EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff-Appellant,
AIMEE STEPHENS, Intervenor,
v.
R.G. &. G.R. HARRIS FUNERAL HOMES, INC., Defendant-Appellee.
6th Cir. Decided 03/07/18 (official cite not available yet)

Aimee Stephens (formerly known as Anthony Stephens) was born biologically male.

While living and presenting as a man, she worked as a funeral director at R.G. & G.R. Harris Funeral Homes, Inc. ("the Funeral Home"), a closely held for-profit corporation that operates three funeral homes in Michigan. Stephens was terminated from the Funeral Home by its owner and operator, Thomas Rost, shortly after Stephens informed Rost that she intended to transition from male to female and would represent herself and dress as a woman while at work. Stephens filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), which investigated Stephens's allegations that she had been terminated as a result of unlawful sex discrimination. During the course of its investigation, the EEOC learned that the Funeral Home provided its male public-facing employees with clothing that complied with the company's dress code while female public-facing employees received no such allowance. The EEOC subsequently brought suit against the Funeral Home in which the EEOC charged the Funeral Home with violating Title VII of the Civil Rights Act of 1964 ("Title VII") by (1) terminating Stephens's employment on the basis of her transgender or transitioning status and her refusal to conform to sex-based stereotypes; and (2) administering a discriminatory-clothing-allowance policy.

The parties submitted dueling motions for summary judgment. The EEOC argued that it was entitled to judgment as a matter of law on both of its claims. For its part, the Funeral Home argued that it did not violate Title VII by requiring Stephens to comply with a sex-specific dress code that it asserts equally burdens male and female employees, and, in the alternative, that Title VII should not be enforced against the Funeral Home because requiring the Funeral Home to employ Stephens while she dresses and represents herself as a woman would constitute an unjustified substantial burden upon Rost's (and thereby the Funeral Home's) sincerely held religious beliefs, in violation of the Religious Freedom Restoration Act ("RFRA"). As to the EEOC's discriminatory-clothing-allowance claim, the Funeral Home argued that Sixth Circuit case law precludes the EEOC from bringing this claim in a complaint that arose out of Stephens's original charge of discrimination because the Funeral Home could not reasonably expect a clothing-allowance claim to emerge from an investigation into Stephens's termination.

The district court granted summary judgment in favor of the Funeral Home on both claims. For the reasons set forth below, we hold that (1) the Funeral Home engaged in unlawful discrimination against Stephens on the basis of her sex; (2) the Funeral Home has not established that applying Title VII's proscriptions against sex discrimination to the Funeral Home would substantially burden Rost's religious exercise, and therefore the Funeral Home is not entitled to a defense under RFRA; (3) even if Rost's religious exercise were substantially burdened, the

EEOC has established that enforcing Title VII is the least restrictive means of furthering the government's compelling interest in eradicating workplace discrimination against Stephens; and (4) the EEOC may bring a discriminatory-clothing-allowance claim in this case because such an investigation into the Funeral Home's clothing-allowance policy was reasonably expected to grow out of the original charge of sex discrimination that Stephens submitted to the EEOC. Accordingly, we REVERSE the district court's grant of summary judgment on both the unlawful-termination and discriminatory-clothing-allowance claims, GRANT summary judgment to the EEOC on its unlawful-termination claim, and REMAND the case to the district court for further proceedings consistent with this opinion

M.F., Plaintiff and Appellant,
v.
PACIFIC PEARL HOTEL MANAGEMENT LLC, Defendant and Respondent.

Court of Appeals of California, Fourth District, Division One.

M.F. worked for Pacific Pearl Hotel Management, LLC (Pacific) as a housekeeper at its five-building hotel property. One morning, the hotel's engineering manager saw a drunk man, who was not a guest of the hotel, walking around the hotel property with a beer in his hand (the trespasser). The engineering manager first saw the trespasser walking around the balcony on the third floor of one of the hotel buildings. The engineering manager then saw the trespasser on the second floor of the building and once more in the elevator as it was going down to the first floor of the building. The engineering manager did not ask the trespasser to leave. The engineering manager also did not report the trespasser's presence to housekeeping management or to the police department.

The trespasser approached housekeepers cleaning hotel rooms three times while he walked around the hotel property. On the first occasion, the trespasser asked the housekeeper to use the restroom. He falsely told the housekeeper the room she was cleaning was his cousin's room, but he could not produce a room key. The trespasser then made sexually harassing comments, showed the housekeeper a handful of $5 bills, and offered the housekeeper money in exchange for sexual favors. A maintenance worker overheard the trespasser's sexually harassing comments and helped the housekeeper persuade the trespasser to leave the room.

On the second occasion, the trespasser tried to enter a hotel room on the third floor of another building. He offered the housekeeper who was cleaning the room money for sexual favors. The housekeeper closed the door on the trespasser and reported the incident to housekeeping management.

Using a walkie-talkie system, a housekeeping manager broadcasted the trespasser's activities and location to other housekeeping managers. The housekeeping manager then went to one of the

buildings to check on the safety of the housekeepers. However, the housekeeping manager did not go to the building where the second incident occurred because M.F.'s supervisor was assigned to that building. M.F.'s supervisor checked the first floor of the building, but did not check the second floor, where M.F. was working.

On the third occasion, the trespasser went to the hotel room M.F. was cleaning. Her cleaning cart was parked in front of the room door. As she went to put cleaning supplies back into the cart, the trespasser confronted her and blocked her exit. He pushed the cart to the side, pushed the room door open, forced M.F. back into the room, and asked her to close the blinds. She refused to close the blinds and tried to get past him. He grew agitated and punched her in the face, knocking her out.

When M.F. regained consciousness, the blinds were closed and the trespasser was raping her on the hotel room bed. He sexually harassed, assaulted, battered, and sodomized her for over two hours. During that time, her cleaning cart remained outside the hotel room, the blinds remained closed, and no one from the hotel came looking for her.

Approximately two hours after the trespasser started assaulting M.F., a housekeeping employee knocked on the hotel room door to deliver a crib. The trespasser answered the door and told the employee to leave the crib outside the room. The employee left the crib and did not inquire as to M.F.'s whereabouts. A short time later, the trespasser left the room.

M.F. used the hotel room phone to call housekeeping for help, but no one answered. She then called the police department, who responded and rescued her. She went to a hospital, where she remained for weeks. She still has not recovered from her injuries.

M.F. sued Pacific for hostile work environment sexual harassment and for failure to prevent sexual harassment. The gravamen of the complaint as to Pacific was that Pacific violated the FEHA by allowing the trespasser to sexually harass M.F. and by failing to take reasonable steps to prevent the sexual harassment from occurring.

In this appeal, we address whether, for purposes of overcoming the workers' compensation exclusivity doctrine (Lab. Code, §§ 3600, subd. (a), 3602, subd. (a)), a housekeeping employee stated claims against her hotel employer for violating provisions in the California Fair Employment and Housing Act (FEHA; Gov. Code, § 12900 et seq.) requiring the employer to protect the employee from nonemployee sexual harassment. The employee alleged facts showing: (1) she was raped while working on the employer's premises by a drunk nonemployee trespasser; (2) the employer knew or should have known the trespasser was on the employer's premises for about an hour before the rape occurred; and (3) the employer knew or should have known that, while on the employer's premises, the trespasser had aggressively propositioned at least one other housekeeping employee for sexual favors.

We conclude these facts are sufficient to state claims under the FEHA for sexual harassment by a nonemployee (§ 12940, subd. (j)(1)) and for failure to prevent such harassment (§ 12940, subd. (k)). Because the superior court determined otherwise and dismissed the employee's operative third amended complaint (complaint) after sustaining the employer's demurrer to it without leave to amend, we reverse the judgment and remand the matter to the court for further proceedings

consistent with this decision.

AILEEN RIZO,
***Plaintiff-Appellee*,**
v.
JIM YOVINO, Fresno County Superintendent of Schools
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Aileen Rizo was hired as a math consultant by the Fresno County Office of Education in October 2009. Previously, she was employed in Maricopa County, Arizona as a middle and high school math teacher. In her prior position, Rizo earned an annual salary of $50,630 for 206 working days. She also received an educational stipend of $1,200 per year for her master's degrees in educational technology and mathematics education.

Rizo's new salary upon joining the County was determined in accordance with the County's Standard Operating Procedure 1440 ("SOP 1440"), informally adopted in 1998 and formally adopted in 2004. The County's hiring schedule consists of 10 stepped salary levels, each level containing 10 salary steps within it. SOP 1440 dictates that a new hire's salary is to be determined by taking the hired individual's prior salary, adding 5%, and placing the new employee on the corresponding step of the salary schedule. Unlike the County's previous hiring schedule, SOP 1440 does not rely on experience to set an employee's initial salary. SOP 1440 dictated that Rizo be placed at step 1 of level 1 of the hiring schedule, corresponding to a salary of $62,133 for 196 days of work plus a master's degree stipend of $600.

During a lunch with colleagues in 2012, Rizo learned that her male colleagues had been subsequently hired as math consultants at higher salary steps. In August 2012, she filed a complaint about the pay disparity with the County, which responded that all salaries had been set in accordance with SOP 1440. The County claimed to have reviewed salary-step placements of male and female management employees for the past 25 years (so including before the policy was even informally adopted), finding that SOP 1440 placed more women at higher compensation steps than males. Rizo disputes this analysis and claims that the data show men were placed at a higher average salary step.

Affirming the district court's denial of summary judgment to the defendant on a claim under the Equal Pay Act, the en banc court held that prior salary alone or in combination with other factors cannot justify a wage differential between male and female employees.

Overruling *Kouba v. Allstate Ins. Co.*, 691 F.2d 873 (9th Cir. 1982), the en banc court held that an employee's prior salary does not constitute a "factor other than sex" upon which a wage differential may be based under the statutory "catchall" exception set forth in 29 U.S.C. § 206(d)

(1). The en banc court concluded that "any other factor other than sex" is limited to legitimate, job-related factors such as a prospective employee's experience, educational background, ability, or prior job performance. By relying on prior salary, the defendant therefore failed as a matter of law to set forth an affirmative defense.

Zarda v. Altitude Express, Inc.
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In the summer of 2010, Donald Zarda, a gay man, worked as a sky diving instructor at Altitude Express. As part of his job, he regularly participated in tandem skydives, strapped hip to hip and shoulder to shoulder with clients. In an environment where close physical proximity was common, Zarda's coworkers routinely referenced sexual orientation or made sexual jokes around clients, and Zarda sometimes told female clients about his sexual orientation to assuage any concern they might have about being strapped to a man for a tandem skydive. That June, Zarda told a female client with whom he was preparing for a tandem skydive that he was gay "and ha[d] an ex husband to prove it." Although he later said this disclosure was intended simply to preempt any discomfort the client may have felt in being strapped to the body of an unfamiliar man, the client alleged that Zarda inappropriately touched her and disclosed his sexual orientation to excuse his behavior.

After the jump was successfully completed, the client told her boyfriend about Zarda's alleged behavior and reference to his sexual orientation; the boyfriend in turn told Zarda's boss, who fired shortly Zarda thereafter. Zarda denied inappropriately touching the client and insisted he was fired solely because of his reference to his sexual orientation. One month later, Zarda filed a discrimination charge with the EEOC concerning his termination. Zarda claimed that "in addition to being discriminated against because of [his] sexual orientation, [he] was also discriminated against because of [his] gender."particular, he claimed that "[a]ll of the men at [his workplace] made light of the intimate nature of being strapped to a member of the opposite sex," but that he was fired because he "honestly referred to [his] sexual orientation and did not conform to the straight male macho stereotype."

In September 2010, Zarda brought a lawsuit in federal court alleging, *inter alia*, sex stereotyping in violation of Title VII and sexual orientation discrimination in violation of New York law. Defendants moved for summary judgment arguing that Zarda's Title VII claim should be dismissed because, although "Plaintiff testifie[d] repeatedly that he believe[d] the reason he was terminated [was] because of his sexual orientation . . . [,] under Title VII, a gender
stereotype cannot be predicated on sexual orientation."

We now conclude that sexual orientation discrimination is motivated, at least in part, by

sex and is thus a subset of sex discrimination. Looking first to the text of Title VII, the most natural reading of the statute's prohibition on discrimination "because of . . . sex" is that it extends to sexual orientation discrimination because sex is necessarily a factor in sexual orientation. This statutory reading is reinforced by considering the question from the perspective of sex stereotyping because sexual orientation discrimination is predicated on
assumptions about how persons of a certain sex can or should be, which is an impermissible basis for adverse employment actions. In addition, looking at the question from the perspective of associational discrimination, sexual orientation discrimination—which is motivated by an employer's opposition to romantic association between particular sexes—is discrimination based on the employee's own sex.

DAWN KNEPPER, on behalf of herself and all others similarly situated,
Plaintiff,
v.
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No.: 3:18-CV-00303

Class Action

1. Defendant Ogletree is one of the largest defense-side labor and employment law firms in the country, employing nearly 700 attorneys in the United States. Ogletree defends employers against individual and class action employment lawsuits, including discrimination actions. Ogletree also advises employers on how to avoid discrimination suits.

2. According to its website, Ogletree advises clients on compliance with federal and state employment laws in order "to provide a positive workplace…." For its own part, Ogletree claims to be "committed to diversity," which it says "makes us better—as lawyers and people." It purports to "foster diversity and inclusion as an integral part of the firm's overall professional development efforts." But this rhetoric is largely hollow. In reality, the Firm has shirked its obligations under the law through its "do as I say not as I do" practices. Upon information and belief, when a female shareholder asked the Managing Shareholder of the Firm, Matt Keen, about the Firm's response to gender discrimination complaints, he explained, "we're not real good at practicing what we preach."

3. Ogletree's female shareholders face discrimination in pay, promotions, and other unequal opportunities in the terms and conditions of their employment. Male shareholders are disproportionately over-represented at every level of the Firm's management and leadership structure. Through formal policies and widespread practices, the Firm's male leadership interferes with, limits, or prevents female shareholders from receiving the appropriate credit for the business they bring to the Firm and their hard work in running complex and demanding

cases day-to-day. All the while, their male colleagues reap the professional and financial profits that women generate. The Firm, dominated by male decision makers, also denies female shareholders the same business development and training opportunities provided to their male counterparts. Female shareholders are not selected for business pitches at the same rate as similarly situated, and in some cases less qualified, male attorneys. Through these practices the Firm systematically overlooks, devalues, or undermines female attorneys as business generators, which adversely impacts their pay and promotion.

4. Plaintiff is a female non-equity shareholder currently employed by Ogletree. She brings this action as a non-equity shareholder alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"), the Equal Pay Act of 1963, 29 U.S.C. §§ 206 *et seq.* ("EPA"), and related California statutes, seeking redress and programmatic change for female non-equity shareholders who have worked or will work for Ogletree.

5. Men dominate Ogletree's leadership and management. Women hold only two of nine seats on Ogletree's Board of Directors and two of six Firm Officer positions; one of these two officer positions was added as recently as December 2017. Compensation decisions at Ogletree are centrally controlled by its Compensation Committee, which is comprised predominantly of male members. Compensation is then voted on by Ogletree's equity shareholders, approximately 80% of whom are men.

6. Ogletree discriminates against women by permitting its predominantly male leadership to favor men overtly in pay, promotions, and other opportunities regardless of their qualifications and to otherwise discriminate against women. Women hold fewer than 20% of equity shareholder positions, and fewer than 42% of non-equity shareholder positions. Ogletree leadership fosters or condones a Firm culture that marginalizes, demeans, and undervalues women.

7. Upon information and belief, the overrepresentation of men in Ogletree's leadership is both the source and product of continuing systemic discrimination against female shareholders.

8. Upon information and belief, Ogletree's leadership is aware of the Firm's inequitable pay, promotion, job assignment, and other practices, but have taken no steps to remedy the root causes of the disparity. Ogletree is aware of the demographics of its workforce, including the underrepresentation of women in different levels and functions.

9. Ogletree, one of the nation's largest employment law firms, regularly advises companies on how to comply with pay equity laws and to avoid, investigate, and remedy discrimination claims. Upon information and belief, Ogletree has been aware of its own misconduct for years but the Firm has failed to rectify the discrimination and actively sought to avoid the changes

necessary to comply with the law.

10. Ogletree discriminates against Plaintiff and female shareholders with respect to compensation and promotions through the use of common policies and procedures.

11. Ogletree's shareholders are divided into two groups: equity shareholders and non-equity shareholders. The Firm uses the equity and non-equity tiers to distribute compensation. These tiers allow predominately male attorneys to rely on arbitrary, subjective criteria to deny female shareholders promotions, equity status, pay, and compensation commensurate with their skill, experience, and contributions to the Firm.

12. In order to be brought into the Firm at or promoted to shareholder level, attorneys must be recommended by Ogletree's predominantly male Board of Directors and local shareholders, then receive 75% of Ogletree's equity shareholders' votes. Ogletree's equity shareholders are approximately 80% men.

13. This male-dominated system makes it extremely difficult for female non-equity shareholders to be promoted and paid at the same levels as equity shareholders, although they perform substantially similar work. Indeed, Ogletree's equity and non-equity positions are identical except for the pay and power the Firm gives them.

14. Ogletree's Equity and Non-Equity Shareholders policy explains that, "Expectations for both Equity and Non-Equity shareholders are the same with regard to technical and professional qualifications, experience, personal effort, managing and developing associates and staff, and contributions to the Firm as a whole." However, Ogletree pays its predominantly-male equity shareholders monthly profit-sharing distributions which can increase their target compensation by approximately up to 40%.

15. Ogletree routinely refuses to promote qualified female non-equity shareholders to equity shareholder status, even when they generate business that meets or exceeds the criteria and expectations for equity shareholders. At the same time, the Firm has eased business generation requirements in order to promote favored male attorneys to equity status. These policies disparately impact Ogletree's female non-equity shareholders.

16. Compensation decisions at Ogletree are centrally controlled by its Compensation Committee, which until recently had no more than one woman among its five members. The Compensation Committee for 2018 compensation now, for the first time, has two women on it; since 2013 only a single female sat on the Compensation Committee—before that year, the Compensation Committee was comprised solely of men.

17. In the compensation-setting process, Ogletree's shareholders receive credit for their work in five main categories: originating credits, managing credits, responsible credits, working credits, and billable hours. Ogletree's Origination Credit Principles policy states that, "The originating, managing, responsible and working attorney statistics should be utilized as a source of objective information for the Compensation Committee to make *subjective* judgments about shareholder

compensation. *A formula is strongly disfavored.*" (emphases added). This subjectivity allows the Firm's male leadership to control all compensation at the Firm and results in discrimination against female attorneys. On average, Ogletree currently pays its male shareholders approximately $110,000 more than its female shareholders, in target compensation and bonus alone.

18. Ogletree defines an *originating attorney* as "The attorney(s) bringing the client to the Firm for legal representation. In some cases, origination credit for a matter may be divided among several attorneys." In practice, whichever attorney establishes the Firm's initial relationship with a potential client is thereafter considered the originating attorney for all of that client's business over the entire course of the client's relationship with the Firm. The originating attorney has total discretion to allocate origination credits in perpetuity. Only once an attorney seeks redress through the appeals process can the Firm's Managing Shareholder overturn the originating attorney's decision. In practice, the Firm's Managing Shareholder rubber stamps the allocations made by predominantly male originating attorneys. Male attorneys, who disproportionately control decision-making authority, disproportionately assign origination credits to other male attorneys. This allows male attorneys to receive an inordinate number of origination credits and allocate other credits to male attorneys even when female attorneys bring the relevant business to the Firm. The Firm's discriminatory practices have caused a substantial gender-based disparity in origination credits throughout the Firm—between 2014 and 2016, the average amount of origination credits for male shareholders was nearly *double* that of female shareholders.

19. Ogletree defines the *managing attorney* as "The attorney responsible for overall management of the work, and relationship with the Firm, pertaining to a particular client. This may include billing responsibilities." According to this policy, managing attorneys are generally the attorneys in charge of communicating with clients and managing the client's expectations and the work that is done to meet them.

20. Ogletree weighs origination and, to a lesser extent, managing credits heavily in making compensation decisions, while responsible attorney and working credits have very little impact on compensation.

21. By Firm practice, originating attorneys have been given the discretion to distribute origination, managing, responsible, and working credits in an arbitrary, subjective, or biased manner. The Firm allows originating attorneys to choose which attorneys will share origination credits and which will receive managing credits on that matter. Originating and managing attorneys then direct responsible and working attorneys to do the actual work on a matter. As a result, predominantly male managing and originating shareholders receive a disproportionate amount of the meaningful credit and compensation.

22. Ogletree defines the *responsible attorney* as "The attorney responsible for coordination management, strategic planning, staffing and overall success in the Firm's handling of a *particular matter*." (emphasis added).

23. The applicable distinction between a managing attorney, who receives managing credit, and a

responsible attorney, who receives responsible credit, is that the managing attorney purportedly manages the *client relationship* while the responsible attorney is responsible for the overall success of the *matter*.

24. Ogletree defines a *working attorney* as "the attorney who is working on the case." Billable hours, responsible credits, and working credits are the most objective metrics that are considered in compensation decisions, but have the least impact on compensation. Consequently, the compensation rubric is stacked in a way that favors male attorneys.

25. Female attorneys are disproportionately assigned to be responsible or working attorneys, as opposed to originating or managing attorneys. This is the case even when female attorneys handle all of the tasks that are supposed to be completed by managing attorneys and for which managing attorneys receive credit, including client contact, performing or managing the bulk of the actual work, and handling other aspects of a matter. Indeed, female responsible or working attorneys are also frequently charged with billing and collection or preparing status reports for originating and managing attorneys who are unfamiliar with that matter, so those attorneys can communicate knowledgeably with the client.

26. After the proposed compensation recommendations were announced at the end of January 2017, but before the numbers were approved by the equity shareholders, a large number of women shareholders met to discuss pay equity and raised the issue to Ogletree Deakins's Women's Initiative ("ODWIN"). When female shareholders proposed asking that that the Board of Directors conduct a pay equity audit, the head of ODWIN explained that there was nothing she could do and that the Board thought the female shareholders from California who had been complaining were "crazy." Nevertheless, multiple female shareholders continued to complain about compensation and the unfair allocation of credits. In response, the Firm announced a process to appeal origination disputes—creating the façade that aggrieved shareholders could contest an originating attorney's allocations. Upon information and belief, while setting up this appeal process, Ron Chapman, the highest paid male shareholder in the Firm – who benefits enormously from the discriminatory practices – announced to the other newly-appointed members of the credit appeal process, "We need to make it really hard to use because we don't want people to use it." Ogletree's old boys' club has created and maintained a blatantly discriminatory system in order to underpay women and make recourse inaccessible or impossible.

27. Ogletree's promotion policies and practices have created a glaring gender disparity in seniority at the Firm. Because the Firm does not promote women at rates remotely equal to those of similarly situated men, women represent a progressively lower percentage of each tier of the Firm as title and compensation rise.

28. For example, while women represent approximately 58% of Ogletree's associates, only 133, or 32%, of Ogletree's 415 shareholders are women. Of Ogletree's 234 non-equity shareholders, only 97, or 42%, are women. Of Ogletree's 181 equity shareholders, only 36, or 19%, are women.

29. In order to maintain control over the Firm and shareholder compensation, Ogletree's male-dominated leadership maintains moving targets for non-equity shareholders pursuing promotion to equity status.

30. Ogletree's Equity and Non-Equity Shareholders policy sets forth the criteria for promotion to equity shareholder status: $750,000 in origination credits, $750,000 in management credits, $500,000 in working credits, at least 1,800 billed hours per year, and at least 200 "Firm hours." The Firm frequently requires non-equity female shareholders to meet these thresholds for three consecutive years prior to promotion.

31. By contrast, there are numerous examples where Ogletree has promoted men who have failed to meet these criteria. In 2017 alone, Kevin Bland, Greg Cheng, William Duda, Bernhard Mueller, and Scott Kelly were promoted to equity shareholder without meeting the promotion criteria for three consecutive years. Ogletree maintained Keith Watts's equity shareholder status despite Mr. Watts not sustaining the criteria for three consecutive years.

32. The most flagrant example of such selective promotion is Evan Moses, whom Kim Ebert, the managing shareholder of the Firm at the time, conceded in an open partnership meeting did not come close to meeting the criteria, but the Firm made an exception because of his (grossly inflated) managing numbers. Male equity shareholders Keith Watts and Vincent Verde were promoted under similar circumstances.

33. In contrast, Ogletree promoted only one woman to the equity tier for 2017. This female shareholder had met every criterion for three years, a standard the Firm did not require of men.

34. The Firm's discriminatory credit allocation system makes meeting the origination criteria for promotion very difficult for female non-equity shareholders to achieve, thereby creating a particularly strong barrier to women's advancement within the Firm.

35. In contrast, the Firm's old boys' club distributes origination credit so that male shareholders are able to meet the requirements without doing the work. The Firm also enables Board members who seek origination credit for a matter to determine what attorneys achieve what portion of origination credits. Likewise, the Firm eases these requirements for favored male attorneys who, despite receiving disproportionately high allocations, still have failed to meet these origination thresholds.

36. This system discriminates against and disparately impacts women by denying them promotions and promoting them less often and more slowly than equally or less qualified men. This impact is apparent in the dwindling proportion of women at each successive level of Ogletree's hierarchy.

37. Female shareholders throughout the Firm are required to assume administrative duties such as office management, paralegal supervision and training, and event planning. These administrative, or "housekeeping," duties take substantial amounts of time from female shareholders while male shareholders are freed from these tasks. Instead, the Firm permits male

attorneys to devote their time to case work and business development efforts, which Ogletree values highly and substantially rewards, particularly through compensation.

38. The Firm also requires female shareholders to perform the bulk of the actual legal work on its cases as the "responsible" or "working" attorneys, including client communications, legal research, developing case strategies, managing work, writing legal documents, and the countless granular tasks involved with litigation. "Responsible" and "working" credits, however, do not meaningfully affect shareholders' compensation, which is driven by origination and managing credits.

39. Thus, while female shareholders are disproportionately consumed with casework and administrative tasks that do not affect their compensation, they are prevented from engaging in business development activities. In contrast, their male colleagues are afforded the time and availability to pursue business development efforts and are richly rewarded for doing so.

40. As female shareholders draft briefs, supervise younger lawyers and non-lawyer staff, and handle a broad range of client demands, the Firm selects male shareholders for pitch meetings, conferences, and other business development opportunities that enable those male shareholders to reap origination credit, management credit, and other compensation that is disproportionate to their contributions.

41. The result is that female shareholders at Ogletree primarily receive responsible and working credit for their work, while male shareholders disproportionately receive origination and managing credit. Because Ogletree places exponentially more value on origination and managing credit in its compensation-setting process, the Firm is able to systematically and discriminatorily pay female shareholders less despite their additional duties.

42. The Firm is also well aware of the disparate impact of its inequitable assignment of administrative roles to female shareholders. Ogletree has discriminatorily tasked female shareholders, including Ms. Knepper, with handling time-consuming administrative duties, which substantially decrease the amount of time they have to conduct billable work and grow their business.

43. In contrast, male shareholders rarely handle administrative tasks while Ogletree actively provides them with business development opportunities that women are excluded from, such as pitches, conferences, awards ceremonies, networking events, and other occasions for professional growth. When male attorneys meet potential clients, the male attorneys frequently demand origination credits despite not bringing the business into Ogletree. If a female attorney later brings the business from that client to Ogletree, the male hierarchy, abusing their power, frequently takes origination credits, often times deciding a discriminatorily low percentage of credit will be allocated to the female attorney. When female shareholders complain about the allocation of origination credits, the Firm's male managing shareholder frequently supports the male taking the greater percentage or all of the origination credits, to the female shareholder's disadvantage.

JAMES DAMORE and DAVID GUDEMAN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

GOOGLE, LLC, a Delaware limited liability company; and DOES 1-10,

Defendants.

Plaintiffs bring this individual and class action on behalf of themselves and on behalf of a class and subclasses defined as all employees of Google discriminated against (i) due to their perceived conservative political views by Google in California at any time during the time period beginning four years prior to the filing of this Complaint through the date of trial in this action ("Political Class Period"); (ii) due to their male gender by Google in California at any time during the time period beginning one year prior to the filing of this Complaint through the date of trial in this action ("Gender Class Period"); and/or (iii) due to their Caucasian race by Google in California at any time during the time period beginning one year prior to the filing of this Complaint through the date of trial in this action ("Race Class Period") (Political Class Period, Gender Class Period, and Race Class Period referred to collectively, as "Class Periods"). These violations also subject Google to claims for violation of California's Business and Professions Code section 17200 *et seq*.

Throughout the Class Periods, and in violation of California law, Google employees who expressed views deviating from the majority view at Google on political subjects raised in the workplace and relevant to Google's employment policies and its business, such as "diversity" hiring policies, "bias sensitivity," or "social justice," were/are singled out, mistreated, and systematically punished and terminated from Google, in violation of their legal rights.

Google's open hostility for conservative thought is paired with invidious discrimination on the basis of race and gender, barred by law. Google's management goes to extreme—and illegal — lengths to encourage hiring managers to take protected categories such as race and/or gender into consideration as determinative hiring factors, to the detriment of Caucasian and male employees

and potential employees at Google.

Damore, Gudeman, and other class members were ostracized, belittled, and punished for their heterodox political views, and for the added sin of their birth circumstances of being Caucasians and/or males. This is the essence of discrimination—Google formed opinions about and then treated Plaintiffs not based on their individual merits, but rather on their membership in groups with assumed characteristics.

Google employees and managers strongly preferred to hear the same orthodox opinions regurgitated repeatedly, producing an ideological echo chamber, a protected, distorted bubble of groupthink. When Plaintiffs challenged Google's illegal employment practices, they were openly threatened and subjected to harassment and retaliation from Google. Google created an environment of protecting employees who harassed individuals who spoke out against Google's view or the "Googley way," as it is sometimes known internally. Google employees knew they could harass Plaintiffs with impunity, given the tone set by managers—and they did so.

Google employs illegal hiring quotas to fill its desired percentages of women and favored minority candidates, and openly shames managers of business units who fail to meet their quotas—in the process, openly denigrating male and Caucasian employees as less favored than others.

Not only was the numerical presence of women celebrated at Google solely due to their gender, but the presence of Caucasians and males was mocked with "boos" during companywide weekly meetings. This unacceptable behavior occurred at the hands of high-level managers at Google who were responsible for hundreds, if not thousands, of hiring and firing decisions during the Class Periods.

Plaintiffs bring this action to vindicate their legal rights, and to stop Google from repeating these practices against other employees or prospective employees now, and in the future.

RYAN KARNOSKI, et al.,
Plaintiffs,
V.
DONALD J. TRUMP, et al.,
Defendants.
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE
CASE NO. CI7-1297-MJP
ORDER GRANTING IN PART
AND DENYING IN PART

**PLAINTIFFS' AND
WASHINGTON'S MOTIONS FOR SUMMARY JUDGMENT;
GRANTING IN PART AND
DENYING IN PART
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

In July 2017, President Donald J. Trump announced on Twitter a ban on military service by openly transgender people (the "Ban"). Plaintiffs and the State of Washington ("Washington") challenged the constitutionality of the Ban, and moved for a preliminary injunction to prevent it from being carried out.

In December 2017, the Court-along with three other federal judges-entered a nationwide preliminary injunction preventing the military from implementing the Ban. The effect of the order was to maintain the status quo, allowing trans gender people to join and serve in the military and receive transition-related medical care. For the past few months, they have done just that.

In March 2018, President Trump announced a plan to implement the Ban. With few exceptions, the plan excludes from military service people "with a history or diagnosis of gender dysphoria" and people who "require or have undergone gender transition." The plan provides that transgender people may serve in the military only if they serve in their "biological sex."
Defendants claim that this plan resolves the constitutional issues raised by Plaintiffs and Washington.
In the following order, the Court concludes otherwise, and rules that the preliminary injunction will remain in effect. Each of the claims raised by Plaintiffs and Washington remains viable. The Court also rules that, because transgender people have long been subjected to systemic oppression and forced to live in silence, they are a protected class. Therefore, any attempt to exclude them from military service will be looked at with the highest level of care, and will be subject to the Court's "strict scrutiny." This means that before Defendants can implement the Ban, they must show that it was sincerely motivated by compelling interests, rather than by prejudice or stereotype, and that it is narrowly tailored to achieve those interests.

The case continues forward on the issue of whether the Ban is well-supported by evidence and entitled to deference, or whether it fails as an impermissible violation of constitutional rights. The Court declines to dismiss President Trump from the case and allows
Plaintiffs' and Washington's claims for declaratory relief to go forward against him.

BACKGROUND

I. The Ban on Military Service by Openly Transgcnder People

President Trump's Announcement on Twitter: On July 26, 2017, President Donald J. Trump (@realDonaldTrump) announced over Twitter that the United States would no longer
"accept or allow "transgender people" to serve in any capacity in the U.S. military" (the "Twitter
Announcement"):

> **Donald J. Trump** @realDonaldTrump
> ....victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you
>
> **Donald J. Trump** @realDonaldTrump
> ....Transgender individuals to serve in any capacity in the U.S. Military. Our military must be focused on decisive and overwhelming....
>
> **Donald J. Trump** @realDonaldTrump
> After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow....

The 2017 Memora11dum: On August 25, 2017, President Trump issued a Presidential Memorandum (the .. 2017 Memorandum") formalizing his Twitter Announcement, and directing
the Secretaries of Defense and Homeland Security to "return" to an earlier policy excluding
transgender service members. (Dkt. No. 149, Ex. 2.) The 2017 Memorandum authorized the
discharge of openly transgender service members (the "Retention Directive"}; prohibited the
accession of openly transgender service members (the "Accession Directive"}; and prohibited the
use of Department of Defense ("DoD") and Department of Homeland Security ("DHS") resources to fund "sex reassignment" surgical procedures (the "Medical Care Directive"). (Id. at
§§ 1-3.) The Accession Directive was to take effect on January 1, 2018; the Retention and
Medical Care Directives on March 23, 2018. (Id. at§ 3.) The 2017 Memorandum also ordered

the Secretary of Defense to "submit to [President Trump] a plan for implementing both [its]
general policy ... and [its] specific directives ... " no later than February 21, 2018. (lg,)

Secretary Mattis' Press Release a11d Interim Guida11ce: On August 29, 2017, Secretary of Defense James N. Mattis issued a press release confirming that the DoD had received the
2017 Memorandum and, as directed, would "carry out" its policy direction. (0kt. No. 197, Ex.
2.) The press release explained that Secretary Mattis would "develop a study and implementation plan" and "establish a panel of experts ... to provide advice and recommendation on the implementation of the [P]resident' s direction." (Id.)

On September 14, 2017, Secretary Mattis issued interim guidance regarding President Trump's Twitter Announcement and 2017 Memorandum to the military (the "Interim Guidance"). (Dkt. No. 149, Ex. 3.) The Interim Guidance again identified the DoD's intent to
"carry out the President's policy and directives" and "present the President with a plan to implement the policy and directives in the (2017] Memorandum." (Id. at 2.) The Interim Guidance provided (l) that transgender people would be prohibited from accession effective
immediately; (2) that service members diagnosed with gender dysphoria would be provided
"treatment," however, "no new sex reassi gnment surgical procedures for military personnel
[would] be permitted after March 22, 2018"; and (3) that no action would be taken "to involuntarily separate or discharge an otherwise qualified Service member solely on the basis of
a gender dysphoria diagnosis or transgcnder status." (Id. at 3.)

The Implementation Plan: On February 22, 2018, as directed, Secretary Mattis delivered to President Trump a plan for carrying out the policies set forth in his Twitter Announcement and 2017 Memorandum (Dkt. No. 224, Ex. I) along with a "Report and Recommendations on Military Service by Transgendcr Persons" (Dkt. No. 224, Ex. 2) (collectively, the "Implementation Plan"). The Implementation Plan recommended the following
policies:

- Transgender persons with a history or diagnosis of gender dysphoria are disqualified from military service, except under the following limited circumstances: (1) if they have been stable for 36 consecutive months in their biological sex prior to accession; (2) Service members diagnosed with gender dysphoria after entering into service may be retained if they do not require a change of gender and remain deployable within applicable retention standards; and (3) currently serving Service members who have been diagnosed with gender dysphoria since the previous administration's policy took effect and prior to the effective date of this new policy, may continue to serve in their preferred gender and receive medically necessary treatment for gender dysphoria.

• Transgender persons who require or have undergone gender transition are disqualified from military service.

• Transgender persons without a history or diagnosis of gender dysphoria, who are otherwise qualified for service, may serve, like all other Service members, in their biological sex.

(Dkt. No. 224, Ex. I at 3-4.)

The 2018 Memorandum: On March 23, 2018, President Trump issued another Presidential Memorandum (the "2018 Memorandum"). (0kt. No. 224, Ex. 3.) The 2018 Memorandum confirms his receipt of the Implementation Plan, purports to "revoke" the 2017
Memorandum and "any other directive [he] may have made with respect to military service by
transgender individuals," and directs the Secretaries of Defense and Homeland Security to
"exercise their authority to implement any appropriate policies concerning military service by
transgender individuals." (Id. at 2-3.)

ARNE WILBERG
Plaintiff,
v.
GOOGLE, INC. and DOES 1 THROUGH 25, INCLUSIVE,
Defendants.
SUPERIOR COURT IN AND FOR THE STATE OF CALIFORNIA COUNTY OF SAN MATEO
CASE NO.: 18CIV00442

GENERAL FACTUAL ALLEGATIONS

Plaintiff Ame Wilberg ("Wilberg" or "Plaintiff") was employed by Defendant Google, Inc., the parent company ofYouTube ("Google" or "YouTube") as Recruiter for the YouTube Tech
Staffing Management Team for 7 years as a recruiter for Google, including his last 4 years at YouTube and two additional years as a contractor onsite at Google before becoming a Google employee. In this capacity, he was responsible for identifying qualified candidates for engineering and technology positions and recruiting them for positions in technology jobs at Google/YouTube. Plaintiff was an exemplary employee and received positive perfonnance evaluations until he began opposing illegal hiring and recruiting practices at Google.

For the past several years, Google has had and implemented clear nnd irrefutable policies,
memorialized in writing and consistently implemented in practice, of systematically discriminating in favor job applicants who are Hispanic, African American, or female, and against Caucasian and Asian men. These policies were reflected in multiple bulletins, memorandum, charts, and other documents prepared by Google's highest-

level managers, and approved by Google's C-level officers and directors. The stated purpose _of these policies was to achieve "Diversity" in the Google workforce, and to manage public relations problems arising from the underrepresentation of women and certain minority groups in the Google workforce, particularly in engineering positions.

For example, Google policy documents state that, for Q3 of 2017, YouTube recruiters, including Plaintiff, would hire only individuals who were "diverse." The policy document states:
"Beginnin.. of Q3-we hire for 2018-all diverse." Further, Google used Weekly Recaps to track the
number of hires who were "Female," "Black", and "LatinX." For the first quarter of 2017, Google's
"Weekly·Recap" reflected that Google had hired 14 females (with a goal of 82), 1 Black (with a goal of 21) and *5* LatinX (with a goal of 13). A true and correct copy of one of Google's "Weekly Recap"of Diversity Hiring, for the week of 3/20/17 is attached hereto as Exhibit 1 and made a part hereof. To execute is "Diversity" hiring program objectives, Google would carefully track the race and gender of each applicant for a position in its technology workforce and use these characteristics to choose which of the candidates and applicants for technology positions to make offers of employment, and which candidates and applicants to reject. In March of 2017, the manager of YouTube's Tech Staffing Management Team, Allison Alagna, wrote an e-mail to the staffing team in which she writes, "HiTeam: Please continue with L3 candidates in process and only accept new L3 candidates that are from historically underrepresented groups." A true and correct copy of Alogna's e-mail dated March 1,2017 is attached hereto as exhibit 2. For several quarters, Google would not extend an offer of employment for any applicants for technical positions who were not "diverse," which Google defined as Women, Blacks and LatinX. Google had a policy that recruiters were not to hire Level 3 and Level 4 Software Engineers. However, YouTube recruiters were given permission to hire Level 3 and Level 4 Software Engineers, if they were diversity hires.

In April of 2017, Google's Technology Staffing Management team was instructed by Alogna to immediately cancel all Level 3 (0-5 years experience) software engineering interviews with every single applicant who was not either female, Black or Hispanic, and to purge entirely any applications by non-diverse employees from the hiring pipeline. Plaintiff refused to comply with this request.

As described in detail below, Plaintiff repeatedly opposed these illegal and discriminatory hiring practices by complaining to his managers and HR. He repeatedly told them that it was illegal to have such hiring quotas favoring certain groups based on race and gender, that it violated state and federal law, and that Google must immediately cease and desist from engaging. in such illegal hiring practices. In response to Plaintiff's complaints, Google on occasion would circulate e-mails instructing its employees purge any and all references to the race/gender quotas from its e-mail database in a transparent effort to wipe out any paper trail of Google's illegal practices. Google repeatedly retaliated against Plaintiff for opposing Google's illegal hiring practices by subjecting him to

unsubstantiated performance reviews, performance criticisms and terminating his employment in
November of 2017.

In approximately December of 2015, Plaintiff's Supervisor, Terry O'Conner (O'Conner") emailed the entire Youtube Tech Staffing team (alias - recruhytswes@google.com), to tell the entire team that the goal for QI 2016 was SWE hires per recruiter and all of the hires had to be diverse SWE candidates which means they must be black, Hispanic or women. Google internally and externally states that is does not make any hiring decisions based upon race ethnicity or gender.Wilberg believed Google's policy on non-discriminatory hiring practices was not followed on the YouTube tech staffing team. Based upon this belief that O'Conner was asking recruiters to discriminate against men and non-minority applicants, Plaintiff believed that pressure was exerted by management on Wilberg and other recruiters, including only giving recruiters credit against the recruiters' hiring goaJs they hired Woman, Black or Hispanic applicants (Google's definition of diversity). Wilberg felt uncomfortable reporting to O'Conner as her disregard for following important hiring policies put Google at significant risk and made recruiters vulnerable for firing or legal action by following management discriminatory hiring goals. In addition, O'Conner yelled at recruiters in meetings and made people on the team feel completely uncomfortable and psychologically unsafe reporting to her.

In approximately, January of 2016, Wilberg and 3 additional YouTube Google recruiters agreed to escalate their complaints about O'Conner to her manager Lisa Pisacane ("Pisacane"), theYouTube Staffing Manager. The four recruiters previously referenced spoke with Pisacane to let her know that O'Conner was a micromanager that made almost everyone feel uncomfortable on the team, and that they had significant issues *with* O'Conner's management. Two other YouTube technical team recruiters were not invited to the meeting with O'Conner because the recruiters had spoken with Pisacane with respect to their complaints about O'Conner resulting in one recruiter's work being taken
away from her.

In retaliation for complaining about O'Conner, a co-worker was given a poor performance
review and had her level reduced from a L6 recruiter to an L5 recruiter in' what was perceived as retaliation for complaining to about O'Conner. In addition, two recruiters both transferred off of O'Conner's Team, the YouTube Tech Recruiting team, based on the fact that one of the recruiters was uncomfortable reporting to O'Conner. Additionally, another co-worker was unhappy about and felt uncomfortable with being given a goal of hiring *5* diverse hires for QI 2016. Pisacane listened to the team complaints about O'Conner's management style and the "diversity hiring" policies, and told the team that she .would get back them with follow up feedback about the concerns.

In approximately early January of 2016, members of the You Tube recruiting team escalated

their concerns about hiring practices to their overall function boss, who was the Director of Google Staffing Services. Google Sta..ng Services is the team that oversees recruiting suppo.. functions such as managing recruiting coordinators who schedule interviews. The Recruiting Coordinators for YouTube lodged a complaint about Diversity hiring practices at YouTube that made them uncomfortable. The coordinators complained about the way the O'Conner and Lisa Pisacane spoke about black candidates as the team needed to hire more blacks. One team member complained that managers were speaking about Blacks like they were objects. Managers asked coordinators to have 2 black Google/YouTube engineers as interviewers on each interview panel for black candidates, or 2Hispanic engineer interviewers on each panel for Hispanic candidates or 2 female interviewers on each
panel for female candidates. This interview panel policy for diversity candidates at' You Tube was called Project Mirror. At the same time, O'Conner and Pisacane, ran a diversity steering committee which was comprised of recruiting managers at YouTube and You Tube engineering managers who were to review close call diversity candidates who didn't meet the hiring bar to try to find them homes and find manager support to make the diversity hire. This Youtube Policy contradicted Google's policy around a non-specific, non-separate and general process for hiring. The Staffing Director flagged the complaints of her team members around diversity hiring concerns to HR.

In January of 2016, Wilberg reached out to the Staffing Direct9r over instant message and
asked to have a meeting about YouTube hiring practices. Wilberg let the Staffing Director know that
many employees on the hiring team were uncomfortable with YouTube's "Diversity Hiring Practices"
because they believed these policies were discriminatory. Wilberg described another re..ruiter's
feedback around this "diversity" hiring program where the other recruiter told other recruiters that she
felt the way the team talked about black people in team meetings was like we were talking about black
slaves as slave traders on a ship. The other recruiter asked Wilberg to speak with HRBP about this
issue and Wilberg participated in the investigation. The Staffing Director aid she would flag this issue
to the VP of Google People Services, who oversees HR and that she would speak with Wilberg's
HRBP (Human Resources Business Partner).

In approximately January of 2016, a black engineer named S.N. (initials) reported to her manager that she was only being asked to interview only black SWE candidates.and this made her feel
uncomfortable. S.N. and her manager escalated their complaints to HR. As a result of S.N.'s

complaints, Google deleted the Youtube Candidate Tracker for the Youtube Diversity Steering
Committee from the Google Drive. Further O'Conner and others deleted all emails around diversity hiring goals from the YouTube Technical Staff'mg Team's Gmail in..oxes. Pisacane confinned to
Wilberg in a meeting that there that the team was asked to "clean up" its diversity hiring practices.
Pisacane also told the entire Y ouTube recruiting team in a team meeting that HR was involved in an
investigation ofYouTube hiring practices and the team had to change its specialized diversity hiring
process. Pisacane told Wilberg that these changes were only temporary and told him that YouTube
would soon continue with the quota-based hiring practices. Pisacane told Wilberg not to share outside
of the core recruiting team what the team was doing, such as sharing with Recruiting Coordinators.

In January of 2016, recruiters at Google were asked to fill out a survey that included manager
feedback. In February of 2016: the manager feedback survey results were released, and O'Conner
scored -30% satisfaction that is exceptionally low. In February of 2016, Wilberg had a follow up
conversation with Pisacane. Pisacane told Wilberg that she had ·decided she would not make any
changes in replacing O'Conner as the team manager. In February of 2016, Wilberg spoke with the
Google Technical Staffing Director to let him know that Wilberg wanted to change teams. The
Technical Staffing Director "asked Wilberg why and Wilberg told him that O'Conner made him
uncomfortable. The Technical Staffing Director recommended staying put for now and that HR was
looking into the situation.

In February of 2016, Wilberg told a few coworkers about speaking with the Technical Staffing Director. One of these co-workers spoke with Pisacane about Wilberg's complaints.
Pisacane immediately asked Wilberg to a meeting where she demanded to know what Wilberg had
told Pisacane' s manager. Pisacane told ..ilberg that she wasn't sure if she could trust him any longer
in that meeting for going above her head. Wilberg told Pisacane in this meeting the environment was
toxic on the team.

Pisacane told O'Conner that Wilberg had escalated his concerns about O'Conner to the Technical Staffing Director. As a result, O'Conner retaliated against Wilberg by not speaking with
him and by cancelling all weekly one-on-one meetings. Wilberg told Pisacane that O'Conner was
retaliating against Wilberg. In response; Pisacane told Wilberg, "what do you expect, you complained
to the director about O'Conner." Pisacane failed to take any corrective steps to fix the toxic work
environment or to address any of the complaints that Wilberg had made about Google/ YouTube's
discriminatory hiring practices.

In February of 2016, Wilberg spoke with HR.BP A.L. (initials) at Google. HR met separately
with every full-time member of the YouTube Staffing team, At the beginning of the meeting A.L. said
she was there to help Pisacane and O'Conner through this situation and then proceeded to ask questions about Wilberg's experiences working with O'Conner.

In March or April of 2016, A.L. followed up with Wilberg and conveyed to him that all members of the YT recruiting team felt the same about O'Conner. In approximately March or April
2016, Wilberg Began seeing an onsite mental health counselor for mental stress.

In April of2016, Wilberg received poor performance review for QTR4-2015 and QTRI-2016 from O'Conner in retaliation for his complaints to staffing leadership and to HR regarding
discriminatory hiring practices at Google. The reason proffered by management for the poor performance review were allegations that Wilberg had received a low candidate survey feedback score of 60%, However, another recruiter on the team received an exceeded expectations rating even though she had a feedback score of just 30% satisfaction, just half of Wilberg's score. Wilberg's performance review also cited this client escalation for the low rating. However, the escalation had actually occurred after the performance review period had ended and managers were calibrating feedback for the previous cycle. Wilberg was not told what the "escalation" was in the performance review. During the performance review meeting, Pisacane told Wilberg that didn't remember anything about the "escalation". Wilberg was not told about what the client escalation was until July of2016 after he lodged a complaint with HR.

After the negative performance review, Wilberg filed complaints about retaliation against him by his managers with his HRBP, which forwarded the complaints to Employee Relations. After investigating Wilberg's complaints, HR found that O'Conner had retaliated against Wilberg in violation of Google Policies. Google considered Wilberg's complaints to have been resolved based on Allison Alagna ("Alogna") being hired to

replace O'Conner as Wilberg's manager and manager of the rest of the tech staffing team at You Tube.

O'Conner remained the team manager until Alogna started in July 2016. In the second one-
on-one meeting between Wilberg and Alagna, Alagna become hostile and angry towards Wilberg for no apparent reasons and created a hostile work environment. In subsequent meetings, Alogna told Wilberg she wanted him to leave the tech recruiting team, that the team was not a good fit, and that Wilberg didn't know how to do his job. She was hostile and angry for months in every weekly one on one. Wilberg became fearful about attending the one on ones and meeting with Alogna each week, so Wilberg requested to work in another Google building next to the building Wilberg 's desk was in. Even though O'Conner had been replaced, O' Conner was the staffing business partner and responsible
26 for training Alogna. In addition, when Alogna told Wilberg he should transfer off the team, Wilberg informed Alogna that Pisacane asked Wilberg to stay on the team before Alogna had joined and that Alogna's allegations that Pisacane did not want Wilberg on the team were untrue. Wilberg reported Alogna's hostile, angry and toxic behavior to HRBP A.L, but she took no action to intervene.

O'Conner continued to be-hostile to other team members including a new hire who was responsible for training and mentoring. A YouTube recruiting peer came to Wilberg and let him know that the new hire needed help creating hiring offer packets stating that she was not getting proper training from O'Conner and that O'Conner was treating the new hire in an abusive manner as she sat next to the new hire and overheard their conversations where O'Conner was speaking disrespectfully and talking down to the new hire.. The new hire came to Wilberg to ask for packet training which was core to her job and training she did not successfully receive yet from Wilberg. The new hire was upset when she asked for help and Wilberg agreed to stay after hours, from 5 to 7pm and help train her. The new hire gave Wilberg a peer bonus for this help.

In August of 2016. Alogna was grilling Wil..erg in a 1:1 and she asked him to explain why
he helped the new hire when he was the mentor for the new hire. Wilberg explained that she needed help. Alogna became even angrier and asked why Wilberg didn't escalate the issues that the new hire was having to Alogna and Pisacane. Alogna became more angry and hostiJe than ever and demand that Wilberg find another team immediately. Alogna was so angry that Wilberg explained that he didn't want to make trouble for O'Conner as O'Conner had been found by HR to retaliate against Wilberg in the past. Wilberg showed Alogna the email from the HR employee relations team that found O'Conncr was retaliatory to Wilberg in the past and violated Google's policy around retaliation. Wilberg told Alogna not to share this information with Pisacane as Pisacane didn't know who filed the complaint against O'Conner and caused the HR investigation. Alogna said Pisacane must already know and refused to keep the infonnation in confidence and signaled she would let Pisacane know that

Wilberg was the one that filed a confidential complaint against O' Conner.

Wilberg interviewed with and found a new team in San Francisco. Wilberg was going to share the news with Alogna· in the weekly 1 :1 and instead during the week's 1 :1, Wilberg and Alogna were joined by HR.BP A.L. Alagna and A.L. put Wilberg on a Performance Improvement Plan. The PIP was full of lies, exaggerations and misinformation. Also, the PIP was mostly written with complaints about Wilbcrg from O'Conner, who was an acting retaliatory against Wilberg in violation of Google's anti-retaliation policies. Wilberg refused to sign the PIP as it was a strong misrepresentation ofWilberg 's work: Wilberg met with A.L. immediately Wilberg told HR the majority ofinfo was from O'Conner who was proven to be retaliatory toward Wilberg. A.L. said she was suspicious as well about the timing of the PIP. However, she told Wilberg that she though the reasons for the PIP were reasonable and that Pisacane, who Wilberg did not work directly with and had only second-hand knowledge ofWilberg 's work, wrote the PIP with input from O'Conner.Wilberg told A.L. that he had another team lined up to internally transfer to and that he needed to change teams because he would continue to be retaliated against on this team for. raising HR concerns. A.L. said she did not support a move off the team.

Wilberg then escalated the retaliation issue to A.L.'s manager HRBP who took over the case.

In December of 2016, Wilberg 's recruiting performance was strong and Wilberg hit all of the metrics required in the PIP and Eifler the 3 months on the PIP. Wilberg's new HR.BP removed Wilberg from a PIP and recommended that Wilberg change teams .

In early 2017, Wilberg interviewed and found another team in Google Data Science
16 recruiting and the manager wanted to quickly speak with Alagna before making the transfer official. Alogna gave Wilberg a bad recommendation and the manager withdrew her support to have Wilberg transfer, so Wilberg was stuck on Alogna's team. Alogna later denied speaking with this manager, however, the manager confirmed with Wilberg that the1:1happened.

In March of 2017, Alogna let Wilberg know that he would be fired if he did not meet diversity-hiring goals he was given. Alogna also relayed the s..me threats to other recruiters. For example, one recruiter told him that-Allison Alogna told her that her job was in jeopardy if she did not hire 3 black engineers in the quarter. Alogna encouraged the recruiter to leave the t..m if she thought she could not meet her hiring goals.

In April of 2017, Wilberg emailed Allison Alagna and his HRBP that he was having stress-
26 related medical issues. Wilberg went on 2-week medical leave approved by his doctor for a weakened immune system, which was a stress-related illness.

In April of 2017, Allison Alogna let the team entire YouTube Staffing team know that they

were not allowed for a time to hire any non-diverse Junior and Mid-Level engineers and that the YouTube Staffing Team needed to make a list of all of the Junior and Mid-Level engineers theYouTube Tech recruiting team was working with and cancel all onsite and phone interviews for candidates who were not Black, Hispanic or a Woman. Recruiting made a list of all interview for Junior and Mid-Level engineers in process and the team proceeded to cancel all interviews except diversity candidates who were allowed to continue interviewing. The decisions on who to interview was not made by the candidate's qualifications for the role, it was solely made by gender and race whereas only females could continue to interview for Junior and Mid-Level Engineering roles as well as Black and Hispanic engineers. Wilberg did not follow the team policy, which opposed Google's
policy and canceled all interviews for candidates he was working with regardless of race and gender. Wilberg proceeded to revive a male engineer candidate during this time and hire one engineer who was not diverse. Alogna was not happy about this and threatened Wilberg that he needed to follow the team policy or he could lose his job.

In June of 2017, Wilberg's HRBP left and Wilberg met with his new HRBP to let her know
16 about the toxic culture on the team, the policy violations and the continued retaliation against Wilberg for his earlier complaints. Wilberg's new HR.BP met immediately with Alogna about Wilberg 's concerns about retaliation. Alogna also met with Wilberg and another manager on the YouTube Staffing Team, to let Wilberg know he was meeting expectations for Q3 l 7. Alagna sent an email to Wilberg to confirm this.

In June of 2017, the You Tube Staffing Team was restructured. Google formed a group of
"Diversity Only" technical recruiters. They were responsible for College Recruiting where the goal in college recruiting was to hire only (100%) Black, Hispanic and woman Engineers. The goal for 2018 hiring was to hire a total of 80 engineers and they were to all required to be “diverse."

Google continued to pursue its Diversity hiring practices. However, to mask the implementation of these policies, an email came out from Google Tech staffing leadership that stated that a Recruiters should no longer be tracking candidate's diversity status and that Google recruiters should moving forward not be making decisions about who should be hired based on diversity status. Management asked Wilberg and other tech recruiters to delete all references in Google's internal records reflecting diversity trackers. Allison Alogna sent an email to the team urgently asking that the team delete all diversity trackers as each week they had to provide diversity hiring numbers to Allison. Google's Staffing Team continued with Google's illegal hiring policies, but stopped tracking and
engaged in an effort to delete all the evidence of the preferences given to women and minorities in Google's hiring practices.

In June of 2017, Allison Alogna went on Leave and manager Jae Jun became Wilberg 's

manager. In October of 2017., Wilberg 's performance continued to be top 2 out of between I 0-15 recruiters on the tech recruiting team (people transferred in and out of the team so the size of the team changed month over month), however, Wilberg continued to receive bad performance reviews for exaggerated reasons like talking too much in meetings.

In September and October of2017, Wilberg met with his HRBP and infonned her that he and
14 other members of the team found that the team's new leader Jae Jun was difficult to work with. Wilberg also shared his ongoing concerns about violations of the law around discriminatory hiring practices, which was Wilberg's concern with manager O'Conner. He told his HRBP he was upset that the discriminatory hiring practices were continuing even after multiple complaints. Furthermore, Wilberg let HR know that Lisa Pisacane had continued to encourage policy violations to be the team policy by encouraging or pressuring each manager who led YouTube tech staffing to violate the law
20 and that it was Lisa Pisacane who was driving the Federal and State Law violations and the Google policy violations around unfair hiring practices and discrimination against non-diverse applications based on their race and gender.

TheHRBP started setting up meetings with team member to investigate. Several YouTube
24 recruiters met with their HRBP to discuss their issues.

In October of 2017, Wilberg was given a bad performance review by Jae Jun in retaliation
for his ongoing complaints about Google's illegal hiring practices. She cited criticisms in the evaluation that were based on events that had taken place much earlier and which were the basis for the bad performance review 6 months earlier. Wilberg informed Jae that her rationale was not relevant to this performance cycle and Jae stated she did not know that he had been given a bad performance review six months before these same events.

Google had a practice of systematically discriminating against older engineers in its hiring
practices. Wilberg opposed these practices. Wilberg gave a job applicant over 40 years old who had applied for an engineering position a lower experience level than the level his supervisors wanted him to give the applicant because he didn't qualify for the higher level under Google's standards. However, his supervisors wanted him to require that the applicant interview for a position of a higherlevel, knowing that he could not meet the requirements of the higher position, because they didn't want to hire him because of his age. Google's hiring policies allowed exceptions to the hiring guidelines. Wilberg's managers were angry with him because he was seeking an exception for hiring an engineer over 40 years of age as a mid-level engineer.

Under pressure from Jae Jun, Wilberg brought the candidate back in for two additional design interviews. The applicant failed both interviews as he didn't have Level *5* skills. Wilberg brought the employee back to the YouTube Hiring Committee where he was re-approved as an Level 4. Wilberg felt that Jun was pressuring Wilberg to discriminate against this candidate and not hire him as an Level 4 if he didn't meet the Level 5 hiring bar, which she should have reasonably known he would not. There was tremendous pressure on recruiters at Google not to hire candidates with over 10 years of industry experience as an Level 4.Wilberg protested Google's age discrimination. Wilberg complained about this discrimination against older workers to his managers, and resisted the efforts to
force order applicants to apply for positions that they would not get because they didn't have the requisite experience and skills.
In the Fall of 2017, Wilberg sent many emails with HRBP around illegal hiring practices on
24 the YouTube Staffing team. About two weeks later, Lisa Pisacane and Jae Jun met with the entire YouTube Tech Staffing team and told everyone the team was no longer having a dedicated Diversity hiring team or individual recruiter diversity hiring targets. In this meeting Lisa Pisacane wouldn't look at Wilberg when he asked questions. In retaliation for his opposition to discriminatory practices, Google gave Wilberg a poor performance review.

In October of 2017, Google's college recruiters gave an update in the bi-weekly YouTube
team recruiting team meeting that for 2018 college hiring, 75% of all hires were diverse and the team had hired over 30 of the 80 all Diverse Software engineer hiring goal.

In November of 2017, Jae Jun stepped down and went on a 3-month leave of absence

and Lisa Pisacane took over as Wilberg's manager. On Friday, November 3,2017, Wilberg was brought into a meeting with HR and Lisa Pisacane and terminated for client escalations, not meeting goals,talking too much in meetings and not being collaborative. These reasons for Wilberg's termination were all pretextual.