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**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

RECEIVED

MAY 10 2019

Office of Administrative Law Judges
San Francisco, Ca

**PLAINTIFF'S MOTION TO COMPEL DEPOSITION OF ORACLE AMERICA, INC.
PURSUANT TO 41 C.F.R. § 60-30.11 AND FEDERAL RULE OF CIVIL PROCEDURE
30(b)(6)**

Pursuant to the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 (OFCCP Rules), Plaintiff Office of Federal Contract Compliance Programs (OFCCP) hereby moves to compel Oracle to designate a witness(es) under Federal Rule of Civil Procedure 30(b)(6) to testify this matter. *See* 41 C.F.R. § 60-30.11.

OFCCP and Oracle America, Inc. have met and conferred on the issue of designating

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witnesses under FRCP 30(b)(6) to testify in this matter.

DATED: May 10, 2019

Respectfully submitted,

KATE O'SCANNLAIN
Solicitor of Labor
JANET M. HEROLD
Regional Solicitor
LAURA C. BREMER
Senior Trial Attorney
NORMAN GARCIA
Senior Trial Attorney

BY:



JEREMIAH MILLER
Counsel for Civil Rights

U.S. Department of Labor
Office of the Solicitor
300 5th Avenue, Suite 1120
Seattle, WA 98104
206-757-6757

Attorneys for Plaintiff OFCCP

JANET M. HEROLD
Regional Solicitor
JEREMIAH MILLER
Counsel for Civil Rights
LAURA C. BREMER
Senior Trial Attorney
Office of the Solicitor
UNITED STATES DEPARTMENT OF LABOR
300 Fifth Avenue, Suite 1120
Seattle, Washington 98104
Tel: (206) 757-6757
Fax: (206) 757-6761
Email: miller.jeremiah@dol.gov

Attorneys for OFCCP

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

OFFICE OF FEDERAL CONTRACT	:	
COMPLIANCE PROGRAMS, UNITED	:	
STATES DEPARTMENT OF LABOR,	:	
	:	Case No. 2017-OFC-00006
Plaintiff,	:	
	:	
v.	:	
	:	
ORACLE AMERICA, INC.	:	
	:	
Defendant.	:	

**OFCCP'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO COMPEL DEPOSITION OF ORACLE AMERICA, INC. PURSUANT TO
41 C.F.R. § 60-30.11 AND FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)**

I. INTRODUCTION

OFCCP hereby moves to compel the deposition of Oracle America, Inc. on matters aimed at the heart of OFCCP's core claims that: (1) Oracle violated its obligation as a government contractor to implement policies and practices to prevent, and correct, unlawful discrimination, and (2) Oracle's failure to take the required affirmative steps to prevent discrimination has, in fact, resulted in unlawful gender and race-based pay disparities.

OFCCP has been forced to file this motion due to Oracle's general strategy of delay and obstruction, creating a logjam which OFCCP requires the Court's assistance to break. OFCCP is committed fully to the litigation and discovery schedule issued by this Court and wholeheartedly believes that there is no reason the Parties cannot get discovery completed by July 3rd: indeed, the parties spent more than a year in mediation crystallizing the issues and disputes in play. All that needs to happen in discovery is nailing down the facts and positions of each party to facilitate an efficient adjudication of the issues at summary judgment and trial.

Yet, in attempting to secure testimony and information from Oracle about the *core issues in this case*, Oracle has presented endless, baseless objections to OFCCP's 30(b)(6) deposition topics, injecting repeated delays into the meet and confer process in an apparent attempt to run the clock on discovery.¹

¹ For example, with less than two months remaining to produce documents in discovery, Oracle refused to even *schedule* a meet-and-confer date for 12 days, despite OFCCP's repeated requests, and ultimately was unavailable until 17 days after OFCCP raised the issues requiring the Parties to meet-and-confer. Jeremiah Miller Decl. at ¶ 2, Ex. A. To address such delays in the meet-and-confer process, OFCCP has proposed multiple times that the Parties agree to schedule meet-and-confers within three days. *Id.* Oracle refused to respond to this proposal. *Id.* OFCCP requests the Court order the Parties to arrange a date to meet and confer within a three-day period. Oracle has also consistently delayed in providing OFCCP with deposition dates. Miller Decl. at ¶ 3, Exs. B, C.

As to OFCCP's 30(b)(6) Notice, Oracle objected to each and every topic listed, requiring OFCCP to dedicate substantial time and resources over multiple days to meeting and conferring on Oracle's frivolous, meritless objections. However, despite the hours spent conferring on Oracle's objections—through multiple letters and meetings over the course of a month—Oracle still has not agreed to produce a witness to testify on certain critical topics relating to Oracle's compensation policies and practices, and significantly, what Oracle has done to meet its affirmative duty as a government contractor to prevent discrimination and ensure compliance with the Affirmative Action Program.

Given the month of time spent trying to cajole Oracle into producing witnesses on the core issues litigated in this case, OFCCP needs the Court's assistance to ensure that the witnesses are produced without any further delays or roadblocks in the form of baseless objections. Specifically, Oracle objected to topics concerning compensation practices on the basis that it would be unduly burdensome and unreasonable to produce deponents capable of testifying on (1) the factors and criteria Oracle considers in setting compensation, and (2) Oracle's company-wide compensation practices, because the "decision-making is decentralized and involves hundreds of individual front-line and higher level managers." Declaration of Jeremiah Miller ("Miller Decl.") at ¶ 5, Ex. E (Oracle Objections, Topic 11 and 12).

In making such a claim, Oracle remarkably seems to be taking that position that, contrary to its obligations as a federal contractor, it has not established any company-wide compensation policies and practices aimed at implementing the steps it promised to take to prevent discrimination in its Affirmative Action Plan (AAP), or ensured that its managers comply with any such policy. *See* Miller Decl. at ¶ 11, Ex. I (Oracle AAP, 2014) ("Oracle's employment philosophy is to provide a working environment that inspires achievement without consideration

of any prohibited factor” and “Oracle strives to ensure that all personnel actions are administered consistently with Oracle’s commitment to [equal employment opportunity] and the furtherance of” affirmative action); *see also* Executive Order 11246, Section 202(1) (government contractors must “take *affirmative action* to ensure that applicants are employed, and that employees are treated during employment, without regard to their” protected status) (emphasis supplied).

Oracle instead seems to want it both ways: Oracle appears to want to claim it has complied with the Executive Order while simultaneously claiming it is too burdensome on Oracle to be compelled to testify as to what affirmative actions it allegedly took to be in compliance.

In further objection to topics concerning compensation, Oracle demands that OFCCP eliminate deposition topics because some Oracle executives have already provided testimony in the private state action or unsworn interviews with OFCCP. Specifically with respect to testimony given in the private action in *Jewett, et al. v. Oracle America, Inc.*, Oracle takes the position that it should not have to provide any testimony for topics on which it produced a witness in the separate, private litigation. Again depicting Oracle’s intent to hamper discovery, Oracle stresses that *Jewett* and this matter are different, “...requiring proof of different elements and implicating different evidence” in order to justify withholding requested *Jewett* documents, while in the same breath arguing that OFCCP should be limited to the testimony provided in *Jewett*, which Oracle also argued is not relevant to the issues in this proceeding. (Oracle’s Opp’n. to OFCCP’s Motion to Compel *Jewett* Documents at 1); Declaration of Norman Garcia (“Garcia Decl.”) Ex. A (John Giansello Ltr. April 5, 2019).

Indeed the cases do involve some differing claims. Unlike the private state action, this case is about whether Oracle lived up to its obligations as a *government contractor* with distinct,

agreed-upon duties. Thus, while the cases overlap in that both allege Oracle discriminates against women, the claims themselves are not identical. As indicated in OFCCP's pending motion to compel regarding Oracle's continuing refusal to produce the deposition transcripts from the *Jewett* litigation, OFCCP believes the testimony given in the *Jewett* litigation is relevant and allows some of the discovery here to be expedited. OFCCP has no intention of seeking information already revealed in the *Jewett* depositions, but OFCCP must be afforded the opportunity to make any additional inquiries relevant to the different scope and nature of OFCCP's compensation discrimination claims and to inquire into the facts regarding Oracle's actions in response to its obligations *as a federal contractor* – which is not an issue that is, or could be, in play in the *Jewett* litigation.

Oracle's obstructionist tactics and refusal to produce a witness to testify to the very subject of OFCCP's allegations is especially troubling in light of Oracle's role as government contractor that readily accepted hundreds of millions of dollars in public funds with the promise to comply with specific obligations in exchange. In taking taxpayer monies, Oracle committed to a level of transparency and oversight that is not required of non-government contractors in order to ensure the taxpayers are not subsidizing an employer engaging in unlawful discrimination, including, as alleged here, systemic race and gender discrimination. Oracle's apparent position that it owes no duty to the taxpayers and should not have to testify to the ways in which it did, or more likely did not, comply with its obligations to take affirmative action to prevent discrimination at Oracle is directly contrary to the goal and purpose of Executive Order 11246, the OFCCP regulations, and Oracle's own agreement in accepting public funds.

While it is Oracle's burden, as the party resisting discovery, to show why OFCCP should not be allowed to inquire into the requested topics,² Oracle's tactics have forced OFCCP to seek Court intervention now to ensure OFCCP can obtain testimony to which it is entitled, and to avoid further delay and the additional cost and burden of re-deposing Oracle's witnesses when Oracle either (1) fails to produce a witness prepared to testify on all identified topics, or (2) instructs the witness not to answer certain lines of inquiry.³ Both result in wasted time and resources and are untenable given the quickly approaching discovery cutoff.

Accordingly, OFCCP respectfully requests that the Court compel Oracle to produce a witness (or witnesses) to testify on the following topics included in OFCCP's April 5, 2019 Notice of Deposition: topics 11, 12, and 30 relating to factors affecting employee compensation; and topics 9, 18, 19, 26, and 27 relating to Oracle's recordkeeping practices. OFFCP further requests that the temporal scope of deposition topics extend beyond the subject period to the time of the deposition, as it is relevant to the alleged ongoing violations.⁴ In addition, OFCCP asks the Court to order the parties to specify a time within 3 days to meet and confer regarding any request. Finally, anticipating that Oracle will continue to press its objections during depositions, OFCCP request the Court implement a procedure by which the Parties can contact the Court

² The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975); see also *Sullivan v. Prudential Ins. Co. of America*, 233 F.R.D. 573, 575 (C.D. Cal. 2005). Further, Fed. R. Civ. P. 30(b)(6) requires that Oracle either designate a deponent to testify to the identified topics or seek a protective order. See Fed.R.Civ.P 37(d); see also *Bregman v. District of Columbia*, 182 F.R.D. 352, 355 (D.D.C.1998) (finding defendant's failure to designate an official to testify on noticed 30(b)(6) topics absent a protective order "violated the unequivocal command of Fed. R. Civ. P. 30(b)(6).").

³ The parties had to meet and confer about Oracle's statement that a witness will testify "generally" to specified topics. OFCCP had to reach an agreement that Oracle with comply with the law and produce a witness to testify "about information known or reasonably available to the organization." Miller Decl. at ¶ 6, Ex. F. (Song Ltr. April 19, 2019); Fed. R. Civ. P 30(b)(6).

⁴The topics expressly identified in this motion encompass all additional topics to which Oracle also objects and on which OFCCP seeks testimony. OFCCP does not waive its right to ask about other enumerated topics. Further, OFCCP reserves the right to move to compel testimony on these additional topics if necessary.

during deposition to expeditiously resolve any disputes, objections or instructions to avoid further delays and discovery motion practice.

II. RELEVANT FACTUAL BACKGROUND

On April 5, 2019, OFCCP served its Amended Notice of Deposition of Oracle Pursuant to 41 C.F.R. 60-30.11 and Federal Rule of Civil Procedure 30(b)(6). Miller Decl. at ¶ 4, Ex. D (Amended Notice of Deposition). Among the topics included for testimony to which Oracle objects, OFCCP requested that Oracle designate someone to testify about a number of factors affecting employee compensation (topics 11, 12, 30) and Oracle's recordkeeping practices as a federal contractor (topics 9, 18, 19, 26, and 27).⁵ *Id.*

A. OFCCP Seeks Testimony on Factors Affecting Employee Compensation.

OFCCP has alleged discriminatory compensation practices resulting in gender and race-based pay disparities at Oracle Head Quarters. Second Am. Compl. (SAC) ¶¶ 11-32. Seeking information relevant to this claim, OFCCP requested Oracle designate a witness to testify on (1) the effect of prior pay on employee compensation (topic 30); the effect of employee job placements, projects, products, and teams on compensation (topic 12); and how Oracle decides and budgets employee compensation (topic 11). Miller Decl. at ¶4, Ex. D. Oracle objects to each of these topics that address factors affecting employee compensation at Oracle. Miller Decl. at ¶ 5, Ex. E (Oracle's Objections to OFCCP's Amended Notice of Deposition).

B. OFCCP Seeks Testimony on Oracle's Recordkeeping Practices as a Federal Contractor Required to Create, Maintain, and Make Available Specific Records.

⁵ Oracle has objected to producing a witness (or witnesses) to testify on Oracle's document production (topics 7 and 8). Based on Oracle's May 8, 2019 meet-and-confer letter, OFCCP believes the parties can come to an agreement with respect to topics 7 and 8. However, if no such agreement is reached, OFCCP reserves the right to move to compel on these topics, which OFCCP identified, among other reasons, in order to authenticate documents.

OFCCP alleged in its Second Amended Complaint that Oracle failed to maintain and make available required records, including documentation of its compliance with its obligation to develop and maintain an Affirmative Action Program. SAC ¶ 44-50. Seeking information to support this claim, OFCCP identified several topics relating to Oracle's recordkeeping practices and procedures (topics 9, 18, 19, 26 and 27), including Oracle's "policies, procedures, and practices related to how [Oracle] fulfill[s] [its] legal obligations pursuant to 41 C.F.R. 60-1.12(b), 60-1.40(a)(1), 60-1.40(b), 60-2.10(c), and 60-2.11 through 60-2.17." Miller Decl. at ¶ 4, Ex. D (Amended Notice of Deposition). Oracle objects to producing a deponent on topics relating to Oracle's recordkeeping practices as a federal contractor required to maintain and make available to OFCCP documentation of its compliance with its obligations. Miller Decl. at ¶ 5, Ex. E.

C. Oracle Has Refused to Produce a Witness to Testify on Matters Directly Relevant to OFCCP's Claims.

Again demonstrating its resolve to impede the free flow of discovery, Oracle responded to OFCCP's Notice of Deposition by objecting to each and every topic listed in the Notice, incorporating unsupported general objections to every topic. *Id.* Aside from its perfunctory general objections, which are waived under long-standing caselaw,⁶ Oracle primarily objects to OFCCP's topics on three meritless grounds.

First, with respect to topics concerning factors affecting compensation (11, 12, 30),

⁶Oracle's unsupported general objections are waived. *Nat'l Acad. of Recording Arts & Sciences, Inc. v. On Point Events, LP*, 256 F.R.D. 678, 680 (C.D. Cal. 2009) ("The party who resists discovery . . . has the burden of clarifying, explaining, and supporting its objections."); *DL v. D.C.*, 251 F.R.D. 38, 43 (D.D.C. 2008) (When faced with general objections, the applicability of which to specific document requests is not explained further, "[t]his Court will not raise objections for [the responding party], but instead will 'overrule[] [the responding party's] objection[s] on those grounds.'" (citation omitted); *Eureka Finan. Corp. v. Hartford Accident & Indemnity Co.*, 136 F.R.D. 179, 182 (E.D. Cal. 1991) ("[A] general objection to an entire discovery document . . . is decidedly improper. This fact should no longer be 'news' to a responding party.").

Oracle demands that OFCCP eliminate deposition topics because Oracle executives have already provided testimony in the private state action and OFCCP should therefore entirely exclude inquiry into any of these matters. Miller Decl. at ¶¶ 5-6, Ex. E (Oracle Objections); Ex. F (Parties' Meet and Confer correspondence). Oracle objected that this same testimony was irrelevant to the issues in this proceeding prior to producing it to OFCCP. Garcia Decl., Ex. A (Giansello Ltr. April 5, 2019). Second, with respect to topic 12 seeking information on the impact of employees' assignments on compensation, Oracle objects on the grounds that it does not "assign" workers to jobs, and claims there is no one to testify to these facts. Miller Decl. at ¶¶ 5-6, Ex. E (Oracle Objections); Ex. F (Parties' Meet and Confer correspondence). Third, with respect to topics relating to Oracle's failure to create, maintain, and make available required records (9, 18, 19, 26, 27), Oracle objects that seeking testimony related to this claim—alleged in the Second Amended Complaint and approved by this Court—would conflict with the Court's Order issued March 13, 2019.⁷ *Id.*

After multiple days of meeting and conferring on Oracle's objections (April 18 and April 19, 2019), the Parties have not reached agreement on these topics. Miller Decl. at ¶ 7.

III. ARGUMENT

OFCCP is entitled to deposition testimony on the matters identified in its Notice of Deposition of Oracle under both 41 C.F.R. § 60-30.11 and Fed. R. Civ. P. 30(b)(6).⁸ Under the applicable rules, OFCCP *shall* be permitted to examine Oracle under oath upon any matter

⁷ With respect to topic 9 regarding Oracle's document retention, destruction, and computer-based recordkeeping practices and policies, Oracle objects based on relevance and the fact that OFCCP previously interviewed Lisa Ripley informally. Miller Decl. at ¶¶ 5-6, Ex. E (Oracle Objections), Ex. F (meet-and-confer correspondence).

⁸ In the absence of a specific provision, procedures shall be in accordance with the Federal Rules of Civil Procedure. 41 C.F.R. §60-30.1. OFCCP's Rules of Practice for Administrative Proceedings do not include a specific provision covering deposition of a private corporation and, therefore, Fed. R. Civ. P. 30(b)(6) covering notice directed to an organization also applies.

relevant to the subject matter of the proceeding, or reasonably calculated to lead to the production of relevant and otherwise admissible evidence. 41 C.F.R. § 60-30.11(c). Each topic for which OFCCP moves to compel production of a deponent is directly relevant to OFCCP's claims alleged in the Second Amended Complaint and/or the defenses Oracle raised in its Answer. Oracle provides no valid argument to preclude OFCCP for obtaining deposition testimony aimed at the heart of its claims.

A. OFCCP is Entitled to Deposition Testimony on Factors Affecting Employee Compensation (Topics 11, 12, 30).

1. Oracle's use of prior pay is a key allegation in OFCCP's compensation claims (topic 30).

The relevance of topic 30—information relating to Oracle's use of new hires' prior pay—to OFCCP's claim that “the systemic underpayment of female, Black or African American and Asian employees may be due, in part, to Oracle's reliance on prior salary in setting compensation for employees upon hire” is exceedingly clear. SAC ¶ 32. However, as of the date of this motion, Oracle has not agreed to produce a witness for topic 30 in this litigation because it argues such testimony would be duplicative of testimony given in *Jewett, et al. v. Oracle America, Inc.*,—the separate, private lawsuit in which Oracle is also a defendant.⁹ Specifically, Oracle takes the position that “...it should not have to produce additional testimony on this topic in light of the multiple PMK witnesses in *Jewett* who already have testified on it...” because Oracle provided these transcripts to OFCCP.¹⁰ Miller Decl. at ¶ 5, Ex. E (Oracle Objections to Notice of Deposition). In other words, Oracle contends that OFCCP should be restricted in its questioning

⁹ California state case number 17-CIV-02669.

¹⁰ Tellingly, during meet and confer discussion regarding the production of those transcripts—to which Oracle objected—it claimed the transcripts were not relevant. Garcia Decl. at ¶ 3, Ex. A. Oracle's conflicting position again demonstrates its true objective of impeding discovery in this matter.

about issues directly relevant to its case because Oracle is the subject of multiple lawsuits involving similar discrimination claims. This assertion that OFCCP should be *entirely precluded* from inquiring into relevant topics because Oracle already provided testimony in a separate case is absurd. The perverse result of such a position would be to punish plaintiffs by hindering their ability to seek discovery against defendants who injure multiple parties in the same or similar fashion.

OFCCP has reviewed all of the PMK deposition transcripts that Oracle produced. Garcia Decl. at ¶ 2. While OFCCP does not intend to be duplicative and will streamline depositions based on the prior testimony in *Jewett*,¹¹ OFCCP cannot agree to forfeit or limit its right to inquire into, and follow up on, the topics discussed during those depositions.¹² OFCCP is not a party to that case, did not participate in those depositions, and private counsel took those depositions without coordination with OFCCP. OFCCP would be prejudiced if unable to make its own decisions on which questions to ask and how, which exhibits to ask about and how, and whether to seek clarification or elaboration from witnesses on specific answers. *See, e.g., Am. Airlines, Inc. v. Travelport Ltd.*, No. 4:11-CV-244-Y, 2012 WL 12884824, at *2 (N.D. Tex. Sept. 19, 2012) (refusing to limit deposition testimony even where the same parties involved in separate cases). Particularly given the important public policy interests at stake, it is improper for Oracle to attempt to entirely limit OFCCP's discovery rights based on the discovery strategy and choices of a separate, private party in a different case. Accordingly, OFCCP will not agree to

¹¹ Oracle mistakenly purports that no efficiencies can be gained unless OFCCP eliminates topics. This is not so. OFCCP did, in fact, streamline Kate Waggoner's deposition based on review of the transcript from *Jewett* and was able to shorten Waggoner's deposition, requiring less than the allotted full day of deposition. Miller Decl. at ¶ 8. OFCCP may re-call Ms. Waggoner if necessary.

¹² Moreover, to the extent Oracle plans to claim that Shauna Holman-Harris' individual testimony suffices for some elements of the sought 30(b)(6) testimony, OFCCP notes that Ms. Holman-Harris frequently did not have knowledge of key topics when she was deposed.

wholesale eliminate topics and voluntarily forgo highly relevant lines of inquiry central to its claims.¹³

2. OFCCP is entitled to information on Oracle's role in employee job placements, work projects, transfers, promotions and how these decisions affect employee compensation (topic 12).

Topic 12 is directly relevant to OFCCP's claim that Oracle channeled women and minorities into lower paying jobs. Specifically, OFCCP alleges that men and Whites are more likely to be assigned to higher global career levels within Oracle's global career level framework, in which lower levels correspond to lower pay. SAC ¶¶ 18-22. Oracle denies this and asserts, among other similar affirmative defenses, that its acts or omissions "were based upon... job-related reasons that were consistent with business necessity." (Oracle's Answer to SAC, Affirmative Defense 19). Thus, how Oracle determined job placements, projects, transfers, teams and promotions for an employee—as described in topic 12—is highly relevant to the claims and defenses in this case. While Oracle agreed to produce a witness for the compensation aspects of this topic, as of the time of this motion, it has not agreed to produce a witness to testify to the remainder of this topic, including how its employees acquire their specific roles at Oracle.¹⁴ Miller Decl. at ¶ 6, Ex. F.

Oracle does not dispute that topic 12 is relevant, but objects it does not "assign" employees to particular jobs, rather they apply for them. *Id.* at ¶ 5, Ex. E (Oracle Objections), Ex. F (Meet and Confer correspondence). While this ignores OFCCP's claim that Oracle assigns men and Whites to higher global career levels within the company, as well as the possibility that

¹³ Oracle raises the same argument regarding prior testimony in *Jewett* in response to topics 11 and 12. For the same reasons discussed here, OFCCP does not agree to eliminate topics 11 or 12, or its right to follow-up on questions asked during the *Jewett* depositions.

¹⁴ As with topic 30, Oracle objected that testimony on this topic would be duplicative of testimony in *Jewett*. As discussed, OFCCP cannot agree to entirely eliminate relevant topics.

Oracle may not hire employees for the precise job to which they apply, OFCCP also told Oracle during the meet-and-confer process that it seeks testimony on the assignment of workers to products in the job functions at issue and the impact of those placements on compensation. *Id.* (Song Ltr. April 19, 2019). To the extent that Oracle plays no role in the placement of their workers or the work they perform within Oracle, it should produce a witness to testify to that fact under oath.¹⁵

Oracle further objects that providing testimony on company-wide compensation practices would be unduly burdensome because there is no centralized decision making. Miller Decl. at ¶ 5, Ex. E (Oracle's Objections to Notice of Deposition). In making such a claim, Oracle concedes that, contrary to its obligations as a federal contractor, it has not established any company-wide compensation policies and practices aimed at preventing discrimination, or ensured that its managers comply with any such policy. *See e.g.* Executive Order 11246, Section 202(1) (government contractors must "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their" protected status); 41 C.F.R. 60-2.10(a)(3) ("An affirmative action program is, thus, more than a paperwork exercise. An affirmative action program includes those policies, practices, and procedures that the contractor implements to ensure that all qualified applicants and employees are receiving an equal opportunity for recruitment, selection, advancement, and every other term and privilege associated with employment."); 41 C.F.R. 60-2.17 ("The contractor must provide for the implementation of equal employment opportunity and the affirmative action program by

¹⁵ At the same time Oracle claims that it does not assign workers to particular jobs, and therefore cannot provide testimony on this, it also claims that it already produced a deponent on assignments in *Jewett*. Miller Decl. at ¶ 6, Ex. F (Riddell Ltr. May 8, 2019 at 2).

assigning responsibility and accountability to an official of the organization.”) If true, Oracle should produce a witness to testify to the fact that Oracle has not implemented company-wide compensation practices to prevent discrimination and implement its AAP.

3. OFCCP is entitled to testimony on how Oracle budgets and sets employee compensation (topic 11).

Oracle also wants to deny relevant testimony about other factors affecting pay including how it budgets and sets employee salaries. Miller Decl. at ¶ 5 Ex. E (Oracle’s Objections to Notice of Deposition). Again, Oracle does not object to the relevance of such information, but instead makes the same meritless objection, addressed above, that OFCCP cannot ask about subjects already covered in *Jewett*. As explained, this is not a basis to deny highly relevant evidence.

Oracle also makes the apparently false claim that is it unduly burdensome to produce a witness on this topic because, again, “decision-making is decentralized.” *Id.* If this is Oracle’s position, it has clearly violated the terms of the contract it entered into when it took taxpayer funds. Setting aside that such a claim reveals a failure to comply with Oracle’s obligations as a federal contractor, evidence Oracle produced suggests its claim is false, showing compensation changes as ultimately requiring approval from Vice Presidents, Senior Vice Presidents, or higher. *Id.* at ¶ 9, Ex. G (Oracle Global Approval Matrix spreadsheets). For example, in its 2014 Manager Training, Compensation Process for Global Corporate Bonus & Fusion Workforce Compensation, it instructs managers as follows, requiring approval of Oracle’s founder Larry Ellison himself:

Submit to Next Level

Method 2: On the [REDACTED]

At this point you are finished with the process

Do not communicate any changes until the 'Last Approval Action' shows "Approved by Larry Ellison" [REDACTED]

Before communicating with employees, verify their awards to ensure you are providing the latest information

ORACLE

Id. at ¶ 10, Ex. H. Thus, Oracle should produce a witness to testify on the highly relevant factors affecting compensation included in topic 11.

B. OFCCP is Entitled to Deposition Testimony on Oracle's Recordkeeping Practices as a Federal Contractor Required to Create, Maintain, and Make Available Specific Records (Topics 9, 18, 19, 26 and 27).

Topics 9, 18, 19, 26 and 27 are directly relevant to OFCCPs claim that Oracle failed to maintain and make available to OFCCP documentation of its compliance with its obligations, including the obligation to develop and maintain an Affirmative Action Program as required under the regulations.

In exchange for the hundreds of millions of dollars that Oracle received in government contracts, it agreed to comply with regulations to prevent and address discrimination in its workplace. Oracle agreed *inter alia* that it would maintain and make available to OFCCP documentation of their compliance with §§ 60-2.11 through 60-2.17. *See* 41 C.F. R. 60-2.10(c). This includes documents and data on the company's racial and gender makeup, available jobs, salary tracking, personnel records, action-oriented programs to conduct internal audits or repair issues, and pay equity analyses. OFCCP alleged that Oracle violated its obligations to maintain

required documentation and now seeks testimony related to that claim. OFCCP drafted these topics to reflect the Second Amended Complaint approved by the Court. In seeking testimony relating to its claim that Oracle failed to maintain and make available the required records, OFCCP does not, as Oracle suggests, attempt to expand the issues in this litigation. Rather, OFCCP seeks information on how, or if, Oracle complied with its recordkeeping obligations, which OFCCP claims Oracle did not do. As such, Oracle must produce a witness to testify on Oracle's process, practices, and policies in creating and maintaining these documents as identified in topics 9, 18, 19, 26 and 27.

C. OFCCP is Entitled to Testimony on Deposition Topics Through the Present.

OFCCP rightfully seeks testimony on topics concerning compensation from January 1, 2013 through the date of the deposition. Oracle objects, attempting to limit testimony to January 18, 2019 which is the agreed upon cut-off for purposes of document production. This does not, however, limit OFCCP's ability to obtain information extending beyond January 2019 that is relevant to the alleged ongoing violations. *See, e.g., EEOC v. Autozone, Inc.*, 258 F.Supp.2d 822, 831 (W.D. Tenn. 2003) ("Courts typically will permit discovery in employment discrimination cases to cover a reasonable number of years before and after the alleged discrimination." (internal citations omitted)). Accordingly, OFCCP moves to compel testimony on the topics identified above through the present time.

IV. CONCLUSION

For the reasons stated above, the Court should grant OFCCP's motion and compel testimony on (1) topics that affect employee compensation from January 1, 2013 to the present, and (2) topics relating to Oracle's recordkeeping processes, procedures, and policies from January 1, 2013 to the present.

Dated: May 10, 2019

Respectfully submitted,

KATE S. O'SCANNLAIN
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

LAURA C. BREMER
Senior Trial Attorney

/s/ Jeremiah Miller
JEREMIAH MILLER
Counsel for Civil Rights

CERTIFICATE OF SERVICE

I certify that on this 10th day of May, 2019, the foregoing PLAINTIFF'S MOTION TO COMPEL, MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL, and DELCLARATIONS OF JEREMIAH MILLER AND NORMAN GARCIA IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL were served upon the following individuals via email at the following addresses:

ERIN M. CONNELL: econnell@orrick.com
GARY R. SINISCALCO: grsiniscalco@orrick.com
JESSICA R.L. JAMES: jessica.james@orrick.com
JACQUELINE KADDAH: jkaddah@orrick.com
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
econnell@orrick.com
gsiniscalco@orrick.com

Attorneys for Defendant Oracle America, Inc.

/s/ Lewlyn D. Robinson

U.S. Department of Labor