is not what I  
7     said. Did we analyze the initial snapshot that was produced  
8     at the end of 2015? Yes.

9           JUDGE BERLIN: And did you do that before  
10    requesting the second snapshot?

11          THE WITNESS: Yes.

12    BY MS. SWEEN:

13          Q     Can you just briefly describe for the Court what it  
14    meant by the Item 19, as it relates to the compliance  
15    evaluation?

16          A     So the Item 19 is part of the itemized listing that  
17    is attached to the scheduling that the OFCCP approved.

18          JUDGE BERLIN: Direct me to an exhibit. I just  
19    wanted to see the item.

20          MR. PILOTIN: To be helpful, Your Honor, it is --

21          JUDGE BERLIN: I know we looked at it before.

22          MR. PILOTIN: To help everybody, it's Exhibit 5.

23          JUDGE BERLIN: Thank you. So it's Exhibit 5, the  
24    attachment, and I have paragraph 19 now. It's Joint Exhibit  
25    5-006.