U.S. Department of Labor

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Issue Date: 11 September 2017

CASE NO.: 2017-OFC-00006

In the Matter of:

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, U.S. DEPARTMENT OF LABOR,
Plaintiff,

vs.

ORACLE AMERICA, INC.,
Defendant.

ORDER GRANTING IN PART, AND DENYING IN PART, PLAINTIFF'S MOTION TO COMPEL

This matter arises under Executive Order 11246 (30 Fed.Reg. 12319), as amended, and associated regulations at 41 C.F.R. Chapter 60. It is currently set for hearing in San Francisco, California, on June 26, 2018.

Under the court's Order issued August 14, 2017, Plaintiff moves the court for an Order compelling Defendant to respond to its Requests for Production Nos. 71, 72, 78, 79, 80, 87, and 88 "by set deadlines" (Plaintiff's Points and Authorities, p. 1). Defendant contends "Oracle and OFCCP have resolved all outstanding disputes related to OFCCP's discovery requests" (Defendant's Opposition, p. 1). As nearly as the court can tell, Plaintiff served the enumerated Requests as part of its Second Set of Requests for the Production of Documents (Garcia Declaration, Exhibit 2), and Oracle has formally responded to those requests twice, first in its Responses and Objections to Second Set of Requests (Garcia Declaration, Exhibit 6), and again in its Amended & Supplemental Responses and Objections to Second Set of Requests (Riddell Declaration, Exhibit "B"). Plaintiff also reports a dispute with Defendant with respect to contact information for current and former employees of De-

fendant at its Redwood Shores, California, facility, arising out of Plaintiff's Request for Production No. 83.[1]

I.
PLAINTIFF'S REQUESTS FOR PRODUCTION

The court first considers Requests for Production 71, 72, 78, 79, 80, and 87, and both of Defendant's responses to each.

Request No. 71

Plaintiff's Request No. 71. YOUR[2] internal pay equity analyses conducted pursuant to 41 C.F.R. § 60-2.17 for the RELEVANT TIME PERIOD,[3] including the date of analysis and dataset(s) used for the analysis.

Oracle's Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request as overbroad in scope, uncertain as to time, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request on the ground that it calls for a legal conclusion. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself. Oracle further objects to this request to the extent it seeks confidential, trade secret, and/or proprietary business information.

Oracle's Amended and Supplemental Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Following its meet and confer conversations with OFCCP, Oracle maintains its objections to this request as overbroad in scope, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to

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[1] In a hearing in this matter on May 9, 2017, and in a written Order issued the next day, the court ordered the parties to file no motions with the court without first conferring with the court, and with each other. Among other advantages, this allows the court better to understand which issues the parties wish the court to decide, a matter sometimes lost in the reams of paper the parties are wont to file otherwise. With respect to this motion, the parties followed that procedure, and in the conference, and in an Order issued August 14, 2017, the court granted leave for the parties to file Motions to Compel with respect to certain enumerated issues. Neither Plaintiff nor Defendant has paid strict heed to the court's Order in this case, as both Plaintiff's Motion, and Defendant's opposition to it, raise issues beyond the scope of the court's Order. The court will not rule on issues the parties have raised for the first time in their moving and opposing papers. The purpose of discovery, and of pretrial motion practice generally, is to narrow the issues for hearing, not to trigger repeated free-for-alls in which the parties may unload all of their grievances with one another.

[2] Plaintiff defines "YOUR" as "Oracle America, Inc. and all of its agents, representatives, attorneys, consultants, successors, subsidiaries, or divisions" (Garcia Declaration, Exhibit 1, p. 1).

[3] Plaintiff defines "RELEVANT TIME PERIOD" as "January 1, 2013 to the present unless otherwise stated" (Garcia Declaration, Exhibit 1, p. 1).

the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request on the ground that it calls for a legal conclusion; specifically, as Oracle noted in its meet and confer letter dated June 9, 2017, this request, by referring to a regulation, requires Oracle to read, research, and apply the regulation to the request, which inherently requires a legal analysis of the regulation and its applicability. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself.

Discussion

In both responses, Oracle objects to the term "YOUR:"

> *Original Objection:* Oracle objects to the OFCCP's definitions of "YOU" and "YOUR" as vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case, to the extent that these terms include Oracle's agents, representatives, attorneys, consultants, successors, subsidiaries, or divisions. Oracle further objects to this definition to the extent it includes information protected by attorney-client privilege, the attorney work product doctrine, or calls for a legal conclusion as to the relationship between Oracle and other entities, including agents. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Accordingly, and in light of OFCCP's Instruction No. 1, which provides "Unless otherwise stated, these requests relate to Oracle's POLICIES, PRACTICES, or PROCEDURES that apply at its headquarters located at Redwood Shores, California," Oracle's responses, objections, and productions are limited to documents "relate[d] to Oracle's POLICIES, PRACTICES, or PROCEDURES that apply at its headquarters located at Redwood Shores, California" (Garcia Declaration, Exhibit 6, p. 3).
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> *Amended and Supplemental Objection:* Due to OFCCP's lack of clarification or limitation of this term, Oracle objects to the OFCCP's definitions of "YOU" and "YOUR" as vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case, to the extent that these terms include Oracle's agents, representatives, attorneys, consultants, successors, subsidiaries, or divisions. Oracle further objects to this definition to the extent it includes information protected by attorney-client privilege, the attorney

> work product doctrine, or calls for a legal conclusion as to the relationship between Oracle and other entities, including agents. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Accordingly, and in light of OFCCP's Instruction No. 1, which provides "Unless otherwise stated, these requests relate to Oracle's POLICIES, PRACTICES, or PROCEDURES that apply at its headquarters located at Redwood Shores, California," Oracle's responses, objections, and productions are limited to documents "relate[d] to Oracle's POLICIES, PRACTICES, or PROCEDURES that apply at its headquarters located at Redwood Shores, California" (Riddell Declaration, Exhibit "B," p. 6).

The court overrules these objections. Oracle and its counsel are more than capable of determining who Oracle, its constituent parts, its agents, representatives, attorneys, and consultants are.

Also, in both responses, Oracle objects to the term "RELEVANT TIME PERIOD:"

> *Original Objection:* Oracle objects to this definition as including the term "present," which renders the phrase vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. As to Requests related to OFCCP's recruiting and hiring claim, Oracle's responses, objections, and productions are limited to the relevant time period of January 1, 2013 through June 30, 2014. As to Requests related to OFCCP's compensation claims, Oracle's responses, objections, and production are limited to the relevant time period of January 1, 2014 through December 31, 2014 (Garcia Declaration, Exhibit 6, pp 3-4.).
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> *Amended & Supplemental Objection:* Oracle objects to this definition as including the term "present," which renders the phrase vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. As noted above, Oracle maintains that its responses, objections and productions should be limited to the relevant periods of January 1 2013 through June 30, 2014 for Requests related to OFCCP's hiring claims and January 1, 2013 through December 31, 2014 for Requests related to OFCCP's compensa-

> tion claims. Nevertheless, while preserving and maintaining its objections, Oracle will act in compliance with Judge Larsen's applicable ruling on the relevant period (Riddell Declaration, Exhibit "B," pp. 6-7).

Both objections show Oracle understands the term "present" perfectly, as persons conversant in English normally do. The good news is that Oracle's second objection includes a promise to follow the court's Order regarding the temporal scope of discovery. The court overrules Oracle's objection to the definition of "RELEVANT TIME PERIOD."

Oracle's objections to the substance of the request are largely boilerplate recitations without factual support. Oracle does not tell Plaintiff or the court, for example, why the Request is "not proportional to the needs of the case," why the Request is "burdensome" or "oppressive,"[4] what privileged documents it reaches, or what trade secret or proprietary information it calls for. The production of trade secrets or proprietary information, in any case, is subject to a Protective Order. In fact, the reference to the regulation vitiates the complaint the Request is "vague and ambiguous." The court overrules these objections as well.

The notion that the Request is impermissible because it refers to a regulation is particularly misplaced here. The regulation in question applies to Defendant because Defendant chose to contract with the government. Defendant cannot credibly argue, as it implicitly does here, that it must "read" and "research" the regulation before it has any idea what the regulation provides. Both Plaintiff and the court may rightly presume that Defendant is aware of its obligations under the regulation and has performed them. What is more, by citing to the regulation, Plaintiff more clearly identifies responsive documents, ameliorating Defendant's complaint the Request is "vague" or "ambiguous." The court overrules this objection too.

Defendant must produce responsive documents within 30 days of the issuance of this Order. To the extend Defendant fails to produce responsive documents, it admits it does not have responsive documents in its possession, custody, or control.

Request No. 72

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[4] Defendant offers the Declaration of Linda Zhao, whose "Oracle Applications Labs" has been "tasked with extracting various types of data from various Oracle databases and putting it in an exportable format for use and production" in this cases. But Ms. Zhao's declaration does not help the court understand what Oracle must do to respond to the specific requests which are the subject of this Order. It is counter-intuitive to assume that, when obligated by regulation to maintain certain information, Defendant would scatter that information through a variety of databases, since this would make it more difficult for Defendant to show it had complied with the regulation.

Plaintiff's Request No. 72: ALL DOCUMENTS RELATING TO[5] actions taken during the RELEVANT TIME PERIOD in response to YOUR internal pay equity analyses conducted pursuant to 41 C.F.R. §60-2.17.

Oracle's Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request as overbroad in scope, uncertain as to time, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request on the ground that it calls for a legal conclusion. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself. Oracle further objects to this request to the extent it seeks confidential, trade secret, and/or proprietary business information (Garcia Declaration, Exhibit 6, p. 40).

Oracle's Amended & Supplemental Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Following its meet and confer conversations with OFCCP, Oracle maintains its objections to this request as overbroad in scope, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request on the ground that it calls for a legal conclusion; specifically, as Oracle noted in its meet and confer letter dated June 9, 2017, this request, by referring to a regulation, requires Oracle to read, research, and apply the regulation to the request, which inherently requires a legal analysis of the regulation and its applicability. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself.

Discussion

Oracle objects to the term "DOCUMENT:"

[5] Plaintiff defines "DOCUMENT" as "all writings of any kind, including any written, printed, typed, electronically stored, or other graphic matter of any kind or nature and all mechanical or electronic sound recordings or transcripts thereof, in YOUR possession and/or control or known by YOU to exist, and also means all copies of documents by whatever means made, including, but not limited to: papers, letters, correspondence, emails, text messages, presentations, manuals, computerized files, computerized spreadsheets, telegrams, interoffice communications, memoranda, notes, notations, notebooks, reports, records, accounting books or records, schedules, tables, charts, transcripts, publications, scrapbooks, diaries, and any drafts, revisions, or amendments of the above, and all other materials enumerated in the definition provided in Rule 34 of the Federal Rules of Civil Procedure" (Garcia Declaration, Exhibit 2, p. 3). Plaintiff defines "RELATING TO" as "constituting, memorializing, evidencing, containing, showing, supporting, contradicting, summarizing, pertaining to, or referring to, whether directly or indirectly, the subject of the particular request" (Garcia Declaration, Exhibit 2, p. 5).

> *Original Objection:* Oracle objects to this definition as including the phrase "or known by YOU to exist," which, to the extent such documents are not in Oracle's possession, custody, or control, encompasses documents beyond those that Oracle has any obligation to produce (Garcia Declaration, Exhibit 6, p. 7).
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> *Amended & Supplemental Objection:* Oracle maintains its objection to this definition as including the phrase "or known by YOU to exist," which, to the extent such documents are not in Oracle's possession, custody, or control, encompasses documents beyond those that Oracle has any obligation to produce (Riddell Declaration, Exhibit "B," p. 10).

The court sustains this objection. Oracle must produce documents within its possession, custody, or control. It need not produce documents outside of its possession, custody, or control, whether in response to this request, or in response to any of the others which are the subject of this Motion.

Oracle's remaining objections are no more persuasive with respect to Request No. 72 than to Request No. 71, and the court overrules them. Defendant must produce responsive documents within 30 days of the issuance of this Order. To the extend Defendant fails to produce responsive documents, it admits it does not have responsive documents in its possession, custody, or control.

Request No. 78

Plaintiff's Request No. 78: ADVERSE IMPACT ANALYSES,[6] as required by 41 C.F.R. § 60-3.15A, performed by YOU or any other PERSONS[7] acting or purporting to act on YOUR behalf or at YOUR direction for the RELEVANT TIME PERIOD.

Oracle's Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request as overbroad in scope, uncertain as to time, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects that this request on the ground that it calls for a legal conclusion. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself. Oracle further objects to this request to the extent it seeks confidential, trade secret, and/or proprietary business information (Garcia Declaration, Exhibit 6, p. 45).

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[6] Plaintiff does not define this term, and Defendant does not object to it specifically.

[7] Plaintiff defines "PERSON" as "without limitation individuals, firms, associations, partnerships, corporations, governmental agencies or offices and employees, and any other entity" (Garcia Declaration, Exhibit 2, p. 4).

Oracle's Amended & Supplemental Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Following its meet and confer conversations with OFCCP, Oracle maintains its objections to this request as overbroad in scope, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request on the ground that it calls for a legal conclusion; specifically, as Oracle noted in its meet and confer letter dated June 9, 2017, this request, by referring to a regulation, requires Oracle to read, research, and apply the regulation to the request, which inherently requires a legal analysis of the regulation and its applicability. Oracle further objects to this requests on the ground that it requires Oracle to refer to materials outside the request itself (Riddell Declaration, Exhibit "B," pp. 62-63).

Discussion

Oracle originally objected to the definition of the term "PERSON," but withdrew that objection (Riddell Declaration, Exhibit "B," p. 13). The court has overruled Oracle's objection to the definition of "RELEVANT TIME PERIOD," and Oracle's objections to the substance of Request No. 78, in its discussion of Request No. 71 above.

Defendant must produce responsive documents within 30 days of the issuance of this Order. To the extend Defendant fails to produce responsive documents, it admits it does not have responsive documents in its possession, custody, or control.

Request No. 79

Plaintiff's Request No. 79: Evaluations of each step or component of the selection (i.e., HIRING[8]) process, as described in 41 C.F.R. § 60-3.4(C), for positions in the PT1 job group and/or Product Development line of business for the RELEVANT TIME PERIOD.

Oracle's Response: Oracle incorporates by reference its Objections to Specific Objections set forth above. Oracle further objects to this request as overbroad in scope, uncertain as to time, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself. Oracle further objects to this request to the extent it seeks confidential, trade secret, and/or proprietary business information (Garcia Declaration, Exhibit 6, p. 45).

[8] Plaintiff defines "HIRING" as "receiving expressions of interest, soliciting, recruiting, communicating with, screening, interviewing, evaluating, determining starting salary and other COMPENSATION for, and/or extending offers to, PERSONS who express interest in a position with YOU a requisition posted by YOU" (Garcia Declaration, Exhibit 2, p. 3).

Oracle's Amended & Supplemental Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Following its meet and confer conversations with OFCCP, Oracle maintains its objections to this request as overbroad in scope, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request on the ground that it calls for a legal conclusion; specifically, as Oracle noted in its meet and confer letter dated June 9, 2017, this request, by referring to a regulation, requires Oracle to read, research, and apply the regulation to the request, which inherently requires a legal analysis of the regulation and its applicability. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself.

During its meet and confer with OFCCP on June 5, 2017, Oracle explained its objections and requested that OFCCP clarify and explain this request. Following OFCCP's explanation, Oracle requested that OFCCP provide a clarified or modified request in writing. OFCCP has yet to provide a clarified or modified request.

Discussion

Oracle objects to the definition of the term "HIRING:"

> *Original Objection:* Oracle objects to this definition as unintelligible in its entirety. Oracle further objects to this definition as including the term "PERSON" and the phrases "expressions of interest," "communicating with," and "express interest," which render the definition vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense, nor proportional to the needs of the case. Furthermore, the definition is objectionable insofar as it refers to multiple processes, is compound, and is wholly inconsistent with the commonly understood definition of the terms "hiring" or "hire." Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Oracle interprets this definition using the commonly understood use of the word "hiring" or "hire" and its responses, objections, and production are limited to responsive documents related to the PT1 job group at its Redwood Shores, CA, location between January 1, 2013 and June 30, 2014 (Garcia Declaration, Exhibit 6, pp. 7-8).
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> *Amended & Supplemental Objection:* Due to OFCCP's lack of clarification of limitation, Oracle maintains its objection to this

> definition as unintelligible in its entirety. Oracle further objects to this definition as including the term "PERSON" and the phrases "expressions of interest," "communicating with," and "express interest," which render the definition vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense, nor proportional to the needs of the case. Furthermore, the definition is objectionable insofar as it refers to multiple processes, is compound, and is wholly inconsistent with the commonly understood definition of the terms "hiring" or "hire." Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Oracle interprets this definition using the commonly understood use of the word "hiring" or "hire" and its responses, objections, and production are limited to responsive documents related to the PT1 job group at its Redwood Shores, CA, location between January 1, 2013 and June 30, 2014 (Riddell Declaration, Exhibit "B," p. 11).

Defendant's objections to the definition set forth three important ideas. First, Defendant acknowledges there is a commonly-understood definition of the terms "hiring" or "hire." Second, Defendant acknowledges an obligation to produce documents which conform to that commonly-understood definition. The court could not agree with Defendant more on these two points. The third notion is more troublesome. Defendant argues there is something about the definition of "hiring" that necessarily limits this inquiry to hiring which occurred at a particular location. On this point Defendant is wrong. The request is not limited to hiring at a particular place, and the court is convinced that if it were to go outside and stop one hundred native-English speakers on the street and ask them what it means to be "hired," none of them would suggest that "hiring" can occur only in one specific geographical location generally, or in Redwood Shores, California, in particular. What Defendant is trying to do here is to object to the Request on grounds of relevance, and this is not the place to do it. While Oracle understandably criticizes Plaintiff's awkward attempts to expand "hiring" to include situations in which a particular person sought, or was considered for, hiring, but ultimately did not become an Oracle employee, this does not give it license to ignore the "commonly-understood" meaning of the term, which it understands perfectly.

Defendant also objects to the term "RELEVANT TIME PERIOD," and the court again overrules that objection. The court overrules Defendant's remaining objections to this Request for the reasons set forth in its discussion of Request No. 71 above.

Within thirty days of the issuance of this Order, Defendant must produce responsive documents, including responsive documents pertaining to job seekers or applicants who did, and who did not, become Oracle employees. To the extend Defendant fails to produce responsive documents, it admits it does not have responsive documents in its possession, custody, or control.

Request No. 80

Plaintiff's Request No. 80: In-depth analyses of the total employment process, as required in 41 C.F.R. § 60-2.17(b), for positions in the PT1 job group or Product Development line of business for the RELEVANT TIME PERIOD.

Oracle's Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request as overbroad in scope, uncertain as to time, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request on the ground that it calls for a legal conclusion. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself. Oracle further objects to this request to the extent it seeks confidential, trade secret, and/or proprietary business information (Garcia Declaration, Exhibit 6, p. 46).

Oracle's Amended & Supplemental Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Following its meet and confer conversations with OFCCP, Oracle maintains its objections to this request as overbroad in scope, uncertain as to time, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request on the ground that it calls for a legal conclusion; specifically, as Oracle noted in its meet and confer letter dated June 9, 2017, this request, by referring to a regulation, requires Oracle to read, research, and apply the regulation to this request, which inherently requires a legal analysis of the regulation and its applicability. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself.

During its meet and confer with OFCCP on June 5, 2017, Oracle explained its objections and requested that OFCCP clarify and explain this request. Following OFCCP's explanation, Oracle requested that OFCCP provide a clarified or modified request in writing. OFCCP has yet to provide a clarified or modified request (Riddell Declaration, Exhibit "B," p. 64).

Discussion

The court overrules Defendant's objection to the definition of "RELEVANT TIME PERIOD" for the reasons previously stated. The court overrules Defendant's remaining objections for the reasons set forth in its discussion of Request No. 71.

Defendant must produce responsive documents within 30 days of the issuance of this Order. To the extent Defendant fails to produce responsive documents, it admits it does not have responsive documents in its possession, custody, or control.

Request No. 87

Plaintiff's Request No. 87: ALL DOCUMENTS RELATING TO validity studies or evaluations that YOU or someone on YOUR behalf conducted RELATING TO any step or component of the HIRING process for employees in the PT1 job group and Product Development line of business during the RELEVANT TIME PERIOD.

Oracle's Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is vague and ambiguous, including but not limited to the phrases "validity studies or evaluations," "any step or component," and "line of business." Oracle further objects to this request as overbroad in scope, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request to the extent it seeks confidential, trade secret, and/or proprietary business information (Garcia Declaration, Exhibit 6, p. 50).

Oracle's Amended & Supplemental Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. During the meet and confer process, Oracle requested that OFCCP clarify the specific tests or selections procedures relevant to OFCCP's hiring claims on which Oracle would have conducted validity studies. OFCCP declined to specify and instead reiterated that this request is for any validity study that was conducted in relation to the hiring process. Due to OFCCP's lack of limitation or clarification, Oracle maintains its objections to this request on the grounds that it is vague and ambiguous, including but not limited to the phrases "validity studies or evaluations" and "any step or component." Oracle further objects to this request as overbroad in scope, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine (Riddell Declaration, Exhibit "B," pp. 69-70).

Discussion

With one exception, the court overrules Defendant's objections to the specifically-defined terms in the Request for the reasons previously stated. The court sus-

tains Defendant's objection to the definition of "DOCUMENT," but only to the extent it can be read to include documents not in Defendant's possession, custody, or control.

Within thirty days of the issuance of this Order, Defendant must produce responsive documents in its possession, custody, or control. To the extent Defendant fails to produce responsive documents, it admits it does not have responsive documents in its possession, custody, or control.

Request No. 88

Plaintiff's Request No. 88: ALL DOCUMENTS RELATING TO validity studies or evaluations that YOU or someone on YOUR behalf conducted RELATING TO any step or component of the COMPENSATION[9] determination process for employees in the Product Development, Information Technology, and Support lines of business during the RELEVANT TIME PERIOD.

Oracle's Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is vague and ambiguous, including but not limited to the phrases "validity studies or evaluations," "any step or component," and "lines of business." Oracle further objects to this request as overbroad in scope, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request to the extent it seeks confidential, trade secret, and/or proprietary business information (Garcia Declaration, Exhibit 6, pp. 50-51).

Oracle's Amended and Supplemental Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. During the meet and confer process, Oracle requested that OFCCP clarify the specific tests or selections procedures relevant to OFCCP's compensation claims on which Oracle would have conducted validity studies. OFCCP declined to specify and instead reiterated that this request is for any validity study that was conducted in relation to the compensation process. Due to OFCCP's lack of limitation or clarification, Oracle maintains its objections to this request on the grounds that it is vague and ambiguous, including but not limited to the phrases "validity studies or evaluations" and "any step or component." Oracle further objects to this request as overbroad in scope, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine (Riddell Declaration, Exhibit "B," pp. 70-71).

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[9] Plaintiff defines "COMPENSATION" as "any payments made to, or on behalf of, an employee as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, commissions, bonuses, vacation and holiday pay, retirement and other benefits, stock options and awards, and profit sharing" (Garcia Declaration, Exhibit 2, p. 2).

Discussion

Defendant objects to the definition of the term "COMPENSATION:"

> *Original Objection:* Oracle objects to this definition as including the phrase "remuneration for employment," which renders the definition vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Oracle's responses, objections, and production are limited to documents in the custody, control, and possession of Oracle America, Inc., and related to its Redwood Shores, CA, location (Garcia Declaration, Exhibit 6, pp. 5-6).
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> *Amended & Supplemental Objection:* Due to OFCCP's lack of clarification or limitation of this term, Oracle maintains its objection to this definition as including the phrase "remuneration for employment," which renders the definition vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition to the extent it seeks documents that are not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, CA, location. Oracles' responses, objections and production are limited to documents in the custody, control, and possession of Oracle America, Inc., and related to its Redwood Shores, CA, location (Riddell Declaration, Exhibit "B," p. 9).

Though these objections largely comprise recycling of boilerplate upon which the court has already ruled above, they include two noteworthy assertions. The first is that the phrase "remuneration for employment" is, in essence, impossible clearly to understand. Here, Defendant confesses to no "commonly-understood" definition, although in the court's view there is one, and Defendant likely understands it. "Remuneration" is "something that remunerates," and to "remunerate" is "to pay an equivalent to (a person) for a service, loss, or expense: RECOMPENSE, COMPENSATE **syn** see PAY." Webster's Third New International Dictionary (unabridged), p. 1921. The second assertion is that the definition of "compensation" must be limited to compensation occurring at a particular location. As with the term "hiring," what Defendant is trying to do here is to sneak a relevance objection in while ostensibly arguing about the definition of a general term. If "compensation," as a matter of definition, can only occur in Redwood Shores, CA, then the court has never been

compensated for work in its entire life. The court overrules Defendant's objection to this definition.

Within thirty days of the date of issuance of this Order, Defendant must produce responsive documents in its possession, custody, or control. To the extent Defendant fails to produce responsive documents, it admits it does not have responsive documents in its possession, custody, or control.

II.
EMPLOYEE CONTACT INFORMATION

The dispute over contact information begins with Request for Production No. 83.

Plaintiff's Request No. 83: Contact information for all current and former employees in the PT1 job group and Product Development, Information Technology, and Support lines of business during the RELEVANT TIME PERIOD, including: full name, home address, home phone number, mobile phone number, and home/personal email address.

Oracle's Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is vague and ambiguous, including but not limited to the phrase "lines of business." Oracle further objects to this request as overbroad in scope, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request on the grounds that it seeks confidential information and invades the privacy rights of individuals who are not a party to this action (Garcia Declaration, Exhibit 6, pp. 47-48).

Oracle's Amended & Supplemental Response: Oracle incorporates by reference its Objections to Specific Definitions set forth above. Due to OFCCP's lack of limitation or clarification to this request, Oracle maintains its objections to this request on the grounds that it is vague and ambiguous. Oracle further objects to this request as overbroad in scope, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this request on the grounds that it seeks confidential information that relates to and invades the privacy rights of individuals who are not a party to this action.

As explained in separate meet and confer correspondence, Oracle objects to this request based on the California Constitution, which provides protection for individual privacy and an obligation for employers to protect the privacy interests of its employees and former employees. This right to privacy extends to employees' privacy in their home addresses and other contact information. *See Planned Parenthood Golden Gate v. Superior Court*, 83 Cal.App.4th 347, 349 (Cal. Ct. App. 2000). Under California law, third parties who have entrusted Oracle with their private contact information have a right to expect Oracle "to resist attempts at unauthorized disclosure" and the affected employees are entitled to expect that their "right[s] will

be thus asserted." *Craig v. Municipal Court*, 100 Cal.App.3d 69, 77 (Cal. Ct. App. 1979); *see also Bd. Of Trustees v. Superior Court*, 119 Cal.App.3d 516, 526 (Cal. Ct. App. 1981) ("[T]he custodian of such private information may not waive the privacy rights of persons who are constitutionally guaranteed their protection."). OFCCP's contention that the implementation of a protective order moots Oracle's objections is a conflation of two separate concerns; the protective order permits confidential information from getting into the hands of third parties to this litigation, but this does nothing to address Oracle's objection to providing the government, a party to this litigation, with employee contact information (Riddell Declaration, Exhibit "B," pp. 66-67).

Discussion

First, the court overrules Defendant's objection to the definition of "RELEVANT TIME PERIOD" for the reasons previously stated.

Second, in its Motion, Plaintiff limits its request to contact information for current and former employees at Defendant's "Redwood Shores campus" only, which Plaintiff believes to be "fewer than 4,500 employees" (Plaintiff's Points and Authorities, pp. 13-14). As nearly as the court can determine, Defendant does not specifically dispute this number.

Third, in its Opposition, Defendant tacitly acknowledges Plaintiff is entitled to contact information for its current and former employees, but objects to producing it without first giving the employees notice of Plaintiff's request, and giving the employees an opportunity to object to disclosure (Defendant's Opposition, pp. 12-14). Yet Defendant cites the court to decisions in which courts have taken other steps, rather than the *Belaire* procedure Defendant champions here,[10] to protect the privacy of current and former employees (Defendant's Opposition, p. 16).

Defendant must produce the requested contact information for current and former employees at its Redwood Shores, California, campus, within thirty days of the issuance of this Order, subject to these conditions:

> 1. Plaintiff may use this contact information only for purposes of this litigation.
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> 2. Plaintiff may not disclose this contact information to anyone outside the Office of Federal Contract Compliance Programs, except for experts or other agents employed for the purpose of this litigation. Plaintiff may not make this information available to any employee of the Office of Federal Contract Compliance Programs except those necessary to assist in the preparation of this litigation for hearing, decision, or settlement.

[10] Defendant's enthusiasm for the *Belaire* approach, described at length in its Opposition, apparently first arose only after it had filed its Response to the Request for Production, and after it had filed its Amended & Supplemental Response as well.

Plaintiff must also instruct any non-employees who receive contact information under this paragraph to destroy it upon conclusion of the litigation, whether by final decision of any tribunal or by settlement.

4. Upon conclusion of the litigation, whether by final decision of any tribunal or by settlement, Plaintiff must destroy the contact information in its possession absent a specific Order of this court to the contrary.

ORDER

Plaintiff's Motion to Compel is granted in part and denied in part, as more specifically set forth above.

To the extent Defendant withholds from production any documents on grounds of privilege, it must provide Plaintiff with a privilege log within forty-five days of the issuance of this Order.

SO ORDERED.

Digitally signed by John C. Larsen
DN: CN=John C. Larsen,
OU=Administrative Law Judge, O=US
DOL Office of Administrative Law
Judges, L=San Francisco, S=CA, C=US
Location: San Francisco CA

CHRISTOPHER LARSEN
Administrative Law Judge