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July 11, 2017

Via E-Mail

Marc Pilotin
Office of the Solicitor
90 7th Street, Suite 3-700
San Francisco, CA 94103

Re: *OFCCP v. Oracle America, Inc.* Case No. 2017-OFC-00006
OFCCP's Database Requests

Dear Mr. Pilotin:

Having met and conferred with you in person on July 5, 2017, and advising you regarding the status of Oracle's extensive and expansive efforts to respond to OFCCP's discovery, I am now writing in response to your June 30 letter pertaining to OFCCP's requests for database information in response to RFPs 73-76.

As you are aware, in lieu of depositions related to the topics noticed in OFCCP's initial 30(b)(6) notice, Oracle engaged in the interview process proposed by OFCCP. The purpose of these interviews was to help OFCCP understand various Oracle "databases" (together with modules and applications) that include employee data, the kinds of data stored in said databases, the ability to generate reports, and the efforts or manual burden associated with extracting certain data. However, based on your letter, it is apparent that OFCCP has not used the information learned in the interviews to narrowly tailor RFPs 73-76 in a manner that is proportional to the needs of the litigation.

Specifically, in your letter of June 30 you state "OFCCP's assistance does not absolve Oracle of its obligation to perform its own reasonable search for responsive data. To the extent there are data not identified below that are responsive, Oracle must produce them." This position eviscerates the proffered utility of the informal interview process. As I have discussed with both you and Norm Garcia at length, RFPs 73-76 are wildly overbroad and, as phrased, would call for the production of entire databases consisting of terabytes of wholly-irrelevant information related to Oracle's sales, operations, etc. That is neither proportional to the needs of this litigation nor practical, and Oracle will not produce entire databases to OFCCP, nor do we believe that is what OFCCP actually wants. The rest of this letter addresses the specific requests you make in your letter; however, should OFCCP request anything beyond what we address here, Oracle requests OFCCP modify its requests appropriately.

Additionally, and as previewed for you in our July 5 discussion, Oracle cannot commit to producing the materials discussed herein or to the production schedule you unilaterally set until it discusses these requests (as clarified and explained for the first time in your letter) with the necessary Oracle personnel, many of whom were on vacation in conjunction with the July 4 holiday. We therefore committed to getting

back to you with this letter and informed you that it would not include definitive commitments until after we discussed these requests with Oracle personnel to explore both feasibility and the proportional burden associated with fulfilling the requests through the use of Oracle's manpower.

Burden & Proportionality

That said, and before addressing the issues in detail below, I pause to make clear Oracle's fundamental concerns and reservations regarding the relevance of what OFCCP seeks through its expansive document demands, inclusive of those through which you seek the database exports identified in your letter. From 2014 to 2016, OFCCP conducted an extensive compliance evaluation, and the results of its factual investigation are what formed the basis upon which OFCCP made findings and issued its Notice of Violation ("NOV"). In multiple places, the NOV and the Amended Complaint both make clear that "[d]uring the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; [] conducted an onsite inspection of the worksite[;]" and reviewed and analyzed Oracle's own "hiring data and appropriate workforce availability statistics." NOV pp. 2-5. OFCCP had access to personnel records for over 18 months and relied on these records in making its discrimination findings. Accordingly, by OFCCP's affirmative admissions, it has already collected massive amounts of material, including many of the records it now seeks here, from Oracle – material that OFCCP found adequate to support its violation and findings. Given the lengthy investigation and records OFCCP reviewed (or affirmatively chose not to personally review) during the onsite investigation that included a sizeable contingent of OFCCP staff descending on Redwood Shores for over nine days, Oracle fails to appreciate why OFCCP needs more information – other than perhaps supplementing the personnel records previously provided in order to cover the expanded time frame beyond the initial 18 months.

The 92 Requests for Production ("RFPs") therefore largely seek information that is unnecessary. In light of the foregoing, all the material and information already gathered in the compliance evaluation must be considered against the burdensome nature of OFCCP's requests here and the cumulative proportional needs in this litigation.

RFP 73

Under the umbrella of RFP 73, your letter makes multiple requests that Oracle aggregate and pull employee-related information from thousands of records that exists in various databases/sources. These requests imply that the applicant and employee details exist in some format that renders it subject to production with little or no difficulty. As explained to OFCCP in the 30(b)(6) interviews, and on several other occasions, to the extent Oracle is able to pull and aggregate much of the employee or applicant details from the systems of record on such a scale, it has to be done through *manual* efforts on the back end through special projects that require specific requirements/parameters, mapping of the details to their

location in the databases, writing scripts, testing and quality control of the outputs, and then final generation of the materials. And although Mr. Juvara generally explained the length of time it would take to undertake such a project for personnel information residing only in GSI and/or HCM (separate and distinct from data in other, separate databases such as Resumate, ORS and Taleo), you did not ask him questions about the burden associated with special projects of the scale you contemplate in your letter (literally hundreds of data fields for each individual). Again, for these reasons Oracle needs to assess the requests before providing you with a more fulsome response to your letter.

Request for compensation snapshots: You have requested the compensation snapshots for each employee in the PT1 job group or in the Product Development, Information Technology, and Support lines of business for the beginning of calendar years 2013-2017. Yes, Kate Waggoner discussed these compensation "snapshots" during her interview. However, Ms. Waggoner explained that while these snapshots do exist, the date on which any snapshot is taken varies. They are usually taken approximately two months prior to the effective date of an increase. She further explained that for the last 4-5 years the effective date for focal increases is any time between September and December (and not necessarily annual), making the "snapshot" dates fall anywhere between July and October of any given year, if at all. Thus, based on the available information and her explanation, OFCCP's request for information "as of the beginning of calendar years 2013, 2014, 2015, 2016, and 2017" is built on inaccurate assumptions. Additionally, as the ALJ has not yet issued a final ruling concerning the relevant time frame, it is unclear which calendar years will be relevant.[1]

Furthermore, OFCCP demands that the compensation "snapshot" include all 111 personnel information fields in ORACLE_HQCA_0000000004 as well as W-2 and Compa-ratio information with zero regard to how such information "snapshots" are kept and what information they regularly contain. Oracle is currently determining the feasibility and associated burden related to producing the "snapshots" referenced by Kate Waggoner for the PT1 job group for the years 2013-2017 as they existed when making compensation decisions during the review period.

Request for W-2 Box 5 data: Oracle is making a similar assessment with respect to your request for "W-2 Box 5 (Medicare wages) data."

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[1] While Oracle maintains its objection that any export should be limited to responsive documents from the period of January 1, 2013 through June 30, 2014 for Requests related to OFFCP's hiring claims, and January 1, 2014 through December 31, 2014 for Requests related to OFCCP's compensation claims, Oracle acknowledges that, as of this date, the issue of the relevant time period is currently pending before Judge Larsen, and that once Judge Larsen's decision regarding the relevant time period at issue in the Amended Complaint ("ALJ Relevant Period") is final it will govern its discovery obligations.

Request for Compa-ratio data: Oracle is making a similar assessment with respect to your request for "Compa Ratio [sic] for the employee's current salary."

Request for 300+ additional fields of personnel information for each employee: Your letter further requests that Oracle produce 27 additional categories of information spanning at least 301 information fields for each employee and that Oracle relate the information to each individual "through use of an appropriate primary key." During our in person meet and confer on July 5 you clarified that this is intended to reference Oracle's internal key for mapping applicant and employee information together. For all data that Oracle agrees to produce, it will produce that data as it is kept in the regular course of business, including a primary key where applicable. Oracle does not agree to modify any of the data to impose a primary key where it otherwise does not already exist.

GSIAP Information

You request Oracle produce information from each of the tabs referenced on the GSIAP screenshot used during your interviews with Mr. Juvara and Ms. Cusson. Mr. Juvara explained that these fields would be exportable from GSI with a custom script written by his team, but it was not clear that you would be seeking all the fields you have sought in your letter. Oracle is currently determining the feasibility and associated burden related to producing the requested material.

Workforce Compensation/Compensation Workbench

In your letter you request information from Workforce Compensation including an employee's ranking and rating, notes, any supporting documentation, and an approval audit log. As Ms. Waggoner explained during her interview, ranking, rating and note fields are not filled in for each applicant. She also explained that notes for an employee are only visible by clicking in to an employee screen. In fact, a manager would not even know if there were notes to be seen on an employee profile without clicking into it. Reports cannot be run on these explanation fields; in fact, the only report available within the system is an export of the screen – it provides no additional information.

Additionally, with respect to audits Ms. Waggoner stated that as a Super User of the system she can view the audit function which would allow her to see changes and approval time stamps, but would not provide any explanations. This is not a function available to managers and as Ms. Waggoner stated, it is not downloadable from the system. Like the notes field, Ms. Waggoner can only access this audit function by clicking into a particular record.

Ms. Waggoner stated that the only information that is pushed to GSI is the new job code (in a focal review) and the final salary, equity or bonus information. The rest of the fields requested (ranking, rating, notes and audit logs) are not stored in GSI or anywhere other than Workforce Compensation. Oracle is

currently investigating whether there are any other options and the burden associated with undertaking such an effort.

Talent Review History

Ms. Dodson shared her belief that HR could run reports concerning the past two years of talent ratings for an individual by organization. Oracle is looking into collecting these reports and, assuming reports can be run and doing so would not impose undue burden, Oracle intends to produce those reports as they are kept in the normal course of business, subject to the ALJ ruling on the relevant time period.

iRecruitment Application Information

Oracle will produce the iRecruitment application information associated with PT1 employees.

RFPs 74 and 75

In general, OFCCP requests, from January 2013 to the present, virtually all information available for any applicant who applied to any position within the PT1 job group or the Product Development line of business.[2] This request is grossly overbroad and could easily result in hundreds of thousands of information fields to be harvested and exported.

Request for iRecruitment Application Information: Oracle is currently determining the feasibility and associated burden related to producing the applicant information requested. Once we have an understanding of these factors and the amount material at issue, we will be in a better position to meaningfully respond to this request. Note, however, that your characterization of Ms. Foster's statement is incorrect. Ms. Foster indicated that self-selection with respect to EEO information is a required field but that one of the selections is to choose not to self-identify. Thus, each candidate need not enter their EEO information; they may instead choose to not self-identify.

iRecruitment Offer Information: Oracle is currently determining the feasibility and associated burden related to producing the iRecruitment Offer Information for each successful applicant.

ORS Information

During Mr. Spallas' interview he explained at length that the ORS system was designed to effectuate payment to recruiters. Because of the way the system was used, the information entered was often

[2] Your letter indicates you intended to supplement these requests upon completion of your interview with Ms. Foster concerning the Taleo system. Now that you have completed the interview, please indicate what additional data fields you will be requesting so that we may incorporate that information into our determinations regarding feasibility and burden.

inaccurate and there could easily be multiple duplicates of the same candidate. He explained it would be extremely difficult for Oracle to determine which information was related to a specific person – there is no "primary key" in this standalone database. Because of the nature of this database, how information was kept, the inherent unreliability of the data, and the dissociation between ORS and the actual approval and hiring of applicants that takes place between iRecruitment, Taleo and Workflow, the potential probative value of this information is not proportional to the efforts Oracle would have to take to obtain it. Those reasons are adequate justification not to produce ORS information in and of themselves. However, equally important here is what Mr. Spallas explained during his interview regarding the dormant state of this application. It has been mothballed for nearly three years and the individuals who used to administer it are no longer with Oracle. For reasons associated with the difficulty/inability of ascertaining which data to export from a mothballed system that has no current operators, the burden is disproportionate to the value of such data, especially where Oracle's system of record regarding professional recruiting consists of iRecruitment, Taleo and Workflow.

RFP 76

Consistent with Oracle's amended and supplemental responses and objections, it will produce the requested RESUMate data in its possession for college applicants who were considered for positions in the PT1 job group excluding the text fields for Explanation, Notes and any copied and pasted resumes. These text fields are not exportable through the database and would require an individual to manually click through each applicant to copy and paste the information into a separate document. The burden of manually sifting through thousands of applicants records to screenshot or cut and paste such fields (which Ms. Cohn stated often contain no information) is not proportional.

With the caveat that Ms. Cohn explained that many of the fields listed under the heading Workflow/iRecruitment Offer Information are optional fields that are not frequently used, Oracle is evaluating the feasibility and burden associated with producing the offer information for college candidates into Product Development positions in the PT1 job group. Note however, as stated above, Oracle has no obligation to modify the information to include a primary key that was not otherwise included.

Please note that Oracle is not able to produce all resumes submitted to the recruiting mailbox because these mailboxes are purged at the conclusion of each fiscal year. These resume emails no longer exist and are not recoverable.

While Oracle will continue to meet its discovery obligations, as we've discussed repeatedly, the burden of creating the exports OFCCP requests is extensive. We will follow up with you regarding feasibility and burden once we have answers and guidance that was unavailable last week. To the extent it agrees to produce exports, however, Oracle cannot commit to completing such a production by July 31 as

requested in your letter. Finally, as mentioned in our in-person meeting on July 5, I am open to providing you with an update regarding the status of our research into the above at the end of the week.

Sincerely,

J.R. Riddell