

1 respect to the college hires hiring?

2 A Well, it doesn't affect salary.

3 Q Does it have any effect on any portion of any  
4 compensation offer made to that college hire?

5 MS. SWEEN: Your Honor, this is beyond the scope of  
6 the direct. We have been talking just about salary, because  
7 the OFCCP's requests are just about salary.

8 So, I think now a discussion about compensation  
9 goes well beyond the scope of the direct.

10 MR. PILOTIN: Your Honor, we're focusing on  
11 compensation practices, which we made clear throughout this  
12 case. Salary is one portion of compensation. And I believe  
13 Mr. Wagner was going, maybe talking about another portion of  
14 a compensation offer given to a college hire.

15 MS. SWEEN: Your Honor, the subject demands make  
16 absolutely no reference to anything beyond salary, in the  
17 compensation context.

18 MR. PILOTIN: Your Honor, there's information --  
19 there are requests that are made in the subject items that  
20 pertain to equity grants and equity, as I understand it, is a  
21 portion of a compensation offer.

22 JUDGE BERLIN: And the bonuses, as well. The  
23 objection is overruled.

24 THE WITNESS: Could you repeat the question?

25 BY MR. PILOTIN:

1 Q I wish I have the memory to do that. Let me try to  
2 reform it.

3 We were talking about competing offers with respect  
4 to college hires. And you testified that there is  
5 consideration of competing offers with respect to college  
6 hires. Do you recall that?

7 A Yes.

8 Q And what consideration is given to competing hires  
9 with respect to a compensation package given to a new college  
10 hire?

11 A We look at the magnitude of the competing offer.

12 Q And by "magnitude," that means amount?

13 A Total amount, yes.

14 Q And with respect to the compensation package that's  
15 offered to a college -- new college hire, what effect does  
16 that amount have on what Google offers the new hire?

17 A We could -- if the amount is higher, we could  
18 increase the stock component or the sign-on component.

19 Q And what would be -- what magnitude would -- what  
20 effect would that have -- well, let me back up.

21 What is the target offer for a college hire with  
22 respect to a stock grant?

23 MS. SWEEN: Objection to the extent that the  
24 question is vague. If you understand the question.

25 JUDGE BERLIN: Could you reform the question,

1 please?

2 MR. PILOTIN: Sure.

3 BY MR. PILOTIN:

4 Q For a college hire, we spoke about a standard offer  
5 that's given with respect to salary, correct?

6 A Yes.

7 Q What is the standard offer given to a college hire  
8 with respect to stock?

9 A Well, there are many, because they vary by the job.

10 Q Okay. With respect -- so each stock grant, as I  
11 understand it, depends on the job that the college hire is  
12 being hired into, correct?

13 A That's correct.

14 Q And what effect would a competing offer have on  
15 whatever standard offer that may be with respect to stock?

16 A It might increase it.

17 Q Is there a maximum by which that stock offer will  
18 be increased?

19 A In -- there's no policy. But in practice, there  
20 would be a maximum.

21 Q And what would that maximum be?

22 A I can't recall the specific number that we would  
23 use.

24 Q Is there a minimum by which that stock offer will  
25 be increased?

1 A No.

2 Q Will that -- okay.

3 So it's true, then, with respect to college hires  
4 on competing offers are considered with respect to that  
5 college hire's compensation package, correct?

6 A Yes. On the total of the compensation package, not  
7 the salary.

8 Q Is prior --

9 JUDGE BERLIN: I think earlier you testified that  
10 when there are these competing offers, if it would make the  
11 salary too high you try to emphasize giving stock or some  
12 sort of equity grant, rather than adjusting the salary?

13 THE WITNESS: Yes.

14 JUDGE BERLIN: Was that for both new hires and  
15 industry hires?

16 THE WITNESS: Correct.

17 JUDGE BERLIN: Okay.

18 BY MR. PILOTIN:

19 Q Now, we've spoken about competing hires with  
20 respect to college hires or competing offers with respect to  
21 college hires. Does prior salary in any way have an effect  
22 on a college hire's stock grant?

23 A No.

24 Q Are there any other portions of the compensation  
25 package that are offered to college hires other than starting

1 salary and an equity grant?

2 A Yes.

3 Q And what are the other portions of that  
4 compensation package that's offered to a college hire?

5 A Their bonus and potentially a sign-on bonus.

6 Q Would a competing offer have any effect on the  
7 bonus that is being offered as part of the compensation  
8 package for a starting college hire?

9 A It could.

10 Q Would prior salary have any effect on the bonus --

11 A I'm sorry. When you say "bonus," did you mean --  
12 I'm sorry. To clarify, can I ask a question?

13 Q Absolutely.

14 A So when you said "the bonus," did you mean the  
15 company regular bonus or the sign-on bonus?

16 Q I'm using "bonus" as you mentioned it earlier. You  
17 said bonus and sign-on bonus.

18 A Then I'd like to correct that and say since that  
19 would be the annual bonus for a company plan person or a  
20 sales bonus, that doesn't change.

21 Q Okay. And to clarify with that, then, when it  
22 comes to the annual bonus that's offered as part of the  
23 compensation package to a college hire, what do you mean by  
24 the annual bonus?

25 A All employees at -- or employees at Google have to

1 participate in the company bonus plan or a sales bonus plan.  
2 About 85 percent of our employees are in the company bonus  
3 plan, which is paid annually. Another -- about 15 percent of  
4 our company is on what we call a sales bonus plan that's  
5 based on the sales results and that's paid quarterly.

6 Q And they're informed of that at hire, is that  
7 right?

8 A That's correct, yes.

9 Q Okay. So then with competing offers, then, based  
10 on your testimony, will have an effect on college hires'  
11 sign-on bonus, correct?

12 A It could.

13 Q Okay. And what effect could it have on the sign-on  
14 bonus?

15 A It could increase it.

16 Q Is there a standard sign-on bonus that's offered to  
17 all new hires in the same way that there is a standard salary  
18 offered to all new college hires?

19 A No.

20 Q What is the sign-on bonus then based on?

21 A It is based on job or -- so, the job code, the job  
22 into which they are going. Or it is used to offset a higher  
23 salary in a competing offer.

24 JUDGE BERLIN: So, you're discussing with a new  
25 hire candidate the compensation rate and you -- in order to

1 match a competing offer, decide to offer the candidate stock.  
2 Is that a one-time offer, always, or is it an ongoing package  
3 every year?

4 THE WITNESS: It would be a one-time offer at the  
5 time of hire.

6 JUDGE BERLIN: So it's more like a signing bonus  
7 than a salary increase, am I right?

8 THE WITNESS: That's correct. The concept we have  
9 is that we are conservative when it comes to providing  
10 salary, because that's ongoing. But -- so we use things like  
11 a cash sign-on or equity grant that dissipate over time.

12 JUDGE BERLIN: So by "dissipate over time," you  
13 mean it repeats at a declining level or?

14 THE WITNESS: So, stock grants -- to clarify, the  
15 sign-on bonus is a one time, at time of hire, and is not  
16 repeated in any way. An equity grant typically vests or is  
17 delivered to the employee over a multi-year period, but it  
18 stops at the end, typically, of four years.

19 BY MR. PILOTIN:

20 Q And just to clarify your prior testimony based on  
21 the sign-on bonus, either a competing offer or prior salary  
22 would have an effect on the magnitude -- could have an effect  
23 on the magnitude of that sign-on bonus, correct?

24 A Are we talking about new grads? That would not be  
25 the case. I thought we were talking about new grads.

1 Q Okay. Then I misunderstood your testimony.

2 I'm only talking about college hires right now, so  
3 new grads. And with respect to new grads, as I understand  
4 it, then, only competing offers would have an effect on the  
5 sign-on bonus for that new grad, correct?

6 A That's correct.

7 Q Prior salary will not have an effect?

8 A No.

9 JUDGE BERLIN: So, these double negatives get very  
10 confusing. So, could you state in a sentence what it is  
11 about prior salaries and their effect on sign-on bonuses?

12 THE WITNESS: So, we're talking new college grads,  
13 only. We do not look at their compensation in any prior job  
14 for a new grad, period, ever. We only look at -- we only  
15 look at competing offers, because it's all based off of  
16 competing offers into a job that would be similar to what  
17 we're offering at Google and what jobs that were held prior  
18 to someone graduating from college are irrelevant regarding  
19 that. They just aren't part of our calculation.

20 BY MR. PILOTIN:

21 Q Now, with respect to competing offers, does Google  
22 ask whether or not the -- as part of the hiring process, ask  
23 whether or not a college hire has a competing offer?

24 MS. SWEEN: I think the question is hopelessly  
25 vague and overbroad. Is he asking as a policy or as a

1 practice?

2 JUDGE BERLIN: If you know whether there is such a  
3 policy or practice, you can answer. Otherwise, you should  
4 say you don't know.

5 THE WITNESS: I don't know.

6 BY MR. PILOTIN:

7 Q Do you know more often than not is it the college  
8 hire who's raising the competing offer to negotiate the  
9 additional compensation?

10 JUDGE BERLIN: If you know.

11 THE WITNESS: I'm not involved in the interaction  
12 that staffing has with the candidate, so I would have to say  
13 I don't know.

14 BY MR. PILOTIN:

15 Q Now, as I understand it, for college hires the  
16 compensation package is -- consists of salary, correct?

17 A Yes.

18 Q An equity grant, correct?

19 A Correct.

20 Q And a sign-on bonus, correct?

21 A Not -- it may, but not necessarily.

22 Q Okay. So potentially a sign-on bonus, correct?

23 A Yes.

24 Q And a disclosure of what that individual's annual  
25 bonus will be at the company?

1 A Annual company bonus or quarterly sales bonus.

2 Q Anything else?

3 A They're -- typically in an offer, we might include  
4 relocation reimbursement, but I'm not -- that's not part of  
5 the compensation offer. That's not what the compensation  
6 team generates. We only generate the items that you  
7 mentioned before.

8 Q Okay. Now, I want to turn to industry hires, and  
9 I'll be careful to use that terminology. So with industry  
10 hires, does the same apply? Is it the same compensation  
11 package that's given, starting salary, an equity grant, you  
12 know, the disclosure of what the annual bonus may be -- or  
13 will be -- and potentially a sign-on bonus?

14 A That would be correct.

15 Q Anything else?

16 A Not -- as I mentioned, those are the compensation  
17 components that would be included.

18 Q Okay. So now I'm focusing on the industry hires.  
19 Is there a target equity grant for non-college -- or, sorry,  
20 I promised I would use the right terminology and I'm already  
21 breaking the promise.

22 For industry hires, is there a target equity grant?

23 A Yes.

24 Q And what is the target equity grant for industry  
25 hires?

1 A It varies by job.

2 Q Okay. So it's the same as respect to non-college  
3 hires?

4 A Correct.

5 Q And are competing offers considered with respect to  
6 the equity grant for industry hires?

7 A Yes.

8 Q Does prior pay factor into what the equity grant  
9 will be for an industry hire?

10 A How do you define "prior pay"?

11 Q Prior pay, as we've been using it and as I will  
12 continue to use it, will be that salary immediately prior to  
13 joining Google. So the applicant's current salary.

14 A So, could you repeat the question, then?

15 Q Sure. Will an applicant's prior pay have an effect  
16 on the equity grant that's provided at hire for an industry  
17 hire? So, the way --

18 A I think you're saying does the prior salary have an  
19 effect on the equity grant? Is that what you're saying?

20 Q Yes.

21 A Potentially.

22 Q Okay. In what way potentially?

23 A If the person has a higher salary than we would  
24 like to offer, we would -- we may offset that with an equity  
25 grant.

1 Q And what do you mean by "a higher salary than what  
2 we would like to offer"?

3 A Well, we endeavor to bring people in as close to  
4 our standard offer as possible. And if someone is highly  
5 paid, has a high salary, we may not -- we may offer equity as  
6 opposed -- or stock as opposed to that higher salary.

7 Q So in lieu of a higher salary, you may grant equity  
8 instead?

9 A Yes.

10 Q Anything else considered, aside from competing  
11 offers of prior pay with respect to an equity grant to an  
12 industry hire?

13 A When we're setting compensation, those are the  
14 things that we consider, that I can think of. I can't think  
15 of what else we would consider.

16 Q Would --

17 JUDGE BERLIN: Again, if you make an offer of an  
18 equity grant to bring in an industry hire without increasing  
19 the salary offer as much, is that a one-time grant that might  
20 be less over time or does it become part of an ongoing  
21 package that they'll get more grants every year?

22 THE WITNESS: The initial grant is one time. Then  
23 when it comes time in the subsequent equity grant cycle, we  
24 run an equity grant cycle every year, but we base any  
25 subsequent grant off of their performance within that

1 specific job. And so future grants are all based on  
2 performance in the job into which they're hired.

3 And the historical grants are not reviewed.  
4 They're not part of that planning process.

5 MS. SWEEN: Your Honor, I'm just -- I do want to  
6 lodge the objection that I've reviewed the subject demands  
7 and historical bonus and historical equity grants are not  
8 part of the outstanding subject demands. They may be part of  
9 the compensation for which we've produced already data points  
10 on.

11 But as far as the subject demands before Your  
12 Honor, I don't believe that bonus history and equity grants  
13 are part of those subject demands.

14 JUDGE BERLIN: So the salary histories that are  
15 being required -- or requested -- or job histories -- are  
16 just salary and job only and not any other compensation?

17 MR. PILOTIN: That's incorrect, Your Honor. We've  
18 made a request for information from 2014, which encompasses  
19 bonus, equity grant, and these various items. So it's  
20 incorrect that we haven't requested this information.

21 JUDGE BERLIN: So a snapshot?

22 MR. PILOTIN: Correct.

23 JUDGE BERLIN: For 2014?

24 MR. PILOTIN: Correct, Your Honor.

25 JUDGE BERLIN: How about the history for each

1 employee going back to when they were hired, does that  
2 include compensation changes over time or is it restricted to  
3 just salary changes over time?

4 MR. PILOTIN: So with respect to this, Your Honor,  
5 I mean this is all encompassed within the -- this is  
6 primarily going to the September 1st, 2014, snapshot. And  
7 as, you know, we've discussed either the -- these equity  
8 grants, that's over the course of four years. And I think  
9 Mr. Wagner will correct me if I'm wrong.

10 THE WITNESS: The typical vesting period is -- for  
11 a new hire offer would be four years.

12 MR. PILOTIN: So the -- for at least from 2010 to  
13 2014, given that these stock grants vest over that time  
14 period, the Agency is, you know, looking at that in terms of  
15 the historical portion of the data requested in the September  
16 1st, 2014, snapshot. However, the complaint does state that  
17 with respect to salary history generally for an employee,  
18 that it is salary history. But it's incorrect that we have  
19 not requested equity information.

20 JUDGE BERLIN: All right. You can continue your  
21 question.

22 BY MR. PILOTIN:

23 Q So we were still talking about equity grants for  
24 industrial hires. We've talked about prior pay potentially  
25 having an effect, competing offers potentially having an

1 effect. Does that -- are there any other items that may have  
2 an effect on the industry hire's initial equity grant?

3 A Beyond prior pay and competing offers?

4 Q Correct.

5 A Those are the only things that the compensation  
6 team would consider.

7 Q Would --

8 A Plus, of course, the standard offer that we make  
9 that's the starting point.

10 Q Would an industry hire's existing equity at his or  
11 her prior job have an effect?

12 A For an industry hire, is there a current equity  
13 that they have? Yes, it would.

14 Q So in addition to, then, it would be prior pay and  
15 competing offers, existing equity would also have an effect?

16 A Yes, if you call "prior pay" salary.

17 Q Okay. Anything else?

18 A It could be -- if we define prior pay as salary,  
19 then it could be the bonus that they get at their current job  
20 -- their job prior to Google.

21 Q Okay. Anything else?

22 A That's all I can think of at this time.

23 Q Okay. I'd like to then move on to starting bonus  
24 with respect to industry hires. Or not starting bonus, let  
25 me correct myself. The sign-on bonus.

1           With respect to that sign-on bonus, does prior pay  
2 have an effect on the magnitude of the sign-on bonus for an  
3 industry hire?

4           A     So, if -- prior salary?

5           Q     Sure, prior salary.

6           A     Possibly if we are asking them or our offer is less  
7 than their current salary.

8           Q     So in lieu of a higher starting salary, that  
9 individual may get a higher sign-on bonus?

10          A     They may get a sign-on bonus, yes.

11          Q     Or they may get a sign-on bonus, okay.

12                   Do competing offers have an effect on the sign-on  
13 bonus for an industry hire?

14          A     Possibly.

15          Q     And would existing equity have an effect on the  
16 sign-on bonus for an industry hire?

17          A     Not typically.

18          Q     When you say not typically, do you mean never?

19          A     No.

20          Q     So there are -- there is potential that existing  
21 equity may have an effect on a sign-on bonus?

22          A     Yes, but not typically.

23                   MS. SWEEN: Again, Your Honor, equity -- prior  
24 equity at an individual's prior job is not one of the subject  
25 demands. It has never been asked for.

1 JUDGE BERLIN: I understand. At the witness' last  
2 session -- this same witness testified to explain how Google  
3 handles a circumstance when a new industry hire is making a  
4 very high salary. So, I don't imagine this described the  
5 majority of hires or anything near the majority. I imagine  
6 it's a small group of people.

7 But this witness, on April 7th, testified that to  
8 try to keep the starting salary as close to where the company  
9 would normally offer it, instead Google tries to bring in the  
10 employee by offering more stock or a starting bonus.

11 So, that opened the door and I think that OFCCP is  
12 allowed to question along those lines, because the door was  
13 opened.

14 MS. SWEEN: Thank you, Your Honor.

15 BY MR. PILOTIN:

16 Q On the first day, Mr. Wagner, you testified along  
17 the lines of -- well, I'll just read the transcript. The  
18 question was:

19 "Are there any circumstances you can  
20 think of where a Google candidate was  
21 offered above 80 percent of the MRP, but  
22 it had nothing to do with their immediate  
23 prior salary?"

24 MS. SWEEN: Your Honor, could we get a page and  
25 line, please, so that I can follow along?

1 MR. PILOTIN: Sure. It's page 177, lines 1 through  
2 6.

3 MS. SWEEN: Okay.

4 BY MR. PILOTIN:

5 Q And your answer was, "No, I wouldn't think so. I  
6 can't think of a circumstance."

7 Do you recall that testimony?

8 A Could you read it again for me?

9 Q Absolutely. The question was:

10 "Are there any circumstances you can  
11 think of where a Google candidate was  
12 offered above 80 percent of the MRP, but  
13 it had nothing to do with their immediate  
14 prior salary?"

15 Your answer was, "No, I wouldn't think so. I can't  
16 think of a circumstance."

17 That -- your answer was inaccurate, insofar as  
18 competing offers are considered and may raise a starting  
19 salary above 80 percent -- or 80 percent of the MRP, correct?

20 A I think -- I believe that I answered that at that  
21 time with respect to circumstances related to the  
22 individual's prior pay only. That may be how I understood  
23 it, the question.

24 Q Okay. But just to clarify now, competing offers  
25 can elevate an industry hire's starting salary above 80

1 percent of MRP, correct?

2 A That is possible. That was something that would be  
3 external or separate from their prior pay.

4 JUDGE BERLIN: Just to you know, my recollection --  
5 I don't have the transcript in front of me -- was that the  
6 line of questions was for new hires, for not recent college  
7 grads, is it correct that the only salary history that is  
8 relevant is current compensation? I thought that was the  
9 context, if you read several of the questions and the witness  
10 said, "Yes." But that was only with respect to salary  
11 history, not competing offers. I think the context did not  
12 include factors other than salary history.

13 So, I'm just not seeing any impeachment material.  
14 But he has explained that competing offers also can be  
15 relevant.

16 MR. PILOTIN: Thank you, Your Honor.

17 JUDGE BERLIN: All right.

18 BY MR. PILOTIN:

19 Q Now, continuing to focus on industry hires, your  
20 testimony has been that Google endeavors not to offer an  
21 industry hire a starting salary more than 90 percent of MRP,  
22 correct?

23 A We try, yes.

24 Q Are there instances in which you will exceed 90  
25 percent of MRP?

1 A Yes.

2 Q What is the maximum Google will offer with respect  
3 to the industry hires relative to MRP?

4 A It would be extraordinarily rare for us to ever  
5 offer an MRP or 100 percent of MRP.

6 Q What would be the maximum, then, that Google would  
7 offer -- is there a maximum above 90 percent that Google has?

8 A There is no firm maximum. Such as we don't have  
9 firm salary ranges. But -- so, but, anything over 100  
10 percent MRP, you know, with the thousands of people we hire,  
11 I think I can probably count on one hand.

12 Q What factors would Google consider, then, with  
13 respect to making an offer to someone above 90 percent of  
14 MRP?

15 A The magnitude of the salary that they currently  
16 have.

17 Q Is prior salary the only reason, then, that Google  
18 would offer above 90 percent of MRP?

19 A That would be the only typical reason that I could  
20 think of.

21 Q Are there any atypical reasons you can think of as  
22 you sit here today?

23 A It is possible that if they have a very large bonus  
24 at their prior company, but no stock, we potentially could  
25 have higher than 90 percent of MRP. That would be atypical,

1 but.

2 Q Any other factor other than prior equity?

3 A No, that's not what I said. I said prior -- a high  
4 bonus.

5 Q Oh, I'm sorry about that.

6 A Cash bonus. And that would be -- that would be one  
7 -- the more common atypical circumstance.

8 Q Would Google consider education?

9 A What do you mean?

10 Q Would Google consider, essentially, other than the  
11 person's prior pay and prior bonus, would Google consider the  
12 individual's qualifications?

13 A No. Well, so, if you said for Job X, we're paying  
14 for the job and we have a standard offer for the job. If we  
15 had two candidates with different educational backgrounds  
16 would we pay differently? The answer would be no.

17 Q No. My question is with respect to, you know,  
18 where you would offer more than what is, I guess, Google's 90  
19 percent?

20 A Well, the typical would be 80 percent.

21 Q Correct. But with respect to offering -- well, let  
22 me start with more than 90 percent. Would an applicant's  
23 qualifications have any role in determining whether to offer  
24 that applicant more than 90 percent?

25 MS. SWEEN: I'm just going to object.

1 Qualifications? Are we talking about education? What are we  
2 talking about with qualifications?

3 JUDGE BERLIN: Could you be more specific in your  
4 question?

5 MR. PILOTIN: Sure.

6 BY MR. PILOTIN:

7 Q So let me start off with respect to qualifications.  
8 I'll start out with education, I'll break it down, since we  
9 started there. Would an applicant's education have any  
10 effect on the determination as to whether to offer that  
11 candidate more than 90 percent of MRP?

12 A No.

13 Q Would that individual's prior job experience have  
14 any effect on offering that candidate more than 90 percent of  
15 MRP?

16 A No.

17 Q Would -- now going from 80 to 90 percent, the same  
18 questions. Would that person's education have any effect in  
19 the determination to offer that candidate more than 80  
20 percent of MRP?

21 A No. Once the person is in the job or assigned to a  
22 job, when it comes to the compensation team with Job X, we  
23 prepare the offer based on the job as it's performed at  
24 Google.

25 And the compensation team does not assign the

1 person to the job.

2 Q Okay, understood. So education is not a  
3 consideration in terms of offering more than the standard  
4 offer, correct?

5 A No.

6 Q Nor is that person's prior job experience?

7 A No.

8 JUDGE BERLIN: So, we're going into these negatives  
9 again. So, in offering more than the standard 80 percent  
10 offer, would Google consider education?

11 THE WITNESS: By itself? No.

12 BY MR. PILOTIN:

13 Q And Google would also not consider --

14 JUDGE BERLIN: No, no, no, no.

15 MR. PILOTIN: Okay.

16 JUDGE BERLIN: Don't use the word "not."

17 MR. PILOTIN: I will try to banish that, as well as  
18 non-college hires or college hires. I'm trying, Your Honor.

19 BY MR. PILOTIN:

20 Q During the hiring process at -- so far as you know,  
21 at what point does Google learn of an industry hire's prior  
22 salary?

23 A I'm not -- I don't know the precise time at which  
24 that occurs.

25 Q Okay. Does the -- is there a practice or procedure

1 for Google to ask about an industry hire's prior salary?

2 A I'm not involved with the staffing, so I don't know  
3 that interaction they have with a candidate.

4 Q At what point does compensation, then, become aware  
5 of a industry hire's prior salary?

6 A When we're asked to prepare an offer for the  
7 candidate.

8 Q And how do you learn about it through that process  
9 of being asked to prepare for -- preparing an offer?

10 A We will get a -- the team would receive an  
11 identifier for that particular candidate, it will be  
12 determined that they're going into Job X and if there is  
13 information about prior compensation and we deem that it is  
14 relevant, then we will look at that information that is based  
15 primarily on the standards for the job.

16 Q Okay. Is that information -- the prior salary  
17 information communicated to -- through what medium is that  
18 information communicated to the compensation team? For  
19 instance, is it an email?

20 A It would typically be in a system called gHire,  
21 which is how we track applicants.

22 Q And does gHire contain a field with respect to  
23 prior salary?

24 A Yes.

25 Q Now, I want to turn to merit increases. So these

1 are now incumbents at Google. And at this point, I don't  
2 need to make the distinction between college hires and  
3 industry hires.

4 When it comes to -- current Google employees are  
5 eligible for merit increases for their salaries on an annual  
6 basis, correct?

7 A Yes.

8 Q And that merit increase is a function of the  
9 employee's -- what you call comp ratio and his or her  
10 performance ratings for that year, correct?

11 A For the prior two cycles, which are typically a  
12 year, yes.

13 Q Okay. And just to clarify, the comp ratio is the  
14 ratio between that news director's current salary and the  
15 market reference point for the job, correct?

16 A That's correct.

17 Q Now, I'm going to ask you to take a look at Exhibit  
18 216 in your binder. It would be in the binder labeled -- if  
19 you've already found it, that's great. And I'm going to ask  
20 you to turn to page 83.

21 MR. PILOTIN: While we're doing that, I wanted to  
22 let Your Honor know -- and this will be the time to offer it  
23 now -- OFCCP revised its exhibits only to add page numbers to  
24 assist the Court in finding things, because counsel was  
25 looking over at -- I thought it would be a disaster for you

1 to try to figure it out.

2 May I approach the Bench with our revised exhibits?

3 JUDGE BERLIN: Sure. Thank you.

4 All right. Is there any objection if I return to  
5 Mr. Pilotin that he gave me before? All right. I'm going to  
6 return this to you. Oh, they're not the same.

7 So, this is Exhibit 216, page --

8 MR. PILOTIN: Page 83, Your Honor.

9 JUDGE BERLIN: Thank you.

10 BY MR. PILOTIN:

11 Q And looking at page 83, Mr. Wagner, is this the --  
12 basically the formula that's used or an explanation of how  
13 the merit increases are calculated for incumbents at Google?

14 A This was the formula for the model amount that  
15 Google applied for the planning that occurred in the fall of  
16 2014.

17 Q Okay. And does this modeled amount reflect  
18 generally the testimony that you've given about how merit  
19 increases are done at Google?

20 A Yes.

21 Q Now, I just want to make sure we understand this.  
22 On the left side, I'm looking at the table toward the middle  
23 of the page, there's a column heading -- discussed -- that's  
24 labeled "perf bucket." Do you see that?

25 A Correct.

1 Q And are the rows below, the initials that are there  
2 -- the letters that are there -- refer to the different  
3 performance ratings an employee may get?

4 A Yes.

5 Q And "I" refers to "needs improvement," is that  
6 right?

7 A Yes, it does.

8 Q "CME" is "consistently meets expectations"?

9 A Yes.

10 Q "EE" is "exceeds expectations"?

11 A Yes.

12 Q What does "SEE" stand for?

13 A "Strongly exceeds expectations."

14 Q And what does "S" stand for?

15 A "Superb."

16 Q And you referred to these during your April 7th  
17 testimony, if you'll recall.

18 A I believe I did, yes.

19 Q Okay. At the very top along the -- it says, "Pre  
20 ADJ comp ratio." Do you see that?

21 A Yes.

22 Q And what does that refer to?

23 A That refers to the salary before we -- before the  
24 individual receives their merit increase or their current  
25 salary.

1 Q Okay. And then what do the cells underneath the --  
2 that kind of title heading refer to? So, for instance, I'm  
3 looking in the corner -- just to take an example, in the  
4 corner cells, in the column labeled, "Less than 55 percent,"  
5 and next to CME on it, it says, "61 percent." What does 61  
6 percent refer to?

7 A Sixty-one percent refers to the comp ratio to which  
8 we would move someone who is below 55 percent comp ratio.

9 Q Okay.

10 JUDGE BERLIN: The comp ratio or the merit  
11 increase?

12 THE WITNESS: Well, the way that it works is that  
13 if someone goes from 80 to 84 percent, we would calculate  
14 what 80 percent of MRP is. I would say if MRP is \$100,000,  
15 it would go from 80,000 to 84 percent, which -- 84 comp  
16 ratio, and that would be a \$4,000 increase or five percent.

17 BY MR. PILOTIN:

18 Q Now, in the lower right-hand corner, I see "MIN."  
19 Do you see that?

20 A Yes.

21 Q What does "MIN" refer to?

22 A That means regardless of the comp ratio or -- they  
23 would receive a minimum increase.

24 MS. SWEEN: Your Honor, I need to do a belated  
25 objection. This exhibit was just brought to my attention is

1 under seal and we have an open courtroom.

2 JUDGE BERLIN: All right.

3 MS. SWEEN: So I would move for this entire line of  
4 testimony to be under seal as an initial matter and if we're  
5 going to continue this, I'd ask the attendees to leave.

6 MR. PILOTIN: If I may, Your Honor, I mean Mr.  
7 Wagner, as he already talked about, we've discussed this in  
8 open court on April 7th and we're just referring generally  
9 now to how this table works. And I don't see the compelling  
10 reason at this stage to evict everybody else in the  
11 courtroom.

12 JUDGE BERLIN: All right. I understood the  
13 testimony before about how this worked. I see that the chart  
14 seems to be consistent with the prior testimony. Is there  
15 any reason you need to discuss this chart further or any of  
16 the information that's on it?

17 MR. PILOTIN: The only other item, Your Honor,  
18 would just be to clarify what the "MIN" stands for.

19 JUDGE BERLIN: I take that to mean the minimum  
20 increase that was described in the testimony before.

21 MR. PILOTIN: Okay.

22 JUDGE BERLIN: He stated that in certain  
23 circumstances there is a minimum increase. I'm not going to  
24 repeat now the testimony. But I take it that's what it  
25 means.

1 MR. PILOTIN: That's good, Your Honor. The only  
2 reason we -- I wanted to go through this, Your Honor, is so  
3 that when we identify it in the brief, we have some  
4 additional information explaining it.

5 JUDGE BERLIN: I think you've accomplished that.

6 MR. PILOTIN: Okay. Thank you, Your Honor. I will  
7 move on from referring to this.

8 JUDGE BERLIN: Beyond that, I don't know that  
9 there's anything I can do, especially, but I don't think we  
10 have any numbers that actually came out.

11 MS. SWEEN: There were some percentages, Your  
12 Honor. I just wanted to bring it to the Court's attention,  
13 in light of the fact that both counsel knew that this exhibit  
14 was under seal.

15 So if we're not intending to ask any more questions  
16 about this exhibit, we can proceed.

17 BY MR. PILOTIN:

18 Q Now, as you've described it -- well, I'll go ahead.

19 Now, your testimony back on April 7th was that  
20 Google has no salary counts on individuals, is that right?

21 A That's correct.

22 Q Now, the -- with respect to merit increases, I  
23 believe the term you used is that these are modeled  
24 increases, correct?

25 A Yes. And if I could say, to correct the prior

1 thing I just said, is that we don't have caps on individuals  
2 jobs. But we do have a maximum salary level that we actually  
3 pay for any one job. But for anybody at Google, but that's  
4 not specific to their job. Meaning, we don't pay people  
5 higher than the VP's salary, for example. Sorry, just to  
6 correct that.

7 I'm sorry, could you repeat your other question?

8 Q Sure. So, with respect to the merit increases that  
9 Google offers on an annual basis, these are target increases,  
10 correct? Modeled increases?

11 A Modeled increases, yes.

12 Q Do managers have discretion to deviate from the  
13 model?

14 A They do.

15 Q And when would that discretion be exercised?

16 A We ask to align -- we allow managers to adjust the  
17 model amounts to align the individual with their peer set in  
18 line with performance. Of course, all of those are subject  
19 to review by subsequent levels of management, as well as by  
20 the compensation team.

21 Q Is there any other reason why Google would -- or  
22 managers may deviate from the modeled numbers?

23 A Well, we allow modest discretion to make  
24 adjustments for alignment with peers and align with  
25 performance. That's the guidance we give to managers.

1 Q Can discretion be exercised to -- for retention  
2 purposes, essentially in an effort to retain an individual?

3 MS. SWEEN: The question is vague, Your Honor.

4 JUDGE BERLIN: Do you mean discretion with respect  
5 to merit increases?

6 MR. PILOTIN: Yes, Your Honor.

7 JUDGE BERLIN: All right. You can answer that.

8 THE WITNESS: Discretion could be used to -- one  
9 might give a higher increase -- a manager might do that in  
10 order to send a positive message reflecting performance,  
11 which could have a retentive effect. But that's not the  
12 guidance we give managers on salary increases.

13 BY MR. PILOTIN:

14 Q Is it the guidance that you give with respect to  
15 any other increase dealing with compensation?

16 A Yes.

17 Q Well, what guidance, then, would that be?

18 MS. SWEEN: Your Honor, this is well beyond the  
19 scope of the direct, as well as subject demands, and I'm  
20 getting concerned that this is guiding into an area that's  
21 not before Your Honor.

22 JUDGE BERLIN: This does seem to be something -- I  
23 mean, there are many, many parameters of data that OFCCP is  
24 requesting. But I'm not sure that I saw anything on that  
25 long list of parameters that would go into efforts of

1 retention. Is there something there?

2 MR. PILOTIN: Again, Your Honor, this pertains to  
3 just generally understanding the cause of why we are seeing  
4 disparities. And we have requested a broad set of data when  
5 it comes to 2014. And with respect to that set of data, it  
6 would be helpful to know and understand how these decisions  
7 are being made. Because, ultimately, OFCCP is looking for  
8 the cause of these issues.

9 MS. SWEEN: Your Honor, we're not here on a  
10 determination as to cause, we're here on a denial of access  
11 case with respect to whether or not the subject demands are  
12 reasonable and relevant. And my concern is that we are going  
13 too far down the path here and, ultimately, having this  
14 witness testify on things that are well beyond direct  
15 examination.

16 JUDGE BERLIN: There is a point where trying to  
17 understand -- trying to offer the Administrative Law Judge an  
18 explanation for how salaries are set in order to show why  
19 OFCCP should be entitled to the information begins, instead,  
20 to be discovery on a merits case. And I think you've cross.  
21 So I'm going to sustain the objection. But I understand the  
22 point that there are many factors that OFCCP wants to  
23 examine.

24 MR. PILOTIN: Understand, Your Honor. Thank you.

25 JUDGE BERLIN: And let me be clear, then, that I'm

1 not making any judgments about the merits. So, for example,  
2 Google could argue on the merits that it is legitimate to  
3 offer someone who has an offer from another company more  
4 money to get them to stay and it is not discriminatory or not  
5 illegitimate in any way. So I'm not foreclosing or making  
6 any rulings that would relate to a merits case.

7 BY MR. PILOTIN:

8 Q I want to continue on with merit increases, but I'm  
9 going to use -- because I want to understand in terms of, you  
10 know, the progression that we're looking at. I will not use  
11 Exhibit 216 and the numbers used on there. I'll use kind of  
12 the general feedback that you gave at the April 7th hearing  
13 to model this, so that we can understand what's going on.

14 JUDGE BERLIN: So, can't you just use hypothetical  
15 numbers?

16 MR. PILOTIN: I will ground it as much as I can,  
17 Your Honor, in what Mr. Wagner testified to on April 7th,  
18 publically. But I will not use the numbers that are given in  
19 the exhibit.

20 JUDGE BERLIN: I don't recall him using any factual  
21 or real data, specific increase amounts for specific job  
22 performances on specific jobs. So as long as you compare  
23 them with real data in terms of testimony, right?

24 MR. PILOTIN: Well, there was some data that was  
25 offered, Your Honor, but let me elicit -- well, I don't want

1 to re-elic it, because we already have it in the April 7th  
2 record.

3           There was some testimony that was given then  
4 regarding, you know, someone being at the 80th percentile of  
5 MRP getting a larger bonus -- or, sorry, larger merit  
6 increase than somebody who was already at the 90th MRP level.  
7 And that once that person hits the 110th percentile, that  
8 person will get only the minimum, which Mr. Wagner, back on  
9 April 7th, would be about three percent, based on how much  
10 the market is moving.

11           So I was just going to use those principles in  
12 terms of this hypothetical, rather than use the actual  
13 figures that are provided in the exhibit.

14           MS. SWEEN: Your Honor, in the interest of moving  
15 this along, I'm not quite sure that hypotheticals really add  
16 anything to the evidence. The witness -- as Mr. Pilotin just  
17 indicated -- was pretty clear on what actually happens.

18           JUDGE BERLIN: I did understand the testimony  
19 before. And that, you know, the people at the highest  
20 rating, they always want to get some merit increase, but once  
21 you get to a certain salary level, they will eventually top  
22 out.

23           So, I do recall on that. I'm only characterizing  
24 it, I'm not trying to repeat or say verbatim anything that  
25 was said before.

1 But do we need more on that?

2 MR. PILOTIN: With respect to making our burden of  
3 proof, Your Honor, our burden of persuasion, I think it's  
4 important that we go through this to demonstrate the need for  
5 -- they've contested whether non-salary history is necessary.  
6 And they've also contested whether or not prior salary and  
7 starting salary is necessary. And this hypothetical goes to  
8 that issue.

9 MS. SWEEN: Your Honor, the burden is not  
10 necessary. It's whether it's relevant.

11 JUDGE BERLIN: You just want to show that people  
12 who are given a discriminatory starting salary, it will be  
13 perpetuated by the merit increases over time, because of  
14 their percentage of the starting salary and each salary  
15 progression after that?

16 MR. PILOTIN: Yes, Your Honor, that's part of it.

17 As I mentioned, I'm not talking about burden here.  
18 I'm talking about our burden of proof.

19 JUDGE BERLIN: Okay, I get that part.

20 MR. PILOTIN: And we want to show that, yes, you  
21 know, as -- you know, if someone who comes in at the 80th MRP  
22 is up against someone who comes in at the same time doing the  
23 same job at the 90th MRP and both individuals perform  
24 superbly thoroughly that -- throughout a given set of years,  
25 that that person at the end of the process who received the

1 80th percentile will still be earning less than the person  
2 who came in at the 90th percentile.

3 JUDGE BERLIN: Mr. Wagner, is that correct?

4 THE WITNESS: He has to repeat the --

5 JUDGE BERLIN: If somebody is hired at the 80th  
6 percentile of the market target rate and another person  
7 starts at the 90th in the same job on the same day, and they  
8 both work there over a period of years, and their performance  
9 is rated identically at the time, will the one that started  
10 at the 90th percentile each year make more money than the one  
11 who started at the 80th percentage?

12 THE WITNESS: Most likely the answer to that would  
13 be no. That our system is designed to make those pay levels  
14 converge.

15 JUDGE BERLIN: Okay. Can you explain that?

16 THE WITNESS: So, at any given rate -- let's say  
17 someone is hired at the 90th percentile. They will not --  
18 it's likely that they're going to meet expectations for their  
19 first cycle. It is extraordinarily rare. I don't know if we  
20 even have a person that's like a superb rating for their  
21 first cycle, for example, for their first year. That would  
22 be extraordinarily rare.

23 So that person who came in higher would likely not  
24 be given a salary increase. And the person who's performing  
25 well, who came in at 80, would get a large salary increase.

1           So -- and we don't drop that person at 90, because  
2 we're going to give them the chance to continue to increase  
3 their performance. And if they don't and one -- person A --  
4 regardless of gender and situation -- person A and person B,  
5 the idea is that if their performance is sustained over time,  
6 that they will converge and they will be paid similarly.

7           So it does not persist. That is not the design of  
8 our compensation system.

9           JUDGE BERLIN: Do you want to follow-up on that?

10          MR. PILOTIN: Yes. And this is the need, Your  
11 Honor, why we need to do the hypothetical, because at least  
12 the way I understand Mr. Wagner's testimony of it, there's  
13 the hope that they will converge over time. But it could  
14 take many years for it to converge. It could -- you know, in  
15 the immediate year afterwards, the folks are not going to be  
16 paid similarly. And as Your Honor --

17          MS. SWEEN: Your Honor, I need to interrupt.  
18 This -- this is OFCCP testifying at this point in time. This  
19 is not a question and answer series.

20          JUDGE BERLIN: He's arguing himself.

21          Can you not base that on the table?

22          MR. PILOTIN: Yes.

23          JUDGE BERLIN: I can read the table. We have it on  
24 the table. It's been admitted. And I can do these  
25 calculations or if you submit a brief and I'll see it.

1 I'll allow a few questions on this, but I'm trying  
2 to keep the fact that the document is sealed into account and  
3 it's only temporarily that I have an opportunity to rule on a  
4 motion. But it is sealed now. So I'm trying to fit that  
5 into account, without canceling you. But to some extent,  
6 with the witness' testimony that he just gave -- which you  
7 can follow-up on -- I understand how it works and the idea --  
8 the concept. I can see, you know, how it worked out at the  
9 time. But at the same time, the chart is on the record.  
10 But, go ahead.

11 Let's ask the hypothetical and let's see how it is  
12 and then we rule on it.

13 MR. PILOTIN: Thank you, Your Honor. And I want to  
14 do the hypothetical, in part, because Mr. Wagner's answer was  
15 "no." And so we --

16 JUDGE BERLIN: All right. You can proceed.

17 MR. PILOTIN: Okay. Thank you, Your Honor.

18 BY MR. PILOTIN:

19 Q So, I'm going to speak loudly and try to use this  
20 chart, because, number one, I used to be a fourth grade  
21 teacher and so I like to use charts.

22 JUDGE BERLIN: If you could move that microphone,  
23 just so we want to make sure this is recorded.

24 MR. PILOTIN: Plus, I want to ground this in  
25 something and numbers -- part of the reason I became a lawyer

1 is I can't handle numbers. So I'm going to try to write this  
2 down.

3 We have two individuals who come in at the same job  
4 at the same time for job one. And the MRP for that job is  
5 200,000 -- just for illustrative purposes. We have two  
6 individuals -- since I heard the job this morning, we have  
7 Jack and Diane.

8 Jack comes in with either prior pay or a competing  
9 offer that -- you know, that warrants a 90 percent MRP.  
10 Diane comes in with an MRP of 80 percent, with no -- because  
11 she had no prior pay or competing offer.

12 Someone will definitely correct me if I'm wrong, 90  
13 percent of 200 is 180. And then 80 percent of 200 is 160.  
14 And I now want to go through this -- what the Judge talked  
15 about in terms of, you know, kind of progressions thereafter.

16 So the status happened in 2010.

17 In 2011 -- now I've done it -- in 2011, both Jack  
18 and Diane perform at some rate -- superbly their second year  
19 there. As I understand it, you said that at a minimum Jack  
20 would be entitled to at least a three percent raise, is that  
21 right?

22 MS. SWEEN: That misstates testimony, Your Honor.

23 BY MR. PILOTIN:

24 Q Or some magnitude with respect to Diane, correct?

25 Or, no. Jack would be entitled to some raise,

1 correct?

2 A If they were both superb performers, of course,  
3 that is highly unlikely that someone who's hired in 2010  
4 would get superb in 2011, but, yes.

5 Q But assuming that they got the same performance  
6 rating, they both would get a raise, correct?

7 JUDGE BERLIN: He has already testified that wasn't  
8 necessarily true. If, for example, if they got just "meets,"  
9 then the one at the 90 percent might not get a raise.

10 THE WITNESS: They likely would not, yeah.

11 BY MR. PILOTIN:

12 Q If they both got more than "meets" --

13 JUDGE BERLIN: But he testified they usually get  
14 "meets" in their first year. I mean, you can design it  
15 however hypothetically you want, but the testimony was the  
16 usually beginning review would be "meets."

17 MS. SWEEN: Your Honor, again, I'm just going to  
18 object. It sounds like the Court understands this process,  
19 and I don't know that a hypothetical is anything other than  
20 redundant to the testimony that's already been given.

21 JUDGE BERLIN: Is there something you have a  
22 question about that I don't understand?

23 MR. PILOTIN: Well, my question is this -- and then  
24 perhaps we can solve it in this way.

25 JUDGE BERLIN: Okay.

1 BY MR. PILOTIN:

2 Q Is there -- is it your testimony that if Jack and  
3 Diane get better than "meets" in the other incidents in which  
4 Jack and Diane get, you know, better than "meets" in terms of  
5 their performance rating, will, in the subsequent year, they  
6 both be earning the same?

7 A Could you say that again?

8 Q Sure. So, with the "meets" standard, there's some  
9 understanding that perhaps Jack will not get a raise,  
10 correct?

11 A At the 90th? That would be correct, yeah.

12 Q If they get better than "meets" -- and I forget  
13 what performance rating is above "meets" --

14 JUDGE BERLIN: What is the next one?

15 THE WITNESS: Exceeds expectations.

16 BY MR. PILOTIN:

17 Q If they both get "exceeds expectations," will they  
18 be earning the same in 2011?

19 A No.

20 Q If they both --

21 A It will be unlikely.

22 However, the comparison to Jack and Diane is not  
23 the right comparison. It's to the entire peer set.

24 Q But Jack and Diane would not be earning the same,  
25 correct?

1 A Correct.

2 Q And the same goes for all performance ratings above  
3 "meets," correct?

4 MS. SWEEN: The question is vague.

5 MR. PILOTIN: I can go through each individually.

6 JUDGE BERLIN: Well, with all of these same  
7 assumptions, the rating is above "meets" -- yes?

8 MR. PILOTIN: Correct, Your Honor.

9 BY MR. PILOTIN:

10 Q The same assumption. It's any sort of performance  
11 rating above "meets." In that second year, Jack and Diane  
12 would not necessarily be earning --

13 A Unlikely.

14 Q -- it's unlikely they'd be earning the same?

15 A In the second year? We do look at -- we ask  
16 managers to look within their teams and pay people  
17 appropriately based on their performance. No reconvergence  
18 over time is how I'd say it.

19 Q Okay, convergence over time.

20 But in that second year, will they be paid the  
21 same?

22 A Perhaps not. I can't say yes or no, since this is  
23 not the only detail you need to know to assess this.

24 Q What other details do I need?

25 A Well, the design of our system is to ensure that

1 people who are similarly situated as a group would be paid  
2 similarly relative to MRP. There can be outliers -- males  
3 and females -- when you took two together, they -- because  
4 who could not be -- who could be outliers of the cadre, but  
5 in general for the entire group, the design is intended to  
6 have alignment.

7 Q Over time, correct?

8 A Yes. But we have tens of thousands of people,  
9 right, in -- at Google.

10 Q But in that immediate second year, they may not  
11 be -- Jack and Diane may not be aligned, these two  
12 individuals -- hypothetically?

13 A They may not, but that's hypothetical.

14 Q Okay. So, given that this may happen over time,  
15 all OFCCP currently has right now is one point in time. To  
16 understand any disparity between Jack's and Diane's salaries,  
17 it would be knowing their starting salary would show light on  
18 that current disparity, correct?

19 MS. SWEEN: And, Your Honor, I'm just going to  
20 object on the grounds that the hypothetical presumes  
21 disparity exists in favor of the man over the woman. I don't  
22 think that this hypothetical is anything other than  
23 prejudicial, because it's making an assumption that is favor  
24 of OFCCP's position.

25 There very well may be lots of instances in which

1 the woman comes in at 90 percent and the man comes in at 80  
2 percent.

3 JUDGE BERLIN: I'll allow it. I'll bear that in  
4 mind. You can answer.

5 THE WITNESS: Could you repeat?

6 BY MR. PILOTIN:

7 Q If we have -- if OFCCP has evidence, as was  
8 testified to on April 7th, that there are pay disparities  
9 between men and women and we only have one snapshot of that -  
10 - we see Jack as being paid more than Diane -- knowing where  
11 Jack and Diane came in at, would shed light on where that  
12 disparity is coming from, correct?

13 MS. SWEEN: Calls for speculation and it's well  
14 beyond the scope of the direct examination. And it also goes  
15 to the merits, as compared to what's before the Court today.

16 MR. PILOTIN: With respect to that last one, Your  
17 Honor, we're talking about relevance here and what sheds  
18 light on the current disparity that the Agency is seeing.

19 MS. SWEEN: I don't know that the standard is  
20 shedding light as compared to relevance.

21 JUDGE BERLIN: So, I think that this is actually  
22 argument. You are arguing what data you need to draw these  
23 inferences. You're not asking him how he sets compensation  
24 at Google, how the raises are done, how they're calculated,  
25 what the factors are. You're offering him an argument about

1 why you need to look at something to understand that  
2 something happened.

3 And you should just argue about that, in your  
4 argument. So the objection is sustained. It's  
5 argumentative.

6 BY MR. PILOTIN:

7 Q Okay. So, Google did a pay equity analysis at the  
8 end of 2016 that showed no pay disparities between men and  
9 women, correct?

10 MS. SWEEN: The question is beyond the scope of the  
11 direct.

12 JUDGE BERLIN: I'm not even sure why it's relevant.  
13 Can you tell me why it's relevant?

14 MR. PILOTIN: Sure, Your Honor. We are trying to  
15 establish the relevance of particular items that OFCCP has  
16 requested. And, obviously, Google has contested that.

17 Google has claimed that it has done a pay equity  
18 analysis, looking at 2016 data, to establish the relevance of  
19 our requests, I think it's important to know what Google used  
20 on its own to determine what it used to perform its equity  
21 analysis. Because, insofar as Google used it, it cannot then  
22 argue that OFCCP's request for the same information is  
23 relevant.

24 MS. SWEEN: What Google did in 2016 is not relevant  
25 to what the OFCCP knew at the time it issued its scheduling

1 letter.

2 JUDGE BERLIN: I agree. I am not going to decide  
3 the case based on how Google does it. I'm going to decide it  
4 based on OFCCP's presentation about what it needs and why.

5 So, you need to -- I'm not going to take it as an  
6 admission. They can do it however they want to do it.

7 I'm sure if, for example, they considered none of  
8 the parameters you're asking about, you would not, you know,  
9 say that I should consider that in deciding whether your  
10 requirements are relevant or not. And I'm not going to take  
11 it as an admission.

12 So, let's just focus on the narrow questions under  
13 the defenses that have been raised and the demands that OFCCP  
14 have made in this expedited proceeding that we're trying to  
15 conclude today.

16 MR. PILOTIN: Understood, Your Honor.

17 JUDGE BERLIN: All right.

18 MR. PILOTIN: We have no further questions at this  
19 time.

20 JUDGE BERLIN: All right. I have a few questions.

21 EXAMINATION

22 BY JUDGE BERLIN:

23 Q So, Mr. Wagner, you've given a lot of testimony  
24 about compensation for new hires in 2013 to 2015.

25 A Yes, Your Honor.

1 Q And I assume that Google has many employees or had  
2 many employees during that same period of time who were not  
3 new hires?

4 A That's correct.

5 Q So, for some of those other employees who are not  
6 newly hired in 201 to 2015, were those people hired at a time  
7 that Google negotiated salaries?

8 A The way I would answer it is that we have employed  
9 the same approach that I've described since I arrived at  
10 Google.

11 Q And when was that?

12 A 2007.

13 Q And when you say the same, do you mean that all of  
14 the testimony that you gave would apply to all of those  
15 people hired since 2007, excepting the top 200 employees who  
16 are outside of your purview?

17 A I would say that the general approach of trying to  
18 hire people toward the bottom of -- or toward our standard  
19 offer and curtailing salary amounts as it approached MRP is  
20 accurate and that's what we've done.

21 JUDGE BERLIN: All right. Ms. Sween, redirect?

22 MS. SWEEN: I just have one, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. SWEEN:

25 Q Mr. Wagner, do you know for sure whether there is a

1 specific field in gHire that is allocated to a prior salary?

2 A I do not.

3 JUDGE BERLIN: Mr. Pilotin?

4 MR. PILOTIN: Just a follow-up.

5 RECROSS-EXAMINATION

6 BY MR. PILOTIN:

7 Q How, then, since the compensation team does  
8 consider prior salary with respect to starting salary, how is  
9 that information communicated to the compensation team if  
10 it's not in a field in gHire?

11 MS. SWEEN: Number one, misstates the prior  
12 testimony, as the question as stated is overbroad. There was  
13 no number two, but that's the objection.

14 JUDGE BERLIN: Well, one of the issues is about the  
15 burden on Google, so I would like to understand how this  
16 information is stored and communicated. It gives me a better  
17 sense of the burden on producing it.

18 So, how does -- how does your compensation group  
19 find out about prior salary?

20 THE WITNESS: Prior salary. There is a space in  
21 our offer work flow -- that's our terminology for it --  
22 within gHire that allows our compensation analysts to see the  
23 job into which the person is going. And that allows us to  
24 populate -- it can be populated with a standard offer or  
25 something that might differ from a standard offer. And there

1 is prior compensation information in that field.

2 Candidly, I don't even go into the system and look  
3 at it. So, I don't know the specific steps an analyst will  
4 take or what fields that are the specific fields that are in  
5 there.

6 JUDGE BERLIN: So, you don't know?

7 THE WITNESS: Yeah.

8 BY MR. PILOTIN:

9 Q To your knowledge, is there any other field or any  
10 other source for this information other than that field that  
11 may be in gHire?

12 A Or fields.

13 Q Or fields.

14 MS. SWEEN: Calls for speculation.

15 JUDGE BERLIN: If you know, you can answer, but  
16 don't guess.

17 THE WITNESS: I don't know.

18 JUDGE BERLIN: He said he didn't know.

19 MR. PILOTIN: No further questions, Mr. Wagner.

20 MS. SWEEN: Nothing more, Your Honor.

21 JUDGE BERLIN: All right. Sir, thank you very  
22 much.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 JUDGE BERLIN: Why don't we take a 10-minute break.

1 (Off the record.)

2 JUDGE BERLIN: Ms. Sween, your next witness,  
3 please?

4 MS. SWEEN: Yes, Your Honor. We're going to call  
5 Kristin Zrmhal, please.

6 MR. ELIASOPH: Your Honor, before the witness takes  
7 the stand --

8 JUDGE BERLIN: Oh, I'm sorry, Mr. Pilotin isn't  
9 here.

10 MR. ELIASOPH: That's okay. I will be handling the  
11 next witness, anyway.

12 JUDGE BERLIN: All right.

13 MR. ELIASOPH: Your Honor, this Court ordered that  
14 the parties were to submit a witness list and that the  
15 witness list must contain a summary of the testimony the  
16 witness will provide, a precise statement of what the  
17 testimony will prove, and a detailed explanation of the  
18 relevance of the testimony. Quote, "General statements about  
19 the topics the testimony will cover are not sufficient."

20 I have a copy here of the witness list that Google  
21 provided the Court and provided OFCCP. This witness list  
22 does not put OFCCP on notice as to what this testimony will  
23 be, in clear defiance of the Court's order.

24 JUDGE BERLIN: Mr. Eliasoph, we had a pre-trial  
25 conference on the record. I asked each side to identify the

1 witness they would be calling specifically. We discussed why  
2 they were going to be called. There were no objections to  
3 anything on the witness list. So that objection is  
4 overruled.

5 If there some questioning that completely takes  
6 OFCCP by surprise, then let me know. But this was not a case  
7 where depositions were allowed. On OFCCP's motion, it is an  
8 expedited hearing. Virtually no discovery allowed, other  
9 than request for admissions, and there was one deposition I  
10 allowed the defense to take. And so there's none that you  
11 can do that have some element of surprise at hearings like  
12 this.

13 So, if there was an objection, the time to make it  
14 was the pre-trial conference. But if you are completely  
15 surprised, let me know.

16 All right. Let's proceed with the next witness.  
17 Whereupon,

18 KRISTIN ZRMHAL,

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

21 JUDGE BERLIN: Please have a seat.

22 Ms. Sween?

23 MS. SWEEN: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. SWEEN:

1 Q Good morning, Ms. Zrmhal.

2 A Good morning.

3 Q Can you spell -- state and spell your name for the  
4 record?

5 A Kristin Zrmhal. That's K-r-i-s-t-i-n, the last  
6 name is Z-r-m-h-a-l.

7 Q Do you currently work at Google?

8 A Yes, I do.

9 Q And what is your current job title?

10 A I am the Senior Legal Operations Manager.

11 Q How long have you held that position?

12 A I was promoted to this position in the summer of  
13 2016.

14 Q Have you held any other positions at Google?

15 A I've had a couple of other titles at Google, always  
16 within the Legal Department.

17 Q And beginning -- you joined Google when?

18 A In January of 2011.

19 Q And can you just briefly describe for the Court  
20 your career history at Google?

21 A Sure. I started in January 2011 as the discovery  
22 support team lead. We then changed job ladders and titles on  
23 my team and I was the discovery program manager. That was in  
24 2012.

25 I was then promoted to Legal Operations Manager in

1 2014. And ultimately promoted to Senior Legal Operations  
2 Manager in 2016.

3 Q And just can you briefly describe your education  
4 background?

5 A Yes. I have a BS in economics from Miami  
6 University in Ohio, and currently getting my MBA at UC  
7 Berkeley, at the School of Business. I graduate in December  
8 of this year.

9 Q Before joining Google, did you have any  
10 professional experience managing document collection or  
11 document review in preparation for litigation matters or  
12 audits?

13 A I did. Prior to joining Google, I was a consultant  
14 at Navigant Consulting Group from 2004 until about 2007. And  
15 then from 2007 until 2010, I worked as Ghiron Consulting  
16 Group. My responsibilities were related to litigation and e-  
17 discovery support for a variety of different clients,  
18 including Google, managing large teams of data collection,  
19 analysis, and document production.

20 Q What were your job duties when you became Legal  
21 Operations Manager in 2014?

22 A So, I -- throughout my tenure at Google, I have  
23 been responsible for managing a team of project managers and  
24 technologists that collects data, documents from Google  
25 employees and Google internal repositories. We analyzed the

1 documents. We make them available for our lawyers and then  
2 ultimately produce them.

3 Q And do you have any responsibility over budgeting  
4 or forecasting the costs related to those projects?

5 A I do. I'm responsible for setting our annual  
6 budgets, for litigation support, as well as preparing  
7 analyses for individual cases, for how much time spent for  
8 each case, for forecasting as well as keeping track of those  
9 on a monthly basis.

10 Q And have your job duties changed in any significant  
11 manner since becoming Senior Legal Operations Manager in  
12 2016?

13 A I have the same responsibilities.

14 Q How many employees are on the Google discovery  
15 operations and project management team that you oversee?

16 A There are 21 people on my team. There are 12 on  
17 the operations side and nine project managers.

18 Q And on the operations side, are those operation  
19 data? What does "operations side" mean?

20 A So, there's two different teams. One is managed by  
21 a man named Danny. He -- his team does our data collection,  
22 our processing analysis -- which means running search terms  
23 and analyzing it, making it available for our lawyers. And  
24 then another team is responsible for document productions.

25 Q Since joining Google in 2011 on the discovery

1 operations and project management team, approximately how  
2 many litigation matters have you either participated in or  
3 have managed and supervised?

4 A I've managed or supervised over 500 matters in the  
5 six years that I've been at Google.

6 Q And those would be related to collection of  
7 documents, production of documents, and those types of  
8 things?

9 A That's exactly right.

10 Q When did you -- did you become involved in the  
11 OFCCP collection of documents and information in relation to  
12 OFCCP's request for information for its September 2015  
13 compliance review?

14 A Yes, I've been involved.

15 Q And when did you first become involved in that?

16 A In January of 2016, someone from our people  
17 operations teams -- our HR team -- reached out to my team for  
18 assisting in responding to the request.

19 Q And can you describe for the Court what was your  
20 understanding of what you were being asked to do at that  
21 point in time?

22 A At that point, we wanted to meet with them to help  
23 them understand exactly how to collect and produce the  
24 documents in response to the request.

25 Q Did the HR team at that point tell you that they

1 had begun collection efforts and ask you for any particular  
2 assistance at that point?

3 A At that point, they reached out to my team, because  
4 they felt that they lacked the resources available to collect  
5 all of the documents. At that point, we were talking about  
6 resume and interview information and they didn't have the  
7 resources available to do that. So they had heard about my  
8 team, the discovery operation team, that does this for most  
9 of our matters, and reached out to us for technical support.

10 Q Can you describe the steps that your team took in  
11 order to coordinate Google's efforts to respond to the  
12 OFCCP's requests from January 2016 to the present?

13 MR. ELIASOPH: Your Honor, I'm going to object:  
14 Google, in the last witness, was very clear that the  
15 testimony today should be limited to the subject items. This  
16 review has included other aspects of Google's hiring process.  
17 It appears they're attempting to elicit testimony that has  
18 nothing to do with the subject request.

19 MS. SWEEN: Your Honor, this all goes to a  
20 demonstration of how burdensome it's been to collect to date,  
21 through the present.

22 The current request in this witness will also  
23 testify with respect to her job duties, to anticipate the  
24 burden to collect the subject demands.

25 JUDGE BERLIN: I'll allow it by way of background,

1 so that I can get the whole picture of the burden. But let's  
2 try to focus mostly on what the current demands will require.  
3 But I'll allow some testimony on this.

4 MS. SWEEN: Sure

5 BY MS. SWEEN:

6 Q Ms. Zrmhal, can you please describe briefly for the  
7 Court the steps that you and your team took in order to  
8 respond to the OFCCP to date?

9 A Yes. We met with a number -- we gathered a team  
10 together, a Project Manager from my team, as well as  
11 discovery counsel and staff attorneys, to evaluate how to  
12 collect the documents and produce -- review and produce them.  
13 So, essentially, we had to work with the engineers on our  
14 gHire team, which stores a lot of our interview information,  
15 candidate information, and figure out how to extract the  
16 contents out of that data base. The documents aren't  
17 normally accessible in a way that you can extract them out,  
18 for privacy issues -- for privacy reasons. So, my team  
19 coordinated with engineers, as well as attempted a number of  
20 different methods to extrapolate documents out in a way that  
21 would be readable and usable.

22 From there, once we figured out -- it took us quite  
23 a few weeks to figure out exactly what to do. We had engaged  
24 with two or three of the gHire engineers. We worked with --  
25 at that point, had 15 staff attorneys lined up and ready to

1 review these documents and finally got them out after, you  
2 know, weeks and months of trying to figure out and coding  
3 different scripts to get the data out.

4           Once we got the documents, we wanted to ensure that  
5 we were reviewing them before just producing them, and the 15  
6 staff attorneys went through every single page by page, to  
7 redact out personal information for our employees.

8           At that point, it became too burdensome for our  
9 team and we had to outsource some of the work to a third  
10 party vendor at a lower rate, because the team was sort of  
11 bogged down with the amount of work for this particular case,  
12 and we support many cases at Google. So, we outsourced the  
13 work to third party vendors to finish the redaction of this  
14 information, so that we could prepare it for outside counsel  
15 to analyze and prepare the production side.

16           Q     And you mentioned the gHire engineers. Was it your  
17 understanding that they had systems in place that could  
18 extract this information?

19           A     No. We did not have systems in place and attempted  
20 multiple different tools that we had already available to us,  
21 but ultimately they had to build new scripts into it to  
22 extract this information in a way -- like I said -- that  
23 would be useful to both our attorneys and the receiving  
24 party.

25           Q     Do you have an approximate amount of time that it

1 took those gHire engineers to build that tool?

2 A We estimated about 40 hours.

3 Q And can you generally describe what types of  
4 documents were collected and produced by your team in  
5 response to the request?

6 A Sure. So, as I mentioned, we had collected some  
7 candidate information resumes. We also went through and  
8 collected various policies and guidelines. So, guidelines  
9 related to hiring, related to firing, related to, you know,  
10 termination of employees, related to job histories,  
11 promotions, user guides for how to use the different tools at  
12 Google, a lot of different documents that both a manager  
13 would see, as well as the employees would see related to  
14 these topics.

15 Q And approximately how many documents in total or  
16 pages in total do you understand you collected and produced  
17 in response to the OFCCP's request?

18 A We produced about 329,000 documents, which is about  
19 740,000 pages.

20 Q And do you know approximately how many items of  
21 applicant flow data -- which you mentioned earlier -- has  
22 been provided as a result of your collection efforts?

23 A There were over a million. I think it was close to  
24 1.3 million data points that we provided.

25 Q Is one of your job responsibilities to keep track

1 of how many employee hours are spent responding to the  
2 document and data request?

3 A Yes. As part of our role as a manager, we -- I am  
4 responsible for ensuring that we have the appropriate number  
5 of people available, for full-time and temp workers, to  
6 respond to requests that we get. So, I do this on a semi-  
7 regular basis.

8 Q And what's your best estimate of the number of  
9 hours your team, the gHire engineers, internal and external  
10 reviewers spent in order to collect, process, and review the  
11 documents that Google produced to OFCCP?

12 MR. ELIASOPH: I'm going to object. That's  
13 incredibly vague.

14 JUDGE BERLIN: Overruled. Don't guess, but if you  
15 can give an estimate or a range, that's fine.

16 THE WITNESS: So, we have an internal system that  
17 we use for our staff attorneys in order to answer their time,  
18 so they spent 600 hours, approximately, on reviewing the  
19 documents and redacting -- as I had alluded to before. There  
20 was 15 of them.

21 We also, as I mentioned, contracted with a third  
22 party vendor, who actually invoiced us, so there were five  
23 people from that vendor that spent an additional 600 hours on  
24 this redaction and review exercise. My team, we estimated  
25 between scripting, collecting, loading the documents, quality

1 control checking that we had everything, and then the  
2 analysis was about 300 hours, with -- it was either six or  
3 seven people on my team.

4 As I mentioned, we talked to the gHire engineers.  
5 There was a couple of them -- they estimated about 40 hours  
6 on building the script. We also had the people operations --  
7 or HR team -- that we coordinated with, and they estimated  
8 about 200 hours were spent just on aggregating this data.

9 BY MS. SWEEN:

10 Q Do you know approximately how much time your  
11 outside counsel spent in assisting in the collection and  
12 document review process?

13 A I looked at the invoices to evaluate how much time  
14 and it was about 600 hours.

15 Q In total, do you know what that number adds up to?

16 A In total of all of my team -- meaning the project  
17 management and operations -- the staff attorneys, the  
18 engineers, the people operations, and the outside counsel  
19 hours, is about 2,300 hours, total.

20 Q And other than your team and the gHire team --  
21 strike that. You actually answered that already.

22 Do you know approximately how many Google employees  
23 in the people operation department worked on responding to  
24 this request? I think you just answered that, but I just  
25 want to make sure.

1           A     I believe it was 10.

2           Q     Are you generally aware of the information that has  
3 been provided to date by the people operations team in  
4 response to the OFCCP's request? Is there anything that you  
5 haven't told us already that's been produced?

6           MR. ELIASOPH: Objection, vague as to what  
7 information is being referred to.

8           JUDGE BERLIN: Overruled.

9           THE WITNESS: So, what I understand, we have  
10 collected and produced policies and procedures related to  
11 hiring, termination, promotion, salary information,  
12 guidelines related -- and trainings relating on how to use  
13 the systems for our managers and employees, for how to use  
14 gHire and the compensation tools and systems. So quite a bit  
15 of information that we would see as both managers and  
16 employees related to any of those topics that I mentioned.

17 BY MS. SWEEN:

18           Q     You mentioned 1.3 as a collection number and we  
19 were talking about applicant flow data at that point in time.  
20 Is there a difference, do you recall, between the number of  
21 data points that were produced for compensation data versus  
22 applicant flow data?

23           A     Oh, yes, I believe there were different -- the data  
24 points that we are talking about on the spreadsheets. So  
25 there was 1.3 -- I believe one million, 1.3 million, data

1 points related to applicants. And then four or 500,000 data  
2 points related to compensation. So, separate and apart from  
3 the 1.3.

4 Q Okay. Do you recall whether the 1.3 million data  
5 points related to compensation?

6 A I don't recall.

7 Q Okay. And with respect to just the compensation  
8 data, are you aware of the total time associated with the  
9 collection review processing and disclosure of just the  
10 compensation data, the number of hours that that component  
11 took?

12 A The compensation data was pulled by our  
13 corroborations team. And, again, I think there was about 10  
14 people that worked on it.

15 Q Okay. And I think you mentioned before, is one of  
16 your job duties is to estimate the cost to Google in  
17 responding to these types of request for information,  
18 document gathering?

19 A Yes.

20 Q And have you estimated the total cost to date, not  
21 including outside counsel fees, to Google in order to respond  
22 to the OFCCP's document request?

23 A So what we did was estimate our internal man hours  
24 and how much that would cost, yes.

25 Q Okay. And do you have a number that you came to

1 with respect to that estimate?

2 MR. ELIASOPH: Objection, Your Honor. At the  
3 prehearing conference, the only information we received about  
4 this witness, they did not indicate that they would present a  
5 cost estimate on how much complying with the subject requests  
6 would be.

7 JUDGE BERLIN: Overruled. You can cross-examine.

8 BY MS. SWEEN:

9 Q You can answer the question. Do you have an  
10 estimate in mind with respect to how much it's cost Google to  
11 date, not including outside counsel fees, in order to respond  
12 to the OFCCP's requests?

13 A Yes, we estimated about \$250,000.

14 Q Okay. And how would you characterize that  
15 estimate?

16 MR. ELIASOPH: Objection, vague.

17 JUDGE BERLIN: Sustained.

18 BY MS. SWEEN:

19 Q Can you give me an idea of whether that is a high  
20 estimate, a low estimate, a mid-estimate? How would you  
21 characterize it?

22 MR. ELIASOPH: Objection, leading.

23 JUDGE BERLIN: I'll allow it.

24 THE WITNESS: So, to create that estimate, what I  
25 did was essentially look at and evaluate the data for how

1 many hours we spent on the particular project. And then  
2 evaluate based on an hourly fee. So it's pretty low and  
3 conservative, because what we worked out on the hourly fee  
4 isn't necessarily what people's salaries are or our --  
5 because they're not hourly employees, but, rather, the level  
6 of work that is required.

7 So, as an example, for our staff attorneys, they  
8 did not use their full compensation package. I estimated  
9 what the third party vendor used, which is a much lower  
10 number.

11 BY MS. SWEEN:

12 Q And in that estimate, did you include any component  
13 with respect to technology or infrastructure your costs or  
14 anything like that?

15 MR. ELIASOPH: Objection, leading.

16 JUDGE BERLIN: I'll allow it.

17 THE WITNESS: No. I just included the number of  
18 hours. There's other pieces of my job that I'm responsible,  
19 including clearing software, licensing software, purchasing  
20 hardware. I didn't amortize that data across this particular  
21 case, because we have so many different cases. So this is  
22 just the people hours.

23 BY MS. SWEEN:

24 Q And are there any other components, other than the  
25 people hours that you included in your cost estimate, other

1 than what you've already testified to?

2 A No.

3 Q Do you know what Google has spent in outside  
4 counsel fees in order to respond to OFCCP's request?

5 MR. ELIASOPH: Objection, relevance.

6 JUDGE BERLIN: You can answer yes or no. Do you  
7 know how much?

8 THE WITNESS: I know how much our outside counsel  
9 has spent related to the collection, review, and production  
10 component.

11 BY MS. SWEEN:

12 Q Okay. And what was that amount?

13 A Over \$210,000.

14 Q And so what is your best estimate of Google's cost  
15 to respond to the OFCCP's request for data and information to  
16 date?

17 A So, it's just under \$500,000.

18 Q Do you have any estimation of what it would cost  
19 Google to proceed in responding to OFCCP's subject demands?

20 MR. ELIASOPH: Objection, vague.

21 JUDGE BERLIN: You can answer yes or no.

22 BY MS. SWEEN:

23 Q Let me strike that and I'll back up.

24 Are you aware of the pending subject demands that  
25 are at issue in this case?

1 A Yes.

2 Q Okay. And you have a general awareness of what  
3 those categories of information are?

4 A Yes.

5 Q Okay. And can you describe to the best of your  
6 understanding what categories of information that is?

7 A Yes.

8 So, as I understand it, there's three categories of  
9 data that we were asked to produce. The first category is  
10 name, contact information, for about 20,000 -- 25,000  
11 employees.

12 The second is a number of different data points,  
13 job history, salary history, compensation history. I think  
14 it's over 85 data points that have been asked for.

15 And then the third question or working of data is  
16 for a prior year snapshots for -- I believe the date was  
17 September 1st, 2014.

18 Q And have you spent any time estimating the cost to  
19 Google with respect to their internal reviewers or their  
20 external third party reviewers, not including outside  
21 counsel? Have you spent any time estimating what the total  
22 cost to Google would be to continue to respond to the subject  
23 demands?

24 A We evaluated about how much time it would take to  
25 collect that information.

1 Q Okay. And what was that estimate?

2 A So, I spoke with a number of different teams,  
3 because this would require coordination between the people  
4 operation team, the stock admin team, the compensation team  
5 -- all different people. So it would be about 10 different  
6 people, each taking 40 -- you know, so about 400 to 500  
7 hours.

8 Q Okay. And do you have a cost estimate related to  
9 that or do you use the same analysis you did before? It's  
10 the same analysis you had used before for that 400 to 500  
11 hours?

12 A Yes.

13 Q Do you have any particular cost estimate?

14 A It could be as much as \$100,000.

15 MS. SWEEN: No further questions, Your Honor.

16 JUDGE BERLIN: So the 400 to 500 hours you said was  
17 to collect the information, does -- you also spoke before  
18 about reviewing it, redacting things -- are you including  
19 that in the four to 500 hours?

20 THE WITNESS: No, I didn't include that because  
21 when we come up with an estimate of the review, it's best to  
22 have the data in front of you to understand exactly how much  
23 time it would take and we don't have that data collected yet,  
24 so it's difficult to estimate.

25 JUDGE BERLIN: Mr. Eliasoph?

1 MR. ELIASOPH: I'm sorry, is the question -- have  
2 you concluded your direct?

3 MS. SWEEN: I did say, "Thank you, Your Honor."  
4 But I do have one follow-up question before cross, if you  
5 don't mind.

6 JUDGE BERLIN: Any objection?

7 MR. ELIASOPH: No.

8 JUDGE BERLIN: All right.

9 BY MS. SWEEN:

10 Q Ms. Zrmhal, has -- to your knowledge, has Google  
11 begun collecting any of the information related to the  
12 subject demands?

13 A No.

14 MS. SWEEN: Thank you, Your Honor.

15 JUDGE BERLIN: Mr. Eliasoph?

16 MR. ELIASOPH: Thank you.

17 CROSS-EXAMINATION

18 BY MR. ELIASOPH:

19 Q I want to go -- I'll start where you ended there.  
20 You indicated that with respect to the subject demands, you  
21 estimate just the collection of that information will be four  
22 to 500 hours? Did I understand that right?

23 A That's right.

24 Q Okay. Can you break that down for me?

25 Could you start with, where is -- let's go

1 demand-by-demand. Name and contact information, where is  
2 that information stored?

3 MS. SWEEN: Objection, Your Honor, it's beyond the  
4 scope. We did not talk about name and contact information.  
5 We talked about gathering documents relevant to subject  
6 demand, other than the name and contact information.

7 MR. ELIASOPH: Your Honor, the witness just  
8 testified that she considered all three categories and that  
9 this was an all-in estimate.

10 JUDGE BERLIN: I'm going to allow this for a time,  
11 but I don't anticipate allowing you to go through 30 or 40  
12 different parameters and, also, this is, again, not discovery  
13 for later use. So -- but some, I'll allow.

14 MR. ELIASOPH: Understood, Your Honor.

15 JUDGE BERLIN: Okay.

16 So you can answer the question. Do you still have  
17 in mind the question Mr. Eliasoph asked?

18 THE WITNESS: Would you mind asking it one more  
19 time?

20 MR. ELIASOPH: No problem.

21 BY MR. ELIASOPH:

22 Q So, name and contact information, are you aware of  
23 how that information is stored?

24 A No.

25 Q And have you done an estimate on how burdensome or

1 how costly -- strike that.

2 How many hours it would take to gather name and  
3 contact information?

4 A I don't have an estimate for that.

5 Q Okay. Thank you.

6 Now, the 2014 snapshot, do you know where the  
7 information is stored with respect to that snapshot?

8 A No.

9 Q Are you aware of any category of information that's  
10 been requested that's not electronically stored?

11 MS. SWEEN: The question is vague as phrased,  
12 overbroad.

13 JUDGE BERLIN: Overruled.

14 THE WITNESS: I'm not specifically aware of where  
15 the electronic or non-electronic data sources that -- where  
16 information that has been requested is stored.

17 BY MR. ELIASOPH:

18 Q Okay. But you're not specifically aware of  
19 requests -- or you're not specifically aware of requests that  
20 would be -- let me try again.

21 You're not specifically aware of responsive  
22 information that is not electronically stored?

23 MS. SWEEN: The question is vague, overbroad.

24 JUDGE BERLIN: Well, she said she doesn't know  
25 whether what's electronic and what isn't. So she doesn't

1 know.

2 You're just asking the question another way. But  
3 you asked it already once.

4 BY MR. ELIASOPH:

5 Q So, for the 2014 snapshot, how many hours will it  
6 take to compile the information that OFCCP has requested?

7 A I don't know.

8 Q So that was not part of your estimate?

9 A It was part of just -- we analyzed approximately  
10 how many hours it would take for all three of the categories,  
11 based on talking to a number of different teams and then  
12 estimating how many people it would take to do that and how  
13 long it would take them to do that, but not specifically that  
14 request, that one request.

15 Q So the estimate you're providing the Court today,  
16 you're not aware of its component parts?

17 MS. SWEEN: Misstates the testimony.

18 BY MR. ELIASOPH:

19 Q Are you aware of its component parts?

20 MS. SWEEN: Is the question is she aware of the  
21 subject demand component parts?

22 JUDGE BERLIN: Do you mean the three components:  
23 The contact information, the salary history, and the  
24 snapshot? Or are you talking about something else?

25 MR. ELIASOPH: I'm just asking -- she's provided an

1 estimate. I want to know how it was built.

2 BY MR. ELIASOPH:

3 Q So, it sounds like from your testimony -- and I'm  
4 just trying to understand how this estimate came about --  
5 that it was not built by segregating out the 2014 snapshot,  
6 the hours that would be required to compile that, versus the  
7 other requests, which would be the prior history and the  
8 salary history. So your estimate was not done that way?

9 MS. SWEEN: Objection, Your Honor, to the extent  
10 he's asking the witness to shoe horn her answer into a 2014  
11 snapshot, as if that exists at Google, as compared to the  
12 component pieces that go into a 2014 snapshot.

13 MR. ELIASOPH: Your Honor, this objection is  
14 argumentative and leading the witness.

15 JUDGE BERLIN: How did you arrive at the estimate  
16 that you testified to? So what it would cost to comply with  
17 OFCCP's current request.

18 THE WITNESS: So, we -- I sat down with people from  
19 the compensation team, the people operations team. They had  
20 information from the stock admin team and we sort of just  
21 walked through approximately how many people they would have  
22 to reach out to and how long they expected those people would  
23 have to work to gather information. It's in a number of  
24 disparate systems, of which I don't know the names, but they  
25 said they would have to query multiple different systems and

1 calculate this information. And so it was basically  
2 information that was provided to me.

3 BY MR. ELIASOPH:

4 Q So you don't have personal knowledge of the  
5 underlying information that goes into this estimate?

6 MS. SWEEN: Misstates the testimony.

7 BY MR. ELIASOPH:

8 Q Do you have personal knowledge of the underlying  
9 information?

10 A Based on my conversation -- the information is  
11 based on my conversations and working through with a couple  
12 of people.

13 Q Okay. So, did -- based on that conversation, what  
14 is your understanding -- based on that conversation, do you  
15 have any understanding on the specific number of hours it  
16 would take to gather the 2014 snapshot?

17 MS. SWEEN: Misstates the testimony.

18 MR. ELIASOPH: I'm asking a question.

19 MS. SWEEN: You said --

20 THE WITNESS: I'm not sure I actually understand  
21 your question.

22 JUDGE BERLIN: So, you were saying you didn't  
23 really, yourself, divide it into thee three categories of  
24 documents or anything. Do you have an estimate of how long  
25 it will take Google in terms of hours of work to come up with

1 a full response about the 2014 snapshot?

2 THE WITNESS: I don't have an estimate for the  
3 specific snapshot, no. Just the three together.

4 BY MR. ELIASOPH:

5 Q Okay. What can you tell me about your estimate as  
6 to how it was put together, other than the fact that you  
7 spoke to multiple teams? Can you subdivide the 400, 500  
8 hours in any way?

9 A I can subdivide them just based on the different  
10 people that we talked to on each teams have the data, but  
11 that's -- but that's not specific to the three requests.

12 Q Okay. We -- I think the Court and we would love to  
13 understand how it takes 400 to 500 hours to gather the  
14 information. So if you can provide what your separate team  
15 members said, even though we have no ability to verify the  
16 information, please.

17 MS. SWEEN: Your Honor, that's argumentative.

18 JUDGE BERLIN: No, I'll allow it. If you could, you  
19 know, just -- it's a little -- it calls for a narrative, it's  
20 very broad, but maybe just describe what you talked about  
21 with the various teams in a little more detail?

22 THE WITNESS: Sure. There's, essentially, multiple  
23 data bases that contain information -- either current  
24 information or historical information. And so the estimates  
25 from people came from the time it would take to create the

1 script, to extract the content, and, in certain instances,  
2 compile it and do mathematics to put everything together the  
3 way it's been asked for, because there's so many different  
4 data points that exist in multiple different systems.

5 I didn't go through and outline every single system  
6 that they would have to query from, but we were estimating  
7 based on their knowledge and what we've done in the past, to  
8 just query data bases, put the information together. And  
9 when I say "query," that means you have to write specific  
10 code and scripts to ensure you're getting the right data  
11 points and then calculations of those data points for the  
12 request.

13 BY MR. ELIASOPH:

14 Q So, what information needs specific scripts to be  
15 written in order to extract it?

16 MS. SWEEN: Calls for speculation.

17 JUDGE BERLIN: If you know, you can answer.

18 THE WITNESS: All of the requests have to be pulled  
19 in some way, but I don't know specifically which ones have  
20 scripts already filled versus which ones don't.

21 BY MR. ELIASOPH:

22 Q So, you have no ability -- your estimate -- are you  
23 able to identify specific items that would be particularly  
24 time consuming to extract?

25 A I can provide an example of what's more difficult

1 than one might think. The example being if it relates to  
2 stocks and the price of a vest -- vested stock at a certain  
3 time in history is not necessarily stored in the data base,  
4 so it has to be queried or analyzed to appropriately come up  
5 with the value of it.

6 The same is true for some historical information  
7 and job information. It might not exist in a static state,  
8 and so it has to be queried through multiple systems.

9 Q Now, do you know if that stock information is also  
10 available in W-2 data?

11 A I'm not sure what you mean.

12 Q Are you aware if Google maintains W-2 data  
13 involving its employees?

14 MS. SWEEN: Calls for speculation beyond her own  
15 personal knowledge of herself.

16 MR. ELIASOPH: I asked if she was aware.

17 JUDGE BERLIN: You can answer. If you don't know,  
18 say that you don't know.

19 THE WITNESS: I know that I have a W-2. I don't  
20 know where that data is stored or how it gets aggregated.

21 BY MR. ELIASOPH:

22 Q Okay. Do you know if Google complies with FLSA  
23 regulations that require individual employee level records to  
24 be maintained in a safe, accessible, central location, and  
25 must be available within 72 hours after notice of the

1 Department of Labor?

2 MS. SWEEN: Your Honor, calls for --

3 JUDGE BERLIN: This one is, "Do you know?" That  
4 was the question.

5 THE WITNESS: I don't know.

6 BY MR. ELIASOPH:

7 Q Do you know if Google maintains employee level  
8 data?

9 MS. SWEEN: The question's vague.

10 MR. ELIASOPH: I'm just asking --

11 JUDGE BERLIN: Is there any information at Google  
12 that's organized by the employee, that you know of?

13 MS. SWEEN: The question's overbroad and vague.

14 THE WITNESS: I really don't know how to answer the  
15 question.

16 BY MR. ELIASOPH:

17 Q Do you -- are you aware of whether Google maintains  
18 its payroll data?

19 A I assume it --

20 Q If you don't know, you don't know.

21 JUDGE BERLIN: Are you aware of a payroll data  
22 base? You know, some companies have a payroll service that  
23 does their payroll for them, and they might keep records and  
24 they might not. Maybe the payroll company does. But do you  
25 know if Google has a payroll data base?

1 THE WITNESS: I don't know if we have it -- if we  
2 maintain it or if it's maintained elsewhere.

3 BY MR. ELIASOPH:

4 Q So, are you -- are you at all familiar with gComp?

5 A I'm familiar with the tool as a manager that has  
6 used it.

7 Q And are you familiar with the type of information  
8 that's stored in it?

9 A I've never accessed the back end of it, so I only  
10 know what's presented to me as a manager.

11 Q And are you aware that merit increases are stored  
12 in gComp?

13 MS. SWEEN: Your Honor, this is beyond the scope of  
14 the direct examination.

15 JUDGE BERLIN: I'll allow it, if you know.

16 THE WITNESS: I don't know anything about how the  
17 data is stored or where it is stored. I know the interface  
18 that we call gComp, and that it presents information about  
19 merit increases.

20 BY MR. ELIASOPH:

21 Q Okay. And it also presents information about  
22 promotion data, doesn't it?

23 A What do you mean by "promotion data"?

24 Q When promotions occurred, how much it was.

25 MS. SWEEN: Calls for speculation.

1 MR. ELIASOPH: I'm asking the witness if she knows.

2 JUDGE BERLIN: Would you please direct your  
3 comments to me? Thank you.

4 You can answer, if you know.

5 THE WITNESS: I'm having trouble, because I don't  
6 fully understand the question. You said how much in a  
7 promotion?

8 BY MR. ELIASOPH:

9 Q Is there any promotion information as far as you  
10 are aware in gComp?

11 A There's -- there can be information displayed in  
12 the gComp interface related to promotions.

13 Q Okay. And is there bonus data displayed there?

14 A There's bonus data displayed in the gComp  
15 interface.

16 Q And is there equity information displayed there?

17 A For certain levels, there is equity information  
18 displayed.

19 Q And stock increases, are they displayed there?

20 A No, not that I'm aware of.

21 MS. SWEEN: Your Honor, I'm going to object on the  
22 grounds that this is now getting into one of those 32,000  
23 categories of information that you indicated, we weren't  
24 going to go down this track. This individual has not been  
25 put on the stand to be an expert with respect to our gComp

1 data system. She interfaces as a manager and, therefore, her  
2 personal knowledge with respect to what's displayed there is  
3 as a manager, not as a data collections analyst, because she  
4 doesn't own that system.

5 She would have to go to somebody else to ask what's  
6 on that system. So this whole line of testimony is  
7 irrelevant.

8 JUDGE BERLIN: I'm going to allow a few more of  
9 these, but it's got to come to an end, because unless we want  
10 to go through every step of how Google is going to respond  
11 and provide to OFCCP with these requested data, which will  
12 take a very long time, I don't know that this -- and I don't  
13 know that this witness can answer all of those questions. My  
14 impression is that she can't. And if you're trying to make  
15 that impression, you've made it.

16 But if you want to get into the nitty gritty of  
17 just what do they have to do, I'm not sure this is going to  
18 be very productive.

19 MR. ELIASOPH: Thank you, Your Honor. I will take  
20 the cue from the Court.

21 BY MR. ELIASOPH:

22 Q I do, actually, though -- I am still puzzled as to  
23 what is entailed in this 400 hours -- four to 500 hours. You  
24 indicated that scripts need to be developed. What else needs  
25 to happen?

1           A     So, in order to respond to a request for large data  
2 sets, we have to identify the data owner, who will then have  
3 to evaluate what the data base schema is, to then write  
4 queries that will aggregate the information in a way that can  
5 be organized and useful.

6                     Part of that is going to take iterations between  
7 our lawyers and the data owners, that will then coordinate  
8 with engineers to write the scripts. We generally will test  
9 the scripts to make sure that they're not missing any data.  
10 Because we have been around for a number of years and this  
11 data encompasses historical data, that there's been  
12 migrations over the years, you have to do a lot of validation  
13 to ensure that what you're providing is the accurate data,  
14 and that requires what we call quality control checking.

15                    As I mentioned, there's also certain data points  
16 that require multiplication or division, so you have to build  
17 those in and ensure that you're querying and aggregating the  
18 right numbers. It's somewhat similar to a person putting  
19 together like a large financial statement with lots of  
20 different data points and validation to ensure that the  
21 information that you're providing is accurate.

22                    So, it would require our lawyers, the data base  
23 owners that could have a number of different titles, and then  
24 engineers that have a good understanding of the underlying  
25 data bases, so they know how to query it. If we went through

1 all of those steps for the multiple data bases, we would then  
2 aggregate it and have somebody run through it, probably  
3 from -- you know, the data owners, the compensation team, the  
4 stock admin team, the payroll team, the HR team, to make sure  
5 that it's accurate before we would ever produce it and turn  
6 it over.

7 Q Okay. So, how much of this 400 hours would involve  
8 attorney time?

9 A We actually, in my estimate, I didn't include any  
10 of our outside counsel, attorneys. That was just internal  
11 time of my team and the engineers and the data base owners.

12 Q I'm asking for the in-house attorneys.

13 A If the data contained personal information about  
14 our employees, we would have our staff attorneys run through  
15 a redaction exercise, as well. Because I don't have the data  
16 in front of me, or I haven't seen it, it would be difficult  
17 for me to estimate.

18 Q So you don't know how much of the 400 hours would  
19 be spent in redacting information to be submitted?

20 MS. SWEEN: Misstates the testimony. She already  
21 testified that it didn't include that component part.

22 JUDGE BERLIN: Is that right, your estimate of four  
23 to 500 hours, even with respect to in-house counsel, does not  
24 include the time that it would take to redact personal  
25 information?

1 THE WITNESS: That's right.

2 BY MR. ELIASOPH:

3 Q Okay. Well, I'm a little bit lost, because I asked  
4 what the 400 hours entailed and you specifically said it  
5 involved an iterative process between the attorneys and  
6 separate teams. So was that wrong?

7 JUDGE BERLIN: But remember I was asking her before  
8 on direct, you know, was this just the collection part or was  
9 this, also, like reviewing it to redact things and she  
10 described with respect to the first response, three different  
11 steps, the last of which was reviewing things to redact. And  
12 the answer I heard was, "No, this is just for the collection  
13 part, because until we see how much data we collect, I really  
14 can't estimate how long it will take to do the rest."

15 So I'm assuming when she says the lawyers are  
16 involved, even in the collections, that it's for some purpose  
17 other than reviewing for redactions.

18 Is that right?

19 THE WITNESS: Yes.

20 JUDGE BERLIN: Okay.

21 BY MR. ELIASOPH:

22 Q Okay. What other purpose are the lawyers doing --  
23 or are you saying your four to 500 hours has -- does not  
24 involve any attorney time, including your in-house team?

25 MS. SWEEN: Misstates the testimony.

1 JUDGE BERLIN: Well, he's asking.

2 I mean, does the four to 500 hours include any  
3 attorney time for your staff attorneys?

4 MS. SWEEN: No.

5 BY MR. ELIASOPH:

6 Q And, I'm sorry, you said that it does include  
7 attorney time or it does not?

8 A It does not include attorney time.

9 Q Okay. So, you indicated that it does include  
10 quality control time. Can you tell me what that quality  
11 control exercise is?

12 A So, this would happen between people on my team, as  
13 well as the data owners, ensuring that we don't have  
14 duplicative data. And, again, I have to couch this with I  
15 don't have the data and we haven't written the queries, so  
16 this is how kind of hypothetical of how I would evaluate and  
17 analyze and ensure that we have the appropriate data. But  
18 generally what we're looking for is that the queries are  
19 pulling back the intended information, that there isn't  
20 duplicative data, that there aren't math errors. That  
21 becomes very difficult without having gone through the  
22 exercise.

23 Q Can you estimate how many hours it would take to  
24 simply gather the raw information requested?

25 A I don't know.

1 Q Okay. Can you tell me for what was already  
2 produced to OFCCP, that there was a 2015 snapshot, do you  
3 know how many hours went into that -- in producing that  
4 snapshot?

5 A I don't know.

6 Q And you indicated that much of what has been  
7 produced to OFCCP involved hiring, correct?

8 A Yes. I think that when I ran through the list of  
9 things I know that we collected, it was related to hiring as  
10 well as other activities.

11 Q And you threw out the term, you know, like, 1.4  
12 million items of data. What does that mean?

13 JUDGE BERLIN: I think she said 1.3 million.

14 MR. ELIASOPH: Okay.

15 THE WITNESS: Data points. So different -- within  
16 dozens of spreadsheet, if I recall correctly, the different  
17 data points that were provided.

18 BY MR. ELIASOPH:

19 Q And how much time did Google spend calculating how  
20 many items of data they provided OFCCP?

21 A I don't know.

22 Q What is an item of data? Can you give examples of  
23 what would constitute an item of data?

24 A It's basically, I guess, a cell in a spreadsheet.

25 Q And you indicated that Google attorneys have spent

1 time reviewing and redacting submissions to OFCCP?

2 A Yes.

3 Q Are you aware of any requirement that Google review  
4 and redact documents before it submits it to OFCCP?

5 A We have internal requirements about, basically,  
6 safeguarding our confidential and private information,  
7 especially as it relates to employees. So part of the reason  
8 that the extraction, for instance, from gHire took so long is  
9 because we put security protocols in place, so that we can't  
10 extract this information out so easily. So those are the  
11 internal guidelines that we have about safeguarding and  
12 ensuring that we're only producing information absolutely  
13 required and protecting the privacy of our employees.

14 Q So the impediment is of Google's own making?

15 MS. SWEEN: Argumentative.

16 JUDGE BERLIN: I'll allow it. Well, sustained as  
17 to the word "impediment."

18 You can rephrase.

19 BY MR. ELIASOPH:

20 Q Part of the expense is to override Google's own  
21 security protocols?

22 A I don't know that I would characterize it as an  
23 override. It's ensuring that you're not opening up your  
24 internal systems to malicious attacks, which is a very  
25 dangerous issue that we've all seen and it's something that

1 we take very seriously.

2 Q Now, are you familiar that in prior reviews Google  
3 did not, in fact, go through and redact applicant  
4 applications?

5 MS. SWEEN: Vague as to time.

6 THE WITNESS: I don't know.

7 BY MR. ELIASOPH:

8 Q You don't know.

9 How much has Google spent just in these legal  
10 proceedings?

11 MS. SWEEN: Relevance and vague.

12 JUDGE BERLIN: Sustained.

13 BY MR. ELIASOPH:

14 Q So you indicated that Google has spent 2,300 hours  
15 in producing information with respect to this review?

16 A The collection review and production of that  
17 information.

18 Q And what percent of that involved compensation  
19 information?

20 A I don't know.

21 Q Could you provide an estimate?

22 JUDGE BERLIN: Don't guess. But if you could give  
23 a range or give us some knowledge and if you can give an  
24 estimate you're comfortable, you should do that, but don't  
25 guess.

1 THE WITNESS: I don't have an estimate.

2 BY MR. ELIASOPH:

3 Q Do you know if it's less than half?

4 A I think I'd have to guess.

5 Q Now, you've testified on behalf of Google in prior  
6 cases in which you provide cost estimates?

7 MS. SWEEN: Relevance, Your Honor.

8 JUDGE BERLIN: You can answer yes or no. Have you  
9 done that?

10 THE WITNESS: I have testified on behalf of Google.  
11 I can't recall if there were cost estimates in specific  
12 testimony.

13 BY MR. ELIASOPH:

14 Q Do you recall that in SEC vs. Google, you estimated  
15 that a data production would cost approximately \$100,000 per  
16 custodian?

17 MS. SWEEN: Your Honor, this is well beyond the  
18 scope of direct examination and it's also not relevant.

19 JUDGE BERLIN: I'll allow it.

20 Do you recall giving that testimony?

21 THE WITNESS: No, I don't recall.

22 BY MR. ELIASOPH:

23 Q Are you familiar with the Work Day system?

24 A I've used the Work Day system.

25 Q From your use of Work Day, does it display salary

1 data with respect to Google employees?

2 A Yes.

3 Q Does it also store salary history?

4 A I don't know where the data is stored.

5 Q I appreciate that. Does it also display salary  
6 history?

7 A Yes.

8 Q And that would include every change in  
9 compensation?

10 MS. SWEEN: Calls for speculation.

11 JUDGE BERLIN: If you know.

12 THE WITNESS: So, I know from my personal  
13 experience of using the interface of the Work Day system,  
14 that it has my salary changes in it displayed.

15 JUDGE BERLIN: But you don't know one way or the  
16 other about other employees?

17 THE WITNESS: Not for every employee. All I have  
18 access to is my own.

19 BY MR. ELIASOPH:

20 Q And does it have your job history in it?

21 A Yes.

22 Q Does Work Day include your contact information?

23 MS. SWEEN: Objection, Your Honor. This witness  
24 has testified she's only used this for her own personal use.  
25 There's no foundation that she's ever used it in a collection

1 effort situation or that she has any experience or knowledge  
2 using it for the purposes that the OFCCP is asking us to use  
3 it for. So I think this whole line of testimony is not  
4 relevant and should be stricken.

5 JUDGE BERLIN: I'll allow it for what it's worth.  
6 It's one employee's experience.

7 BY MR. ELIASOPH:

8 Q You are a Google employee?

9 JUDGE BERLIN: No, we have that. So, go to the  
10 question that was pending.

11 MR. ELIASOPH: I just want to know if her contact  
12 information is in it.

13 THE WITNESS: I'm not actually sure exactly what  
14 information is in it, as it relates to like my contact  
15 information.

16 BY MR. ELIASOPH:

17 Q You testified earlier that you produced the Work  
18 Day manual?

19 MS. SWEEN: Misstates the testimony.

20 BY MR. ELIASOPH:

21 Q Are you familiar with the Work Day manual?

22 MS. SWEEN: Asked and answered.

23 JUDGE BERLIN: You can answer again.

24 THE WITNESS: I haven't seen the Work Day manual.  
25 I know we produced user manuals and guidelines, but I don't

1 recall specifically seeing the Work Day manual.

2 BY MR. ELIASOPH:

3 Q I'm not going to read the Work Day manual, because  
4 it is sealed and I don't want to complicate these  
5 proceedings.

6 JUDGE BERLIN: You can just argue about it. I  
7 mean, it's in there. You can include it in your brief, or  
8 whatever.

9 BY MR. ELIASOPH:

10 Q Is there any reason that you are aware of that if  
11 the manual says that it contains that information it wouldn't  
12 be in there?

13 A I just mean I don't recall putting my information  
14 in there or looking at it myself. When I go into Work Day,  
15 that's not what I use it for.

16 Q But my question is: Are you aware of any aspect of  
17 the manual that's incorrect?

18 JUDGE BERLIN: Are you familiar with the contents  
19 of the manual for Work Day?

20 THE WITNESS: No.

21 MR. ELIASOPH: Okay. I have nothing further.

22 JUDGE BERLIN: Ms. Sween?

23 MS. SWEEN: Just one question, Ms. Zrmhal -- or  
24 maybe two.

25 REDIRECT EXAMINATION

1 BY MS. SWEEN:

2 Q Do you know if it's Google's practice to turn over  
3 information in litigation or audit situations without first  
4 having some level of review for quality control?

5 A In every matter that I've worked on for Google,  
6 both as an employee since 2011, and then prior as a  
7 consultant, we have done a review or analysis of the  
8 documents before we produce them.

9 Q So if OFCCP were to make the representation that if  
10 we just turned over interview notes to them and allow them to  
11 extract information they were interested in, would that be  
12 something that Google would typically comply with?

13 MR. ELIASOPH: Object, that's outside the scope of  
14 this subject request.

15 MS. SWEEN: It was brought up in the hearing.

16 JUDGE BERLIN: I'll allow it.

17 You were asking whether -- you used the word  
18 "impediment," but you did change it, so is this a self-  
19 created requirement.

20 BY MS. SWEEN:

21 Q Do you have the question in mind?

22 A Could you ask it one more time?

23 Q Sure. If OFCCP represented to this Court that they  
24 made an offer to have Google just turn over interview notes  
25 and that they would extract information that they were

1 interested in from the raw data, is that something that would  
2 lessen Google's burden with respect to producing interview  
3 notes?

4 A No. We would -- I'm not exactly sure how  
5 voluminous that would be, but we would definitely review and  
6 analyze those documents before it would be produced. So we  
7 would have attorneys, our internal team or have to hire a  
8 third party vendor to go through that and redact out the  
9 personal and confidential information. So that would  
10 actually be very time consuming.

11 MS. SWEEN: Thank you, Your Honor. No further  
12 questions.

13 JUDGE BERLIN: Mr. Eliasoph?

14 MR. ELIASOPH: No further questions.

15 JUDGE BERLIN: All right. Ma'am, thank you very  
16 much for your testimony and you're excused.

17 (Witness excused.)

18 JUDGE BERLIN: So, I'm shortly going to take our  
19 lunch break, but, Mr. Eliasoph, I don't recall which of the  
20 OFCCP attorneys wrote a letter, but -- alerting me to the  
21 Ninth Circuit's decision on remand in the McLane case. And,  
22 Ms. Sween, I know you were copied on the letter.

23 I don't know if Google -- let me start again.

24 I don't know if Google had an opportunity to review  
25 that case and there might be ways to distinguish the Ninth

1 Circuit's opinion. But I just want you to know at the  
2 conclusion of the evidence, I'm really asking if Google  
3 wishes to concede the point about that the contact  
4 information that's been requested in these four categories --  
5 I fully understand Google's resistance to producing that.  
6 And I appreciate Google's concern for the privacy of its  
7 employees. But my decision is going to be controlled by  
8 anything that applies from the Ninth Circuit.

9 So this is a recent decision and, as I said, Google  
10 might be able to distinguish it in good faith, meeting the  
11 requirements we have in 29 CFR 18.35, but I will be asking  
12 Google for its views on that, just to let you know.

13 All right. Why don't we break now for the lunch  
14 hour? And let's be back in one hour.

15 MS. SWEEN: Your Honor, Google does intend to rest  
16 at this point. So if Your Honor wanted to push through and  
17 go to closing arguments, we are not adverse to that.

18 JUDGE BERLIN: All right. So, Google rests at this  
19 point.

20 Mr. Pilotin, is OFCCP planning to offer any  
21 rebuttal witnesses?

22 MR. PILOTIN: No, Your Honor, no rebuttal  
23 witnesses.

24 JUDGE BERLIN: All right. I would appreciate  
25 estimates from each of you about the amount of time you need

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: MAY 26, 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 Ohlson*

*5-30-17*

SIGNATURE OF REPORTER

DATE

**U.S. Department of Labor**

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**Issue Date: 15 March 2017**

CASE NO. 2017-OFC-00004

*In the Matter of*

**OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS,  
U.S. DEPARTMENT OF LABOR,**  
Plaintiff,

v.

**GOOGLE INC.,**  
Defendant.

**ORDER DENYING PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT**

This case is akin to a subpoena enforcement proceeding. OFCCP is charged to evaluate federal contractors' compliance with certain employment non-discrimination and affirmative action requirements. *See* Executive Order No. 11246; the Rehabilitation Act of 1973, and the Vietnam Era; 41 C.F.R. § 60-1.20(a). Federal contracts contain mandatory terms requiring the contractor to comply with these requirements as well as with OFCCP's requests for records and information in connection with its evaluations.

The General Services Administration awarded Google a particular contract on June 2, 2014. OFCCP alleges that, as of December 29, 2016, GSA had paid Google \$600,000 on the contract. Complaint, ¶ 4. Among the contract terms were these standard government contract requirements described above. *See also*, 41 C.F.R. § 60-1.12(c). OFCCP notified Google on September 30, 2015, that it was initiating a compliance evaluation. The process has taken the regulatory form of a "compliance review." *See id.*

OFCCP began with requests for considerable records and information; Google complied. OFCCP next required an onsite inspection that included interviews of more than twenty Google managers. Google again complied. OFCCP then requested additional information, including extensive data for some 20,000 employees.<sup>1</sup> After some conciliation efforts on these last

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<sup>1</sup> The three-step information gathering process is consistent with the regulatory scheme. *See* 41 C.F.R. § 60-1.20(a).

requests, the parties reached an impasse, and Google declined to produce the additional information requested. OFCCP then brought the current action.

OFCCP filed its complaint on January 4, 2017, requesting an order (1) requiring Google to comply with the Executive Order, the statutes listed above, and their implementing regulations; (2) directing Google to provide OFCCP with the requested items; and (3), in the event Google fails to comply, imposing certain sanctions. In its answer, Google denies the material allegations of the complaint and asserts various affirmative defenses.

The implementing regulations provide a permissive expedited procedure for cases of this kind. 41 C.F.R. §§ 60-30.31 through 60-30.37 (“Expedited hearings may be used, *inter alia*, when a contractor or subcontractor . . . has refused to give access to or to supply records or other information as required by the equal opportunity clause”). OFCCP moved to apply the expedited procedures, a motion that I granted over Google’s objections. Order, Feb. 21, 2017.

OFCCP’s complaint recites the specific items that it seeks:

a compensation snapshot as of September 1, 2014;

job and salary history for employees in a September 1, 2015 compensation snapshot that Google had produced and the requested September 1, 2014 snapshot, including starting salary, starting position, starting “compa-ratio,” starting job code, starting job family, starting job level, starting organization, and changes to the foregoing; and

the names and contact information for employees in the previously-produced September 1, 2015 snapshot and the requested September 1, 2014 snapshot.

Complaint, ¶9.

The “snapshot” includes for each employee working at the subject facility, Google’s headquarters in Mountain View, California, data falling into at least 38 categories plus “Any other factors related to Compensation.” D.Ex. B at 3.

On February 7, 2017, OFCCP moved for summary judgment. The motion must be denied, as the implementing regulations establishing the expedited procedures do not permit such motions. Even were I to reach the merits, I would deny the motion.

The regulations establishing the expedited procedures aim at focusing the parties narrowly on preparation for a relatively informal hearing on a sharply foreshortened schedule. These regulations incorporate by reference certain specified portions of the regulatory process generally applicable in an ordinary, non-expedited case. For example, the expedited procedures expressly incorporate by reference the pleading requirements applicable to routine cases. 41 C.F.R. § 60-30.32. They incorporate by reference the ordinary procedures for requests for admission. 41 C.F.R. § 60-30.33(a).

In several ways, however, the expedited procedures differ from those applicable in a routine case. In a routine case, this Office's rules of evidence apply; in an expedited hearing, no formal rules of evidence apply. Compare 41 C.F.R. §§ 60-30.18 and 60-30.34(b). In an ordinary case, parties may propound and must answer interrogatories, requests for admission, requests for production, and questions at oral depositions. 41 C.F.R. §§ 60-30.9 through 60-30.11. Each of these discovery devices has attendant procedures, and motions may be filed for failure to comply with a discovery demand. *Id.* In an expedited hearing, however, discovery is limited to requests for admission and, only with the permission of the administrative law judge, depositions; other discovery is not permitted. 41 C.F.R. § 60-30.33.

As to motion practice in an ordinary proceeding, pre-hearing and post-hearing motions are permitted, with 10 days to file an opposition; moving papers and supporting briefs must be submitted in writing unless the motion is made at a hearing. 41 C.F.R. § 60-30.8. By comparison, the expedited procedures include no provision for pre-hearing or post-hearing motions except for permission to take depositions or to address an opposing party's failure to respond to requests for admission. 41 C.F.R. § 60-30.33 (a), (c). The expedited procedures allow for this limited motion practice by expressly incorporating by reference the implementing regulation from the ordinary, non-expedited procedures.

Turning to motions for summary judgment, the regulations in an ordinary case establish detailed requirements. 41 C.F.R. § 60-30.23. The motion must be filed "at least 15 days before the time fixed for the hearing on the motion. The adverse party or parties may serve opposing affidavits prior to the day of hearing [on the motion]." *Id.* § 60-30.23(e). There are detailed briefing requirements similar to those found in some federal district courts.<sup>2</sup> *Id.* § 60-30.23(d), (e). The administrative law judge may grant partial summary judgment. *Id.* § 60-30.23(f).

But the expedited procedures include no provision that allow motions for summary judgment. There is no reference – express or implied – to the procedures established for such motions in ordinary cases (41 C.F.R. § 60-30.23).

As the implementing regulations for expedited hearings are aimed at a short, streamlined process and expressly incorporate by reference the portions of the ordinary procedures that will apply in an expedited case, the absence of any provision for summary judgment in the expedited procedures excludes such motions from the process. This reflects that, in an expedited proceeding, the parties (and the administrative law judge) have little time to prepare for the hearing on merits and cannot devote resources to the kind of extensive briefing that the parties filed here.<sup>3</sup>

Accordingly, OFCCP's motion for summary judgment is denied.

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<sup>2</sup> *E.g.*, the moving party must file and serve a "Statement of Uncontested Facts," and the opposing party must file and serve a "Statement of Disputed Facts." 41 C.F.R. § 60-30.23(d).

<sup>3</sup> Plaintiff OFCCP's opening brief is 23 pages long. It is supported by a declaration of counsel and over 200 pages of exhibits. After Google filed a 9-page opposition brief with 12 supporting exhibits, I granted OFCCP's request to file a reply. OFCCP filed a 28-page reply brief. If OFCCP requires 51 pages of briefing at a time when the parties are supposed to be preparing for a hearing on a very short schedule, OFCCP's motion is inconsistent with the expedited process that OFCCP requested and that I allowed.