

1 vestiges that still exist today, for example, is that also in
2 the purview of OFCCP when there was no federal contract in
3 1998?

4 So, I'm -- I'm not suggesting what the answer to
5 that question is, but I'm urging people to make a clear about
6 when Google was a federal contractor and when it wasn't. And
7 I am very interested to hear the parties' arguments on this
8 subject, perhaps at the close of the evidence, because you
9 will be giving closing arguments.

10 But I perceive those as issues to be addresses and
11 I'm willing to be convinced that they are not really issues,
12 but I would like to have the parties to be aware that it's a
13 question in my mind, so that you might choose to address it.

14 All right. Let's turn now to the case for the
15 Defense. Ms. Sween, your first witness?

16 MS. SWEEN: Thank you, Your Honor. We do call
17 Janette Wipper, please.

18 JUDGE BERLIN: Ms. Wipper?

19 You're already sworn, so there's no need to do it
20 again.

21 Whereupon,

22 JANETTE WIPPER,

23 having been previously duly sworn, was further examined
24 and testified as follows:

25 JUDGE BERLIN: Ms. Sween?

1 MS. SWEEN: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. SWEEN:

4 Q Good afternoon, Ms. Wipper.

5 A Good afternoon.

6 Q Would you agree that as Regional Director of the
7 OFCCP one of your primary obligations is to ensure that the
8 compliance review that you and your department conduct are
9 conducted in a fair and unbiased manner?

10 A Yes.

11 Q Can I ask you to scoot closer to your microphone?

12 JUDGE BERLIN: I'm sorry and someone is here now
13 who is trying to address this, but it could take a while. So
14 it would be good if you could move it close to you.

15 THE WITNESS: Yes.

16 JUDGE BERLIN: Could you hear that?

17 MS. SWEEN: I could.

18 JUDGE BERLIN: All right. Good.

19 BY MS. SWEEN:

20 Q And immediately prior to joining OFCCP I believe I
21 heard you testify that you worked at a firm in which your
22 firm litigated class actions and discriminatory pay practice
23 cases, is that correct?

24 A Yes.

25 Q Okay. And that was a plaintiff's side, correct?

1 You were proceeding on behalf of the plaintiffs?

2 A I've also done some work on the defense side, but,
3 yes, primarily.

4 Q And when you did the defense work, was that at
5 Sanford-Heisler or was that at a prior job?

6 A It was at Sanford-Heisler.

7 Q Okay. What percentage of your practice would you
8 say when you were at Sanford-Heisler was on the plaintiff's
9 side, litigating cases against employers?

10 A The majority.

11 Q More than 50 percent?

12 A I would say yes, because the class action work was
13 primarily on the plaintiff's side and those cases were a lot
14 more complex and required a lot more work. So, from a work
15 load perspective, yes.

16 Q Could it be as much as 90 percent of your case load
17 was plaintiff side, class action, pay disparity cases?

18 A I wouldn't say -- I would say maybe plaintiff's
19 side, but not all pay disparity.

20 Q Okay. So 90 percent of your work was plaintiff's
21 side?

22 A Um-hum.

23 Q With a majority of your practice pay disparity
24 cases?

25 A So, my work was on behalf of employees, which is

1 similar to the mission of the OFCCP, to ensure that
2 discrimination is not occurring against employees.

3 So in that way, yes, it's similar.

4 Q Okay. But my question was specific. Did it relate
5 to pay discrimination practices, for the most part? Was that
6 the majority of your practice included?

7 A I wouldn't -- I had wage and hour cases, as well.
8 So I did pay and promotion discrimination cases, but I
9 wouldn't say it was the majority.

10 Q So wage and hour was not the majority. The pay
11 discrimination practice was the majority?

12 A No, I would say the wage and hour sometimes was the
13 majority of my cases.

14 Q Do you believe as a result of your position at a
15 plaintiff's side lawfirm litigating cases against employers,
16 that you developed any particular bias against employers?

17 MR. PILOTIN: Objection, Your Honor. I don't
18 understand the relevance of this.

19 JUDGE BERLIN: It goes to bias. She can answer it.
20 She's a witness and she can show bias.

21 THE WITNESS: Actually, I think it's the opposite,
22 because I understand the pay practices. I've looked at a lot
23 of pay practices, not only in my former job, but in my
24 current job and I, based on that experience, am able to
25 determine, I think whether there's an issue.

1 I'm also very familiar with research in this area.

2 So I draw from not just the data, but I'm familiar with
3 research on negotiating pay, starting pay, and why starting
4 pay can actually impact an employee's compensation over the
5 lifetime of their career. So I'm -- I actually think it
6 makes me less bias because of my experience and understanding
7 different types of employers and their pay practices.

8 BY MS. SWEEN:

9 Q I just want to explore this for a second. Thank
10 you for that explanation. I'm not quite sure I understand
11 how your experience in this regard affects having no bias
12 against employers. So that's what I'm trying to explore.

13 So, in your practice as a plaintiff's side
14 employment attorney, you regularly litigated cases against
15 employers. And in your experience, did you find in that
16 practice that more times than not, from your opinion, that
17 employers discriminated against their employees?

18 MR. PILOTIN: Objection again, Your Honor. I don't
19 understand the relevance of this, especially since -- as the
20 Court has made clear -- even if Ms. Wipper had any bias, the
21 Court's made clear in its summary judgment motion that motive
22 is not something that plays into relevance.

23 JUDGE BERLIN: I'm going to sustain it, because I
24 don't really think -- I people coming to plaintiffs' lawyers,
25 looking to bring lawsuits are not an average sample of the

1 employee population of the country. And it wouldn't be
2 surprising if more of those people have viable claims than
3 the ordinary person. So it wouldn't show any bias, anyway.

4 MS. SWEEN: Fair enough. I'll proceed.

5 BY MS. SWEEN:

6 Q So you agree it would be entirely inappropriate of
7 you as a Regional Director to express any bias against
8 employers in public statements, wouldn't you?

9 MR. PILOTIN: Objection, Your Honor. I don't see
10 how this goes to the relevance of anything in this case which
11 focuses on the relevance of the documents OFCCP requested or
12 the undue burden Google faces in producing those documents.

13 JUDGE BERLIN: Ms. Sween?

14 MS. SWEEN: Your Honor, if you would allow a quick
15 side bar, I can explain that to you outside the presence of
16 the witness.

17 JUDGE BERLIN: All right. Let's do that. Let's do
18 that.

19 (Off the record.)

20 JUDGE BERLIN: All right. I'm not going to -- the
21 objection is sustained. We had an off-the-record
22 conversation with counsel for both parties and I've concluded
23 that the questions are not aimed at impeaching the witness'
24 truthfulness and veracity, but are aimed at reducing the
25 weight that would be put on her opinion on what's needed,

1 which I find generally not relevant, because the motivation
2 OFCCCP has for seeking the information is not the relevant
3 question. There are some other questions that we've all
4 discussed on the record and on the motion for summary
5 decision, but motivation is not one of them.

6 So, the objection is sustained.

7 MS. SWEEN: Thank you, Your Honor.

8 BY MS. SWEEN:

9 Q Ms. Wipper, you testified earlier this morning that
10 there are two different types of affirmative action plans
11 available to a federal contractor to use. One was the
12 establishment model and one was the functional model,
13 correct?

14 A Generally, that was my testimony. There are
15 regulations that talk about the establishment, AAP, which
16 have different types of definitions on how to group the
17 employees within that establishment-based AAP.

18 Q And can you just provide the Court with a very
19 brief, 30,000 foot, understanding of what an establishment
20 model is?

21 A So it's similar to the Equal Pay Act. So, you look
22 at the -- and traditionally with, I guess, manufacturing
23 types of plants, for example, you would have an
24 establishment, a facility, where the employees are located.
25 That would be the default rule of who would be covered by the

1 AAP. But now with, you know, the modern work force and you
2 have people reporting in to a manager at a different site, if
3 that's the case, then that employee would be in their
4 manager's AAP, so the location where the manager is located.

5 And I believe that's what Google did here.

6 Also, you can -- if there's high level employees
7 making selection decisions for lower level, that's also a
8 third option on the establishment-based AAP where you would
9 put those employees in the higher-level selection official's
10 location. On any of those options that are not where the
11 employee is located, it has to be noted in the AAP where they
12 are, if they're not at the place where they work.

13 Q Okay. Distilled down to a very simple explanation,
14 isn't it akin to you have a group of employees at a building.
15 You have to have 50 or more employees in that building or in
16 that campus, and those -- all of those buildings together are
17 the establishment for which the Affirmative Action Plan flows
18 other than what you've testified to with respect to the
19 various different reporting, correct? So, it's essentially a
20 location, right?

21 A It is. However, if a contractor has different
22 addresses for those buildings, sometimes they'll give us an
23 AAP for every address, similar to what they do for an EEO-1
24 report for the physical location or the physical address. We
25 have one review -- I can give you an example. It's a campus,

1 there's five buildings, there's five EEO-1 reports, there's
2 five different AAPs at that same location.

3 Q The other model you referred to is the functional
4 model. And can you briefly explain to the Court what the
5 functional model is?

6 A So, the functional model is an exception to the
7 establishment model. And so the way that works -- it's also
8 in the same regulation. I believe it's 41 CFR 612, I think.

9 So, anyway, so for the FAP, is what it's called, you could
10 be -- the contractor has the option to organize their AAP by
11 function or business unit.

12 So, for example, Google could do engineering
13 nationwide and put them all -- you know, across all states,
14 put them all in one FAP. In order to do that, they would
15 need approval from the Director of the Agency in Washington,
16 D.C., and some contractors do it. It tends to be less
17 burdensome on the review, because they couldn't be scheduled
18 separately throughout the country. They would rather just do
19 one review all together for one functional unit.

20 Q Thank you. So, absent getting government approval
21 or permission, rather, a contractor has no choice how to
22 structure its AAP, correct?

23 A Well, in the establishment-based model, they could
24 -- with a separate address, a separate building, have a
25 separate AAP.

1 If they could -- I know the Google EEO-1 reports,
2 for example, are broken -- okay.

3 Q If Google had applied for and received permission
4 to prepare functional AAPs, as you sit here today, you have
5 absolutely no knowledge or you don't know the size of those
6 AAPs or that those sizes would be any smaller than the
7 establishment-based AAP that Google uses, isn't that correct?
8 So you just gave an example for -- you gave the example of
9 engineers across the country. As you sit here today, you
10 have absolutely no idea whether if they had gone the
11 functional route for engineers across the country, whether
12 that would be any more or any less than their establishment-
13 based plan in effect right now?

14 A I do know if they did the address-based approach,
15 that --

16 Q That's not my question, Ma'am.

17 A -- they would have 2,500 at the current addresses.

18 Q That's not my question.

19 MR. PILOTIN: Your Honor, I'd ask Counsel not to
20 interrupt the witness while the witness is talking.

21 JUDGE BERLIN: You need to answer the question that
22 was asked.

23 THE WITNESS: Okay.

24 JUDGE BERLIN: So, is it correct that you do not
25 know how many employees would be covered if the AAP has been

1 done by function rather than establishment?

2 THE WITNESS: The reason I don't know is because
3 the function would be defined by Google and not by us. And
4 do I believe, based on the data that we have, that there are
5 functions that are much smaller than engineering? I do. And
6 nationwide, I think they would be below 20,000, but, again,
7 who defines the functional unit is the contractor, so I
8 couldn't answer that.

9 BY MS. SWEEN:

10 Q So, in other words, it's pure speculation on your
11 part whether if Google chose to use the functional route
12 rather than the establishment route -- say, for example, for
13 engineers across the country -- you have absolutely no idea
14 as you sit here today definitively that that would be any
15 less than the establishment model that's in effect. Isn't
16 that true?

17 MR. PILOTIN: Objection, Your Honor, that
18 mischaracterizes the last answer Ms. Wipper gave.

19 THE WITNESS: For which function?

20 BY MS. SWEEN:

21 Q Let's use software engineering as an example.

22 A Well, that would be the largest function. So for
23 software engineering, probably it would be comparable.

24 Q Okay. Thank you.

25 A But for the others, it would be less.

1 Q So your earlier testimony that Google's Mountain
2 View AAP is so large because Google chose to make it that way
3 is really not true, is it?

4 A No, it is.

5 Q You have no idea as you sit here today if they went
6 the functional route, whether it would be -- for software
7 engineers -- whether it would be smaller or larger?

8 A If they can make it smaller with the establishment
9 route. So if they would have chosen only the people who
10 actually work at 1600 Amphitheater -- is it? -- then
11 according to their EEO-1 report, that's only 2,500 employees
12 at that location.

13 Q But they could have selected -- they could have
14 requested permission from the government to use a functional
15 model. And if they had done that within their choice and
16 with the government's permission, as you sit here today, you
17 don't know if the AAP, for example, software engineers
18 nationally, would be any less than the establishment model
19 used at the Mountain View facility, correct?

20 A Well, could you break that down? Because there's a
21 lot of assumptions buried in your question. So, it depends on
22 the function.

23 Q Okay.

24 A And in terms of the establishment model, I think
25 that -- forget about the FAP -- the establishment model, they

1 could have created it under the options on the establishment
2 model with a smaller work force.

3 So -- and in terms of the FAP, it would depend on
4 the functional unit. Since it's a software engineering
5 company, sure, the functional unit of software engineering
6 could be more. But the other -- the support functions --
7 legal, for example, would probably be less.

8 But, again, it would be defined by Google.

9 Q But you don't know one way or the other as you sit
10 here today, correct?

11 A I do know that if they used the establishment by
12 address, it would be less. That's the only thing I can say
13 that I know.

14 Q Okay. Thank you very much.

15 So I want to talk a little bit about the compliance
16 review that OFCCP has done specific to Google.

17 A Okay.

18 Q With these questions, I'm not interested in what
19 your general experience is in compliance review. I want to
20 focus my questions and your answers on what specifically went
21 into the compliance review at issue here. Okay?

22 So, to take a step back, can you just explain for
23 the Court the phases of a compliance review?

24 A Sure. So there's, you know, in our regulations we
25 have -- it's defined with three phases. So there's the desk

1 audit review, there's the on-site review and there's an off-
2 site analysis.

3 Q And isn't it true that the OFCCP does not actually
4 have to undertake every phase in each review? They can
5 select which of those that they want to do?

6 A No, that's not true.

7 Q So is it your testimony that in every single
8 compliance review each of those three steps that you just
9 testified to are taken in each compliance review?

10 A The only time the -- it would not go beyond desk
11 audit is if there were no issues to further investigate.
12 So, if there are issues to investigate, then all three phases
13 would be included.

14 Q In a typical compliance review, doesn't the OFCCP
15 conduct a preliminary analysis of the data before requesting
16 additional information?

17 A There is a desk audit, so, yes.

18 Q And so typically would a desk audit be complete
19 before additional information is requested from the
20 contractor?

21 A It depends if the initial data provided was
22 complete.

23 Q Is a desk audit what the OFCCP generally refers to
24 as a preliminary analysis?

25 A No. A preliminary analysis could be broader than

1 that.

2 Q Broader than a desk audit?

3 A Um-hum.

4 Q Can you give me an idea of what a preliminary
5 analysis -- how it would be broader than a desk audit?

6 A Depending on the review, additional data could be
7 necessary. Other sources of information could be looked at.
8 There's -- you know, as you know, the first one -- one of
9 the first steps we do before we use a desk audit is we
10 contact EEOC -- and in California it would be DSCH -- to
11 understand what pending charges are against a contractor
12 under review. For Google, for example, there's quite a few
13 pending charges that, you know, had been filed against
14 Google. So we had to look into that. That's beyond just the
15 data at the desk audit.

16 There is also information that's provided
17 publically about issues about compensation at Google where
18 employees were complaining about pay transparency and
19 disparities at Google. That's something we'd also look at in
20 a desk audit.

21 So, you know, we're doing investigations about the
22 contractor. We're looking into pending complaints. We're
23 also looking at the AAP. So here with Google, there was a
24 lot more to look at than just the AAP.

25 Q You just referred to public information that was

1 disclosed by Google employees. What were you referring to?

2 A Well, one thing, there's a site that Google has,
3 "Rework" that talks about their pay structure. It's
4 available to the public. Laszlo Bock, who is the SVP of
5 People Operations, who we tried to interview at the on-site,
6 but Google did not make him available. I believe Frank
7 Wagner reports to someone who reported in to him. He also
8 has a lot of publically-available information about pay
9 equity and tainted variables or things that could have a
10 disparate impact on women, such as considering a prior pay
11 because of the anchoring bias that's associated with it.

12 There was quite a lot of coverage about -- from a
13 female engineer. Her name is Erica Baker, I believe -- about
14 a spreadsheet that she created at Google a few months before
15 our scheduling letter went out, where she was promoting a pay
16 equity and transparency and then alleged that Google
17 retaliated against her when her peers nominated her for a
18 peer bonus.

19 And so, you know, we do our due diligence at the
20 desk audit stage.

21 Q Are you aware of any complaints that were lodged
22 with the OFCCP on any of these issues?

23 A I'm aware of complaints lodged at the EEOC and at
24 the DFSC, because that's in every compliance evaluation we
25 get the pending charges and there are quite a few against

1 Google.

2 Q And are any of those pending charges within the
3 compliance two-year scope period that you testified to
4 earlier?

5 A I believe so, but I -- I know there was also a
6 pending age discrimination case against Google, too.

7 I don't have them all memorized. Given the volume,
8 I would say yes.

9 Q None of these complaints, however, were lodged with
10 OFCCP, correct?

11 A We work together with the EEOC on our reviews, so
12 they -- as far as what's been filed with us, since we opened
13 the review, I'm not aware of anything that's been filed.
14 But, again, we don't have -- we haven't had the ability to
15 speak with employees the way we typically do, because Google
16 has withheld contact information from us.

17 MS. SWEEN: Your Honor -- thank you.

18 Your Honor, can you ask the witness just to answer
19 my question, please?

20 JUDGE BERLIN: Just try to keep it brief, because
21 OFCCP wants to conclude today, so.

22 BY MS. SWEEN:

23 Q So, Ms. Wipper, it's a yes or no question. Are you
24 aware of any complaints that any employee from Google has
25 lodged with the OFCCP during the two-year compliance review

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.

1 MS. SWEEN: May I proceed, Your Honor?

2 JUDGE BERLIN: Please.

3 BY MS. SWEEN:

4 Q Okay. Ms. Wipper, what type of analysis does OFCCP
5 typically conduct on Item 19 data?

6 A There's various analyses that we -- it could be
7 anything from descriptive analysis to regression analysis and
8 everything in between. But I don't know if we would reveal
9 all of the analyses, because it's privileged.

10 Q So I'm not asking you to reveal the analyses. I'm
11 asking you what types of analyses are done.

12 In this instance, did you conduct a regression
13 analysis on the Item 19 data before requesting the second
14 snapshot?

15 MR. PILOTIN: Objection, Your Honor, this goes to
16 deliberative process and the investigative files privilege.
17 Whether -- you know, the nature -- we've litigated this issue
18 regarding the nature of the analysis that OFCCP has done.
19 And, again, I don't see how this information is relevant,
20 either to whether the requested items are relevant or as to
21 the undue burden.

22 JUDGE BERLIN: Sustained. The witness has
23 testified that it was analyzed -- that the first snapshot was
24 analyzed before the second was requested and I think that
25 that's sufficient.

1 MS. SWEEN: Thank you.

2 BY MS. SWEEN:

3 Q Ms. Wipper, in your region -- in the Western Region
4 -- does the OFCCP typically request the complete salary
5 history for all employees in an AAP -- in conducting
6 compliance reviews?

7 A We have requested it and we have received it
8 without objection from contractors.

9 Q My question is a little bit different.

10 A Um-hum.

11 Q I'm asking whether it's typical for you to request
12 the complete salary history for all employees in an AAP?

13 A If prior pay and anchoring bias is at issue, yes.

14 Q In your region, does OFCCP typically request the
15 complete job history for all employees in an AAP?

16 A It would be the same answer, because we cannot
17 really analyze the initial pay without looking at the job
18 that or the initial assignment of their job and the other
19 factors. So, they go together.

20 Q So your answer is it is typical?

21 A My answer is when prior pay and anchoring bias and
22 negotiation is at issue at the start, yes, we ask for it.

23 Q And when you are talking about negotiation and
24 anchoring bias with respect to the compliance review that's
25 at issue here, did you find that it was necessary to request

1 the job history for all employees in the Mountain View AAP
2 because of those two factors? So what I'm really trying to
3 get at is, I understand typically you ask for this
4 information if there are certain indicators that lend you to
5 believe it would be helpful. In the Google compliance
6 review, did you find indicators that caused you to believe
7 that the job history for all employees in the AAP would be
8 helpful to your analysis?

9 MR. PILOTIN: Objection, Your Honor. This again
10 goes to the deliberative process and the investigative files.

11 Ms. Sween is asking for the indicators that have been the
12 topic of much discussion before the Court. And, again, I --
13 in addition to objecting on those grounds, I don't see the
14 relevance of this as to the relevance of the information
15 requested in Google's undue burden.

16 JUDGE BERLIN: So let me ask you a yes or no type
17 of a question. I mean, you can add, if you want, but you
18 don't have to.

19 Did OFCCP give any consideration to making the
20 breadth of the request less than the entire work force? Was
21 that something you even considered?

22 THE WITNESS: Yes. If the indicators were limited,
23 we would have to a certain -- if the indicators were the
24 policies at issue were limited to a certain sector, we would
25 consider limiting it. But in this case, that wasn't what we

1 were seeing at this point. We saw indicators that were
2 consistently adverse to women and we also saw policies that
3 were impacting -- potentially impacting.

4 Now, without looking at the history, we cannot
5 pinpoint exactly where the disparities are, you know,
6 stemming from. But we did see a widespread-enough issue that
7 it wasn't -- there wasn't a need to narrow it.

8 Also, we consider the burden, because it was
9 electronically stored. So, with respect to hiring data, it's
10 a lot more burdensome to produce hiring data, generally. You
11 know, the applications, the resumes usually are stored in
12 separate files. I'm just talking generally in our reviews.
13 But compensation data is usually centrally stored,
14 electronic. It's not applicants, it's their actual
15 workforce. So the burden issues don't -- are not as
16 concerning for us with compensation as they are for hiring.
17 Hiring is much -- it's just -- there -- even in this review,
18 it's hundreds of thousands of applicants in the hiring, as
19 opposed to we're just looking at the 20,000 or 21,000 for
20 compensation. So hiring actually presents a much bigger
21 burden in this matter and in most of the matters that we look
22 at.

23 JUDGE BERLIN: All right. So the objection to the
24 question and the form of the question that was asked, the
25 question you asked, Ms. Sween, is sustained. But I hope that

1 answer got it where you were going.

2 BY MS. SWEEN:

3 Q Did I hear you say that the burden in compensation
4 is not as -- is higher than in -- you know, the opposite?
5 What leads you to believe that?

6 A Because in hiring you're looking at applicants.
7 So, you're looking at --

8 Q I'm asking you specifically with respect to Google.
9 So, I'm not asking you in general. I'm asking what about
10 Google led you to believe that seeking compensation data is
11 less burdensome than applicant data?

12 A Because with compensation we're only asking for
13 employees' data. Okay? We're not asking for applicant data
14 where the company has partial data. Maybe you have an
15 application, maybe you have a resume. We don't have both.

16 Also, it's contained in electronic format, in
17 centralized data bases. The regulations for other federal,
18 you know, agencies like IRS, Wage and Hour --

19 Q I'm talking about Google right now.

20 A No, I'm talking about Google.

21 I'm just saying that what the compensation or the
22 regulations that cover compensation -- I'm telling you why
23 the burden -- you asked me about burden with compensation.
24 So IRS requires compensation to be maintained for 15 years
25 under some of their regulations.

1 So there's compensation data is maintained and
2 highly regulated in a way that hiring is not.

3 Also, the applicants -- the size of the applicant
4 pools -- even in this -- as far as what I know -- in this
5 review is hundreds of thousands of applicants. In the
6 compensation context, it's 21,154 employees.

7 Q As you sit here today, you have absolutely no
8 personal knowledge, however, of how burdensome it would be on
9 Google to extract all categories of compensation data that
10 the OFCCP has requested, isn't that true?

11 A The OMB scheduling letter says that it should take
12 27 hours to produce the Item 19 table.

13 Q That's not my question, Ma'am.

14 A And from the statements that I read at the on-site,
15 from the Workday manual, from the online instructions for
16 gComp -- from all of that, and including several of the
17 notes, you know, and the statements made to four federal
18 officials during the onsite interview, I could say with
19 confidence that what we've asked for is not burdensome.

20 Q Do you have any idea as you sit here today how many
21 manpower hours it would take to extract the information that
22 the OFCCP has requested from Google's data bases?

23 A According to Workday, it would be an export of a
24 compensation report. So I would say a day, you know, based
25 on that. And based on Google's capabilities, probably less.

1 Q And when you say a day, are you referring to eight
2 hours?

3 A There was someone who testified or who gave a
4 statement at the -- Yionus (phonetic), I believe his name was
5 -- he said he could write a query and pull the data out of
6 the data base.

7 Q But, Ma'am, please answer the question I'm asking
8 you.

9 You just told me you think it would take a day to
10 extract all of the information requested by the subject
11 demands related to compensation. My question is very simple:
12 Is that your assumption or do you know that?

13 A Based on my experience and the evidence in this
14 case, that's my answer.

15 Q That's your assumption, correct?

16 A Well, the OMB letter says 27 hours. So, that's --
17 maybe it's 27 hours.

18 Q Okay. But you don't know one way or the other?
19 You don't know one way or the other and you didn't answer.

20 JUDGE BERLIN: She'll have to answer the question.

21 THE WITNESS: No, I haven't -- we tried to look at
22 the HRIAS system during the on-site and Google wouldn't allow
23 us to do so. So, no. We weren't able to get a demo of the
24 HRIAS system that we asked for.

25 BY MS. SWEEN:

1 Q In your region does the OFCCP typically request the
2 prior salary history for all employees in an AAP?

3 A I think I already answered that question.

4 Q Oh, I'm sorry. The question you answered was about
5 salary history. I'm not asking about prior salary. So I'm
6 talking about the salary that the employee had immediately
7 prior to coming to Google.

8 In your region, does the OFCCP typically request
9 the prior salary for all employees in the AAP?

10 MR. PILOTIN: Your Honor, I'm going to start
11 objecting to these types of questions, only because whether
12 OFCCP typically does it, I just don't see how that's relevant
13 as to whether the current requests are relevant. And I'm
14 just mindful of the time today.

15 JUDGE BERLIN: Overruled. You can answer.

16 THE WITNESS: If the contractor puts something at
17 issue, we will ask for it. So, on prior pay, we asked for it
18 in this review, because it was a G-non-VR (phonetic), so that
19 prior pay is considered when setting salary for new hires.

20 BY MS. SWEEN:

21 Q You weren't at that on-site, were you?

22 A I read notes from everyone who was there.

23 Q You weren't at the on-site, were you, Ma'am?

24 A No, I was not.

25 Q Okay. And so you're relying on notes that your

1 direct reports prepared, correct?

2 A Google counsel prohibited us from getting
3 signatures.

4 MS. SWEEN: Your Honor, could you please instruct
5 this witness to answer my questions?

6 JUDGE BERLIN: You were relying on notes you wrote,
7 right?

8 THE WITNESS: Yes.

9 BY MS. SWEEN:

10 Q In your region, does the OFCCP typically request
11 the names and personal contact information for all employees
12 in the AAP?

13 A We ask for employee contact information for the
14 employee groups subjected to the policies and practices at
15 issue.

16 Q The question is does OFCCP typically do that? Does
17 it typically request the names and contact information of all
18 employees in the AAP?

19 A If we're looking at all of the employees in the
20 AAP, yes.

21 Q Under -- so is that the only circumstance in which
22 you would ask for all contact information, for all employees
23 in the AAP?

24 A Yes. I mean, you know -- yes. If we're looking at
25 the entire work force in the AAP, then we would -- and those

1 employees are subject to the indicators that we're
2 investigating, yes.

3 Q How often do you typically look at the entire work
4 force?

5 MR. PILOTIN: Objection, Your Honor, again. This -
6 - I'm not sure why all of these typical questions regarding
7 "typically" are relevant to whether or not these current
8 subject items are relevant.

9 JUDGE BERLIN: I'm going to allow this one, but I
10 think we need to conclude about this typicality.

11 MS. SWEEN: This is my last question on that.

12 JUDGE BERLIN: All right.

13 THE WITNESS: Could you restate your question?

14 BY MS. SWEEN:

15 Q Sure. I asked you earlier was it typical for the
16 OFCCP to request the names and personal contact information
17 of everyone in the AAP and you told me that if you had reason
18 to believe you needed it, you would ask for it. And my
19 question is -- my question was do you do that typically?

20 JUDGE BERLIN: So what I understood was your answer
21 was that if the data suggested a possibility of
22 discrimination that affected all of the employees, you would
23 ask for the names of all of the employees. And then I
24 thought your question was --

25 MS. SWEEN: How often.

1 JUDGE BERLIN: -- do you typically ask for -- do
2 the investigations typically extend to all of the employees.

3 Was that --

4 MS. SWEEN: Yes, Your Honor.

5 THE WITNESS: The typical review is much smaller
6 than this. We often ask for it for applicants, as well. So
7 are you asking about applicants?

8 BY MS. SWEEN:

9 Q No, I'm asking about compensation.

10 A Compensation? If it's -- it's the same answer. It
11 depends on -- and the indicators. I mean, if it's impacting
12 the entire work force in the AAP, then, yes, we would.

13 Q I want to move now to Google's compliance review.
14 As we've talked about earlier today in, I believe, it's
15 Exhibit 6 -- yeah, Exhibit 6 is the June 1st, 2016, letter
16 that OFCCP sent to Google requesting a variety of additional
17 information on the attachment, would you agree -- do you have
18 that exhibit in front of you, Ma'am?

19 A Yes.

20 Q Okay. Would you agree that the amount of
21 information requested in that attachment was almost the same
22 amount as that had been requested in the initial request to
23 Google?

24 A When you say "initial," do you mean the Item 19?

25 Q Correct.

1 A In terms of the number of data points, I mean I
2 would say that because job history is in this attachment, and
3 salary history, and that would depend on how long the
4 employee worked there, so, you know, it's hard to tell. So,
5 I don't know.

6 Q So, based on your testimony, Attachment A could
7 actually result in thousands of additional data points,
8 correct?

9 A Well, what do you mean by "data points"?

10 Q You just referred to "data point," Ma'am.

11 A So, do you mean the salary or the the date of the
12 pay change?

13 Q My question is very specific and limited at this
14 point in time and then I will get more details, okay?

15 A Um-hum.

16 Q The attachment that is attached to the June 1st,
17 2016, letter, would you agree that it is almost the same
18 amount of requests that were made in the initial request?

19 A I don't know.

20 Q Would it be fair to say that what you are
21 requesting in Attachment A is an amount of information, or at
22 the very least a large amount of information?

23 A Based on what context?

24 Q Based on the number of categories set forth on
25 Attachment A, would you agree that if Google were to produce

1 what was attached on Attachment A, that would result in
2 thousands of data points for the OFCCP to consider in its
3 compliance review?

4 A I don't know.

5 Q In fact, Google did produce almost everything that
6 was on Attachment A. Isn't that correct?

7 A No, because most of Attachment A is the issues
8 we've been discussing concerning prior salary and salary
9 history and job history. So the starting -- you know, it's
10 repetitive in some way. So, the starting salary, starting
11 position, starting organization, that all would be obtained
12 within this job history. So it is -- that wasn't produced.

13 So, actually, a lot of -- I don't think -- maybe --
14 I'd have to guess, but there was a lot of it that wasn't
15 produced, because the job history and the salary history and
16 the prior salary at issue were not.

17 Q You heard earlier from Ms. Suhr, correct? You were
18 in the room when she testified?

19 A Yes.

20 Q And when I was asking her questions about which on
21 Attachment A hadn't been produced, you were in the courtroom
22 during that testimony, correct?

23 A Yes.

24 Q And is there any reason to believe that Ms. Suhr
25 didn't provide accurate testimony during that section of the

1 examination?

2 A You'd have to remind me of her testimony, because I
3 don't know exactly what she testified to.

4 Q As you were sitting here today listening to her,
5 did you find her testimony to be truthful?

6 A I didn't memorize everything that she said, so I
7 don't know.

8 Q Okay.

9 A I would say I work with her and I would assume that
10 she testified truthfully, but you'd have to read back the
11 testimony if you want me to give you a specific answer.

12 Q You didn't sign the September 30th, 2015,
13 scheduling letter sent to Google's Mountain View's facility,
14 did you?

15 A No.

16 Q Would it be fair to say that your consideration
17 about what is relevant is, in part, based on your general
18 experience in conducting compliance reviews?

19 A Not completely. I think, yes, I am informed by the
20 reviews that we do and, particularly, certain industries have
21 very similar compensation structures that I know they work
22 together to set and structure. So, in that respect, yes.

23 So if you're looking at one industry that uses, you
24 know --

25 Q You've answered my question, Ma'am.

1 A Okay.

2 Q So, my first question is you didn't sign the
3 scheduling letter on September 30th.

4 A Um-hum.

5 Q And you also didn't sign the June 1st, 2016, letter
6 that's Exhibit 16 -- or Exhibit 6, correct?

7 A Um-hum.

8 Q Did you direct that those letters be sent to
9 Google?

10 A No.

11 Q Did you direct that Ms. Huang, who is the author of
12 Exhibit 6, include any of the items sought in that letter?

13 MR. PILOTIN: Objection. This goes to the
14 deliberative process within the Agency and how the Agency
15 makes decisions. I'll leave it at that.

16 JUDGE BERLIN: Ms. Sween, why is this relevant?

17 MS. SWEEN: Sure, Your Honor.

18 I'm not asking her why they chose to include these
19 in Attachment A. I'm asking her whether she directed that
20 they do, based on her testimony that she -- part of what she
21 deems relevant is based on her general experience in
22 collecting -- in conducting compliance reviews. I think it's
23 relevant, Your Honor.

24 JUDGE BERLIN: I'm not sure where this is going.
25 I'm going to allow this, but we'll see if there's any

1 follow-up.

2 You can answer that.

3 THE WITNESS: So, my understanding -- so, I wasn't at the
4 on-site, as you previously stated. So, the June 1st letter,
5 I believe, was sent out in response to Google's
6 representations at the on-site interviews as to what was
7 relevant to pay, decisions at Google. So this was created by
8 the on-site team, if that's what you're asking.

9 BY MS. SWEEN:

10 Q Well, it wasn't what I was asking.

11 My question was did you direct Ms. Huang to include
12 any of the items sought in Exhibit 6?

13 A I believe I reviewed it before it went out and I
14 don't remember whether we spoke about any individual items on
15 this. Is there one in particular?

16 Q No, Ma'am.

17 A Okay.

18 Q I'm just asking if you have any recollection of
19 asking her to include any specific item included on this
20 list.

21 A I don't recall. But I did review it before it went
22 out.

23 Q And you testified earlier you didn't participate in
24 the on-site on April 2016. Isn't it true that the first
25 time, the first time your name appears in any correspondence

1 in this matter is September 16th, 2016, in the show-cause
2 notice? Isn't that correct?

3 A That's typical for a compliance evaluation. I
4 never sign the scheduling letters and I don't submit data
5 requests. That's not -- it's usually the local office that
6 does that. So -- and I do the show-cause -- the Regional
7 Director signs all show-cause notices.

8 Q And other than those people who interviewed the
9 Google managers on April 2016, you're not aware of any other
10 interviews that have taken place relative to the compliance
11 review, correct?

12 MR. PILOTIN: Objection to the extent that this
13 goes to the investigative files privilege, Your Honor.

14 MS. SWEEN: Let me ask --

15 MR. PILOTIN: There's an ongoing compliance
16 evaluation.

17 MS. SWEEN: Let me ask a different question.

18 BY MS. SWEEN:

19 Q You didn't participate in any of the on-site
20 interviews, right?

21 A The on-site interviews?

22 Q Correct. Correct?

23 A Correct, I was not at the on-site.

24 Q So you're not in a position, really, to testify
25 what Google representatives actually told the OFCCP

1 investigators during that on-site interview, isn't that
2 right?

3 A I read all of the statements.

4 Q You have no personal knowledge of what happened
5 during those on-site interviews, isn't that correct?

6 A I wasn't there, so since that's what you're asking,
7 I wasn't there.

8 Q At any point in time, did you review the materials
9 that Google provided to the OFCCP with respect to its
10 compensation policies, practices, or principles?

11 MR. PILOTIN: Objection, Your Honor. I just don't
12 see the relevance of this.

13 JUDGE BERLIN: I'm not sure if it's going to prove
14 whether she read it herself, but you can answer about whether
15 you've read it.

16 THE WITNESS: I have read the investigative file.

17 BY MS. SWEEN:

18 Q Have you read the documents that Google has
19 provided to the OFCCP, specifically with respect to its
20 compensation policies, practices, and principles?

21 A I believe I have read a compensation policy at some
22 point. I definitely read the manual online instructions on
23 Workday and gComp. And I can't recall what else.

24 Q Based on those readings, would you say you're
25 familiar with Google's compensation principles and practices?

1 A Based on the interview statements, I learned a lot
2 about Google's compensation practices.

3 Q That's not my question, Ma'am.

4 A Okay.

5 Q I'm asking based on what you did personally. So
6 whether you read -- whether you personally read Google's
7 compensation practices and policies and you said you have
8 read some, but not all, right?

9 A I said I don't recall. I know that the initial
10 production of what they provided us wasn't an actual policy.

11 It was a cut-and-paste from different online guidances,
12 which came out in the on-site interviews. So I'm not sure if
13 we have the actual policies or we just have portions of it.
14 So it's hard for me to answer your question.

15 Q Would it be accurate to say that you don't have
16 personal knowledge of Google's compensation policies and
17 practices?

18 A That's why we're doing the review. We're trying to
19 get the information so we can complete it.

20 Q So you don't have that personal understanding,
21 right?

22 A I have what they have provided to us.

23 Q Okay. So, did you ever ask anyone or can you
24 explain to me why prior job history at Google, going back as
25 far as 1998, is relevant to the OFCCP's review of salaries

1 included in the Item 19 data?

2 A When you say prior -- did you say prior job salary?

3 Q Prior job history.

4 A History?

5 Q Going back to 1998.

6 A Yeah. So, I know I testified about this on direct.

7 Again, it goes to the issues that were raised on negotiation
8 at hire. The fact that Google, both compensation managers
9 stated that -- to four federal officials in an audit that
10 they beat prior salary from 10 to 20 percent. That was
11 consistent, you know, in both statements.

12 So -- and the anchoring bias issue, as well as
13 research about the impact against women when there's a
14 negotiation at hire throughout their career -- because when
15 you have a merit increase that's set by the market at four
16 percent and you're making \$100,000, instead of 150,000,
17 you're behind for the rest of your career.

18 So, because of those issues, yes, we have
19 sufficient information to request the job history and the
20 salary history, which really go together.

21 Q And you're making that determination based on
22 interviews that you didn't participate in, correct?

23 A No, I'm making it based on statements in the media
24 by Google officials, by either public -- you know, the Re-
25 work site, and I'm making it based on the information we

1 gathered. So, you know, am I -- to give you every piece of
2 information that we have, I don't -- we have a deliberative
3 process and we have other privileges that we can't -- we're
4 not free to disclose every source of information that we
5 have.

6 Q So the information that you just provided me
7 included, at least in part -- in relevant part, in the
8 majority part, generalized research. I'm asking specifically
9 what you learned from Google managers at the on-site that led
10 you, the Regional Director, to believe that prior job history
11 at Google going back as far as 1998 -- so not generalized
12 research, not principles of anchoring -- what did you learn,
13 personally, that led you to believe that going back with
14 respect to job history to 1998 is relevant to compensation
15 during the relevant compliance period?

16 MR. PILOTIN: I'm going to object, Your Honor. I
17 mean, we've been on this for a while. This is getting into
18 deliberative process. There is an ongoing compliance
19 evaluation and the investigated party is seeking to
20 understand the inner-workings of an ongoing investigation.
21 And I find this entire line of questioning -- which I've let
22 go, so that the opposing party could get enough information
23 that it thinks is relevant -- but I can't stress enough,
24 there is an ongoing compliance evaluation and this is
25 improper.

1 MS. SWEEN: Your Honor, can I just be heard before
2 you make your ruling?

3 JUDGE BERLIN: Yes.

4 MS. SWEEN: This witness has been put on as OFCCP's
5 chief witness with respect to why these requests are
6 relevant. I think I'm entitled to determine to what extent
7 she's relying on either her personal knowledge, generalized
8 research, conversations she's having with her staff. I think
9 she is their chief witness with respect to why these requests
10 are relevant, and I think I should be able to inquire as to
11 what bases she has determined the relevancy of these
12 requests.

13 JUDGE BERLIN: The objection is sustained.

14 BY MS. SWEEN:

15 Q You testified earlier, I believe, that the names
16 and personal contact information is relevant to analyzing
17 compensation so that you can interview these witnesses,
18 correct?

19 MR. PILOTIN: Objection to the extent that it
20 mischaracterizes the testimony. I don't know which witnesses
21 we're talking about.

22 BY MS. SWEEN:

23 Q You've asked for the names and personal contact
24 information of all 21,000 employees in the AAP as of 2015,
25 correct?

1 A Yes.

2 Q And you have testified that the need for that
3 information is so that the OFCCP can interview witnesses,
4 correct?

5 A Yes.

6 Q Is it typical -- or, we asked that question
7 already.

8 I believe you stated earlier that whether or not
9 you ask for an entire work force or not just depends,
10 correct?

11 MR. PILOTIN: Your Honor, objection. We're going
12 over material that has already been covered and we are
13 running late in the day.

14 JUDGE BERLIN: Sustained.

15 BY MS. SWEEN:

16 Q Is it one of the OFCCP's -- is it the OFCCP's
17 intention to interview all 21,000 employees?

18 MR. PILOTIN: Objection, Your Honor, this goes --
19 there's an ongoing compliance evaluation and they are getting
20 into how the Agency is conducting that investigation.

21 JUDGE BERLIN: I'll allow it.

22 THE WITNESS: We would want to interview the
23 employees that are impacted by the practices that we're
24 investigating.

25 JUDGE BERLIN: You're not going to review all

1 21,000 employees, are you?

2 THE WITNESS: Well, hopefully not that we wouldn't
3 need to talk to all of them to get the information. That
4 would be the goal. But we don't want to force anyone to
5 speak with us if they don't want to. And we want to protect
6 their identity, also.

7 So, no, we wouldn't want to talk to all of them.
8 But it could be that we go through the list and there's only
9 a small percentage that actually wants to share information.

10 JUDGE BERLIN: I may be misunderstanding OFCCP's
11 argument here. I thought your argument is that you want the
12 interviewed employees basically to be hidden in plain sight.
13 You have 21,000 people listed, maybe 100 of them get
14 interviewed. Who knows who they were when there are 21,000
15 that they could be. Isn't that -- you're not going to
16 interview 21,000 people, are you?

17 THE WITNESS: Yeah. No, we wouldn't want to do
18 that. In order to get the information, we would want to talk
19 to a sufficient amount of people -- a sample. But --

20 JUDGE BERLIN: You don't have the resources to
21 interview 21,000 people, do you?

22 MR. PILOTIN: And I don't know if you want to hear
23 me on that, Your Honor.

24 JUDGE BERLIN: No, no. I just want to make sure
25 that I understood where this was going from OFCCP's

1 viewpoint.

2 BY MS. SWEEN:

3 Q Isn't it true that with the exception of the
4 subject demands, Google's provided all of the information
5 sought by the OFCCP?

6 A No, I can't answer that question. But I know that
7 Google has produced hiring information and, for some reason,
8 objects to compensation. So if you -- the hiring
9 information, we've gotten a lot more hiring information from
10 Google.

11 Q No, Ma'am.

12 A But I don't know if every single piece requested --
13 if that's what you're asking -- has been produced.

14 Q Okay. What portions of the subject demands do you
15 think -- I'm sorry. What, other than what's set forth in the
16 subject demands, do you believe Google hasn't produced?

17 A I believe that the W-2 data was not produced. I
18 believe that employee complaints -- internal complaints --
19 were not produced.

20 Q And do you see either of those items on Attachment
21 A in Exhibit 6, either W-2 information or internal
22 complaints?

23 A No.

24 Q Isn't it true that Google permitted OFCCP access to
25 its premises for on-site interviews of numerous managers?

1 MR. PILOTIN: Objection, Your Honor. I think we've
2 already established that.

3 MS. SWEEN: She can answer the question.
4 I'm almost done, Your Honor.

5 JUDGE BERLIN: Good -- thank you. But good faith
6 is not an issue. And no matter how much Google has complied,
7 even if it's with every single thing, then the question
8 remains the same. Does it have to comply with these
9 additional things?

10 MS. SWEEN: Yes, Your Honor, except to the extent
11 your earlier question indicated that OFCCP has taken the
12 position that if we don't provide 21,000 names, that they
13 have a fear that we may interfere with the process. And so
14 I'm trying to get from this witness to what extent we have
15 agreed to comply up to this date and acted in good faith --
16 which is not an issue. But it's certainly relevant to
17 whether or not we have -- they have any evidence that we
18 would ever interfere with anything.

19 JUDGE BERLIN: Do you have any other evidence that
20 they would interfere in your efforts to interview employees?

21 THE WITNESS: Well, we asked to speak with some
22 employees at the on-site -- Laszlo Bock, who was working
23 there at the time and actually published an opinion piece in
24 the Washington Post the day after the on-site about anchoring
25 bias and priori pay and he was not made available. And I

1 believe there were others, but I can't speak to every single
2 one, because I wasn't at the on-site.

3 MS. SWEEN: Just one last series of questions, Your
4 Honor.

5 BY MS. SWEEN:

6 Q Earlier Your Honor asked if you were aware of any
7 data -- the Judge asked you if you were aware of any data
8 breaches. Do you remember that line of questioning from the
9 Court?

10 A Yes.

11 Q And you were a government employee in 2015,
12 correct?

13 A Yes.

14 JUDGE BERLIN: Well, I was. So I'm very aware of
15 what happened.

16 BY MS. SWEEN:

17 Q Were you notified at that time that a number of
18 federal government entities, including the Office of
19 Personnel Management, suffered a major data breach?

20 A Yes. And OFCCP -- I thought the question was about
21 OFCCP's data breaches, so not the entire federal government.

22 Q But you're aware that the federal government has
23 suffered serious data breaches as early as 2015 -- or as soon
24 as 2015, correct?

25 MR. PILOTIN: Objection, Your Honor. I don't see

1 how this is relevant as to whether the federal -- the various
2 agencies -- the hundreds of agencies of the federal
3 government has any -- had any issues with respect to data
4 breaches.

5 JUDGE BERLIN: Overruled.

6 BY MS. SWEEN:

7 Q And the data breach contained personal data
8 relating to government employees -- millions of government
9 employees, is that your understanding?

10 A I really don't have -- I don't know. I know there
11 was news articles about it. I don't really know all of the
12 specifics.

13 Q Okay. But you're aware of the news articles that
14 generally described that personal data of government
15 employees was breached, correct?

16 A Yes.

17 Q And does that change your opinion one way or the
18 other with respect to the need to make sure that the personal
19 data of Google employees is secure?

20 A Whether or not that breach happened, the security
21 of all the data we receive is a high priority.

22 MS. SWEEN: Thank you, Your Honor, nothing else.

23 JUDGE BERLIN: Mr. Pilotin?

24 MR. PILOTIN: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. PILOTIN:

2 Q Ms. Wipper, there's been some talk of the request
3 for employee contact information. Do you recall that
4 discussion?

5 A Yes.

6 Q Why has OFCCP requested information for the Google
7 work force -- contact information for the Google work force,
8 even though it's not going to -- likely not going to
9 interview the entire Google work force?

10 A Well, the main reason is to protect the identity of
11 the employees who choose to speak with us. There's an
12 informant's privilege, you know, that applies throughout the
13 government, to encourage -- that the policy behind it is to
14 encourage the public to provide information to the
15 government. And in exchange for that, we protect their
16 identity to ensure that there's no potential consequences --
17 adverse consequences to them for providing us information.
18 So we take that very seriously and we don't see another way
19 of doing it, other than having them provide the information
20 to us and then we contact the employees directly.

21 Q How could pay decisions in 1998 have any relevance
22 to pay during the review period?

23 A So, going back to what we said about starting
24 salary, so if an employee, you know, doesn't negotiate well
25 and, unfortunately the research says that that has more of an

1 impact on women than men, and that as a result that employee
2 comes in at the same job at a lower salary, it's been shown
3 in studies that that employee will be behind their colleagues
4 that were better negotiators for their entire career.

5 So they're not just missing out on the pay that
6 they would have received that year, but every time there's an
7 increase -- and I know that Google's HR compensation
8 representatives said they will market their merit increase or
9 they'll target it to the market. So if the market is
10 providing a four percent increase, then they will provide a
11 four percent increase. But if your salary is set lower
12 because negotiation had a disparate impact on you, that four
13 percent is going to be less. And then that's going to grow
14 over the time of your career.

15 So, it will, today -- your pay level today is a
16 combination of all of the pay decisions that occurred from
17 your starting salary at your current employer. So, all --
18 every time there's a pay change, which starts -- and it's
19 usually most significant at hire, it goes with disparity, it
20 will never leave you.

21 Q Okay. Ms. Wipper, does Directive 307 -- the
22 publically-available directive that the Agency has -- have
23 any guidance as to whether OFCCP conducts the same analysis
24 with respect to compensation as to every contractor that
25 OFCCP reviews?

1 OFCCP to conduct non-confidential interviews.

2 MR. PILOTIN: Objection, Your Honor. This goes to
3 the whole "typically and usually." I don't see how this is
4 relevant.

5 JUDGE BERLIN: She can answer.

6 THE WITNESS: I can't speak for the whole agency.
7 I know in our region, we -- because of the reasons I've
8 stated about the informant's privilege and the
9 confidentiality, we do everything that we can do protect the
10 employees in an identity when we conduct an interview. So
11 even if there are interviews conducted on-site, there's many
12 others that are conducted off-site.

13 BY MS. SWEEN:

14 Q So are you saying that in your region where you're
15 Regional Director, that in every instance you always conduct
16 confidential interviews and you never coordinate with a
17 federal contractor to arrange for those interviews?

18 MR. PILOTIN: Objection, Your Honor. Again, this
19 goes to the way that the Agency investigates matters.

20 JUDGE BERLIN: You may answer.

21 THE WITNESS: So, to answer a question that says
22 "every" and "never," I'm not going to do that. So, do I have
23 personal knowledge of every single thing happening right now?
24 I'm not involved with every.

25 BY MS. SWEEN:

1 Q Okay. Let me just make it really easy.

2 A Um-hum.

3 Q Do you typically request confidential interviews or
4 have there been instances that you are aware of that you've
5 coordinated with a federal contractor to set up employee
6 interviews?

7 MR. PILOTIN: Same objection, Your Honor,

8 JUDGE BERLIN: Overruled.

9 THE WITNESS: If we did do that, it was because the
10 contractor would not provide us with the information that we
11 needed to conduct the interviews. So, if we have interviewed
12 employees on-site, I'm sure we also asked for the employee
13 contact information.

14 BY MS. SWEEN:

15 Q I'm a little bit confused on your answer, so I'm
16 just going to ask you until I'm not confused. Are you saying
17 that there are instances in which you coordinate with a
18 federal contractor to set up employee interviews?

19 MR. PILOTIN: Objection, Your Honor. This has
20 already been answered.

21 JUDGE BERLIN: Please answer, if you know.

22 BY MS. SWEEN:

23 Q It's just a yes or no question.

24 A Yeah, I don't know.

25 Q So you can't tell me, as Regional Director, being

1 in charge of compliance reviews in your region, that you are
2 aware of any instance that you have personal knowledge of in
3 which you or your team has coordinated with a federal
4 contractor to set up employee interviews?

5 MR. PILOTIN: Objection, Your Honor. We've asked
6 this question and now it's becoming argumentative.

7 JUDGE BERLIN: Yeah, I believe she testified that
8 there have been instances where the employer would not
9 cooperate. And rather than sitting in a courtroom like this,
10 they interviewed some people on-site, which would then not be
11 confidential. But then they also interviewed other people
12 from that employer not on-site that were confidential. So
13 she did concede that much.

14 BY MS. SWEEN:

15 Q Okay. Other than in those instances where you're
16 not getting cooperation, as you have described it, are you
17 aware of any other instances in which your region has
18 coordinated employee interviews with a federal contractor?

19 A Non-management interviews?

20 Q Yeah.

21 A I'm not aware of it, no, other than the instances
22 that the Judge noted, that they would not cooperate.

23 Q Is it possible that that's happened?

24 A Given that we're here today and we've been asking
25 for the contact information from Google and they haven't

1 complied, I'm sure that in our investigations we don't want -
2 - this is a last resort to have to do this. It's very rare
3 that we have to file a denial of access case. So, yes, I
4 could see -- if you're asking me to guess -- I could see
5 where a compliance --

6 JUDGE BERLIN: Well, don't guess. If you don't
7 know, just say that you don't know.

8 BY MS. SWEEN:

9 Q No, I'm asking you very specifically, in those
10 instances where you're not headed to the courtroom, where
11 there isn't, from your perspective, a denial of access issue,
12 are you aware of any instance in which your region has
13 conducted -- has conducted employee interviews -- non-
14 managerial employee interviews -- with the coordination of
15 the federal contractor?

16 A My answer is the same.

17 Q Which is what?

18 A My answer is we would ask for the contact
19 information --

20 JUDGE BERLIN: No, if they cooperate and give you
21 what you want, are there instances where you coordinate the
22 interviews with the employer, anyway, for the non-managerial
23 employees?

24 THE WITNESS: Generally, no. We have done employee
25 interviews on-site. So that has happened. The circumstances

1 which, you know, gave rise to that, I can't testify to every
2 single circumstance, whether we asked for the information,
3 they wouldn't give it to us. We decided to have the
4 interviews, anyway.

5 JUDGE BERLIN: But if I'm understanding Ms. Sween's
6 question correctly, these are instances where they have
7 cooperated and they gave you the contact information.

8 THE WITNESS: Right.

9 JUDGE BERLIN: Are there instances where OFCCP
10 called the employer and says, "We'd like to Bill, Joe, and
11 Sally, can you arrange to have them in your conference room?

12 I know we have their name, address, and phone number, but
13 we'd prefer" --

14 THE WITNESS: No, no. If we have their contact
15 information, we would contact them separately. So, as
16 opposed to talking to them on-site. It's also a resource
17 issue. It's a lot easier to talk to the employees, you know,
18 separately from the on-site, because so much has to happen at
19 the on-site that it just doesn't make sense to do it all at
20 one time.

21 MS. SWEEN: I have no further questions, Your
22 Honor.

23 JUDGE BERLIN: Mr. Pilotin?

24 MR. PILOTIN: I have no questions, Your Honor.

25 JUDGE BERLIN: All right. Ma'am, at this time,

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.)

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REPORTER'S CERTIFICATE

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.

Robert Olson

April 14, 2017

SIGNATURE OF REPORTER

DATE

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.)

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VOLUME II

PAGES: 191 through 331

LOCATION: San Francisco, California

DATE: May 26, 2017

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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,
May 26, 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 9:00 o'clock a.m.

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

APPEARANCES:On behalf of the Plaintiff:

MARC A. PILOTIN, ESQ.
IAN H. ELIASOPH, ESQ.
JANETTE WIPPER, ESQ.
United States Department of Labor
90 Seventh Street, Suite 3-700
San Francisco, California 94103

On behalf of the Defendant:

LISA BARNETT SWEEN, ESQ.
DANIEL DUFF, ESQ.
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MATT CAMARDELLA, ESQ.
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Jackson Lewis
50 California Street, 9th Floor
San Francisco, California 94104

I N D E X

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WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

ALJ

Frank Wagner

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Kristin Zrmhal

260

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302

EXHIBITS:

IDENTIFIED

RECEIVED

REJECTED

PLAINTIFF

(None marked, nor received.)

DEFENDANT

(None marked, nor received.)

ADMINISTRATIVE LAW JUDGE

(None marked, nor received.)

JOINT

(None marked, nor received.)

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- 2
- 3
- 4

P R O C E E D I N G S

(9:00 o'clock a.m.)

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2
3 JUDGE BERLIN: This is a resumption of the hearing
4 that began on April 7th. And when we were at the hearing on
5 April 7th, the parties requested sequestration of witnesses
6 who have not testified. So if there are any people here in
7 the courtroom who understand that they will be testifying,
8 who have not yet testified, at this time I will ask you to
9 wait outside, if there's any one -- any witness here. All
10 right.

11 I believe we left off during Mr. Wagner's
12 testimony. So why don't we resume there? Mr. Wagner?

13 Good morning. And why don't I swear you again,
14 since it's been over a month? If you'll raise your right
15 hand?

16 Whereupon,

17 FRANK WAGNER,

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

20 JUDGE BERLIN: All right. Have a seat.

21 And why don't I also take the appearances of
22 counsel again this morning, just so that we'll have it for
23 the record?

24 And for OFCCP?

25 MR. PILOTIN: Good morning, Your Honor. Marc

1 Pilotin and Ian Eliasoph for OFCCP, and along with us is the
2 representative of the Agency, Regional Director, Janette
3 Wipper.

4 MS. SWEEN: Good morning, Your Honor. Lisa Barnett
5 Sween of Jackson Lewis, along with Matt Camardella and Daniel
6 Duff, Antonio Raimundo and Amelia Sanchez-Moran.

7 JUDGE BERLIN: Good morning to you all.

8 All right. Ms. Sween, would you like to continue
9 your examination of the witness?

10 MS. SWEEN: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. SWEEN (RESUMED):

13 Q Good morning, Mr. Wagner.

14 A Good morning.

15 Q Welcome back.

16 A Thank you.

17 Q So, we're going to try to pick up where we left off
18 about a month ago. And all of my questions today are going
19 to relate to Google's compensation policy and practices as
20 they existed between 2013 and 2015. Do you have that time
21 frame in mind?

22 A Yes.

23 Q Okay. And if you can't hear me, please let me
24 know, because we've got a fan there, okay?

25 A Okay.

1 Q Just to set the context, on the first day of the
2 hearing you testified that for newly-graduated applicants --
3 and I may just back and forth between newly-graduated
4 applicants or refer to them as campus hires. Do you
5 understand those two things to be the same thing?

6 A Yes.

7 Q Okay. That for newly graduated applicants, that
8 prior salary is not relevant to setting starting salary. Do
9 you remember that testimony, generally?

10 A That's right, yes. I remember and that is correct.

11 Q Okay. And can you remind me why is it that
12 starting salary is not a relevant component for newly -- I'm
13 sorry, why prior salary is not a relevant component to
14 starting salary at Google?

15 A Well, we want to pay those new graduates for the
16 job into which we're hiring them for Google. And we also
17 want to treat them cadre for whatever job they're going into.
18 So we pay them the same.

19 Q Does Google allow these new grads or campus hires
20 to negotiate their salary?

21 A No.

22 Q And why is that? Or why not?

23 A Because we want them to all be paid the same and
24 have the same entry salary.

25 Q Are you aware of what percentage of the employees

1 in the September 1st, 2015, snapshot were campus hires or new
2 grads?

3 A I believe it's approximately 20 percent.

4 Q So would it be fair to say that 20 percent of the
5 employees on the September 1st, 2015, snapshot, that neither
6 prior salary nor the ability to negotiate impacted their
7 starting salary at Google?

8 A I would say for those 20 percent, there was no
9 negotiation and prior salary was not considered.

10 Q Thank you.

11 And besides campus hires or new grads, are there
12 any other situations where all new hires receive the exact
13 same starting salary?

14 A Yes.

15 Q And what types of jobs would those be?

16 A We have certain types of support roles, such as
17 information technology -- IT -- help desk folks, and they all
18 get the same starting pay.

19 Q Now, I want to turn to what I refer to as an
20 industry new hire. Do you know what I mean by "industry new
21 hire," in Google terms?

22 A Yes.

23 Q Okay. What is an industry new hire?

24 A An industry new hire would be someone who is not
25 coming from a college campus, but, rather, from another

1 company or from the industry.

2 Q For industry new hires, is their specific prior --
3 so the amount of money they are actually earning in the job
4 they are coming from -- their specific prior salary --
5 relevant to their starting salary at Google?

6 A Well, for about half of those folks, we will give
7 them at least what we call our minimum salary, which you may
8 recall, what I said before, was 80 percent of our market
9 target, what we call the market reference point, MRP. And
10 that we would pay that minimum for that cadre, regardless of
11 whether they're making half or two-thirds or three-quarters
12 or whatever it might be.

13 Q So, if I understand that correctly, the actual
14 amount of their prior salary plays no impact for that 50
15 percent of the group?

16 A It doesn't affect it, no.

17 Q Are there situations where an industry new hire
18 might try to negotiate a higher starting salary than was
19 offered?

20 A Yes.

21 Q And what instances would that happen?

22 A Yeah. And, to be clear, we get requests for salary
23 negotiations on a regular basis. However, we only do --
24 negotiate that salary when we're provided new information,
25 such as a competing offer.

1 Q And can you describe how that competing offer piece
2 of information might impact Google's decision making
3 regarding starting salary at Google?

4 A Yes, it's possible. If there is a competing offer
5 with a higher salary than our initial offer, we will
6 typically match that salary. However, we try to curtail the
7 new salary that we offer at 90 percent of our MRP or below.

8 Q And do you know what percent of industry new hires
9 receive a higher starting salary as a result of negotiation
10 in the context of a competing offer situation?

11 A I would estimate that at approximately 10 to 15
12 percent of the -- that cadre.

13 Q I want to go back for just a moment to Google's
14 promotion policies, practices, and philosophies. We talked a
15 little bit about that on day one. And just, again, to set
16 the context, what is Google's policy regarding promotional
17 increases?

18 A During the time period we're discussing, we bring
19 anyone who is promoted up to 85 percent of their new market
20 reference point. And the policy -- the reason why we do that
21 is to align them with their new peers, who are meeting
22 expectations for that job.

23 Q Are there circumstances in which employees in the
24 promotional context, that their new salary, due to promotion,
25 is not at 85 percent of the MRP?

1 A Yes, there's a couple variations -- a few
2 variations.

3 The first is we -- regardless of the person's -- if
4 a person goes to 85 percent of MRP and they don't get at
5 least a five percent salary increase, we will increase their
6 salary up to a five percent increase from their prior salary,
7 in line for our pay-for-performance philosophy, one or more
8 people who are being promoted with a minimum.

9 Q So, in that instance, they're going to get at least
10 a five percent increase, is that correct?

11 A That's correct.

12 Q Okay. And is there another situation where they
13 may not be at 85 percent?

14 A Yeah. Also, they're subject to a maximum. So, the
15 maximum model increase that we would propose would be 20
16 percent as -- even if it doesn't get them to 85 percent. So
17 it could be below 85 of MRP, with the 20 percent, in mind
18 that we don't want to give too large of an increase followed
19 by, in subsequent cycles, too small of a performance-based
20 increase.

21 Q And is there any other situation in which a
22 starting or a promoted employee would not be at 85 percent
23 MRP?

24 A So, yes. So people are brought -- and we call it
25 modeled -- for a post-promotion salary increase. Most of

1 them are at the 85 percent level. Some are higher than that,
2 because they're getting the minimum five percent increase.
3 And others are below that, because they get the 20 percent
4 maximum.

5 And then the managers can adjust that the proposed
6 or modeled increase, but with the guidance that they should
7 be aligning the salaries of these newly-promoted folks with
8 their new peers.

9 Based on a recent analysis that I've looked at of
10 those salaries, in over 90 percent of the cases the
11 adjustment that the manager makes, when we look at the final
12 salary, it's no more than one percent of a variation of our
13 proposed or modeled amount.

14 JUDGE BERLIN: I just want to back up a moment.
15 You've testified about a lot of this before. And when you
16 were testifying before about the industry new hires, I
17 believe you said that in addition to competing offers, which
18 could result in a different starting salary, prior
19 compensation of the job the person was leaving to come to
20 Google could also have a similar result. Is that right?

21 THE WITNESS: Yes. If they were above the 80
22 percent minimum offer, yes, their prior could be. And --
23 yes.

24 BY MS. SWEEN:

25 Q Going back to the managerial discretion you were

1 just talking about, what's the philosophy around allowing
2 managers some adjustment discretion?

3 A It's to align the pay with folks in the new peer
4 group so that they will -- so that their pay is aligned
5 appropriately in the new job. So it's a prospective look as
6 to that alignment.

7 Q And can you think of any situation in which the
8 manager would look backwards to prior salary for the purpose
9 of making the adjustment in this discretion category we're
10 talking about?

11 A No, the manager would not be looking at past
12 salary. We want them to look prospectively at the new group.

13 Q So, in the three circumstances you just described
14 in which the employee's new salary due to promotion is not at
15 the model 85 percent of MRP, in how many situations would an
16 employee's immediate prior salary impact or may impact their
17 salary after promotion?

18 A So, it would be the people who are either subject
19 to the five percent or the -- minimum -- or the 20 percent
20 max, which is approximately 20 percent of promoted employees.
21 And, of course, conversely, that means that 80 percent are
22 not affected by prior salary.

23 Q Ms. Wipper of the OFCCP testified on Day One that
24 Google managers have the discretion to award promotional
25 increases between five percent and 20 percent. Is that

1 accurate, based on your understanding of Google's pay
2 practices and philosophies?

3 A No, that would not be accurate. It would
4 mischaracterize our approach.

5 Q And can you explain to me again why that wouldn't
6 be accurate?

7 A Well, managers don't have discretion between five
8 and 20 percent. They have a modeled amount, which is
9 typically 85 percent of their MRP, in most cases, and they
10 have the ability to adjust that amount. But as I've noted
11 before, that in most of those adjustments, the final salary
12 is within one percent of the model amount in over 90 percent
13 of all cases.

14 Q And can an employee's salary history at Google --
15 so beyond their most immediate salary that they're sitting in
16 -- can their salary history at Google influence their
17 promoted-to salary?

18 A Their history?

19 Q Correct.

20 A Only those -- the immediate salary prior to the
21 promotion for the people subject to the five percent minimum
22 and the 20 percent maximum.

23 Q Thank you.

24 MS. SWEEN: That's all the questions I have, Your
25 Honor.

1 JUDGE BERLIN: Mr. Pilotin?

2 MR. PILOTIN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. PILOTIN:

5 Q Good morning, Mr. Wagner.

6 A Good morning.

7 Q Now, as part of your preparation for today, have
8 you discussed with anybody your testimony at the April 7th
9 hearing?

10 A Yes.

11 Q And as part of those discussions, have you been
12 made aware of anything that was stated by a witness in court
13 at the April 7th meeting -- hearing?

14 A Could you clarify what you mean by that?

15 Q Sure. So, as part of your discussions regarding
16 your preparation for today, have you been made aware of any
17 testimony that was given during the April 7th hearing?

18 MS. SWEEN: And, Your Honor, I'm just going to
19 object and instruct the client to be mindful of the
20 attorney/client communication privilege and that is just a
21 plain yes or no answer.

22 JUDGE BERLIN: You should answer just yes or no.

23 THE WITNESS: Yes.

24 BY MR. PILOTIN:

25 Q And did your -- was your testimony that was given

1 today affected in any way by the knowledge of the testimony
2 that was given in Court on April 7th?

3 A As far as I -- did I modify my testimony? I don't
4 understand what you mean.

5 Q My question is because you were not supposed to
6 learn about anything, given the sequestration order, about
7 what was said during the hearing on April 7th, my question is
8 whether anything that you said today was informed by the
9 knowledge that you gained about what was stated during the
10 April 7th hearing.

11 A My answer to that would be no. I'm testifying
12 based on what I know about Google compensation practices.

13 Q Okay. Now, you've made a distinction between
14 college and non-college hire, correct?

15 A Yes.

16 Q In most recent years, the majority of Google's
17 hires have been industry hires, correct?

18 A Yes.

19 Q From 2014 to 2015 more than 80 percent of the hires
20 -- or more than 85 percent of the hires into the technical
21 and engineering professional job groups have been industry
22 hires, correct?

23 MS. SWEEN: Your Honor, I'm just going to object on
24 the grounds he hasn't been called as a person who is
25 knowledgeable on this topic and I think this is beyond the

1 scope of the direct.

2 JUDGE BERLIN: If you know the answer, I'll allow
3 it, but don't guess. You can give an estimate.

4 THE WITNESS: I can't -- I don't know enough to
5 give -- to answer that specifically.

6 BY MR. PILOTIN:

7 Q Do you have any sort of estimate with respect to
8 the technology and professional groups?

9 A No, only to the regard that I was aware that
10 approximately 20 percent were -- overall were new grads of
11 our snapshot.

12 Q Now, the distinction that you have made today and
13 at the April 7th hearing between college hires and non-
14 college hires is that college hires always get the standard
15 offer with respect to salary, correct?

16 A That's correct.

17 Q And your testimony is that they always get that
18 standard offer?

19 A As far as I am aware they get the standard offer.

20 JUDGE BERLIN: I just want to clarify about
21 something. I've been hearing mostly about new grads from
22 college as one group of hires, industry hires is another
23 group. But probably a number of the industry hires went to
24 college. So, there might be some hires who are non-college
25 hires into positions that don't require a degree. But this

1 seems -- I'm hearing a slightly different category now:
2 college versus non-college. I just want to make sure we're
3 all still talking about the hires newly out of college versus
4 industry hires, as opposed to those who have degrees and
5 those who don't.

6 MR. PILOTIN: Understood, Your Honor. So I will
7 use the phrase as -- or the terminology that Ms. Sween used:
8 college versus industry hires.

9 JUDGE BERLIN: Okay.

10 BY MR. PILOTIN:

11 Q And the standard offer that's provided to college
12 hires is 80 percent of the market reference point for that
13 particular job, correct?

14 A Approximately, yes.

15 Q Now, your testimony back on April 7th was that with
16 new college graduates, "We endeavor to treat them all the
17 same and consistent with each job category."

18 Do you recall that testimony?

19 A I don't recall saying that specifically, but it
20 would be accurate.

21 Q Now, there's no consideration of competing offers
22 for college hires?

23 A There is consideration of competing offers for
24 college hires.

25 Q And what effect does that consideration have with