

RECEIVED

AUG 25 2017

cc
Herrington
Sutcliffe
TR

Office of Administrative Law Judges
San Francisco, Ca

**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DECLARATION OF J.R.
RIDDELL IN SUPPORT OF
DEFENDANT ORACLE
AMERICA, INC.'S OPPOSITION
TO OFCCP'S MOTION TO
COMPEL AND FOR ORDER
SETTING PRODUCTION
SCHEDULE**

I, J.R. Riddell, hereby declare as follows:

1. I am an attorney at Orrick, Herrington & Sutcliffe LLP ("Orrick"), admitted to practice in the State of California, and serve as counsel to Oracle America, Inc. ("Oracle") in the above-captioned matter. I make this declaration in support of Defendant Oracle America, Inc.'s Opposition to OFCCP's Motion to Compel and For Order Setting Production Schedule. I have personal knowledge of the facts set forth herein, except where stated on information and belief, and if called as a witness could competently testify thereto.

2. Various statements in the Declaration of Norman E. Garcia in Support of OFCCP's Motion to Compel and For Order Setting Production Schedule are misleading, incomplete and/or inaccurate. This is likely due in part to his absence from most portions of the meet and confer process germane to the parties' current positions, which came into focus over the last few weeks. Mr. Garcia was initially involved in the meet and confer process regarding Oracle's responses and objections to OFCCP's requests for production. However, since mid-July, Oracle has instead met and conferred exclusively with Mr. Marc Pilotin and Ms. Laura

Bremer regarding the issues presented in OFCCP's Motion. On information and belief, during this period, Mr. Garcia's involvement in the meet and confer process shifted away from the issues presented here, and instead his meet and confer communications with Oracle focused on the issues raised in Oracle's Motion to Compel Plaintiff OFCCP to Produce Documents, Respond to Interrogatories, and Designate Witnesses for Deposition.

3. Because much of what Mr. Garcia states in his declaration is immaterial to the issues before the Court, this declaration addresses only the most pertinent points.

4. On February 10 and February 21, 2017, OFCCP served a total of 92 requests for production of documents. Many of these requests were extremely broad and sought "all documents," "all communications" and/or "all emails" for a multitude of vague and broadly-defined topics, categories, or custodians. Oracle served responses to OFCCP's requests on March 7 and March 20, 2017, respectively. Following a lengthy meet and confer process with OFCCP, Oracle served supplemental and amended responses to OFCCP's requests on July 12, 2017. Attached hereto as Exhibit A is a true and correct copy of Oracle's Supplemental and Amended Responses to OFCCP's First Set Requests for Production, and attached hereto as Exhibit B is a true and correct copy of Oracle's Supplemental and Amended Responses to OFCCP's Second Set Requests for Production.

5. For months after OFCCP sent its requests, it refused to enter into or even consider a protective order. Attached hereto as Exhibit C is a true and correct copy of correspondence from Laura Bremer to Erin Connell, dated March 22, 2017, in which Ms. Bremer stated that "a protective order is not necessary in this case." Attached hereto as Exhibit D is a true and correct copy of correspondence from Ms. Bremer to Ms. Connell, dated April 17, 2017, again stating that "a protective order is inappropriate." Attached hereto as Exhibit E is a true and correct copy of correspondence from Ms. Connell to Ms. Bremer dated April 20, 2017 explaining that Oracle would seek the court's intervention to decide the issue.

6. During the meet and confer process with OFCCP, Oracle offered to discuss search terms for certain requests, and also suggested the use of sample periods to limit some of

OFCCP's incredibly burdensome requests for email. *See, e.g.*, Exhibit B at 28 (Oracle's Supplemental and Amended Responses to OFCCP's Second Set of Requests for Production).

7. Oracle's invitation to discuss search terms/sampling went unanswered until two days before the Court's August 4 deadline for meeting and conferring, when OFCCP indicated on an August 2, 2017 meet and confer call with Ms. Connell that it was willing to discuss search terms and sampling for its requests seeking emails. Attached as Exhibit F is a true and correct copy of correspondence from Ms. Connell to Mr. Pilotin, dated August 3, 2017, noting that the August 2 call was the first time that OFCCP "indicated that it was willing to consider Oracle's repeated invitations to discuss an approach to narrowing OFCCP's overbroad and disproportionate requests for emails."

8. Oracle and OFCCP reached agreement on August 7, 2017 for Oracle to review sample sets of emails in response to OFCCP's Request Nos. 17, 18, 22, 24, 25, 39, 40, 42, 43, 44, 45, and 46. Attached as Exhibit G is a true and correct copy of correspondence from Mr. Pilotin to Ms. Connell, dated August 7, 2017, which outlines the agreement between the parties. On information and belief, the search terms and sample time periods agreed to by Oracle encompass over 82,000 documents. Although the parties reached agreement on the scope of emails to be reviewed, no agreement was reached on a deadline for the production of these documents. *See id.*

9. The timeline for production of emails that OFCCP has requested whereby Oracle must complete its review and production of all documents—including many of the emails that were the subject of the August 7 agreement between the parties—by September 15, 2017, is not feasible. Similarly, a production deadline of October 15, 2017 for a to-be-determined number of emails, for which OFCCP and Oracle have not even discussed search terms or sample periods, is not feasible. This is based on the estimated time it will take to review the tens of thousands of documents that Oracle has only recently agreed to review and produce, as well as the estimated time required for: Oracle to make its initial productions in response to Request Nos. 18, 24, 25, 39, 40 and 46; OFCCP to review those productions; the parties to engage in a further meet and

confer process regarding additional potential search terms and sample periods for emails that are potentially responsive; if agreement is reached, for Oracle to run any new search terms across any agreed-upon sample period; and Oracle to review and produce the documents that hit on those searches. Even after the 82,000+ documents are threaded and de-duplicated (a process necessary to reduce reviewing duplicate emails, including threads that compile forwards, reply and reply-all messages) Oracle will still have to review tens of thousands of documents. Based on Orrick's experience reviewing and producing tens of thousands of documents already in this matter, an experienced document review attorney with a sophisticated understanding of the matter and OFCCP's requests, working full time, can review approximately 425 documents per day. This, however, is only the initial review. Before producing documents, Oracle requires additional time to ensure that the review is correctly identifying responsive documents and designating them for production and also requires time to review potentially privileged documents and create a privilege log for any documents withheld on the basis of privilege.

10. Mr. Garcia's claim that Oracle refused to meet and confer about requests for data until OFCCP interviewed witnesses is misleading. The parties met and conferred early on and Orrick (through me and other attorneys) explained our understanding of the OFCCP's document requests related to "database" exports (i.e., RFPs 73 to 76) to Mr. Garcia. In turn, Mr. Garcia indicated Orrick's interpretation was inaccurate and then offered a different interpretation and explanation regarding what data OFCCP was requesting Oracle produce. As a result of the varied interpretations of the requests, Orrick asked for clarification and/or modification of the requests to help resolve these differences. We also explained that OFCCP's demands for wholesale exports of databases were extremely broad and, if taken literally, would call for exports of entire databases to include business records, operational data, sales data and other data points wholly irrelevant to the litigation. We explained that, given OFCCP's apparent inability to articulate exactly which data it wanted, and its lack of understanding regarding the actual breadth of its requests, OFCCP would be better served completing its Rule 30(b)(6) interviews to gain a better appreciation for what is in the databases after which point OFCCP could then advise

as to what it really wanted. (OFCCP elected to conduct interviews instead of actual depositions to learn about the databases from which it was requesting Oracle produce database exports.) I was also informed by OFCCP's counsel that these 30(b)(6) interviews were intended to help OFCCP determine what data was available; the interviews, according to Marc Pilotin, would facilitate "discovery regarding discovery."

11. Oracle spent a great deal of time and effort preparing and tendering nine witnesses from six locations to speak about 15 different databases, modules and applications (e.g., GSI, HCM, GCW, ORS, Core HR, Resumate, iRecruitment, Taleo, Talent Review, Performance Appraisals, Workflow, Global Approval Matrix, Compensation Workbench, Information Workbench, and Workforce compensation). Following the interviews, OFCCP refined its data requests (i.e., RFPs 73 to 76) to account for the data it actually wanted/needed—none of which included the massive amounts of data related to operational, business, or sales data that rendered those requests incredibly overbroad as described above. While the process was extremely burdensome and expensive for Oracle, OFCCP did narrow its original broad and sweeping database requests (reflected in RFPs 73 to 76) but even so, the requests remain extremely broad and burdensome. In light of the foregoing, the claim that Oracle refused to meet and confer about the data requests is misleading, especially considering the conversations that transpired before, during, and after the ten 30(b)(6) interviews (one of the nine witnesses was interviewed twice) were a central part of the meet and confer process that facilitated OFCCP's eventual understanding of, and communication regarding, exactly what it sought from the databases that it claims are relevant to this case.

12. It is disingenuous and misleadingly incomplete to state, without qualification, that Oracle has not produced any data to date. A more accurate statement would be that Oracle previously provided OFCCP with enormous amounts of employee and applicant data during its compliance audit, and has pledged to provide OFCCP with massive amounts of additional data (orders of magnitude) as soon as possible. To date, in this case Oracle has made seven

productions.¹ While the productions do not contain the data contemplated by OFCCP's RFPs 73-76, Mr. Garcia's statement that "Oracle has not produced any data to date" incorrectly suggests that OFCCP is not in possession of data relevant to its claims and implies that Oracle has refused to provide it with any data. During OFCCP's audit, Oracle produced over one million cells/data points in various formats, and, as OFCCP's Motion acknowledges, Oracle has committed to producing 400 to 500 data points for thousands of applicants and employees covering several years. Oracle explained to me and to OFCCP that during OFCCP's audit, the data which Oracle is now working to gather and produce in the requested format, was not subject to extraction in the same manner sought here for thousands of employees and applicants because it did not naturally exist in such an exportable format (in the absence of scripting new computer programs). Thus Oracle would have had to draft computer scripts to produce the data as requested by OFCCP.

13. Through oral and written communications, various Orrick attorneys (including Erin Connell, Gary Siniscalco, and me) have repeatedly conveyed to OFCCP's counsel the complexity of their requested database exports, the time and effort involved, and the fact that Oracle has an interest in compiling and completing these database exports quickly as well—to provide to its consultants/experts. Indeed, we have explained to OFCCP's counsel, including Mr. Pilotin and Ms. Bremer that the reason the data is taking time to provide is because the requests are both very large and complex. Orrick has reviewed and is continuing to review initial iterations of these exports and is finding there are various glitches or corrections that need to be made, as well as fields and other scripted outputs (out of the hundreds of data fields OFCCP requested) that need modification. As a result of our review, we have coordinated with Oracle, and that has in turn caused the need for Oracle's IT team to go back, revise scripts, re-run

¹ These productions included documents related to or consisting of policies, practices and procedures, email communications, and training materials about Oracle's College Recruiting process memoranda, modifications to the core schools list, Career Fair guidelines, and the Employee Referral Program. The productions also included Oracle's PT1 job descriptions and Global Career Code descriptions, electronic resumes collected from college recruiting, resumes for experienced recruiting, various emails related to offer approvals, and various audit communications with OFCCP.

them and engage in additional review. In meet and confer discussions with Mr. Pilotin and Ms. Bremer, my colleagues and I have explained this process and the fact that these issues, including the need to account for time to review, quality check, and revise, are necessary to minimize (although perhaps not entirely eliminate) issues with the final products produced to OFCCP. To simply state that Oracle has not produced data to date, is disingenuous and misleading, and conveniently ignores Oracle's significant and ongoing efforts—much of which are described in the declaration of Linda Zhao. As a result, I disagree with any portrayal of Oracle and its counsel being unreasonable or delaying production of materials. OFCCP knows that Oracle has been diligently working to provide OFCCP with that data, and the fact that it is taking so much effort and time to program scripts to compile, aggregate, and produce these data points from multiple sources serves to underscore that fact.

14. Mr. Garcia's declaration advises the Court that I indicated Oracle intended to produce a privilege log, but he did not also advise the Court that I have, and other Orrick attorneys have, repeatedly provided fulsome explanations to him and others regarding why a privilege log was not produced on the date originally anticipated; i.e., because no responsive documents had been withheld on the basis of privilege. During our May 24, May 30, June 1, and June 5, telephonic meet and confers, I repeatedly assured Mr. Garcia, that in the event we withheld something based on privilege or came across responsive privileged documents, we would annotate the document on a privilege log—I explained this in excess of 11 times during those calls. During the May 24 meet and confer we stated that we expected (and I emphasize the word expected) we would be withholding documents in our June 9 production and would provide the related privilege log on June 12. Indeed, all communication and correspondence leading up to that date rested on that assumption or expectation. However, it happened that there were no privileged documents to log at that time after all—in our review and production efforts we had not identified documents to be withheld from those productions based upon claims of privilege—and that is the reason we did not provide a log. Once again, this was clearly explained to Mr. Garcia in my July 11, 2017 letter, and so it is incomplete and alarmist to simply state that Oracle

agreed to produce a privilege log on June 12, and then failed to do so, without providing the Court with a more fulsome explanation. Attached hereto as Exhibit H is a true and correct copy of the July 11, 2017 letter from me to Mr. Garcia regarding Oracle's Request for Production of Documents with the privilege log discussion on page 10. To be clear, we have repeatedly advised OFCCP's counsel that we would properly log any documents withheld on the basis of privilege, and intend to do so. For example, I anticipate most privileged documents will be responsive to OFCCP's request for communications related to the audit responses—those documents will be appropriately identified on a log, consistent with our long-articulated position.

15. My colleagues and I have been continuously working to resolve various discovery disputes with OFCCP related to its 92 requests, and Oracle has been furiously working to gather and provide the requested data.

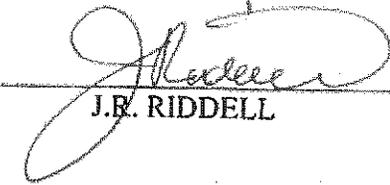
16. Oracle has worked diligently to provide OFCCP with explanations and reasonable proposals to resolve the issues raised in the Motion. For example, the August 3, 2017 letter from Ms. Connell to Mr. Pilotin explains Oracle's objections to OFCCP's request for contact information for *all current and former employees* who worked in the PT1 job group (RFP 83), notes Oracle's proposal of a *Belair* notice procedure, and suggests a path forward by agreeing to production of contact information for a limited number of individual contributors (non-manager) class members subject to a *Belair* notice. *See* Exhibit F at 3–6. Similarly, the letter reiterated Oracle's request that OFCCP narrow its requests for emails, provided metrics to demonstrate why the requests as written are broad and disproportionate, and proposed search terms and timeframes by which to narrow the email-related requests. *Id.* at 8–11.

17. Attached hereto as Exhibit I is a true and correct copy of the July 19, 2017 letter I sent Mr. Garcia suggesting solutions to resolve disputes over OFCCP's RFPs, including a request that OFCCP explain the relevance of the validity studies requested in RFPs 87–88. Oracle also reiterated its willingness to evaluate OFCCP's request for evaluations "as described" and "as required" in the Code of Federal Regulation, if OFCCP would clarify the requests so that Oracle could determine what OFCCP sought without referring to the CFR and hoping its legal

interpretation run parallel to that of OFCCP.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed in Sacramento, California on August 25, 2017.



J.R. RIDDELL

