



EXHIBIT D

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

**OFCCP'S OBJECTIONS TO DEFENDANT ORACLE AMERICA, INC.'S NOTICE OF
DEPOSITION PURSUANT TO 41 C.F.R. § 60-30.11 AND FED. R. CIV. P. 30(B)(6)**

The United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"), by and through the Office of the Solicitor, hereby submits its objections to Defendant Oracle America, Inc.'s ("Oracle") Notice of Deposition of OFCCP Pursuant to 41 C.F.R. § 60-30.11 and Fed. R. Civ. P. 30(b)(6).

GENERAL OBJECTION

OFCCP objects to this Notice to the extent Oracle purports to unilaterally set the deposition for June 29, 2017. Should a deposition be necessary, OFCCP will work with Oracle to schedule a mutually convenient date.

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SPECIFIC OBJECTIONS TO DEFINITIONS AND TOPICS

DEFINITION 5:

“COMPLIANCE REVIEW” is defined as OFCCP’s compliance evaluation of Oracle’s Redwood Shores location and referenced in OFCCP’s Amended Complaint, and covering the time period from the date of determination that Oracle Redwood Shores was selected for a compliance evaluation until March 11, 2016.

OBJECTION TO DEFINITION 5:

OFCCP objects to Oracle’s definition of “COMPLIANCE REVIEW” to the extent it is inconsistent with 41 C.F.R. Part 60.

TOPIC 1:

OFCCP’s COMPLIANCE REVIEW of ORACLE’s facility in Redwood Shores, California, including the criteria used to select ORACLE for COMPLIANCE REVIEW.

OBJECTIONS TO TOPIC 1:

OFCCP incorporates the general objection stated above, and further objects to this topic to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government’s deliberative process privilege, the governmental privilege for investigative files and techniques, the government’s informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to this topic as irrelevant, since it seeks information regarding the sufficiency of OFCCP’s underlying investigation, which is not the issue in this proceeding. The Court’s role in this case is to conduct a *de novo* analysis of OFCCP’s allegations, not to

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evaluate the sufficiency of OFCCP's investigation. *OFCCP v. Florida Hospital of Orlando*, ARB Case No. 11-011 (ARB 2013); *see* OALJ OFCCP Deskbook, Section IV(A) ("review by the ALJ is *de novo*").

OFCCP further objects to this topic as overly broad, unduly burdensome, and oppressive because it seeks information that can be obtained through far less burdensome means.

TOPIC 2:

The facts that support the allegations of Paragraph 7 of the Amended Complaint, including:

- a. the qualified female employees referenced in Paragraph 7, and the factual basis for the allegation that the female employees are qualified;
- b. the comparable males employed in similar roles, including the factual basis for the allegation that the males are comparable and employed in similar roles;
- c. the statistical data used, the analysis and methodologies used and the computations used.

OBJECTIONS TO TOPIC 2:

OFCCP incorporates the general objection stated above, and further objects to this topic to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to this topic as irrelevant, since it seeks information regarding the sufficiency of OFCCP's underlying investigation, which is not the issue in this proceeding. The Court's role in this case is to conduct a *de novo* analysis of OFCCP's allegations, not to evaluate the sufficiency of OFCCP's investigation. *OFCCP v. Florida Hospital of Orlando*,

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ARB Case No. 11-011 (ARB 2013); *see* OALJ OFCCP Deskbook, Section IV(A) (“review by the ALJ is *de novo*”).

Additionally, OFCCP objects to this topic as overly broad and unduly burdensome, and premature at this early stage of discovery. Oracle’s proposed deposition topics are virtually identical to its interrogatories, which also sought facts supporting OFCCP’s contentions, which remain uniquely in Oracle’s custody and control. To date, OFCCP has not obtained significant discovery from Oracle, including much of the data and documents that Oracle refused to produce during the compliance review (*see* Amended Complaint ¶¶ 1-15) and has not produced in this litigation. OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions that it will present at the hearing before being deposed on such topics. *See* the cases cited in OFCCP’s responses to Oracle’s amended interrogatories, and Federal Rules of Civil Procedure 26(c), and 30(d)(3).

Furthermore, OFCCP objects to this premature topic because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and needlessly complicating OFCCP’s acquisition of this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle refused to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle’s pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP’s document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this topic is premature to the extent it will be the

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subject of forthcoming expert testimony. Also, OFCCP objects to this topic insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP additionally objects to the terms “statistical data used,” “the analysis and methodologies used,” and “the computations used.” For these three terms the context of “used” it is not known and it is not clear to which “statistical data,” “analysis,” “methodologies” and “computations” that Oracle is referring.

Finally, OFCCP objects to this topic as duplicative; Oracle has previously requested this information through its interrogatories, and OFCCP has already provided information responsive to this topic in its production of documents.

TOPIC 3: The facts that support the allegations of Paragraph 8 of the Amended Complaint,

including:

- a. the qualified African American employees referenced in Paragraph 8, and the factual basis for the allegation that the African American employees are qualified;
- b. the comparable White employed in similar roles, including the factual basis for the allegation that the White employees are comparable and employed in similar roles

OBJECTIONS TO TOPIC 3:

OFCCP incorporates the general objection stated above, and further objects to this topic to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government’s deliberative process privilege, the governmental privilege for investigative files and techniques, the government’s informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

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OFCCP further objects to this topic as irrelevant, since it seeks information regarding the sufficiency of OFCCP's underlying investigation, which is not the issue in this proceeding. The Court's role in this case is to conduct a *de novo* analysis of OFCCP's allegations, not to evaluate the sufficiency of OFCCP's investigation. *OFCCP v. Florida Hospital of Orlando*, ARB Case No. 11-011 (ARB 2013); *see* OALJ OFCCP Deskbook, Section IV(A) ("review by the ALJ is *de novo*").

Additionally, OFCCP objects to this topic as overly broad and unduly burdensome, and premature at this early stage of discovery. Oracle's proposed deposition topics are virtually identical to its interrogatories, which also sought facts supporting OFCCP's contentions, which remain uniquely in Oracle's custody and control. To date, OFCCP has not obtained significant discovery from Oracle, including much of the data and documents that Oracle refused to produce during the compliance review (*see* Amended Complaint ¶¶ 1-15) and has not produced in this litigation. OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions that it will present at the hearing before being deposed on such topics. *See* the cases cited in OFCCP's responses to Oracle's amended interrogatories, and Federal Rules of Civil Procedure 26(c), and 30(d)(3).

Furthermore, OFCCP objects to this premature topic because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and needlessly complicating OFCCP's acquisition of this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle refused to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation,

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Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this topic is premature to the extent it will be the subject of forthcoming expert testimony. Also, OFCCP objects to this topic insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP additionally objects to the terms "statistical data used," "the analysis and methodologies used," and "the computations used." For these three terms the context of "used" it is not known and it is not clear to which "statistical data," "analysis," "methodologies" and "computations" that Oracle is referring.

Finally, OFCCP objects to this topic as duplicative; Oracle has previously requested this information through its interrogatories, and OFCCP has already provided information responsive to this topic in its production of documents.

TOPIC 4: the statistical data used, the analysis and methodologies used and the computations used.¹

OBJECTION TO TOPIC 4:

Please see footnote one. The objections to Topic 4, which OFCCP believes Oracle intended as part c of Topic 3, are raised in its Objections to Topic 3.

TOPIC 5: The facts that support the allegations of Paragraph 9 of the Amended Complaint, including:

- a. the qualified Asian employees referenced in Paragraph 9, and the factual basis for the allegation that the Asian employees are qualified;

¹ OFCCP assumes that Oracle has in error separated Topic 4 from Topic 3 based on the form of similar topics and the lack of capitalization in Topic 4. In light of this, objections to Topic 4 will be raised in the objections to Topic 3.

- b. the comparable White employed in similar roles, including the factual basis for the allegation that the White employees are comparable and employed in similar roles;
- c. the statistical data used, the analysis and methodologies used and the computations used.

OBJECTION TO TOPIC 5:

OFCCP incorporates the general objection stated above, and further objects to this topic to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to this topic as irrelevant, since it seeks information regarding the sufficiency of OFCCP's underlying investigation, which is not the issue in this proceeding. The Court's role in this case is to conduct a *de novo* analysis of OFCCP's allegations, not to evaluate the sufficiency of OFCCP's investigation. *OFCCP v. Florida Hospital of Orlando*, ARB Case No. 11-011 (ARB 2013); *see* OALJ OFCCP Deskbook, Section IV(A) ("review by the ALJ is *de novo*").

Additionally, OFCCP objects to this topic as overly broad and unduly burdensome, and premature at this early stage of discovery. Oracle's proposed deposition topics are virtually identical to its interrogatories, which also sought facts supporting OFCCP's contentions, which remain uniquely in Oracle's custody and control. To date, OFCCP has not obtained significant discovery from Oracle, including much of the data and documents that Oracle refused to produce during the compliance review (*see* Amended Complaint ¶¶ 1-15) and has not produced in this litigation. OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions that it will present at the hearing before being deposed on such

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topics. See the cases cited in OFCCP's responses to Oracle's amended interrogatories, and Federal Rules of Civil Procedure 26(c), and 30(d)(3).

Furthermore, OFCCP objects to this premature topic because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and needlessly complicating OFCCP's acquisition of this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle refused to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this topic is premature to the extent it will be the subject of forthcoming expert testimony. Also, OFCCP objects to this topic insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP additionally objects to the terms "statistical data used," "the analysis and methodologies used," and "the computations used." For these three terms the context of "used" it is not known and it is not clear to which "statistical data," "analysis," "methodologies" and "computations" that Oracle is referring.

Finally, OFCCP objects to this topic as duplicative; Oracle has previously requested this information through its interrogatories, and OFCCP has already provided information responsive to this topic in its production of documents.

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TOPIC 6: The facts that support the allegations of Paragraph 10 of the Amended Complaint, including:

- a. the qualified non-Asians referenced in Paragraph 10, and the factual basis for the allegation that the non-Asians are qualified;
- b. the comparable Asians, including the factual basis for the allegation that the Asians are comparable;
- c. the hiring process(es) that is/are alleged to have discriminated against qualified non-Asians;
- d. the recruiting process(es) that is/are alleged to have discriminated against qualified non-Asians;
- e. the statistical data used, the analysis and methodologies used and the computations used.

OBJECTION TO TOPIC 6:

OFCCP incorporates the general objection stated above, and further objects to this topic to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to this topic as irrelevant, since it seeks information regarding the sufficiency of OFCCP's underlying investigation, which is not the issue in this proceeding. The Court's role in this case is to conduct a *de novo* analysis of OFCCP's allegations, not to evaluate the sufficiency of OFCCP's investigation. *OFCCP v. Florida Hospital of Orlando*, ARB Case No. 11-011 (ARB 2013); see OALJ OFCCP Deskbook, Section IV(A) ("review by the ALJ is *de novo*").

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