UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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US DEPT OF LABOR
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WASHINGTON, DC

2017OFCC00004

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. GOOGLE, INC., Defendant.	OALJ Case No. OFCCP No. R00197955

COMPLAINT FOR DENIAL OF ACCESS TO RECORDS IN VIOLATION OF EXECUTIVE ORDER 11246, SECTION 503 OF THE REHABILITATION ACT, THE VIETNAM ERA VETERANS' READJUSTMENT ASSISTANCE ACT, AND REGULATIONS PROMULGATED THEREUNDER

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

Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor ("OFCCP") brings this action against Defendant Google, Inc., to enforce the obligations imposed by Executive Order 11246, as amended by Executive Orders 11375, 12086 and 13279 ("Executive Order 11246" or the "Executive Order"); section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Rehabilitation Act"); section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. § 4212 ("VEVRAA"); and the rules and regulations issued pursuant to each of the foregoing at 41 C.F.R. chapter 60.

OFCCP alleges the following:

JURISDICTION

1. The Court has jurisdiction of this action under sections 208 and 209 of Executive Order 11246; 41 C.F.R. §§ 60-1.26, 60-300.65, and 60-741.65; and 41 C.F.R. part 60-30.

DEFENDANT AND ITS STATUS AS A GOVERNMENT CONTRACTOR

2. Defendant Google, Inc., is a wholly-owned subsidiary of Alphabet, Inc. Google offers, among other things, Internet advertising services. It is located at 1600 Amphitheatre Parkway in Mountain View, California.

3. At all times relevant hereto, Google has had 50 or more employees.

4. At all times relevant hereto, Google has had at least one contract with the federal government of $50,000 or more. For example, on or about June 2, 2014, the General Services Administration awarded Defendant Contract No. GS07F227BA for "Advertising and Integrated Marketing Solutions" ("Advertising and Integrated Marketing Solutions Contract"). To date, Google has received in excess of $600,000 under the Advertising and Integrated Marketing Solutions Contract.

5. The Advertising and Integrated Marketing Solutions Contract incorporates an equal employment opportunity clause as required by the Executive Order, VEVRAA, and the Rehabilitation Act. The Contract also incorporates by reference certain Federal Acquisition Regulations ("FAR"), including FAR 52.222-26 concerning Equal Opportunity under which Google agreed to, among other things, "comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor"; and to

> permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

Similarly, Google agreed "to comply with the rules, regulations, and relevant orders of the Secretary of Labor" issued under the Rehabilitation Act and VEVRAA.

6. Google voluntarily agreed to these terms in exchange for government business. For instance, with respect to the Advertising and Integrated Marketing Solutions Contract, Google "affirm[ed] that no exceptions are being taken to the terms and conditions related to" the underlying contract solicitation, which contained the FAR provisions above, and that its affirmation "reflect[ed] the outcome of negotiations between Google and" the General Services Administration.

7. Based on the foregoing, Google has been a contractor within the meaning of the Executive Order, the Rehabilitation Act and VEVRAA, and has been subject to the obligations imposed on contractors by the Executive Order, the Rehabilitation Act, VEVRAA, and the regulations issued pursuant thereto. Those regulations require, among other things, contractors submit to OFCCP upon request items they are required under the regulations to retain and items that may be relevant to the compliance evaluation and pertinent to compliance with the Executive Order, the Rehabilitation Act, and VEVRAA. *See, e.g.*, 41 C.F.R. § 60-1.12(c)(2); *id.* § 60-1.43.

GOOGLE'S DENIAL OF ACCESS TO RECORDS OFCCP REQUESTED AS PART OF ITS COMPLIANCE EVALUATION

8. On or about September 30, 2015, OFCCP sent Google a scheduling letter stating that OFCCP had selected its establishment at 1600 Amphitheater Parkway in Mountain View, CA for a compliance evaluation under Executive Order 11246, VEVRAA, and the Rehabilitation Act, and their implementing regulations ("Scheduling Letter"). OFCCP selected the facility pursuant to its neutral selection process. The Office of Management and Budget approved the Scheduling Letter, which bore OMB No. 1250-0003.

9. As part of the compliance evaluation, on or before June 1, 2016, OFCCP requested various items relevant to Google's compensation policies and, thus, relevant to the compliance evaluation. Among the requested items were:

a. a compensation snapshot as of September 1, 2014;

b. 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

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

10. On June 17, 2016, Google communicated its refusal to produce the items identified in paragraphs 9.a through 9.c ("Subject Items"), among others. In the months that followed, OFCCP repeatedly attempted to obtain Google's agreement to produce the Subject Items. Despite OFCCP's efforts to obtain Google's voluntary compliance, Google denied OFCCP access to the Subject Items, among others.

11. In accordance with 41 C.F.R. §§ 60-1.28, 60-300.64, and 60-741.64, OFCCP served a Notice to Show Cause ("Show Cause Notice") on Google on or about September 16, 2016. After issuing the Show Cause Notice, OFCCP continued to attempt to obtain Google's voluntary compliance. However, as of the date of this Complaint, Google has persisted in its refusal to produce the Subject Items.

VIOLATIONS

12. Google's refusal to provide access to relevant items as part of the compliance evaluation, as described in paragraphs 10 and 11, violates the Executive Order, the Rehabilitation Act, VEVRAA, and the regulations pursuant thereto. Moreover, Google's conduct breaches the contractual obligations it accepted in exchange for obtaining business from the federal government.

13. All procedural requirements prior to the filing of this Complaint have been met. OFCCP attempted unsuccessfully to secure voluntary compliance, as set forth in paragraphs 10-11.

14. Unless restrained by an administrative order, Google will continue to violate its obligations under the Executive Order, the Rehabilitation Act, VEVRAA, and the regulations issued pursuant thereto.

15. This matter is subject to the expedited hearing procedures set forth at 41 C.F.R. §§ 60-30.31 through 60-30.37. OFCCP requests that expedited hearing procedures be applied in this case.

PRAYER FOR RELIEF

BASED ON THE FOREGOING, Plaintiff OFCCP requests a decision and order pursuant to 41 C.F.R. §§ 60-30.35 and 60-30.37 providing the following:

(a) permanently enjoining Google, Inc., and its successors, officers, agents, servants, employees, divisions, subsidiaries and all persons in active concert or participation with them, from failing and refusing to comply with the requirements of the Executive Order, the Rehabilitation Act, VEVRAA, and the regulations issued pursuant thereto;

(b) directing Google to provide to OFCCP all of the Subject Items and otherwise to permit OFCCP to conduct and complete its compliance review;

(c) subjecting Google to the following, in the event Google fails to provide the above-identified relief: (1) an order canceling all of its federal government contracts and subcontracts and those of its officers, agents, successors, divisions, subsidiaries and those persons in active concert or participation with them, and declaring said persons and entities ineligible for the extension or modification of any such existing Government contract or subcontract; and (2) an order debarring Google and its officers, agents, servants, successors, divisions and subsidiaries and those persons in active concert or participation with them from entering into future federal government contracts and subcontracts until such time as Google satisfies the Director, Office of Federal Contract Compliance Programs, that it has undertaken efforts to remedy its prior noncompliance and is currently in compliance with the provisions of the Executive Order, the Rehabilitation Act, VEVRAA, and the regulations issued pursuant thereto; and

(d) any other relief as justice may require.

Respectfully submitted,

Date: December 29, 2016

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CERTIFICATE OF SERVICE

I am a citizen of the United States of America. I am over eighteen years of age and am not a party to the within action. My business address is 90 7th Street, Suite 3-700, San Francisco, California 94103. On December 29, 2016, I served the within

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on the Defendant in this action by placing a true and correct copy in a sealed government envelope addressed to:

Matthew J. Camardella
Daniel V. Duff, III
JACKSON LEWIS P.C.
58 South Service Road, Suite 250
Melville, NY 11747

Executed: December 29, 2016

/s/Llewlyn D. Robinson
LLEWLYN D. ROBINSON
Paralegal Specialist

OFFICE OF THE SOLICITOR
UNITED STATES DEPARTMENT OF LABOR