OFCCP v. Google Inc., 2017-OFC-00004

EXHIBIT A

to Google's Post-Hearing Brief

Excerpts from Administrative Record in *United Space Alliance, Inc. v. Solis*, 824 F. Supp. 2d 68 (D.D.C. 2011).

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,	)	
Plaintiff,	)	
vs.	)	Case No.
UNITED SPACE ALLIANCE, LLC,	)	2011-OFC-00002
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

Newport News, Virginia

February 14, 2011

Before: HONORABLE DANIEL A SARNO, JR.
Administrative Law Judge

1 Plaintiff calls Miguel Rivera.
2 ADMINISTRATIVE LAW JUDGE SARNO: All right.
3 Mr. Rivera, you've been sworn already?
4 MR. RIVERA: Yes, sir.
5 ADMINISTRATIVE LAW JUDGE SARNO: So please
6 take a seat.
7 Proceed.
8 MR. BLACK: Thank you, Your Honor.
9
10 MIGUEL RIVERA, called as a witness by and on
11 behalf of the Plaintiff, being first duly sworn,
12 testified as follows:
13
14 DIRECT EXAMINATION
15 BY MR. BLACK:
16 Q. Mr. Rivera, would you state your full name for
17 the record?
18 A. My name is Miguel Rivera, Jr.
19 Q. And in what city and state do you reside?
20 A. I reside in Winter Park, Florida.
21 Q. Who's your employer?
22 A. U.S. Department of Labor, Office of Federal
23 Contract Compliance Programs.
24 Q. And what is your position -- do you sometimes
25 refer to that as OFCCP?

1 A. Correct.
2 Q. What is your position with OFCCP?
3 A. District director.
4 Q. How long have you been a district director
5 with OFCCP?
6 A. A little over a year, since December of 2009.
7 Q. And at what location are you district
8 director?
9 A. In Orlando, Florida.
10 Q. Can you briefly tell us what your duties are
11 in that position?
12 A. As a district director, I'm responsible for
13 the Orlando offices, and also the Miami offices.
14 Q. And you say you're responsible for. In what
15 ways are you responsible?
16 A. I provide guidance for the entire district. I
17 oversee the work for the district, make sure it has
18 quality for the work, and provide guidance overall for
19 the district.
20 Q. Before I ask you about your prior position,
21 can you tell the Court -- can you tell us what the
22 mission or purpose of OFCCP is?
23 A. The mission of our agency is to ensure that
24 federal contractors comply with our regulations dealing
25 with Affirmative Action and Equal Employment Opportunity

1 as it relates to race, gender, religion, national origin,
2 disability, and veteran status.
3 Q. Can you tell us what statutes and laws OFCCP
4 deals with?
5 A. We deal with Executive Order 11246,
6 Rehabilitation Act, Section 503, and also VEVRAA --
7 USC -- 38 USC 4312.
8 Q. Okay. And, briefly, what does Executive Order
9 11246 require?
10 A. Executive Order 11246, it requires equal
11 employment opportunity under race and gender.
12 Q. Equal opportunity under race and gender, and
13 what does that mean, as applied to what? Equal
14 opportunity where?
15 A. Equal employment opportunity as it applies to
16 personnel activities.
17 Q. Okay. And to whom does this apply; that is,
18 who is it that OFCCP is making sure complies with equal
19 opportunity?
20 A. Federal contractors.
21 Q. What do you mean, "federal contractors"?
22 A. Companies that do business with the federal
23 government.
24 Q. You mentioned that you became district
25 director in about December of 2009.

1 A. Correct.
2 Q. Okay. And did you have a prior position with
3 OFCCP?
4 A. I was the assistant district director in
5 Orlando.
6 Q. When did you begin that position?
7 A. I began that position in February 2003.
8 Q. What were your duties as assistant district
9 director in Orlando?
10 A. My duties as assistant district director in
11 Orlando were to supervise compliance officers, as it
12 relates to conducting their investigations, to provide
13 guidance and, again, to ensure quality.
14 Q. And you said as it relates to their
15 investigation. What are you referring to in "their
16 investigation"?
17 A. The proper terminology is "compliance
18 evaluation of federal contractors."
19 Q. Okay. What are they checking compliance with,
20 compliance evaluations?
21 A. Checking compliance with our regulations, as I
22 stated earlier, with the federal contractors that are
23 selected for review.
24 Q. Okay. Are these regulations implementing or
25 issued under the Executive Order 11246?

1 A. Yes.
2 Q. What is the process or how does the compliance
3 evaluation process work? What steps are involved?
4 A. The contractor is selected for a review. We
5 conduct a desk audit; if necessary, we conduct an onsite
6 review; and if necessary, then we -- we would close it
7 out, either a compliance or a conciliation or whatever
8 the other -- whatever is relevant to that particular
9 case.
10 Q. Okay. You said "selected for review." Are
11 they selected for review in your Orlando office?
12 A. They appear on a list generated by the
13 national office, and then we get the list, and we review
14 the individuals or the contractors on that list.
15 Q. You mentioned a desk audit. Can you briefly
16 describe what that is?
17 A. A desk audit is, once we send out the
18 scheduling letter to the contractor, notifying them that
19 we're conducting a compliance evaluation, they submit the
20 Affirmative Action Plan and personnel activity data. And
21 then we review the Affirmative Action Plan and analyze
22 the personnel activity data.
23 Q. And where does that review of the Affirmative
24 Action Plan and personnel activity data take place?
25 A. It takes place in the local office.

1 Q. The local office of what -- of whom? Is it
2 with the contractor?
3 A. Oh, no. With OFCCP.
4 Q. So that's done at your office?
5 A. Correct.
6 Q. And since we're sitting in court here today, I
7 assume OFCCP began a compliance evaluation of the
8 defendant, United Space Alliance.
9 A. That's correct.
10 Q. Okay. And how did that begin? What's the
11 first thing that happened?
12 A. They showed up on the list that's generated
13 from the national office, and they were selected for a
14 compliance review. We sent out a scheduling letter.
15 Q. Before I show you the scheduling letter or
16 talk about the scheduling letter, you also mentioned an
17 onsite review. When does OFCCP conduct an onsite review
18 of a contract?
19 A. We conduct an onsite review of the contractor
20 when there's some unresolved issues discovered at the
21 desk audit.
22 Q. If there are unresolved issues discovered at
23 the desk audit, is an onsite review the only way that
24 OFCCP proceeds?
25 A. Well, typically, we try to get additional data

1 during that desk audit phase, just to conduct additional
2 analysis. But if that's unsuccessful, then, yes, we have
3 to go onsite.
4 MR. BLACK: May I approach, Your Honor?
5 ADMINISTRATIVE LAW JUDGE SARNO: Yes.
6 MR. BLACK: Thank you.
7 I'm handing the witness what I've marked for
8 identification as Exhibit P-1, "P" for Plaintiff.
9 ADMINISTRATIVE LAW JUDGE SARNO: It will be
10 marked for identification as P-1.
11 MR. BLACK: Thank you, Your Honor.
12 (Plaintiff's Exhibit P-1 marked for
13 identification.)
14 BY MR. BLACK:
15 Q. Can you tell me what this is Mr. Rivera?
16 A. This is the scheduling letter that was sent to
17 United Space Alliance.
18 Q. Okay. What's the date of that letter?
19 A. August 7, 2009.
20 Q. Was this the first contact that OFCCP made
21 with United Space Alliance in this compliance evaluation?
22 A. From my perspective, yes.
23 Q. You say from your perspective. Is it possible
24 there were other contacts?
25 A. It's possible that the national office sent a

1 letter, what we refer to as corporate scheduling --
2 another acronym is CSAL -- advising them of a possible
3 review.
4 Q. Okay. Would that national office letter have
5 been something that would have initiated this review, as
6 opposed to what's been marked as Plaintiff's P-1?
7 A. No.
8 Q. And if you'll turn to the second page, in -- I
9 know this is a challenging copy, but did you sign this
10 letter?
11 A. Yes, I did.
12 Q. Okay. And I see that it says -- under
13 signature it says, "Ronald Bailey, District Director,
14 Nashville," and then it says, "by," and then it says,
15 "Miguel A. Rivera, Jr." Why did you sign this letter,
16 rather than Mr. Bailey?
17 A. At that time we had the signature authority by
18 the assistant district directors, so I signed on his
19 behalf.
20 MR. BLACK: At this time we would offer
21 Plaintiff's 1.
22 ADMINISTRATIVE LAW JUDGE SARNO: Objection?
23 MR. DOYLE: No objection.
24 ADMINISTRATIVE LAW JUDGE SARNO: Okay.
25 Plaintiff's 1 is received.

(Plaintiff's Exhibit P-1 received into evidence.)

BY MR. BLACK:

Q. What did this schedule order P-1 ask U.S. -- United Space Alliance to do or to provide?

A. To provide the Affirmative Action Plan, as well as personnel activity data listed as itemized listing sections.

Q. Okay. The itemized listing, the third page of this document, which is labeled "Itemized Listing," is that what you're referring to?

A. Yes.

Q. And who created this itemized list? Where did it come from?

A. This would be generated from the national office.

Q. Is this something that you had any input on, in this particular compliance evaluation?

A. No.

Q. I wanted to turn to the very last page of this document, P-1. I think it's the fifth page. It's labeled "Itemized Listing Continued," page 3 at the top. There's an Item 11. Do you see that?

A. Yes.

Q. Can you tell me what this Item 11 requests, or

1 what it is intended to obtain?
2 A. It requests compensation data.
3 Q. And what's the purpose of requesting the
4 compensation data?
5 A. The purpose of requesting this compensation
6 data is to then conduct an analysis at the desk audit
7 stage.
8 Q. Analysis for what purpose?
9 A. To analyze it for possible disparities or to
10 see if there are any disparities. Overall, to ensure
11 equal employment opportunity.
12 Q. Did United Space Alliance -- did they respond
13 to this scheduling letter?
14 A. Yes.
15 Q. Do you know what format their response took?
16 Was it oral? Written?
17 A. It was written.
18 MR. BLACK: Okay. May I -- may I approach
19 again, Your Honor?
20 ADMINISTRATIVE LAW JUDGE SARNO: Yes.
21 MR. BLACK: I'm handing you what I've marked
22 for identification P-2.
23 ADMINISTRATIVE LAW JUDGE SARNO: It will be so
24 marked, as Plaintiff's Exhibit 2.
25 MR. BLACK: Thank you, Your Honor.

1 (Plaintiff's Exhibit P-2 marked for
2 identification.)
3 BY MR. BLACK:
4 Q. Can you tell me what this is, Mr. Rivera?
5 A. This appears to be the cover letter for their
6 Affirmative Action Plan submission.
7 Q. Was this a response to your letter, your
8 scheduling letter, Exhibit 1?
9 A. Yes.
10 Q. And this letter is addressed to you. Did you
11 receive it the date indicated, October 14, 2009?
12 A. Yes.
13 MR. BLACK: Okay. At this time we would offer
14 P-2 into evidence.
15 MR. DOYLE: No objection, Your Honor.
16 ADMINISTRATIVE LAW JUDGE SARNO: Plaintiff's 2
17 is received.
18 (Plaintiff's Exhibit P-2 received into
19 evidence.)
20 BY MR. BLACK:
21 Q. And what's the date of this letter,
22 Mr. Rivera?
23 A. October 13, 2009.
24 Q. And you mentioned the Affirmative Action Plan.
25 And the Affirmative Action Plan, was that provided along

1 with this letter?
2 A. It appears so.
3 Q. Okay. What form did the Affirmative Action
4 Plan take? Was that electronic? Was it written?
5 A. To my recollection, that would be a written
6 submission.
7 Q. Who received the AAP? Did you receive it?
8 A. It would have been received in my office. I
9 would have to say, yes, I did receive that.
10 Q. Okay. And what would you do with it? What
11 did you do with it after you received it?
12 A. I would have given it to Compliance Officer
13 Teresi.
14 Q. Did Defendant United Space Alliance raise any
15 objections, in this letter or otherwise, in response to
16 Exhibit 1, your scheduling letter?
17 MR. DOYLE: Objection, Your Honor. This gets
18 into the area, and a couple of other questions touched on
19 it, about the justification for the request, which I
20 understand Your Honor has already ruled on, that we are
21 not permitted to offer any evidence that you've already
22 ruled on consent. So if plaintiff wants to --
23 ADMINISTRATIVE LAW JUDGE SARNO: Well, I've
24 already ruled on it. So just move on, Counsel.
25 MR. BLACK: Thank you, Your Honor.

1 BY MR. BLACK:
2 Q. In Plaintiff's Exhibit 2, you see the line at
3 the end of the second paragraph that reads, "Our
4 Submission Items 9, 10, and 11 will be e-mailed to you
5 separately later this week"?
6 A. Yes.
7 Q. What was your understanding of what that
8 meant?
9 A. I understood that they would provide Items 9,
10 10, and 11 via e-mail later on in the week.
11 Q. And did they?
12 A. I believe so, yes.
13 MR. BLACK: To save time here, Your Honor, I'm
14 going to mark a couple of exhibits.
15 I'm handing you what's marked as Plaintiff's
16 Exhibit 3 or P-3, as well as P-4.
17 ADMINISTRATIVE LAW JUDGE SARNO: They will be
18 so marked, as Plaintiff's Exhibits 3 and 4.
19 MR. BLACK: Thank you, Your Honor.
20 (Plaintiff's Exhibit P-3 marked for
21 identification.)
22 (Plaintiff's Exhibit P-4 marked for
23 identification.)
24 BY MR. BLACK:
25 Q. Can you tell me what Exhibit P-3 is?

1 A. Exhibit P-3. It appears to be an e-mail from
2 U.S.A., which has Item 11 attached to it.
3 Q. Okay. Maybe I should be -- and I'm just
4 focusing on the first e-mail, rather than the lower
5 e-mail.
6 So it's your response that -- as to the e-mail
7 on the top half of page 1?
8 A. Correct.
9 MR. BLACK: We would offer Exhibit P-3, Your
10 Honor.
11 MR. DOYLE: No objection.
12 ADMINISTRATIVE LAW JUDGE SARNO: Without
13 objection, P-3 is received.
14 (Plaintiff's Exhibit P-3 received into
15 evidence.)
16 BY MR. BLACK:
17 Q. And you said that there was -- it appeared
18 that the compensation data, Item 11, was attached?
19 A. Correct.
20 Q. Is P-4 a copy of that attached compensation
21 data?
22 A. Yes.
23 MR. BLACK: We would offer P-4 at this time,
24 Your Honor.
25 MR. DOYLE: No objection.

1 ADMINISTRATIVE LAW JUDGE SARNO: Without
2 objection, Plaintiff's 4 is received.
3 (Plaintiff's Exhibit P-4 received into
4 evidence.)
5 BY MR. BLACK:
6 Q. After the Affirmative Action Plan, as well as
7 the personnel -- activity data, I think is what you
8 called it?
9 A. Yes.
10 Q. After that was received in your office,
11 including Exhibit P-4, what did OFCCP do with that data?
12 A. The compliance officer would have done an
13 initial desk audit analysis on that data.
14 Q. Okay. And was there something specific he did
15 with respect to P-4 that is -- my question was -- was not
16 very artful.
17 What did he do with just the Exhibit P-4 data?
18 A. He would have analyzed it on the spreadsheet.
19 Q. And how would he have done an analysis of it?
20 What would he have done to analyze it on a spreadsheet?
21 MR. DOYLE: Objection, Your Honor.
22 Objection, Your Honor, as to his ability to
23 testify as to what.
24 ADMINISTRATIVE LAW JUDGE SARNO: You can talk
25 about the procedure he generally followed. I'll allow

1 the question, but don't -- I mean, about the general
2 procedures.
3 MR. BLACK: Fair enough.
4 BY MR. BLACK:
5 Q. What would be the procedure for dealing with
6 information such as P-4 spreadsheet analysis?
7 A. The procedure would be to then conduct a
8 compensation analysis using an Excel spreadsheet.
9 Q. And what's the purpose of that analysis?
10 A. The purpose of that analysis would be to look
11 for disparities in pay.
12 Q. I'm sorry. Disparities in --?
13 A. In pay.
14 Q. Pay and compensation are synonymous?
15 A. Yes.
16 Q. Okay. Who did the initial analysis here?
17 A. It would have been done by Compliance Officer
18 Teresi.
19 Q. And do you know whether he reached conclusions
20 in his initial analysis?
21 A. Can you clarify "conclusions"?
22 Q. Well, is it your understanding that he
23 reviewed the spreadsheet?
24 A. Yes.
25 Q. Okay. And did he report to you the results of

his review of the spreadsheet?

A. Yes.

Q. And did you -- did you review his results?

A. Yes.

Q. Okay. And what did you conclude?

A. I concluded that there was a pattern of disparity for women.

Q. There was a pattern of disparity for women?

A. Yes.

Q. And can you explain what you mean by that?

A. I reviewed the spreadsheet that was used, and by looking at the groups, and looking to see who was earning less within those groups, we noticed that -- or I noticed that, in concurrence with the CO, that it appeared that women were earning less more frequently than men.

Q. Was this analysis, this spreadsheet analysis -- how many times was it performed, if you will?

A. Twice.

Q. Okay. The conclusion that you just described, was that your conclusion after the first time that the spreadsheet analysis was performed?

A. Yes.

Q. And why was -- then why was a second analysis -- spreadsheet analysis performed?

1 A. The second analysis was performed for the
2 purposes of refinement, in the sense that it would give
3 me a different perspective on the pattern, just in case
4 my initial conclusion was incorrect.
5 Q. Did you say "further perspective"? I'm sorry,
6 what words did you --
7 A. To give me a better perspective, if I'm not
8 mistaken, yes.
9 Q. And who prepared the second analysis --
10 spreadsheet analysis?
11 A. The second analysis was conducted by
12 Mr. Teresi, based on my instruction.
13 Q. Okay. And did he report his results to you?
14 A. Yes.
15 Q. And did you review his spreadsheet?
16 A. Yes.
17 Q. What conclusions did you draw from the second
18 spreadsheet analysis?
19 A. The second spreadsheet analysis reaffirmed the
20 pattern that we noted on the first one.
21 Q. And, I apologize, the pattern was a pattern
22 of --
23 A. Disparity for women -- pay disparity for
24 women.
25 Q. Now, at my request did you prepare a table to

1 assist in explaining your analysis and conclusions at the
2 hearing here?
3 A. Yes.
4 Q. And in preparing this table, you don't -- do
5 you -- did I tell you why I didn't want you to produce
6 just the spreadsheet themselves here for the hearing?
7 A. The spreadsheets that were utilized during the
8 desk audit contained specific variables used in
9 thresholds.
10 Q. Okay. And what does that have to do with
11 whether those are produced or shown here at the hearing?
12 Can you explain?
13 A. Those would be internal -- for internal use.
14 Q. And what part of the spreadsheets would be
15 internal?
16 A. The actual numbers.
17 Q. And can you explain what you mean by that,
18 just so the Court and so the record is clear, as to what
19 part of the spreadsheet analysis, that you looked at
20 during the audit, what part of that was internal? You
21 said the numbers. What does that mean?
22 A. It quantified the three different criteria
23 that are utilized in calculating the threshold indicators
24 on that spreadsheet.
25 MR. BLACK: May I approach, Your Honor?

1 ADMINISTRATIVE LAW JUDGE SARNO: Yes.
2 MR. BLACK: I'm handing you what's marked as
3 Plaintiff's Exhibit 5.
4 ADMINISTRATIVE LAW JUDGE SARNO: It will be so
5 marked.
6 (Plaintiff's Exhibit P-5 marked for
7 identification.)
8 BY MR. BLACK:
9 Q. Is this the table I asked you to prepare?
10 A. Yes.
11 Q. Just for the record, the table that you
12 prepared is page 1, and the pages 2, 3, 4, and 5 are
13 just -- the table that's on page 1, just blown up in
14 larger font, in case anybody, such as me, has trouble
15 seeing the table on page 1. Is that -- looking at that,
16 does that appear to be the case?
17 A. Yes.
18 MR. BLACK: At this time we would offer
19 Plaintiff's Exhibit 5.
20 MR. DOYLE: Your Honor, this is a table that
21 was prepared for purpose of litigation, that we
22 understand that there were actual tables that were relied
23 on at the time.
24 ADMINISTRATIVE LAW JUDGE SARNO: I understand
25 that. I understand it.

1 MR. DOYLE: So the best evidence doctrine
2 would say that the actual tables have to be used, not
3 some rendition based on the witness's --
4 ADMINISTRATIVE LAW JUDGE SARNO: He says that
5 the tables he used contained internal -- I don't know --
6 criteria.
7 MR. BLACK: Thresholds.
8 ADMINISTRATIVE LAW JUDGE SARNO: And I've
9 already ruled, so that doesn't come in. So this is the
10 next best evidence that I will --
11 Any other questions? Any other objections?
12 MR. DOYLE: That was my objection, as to the
13 document -- that he's going to testify as to a document
14 that actually exists that is not going to be presented.
15 ADMINISTRATIVE LAW JUDGE SARNO: This explains
16 that document?
17 THE WITNESS: It explains the pattern
18 indicator.
19 ADMINISTRATIVE LAW JUDGE SARNO: All right.
20 I'll allow this in, with that understanding.
21 Plaintiff's 5 is received into evidence.
22 MR. BLACK: Thank you, Your Honor.
23 (Plaintiff's Exhibit P-5 received into
24 evidence.)
25

1 BY MR. BLACK:
2 Q. Mr. Rivera, I want -- because the purpose here
3 is to explain to the Court what your conclusions were
4 during the audit, I want to go through the document P-5
5 with you.
6 What is the source of the information
7 contained on this -- this P-5? And it may be source or
8 sources.
9 A. The source would be Item 11, submission.
10 Q. And Item 11, that's the Exhibit P-4?
11 A. Yes.
12 Q. And tell me -- tell me how this table shows
13 your conclusion that there was pay disparity -- a pattern
14 of pay disparity for women.
15 A. In the part to the left of that gray bar down
16 the middle, there's a column called "Salary Difference,"
17 and that's a value that's also calculated on the
18 spreadsheet that was used for the desk audit analysis.
19 That salary difference --
20 Q. If I might interrupt you.
21 That salary difference -- and perhaps you were
22 going to explain. But the salary difference represents
23 what?
24 A. The difference between average compensation
25 between women and men in this case.

1 Q. For -- okay -- let's look at the first row
2 under the headings. Do you see where it says 1A, Exec
3 Payroll Management?
4 A. Yes.
5 Q. Explain what that -$34,975.72 represents.
6 A. It represents that women are earning less by
7 that amount on the average than men on the average.
8 Q. Is -- how about in the -- going down that
9 column. The next -- the next row, "1T, Exec Payroll
10 Management," it's not a negative number. What does that
11 positive number, $6,899.21, represent?
12 A. It represents that men are earning less by
13 that amount on average than women on average.
14 Q. Okay. How were these salaries differently
15 calculated on this spreadsheet?
16 A. How were they calculated?
17 Q. Yes, sir.
18 A. It subtracts -- the formula in this case, to
19 show a negative number for women, would be the average
20 composition for women minus the average compensation for
21 men.
22 Q. Okay. And the average compensation for women
23 and men is shown in the seventh and eighth columns of
24 this spreadsheet, if I've counted correctly, under where
25 it says "Average Compensation"?

1 A. Yes.
2 Q. So you subtracted the compensation for men
3 from the compensation for women shown in that column, to
4 yield the salary difference?
5 A. Correct.
6 Q. And is it the case that all negative
7 differences mean that women were learning less on average
8 by that amount in that job group?
9 A. Yes.
10 Q. So what did you do with that information in
11 your analysis?
12 A. With that information, we totaled the number
13 of times that women were earning less and compared it to
14 the totals with the number of times that men were earning
15 less.
16 Q. Okay. Show me or explain to me where that is
17 shown on this spreadsheet.
18 A. It's shown on the spreadsheet right below that
19 main table, where it shows the bottom total groups. It
20 would be 35 total AAP job groups, and then the total
21 groups with women earning less 23, and the total groups
22 of mean earning less is 12.
23 Q. What did you do next in your analysis, or look
24 at next?
25 A. Well, using this pattern, seeing that the

1 women were earning less on more occasions than men, I
2 also decided to go ahead and look at the number of actual
3 individuals that were within those groups and --
4 Q. When you say "those groups," what do you mean,
5 those groups?
6 A. Those groups -- for example, the total groups
7 with women earning less shows 23, but those were actual
8 groups, the count of the groups that represent the total
9 number of employees in those groups -- or number of women
10 in those groups, I should say.
11 Q. And where on the spreadsheet, if anywhere,
12 does it show how many women and how many men were in each
13 of those pay division or groups?
14 A. It would be -- the calculations would be over
15 under the Affected Totals column.
16 Q. Okay.
17 A. Where -- then it has the women, and the counts
18 for the women when they're earning less. And then it
19 also has a column for the men, and the count for the men
20 when they're earning less.
21 Q. And that represents the number of employees by
22 gender within that pay division?
23 A. Correct.
24 Q. And so what did you do with those affected
25 totals?

1 A. I calculated for an overall. Some of those
2 totals, and came down to a calculation down at the bottom
3 where it has "Affected Totals."
4 Q. I may have misspoken. The Affected Totals
5 only indicate a number in either the box "women" or
6 "men," and then in the other box the number is zero. Can
7 you explain where those numbers -- let's take a real
8 example. "1A, Exec Payroll Management," in "Affected
9 Totals," it says two women and zero men.
10 A. Correct.
11 ADMINISTRATIVE LAW JUDGE SARNO: Where are we
12 looking at this, Counsel?
13 MR. BLACK: I'm sorry, Your Honor.
14 ADMINISTRATIVE LAW JUDGE SARNO: I'm not
15 following you at this stage. It's on the right-hand
16 side, "Affected Totals"?
17 MR. BLACK: I'm asking or trying to have the
18 witness explain --
19 ADMINISTRATIVE LAW JUDGE SARNO: I understand,
20 where in the column are we looking at?
21 MR. BLACK: Okay. The very first row. Okay.
22 If you go to the far left, Pay Division. Far left.
23 ADMINISTRATIVE LAW JUDGE SARNO: Are we
24 looking at this one over here?
25 MR. BLACK: No. No. No. The other side of

1 the page.

2 ADMINISTRATIVE LAW JUDGE SARNO: Okay.

3 MR. BLACK: So the very first column is Pay

4 Division on the page.

5 ADMINISTRATIVE LAW JUDGE SARNO: Yes.

6 MR. BLACK: And you see in Pay Division, it

7 says, 1A Exec Payroll Management?

8 ADMINISTRATIVE LAW JUDGE SARNO: Yes. In the

9 far right it's two women and zero men.

10 MR. BLACK: Right.

11 BY MR. BLACK:

12 Q. And my question for Mr. Rivera is: Why does

13 it show two women and zero men in that column, Affected

14 Totals -- for those two columns, Affected Totals.

15 A. In this case, since the women were identified

16 in that group as earning less on average, that Affected

17 Totals, that number 2 to the right of that is the number

18 of women that are shown in the third column, as far as

19 being in that band, or that -- excuse me, that AAP job

20 group.

21 Q. Okay. And so the No. 2 in Affected Totals for

22 women came from the third column on the page, where it

23 says "Number of Employees for Women." Correct?

24 A. Right.

25 Q. Okay. And "Number of Employees for Men," it

1 lists four men. Why aren't four men shown in Affected
2 Totals?
3 A. The men are not shown in that Affected Totals
4 for that pay division because they were not earning less
5 on average.
6 Q. Okay. Let's go to the next row, 1T Exec
7 Payroll Management. And for the Affected Totals, now you
8 show zero women and 14 men. Is that right?
9 A. Right.
10 Q. And where did those numbers come from?
11 A. The zero women is zero because men were
12 earning less on average for women for that particular job
13 group, and the 14 men, it comes from the number of
14 employee totals, which is the fourth column under the
15 "Men" column.
16 Q. Okay. And did you do a similar type
17 calculation or computation going down each of the rows in
18 the Affected Totals column?
19 A. Yes.
20 Q. And you started -- well, what did you find
21 about the Affected Totals on this sheet?
22 A. On this sheet I found that the percentage of
23 women that were in groups earning less was 75 percent of
24 the total number of women in the workforce.
25 Q. Okay. And what is the -- what are the numbers

1 on which you reached that 75 percent conclusion, if you
2 could explain, on the page?
3 A. The number at the bottom, there's some
4 calculations towards the middle of the page. Where it
5 has Affected Totals, it comes down to 1,211, which is the
6 sum of all the women that were identified and counted in
7 that column. And then that divided by the total number
8 of women in the workforce, which was 1,600 --
9 Q. Okay.
10 A. -- and that came up with a percentage of
11 75.7 percent.
12 Q. Okay. How about the Affected Totals for men,
13 how -- go ahead. How was that calculated?
14 A. Similar logic. Same logic, actually. It was
15 just different categories.
16 It would be the sum of the men that were
17 counted as far as earning less under the Affected Totals,
18 divided by the total number of men in the workforce,
19 which is 4,388, and it came up with a percentage of 17.7.
20 Q. Before I move to the right side of this table,
21 Your Honor, do you have any questions?
22 ADMINISTRATIVE LAW JUDGE SARNO: No.
23 BY MR. BLACK:
24 Q. Moving to the right side of the gray bar, what
25 is the purpose of what's shown there?

1 A. The purpose of what's on the right side of the
2 gray bar, it follows the same logic as discussed earlier
3 on the table to the left of that, with the exception that
4 to get a better perspective on the disparity that I was
5 looking at for women, I removed those job titles that did
6 not meet -- or instructed CO Teresi to remove those job
7 titles that did not meet the 30-5 criteria.
8 Q. Okay. And would you explain to the Court what
9 you mean by the 30-5 criteria that you instructed him to
10 use?
11 A. The 30-5 criteria, there has to be a total of
12 30 individuals in that group, and at least 5, in this
13 case, female, and at least 5 men. So whatever two groups
14 that are being compared, you have to have at least five
15 of each and a total of 30 to meet that criteria.
16 Q. What do the pink rows represent?
17 A. The pink rows represent those job groups that
18 did not meet that criteria, the 30-5 criteria.
19 Q. Can you explain -- for example, the first row,
20 Pay Division 1A, Executive Payroll Management, what part
21 of the 30-5 role did this fail to meet?
22 A. It failed all. It did not have at least 30,
23 and it did not have at least five women or five men.
24 Q. And where are you looking when you say that it
25 didn't have at least 30 employees and five women and five

men?

A. I'm looking at the column toward the left of the gray bar in the table, and there's a second, third, and fourth column under Number of Employees.

Q. Total employees, women and men?

A. Correct.

Q. So now let's go to the first -- the first row which actually contains data other than pink -- pink fill-in. That would be Pay Division 3A, Bands 10 and 11, Management, if I'm reading this correctly.

A. Yes.

Q. Okay. And so now there -- it says "Group" -- and to the right side of the gray bar under 30-5 "Group Earning Less" it says "Men." Where did that -- "Men," where did that come from?

A. Again, it would have come from the prior calculations in the table to the left of the gray bar.

Q. Okay. So the group-earning-less determination in -- on the right side of the gay bar under 30-5, is unchanged from the group-earning-less determination on the left side of the gray bar?

A. Correct.

Q. And then the numbers of employees that are shown, 50 total employees, 12 women, 38 men, those are the numbers that came from Number of Employees on the

1 left side of the table?
2 A. Correct.
3 Q. Okay. And now moving over to the very last
4 two columns on this page, Affected Totals, how did those
5 compare with the Affected Totals on the left side of the
6 gray bar?
7 A. It's the same -- same data, same values.
8 Q. What was your purpose in doing this 30-5
9 refinement?
10 A. The purpose of doing this 30-5 refinement was
11 to give me a better perspective on the overall pattern
12 that I was getting on the initial analysis.
13 Q. Explain, if you will, what you mean by getting
14 a better perspective -- how it gave you a better
15 perspective on the overall pattern indicator.
16 A. Well, in this particular case we had a lot of
17 groups -- AAP job groups that met the 30-5 criteria,
18 where it came -- it was a good sample size. So we
19 weren't comparing a lot of individuals to a small number
20 of individuals that were less than five. So this gave me
21 a better perspective because I was looking at groups with
22 larger numbers of individuals.
23 And given that those groups that met the 30-5
24 criteria represented over 90 percent of the total
25 workforce, it would give me a better perspective to look

1 at it that way, and to see if the pattern continued.
2 Q. Okay. And 30-5, why did you decide to use a
3 30-5 refinement?
4 A. The 30-5 refinement is something that has been
5 communicated through the statisticians, as far as the
6 30-5 rule. And, initially, when the spreadsheet was
7 initially created, that was one of the things that they
8 wanted us to do, was to try to analyze and group the pay
9 divisions as closely as possible, using where it would
10 meet the 30-5 rule.
11 MR. DOYLE: Your Honor, I'm sorry. Could I
12 object to this testimony as hearsay, if it's offered for
13 what the statisticians -- if it's offered as to the state
14 of mind, it's permissible. But if it's offered as the
15 truth of the matter of what the statisticians were
16 saying, I would object to it as hearsay.
17 ADMINISTRATIVE LAW JUDGE SARNO: Well, he can
18 testify as to his state of mind, what he understands, why
19 he uses this.
20 THE WITNESS: For clarification, I did not
21 come up with the 30-5 rule.
22 BY MR. BLACK:
23 Q. Okay. What is your understanding of what the
24 30, 5, rule -- why it exists? Your understanding.
25 A. My understanding is that statisticians, as has

1 been communicated, say that that is the smallest size
2 that they can do, as far as any analysis, anything that
3 would -- what that would consider as being statistically
4 significant.
5 Q. Now, you've mentioned -- you've mentioned that
6 this sheet shows the pattern of pay disparity for women.
7 Are there particular boxes on this sheet -- and I can
8 hand you a yellow highlighter, so that you can mark the
9 box, and maybe even mark -- well, you don't need to mark
10 the column names, but the boxes that you believe indicate
11 the pattern of pay disparity for women. Could you do
12 that for me?
13 A. Yes.
14 MR. BLACK: May I approach?
15 ADMINISTRATIVE LAW JUDGE SARNO: Yes.
16 MR. BLACK: Thank you, Your Honor.
17 BY MR. BLACK:
18 Q. Okay. So for the record, can you -- although
19 you've marked it, and it will be a document on the
20 record, can you describe which boxes you've marked as
21 indicating the pattern?
22 A. The boxes I've marked are the ones that are at
23 the center bottom of the exhibit, P-5.
24 Q. Okay.
25 A. Where it says "Total Groups with Women Earning

1 Less," "Total Groups with Men Earning Less," both in
2 count and percentage format.
3 Q. Okay.
4 A. And the secondary areas that I highlighted
5 would be the "Percentages of the Affected Total Compared
6 to the Workforce," which is right above that, the 75.7
7 and the 17.7 percent.
8 Q. So this reflects the pattern of pay disparity
9 for women that you found?
10 A. Yes.
11 ADMINISTRATIVE LAW JUDGE SARNO: And you
12 marked them in yellow. Is there any reason you didn't
13 mark the ones to the right of the gray line?
14 THE WITNESS: The ones to the right of the
15 gray line also showed a pattern, but it was based on a
16 refinement --
17 ADMINISTRATIVE LAW JUDGE SARNO: Okay.
18 THE WITNESS: -- by using the 30-5, and it was
19 more to give me a better perspective of the initial
20 pattern indicator.
21 ADMINISTRATIVE LAW JUDGE SARNO: All right.
22 BY MR. BLACK:
23 Q. Can you explain what you mean or explain how
24 it gave you a better perspective on the initial pattern
25 indicator?

1 A. It gave me a better perspective, in that the
2 pattern continued. The intent of the 30-5 was to test a
3 more tighter population, to see if it would contradict
4 the initial pattern.
5 ADMINISTRATIVE LAW JUDGE SARNO: Did it?
6 THE WITNESS: In this case, it did not.
7 ADMINISTRATIVE LAW JUDGE SARNO: All right.
8 BY MR. BLACK:
9 Q. What is the significance of the pattern of pay
10 disparity for women that you observed; that is, what does
11 it mean in OFCCP-land or to you?
12 A. What it means, both looking at it from the
13 total groups, and then looking at the count of the number
14 of employees within those groups, it would indicate to me
15 that I would need additional data to continue to analyze
16 compensation.
17 Q. And why is that?
18 A. Because of the --
19 Q. Why would you need additional data?
20 A. Because this -- at this stage it's very
21 rudimentary. I would need to get additional or detailed
22 data to then come to a more reliable conclusion as to
23 whether or not there is, in fact, a disparity.
24 Q. Now, did you take any action in the compliance
25 evaluation, based on your conclusion that the data -- the

1 CERTIFICATION

2 This is to certify that the attached proceedings
3 before the Office of Administrative Law Judges, U.S.
4 Department of Labor, Courtroom No. 1, in the matter of
5 OFFICE FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES
6 DEPARTMENT OF LABOR, vs. UNITED SPACE ALLIANCE, LLC, Case
7 No. 2011-OFC-00002, at Newport News, Virginia, on February
8 15, 2011, were held according to the record, and that this
9 is the original, complete, and true and accurate transcript
10 that has been compared to the reporting or recording,
11 accomplished at the hearing.
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14 Bobbi J. Case, RPR, CCR
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