

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DECLARATION OF ERIN
CONNELL IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
OFCCP'S MOTION TO COMPEL
JEWETT DOCUMENTS**

I, Erin Connell, hereby declare as follows:

1. I am a partner with Orrick, Herrington & Sutcliffe LLP, attorneys of record for defendant Oracle America, Inc. ("Oracle"). I make this declaration in support of Oracle's Opposition to OFCCP's Motion to Compel *Jewett* Documents ("Motion"). I have personal knowledge of the facts set forth herein, except where stated on information and belief, and if called as a witness could competently testify thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of a February 16, 2019 email from Jim Finberg, counsel for the plaintiffs in *Jewett v. Oracle America, Inc.*, California State Case No. 17-CIV-02669, notifying me that the *Jewett* plaintiffs had received a subpoena from OFCCP and attaching said subpoena, which appears as Exhibit 2 to the April 22, 2019 Declaration of Norm Garcia filed with OFCCP's Motion. Prior to receiving this email, neither I nor my colleagues at Orrick received notice from OFCCP that it intended to serve, or had already served, a subpoena for documents on the *Jewett* plaintiffs.

3. Attached hereto as **Exhibit B** is a true and correct copy of a February 19, 2019 letter from me to Norm Garcia, counsel for OFCCP, regarding the invalidity of OFCCP's subpoena to the *Jewett* plaintiffs.

RECEIVED

MAY 06 2019

- 1 -

CONNELL DECL. ISO DEF'S OPP. TO
OFCCP'S MTC *JEWETT* DOCUMENTS
CASE NO. 2017-OFC-00006

4. Upon information and belief, the three remaining class representatives in the *Jewett* matter whose deposition transcripts and exhibits are sought through this Motion and have not already been produced—specifically, Marilyn Clark, Manjari Kant, and Elizabeth Sue Petersen—did not work at HQCA during the relevant period of this litigation. Attached hereto as **Exhibit C** is a true and correct copy of email correspondence from February 20-26, 2019, between counsel for Oracle and counsel for OFCCP. In my email in this exhibit dated February 22, 2019, I noted that these three plaintiffs were not employees who worked at HQCA.

5. Attached hereto as **Exhibit D** is a true and correct copy of a February 26, 2019 email from Norm Garcia, counsel for OFCCP, to Jim Finberg, counsel for the *Jewett* plaintiffs, informing Mr. Finberg that OFCCP is withdrawing its subpoena to the *Jewett* plaintiffs.

6. Attached hereto as **Exhibit E** is a true and correct copy of a March 12, 2019 letter from Norm Garcia, counsel for OFCCP, to me.

7. Attached hereto as **Exhibit F** is a true and correct copy of a March 25, 2019 letter from Norm Garcia, counsel for OFCCP, to John Giansello, counsel for Oracle.

8. Attached hereto as **Exhibit G** is a true and correct copy of an April 1, 2019 letter from Norm Garcia, counsel for OFCCP, to John Giansello, counsel for Oracle.

9. Attached hereto as **Exhibit H** is a true and correct copy of email correspondence from March 15, 2019 to April 2, 2019, between John Giansello, counsel for Oracle, and Norm Garcia, counsel for OFCCP, which contains emails from Mr. Giansello in response to the letters attached as Exhibits F and G.

10. Attached hereto as **Exhibit I** is a true and correct copy of OFCCP's Amended Notice of Deposition of Oracle Pursuant to 41 C.F.R. § 60-30.11 and Federal Rule of Civil Procedure 30(b)(6), which was served on April 5, 2019.

11. Attached hereto as **Exhibit J** is a true and correct copy of an April 5, 2019 letter from John Giansello, counsel for Oracle, to Norm Garcia, counsel for OFCCP, that accompanied Oracle's production of the unredacted transcripts and exhibits from the depositions of Oracle's four Persons Most Knowledgeable in the *Jewett* litigation.

12. Attached hereto as **Exhibit K** is a true and correct copy of an April 12, 2019 letter from John Giansello, counsel for Oracle, to Norm Garcia, counsel for OFCCP, that accompanied Oracle's production of the unredacted transcripts and exhibits from the depositions of the four deponents in the *Jewett* litigation that worked at HQCA during the relevant period of this litigation.

13. Attached hereto as **Exhibit L** is a true and correct copy of an April 19, 2019 letter from Charles Song, counsel for OFCCP, to J.R. Riddell, counsel for Oracle, regarding meet-and-confer discussions between the parties on April 18 and 19, 2019.

14. Attached hereto as **Exhibit M** is a true and correct copy of an April 22, 2019 letter from J.R. Riddell, counsel for Oracle, to Charles Song, counsel for OFCCP, in response to Mr. Song's letter dated April 19, 2019.

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

Executed in San Francisco, CA on May 6, 2017.



Erin M. Connell

Exhibit A

Attachments: Subpoena to Rong Jewitt as class rep served via counsel Jim Feinberg on 2-15-19.pdf

Importance: High

-----Original Message-----

From: Jim Finberg <jfinberg@altshulerberzon.com>

Sent: Saturday, February 16, 2019 8:11 AM

To: Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>

Cc: Perry, Jessica R. <jperry@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Eve Cervantez <ecervantez@altshulerberzon.com>; John T.. Mullan <jtm@rezlaw.com>; Erin M.. Pulaski <emp@rezlaw.com>; William <wpm@rezlaw.com>; McKenzie Langvardt <mlangvardt@altshulerberzon.com>; Tess Imhof <timhof@altshulerberzon.com>; garci.norman@dol.gov; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>

Subject: Fw: Service of subpoena to Rong Jewitt as class rep by US DOL
Importance: High

Dear Erin and Gary,

Pursuant to the confidentiality order in the Jewett case, I hereby notify you that we have received a subpoena from the U.S. Department of Labor that seeks materials designated by Oracle as confidential.

Jim

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Sent: Friday, February 15, 2019 4:37 PM

To: Jim Finberg

Cc: Miller, Jeremiah - SOL

Subject: Service of subpoena to Rong Jewitt as class rep by US DOL

Jim,

Thank you for accepting service for your client via e-mail for the attached subpoena. We understand that the service of this subpoena will cause the invoking of provisions of the protective order that you have with Oracle.

If you have any questions or issue, please contact me.

Thanks again,

Norm

Norman E. Garcia

Senior Trial Attorney

United States Department of Labor

90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

Exhibit B



February 19, 2019

Via E-Mail

Norman E. Garcia
Senior Trial Attorney
U.S. Department of Labor
90 Seventh Street, Suite 3-700
San Francisco, CA 94103

Re: *OFCCP v. Oracle America, Inc.*
OALJ Case No. 2017-OFC-00006

Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
+1 415 773 5700
orrick.com

Erin M. Connell

E econnell@orrick.com
D +1 415 773 5969
F +1 415 773 5759

Dear Mr. Garcia:

I write concerning the subpoena you served on counsel for “Rong Jewett as lead class representative” in *Jewett et al. v. Oracle America, Inc.*, San Mateo County State Court Case No. 17-CIV-02669 just before close of business on a holiday weekend. OFCCP must withdraw the subpoena. OFCCP does not have subpoena power. Additionally, the subpoena contains broad requests for records not relevant to this lawsuit, many of which are protected as “confidential,” and some of which are protected as “attorneys’ eyes only” under the protective order in place in the *Jewett* action. OFCCP’s *ultra vires* subpoena along with OFCCP’s clear efforts to obtain discovery to which it is not entitled in violation of Oracle’s rights in the state court action is improper.

OFCCP Has No Authority To Issue A Subpoena.

OFCCP’s authority to obtain documents from third parties to a litigation by way of subpoena is not a matter of first impression. Eight years ago OFCCP conceded that it does not have such subpoena authority. As the Court noted in *United Space Alliance, LLC v. Solis*, 824 F.Supp.2d 68, 92 (D.D.C. 2011), “[t]he [OFCCP] concedes that it lacks formal subpoena authority[.]”

Even had OFCCP not made this concession, the relevant regulations and statutes force such a conclusion given the scope of powers authorized by Executive Order 11246. Unlike ERISA (29 U.S.C. § 1134(a)(1)) or the Fair Labor Standards Act (29 U.S.C. § 209), Executive Order 11246 does not confer upon the OFCCP the power to subpoena third parties. Instead EO 11246 only provides that *the contractor* will permit access to its records. § 202(6). OFCCP’s Compliance Manual is noticeably silent regarding the issuance of subpoenas and the rules of practice specific to OFCCP include provisions for a number of discovery mechanisms (*i.e.*, interrogatories, requests for admissions, production of documents from a party, and depositions) but does not include any provision regarding third party subpoenas. 41 C.F.R. §§ 60-30.9-11.

It matters not at all that Judge Clark signed the subpoena. The ALJ may only issue a subpoena “authorized by law or statute.” 29 C.F.R. § 18.56(a)(1) (“Upon written application of a party the judge may issue a subpoena *authorized by statute or law*[.]”) (emphasis added).



Norman E. Garcia
February 19, 2019
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Here, there is no authority for the issuance of a subpoena by OFCCP or by an ALJ at the request of OFCCP to obtain documents from a third party. As the Court noted in *Borbreski v. U.S. Environmental Protection Agency*, 284 F.Supp.2d 67, (D.D.C. 2003) “Congress did not intend to provide the Secretary of Labor (and hence the ALJ) with subpoena authority” (finding that the plain meaning of the statutes underlying the action reflect that).

Thus, the subpoena signed by Judge Clark and served by OFCCP on the *Jewett* plaintiffs is not valid and is unenforceable.

Even If OFCCP Could Subpoena Documents, It Is Not Entitled To The Breadth Of Documents It Seeks Here.

OFCCP’s subpoena requests from the *Jewett* Plaintiffs (1) all “unredacted deposition transcripts,” (2) all documents produced in the case, (3) all discovery requests and responses; (4) all discovery meet and confer communications; (5) all expert reports; (6) all “analyses,” and (7) all stipulations.

As you know, *Jewett* is a different case. There, Plaintiffs allege violation of the California Equal Pay Act, violation of the California Labor Code, and violation of the California Business and Professions Code, and the putative class spans throughout California (including approximately 166 separate location codes). It is not limited to the Redwood Shores office, and the three remaining class representatives never worked in the Redwood Shores office.

Given the differences between this case and *Jewett*, the subpoena is obviously overbroad and seeks information not relevant to the present action. OFCCP’s “Instruction” that the requests are limited to Oracle’s headquarters location in Redwood Shores, California acknowledges as much. OFCCP ignores (whether intentionally or not) the fact that Plaintiffs in *Jewett* are not in a position to discern what documents are relevant to the Redwood Shores location.

Oracle has produced tens of thousands of documents (and exponentially more pages) to the *Jewett* Plaintiffs that were responsive to document requests covering offices throughout the state of California. The data the *Jewett* Plaintiffs possess, then, includes the private information of hundreds of Oracle employees from offices across the state that are not relevant to OFCCP’s action and that OFCCP is not entitled to. The *Jewett* Plaintiffs are in no position to parse the documents and data to determine what information is relevant to which employees and/or locations. And, even if they were, the *Jewett* Plaintiffs are not able to manipulate the information it received to then produce it to OFCCP because any such documents would not be responsive to the subpoena which requests all documents “received from” Oracle – any manipulated documents would not be “received from” Oracle.

Additionally, as OFCCP is well aware, Oracle produced documents to the *Jewett* Plaintiffs pursuant to a Protective Order (much like Oracle did in this matter). Consistent with its disregard of the Protective



Norman E. Garcia
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Order Oracle entered into with OFCCP, OFCCP acknowledged its understanding “that the service of this subpoena will cause the invoking of provisions of the protective order [plaintiffs] have with Oracle.” OFCCP also specifically requests “unredacted deposition transcripts.” Coupled with OFCCP’s position that there is currently no protective order governing its handling of Oracle’s confidential information, OFCCP’s purpose in seeking irrelevant documents marked confidential or attorneys’ eyes only in a separate proceeding and specifically requesting *unredacted* transcripts is unsavory.

The Proper Avenue For OFCCP To Collect Documents Is The Discovery Process In This Case.

As permitted by the rules of practice governing this matter, and as OFCCP has done in the past in this matter, OFCCP should seek documents from Oracle through requests for production of documents. See 41 C.F.R. § 60-30.10.

On January 30, 2019 OFCCP served Oracle with its fifth set of requests for production of documents. Requests 166, 167, and 168 are substantively identical to Requests 1, 2 and 3 in the subpoena. Oracle’s responses and objections to those requests are not even yet due. On February 11, however, counsel for Oracle wrote to initiate the meet and confer process regarding some of OFCCP’s requests. OFCCP has yet to respond. Accordingly, it seems apparent that OFCCP would prefer to receive the documents elsewhere to circumvent any objections to the requests by Oracle. This, of course, is contrary to how the discovery process in this case should proceed.

OFCCP Failed To Serve Oracle With A Copy Of Its Subpoena

Finally, Oracle notes that OFCCP failed to provide notice of its subpoena to Oracle prior to serving it on plaintiffs in *Jewett*. Indeed, OFCCP did not even serve a copy of the subpoena on Oracle after serving it on the *Jewett* Plaintiffs. Not only is such a failure contrary to normal civil practice, it violates the procedural rules for issuing a subpoena. Both the Code of Federal Regulations and the Federal Code of Civil Procedure require a party that intends to serve a subpoena for production of documents on a third party to first provide notice and a copy of the subpoena to all parties in a case. 29 C.F.R. § 18.56(b)(1); Fed. R. Civ. Proc. 45(a)(4).

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Norman E. Garcia
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Because OFCCP (and therefore the ALJ acting on OFCCP's behalf) has no authority to issue a third party subpoena for documents, OFCCP must withdraw its subpoena to the *Jewett* Plaintiffs immediately. Please confirm by close of business today, February 19, 2019, that OFCCP will do so. Absent such confirmation, Oracle will seek relief from the court.

Very truly yours,

A handwritten signature in black ink that reads "Erin Connell". The signature is written in a cursive, flowing style.

Erin M. Connell

Exhibit C

From: "Connell, Erin M." <econnell@orrick.com>
Date: February 26, 2019 at 7:13:50 AM PST
To: "Garcia, Norman - SOL" <Garcia.Norman@DOL.GOV>
Cc: "Parker, Warrington" <wparker@orrick.com>, "Grundy, Kayla Delgado" <kgrundy@orrick.com>, "Mantoan, Kathryn G." <kmantoan@orrick.com>, "Siniscalco, Gary R." <grsiniscalco@orrick.com>, "Kaddah, Jacqueline D." <jkaddah@orrick.com>, "Bremer, Laura - SOL" <Bremer.Laura@dol.gov>, "Miller, Jeremiah - SOL" <Miller.Jeremiah@dol.gov>
Subject: RE: OFCCP v Oracle - subpoena issue

Norm,

We will respond to the inaccurate accusations regarding the Larry Lynn emails shortly and under separate cover. And as we've stated before, we remain willing to meet and confer further regarding which documents from Jewett are relevant here as well, and how to address the confidentiality issues they implicate. With respect to the invalid subpoena, please confirm once it is withdrawn so we know we don't have to raise this issue with the ALJ.

I further note that you did not respond to the latest email in the chain below (which I sent last Friday at 3:09 p.m. in response to Laura's email, and which is pasted immediately below). I raise that here because the repeated mischaracterizations of my emails as "threats" is not well-taken – I simply have noted that if you hadn't agreed to withdraw the invalid subpoena, we'd have no choice but to raise it with the ALJ. This situation is particularly ironic in light of your "threat" below to re-issue the invalid subpoena, notwithstanding the undisputed fact that OFCCP lacked authority to issue it in the first place.

Once again, please confirm once the invalid subpoena is withdrawn.

Thanks,
Erin

Laura,
I've made no "threats to immediately file a motion with Judge Clark" – my email

below speaks for itself. We both know that pursuant to the judge's order, we need to meet and confer on the phone before filing anything. But we would like this nonsense over the invalid subpoena to be put to an end promptly so we can stop devoting time to it and get back to the substantial amount of work that needs to be done to prepare this case for trial in December. I'll wait to hear from Norm next week.

Erin

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Sent: Monday, February 25, 2019 4:27 PM

To: Connell, Erin M. <econnell@orrick.com>

Cc: Parker, Warrington <wparker@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>

Subject: RE: OFCCP v Oracle - subpoena issue

Erin,

Once again, your threatening communications are filled with conjecture, speculation and do not accurately portray the communications between the parties. As noted in my letter to John Giansello, you personally committed to your client producing 7,887 of Larry Lynn's e-mails to avoid this issue being raised to Judge Larsen in a motion to compel. Then, after OFCCP filed the motion to compel briefing, your client failed to produce all of these 7,887 e-mails you had committed to produce. While you made inaccurate references to OFCCP's correspondence with Mr. Giansello, we see that you avoided comment on this issue.

We disagree with your characterization of the subpoena and note that subpoenas have explicitly been included in other OFCCP scheduling orders, and are addressed in Part 18. We have offered a means of shifting the burden of production of documents in *Jewett* from Oracle to plaintiffs, including the burden of protecting individual privacy rights. Our position is that documents can be produced to OFCCP without redaction (regardless of who produces them), as documents have already been produced by Oracle to OFCCP in this case. Significantly, we have not disclosed any individual's data in this action (unlike Oracle). We can agree that the documents produced to OFCCP from the *Jewett* case – whether pursuant to the subpoena issued to the *Jewett* plaintiffs or by Oracle—will be governed by the protective order in this case. As you know, there is a temporary protective order that remains in place while the parties meet and confer about the protective order that will govern the case going forward. So your purported need for “immediate assurance that the confidential information produced in *Jewett* will remain confidential” is a poor excuse for not producing highly relevant documents in this case.

Your suggestion that we already have all unredacted documents from the *Jewett* case is incorrect. Nevertheless, it is obvious that we will need unredacted versions of the documents filed in court, as well as documents marked confidential in the *Jewett* case.

We are entitled to Oracle's confidential information in this action. There is simply no justification for Oracle redacting information in relevant documents it produces to OFCCP, or for the suggestion that OFCCP articulate why it needs unredacted documents. As you recognize, the actions overlap, so broad swaths of documents relevant in *Jewett* are also relevant in this case. Moreover, in terms of discovery, the *Jewett* case is ahead of our case, so it only makes sense to take advantage of the discovery that has already been conducted in *Jewett*. Of course, if there are particular categories of documents that were produced in *Jewett* that you think are not relevant to the OFCCP case, we can discuss that. But, since Oracle's compensation and hiring policies were consistent across California, depositions and documents that address Oracle's policies at California locations other than HQCA are also relevant to OFCCP's case.

We will withdraw the subpoena in anticipation of Oracle producing the (unredacted) documents from the *Jewett* case, but reserve the right to reissue the subpoena and/or bring a motion to compel if Oracle fails to produce the documents. Oracle should be able to produce most of these documents immediately, as they have already been reviewed for privilege and quality-checked.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Bremer, Laura - SOL <Bremer.Laura@dol.gov>

Sent: Friday, February 22, 2019 2:57 PM

To: Connell, Erin M. <econnell@orrick.com>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: OFCCP v Oracle - subpoena issue

Erin,

As you know, Norm extended the deadline to respond to the subpoena until March 20, 2019 to give the parties a chance to thoroughly meet and confer about this issues. Norm is out of the office today, and can respond to your email next week (including the series of inaccurate conclusions you make). Given that your meet and confer with

Norm is ongoing and OFCCP extended the deadline to respond to the subpoena until March 20, your threats to immediately file a motion with Judge Clark if we “do not immediately withdraw the subpoena” are unnecessary and premature. Norm will get back to you next week.

Laura C. Bremer
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
90 7th Street, Suite 3-700
San Francisco, California 94103
(415) 625-7757

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From: Connell, Erin M. <econnell@orrick.com>
Sent: Friday, February 22, 2019 10:59 AM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP v Oracle - subpoena issue

Norm,

Thanks for your response, although it doesn't address the substantive points made in my letter. For example, you don't address the legal authority we provided – nor OFCCP's prior admission – confirming that OFCCP lacks authority to serve a third-party subpoena (nor that you presumably did not inform Judge Clark of that fact when you asked him to sign it). You also ignore that you never served us with the subpoena – we only learned of it over the weekend when plaintiffs' counsel in *Jewett* forwarded it to us via email. These omissions lead us to conclude that you know we are right.

In your email below, you attempt to deflect attention away from these facts by making unfounded accusations of wrongdoing by Oracle. I note you employed the same strategy in your letter to John Giansello on Wednesday of this week – instead of addressing the merits of the issues or providing substantive, thoughtful explanations backed by legal authority articulating why you are entitled to the massively burdensome documents and data you have requested, you instead accuse Oracle of discovery misconduct (and even bring up the audit, which obviously has nothing to do with whether the discovery requests

you've served in this litigation are relevant and reasonably tailored to the claims asserted here). This repeated tactic of avoiding the substance of our disputes and instead resorting to attacks on Oracle is not helpful. It doesn't advance things or help narrow the disputes for which we may need assistance from the ALJ, which is the entire purpose of the meet and confer process.

With respect to the "compromises" you suggest below, they are not really compromises at all. You need to immediately withdraw the subpoena, having all but conceded it is invalid. Please confirm you will do so, or we'll have no choice but to raise this with Judge Clark. The documents and data you've requested from plaintiffs' counsel are covered by a protective order in *Jewett* – you know this, because you acknowledge it in your email to Jim Finberg attaching the subpoena. The putative class in *Jewett* is state-wide, and therefore broader than the class at issue here. Accordingly, the data you've requested is covered by third party privacy rights of individuals who are not part of this litigation. It also includes information that the *Jewett* plaintiffs (not Oracle) have designed as confidential – and three of them (including the three remaining named class representatives) never worked at HQCA. Particularly given OFCCP's current position regarding a protective order in this case, we need immediate assurance that the confidential information produced in *Jewett* will remain confidential.

With respect to Request Nos. 166-168, our written objections and responses are not due until next week. As you'll see when we serve them, however, we are willing to meet and confer and produce documents from the *Jewett* case that are also relevant here. There is overlap – we see that. We also recognize there may be some efficiencies to be gained for both sides by stipulating that PMK depo testimony there can apply here, so we don't have to repeat depositions on the same topics. As to other documents and depo transcripts – we assume you already have everything not marked "confidential" pursuant to your "common interest agreement" with *Jewett*'s counsel, so you should be in a very good position to articulate during the meet and confer process why you need unredacted versions of things, and exactly what it is you think you're missing.

Please confirm whether you will withdraw the subpoena, or whether we need to ask Judge Clark to quash it. If you won't withdraw it, please confirm when you are available for a phone call to meet and confer regarding our motion, per Judge Clark's scheduling order.

Thanks,
Erin

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Sent: Thursday, February 21, 2019 4:29 PM

To: Connell, Erin M. <econnell@orrick.com>

Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>;

Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: OFCCP v Oracle - subpoena issue

Erin,

We seek to avoid a repeat of Oracle's actions when we served discovery in February 2017. At that time, Oracle demanded a very lengthy meet and confer process, we were forced to eventually file a motion to compel, and did not receive any data, and most of the documents Oracle produced, until September and October 2017. Over the last month, we have received repeated communications from your office regarding discovery, objections thereto, how burdensome it is and, how your office would be hard pressed to provide the documents and data, etc. In fact, up and until Tuesday of this week, the date our joint proposed schedule was due to the Court, Oracle resisted providing a date certain to produce data. Moreover, Oracle's response to a set of document production requests and interrogatories that we served before the stay consisted solely of objections, and claimed a new judge and the filing of a new complaint excused it from producing documents or answers (even to requests relevant to both the First Amended Complaint and the Second Amended Complaint).

To lessen the burden to Oracle and to ensure that we actually receive the data and documents on time, we issued a subpoena to the lead Jewitt Plaintiff to secure documents, to include data, from that case since you had already produced it or received it in that litigation. The request for depositions would also render discovery in this action more efficient, as it may eliminate the need for us to duplicate depositions. However, you have identified that you have issues with us taking this tack. In an effort to compromise to lessen the amount of time spent to meet and confer and to avoid motion practice, we would be willing to withdraw the subpoena in Jewitt if you would agree to produce the requested documents to RFPs 166-168. Alternatively, we would agree to withdraw RFPs 166-168 if you permit us to secure and use the documents from the Jewitt plaintiffs that we seek in the subpoena.

Please advise if you are willing to agree to one of these compromises.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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Solicitor. If you think you received this e-mail in error, please notify the sender immediately.

From: Connell, Erin M. <econnell@orrick.com>
Sent: Thursday, February 21, 2019 10:19 AM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP v Oracle - request for meet and confer call tomorrow

Norm,
I understand the purpose of the extension – I wasn't clear if you intended to respond to my letter in writing, or if we would discuss it on a call. I'll look for your written response.
Thanks,
Erin

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Thursday, February 21, 2019 10:10 AM
To: Connell, Erin M. <econnell@orrick.com>
Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP v Oracle - request for meet and confer call tomorrow

Erin,

The purpose of giving a 12-day extension was to give the parties adequate time to thoroughly meet and confer over this issue as opposed to one party quickly running to the Court without this adequate meet and confer. We are currently evaluating your correspondence in this matter and we will get back to you today.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Connell, Erin M. <econnell@orrick.com>
Sent: Wednesday, February 20, 2019 5:40 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP v Oracle - request for meet and confer call tomorrow

Norm,
Thanks for confirming the extension. To confirm regarding tomorrow, are you available for a call?
Erin

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Wednesday, February 20, 2019 5:31 PM
To: Connell, Erin M. <econnell@orrick.com>
Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP v Oracle - request for meet and confer call tomorrow

Erin,

I would like to get back to you tomorrow regarding your letter. We can extend the production deadline beyond March 8 to March 20 so that we can meet and confer on this issue. I will notify Jim tomorrow of the extension.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Connell, Erin M. <econnell@orrick.com>
Sent: Wednesday, February 20, 2019 4:18 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: OFCCP v Oracle - request for meet and confer call tomorrow

Norm,

Per Judge Clark's scheduling order, I'm writing to request a telephone call tomorrow to meet and confer regarding a motion to quash OFCCP's subpoena to Rong Jewett. As you know, I sent you a letter yesterday confirming our position that the subpoena is invalid, and asked you to confirm by close of business yesterday that you would withdraw the subpoena. I did not hear from you. In the event we cannot resolve this issue through the meet and confer process, and in light of the subpoena's March 8 deadline for production, we intend to file our motion this week, and will ask the Court to rule on it on shortened time. Alternatively, if you agree to extend the subpoena's production deadline, there will be no need for shortened time on the motion.

Please let me know when you are available tomorrow for a call.

Thanks,
Erin

Erin M. Connell

Partner

Orrick

San Francisco 

T +1-415-773-5969

M +1-415-305-8008

econnell@orrick.com



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Exhibit D

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Tuesday, February 26, 2019 11:31 AM
To: Jim Finberg <jfinberg@altshulerberzon.com>
Cc: Eve Cervantez <ecervantez@altshulerberzon.com>; McKenzie Langvardt <mlangvardt@altshulerberzon.com>; John T.. Mullan <jtm@rezlaw.com>; 'Tess Imhof' <timhof@altshulerberzon.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Subject: RE: OFCCP document requests seeking Jewett documents

Jim,

We are withdrawing the subpoena that OFCCP served to Ms. Jewitt as the lead plaintiff in the Jewitt case.

Please contact me if you have any questions,

Thank you,

Norm Garcia

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Garcia, Norman - SOL
Sent: Thursday, February 21, 2019 8:36 AM
To: Jim Finberg <jfinberg@altshulerberzon.com>
Cc: Eve Cervantez <ecervantez@altshulerberzon.com>; McKenzie Langvardt <mlangvardt@altshulerberzon.com>; John T. Mullan <jtm@rezlaw.com>; Tess Imhof <timhof@altshulerberzon.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Subject: RE: OFCCP document requests seeking Jewett documents

Jim,

We are extending the production date 12 days to March 20, 2019, to enable the parties to

adequately meet and confer on this issue.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor. If you think you received this e-mail in error, please notify the sender immediately.

From: Jim Finberg <jfinberg@altshulerberzon.com>
Sent: Tuesday, February 19, 2019 4:18 PM
To: Connell, Erin M. <econnell@orrick.com>
Cc: Eve Cervantez <ecervantez@altshulerberzon.com>; McKenzie Langvardt <mlangvardt@altshulerberzon.com>; John T. Mullan <jtm@rezlaw.com>; Tess Imhof <timhof@altshulerberzon.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Subject: RE: OFCCP document requests seeking Jewett documents

Erin,

Given your interpretation of the Amended Confidentiality Order in the Jewett case, we will not produce documents or data to the OFCCP pursuant to the subpoena we received from OFCCP until you get a resolution of the motion to quash you have informed me you intend to file in the OFCCP case, provided that you file that motion promptly and seek resolution of it before March 8. If you file that motion promptly, but have not obtained resolution by March 8, we will meet and confer about what is a reasonable additional period of time for us to hold off on production pending resolution of that motion.

Jim

From: Connell, Erin M. [<mailto:econnell@orrick.com>]
Sent: Tuesday, February 19, 2019 4:07 PM
To: Jim Finberg <jfinberg@altshulerberzon.com>
Cc: Eve Cervantez <ecervantez@altshulerberzon.com>; McKenzie Langvardt <mlangvardt@altshulerberzon.com>; John T. Mullan <jtm@rezlaw.com>; Tess Imhof <timhof@altshulerberzon.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>
Subject: RE: OFCCP document requests seeking Jewett documents

Hi Jim,

As a follow up to our discussion just now, we do interpret paragraph 10(c) in the Amended Protective Order (paragraph 7(c) in the original Protective Order) to be broader than "reasonable procedures" sought in the *Jewett* case – we interpret it to also include reasonable procedures sought in the OFCCP case. As reflected in the letter to OFCCP that I sent to you earlier today explaining why the OFCCP subpoena is invalid, we are

moving swiftly to take all reasonable procedures in the OFCCP litigation. Accordingly, it is also our position that if plaintiffs here produce data covered by the Amended Protective Order in this case while our challenge to OFCCP's subpoena is pending, it would constitute a violation of the Amended Protective Order and we would seek all appropriate remedies/sanctions in this case. We are mindful of the subpoena's purported deadline of March 8. Based on our discussion today, however, we understand that you do not intend to produce confidential data pursuant to the subpoena prior to that date, and if that date approaches and there is no resolution of this issue in the OFCCP case, we will meet and confer again. Please confirm if that understanding is incorrect. We think it would be premature and unnecessary to file a motion for a protective order in *Jewett* now, but are prepared to do so if left with no other choice.

Thanks,
Erin

From: Connell, Erin M.

Sent: Tuesday, February 19, 2019 2:07 PM

To: 'Jim Finberg' <jfinberg@altshulerberzon.com>

Cc: Eve Cervantez <ecervantez@altshulerberzon.com>; McKenzie Langvardt <mlangvardt@altshulerberzon.com>; John T.. Mullan <jtm@rezlaw.com>; Tess Imhof <timhof@altshulerberzon.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>

Subject: RE: OFCCP document requests seeking Jewett documents

Hi Jim,

I left you a voice mail on this about an hour ago – I'm generally available this afternoon to discuss.

Thanks,
Erin

From: Jim Finberg <jfinberg@altshulerberzon.com>

Sent: Tuesday, February 19, 2019 9:04 AM

To: Connell, Erin M. <econnell@orrick.com>

Cc: Eve Cervantez <ecervantez@altshulerberzon.com>; McKenzie Langvardt <mlangvardt@altshulerberzon.com>; John T.. Mullan <jtm@rezlaw.com>; Tess Imhof <timhof@altshulerberzon.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>

Subject: RE: OFCCP document requests seeking Jewett documents

Thanks.

When you have a chance , please give me a call.

I do not read paragraph 7 of our confidentiality order requiring me to identify for you each document Oracle has marked as confidential that is sought by the subpoena, but please clarify for me why, if you do, you read it otherwise.

Also, please let me know what you understand the phrase “ cooperate with respect to all reasonable procedures sought to be pursued by the party whose Confidential Information may be affected” in paragraph 7 to mean. I would have read it as meaning reasonable procedures taken in the Jewett case. Do it read it otherwise?

From: Connell, Erin M. [<mailto:econnell@orrick.com>]

Sent: Tuesday, February 19, 2019 5:42 AM

To: Jim Finberg <jfinberg@altshulerberzon.com>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Perry, Jessica R. <jperry@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Eve Cervantez <ecervantez@altshulerberzon.com>; John T. Mullan <jtm@rezlaw.com>; Erin M.. Pulaski <emp@rezlaw.com>; William <wpm@rezlaw.com>; McKenzie Langvardt <mlangvardt@altshulerberzon.com>; Tess Imhof <timhof@altshulerberzon.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: OFCCP document requests seeking Jewett documents

Hi Jim,

Pursuant to the Protective Order in this case, I'm writing to notify you that Request Nos. 166-168 in the attached RFP #5 served by OFCCP in the OFCCP case appear to seek materials designated by Plaintiffs as confidential in this matter.

Thanks,

Erin

Erin M. Connell

Partner

Orrick

San Francisco 

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M +1-415-305-8008

econnell@orrick.com



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Exhibit E



March 12, 2019

VIA ELECTRONIC MAIL

Erin M. Connell
ORRICK HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105

Re: OFCCP v. Oracle America, Inc., OALJ Case No. 2017-OFC-00006

Dear Erin:

This letter is a meet and confer in response to Oracle's responses to the *Jewett* RFPs (166-168) in OFCCP's Fifth Set of Document Production Requests. OFCCP is troubled that Oracle, once again, is making frivolous objections to purposely disrupt and extend the meet and confer process so that it can claim that it has limited time to harvest, mark and produce the documents. Oracle's oppressive delaying tactics are even more egregious given that OFCCP could have already attained these same documents through a subpoena that OFCCP served to the *Jewett* lead plaintiff. However, Oracle intervened and stopped attorneys from the *Jewett* case from readily producing the documents OFCCP sought in RFPs 166-168.

Oracle waived its unsupported boilerplate objections.

Once again, Oracle makes unsupported boilerplate objections. In response to RFP 166, Oracle states: "Oracle further objects to this Request on the ground that it is grossly overbroad, unduly burdensome, oppressive and seeks documents that are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence." To this request, Oracle also makes hyperbolic boilerplate objections that state: "Oracle further objects to this Request on the grounds that it manifests harassing intent on its face by its wholesale attempt to interrupt and disrupt Oracle's motion and trial preparations in a case to which OFCCP is not a party and in which it has no direct interest." Oracle provides absolutely no support to support its "grossly overbroad, unduly burdensome, oppressive" boilerplate objections nor to its provocative objection that OFCCP's request "manifests harassing intent on its face by its wholesale attempt to interrupt and disrupt Oracle's motion and trial preparations." Oracle's nonsupport for this inflammatory objection shows that Oracle is more interested in making outlandish claims than in supporting them. Oracle incorporated its objections in RFP 166 into RFPs 167-168.

These unsupported boiler plate objections are waived. *Progressive Cas. Ins. Co. v. F.D.I.C.*, 2014 WL 994629, at *7 (D. Nev. 2014) ("The Ninth Circuit has held that boilerplate objections or blanket refusals inserted into a response to a Rule 34 request for production of documents are insufficient to assert a privilege citing to *Burlington Northern & Santa Fe Ry. Co. v. U.S. District Court*, 408 F.3d 1142, 1149 (9th Cir. 2005).); see also *Frontier-Kemper Constructors, Inc. v. Elk Run Coal Co., Inc.*, 246 F.R.D. 522, 528-29 (S.D.W.Va. 2007)

(“Furthermore, boilerplate objections in response to a Rule 34 request for production of documents are widely rejected *citing to McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) (finding insufficient, objections to document requests on the grounds that they were overly broad, burdensome and oppressive); *Sabol v. Brooks*, 469 F.Supp.2d 324, 328-29 (D.Md. 2006) (court found that an out-of-state nonparty ordered to appear for an examination in aid of judgment had violated Rule 34 when it objected to discovery on the grounds that it was overly broad, vague and sought information not reasonably calculated to lead to the discovery of admissible evidence because it failed “to make particularized objections to document requests”, which constituted waiver of those objections); *St. Paul Reins. Co., Ltd. v. Commercial Fin. Corp.*, 198 F.R.D. 508, 512 (N.D.Iowa 2000) (Boilerplate objections, including that a particular document request was oppressive, burdensome and harassing, were “[i]n every respect ... text-book examples of what federal courts have routinely deemed to be improper objections.”); *Momah v. Albert Einstein Med. Ctr.*, 164 F.R.D. 412, 417 (E.D.Pa. 1996) (“Mere recitation of the familiar litany that an interrogatory or a document production request is ‘overly broad, burdensome, oppressive and irrelevant’ will not suffice.”).

Oracle’s broad and burdensome objections are disingenuous because Oracle brought whatever burden exists onto itself.

Besides being waived, Oracle’s overly broad and unduly burdensome objections are disingenuous because Oracle brought whatever burden it has onto itself. As OFCCP stated in its subpoena meet and confer correspondence, we served a subpoena to the *Jewitt* lead plaintiff to quickly attain the requested documents and to lessen, if not eliminate, Oracle’s burden. However, instead of allowing the *Jewitt* lead plaintiff to comply, Oracle intervened and stopped her from complying with the subpoena. In fact, but for Oracle’s intervention, OFCCP would have already had the documents it is requesting in RFPs 166-68 by now, with minimal, if any, burden to Oracle.

Moreover, even if Oracle produces the documents, such production would likely impose, *minimal*, if any, burden because much of the documents requested are already gathered and put in an electronic form. In other words electronic versions of the deposition transcripts probably already exist and the parties in *Jewitt* likely produced the documents to each other electronically. Thus, there is minimal additional burden to Oracle.

Oracle also waived its general objections.

In response to RFP 166, Oracle stated that it “incorporates by reference its General Objections.” Oracle further incorporates its RFP 166 objections into RFPs 167-68. These general objections are waived. *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981) (“Appellant never identified, with any specificity, the interrogatories to which the claim of privilege pertained. Appellant’s blanket claim of privilege is simply not sufficient.”); *Johnson v. Kraft Foods North America, Inc.*, 236 F.R.D. 535, 538 (D.Kan. 2006); (“The Court agrees with these cases and holds that a general objection which objects to a discovery request ‘to the extent’ that it asks the responding party to provide certain categories of documents or information is tantamount to asserting no objection at all. In other words, such a general objection does not preserve the asserted challenge to production.”); *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.”). Furthermore, when Oracle made a temporal scope objection in its General Objections, it *reneged* on the prior commitment of one of its lead counsels, Warrington Parker. Mr. Parker stated more than three weeks prior to these objections on February 1, 2019, that: “Oracle does not intend to offer a temporal scope objection to discovery as a general matter.”

Oracle’s definitional objections are likewise frivolous.

Oracle continues its delaying practice of objecting to common every day words such as you, your, present, person, orally, etc. The true level of Oracle’s frivolousness is evident when it objected to the word “IDENTIFYING” as not being defined even though OFCCP defined its base word “IDENTIFY.” Another poignant example of these merit-less objections is when Oracle objected to the word “present” when OFCCP defined “RELEVANT TIME PERIOD” as being from “January 1, 2013, to the present.” Not only has this phrase and word been used throughout this litigation with both parties understanding their meaning, but Oracle’s meet and confer correspondence in February 2019 demonstrated its understanding of the meaning of this word when it stated: “the parties cannot harvest, review and produce documents up until the date of the discovery cutoff in May, 2019. . . . Oracle proposes a presumptive cut-off for all documentary and electronic discovery as of January 18, 2019.” This communication demonstrates Oracle’s understanding of “present” in the phrase “January 1, 2013, to the present” because of its reference to producing “documents up until the date of the discovery cutoff in May, 2019” which would have been required under this phrase since the discovery cut-off date limited production to May 2019. Oracle’s definitional objections are also disingenuous because Oracle included within them a temporal scope general objection even though one of its lead counsel, more than three weeks prior, stated that: “Oracle does not intend to offer a temporal scope objection to discovery as a general matter.”

Courts frown on this practice by Oracle and call upon parties to give words and phrases their ordinary meanings instead of straining to find an ambiguous interpretation. *See Johnson v. Cate*, 2014 WL 4249141, *4 (E.D. Cal. 2014) *citing to Pulsecard, Inc. v. Discover Card Servs., Inc.*, 168 F.R.D. 295, 310 (D. Kan. 1996) (objection on grounds as vague and ambiguous overruled if reason and common sense to attribute ordinary definitions to terms and phrases provided needed clarity); *King-Hardy v. Bloomfield Board of Education*, 2002 WL 32506294, *5 (D. Conn. 2002) (responding party must give discovery requests a reasonable construction, rather than strain to find ambiguity). Moreover, when OFCCP defines terms to provide further clarity, “Oracle objects to this definition on the grounds it is vague, ambiguous, overbroad and fails to comport with the commonly understood meaning of the term ‘list.’” Oracle even objects if it might not have all of the responsive documents when it objects to a definition that “would include information not available to Oracle” even though Oracle fully knows that if the documents are not available to it, Oracle has no duty to produce them. Oracle even objects to definitions because it believes that the term defined is “irrelevant” without seeing the context to which it is used, but based solely upon the definition of the term. Oracle also simultaneously finds definitions to be “argumentative, vague, ambiguous, inherently incomplete and incoherent” all at the same time. In short, Oracle’s vague and ambiguous definitions and definitional

objections are frivolous and just made for the purposes of delaying or excusing its production of documents because it has insufficient time to harvest and produce them before the production cut-off date after all of its alleged definitional objections are clarified. Oracle is also trying to use this tactic, as it did in 2017, to artificially narrow the scope of the request to deny OFCCP legitimate and relevant documents.

Oracle's relevancy and different case objections are merit-less because both cases have a similar core claim – gender pay discrimination against women.

Oracle's bluster about documents from the *Jewitt* case not being relevant because OFCCP is not a party to *Jewitt*, *Jewitt's* lead plaintiffs are not members of OFCCP's case, *Jewitt* involves California's equal pay act, *Jewitt* case includes more people or locations, the cases are not congruent, etc., is merit-less. *Both cases involve the same core gender female pay discrimination at Oracle's Redwood Shores location.* Furthermore, the females in OFCCP's gender discrimination pay claim are also part of *Jewitt's* gender pay discrimination class. Moreover, the pay policies and practices that Oracle produced to OFCCP are not limited to just the Redwood Shores location and instead apply to all of California. As such, they would apply to the *Jewitt* case and whatever Oracle produced in *Jewitt* would likely apply to OFCCP's case. The frivolousness of these objections is also demonstrated by Oracle's discovery actions in this litigation wherein it has (1) repeatedly sought information about OFCCP's communications with *Jewitt* personnel and (2) propounded 10 separate document production requests to OFCCP seeking *Jewitt* related documents. Thus, through these actions, Oracle itself demonstrated that it thought that the *Jewitt* case is relevant to this litigation. Lastly, and most importantly, *Jewitt's* relevancy is demonstrated by the counsel of *Jewitt* and OFCCP signing a *common interest agreement* to which Oracle has knowledge.

Oracle's claim that its protective order in *Jewitt* prohibits it from producing responsive documents to OFCCP is baseless.

This objection by Oracle demonstrates that it has no limits in making frivolous objections. To object to producing documents because Oracle is bound by a *Jewitt* state protective order is truly extraordinary because it casts aside the Supremacy Clause of the United States Constitution as well as laws, regulations and executive orders by the United States not to mention Oracle's obligations under them. Moreover, protective orders usually have an "unless required by law" exception to them that Oracle fails to address or take into account. This, in itself, is bad faith. Lastly, Oracle undermines this objection when it offers to produce documents after the parties agree to language in a protective order in this case. If Oracle was bound as it claims, then there would be no grounds for it to unilaterally decide that it can offer documents received from the *Jewitt* plaintiffs to OFCCP. Yet, even with all of these considerations that work against making such an objection, Oracle makes this frivolous objection in an attempt to delay, limit and avoid the production of documents in this case.

Oracle's alleged willingness to "consider" the production of documents "upon reasonable specification thereof" is baseless because Oracle's willingness is illusory and OFCCP has already identified them to a reasonable particularity.

Oracle's offer to "consider" the production of documents if OFCCP provides a "reasonable specification thereof" is illusory because Oracle does not have to produce any documents even if finds that OFCCP defined the documents to a "reasonable specification." This is because Oracle only offered to "consider" their production, not to actually produce them. Moreover, Oracle's "willing[ness] to consider" is further suspect because OFCCP has already met the reasonable particularity requirements of Rule 34(b)(1)(A) because the requests are very specific. For example, RFP 166 requests Oracle to "[p]roduce all unredacted deposition transcripts of depositions taken in the *Jewett et al. v. Oracle America, Inc.*, California state case number 17-CIV-02669 litigation. OFCCP cannot get any more specific than that. RFP 167 sought for Oracle to "[p]roduce all DOCUMENTS YOU produced to OR received from the plaintiffs in the *Jewett et al. v. Oracle America, Inc.*, California state case number 17-CIV-02669 litigation that were not previously produced in this litigation." This RFP is also very specific. RFP 168 requests that Oracle:

Produce all DOCUMENTS YOU provided to OR received from the plaintiffs in the *Jewett et al. v. Oracle America, Inc.*, California state case number 17-CIV-02669 litigation RELATED TO written discovery requests (e.g., interrogatories, requests for admissions, requests for the production of DOCUMENTS) to include the discovery requests, the responses AND meet AND confer COMMUNICATIONS RELATED TO the discovery requests OR responses. This request does not include the DOCUMENTS actually produced RELATED TO the responses, but it does include any AND all COMMUNICATIONS RELATED TO the written discovery requests OR responses thereto.

What makes RFP 168 longer than the other two requests is that it provides specific information of the types of documents OFCCP is seeking and not seeking. Thus, it is specific too. For Oracle to require more specificity to these very specific requests for (1) deposition transcripts, (2) documents produced and received and (3) discovery requests, the responses to them and meet and confer communications related to the discovery requests or responses again demonstrates its efforts to delay discovery by attempting to either avoid production altogether or limit the production of documents.

Oracle's refusal to produce *Jewitt* documents pending a protective order agreement is illusory, in bad faith and nonsensical because a protective order is already in place.

Oracle's outright refusal to produce *Jewitt* documents pending the parties' agreement to a protective order is illusory because the parties may not come to an agreement. This is especially true since Oracle has provided a conflicting interpretation of confidential information depending upon who is producing and arguing it. For example, on April 21, 2017, one of Oracle's lead counsels, Gary Siniscalco, in documents attached to a declaration, publically filed in this Court documents wherein he contrasted personal information about Oracle's employees, identified Oracle's recruiting, compensation, and visa practices and provided summaries and compilations

of analysis that Oracle performed. Specifically, Mr. Siniscalco publically filed the following types of information:

- In Exhibits K (pp. 17-18) , O (pp. 34-35) and Q (pp. 9-12, 20-36) for specifically named people: *salaries, performance evaluations, performance ratings, citizenship*, race, gender, job title, degree obtained, school where degree obtained, span of control, supervisor and reporting relationships, specific duties and responsibilities, skills and capabilities, specific products and projects worked on, scope and role of work, global career level, tenure/seniority, leadership abilities, performance, expertise, productivity, job function, percent of time spent on different tasks, years worked at Oracle, inter-team collaboration, training, coding performed. Additionally, when making these comparisons, Oracle identified the number of its employees at Redwood Shores who had the same job title and its compensation practices.
- In Exhibit Q (pp. 2-4) its recruiting practices and requirements, the number of employees it has in India and the principal roles that they perform, the source of its applicants, countries of which applicants were citizens, countries from which applicants applied or were working.
- In Exhibit Q (p. 5) Oracle's internal analysis of job requisitions; *summaries, and compilations and comparisons* of this analysis of these job requisitions expressed in both raw numbers and percentages.
- In Exhibit R (pp. 2-5) applicant rate in percentages of its Asian applicants to entry level jobs total and for college applicants, the disparities in Oracle's work force as compared to the U.S. labor market for Asians and non-Asians, Oracle's Asian hiring rate, percentage of Asian incumbents and applicants, the percentage of Asians in PT1 jobs, Oracle recruiting directly from India for entry level jobs, percentage of Oracle's H-1B visas who are Asian, the percentage of Oracle's overall and PT1 workforce who have H-1B visas, the percentage of people having H-1B visas in its PT1 workforce at Redwood Shores, the percentage of Oracle's PT1 workforce at Redwood Shores by race, Oracle's reliance on word of mouth recruiting, the percentages of Asians who were referred and hired from PT1 employees.
- Exhibit S includes Exhibits K and Q.

With this filing, Oracle demonstrated that it did not consider these types of information and / or documents to be confidential. However, when OFCCP files *summaries, and compilations of just* its own analysis, Oracle claimed that OFCCP filed confidential information. In summary, because Oracle has a self-serving interpretation of what is confidential that is dependent upon who is using and filing the information/documents, the parties may not agree to a protective order. Thus, Oracle's refusal to produce documents until there is an agreement over this protective order is illusory and in bad faith. It is also in bad faith to the extent that Oracle is

attempting to black mail OFCCP to agree to a protective order in order for Oracle to just consider whether to produce responsive documents.

Oracle's refusal is also nonsensical because there is already a protective order in place covering the documents that Oracle produces to OFCCP. In fact, the Court issued this protective order on February 20, 2019, five days before Oracle served its responses that are at issue here. So, even though Oracle knew that a protective order was already in place, Oracle still refused to produce documents until the parties came to an agreement. This is another example of its bad faith and delaying the production of documents in this matter.

Since we have already met and conferred several times on these issues when addressing the subpoena and Oracle's responses to the Fifth Set, I propose that we have a final conference call next week to discuss on March 18 or 19, 2019. What is your availability on those dates?

Sincerely,



NORMAN E. GARCIA
Senior Trial Attorney

Exhibit F



March 25, 2019

VIA ELECTRONIC MAIL

John D. Giansello
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019-6142

Re: OFCCP v. Oracle America, Inc., OALJ Case No. 2017-OFC-00006

Dear John:

I write to memorialize our meet and confer communications on March 22, 2019, and to provide further responses to the issues raised on that conference call.

Jewitt RFPs (166-168).

Introduction and Production Demand:

OFCCP sought a meet and confer conference call with Oracle to address its objections and to understand what Oracle would or would not produce in response to these three RFPs. As will be detailed more below, Oracle's response is that it is still reviewing the documents and does not know what it will produce or when it will make a decision on what it will produce. As discussed in length below, there is substantial overlap between the *Jewitt* and OFCCP cases because they both involved gender compensation discrimination at Oracle's Redwood Shores Headquarters. This is why counsel for both parties entered into a common-interest agreement. Moreover, OFCCP's prior review of Oracle's compensation policies show them to be used company-wide across California. Therefore, the documents sought in these three requests are highly relevant. Providing the documents, to include depositions, may be beneficial to both sides because they may obviate the need for depositions of the people deposed or may streamline their depositions. We will not know their possible impact until we actually see them. Given Oracle's lack of action and knowledge for these three RFPs, OFCCP is requesting that Oracle fully disclose what it will be producing not later than noon on Wednesday, March 27, 2019, and provide a date certain for producing the documents such that they are produced no later than April 8, 2019. This disclosure and production includes the unredacted deposition transcripts that Oracle will produce in response to RFP 166. What follows are the specific details that we discussed on the conference call.

Oracle's Objections:

During the conference call we discussed OFCCP's finding that Oracle's objections were waived and / or not properly made. In response, Oracle initially and repeatedly stated that it wanted to bypass this objection discussion and "discuss substance." OFCCP inquired if Oracle was withholding any documents for any objections. Oracle stated that this was not relevant and

refused to answer. OFCCP stated that if Oracle would inform OFCCP what objections it was using to withhold documents then OFCCP would confine its objection discussion to just those RFPs. Oracle again refused. OFCCP identified that because Oracle previously did not disclose if it was withholding documents for objections for previous requests, the parties wasted time meeting and conferring about Oracle's objections only to have Oracle later state that it had no responsive documents or it was not withholding any documents based on objections.

OFCCP inquired if Oracle was withholding documents based on the state's protective order in *Jewitt*. Oracle identified that there were privacy and confidentiality issues related to this protective order. OFCCP noted that these issues were protected by the protective order in this case. Oracle subsequently refused to identify if it was withholding documents based on the *Jewitt* protective order. OFCCP then proceed to address Oracle's objections. In response, Oracle stated that it disagreed with OFCCP's assessments and would not be withdrawing a single objection to any of the three RFPs.

While discussing the objections, OFCCP noted that Oracle brought the alleged burden onto itself because Oracle interfered with OFCCP's subpoena to the *Jewitt* lead plaintiff. Oracle responded by claiming that this subpoena was improper. OFCCP asked what was improper with its subpoena. Oracle stated it was not going to get into an extended legal argument on the phone call and refused to answer. OFCCP asked Oracle if it believed that subpoenas can be issued in this litigation and Oracle refused to answer.

Oracle also claimed that the *Jewitt* case was not relevant because it was a state-wide gender class action while OFCCP's was limited to Oracle's Redwood Shore Headquarters and that while the OFCCP case had race, the *Jewitt* case did not. OFCCP agreed that the two cases were different in those ways, but that both cases had compensation gender discrimination at Oracle's headquarters. Oracle conceded that both cases had this compensation gender discrimination. Additionally, while not raised on the call, one of Oracle's lead counsel admitted to this congruence between the two cases in a February 22, 2019, e-mail wherein she stated: "There is overlap – we see that" while discussing these two cases.

Oracle's Unknown Production and vague and ambiguous "substantive" offer:

OFCCP inquired if Oracle would be producing documents for any of these three requests. Oracle stated that it was unknown. Oracle further stated that it was currently reviewing the documents and that it has only been nine days since OFCCP sent its March 12, 2019, meet and confer letter about these RFPs. OFCCP stated that it requested these documents in January 2019, soon after the stay was lifted, the parties addressed these requests when addressing the subpoena a month ago, and OFCCP actually sent the meet and confer letter ten days ago. Oracle stated that it hoping to identify and produce documents "next week or so," but it did not know if it would be completed that week.

OFCCP stated that it was hard to "discuss substance" if Oracle was still reviewing the documents. Oracle stated that there "may be some willingness" by Oracle to produce transcripts, like from some PMK (person most knowledgeable) depositions if OFCCP agreed not to "rehash" the information and take the depositions. OFCCP identified that this "may" offer was too vague

and ambiguous. It was not clear which depositions or which people Oracle was referring to beyond PMK. Also the *Jewitt* plaintiffs may not have gone into the same detail as OFCCP would like. OFCCP also noted that it is hard to come to agreements on deposition transcripts sight unseen. OFCCP likewise identified that there have been issues between the parties in their interpretation of agreements like with the protective order and RFP 24.

In response, Oracle stated that it was “diligently” working on this issue, will try to find out more information and will get back to OFCCP. When OFCCP asked for a date certain, Oracle refused other than hoping “next week or so.” When OFCCP complained about the time Oracle was taking, that it has requested the documents in January, that Oracle was still reviewing the documents, and Oracle wanted to “discuss substance,” but it is not offering anything in substance, Oracle stated that “none of this is helpful.”

While not addressed in the conference call, it should be noted that Ms. Connell, a month prior to our call, made the same vague and ambiguous offer regarding transcripts when she stated on February 22, 2019, “We also recognize there may be some efficiencies to be gained for both sides by stipulating that PMK depo testimony there can apply here, so we don’t have to repeat depositions on the same topics.” So, in a month’s time from this communication and ten days since OFCCP’s meet and confer letter, Oracle’s position has not changed and it is still thinking about the possibility of sharing deposition transcripts to avoid OFCCP taking depositions. To not change a position in a month undermines Oracle’s claim that it is working diligently. Moreover, other than the possibility deposition transcripts, Oracle refused to commit to producing any other documents in response to these RFPs.

Privilege Log.

Oracle stated that while attorney, at times, is not identified in the privilege log for an actual e-mail, Oracle believes that e-mail is privileged because it is part of a string of e-mails that involved communications with an attorney. OFCCP also identified that Oracle did not identify the number of pages associated with the privileged documents. Oracle disputed whether it had to identify the number of pages of a privileged document, believed OFCCP’s request was “busy work” and stated that Oracle would consider OFCCP’s request. OFCCP noted that the number of pages make a difference when evaluating the privilege especially if the document is a large document that was dated before any privileged communication.

OFCCP then identified problems with the “privileged attachment(s)” that were not raised in OFCCP’s March 15, 2019, letter. OFCCP questioned why Oracle put the “(s)” after attachment because it should know how many attachments there were actually attached to the e-mail. OFCCP also identified that there was no information about what the attachment contained, its subject, what it was about, when it was dated, etc. Oracle also identified that one document at number 605 did not identify that the attachment was privileged. Lastly, OFCCP stated that there is case law that a pre-existing document does not become privileged by simply giving it to an attorney. Oracle stated that it understood OFCCP’s points and would consider whether it would change its privilege log. While not stated in the conference call, OFCCP is now requesting that each document to which Oracle is claiming a privilege, like a “privileged attachment,” have a separate row in its privilege log because the basis of the privilege for the attachment cannot be

determined given the amount of uncertain information regarding it. In other words, the same rationale that caused Oracle to reference each e-mail in a string of e-mails as a separate document in the privilege log would also apply to the attachments of the e-mails.

OFCCP inquired whether Oracle is currently withholding any documents not listed in its two privileged logs for OFCCP's first two sets of RFPs. Oracle stated that it did not know and would get back to OFCCP.

OFCCP inquired about a privilege log for its other RFP sets. Oracle stated that it did not know and would get back to OFCCP.

Blank Documents and Empty Native Folders.

Oracle first stated that the pages could be blank because the document had blank pages and Oracle simply copied them. OFCCP stated that while that may be true for single pages, it is likely not true when there are many blank pages in a row.

Oracle then stated that its Relativity program created blank Bates stamped numbered pages and empty native folders. Oracle further stated that the reasons for doing so are very technical and that Oracle would be sending OFCCP correspondence addressing them.

OFCCP asked Oracle to specifically confirm for each of the documents it identified as being blank, that either the original document had a blank page or that Relativity created blank pages. Oracle agreed. OFCCP further corrected one of the digits of ORACLE_HQCA_67876-68 to ORACLE_HQCA_67866-68 and stated that it would provide Oracle with the page numbers in the range (ORACLE_HQCA_27003-220) that it previously identified. These page numbers are: ORACLE_HQCA_27003-06, ORACLE_HQCA_27059-62, ORACLE_HQCA_27078-81, ORACLE_HQCA_27085-89, ORACLE_HQCA_27099-102, ORACLE_HQCA_27109-112, ORACLE_HQCA_27163-66, ORACLE_HQCA_27217-220. In addition to the aforementioned blank pages, are the blank pages OFCCP e-mailed to you on March 21, 2019:

ORACLE_HQCA_0000148329, ORACLE_HQCA_0000151416,
ORACLE_HQCA_0000154950, ORACLE_HQCA_0000160622,
ORACLE_HQCA_0000160623, ORACLE_HQCA_0000160624,
ORACLE_HQCA_0000172708, ORACLE_HQCA_0000179517,
ORACLE_HQCA_0000186609, ORACLE_HQCA_0000186610,
ORACLE_HQCA_0000203803, ORACLE_HQCA_0000208788,
ORACLE_HQCA_0000208659, ORACLE_HQCA_0000211989,
ORACLE_HQCA_0000211987, ORACLE_HQCA_0000211988,
ORACLE_HQCA_0000211990, ORACLE_HQCA_0000211991,
ORACLE_HQCA_0000213244.

Redacted Documents with Black Rectangles.

Oracle stated that these redactions were made during the underlying investigation. It further stated that it simply produced to OFCCP what it produced during the underlying investigation because OFCCP specifically requested in an RFP what Oracle had produced in the underlying

investigation. OFCCP stated that it did not recall making such a request, but stated that it would go back and check. OFCCP reviewed the first two sets of its RFPs after this conference call and found that there is not a specific RFP requesting that Oracle produce to OFCCP in the litigation all of the documents Oracle previously produced to it during the underlying investigation. If Oracle, believes otherwise, please identify the RFP. Thus, as requested in the meet and confer letter, for each document that Oracle redacted with black rectangles that is not listed on the privilege log, please produce this document unredacted.

Sincerely,



NORMAN E. GARCIA
Senior Trial Attorney

Exhibit G



April 1, 2019

VIA ELECTRONIC MAIL

John D. Giansello
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019-6142

Re: OFCCP v. Oracle America, Inc., OALJ Case No. 2017-OFC-00006

Dear John:

I write in response to your *Jewett* meet and confer communications last week to include on Friday, March 29, 2019, and as a follow up to OFCCP's reply on the same date.

OFCCP is following up on its offer Friday to provide notice in advance to Oracle if it plans to serve a deposition notice for a person most knowledgeable ("PMK") deposition for any of the topics listed in the *Jewett* PMK deposition notice(s) to Oracle. As stated on Friday, we believe that Oracle's suggestion to provide notice for "anything that may range outside the matters for which those witnesses were designated" is unworkable, would lead to further disputes and these deponents did not testify as PMK witnesses for these other topics. OFCCP also noted that while it would give prior notice before serving the PMK deposition notices on the same topics, it could not wait indefinitely for Oracle to file its protective order motion and that it would notice the depositions if the parties could not quickly resolve their differences through the meet and confer process. OFCCP took this position since Oracle would not agree to file its protective order motion within five days of receiving OFCCP's notice. To date, OFCCP is still awaiting Oracle's response to its last offer.

In terms of the non-PMK depositions, counsel for the *Jewett* plaintiffs consented to Oracle producing them to OFCCP in the attached document. This consent satisfies the requirement of Section four of the *Jewett* protective order and resolves Oracle's previous "significant issues of personal privacy" objection. Judge Clark's protective orders resolves Oracle's confidential concerns about its own documents. Lastly, as previously identified last week, these documents are highly relevant because both litigations concern gender pay discrimination against women at Oracle's Redwood Shores Headquarters and Oracle's compensation policies for these women were the same throughout California. Thus, OFCCP is requesting that Oracle produce the non-PMK depositions forthwith.

In terms of the other *Jewett* document production requests, OFCCP is requesting, as a compromise, that Oracle produce a detailed index of *Jewett* documents that it currently does not plan to produce in response to RFP 167. OFCCP will review the items contained therein to address Oracle's burdensome claim. While OFCCP is making this compromise offer, OFCCP still reserves the right to bring a motion to compel for RFP 167 based on Oracle's boilerplate objections being waived because they lacked the required support. For RFP 168, OFCCP does

not believe that the production of the written discovery requests, responses and meet and confer communications thereto in *Jewett* are burdensome and again requests Oracle's production thereof.

Given that OFCCP has been waiting since January for these documents, Oracle did not provide a substantive response until March 25, 2019, and it is now April, OFCCP is requesting a prompt response to these communications for these three RFPs. OFCCP is also requesting unredacted versions of the PMK transcripts by the close of business Wednesday, April 3, 2019. If we do not receive them by that date, we will serve PMK deposition notices without regard to the topics previously noticed in those depositions and do motion practice to obtain these depositions.

Sincerely,



NORMAN E. GARCIA
Senior Trial Attorney

From: [Jim Finberg](#)
To: [Miller, Jeremiah - SOL](#)
Subject: RE: OFCCP v. Oracle-- seeking documents
Date: Friday, March 29, 2019 3:55:41 PM

Jeremiah,

Plaintiffs consent to Oracle producing those materials to you.

Jim

From: Miller, Jeremiah - SOL [mailto:Miller.Jeremiah@dol.gov]
Sent: Thursday, March 28, 2019 6:06 PM
To: Jim Finberg <jfinberg@altshulerberzon.com>
Subject: OFCCP v. Oracle-- seeking documents

Hi Jim,

We are seeking transcripts (and exhibits) for the depositions that the parties took in *Jewett, et al. v. Oracle America, Inc.*, as well as written discovery requests and responses. We are aware that confidential information in that litigation is subject to a protective order, and that that order (in paragraph 4) requires written consent of the other parties prior to the disclosure of confidential information. Therefore, I am writing to you to request your consent on behalf of your clients to the production of un-redacted deposition transcripts and exhibits for depositions taken by the parties in the *Jewett* matter, as well as written discovery requests and responses served in *Jewett*.

It is our position that any confidential information produced through these transcripts and exhibits would be subject to the protective order in our case, *OFCCP v. Oracle America, Inc.* so we do not believe there is any risk that your clients' or the deponents' confidential information (as defined by the Protective Order in *OFCCP v. Oracle America, Inc.*) will be released as a result of this production.

Please let me know if you consent to Oracle producing these materials to us.

Thank you,
Jeremiah

Jeremiah Miller
Counsel for Civil Rights
U.S. Department of Labor, Office of the Solicitor
300 Fifth Avenue, Suite 1120
Seattle, WA 98104
telephone: 206-757-6757
fax: 206-757-6761

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Exhibit H

From: Giansello, John

Sent: Tuesday, April 2, 2019 2:38 PM

To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Riddell, J.R. <jriddell@orrick.com>; Horton, Nicholas J. <nhorton@orrick.com>; Stanley, James <jamesstanley@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: OFCCP letter regarding Jewett RFPs

Mr. Garcia:

I respond briefly to the attached letter and to your email(s) of last Friday, concerning the *Jewett* discovery issues.

First, I take exception to your unnecessary aspersions in your second email last Friday about our supposed “failure” to produce *Jewett* transcripts. We have not “failed” to do anything. We have serious concerns about OFCCP’s access to the *Jewett* materials, and it is our right to raise those concerns and attempt to ensure that your access to those materials is proper and properly conducted. As for the scope of any depositions you may seek to take of the four PMK witnesses, we trust that any such issues can be resolved expeditiously if you will give us advance notice prior to serving notices of deposition, and in the meet-and-confer process required prior to filing a motion for a protective order.

Second, although we do not concede that they are relevant to the issues in this proceeding, we are producing the four unredacted PMK deposition transcripts and exhibits from the *Jewett* litigation. We are not able to produce them by noon tomorrow. The exhibits are voluminous, and we have been encountering some logistical difficulties in preparing these materials for production. At present, we expect to be able to produce all of them to you by Friday.

Second, as for non-PMK deposition transcripts, we are willing to produce the transcripts of four depositions that relate to HQCA. Otherwise, our position has not changed. We appreciate your obtaining consent to your access to additional transcripts from *Jewett* counsel, but we continue to object that such documents are not relevant to the issues in this litigation, let alone “highly relevant,” as you contend. In addition, *Jewett* counsel’s apparent waiver of any confidentiality interest does not and cannot satisfy our confidentiality concerns about personal privacy and competitively sensitive matters, given the different standards that apply as a result of FOIA exposure in this case.

Third, we cannot agree to your proposal for RFPs Nos. 167 and 168. As I mentioned previously, we are producing material from the *Jewett* litigation that we believe may have some arguable relevance to this proceeding. Some of that material was produced to you last Friday, and I would recommend that you review it before pursuing these requests further. Beyond that, the *Jewett* litigation has been a massive, sprawling enterprise that is not congruent on the issues with this case, and, even if we were willing to concede relevance in part – which we are not – it is far too late in this proceeding to indulge in a scavenger hunt picking through the enormous document corpus of the *Jewett* litigation to find a few additional things that might have some proximate bearing on the very different issues in this case.

Finally, we did not wait to provide a substantive response on these matters until March 25. That was when responses to your RFPs were due, and we complied with our objections with respect thereto.

John Giansello

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Monday, April 1, 2019 8:08 PM
To: Giansello, John <jgiansello@orrick.com>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Riddell, J.R. <jriddell@orrick.com>; Horton, Nicholas J. <nhorton@orrick.com>; Stanley, James <jamesstanley@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: OFCCP letter regarding Jewett RFPs

John,

Since we have not heard anything from Oracle today regarding the *Jewett* RFPs, attached is letter on this subject.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor. If you think you received this e-mail in error, please notify the sender immediately.

From: Garcia, Norman - SOL
Sent: Friday, March 29, 2019 1:38 PM
To: Giansello, John <jgiansello@orrick.com>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Riddell, J.R. <jriddell@orrick.com>; Horton, Nicholas J. <nhorton@orrick.com>; Stanley, James <jamesstanley@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP's response to Oracle's conditional offer for Jewett PMK deposition transcripts

John,

We agree that we can resolve the dispute over Oracle's failure to produce the PMK depositions taken in Jewett by Oracle producing the unredacted deposition transcripts, notices of those depositions, and exhibits by noon on Wednesday of next week. Our understanding is that Judge Clark is "leav[ing] Judge Larsen's Protective Order in place,

with a slight revision to the Pre-Hearing Order.” Order Addressing Protective Order and Order Modifying Pre-Hearing Order (Mar. 22, 2019). Accordingly, Oracle may designate excerpts of the transcripts as Confidential pursuant to the Protective Order, if appropriate.

We will also agree to give prior notice to Oracle before noticing PMK depositions on the same topics in the notice of depositions for those depositions and will meet and confer with Oracle to attempt to resolve disputes. This assumes of course that we receive them before we serve our 30(b)(6) notices. However, we do not agree to prior notice as to anything that may have been touched upon in the deposition transcripts to include topics not covered in the deposition notices because the witnesses were not testifying in their capacity as PMK witnesses for non-noticed topics. We take this position because we believe that doing otherwise is unworkable and will lead to further disputes. Of course, we intend to cooperate with Oracle, in any event, in seeking mutually convenient deposition dates, which provides the opportunity to meet and confer regarding any matters Oracle believes warrant a protective order.

Lastly, given the schedule in this case and your unwillingness to seek a protective order within five days of notice, we will need to serve any notice promptly if the parties cannot quickly resolve their differences through the meet and confer process.

Please advise if this is acceptable to you.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Giansello, John <jgiansello@orrick.com>
Sent: Friday, March 29, 2019 10:28 AM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Riddell, J.R. <jriddell@orrick.com>; Horton, Nicholas J. <nhorton@orrick.com>; Stanley, James <jamesstanley@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP's response to Oracle's conditional offer for Jewett PMK deposition transcripts

Mr. Garcia:

I respond to your comments below, concerning the *Jewett* PMK depositions.

First, as to scope, yes, our intention is to include the deposition topics contained with the deposition notices for those PMK depositions, but also topics actually covered in those depositions and anything that may range outside the matters for which those witnesses were designated. The topics covered by the depositions are reflected in the transcripts themselves, and in colloquy between counsel that appears in the transcripts.

We do intend to produce the deposition transcripts and the exhibits to those depositions. The deposition notices are included in the exhibits in each case. I advise you that these depositions were taken as confidential in the *Jewett* litigation, and subject to the protective order in that case. We therefore deem the transcripts and their exhibits, if produced to you, subject to the protective order in effect in this litigation, as modified by Judge Clark in his order of March 22, 2019, as to which there are some matters remaining to be worked out between the parties.

We will not be producing the transcripts or exhibits today. I seem to recall that, when you first raised the issue of deposition transcripts directly, you asked that they be produced by some time in April. These shifting, imperious and arbitrary deadlines are not helpful to the resolution of this or any other dispute in this litigation, particularly when they arrive at almost 10 PM my time the night before. Assuming we are in agreement on the particulars of producing these transcripts and exhibits, I anticipate we will be able to produce them next week.

The request that we agree to file a motion for a protective order within five days of service of any deposition notice for these witnesses is unworkable. We are required to meet and confer prior to filing such a motion. That is why we request your agreement to inform us of your intent to serve a notice of deposition before you do so, in order to afford the parties an adequate opportunity to resolve any differences or misunderstandings in an orderly manner. Also, your proposed short-fuse requirement is unnecessary, in that, given the positions these witnesses occupy in the Company and the schedules of counsel on both sides, finding deposition dates and times for each of them will inevitably require discussion and flexibility.

Finally, of course, if we file a motion for a protective order, you have all rights afforded to you by the applicable rules and the scheduling order in this case with respect thereto.

John Giansello

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Sent: Thursday, March 28, 2019 9:39 PM

To: Giansello, John <jgiansello@orrick.com>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Riddell, J.R. <jriddell@orrick.com>; Horton, Nicholas J. <nhorton@orrick.com>; Stanley, James <jamesstanley@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: OFCCP's response to Oracle's conditional offer for Jewett PMK deposition transcripts

Importance: High

John,

Thank you for the e-mail. We will only be responding at this time to your PMK deposition transcript proposal.

We need to confirm some points in your e-mail below.

- You state that Oracle will produce PMK transcripts subject to "our reservation of our right to seek protective orders as to the scope of any depositions of those witnesses you may seek to obtain, and to your agreement that you will, in each case, inform us of your intent to do so prior to service of a deposition notice." We interpret your statement of "the scope of any depositions of those witnesses you may seek to obtain" to mean the deposition topics contained within the deposition notices for these PMK depositions. If Oracle seeks prior notice of intent to serve deposition notices on

these topics, Oracle will need to immediately provide us with the deposition topics, so we know what they are.

- We want to confirm that you will be producing the deposition transcripts, their notices and any exhibits covered in the depositions as part of your proposal.
- Assuming we understand the scope of Oracle's proposal, we would request that you provide electronic copies of the aforementioned PMK documents by the end of the day Friday, March 29, 2019.
- It was unclear when Oracle would file a protective order in response to our prior notice of our intent to depose. To not hold up the taking of any deposition, we would request that Oracle, if it should want to file a protective order, file it within five days of the notice.
- Of course, this agreement would include not only a reservation of rights for Oracle to bring a motion for a protective order, which it already has the right to do so, but a likewise reservation of rights for OFCCP to oppose such a protective order motion.

Please let us know immediately if we understand your proposal, and if Oracle will agree to electronically produce the documents requested above by the end of the day tomorrow, agree that it will bring protective orders regarding the PMK depositions within five days of notice that OFCCP seeks such depositions, and agree to the reservation of rights by both parties.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Giansello, John <jgiansello@orrick.com>
Sent: Thursday, March 28, 2019 4:18 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Riddell, J.R. <jriddell@orrick.com>; Horton, Nicholas J. <nhorton@orrick.com>; Stanley, James <jamesstanley@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP's response to Oracle's conditional offer for Jewett PMK deposition transcripts

Mr. Garcia:

We respond as follows to your email of March 26, 2019 (below), concerning RFPs Nos. 166, 167 and 168, and our prior discussions and exchanges concerning RFP No. 24:

As for transcripts of depositions taken in the *Jewett* litigation, we are willing to produce the transcripts of the depositions of the four Oracle PMK witnesses who have already been identified to you by position and title. Our willingness to do so, however, is subject to our reservation of our right to seek protective orders as to the scope of any depositions of those witnesses you may seek to obtain, and to your agreement that you will, in each case, inform us of your intent to do so prior to service of a deposition notice.

As for the other depositions taken in the *Jewett* litigation, we do not believe they are relevant to the issues in the OFCCP litigation against Oracle, and their production would implicate serious issues and problems arising from the production in the *Jewett* litigation of private personal information of individuals and of Oracle's competitively sensitive and otherwise confidential information. Therefore, we decline to produce them.

As for RFPs Nos. 167 and 168, as written, they ask us indiscriminately to provide OFCCP with what would be a complete dump of everything exchanged between the parties to the *Jewett* litigation. We decline to do so. We do note that we have produced and are producing material from the *Jewett* litigation that is relevant to the issues in this litigation.

Finally, with respect to your proposed procedure for dealing with RFP No. 24, we reject it. It is a much too cumbersome and protracted mechanism for a problem that can be addressed much more simply. In that regard, we are in the process of re-reviewing the Larry Lynn emails from the earlier-identified sample period, and we will produce anything additional that we believe is responsive. If OFCCP wishes, it can propose search terms when it reviews the additional material – or before if it is inclined to do so.

John Giansello

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Sent: Tuesday, March 26, 2019 1:12 PM

To: Giansello, John <jgiansello@orrick.com>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>

Subject: OFCCP's response to Oracle's conditional offer for Jewitt PMK deposition transcripts

John,

Thank you for the deposition response.

From the titles you mentioned, all of the PMK depositions you listed seem highly relevant to this case. There is no legal basis to withhold them. As stated previously, after we review them, we may determine that it is unnecessary to depose some of the witnesses, or may choose to limit our questioning. Thus, providing the depositions will likely lead to efficiencies for both parties.

Therefore, we request again that you provide the highly relevant PMK transcripts, without seeking to impose limitations on us.

In terms of the non-PMK transcripts, those are relevant too because they, inter alia, likely cover Oracle's compensation practices in California which were the same throughout the state to include its Redwood Shores Headquarters. The privacy concerns are a non-issue because of the protective order for this case. Thus, there is also no legal basis to withhold them. We request again that you also provide these relevant transcripts.

If you don't agree to produce these deposition transcripts, we will bring a motion to compel.

As stated in yesterday's letter, please let us know by noon on Wednesday, March 27, 2019, if Oracle wishes to change its positions on the deposition transcripts and what Oracle will do in response to RFPs 167-68.

Lastly, please advise if Oracle will accept OFCCP's compromise offer for RFP 24 as stated in OFCCP's letter dated March 21, 2019.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Giansello, John <jgiansello@orrick.com>
Sent: Monday, March 25, 2019 4:44 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>
Subject: RE: Memorializing the March 22, 2019, conference call for the Jewett and privilege log letters

Mr. Garcia:

Without responding to your attached letter (which I have not yet had the opportunity to read), we respond as promised in our discussion Friday evening concerning the depositions taken in the *Jewett* litigation:

The Oracle witnesses deposed in the *Jewett* litigation were all PMK witnesses, and their titles were the Vice President of Human Resources, the Director of Talent Advisory, the Senior Director of US Compensation, and the Senior Director of Global Compensation. We are prepared to produce the transcripts of these depositions to you provided that you agree that you will not serve notices for PMK depositions covering the topics covered in these depositions, and that the PMK testimony from *Jewett* will be, to the extent relevant, the PMK testimony in this case on those topics.

We are not willing to produce transcripts of other witnesses deposed in the *Jewett* litigation. We believe they are irrelevant to the issues in this proceeding and also raise significant issues of personal privacy.

John Giansello

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Monday, March 25, 2019 6:35 PM
To: Giansello, John <jgiansello@orrick.com>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>;

Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>

Subject: Memorializing the March 22, 2019, conference call for the Jewitt and privilege log letters

John,

Attached is OFCCP's letter memorializing our meet and confer communications on March 22, 2019, as well as adding a few items when noted.

Also, on this past Friday, while we discussed the visa compromise offer that OFCCP made in its March 21, 2019, letter, we did not discuss the compromise offer that OFCCP made in this letter for RFP 24. Please advise if Oracle will accept OFCCP's compromise offer.

Lastly, in the second paragraph of this letter we are asking Oracle to identify by noon on Wednesday, March 27, 2019, if it will be producing the documents requested in RFPs 166-168 not later than April 8, 2019, for the reasons stated in the letter. Chief among them is that Oracle could not identify what documents, if any, that it will produce when for these RFPs and that the potential PMK transcript offer was not different from what Ms. Connell stated a month before on February 22, 2019, in an e-mail.

Mr. Song will be sending you separate correspondence for the meet and confer communications on March 22, 2019, that involved his March 14, 2019, meet and confer letter.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Garcia, Norman - SOL

Sent: Thursday, March 21, 2019 3:38 PM

To: Giansello, John <jgiansello@orrick.com>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>

Subject: RE: Meet and Confer Letter re Oracle's privilege log and production

John,

Attached is our response to your letter dated March 18, 2019, regarding your alleged memorialization of our March 15, 2019, conference call. We have also identified about another 20 blank documents that Oracle produced that are in addition to those identified in the letter to Erin. The BSNs of these documents are identified below.

Talk to you tomorrow regarding my letters dated March 12th and 15th and Charles Song's letter dated March 14, 2019.

Thanks,

Norm

ORACLE_HQCA_0000148329
ORACLE_HQCA_0000151416
ORACLE_HQCA_0000154950
ORACLE_HQCA_0000160622
ORACLE_HQCA_0000160623
ORACLE_HQCA_0000160624
ORACLE_HQCA_0000172708
ORACLE_HQCA_0000179517
ORACLE_HQCA_0000186609
ORACLE_HQCA_0000186610
ORACLE_HQCA_0000203803
ORACLE_HQCA_0000208788
ORACLE_HQCA_0000208659
ORACLE_HQCA_0000211989
ORACLE_HQCA_0000211987
ORACLE_HQCA_0000211988
ORACLE_HQCA_0000211990
ORACLE_HQCA_0000211991
ORACLE_HQCA_0000213244

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Connell, Erin M. <econnell@orrick.com>
Sent: Wednesday, March 20, 2019 10:21 AM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Giansello, John <jgiansello@orrick.com>; Parker, Warrington <wparker@orrick.com>
Subject: RE: Meet and Confer Letter re Oracle's privilege log and production

Hi Norm,

I'm re-sending one more time as I inadvertently did not add Warrington.

Thanks,
Erin

From: Connell, Erin M.
Sent: Wednesday, March 20, 2019 10:20 AM
To: 'Garcia, Norman - SOL' <Garcia.Norman@DOL.GOV>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline

D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Giansello, John <jgiansello@orrick.com>

Subject: RE: Meet and Confer Letter re Oracle's privilege log and production

Hi Norm,

I have been out of the office (and out of the country) for the past several days, as my out-of-office message confirmed. In any event, please coordinate with John and Jake (copied here) directly on your request for a meet and confer call this week.

Also, please let Warrington know when you are available to meet and confer call with him, per his request on March 19.

Finally, can you please include Warrington, Jake and John on discovery correspondence going forward? I have added them here.

Thanks,
Erin

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Sent: Wednesday, March 20, 2019 9:25 AM

To: Connell, Erin M. <econnell@orrick.com>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>

Subject: RE: Meet and Confer Letter re Oracle's privilege log and production

Importance: High

Erin,

I am following up on the meeting and confer letters that I sent on March 12, 2019, concerning the Jewitt RFPs and on March 15, 2019, concerning issues with Oracle's privilege log, non-referenced redactions, blank pages and empty native file folders. While I requested a meeting this week in both, I have heard nothing back from you. When are you available this Thursday, March 21, 2019, to discuss?

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Garcia, Norman - SOL

Sent: Friday, March 15, 2019 5:05 PM

To: econnell@orrick.com

Cc: grsiniscalco@orrick.com; jessica.james@orrick.com; jkaddah@orrick.com; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>

Subject: Meet and Confer Letter re Oracle's privilege log and production

Erin,

Attached is a meet and confer letter about Oracle's privilege log and production.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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Exhibit I

**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 AMENDED NOTICE OF DEPOSITION OF ORACLE PURSUANT TO
41 C.F.R. § 60-30.11 AND FEDERAL RULE OF CIVIL PROCEDURE 30(B)(6)**

PLEASE TAKE NOTICE that, pursuant to 41 C.F.R. § 60-30.11 and Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor (“OFCCP”) will take the deposition upon oral examination of Defendant Oracle America, Inc. (“Oracle”), through its designated agent(s). OFCCP requests that Oracle provide the names and employment positions of the individuals Oracle designates to testify on its behalf at least 5 business days before any deposition.

The deposition will commence on May 15, 2019 at 9:00 a.m., at 90 7th Street, Suite 3-700, San Francisco, California 94103, or at such other mutually agreeable time and location. Pursuant to the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure, Oracle is hereby directed to designate one or more officers, directors,

managing agents, or other persons who consent to testify on its behalf about the matters described below.

PLEASE TAKE FURTHER NOTICE that OFCCP reserves the right to record any deposition testimony by videotape and instant visual display, in addition to recording the testimony by stenographic means. OFCCP reserves the right to use the videotape deposition at trial.

DEFINITIONS AND INSTRUCTIONS

1. Except as otherwise defined in this notice of deposition, Plaintiff incorporates by reference the definitions set forth in Fed. R. Civ. P. 26 and 30.
2. “COLLEGE RECRUIT” means any individual who expresses interest or applies to YOU through YOUR college recruiting program or who YOU identify as a potential candidate for YOUR college recruiting program for positions in the Professional Technical I, Individual Contributor Job Group.
3. “COMPA-RATIO” means the ratio of the employee’s base salary to the midpoint of their job’s salary range multiplied by 100.
4. “COMPENSATION” means any payments made to, or on behalf of, an employee as remuneration for employment, including, but not limited to salary, merit bonuses, relocation expenses, signing bonuses, stock options and grants.
5. “HQCA” means all locations Oracle included in its AAP labelled HQCA.
6. “PT1” means Professional Technical I, Individual Contributor Job Group.
7. “TRANSFER EMPLOYEES” means any of YOUR employees who transferred to HQCA from any other business YOU own or control or with whom you are affiliated, such as Oracle India Pvt. Ltd, from 2013 to the present.
8. “YOU” and “YOUR” mean Oracle America, Inc.

9. The terms “INCLUDING” and “INCLUDES” shall mean “including but not limited to” or the grammatical equivalent, and shall not be construed to exclude items not listed.

MATTERS DESIGNATED FOR DEPOSITION TESTIMONY

1. YOUR policies, practices, and procedures in effect between January 1, 2013, through the date of the deposition for hiring COLLEGE RECRUITS, including identifying, screening, and interviewing COLLEGE RECRUITS, matching COLLEGE RECRUITS to PT1 positions at HQCA, and making offers of employment and COMPENSATION to COLLEGE RECRUITS for PT1 positions at HQCA.

2. Oracle’s processes for hiring COLLEGE RECRUITS, including identifying, recruiting, screening interviewing, matching to positions, and making offers of employment and COMPENSATION to such individuals. Any person or set of persons Oracle designates as being the most knowledgeable about such processes must be prepared to provide testimony on the following non-exclusive list of topics:

- a. The process and criteria Oracle uses in identifying potential COLLEGE RECRUITS (e.g., “sourcing” for example ORACLE_HQCA_0000020131-34) and encouraging them to apply to Oracle (for example ORACLE_HQCA_0000020161-62);
- b. The process by which YOU screen individuals’ resumes sent to YOU, including to the college_us@oracle.com email address;
- c. YOUR process, practice, and procedures for each step of the recruitment, application, and hiring process from expression of interest through an applicant’s start date;

- d. YOUR process, practice, and procedures for tracking each step of the recruitment, application, and hiring process from expression of interest through an applicant's start date (including YOUR use of Resumate);
- e. The college recruiting processes and related criteria identified in the "Sourcing Handbook" (ORACLE_HQCA_0000020125-79); and
- f. How Oracle decides on what to offer COLLEGE RECRUITS as part of an initial COMPENSATION package, including any offers of salary, stock, a relocation allowance, and bonuses.

3. Any training or guidance YOU provide YOUR employees regarding recruiting, interviewing, hiring, and making offers of employment to COLLEGE RECRUITS.

4. YOUR processes for hiring and assigning TRANSFER EMPLOYEES, including recruiting, and offers of employment and COMPENSATION to such individuals. Any person or set of persons YOU designate as being the most knowledgeable about such processes must be prepared to provide testimony on the following non-exclusive list of topics, which is provided by :

- a. The process and criteria YOU use in identifying TRANSFER EMPLOYEES to apply to positions at HQCA ; and,
- b. How YOU decide on what to offer TRANSFER EMPLOYEES as part of a compensation package, including any offers of salary, stock, relocation allowance, and bonuses.

5. Any training or guidance YOU provide YOUR employees regarding recruiting, hiring, and making offers of employment and COMPENSATION to TRANSFER EMPLOYEES.

6. The documents and data YOU maintained (or failed to maintain) and supplied (or failed to supply) to OFCCP during the compliance review of HQCA, including the compensation snapshots for 2013 and 2014; applicant and hiring data for 2012 through 2014; data for education (e.g., names of school attended and the educational degrees earned), prior salary, and experience from 2012 through 2014; YOUR applicant flow log for the PT1 positions; resumes; employer personnel actions for wage increases, bonus awards, job title hired into, starting stock level, stock level changes, job title and supervisor changes, promotion history, performance evaluations, performance ranking information and the dates associated with the aforementioned actions, internal and external complaints; and analyses from 2013 through 2014 required by 41 C.F.R. 60-2.17, 60-3.15A, 60-3.4.

7. The data produced by YOU in this action through the date of the deposition, including the source of such data, the method of exporting it, the validation of the data, the authenticity of it, the meaning of the data fields, the information included and excluded from such data, and any differences between the data produced in this action and during the compliance review of HQCA. This includes the following data sets and information:

a. The meaning of all column headers on data produced by YOU, including all of the data files produced by YOU on October 11, 2017, all supplementation of the data in 2019, as well as the following spreadsheets:

- (1) ORACLE_HQCA_0000062859.xlsx
- (2) ORACLE_HQCA_0000062858.xlsx
- (3) ORACLE_HQCA_0000360321.xlsx
- (4) ORACLE_HQCA_00000364082-182.xlsx

b. The source of all information contained in the spreadsheets identified in paragraph 4a; and

c. How the data in the spreadsheets identified in paragraph 4a correlate or relate to each other, both within an individual spreadsheet and across different spreadsheets.

8. Documents, including spreadsheets YOU provided to OFCCP in response to data requests to include the source(s) of the information provided, period of time of information provided, the database extracted from, the fields and columns of the information provided, the scripts that were used to pull the information provided.

9. YOUR policies and practices regarding document retention and/or destruction and computer-based record-keeping. This includes all personnel or employment records made or kept by YOU to comply with OFCCP regulations; and includes YOUR written affirmative action program and its documentation.

10. The authenticity of documents YOU produced during the compliance review and this enforcement action, including documents YOU produced in response to discovery requests;

11. The processes and factors affecting COMPENSATION of individuals in the Product Development, Information Technology, and Support lines of business at

HQCA between January 1, 2013, and the date of the deposition, including base salary, salary increases, stock options, stock grants, and bonuses, including:

- a. The budgets YOU develop and provide leaders and managers for headcount, base salary, salary increases, stock options, stock grants, and bonuses, including the cascading of the budgets through different levels of supervisors;
- b. The salary grades and salary ranges applicable to each job in Product Development, Support, and Information Technology job functions at HQCA, including how such salary grades are assigned to each job, how salary ranges are assigned to each salary grades, and how markets surveys are used to set such ranges;
- c. The criteria YOU consider in setting, awarding, or changing COMPENSATION to individuals in the Product Development, Information Technology, and Support job functions at HQCA, including the role that a new hire's or TRANSFER EMPLOYEE's prior compensation plays in setting initial compensation;
- d. The setting of COMPENSATION, salary grades and salary ranges for workers of companies acquired by YOU who work or will work in YOUR Product Development, Information Technology, or Support lines of business at HQCA between January 1, 2013, and the date of the deposition;
- e. The setting of COMPENSATION, salary grades and salary ranges for workers who transfer from Oracle affiliates in other countries

(such as Oracle India Pvt. Ltd.) into jobs in the Product Development, Support, or Information Technology job functions at HQCA; and

- f. YOUR use of COMPA-RATIO for workers who transfer from Oracle affiliates in other countries (such as Oracle India Pvt. Ltd.) into jobs in the Product Development, Support, or Information Technology lines of business at HQCA.

12. YOUR policies, practices, and procedures in assigning of workers in the Product Development, Support, and Information Technology job functions at HQCA between January 1, 2013, to the date of the deposition to products during the time they worked for YOU, and the impact of their assignments on their COMPENSATION. This includes:

- a. The method of setting initial job, product, and team assignments for YOUR employees at the time of hire, to include who makes the assignment decision, the factors considered when making this decision, the evaluation and weighting of these factors;
- b. The process by which YOUR employees transfer between different jobs and products at HQCA or receive promotions from one of them to another, including the method and means for an employee to seek a promotion or transfer, the method and means for YOU to direct a promotion or transfer, the factors considered by YOU in determining whether to permit a promotion or transfer and any method or means used by YOU to inform YOUR employees of the

opportunity to transfer and / or be promoted for a different job or product; and

- c. The process by which YOU determine if a transfer and / or promotion will result in a COMPENSATION change for an employee, including who is involved in making the COMPENSATION change determination, the factors considered by YOU in determining whether to change COMPENSATION, the method and means by which YOU change COMPENSATION.

13. YOUR policies, procedures, and practices used to produce documents in response to any request for production of documents propounded by Plaintiff.

14. YOUR policies, procedures, and practices used to create documents in response to any request for production of documents propounded by Plaintiff.

15. YOUR policies, procedures, and practices used to maintain, organize, collect, or store any information produced in response to any written discovery request by Plaintiff.

16. All actions YOU took in preparation to respond to any request for production of documents propounded by Plaintiff.

17. YOUR policies, procedures, and practices related to how YOU drafted, maintained, adhered to, or enforced your affirmative action plans.

18. YOUR policies, procedures, and practices related to how YOU fulfill YOUR 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.

19. YOUR policies, procedures, and practices related to how YOU make, keep, and maintain all personnel or employment records to comply with OFCCP regulations.

20. YOUR policies, procedures, and practices related to developing and maintaining YOUR affirmative action program.

21. YOUR policies, procedures, and practices related to developing and maintaining diagnostic components, including YOUR quantitative analysis, created and designed to evaluate composition of YOUR workforce and affirmative action program.

22. YOUR policies, procedures, and practices related to developing and maintaining action-oriented programs YOU designed to correct problem areas and attain YOUR established goals and objectives for YOUR affirmative action program.

23. YOUR policies, procedures, and practices for developing and maintaining internal auditing and reporting systems to measure YOUR progress for YOUR affirmative action program.

24. YOUR policies, procedures, and practices for monitoring and examining YOUR employment decisions and compensation system for YOUR affirmative action plan, and developing and maintaining these policies, procedures, and practices.

25. YOUR policies, procedures, and practices related to developing and maintaining YOUR availability determination under 41 C.F.R. 60-2.14, YOUR incumbency to availability comparison under 41 C.F.R. 60-2.15, and YOUR placement goals under 41 C.F.R. 60-2.16.

26. YOUR policies, procedures, and practices related to developing and maintaining: how YOU identify or determine problem areas, action-oriented programs, and internal audit and reporting systems under 41 C.F.R. 60-2.17(b) through (d).

27. YOUR policies, procedures, and practices related to creating, maintaining, and make available for inspection YOUR information on impact pursuant to 41 C.F.R. 60-3.4 and 60-3.15.

28. YOUR policies, procedures, and practices related to how YOU decide job placement, project assignment, and compensation for new hires.

29. YOUR policies, procedures, and practices related to how YOU decide to promote someone to a position in management.

30. YOUR policies, procedures, and practices related to how YOU gather and use information about the prior income earned by new hires, including YOUR use of this information to set pay for new hires.

31. YOUR policies, procedures, and practices related to how YOUR employees can file complaints of discrimination and how YOU follow up on those complaints.

32. Whether YOU have received any complaints from any employee related to pay discrimination and how YOU handled those complaints.

CERTIFICATE OF SERVICE

I certify that on this 5th day of April, 2019, the foregoing NOTICE OF DEPOSITION OF ORACLE PURSUANT TO 41 C.F.R. § 60-30.11 AND FEDERAL RULE OF CIVIL PROCEDURE 30(B)(6) was served upon the following individuals by U.S. mail, as well as by courtesy copies via email, at the following addresses:

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The Orrick Building
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San Francisco, CA 94105-2669
econnell@orrick.com
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Attorneys for Defendant Oracle America, Inc.

/s/ Jeremiah Miller
Jeremiah Miller
U.S. Department of Labor

Exhibit J



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John D. Giansello

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D +1 212 506 5217

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April 5, 2019

VIA E-mail: (Garcia.Norman@dol.gov; Bremer.Laura@dol.gov)

Norman E. Garcia, Esq.
Senior Trial Attorney
United States Department of Labor
90 Seventh Street, Room 3-700
San Francisco, CA 94103

**Re: OFCCP v. Oracle America, Inc.
OALJ Case No. 2017-OFC-00006; OFCCP No. R001192699**

Dear Mr. Garcia:

In furtherance of my prior response to your April 1, 2019 letter, today Oracle is producing load files that include the four unredacted transcripts and exhibits from the Persons Most Knowledgeable (PMKs) depositions in the *Jewett* litigation. The PMK materials include transcripts and exhibits from Anje Dodson (produced at ORACLE_HQCA_0000398389 to ORACLE_HQCA_0000399189), Kristina Karstensson Edwards (produced here at ORACLE_HQCA_0000399190 to ORACLE_HQCA_0000399378), Chad Wayne Kidder (produced at ORACLE_HQCA_0000399379 to ORACLE_HQCA_0000399630), and Kate Waggoner (produced here at ORACLE_HQCA_0000399631 to ORACLE_HQCA_0000401021). As I stated in my previous letter, we do not concede that this production is relevant to the issues in this proceeding, and Oracle reserves its rights in that regard.

Furthermore, we are producing these materials in accordance with our e-discovery protocols and they are marked "Confidential" in their entirety due to system limitations that do not facilitate confidential designations by page or line numbers. However, through this letter we narrow our designations as reflected in the attached chart. These materials are only being produced subject to our understanding that you will observe each of the designations in accordance with the protective order in effect in this litigation.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Giansello".

John Giansello

cc: Jeremiah Miller, Esq. (via email to Miller.Jeremiah@dol.gov)
Charles C. Song, Esq. (via email to Song.Charles.C@dol.gov)

Exhibit K



Orrick, Herrington & Sutcliffe LLP
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April 12, 2019

VIA E-mail: (Garcia.Norman@dol.gov; Bremer.Laura@dol.gov)

Norman E. Garcia, Esq.
Senior Trial Attorney
United States Department of Labor
90 Seventh Street, Room 3-700
San Francisco, CA 94103

John D. Giansello

E jgiansello@orrick.com
D +1 212 506 5217
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**Re: OFCCP v. Oracle America, Inc.
OALJ Case No. 2017-OFC-00006; OFCCP No. R001192699**

Dear Mr. Garcia:

In furtherance of my prior communication on April 2, 2019, today Oracle is producing load files that include the four unredacted transcripts and exhibits from the four deponents that relate to HQCA: Rong Jewett (produced at ORACLE_HQCA_0000401022 to ORACLE_HQCA_0000402227), Xian Murray (produced at ORACLE_HQCA_0000402996 to ORACLE_HQCA_0000403927), Srividhya Subramanian (produced at ORACLE_HQCA_0000402827 to ORACLE_HQCA_0000402995), and Sophy Wang (produced at ORACLE_HQCA_0000402228 to ORACLE_HQCA_0000402826). As I stated in my previous letter, we do not concede that this production is relevant to the issues in this proceeding, and Oracle reserves its rights in that regard.

As with the PMK transcripts and exhibits that we produced on April 5, 2019, we are producing these materials in accordance with our e-discovery protocols and they are marked "Confidential" in their entirety due to system limitations that do not facilitate confidential designations by page or line numbers. However, through this letter we narrow our designations as reflected in the attached chart. These materials are only being produced subject to our understanding that you will observe each of the designations in accordance with the protective order in effect in this litigation.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Giansello".

John Giansello

cc: Jeremiah Miller, Esq. (via email to Miller.Jeremiah@dol.gov)
Charles C. Song, Esq. (via email to Song.Charles.C@dol.gov)

Exhibit L

U.S. Department of Labor

Office of the Solicitor
350 S. Figueroa Street, Suite 370
Los Angeles, CA 90071-1202



Reply to:
Charles Song
(213) 894-5365

April 19, 2019

VIA ELECTRONIC MAIL

J.R. Riddell
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814

Re: OFCCP v. Oracle America, Inc., OALJ Case No. 2017-OFC-00006

Mr. Riddell:

This letter is to memorialize our meet and confer discussions on April 18 and 19, 2019, regarding Oracle's objections and responses to OFCCP's Amended 30(b)(6) Notice of Deposition. In general, Oracle stood by its objections for every request, and the parties were unable to resolve numerous topics. Aside from the topic-specific discussions outlined below, the parties met and conferred about the following general topics:

First, OFCCP objected to Oracle's repeated use of the qualifier "generally" to describe what its 30(b)(6) witnesses would testify about. The parties agreed that regardless of Oracle's use of this word, Oracle will comply with its obligation to prepare and produce 30(b)(6) witnesses who will be prepared to testify about information known or reasonably available to Oracle.

Second, the parties disagreed about the role of the *Jewett* deposition transcripts in this litigation. Oracle repeatedly delayed OFCCP's efforts to acquire the *Jewett* transcripts even after OFCCP offered to wait to serve its 30(b)(6) notice. Given Oracle's past and continuing obstructionist behavior in this litigation, it cannot complain that OFCCP refused to wait even longer to serve its notice. In any event, OFCCP is entitled to its own depositions in this action and will not agree to modify its notice to remove topics that may have been discussed in other, according to Oracle, irrelevant litigation to which OFCCP was not a party. However, OFCCP is, of course, still reviewing the *Jewett* deposition transcripts received a few days ago with an eye to limiting duplicative questioning.

Third, the parties were unable to agree on the temporal scope of topics concerning compensation. OFCCP's position is that we are entitled to inquire about facts up to the date of the deposition, whereas Oracle claims that it should be limited to January 18, 2019. Given that Oracle promised to reconsider its position, please let us know by April 23, 2019 whether Oracle will agree to OFCCP's time period.

J.R. Riddell
April 19, 2019

The parties further discussed issues related to specific topics:

Topic 1: OFCCP agreed to limit the period from January 1, 2013 to January 18, 2019 for purposes of testimony regarding this topic. OFCCP expressed concern that Oracle was narrowing the topic to exclude testimony about “identifying, screening, and interviewing COLLEGE RECRUITS, [and] matching COLLEGE RECRUITS to PT1 positions at HQCA.” Oracle clarified that it will produce a witness to testify about those issues as well.

Topic 2: OFCCP agreed to limit the period from January 1, 2013 to January 18, 2019 for purposes of testimony regarding this topic. Again, Oracle clarified that it will produce a witness to testify about all subtopics included.

Topic 3: OFCCP agreed to limit the period from January 1, 2013 to January 18, 2019 for purposes of testimony regarding this topic. Oracle will produce a witness to testify about this topic.

Topics 4-5: Oracle clarified that despite its objection to definition 7 (“transfer employees”), it will produce a witness to testify about compensation for transfers in the Product Development, Support, and Information Technology job functions at HQCA. Oracle, however, refused to allow testimony on the remaining subtopics, including its process and training for recruiting, hiring, and assigning transfers. Oracle claimed that such issues are overbroad and irrelevant. Further, the parties disagreed about the temporal scope for the topic. *See supra* pg. 1.

Topic 6: Oracle agreed to produce a witness to testify about OFCCP’s document and data requests and Oracle’s response to those requests. This includes testimony about Oracle’s response to requests for which they ultimately did not produce documents or data.

Topics 7-8: Oracle refused to produce a witness to testify about these topics. Oracle claimed that it is not possible to prepare even multiple witnesses to testify about these topics. Instead, Oracle offered to answer technical questions in writing. OFCCP noted that Oracle has previously told OFCCP to request this information in depositions during meet and confer discussions.

OFCCP offered to accept testimony on only the four spreadsheets listed in its notice and that Oracle continue to answer questions about other data. Oracle rejected OFCCP’s offer based on its unsupported and unexplained undue burden objection. Oracle also claimed that some of the testimony that OFCCP seeks is protected by the work product doctrine, and that OFCCP should be satisfied with the information it obtained during pre-discovery interviews. OFCCP explained that it cannot rely on those interviews because they were not on the record, under oath, and Oracle instructed its witnesses not to answer multiple times, impeding OFCCP from developing a full understanding of the issues in question.

Topic 9: Oracle refused to commit to producing a witness for this topic. Again, Oracle claims that OFCCP already obtained enough information during its interview of Lisa Ripley. Oracle asked

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if OFCCP would be willing to travel to Denver for the deposition, but OFCCP noted that it has the legal right to take the deposition in California. Oracle agreed to reconsider its position. Please let us know by April 23, 2019 whether Oracle will agree to produce a witness for this topic.

Topic 10: The parties agreed to continue discussions about stipulating to authentication of documents. OFCCP reserved its right to take a 30(b)(6) deposition on this topic if the parties cannot agree on the terms of a stipulation in a timely manner.

Topic 11: The parties could not reach an agreement on this topic. Oracle refuses to produce someone to testify, because Kate Waggoner discussed the topic during her OFCCP interview and because it claims that the testimony would be duplicative of her testimony in the *Jewett* depositions.

Topic 12: In its response to this topic, Oracle offered testimony on “policies, practices, and procedures regarding the determination of initial compensation and compensation changes for employees in the Product Development, Support, and Information Technology job functions at HQCA.” However, this topic seeks testimony on the assignment of workers to products in those job functions and the impact of those assignments on compensation.

On one hand, Oracle claimed that there is no “assignment” of workers. At the same time, however, Oracle belatedly objected that Kate Waggoner had already testified about this topic during OFCCP interviews. Oracle also claimed that there may be responsive testimony in the *Jewett* deposition transcripts.

Ultimately, Oracle agreed to produce a witness only for the compensation part of this topic. Oracle agreed to reconsider whether it will produce a witness for the remainder of the topic, including worker assignment. Please let us know by April 23, 2019 whether Oracle will agree to produce a witness to testify about the entire topic.

Topic 13-16: OFCCP explained the bases for these topics, including that the lawsuit involves recordkeeping violations, that Oracle has raised undue burden objections in discovery multiple times, and that Oracle itself has told OFCCP to ask about recordkeeping in depositions. *See, e.g.*, OFCCP Letter to Oracle Re April 8, 2019 Meet and Confer, at 3. Still, Oracle refused to produce a witness to testify about these topics.

Topic 17-28: OFCCP explained that it does not consider these topics to be part of a “deficiency” claim. In fact, the language of these topics tracks what Judge Clark has already agreed that OFCCP can litigate. Oracle disagreed and stated that it believes these topics are actually contrary to Judge Clark’s orders. Oracle refused to produce a witness to testify about these topics.

Topic 29, 31-32: Oracle agreed to produce a witness to testify about these topics. The parties, however, disagreed about the time period relevant for this topic. OFCCP explained that it is entitled

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to explore whether Oracle is currently in compliance with regulations. The parties did not reach an agreement on this time period dispute.

Topic 30: Oracle refused to produce a witness for this topic. Again, Oracle claims that OFCCP already obtained all of the information it needs through pre-discovery interviews.

Scheduling Depositions: OFCCP made its fourth request for Malory Cohn's availability for deposition. Oracle agreed to inquire about Cohn's availability, but refused to state when it would be able to provide such dates. OFCCP reminded Oracle that it noticed Ms. Cohn's deposition on March 29, 2019, and that counsel stated he would promptly confer with Ms. Cohn when she returned from leave the week of April 8, 2019. To date, three weeks after our notice, Oracle has yet to ask Ms. Cohn for her availability.

Oracle requested that OFCCP take the testimony of Ms. Waggoner on 30(b)(6) topics 4, 5, 11, 12, and 28 on the same or consecutive days to her individual deposition on May 1, 2019, in Denver. OFCCP has considered Oracle's request but, unfortunately, will not be able to accommodate Oracle's request.

Finally, for the topics Oracle has agreed to produce witnesses for, please designate witnesses and provide us their availability for depositions. Thank you very much.

Sincerely,

/s/ Charles Song

Jeremiah E. Miller, Counsel
Charles C. Song, Senior Trial Attorney
Jessica M. Flores, Trial Attorney
M.J. Cristopher Santos, Trial Attorney
U.S. Department of Labor
Office of the Solicitor

Exhibit M



April 22, 2019

Via E-Mail

Charles Song
Office of the Solicitor
U.S. Department of Labor
350 South Figueroa Street, Suite 370
Los Angeles, CA 90071

Re: *OFCCP v. Oracle, Inc., et al.*, Case No. 2017-OFC-00006

Dear Mr. Song:

I write to respond to your letter of April 19, 2019, labeled “Memorialization Letter”, which purports to memorialize our April 18 and 19 meet and confer calls, and to correct the misrepresentations and omissions therein. Your letter repeatedly either misstates Oracle’s positions or omits them entirely in an apparent effort to construct an inaccurate record. Moreover, while you portray Oracle as uncompromising in its positions, you fail to memorialize that OFCCP was unwilling to discuss any meaningful compromise to its topics, largely because your team still has not reviewed the Jewett PMK deposition transcripts, and to the extent any review has taken place the deposition taking attorneys have failed to coordinate with the team of attorneys who engaged in these meet and confer discussions.

At this point, I write to correct the most glaring and gross mischaracterizations set forth in your letter. First, OFCCP cannot impose an arbitrary deadline (following a holiday weekend, no less) demanding that Oracle reconsider its positions and provide a written response within two business days of your Friday afternoon demand, particularly where OFCCP has and continues to drag its feet with respect to Oracle’s 30(b)(6) deposition notice. As explained to you during our first call, I am on vacation this week. While I have taken the time to respond to your Good Friday after hours correspondence, and will continue to coordinate with my team and Oracle regarding the issues discussed during our call, I am not and will not be in a position to respond to your unilateral demand. Instead, as I said during our call, I will work to get back to you regarding those issues and respond as soon as I am in a position to do so.

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Page 2

Oracle's 30(b)(6) Notice

Furthermore, OFCCP's unwillingness to work with Oracle to reduce the burden on individual witnesses and to save both sides time and expense is particularly troubling in light of OFCCP's position with respect to Oracle's 30(b)(6) deposition notice. Specifically, OFCCP has indicated that it will seek a protective order to prevent Oracle from taking 30(b)(6) depositions if Oracle insists on further responses to its second set of interrogatories. It is impossible to reconcile OFCCP's aggressive refusal to narrow its own 30(b)(6) topics in light of Oracle's good faith efforts to provide information through other means on the one hand, with its simultaneous refusal to produce witnesses in response to Oracle's 30(b)(6) notice. Notwithstanding the discussion of individual topics and issues below, if OFCCP cannot align its diametrically opposed positions, Oracle will have no choice but to involve the court before any 30(b)(6) depositions go forward.

Narrowing of Topics Based on Production of *Jewett* Deposition Transcripts

Your description of OFCCP's position on limiting or removing topics duplicative of sworn testimony Oracle already provided in the *Jewett* PMK deposition transcripts is grossly misleading—and suggests OFCCP has generously offered to limit the questions it will ask of Oracle's 30(b)(6) designees. For that reason, I am compelled to make an accurate record demonstrating OFCCP is now backtracking and wants Oracle to prepare witnesses on all 32 topics, and subtopics, even though the preparation may be unnecessary because OFCCP may decide not to ask questions in light of Oracle's *Jewett* PMK testimony. As you know, after having to spend time and resources addressing the invalid subpoena that OFCCP served on *Jewett* counsel despite having no authority to do so, Oracle agreed to produce transcripts of depositions taken in the *Jewett* matter based on OFCCP's indication that it would review those transcripts and limit or remove topics that were redundant of the prior depositions. However, now that it has those transcripts in hand, OFCCP completely refuses to modify or limit its topics to remove unnecessary and redundant subject matter. Clearly, having gotten what it wanted, OFCCP decided to renege on its prior statements.

In a March 26, 2019, email to John Giansello, Norman Garcia told Oracle that “[a]s stated previously, after we review [the *Jewett* transcripts], we may determine that it is unnecessary to depose some of the witnesses, or may choose to limit our questioning. Thus, providing the depositions will likely lead to efficiencies for both parties.” In a March 28, 2019, email from Mr. Giansello to Mr. Garcia, Oracle then committed to producing the deposition transcripts by the end of the following

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Page 3

week (April 5, 2019). Mr. Garcia's March 29, 2019, email in response acknowledged Oracle's commitment, and further stated that OFCCP "will also agree to give prior notice to Oracle before noticing PMK depositions on the same topics in the notice of depositions for [the *Jewett*] depositions and will meet and confer with Oracle to attempt to resolve disputes," while couching that promise with the caveat that OFCCP receive the transcripts before filing its notice. Notwithstanding Mr. Garcia's attempt in that email to impose an arbitrary deadline of April 3, Oracle produced the *Jewett* transcripts, as promised, by the deadline discussed between both sides – i.e., on April 5.

Despite knowing that Oracle had agreed to produce the *Jewett* transcripts by April 5, and despite indicating that it would review those transcripts in order to determine whether it could narrow its topics (and potentially avoid deposing some witnesses), and despite promising to give prior notice before noticing any 30(b)(6) depositions on the same topics, OFCCP served its 30(b)(6) notice on April 5, without any prior notice, and mere hours before receiving the promised transcripts. Needless to say, this timing suggests that OFCCP sought to serve its notice *before* receiving the transcripts it had promised to review so that it could renege on its commitment.

In an attempt to place the blame for OFCCP's change of heart on Oracle, OFCCP repeatedly stated during the meet and confer that if only OFCCP had received the *Jewett* deposition transcripts before it served its 30(b)(6) notice, it would have evaluated the testimony to determine if it could more narrowly tailor its 30(b)(6) topics. However, despite having now had those transcripts for two weeks (not a "few days", as your letter suggests), OFCCP indicated during the meet and confer that it is now unwilling to consider limiting any of its repetitive topics based on the content of those transcripts. Instead, OFCCP's position is that it will review the transcripts "with an eye to limiting duplicative questioning," but that Oracle must still prepare witnesses for all of the requested topics, even where those topics were thoroughly covered and explained in the *Jewett* testimony. Such a promise is illusory at best and, of course, does nothing to lessen the burden on witnesses, who will have to be prepared on all of the redundant subject matter included in OFCCP's 30(b)(6) topics.

It is unclear how OFCCP can reconcile its position that it *would* have reviewed the transcripts and limited the scope of its 30(b)(6) notice if it had received the transcripts before serving its notice with the fact that it has yet to complete its review of said transcripts two weeks after receiving them. Moreover, there is no reason why, as part of the ongoing meet and confer process, OFCCP cannot now review the *Jewett* transcripts and work with Oracle to eliminate unnecessarily duplicative Topics and subject matter.

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Page 4

As described, Oracle has made good faith efforts to provide OFCCP with information that would allow OFCCP to limit or remove certain Topics, thereby saving both sides time and expense and reducing the burden on witnesses. OFCCP's attempt to characterize these efforts as "obstructionist behavior" is ironic indeed, considering it is OFCCP that has reneged on its statements and now refuses to complete its review of the testimony and resume discussions about how the Topics could be narrowed or eliminated. OFCCP has had the *Jewett* transcripts in its possession for two weeks, and has previously committed to reviewing those transcripts with the goal of making the Parties' depositions more efficient and less burdensome. OFCCP's stated reason for refusing to do so – that it served its deposition notice on the same day, but slightly before, receiving the transcripts – does not hold water. We ask that OFCCP complete its review of the *Jewett* transcripts and work with Oracle to limit OFCCP's 30(b)(6) topics to avoid unnecessary repetition and to reduce the burden on witnesses who have already had to sit for deposition on the same topics.

Time Period at Issue

During our call, we discussed the appropriate time period to be applied to the topics listed in OFCCP's 30(b)(6) deposition notice. While we agreed that topics 1, 2, and 3 were limited to the period from January 1, 2013 to January 18, 2019, OFCCP stated that its position was that the other topics should cover the period from January 1, 2013, through the date of the deposition as the notice states. Your letter omits Oracle's reasoning for suggesting a January 18 cutoff for all Topics. Namely, because the parties have agreed to a cutoff date of January 18, 2019, for all documentary and electronic discovery, we do not think it would be appropriate to extend the scope of the 30(b)(6) depositions beyond that date. Among other concerns, this could lead to difficulties wherein a witness might potentially have to review and/or be asked about documents at deposition that were not produced to OFCCP because they post-dated January 18, 2019. In order to avoid any such issues, we think it best to limit the time period at issue in these depositions so that it matches the clean cut-off date for documentary and electronic evidence agreed to by the parties. We did not reach an agreement on this point but Oracle agreed to revisit it, while OFCCP refused to reconsider its position.



Charles Song
April 22, 2019
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Topics 1 Through 3

While we are largely in agreement with respect to Topics 1 through 3, I want to clarify that, as I stated on our call, Oracle cannot produce a witness to testify as to the “matching” of college recruits (referenced in Topic 1) because Oracle does not “match” or “assign” employees to specific positions. Rather, college recruits self-select. Aside from that issue, Oracle agreed to produce a witness to testify as to Topics 1 through 3 as discussed.

Topics 4 and 5

As we discussed on our call, Topics 4 and 5 reference issues related to hiring and to compensation for transfer employees. Because there are no longer any hiring/recruiting claims related to transfer employees at issue in this case, Oracle noted this in its objection while offering to produce a witness to testify as to the remaining compensation-based issues. We discussed this reasoning specifically on our call, and the parties came to an agreement that Oracle would produce a witness on the compensation issues. Yet your letter decides to present this agreement as “Oracle...refus[ing] to allow testimony on the remaining [hiring-related] subtopics.” This misportrayal of an agreement between the parties is indicative of OFCCP’s continued refusal to meet and confer in good faith.

Topics 7 and 8

In similar fashion, your letter completely misstates my response to OFCCP’s counter-proposal that Oracle produce a witness to testify as to the four spreadsheets listed in Topic 7 while answering other technical questions about the data in writing. To be clear, Oracle did not reject that offer and I told you I would need to look at the spreadsheets and consult with my team. Indeed, that coordination began after our Thursday call. I stated on the call that we would consider OFCCP’s offer, while also cautioning that even just the four listed spreadsheets cover a wide range of information given all the subtopics and details OFCCP seeks here. While we of course appreciate any offer of compromise, the fact remains that even just the four identified spreadsheets are the product of work by multiple different groups. Nevertheless, we will consider what can be done along the lines of your proposal and get back to you.



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Furthermore, your statement that Oracle's objection that producing a witness or witnesses to testify as to almost every aspect of its massive data production would be impractical and unduly burdensome is "unsupported and unexplained" borders on willful blindness. As we discussed on our call (and as Oracle has made clear to OFCCP time and again), Oracle's data production is massive, and consists of multiple large files, hundreds of fields, and millions of individual entries. The identification, pulling, aggregation, cross-checking, and production of that data required incredible amounts of time and effort by many individuals. Moreover, any given data field may have been created by one individual or group, filled by another, and pulled by yet another. As a result, there is no single individual, or even group of individuals, who could testify as to all of the data issues requested in Topics 7 and 8 for all of the data produced in real-time. Not only is it disingenuous to suggest that Oracle has provided no support for its objection to the burdensome nature of these Topics, that burden should, if nothing else, be self-evident from the huge amount of data OFCCP now has in its possession.

Topic 9

While your letter correctly states that Oracle would consider its position regarding re-producing Lisa Ripley, you omit OFCCP's statement that it would consider whether it could travel to Denver to take this deposition. Oracle will consider your request that it produce Ms. Ripley yet again and get back to you. However, consistent with your commitment to consider traveling to Denver, to minimize the burden on the witness where Oracle flew her out her the last time around, that commitment needs to be memorialized as well. We will wait to hear from you.

Topic 11

Your letter again misstates Oracle's position with regard to Topic 11. Specifically, Oracle did not "refuse to produce someone to testify." As described above, Oracle's position is that OFCCP needs to review the transcripts of depositions in the *Jewett* matter and determine whether the topic can be narrowed so that Oracle's witness does not have to testify on duplicative subject matter. Moreover, I stated on our April 19 call that we recognized that, at minimum, sub-topics 11(e) and 11(f) constituted new areas and that we would produce a witness – likely Kate Waggoner – to testify as to those issues. How you can take that affirmative statement and then memorialize that Oracle has refused to produce a witness is puzzling at best. Moreover, I mentioned Kate Waggoner could



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likely be designated to testify on the portions of Topic 11 for which Oracle agrees to produce a witness following meet and confer (and OFCCP's review of the Jewett PMK testimony).

Topic 12

Your letter also misstates Oracle's position and statements during the meet and confer call relating to Topic 12. As I explained on our call, Topic 12 asks for Oracle's "policies, practices, and procedures in assigning of workers..." Our objection to this Topic is based on the fact that Oracle does not "assign" workers to particular jobs. Rather, individuals apply to specific job openings and, if they are hired, are hired into that specific job. As such, there are no policies, practices, or procedures covering the "assigning of workers" to specific products. However, because the Topic also refers to compensation, Oracle offered to produce a witness who could testify as to compensation and compensation changes in the identified job functions. Moreover, and as memorialized above, Mr. Garcia acknowledged that OFCCP would give prior notice to Oracle before noticing 30(b)(6) depositions on the same topics covered in Jewett PMK depositions and that it would meet and confer to resolve disputes in that regard. That, of course, did not happen.

Contrary to your letter, Oracle did not "claim[] that there is no 'assignment' of workers," and, "[a]t the same time . . . belatedly object that Kate Waggoner had already testified about this topic." Rather, I stated during the call that Kate Waggoner had already testified as to separate compensation topics (not the assignment topic that is the focus of Topic 12). There is no belated objection at issue here or anywhere else with respect to any objections based on Jewett PMK testimony. *See, e.g.*, Oracle's Objections, General Objection 7.

Oracle will consider producing a witness to cover "the remainder of the topic," but, as explained during our call, OFCCP needs to review the Jewett transcripts and assess how and where the topic/subtopics can be narrowed. Both sides should discuss how to proceed on this topic once your review is complete. As a result, we cannot commit to meeting your arbitrary deadline.

Topics 13 Through 16

Your letter, which purports to memorialize the Parties' discussions during the meet and confer, omits Oracle's basis for standing on its objections to these topics. As I stated during the call, Topics 13 through 16 seek a witness to testify about Oracle's (and by proxy, Orrick's) underlying

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practices for responding to OFCCP's discovery requests. How a party and its counsel respond to discovery is clearly not relevant to the actual claims at issue in this case and necessarily implicates privileged information. Moreover, your inapposite reference to a letter discussing unrelated discovery requests does not somehow transform Oracle/Orrick's handling of discovery into a proper deposition topic.

Topics 17 Through 27

Your letter, which again purports to memorialize the Parties' discussions, fails to fully state Oracle's explanation of its basis for standing on its objections to these topics. Judge Clark made clear in his March 13 Order that OFCCP's Revised Second Amended Complaint would not be read to extend to "a substantive analysis of the [AAP] developed and maintained by Oracle." OFCCP's permitted claim concerns whether Oracle gave OFCCP information in response to its requests or not. As I stated during our meet and confer, the language of Topics 17 through 27 clearly attempts to reach a substantive review. The topics noticed delve into the way the AAP was structured, its components, and how Oracle ran its Affirmative Action Program. This is precisely the attempted expansion of issues that Oracle feared when it objected to OFCCP's Second Amended Complaint and these topics appears to be an end run around the clear intent of Judge Clark's ruling.

Topic 28

Although your letter lumps Topic 28 in with topics relating to Oracle's Affirmative Action Program, Topic 28 itself asks for a witness to testify about "policies, practices, and procedures related to how [Oracle] decide[s] job placement, project assignment, and compensation for new hires." As Oracle has stated, it does not "place" or "assign" individual employees into specific jobs. However, to the extent Topic 28 includes an inquiry into "compensation for new hires", Oracle has offered to produce a witness to testify regarding the "determination of initial compensation for new hires," in the relevant job functions.

Topic 30

Your letter again fails to accurately memorialize our conversations. Oracle did not refuse to produce a witness here. Rather, I explained Oracle produced three PMK witnesses in Jewett and explained you should review those transcripts because I failed to see what else you could possibly

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want or need that had not already been provided through these three witnesses' testimony. You agreed to look at the transcripts and get back to us. Tellingly, however, even before your team took the time to review these three transcripts, you indicated it was unlikely OFCCP would end up narrowing the topics.

Scheduling Depositions

With regard to Mallory Cohn, while you make much of the amount of time since you noticed Ms. Cohn's deposition and that "Oracle has yet to ask Ms. Cohn for her availability," your letter omits my explanation that Ms. Cohn was on maternity leave and that I've told you this multiple times. Oracle's desire not to intrude on a new mother's maternity leave is, of course, a perfectly valid reason for the delay in setting a date for her deposition – which is no doubt why your letter fails to mention it. As I stated during the meet and confer, now that Ms. Cohn has returned to work, Oracle will work with her to determine her availability and we will get back to you within a reasonable time. However, you also agreed (yet you failed to memorialize this) that you would confer with whoever is going to take her deposition about combining her individual deposition with 30(b)(6) testimony regarding College Recruiting (if we designate her to testify on those topics).

More generally, your letter rejects, without explanation, Oracle's request that OFCCP combine, where possible, the depositions of individuals and 30(b)(6) designees where the topics and deponent overlap. This request applied not only to Kate Waggoner, who you identify, but to any instance where OFCCP has individually noticed a witness that may also be a 30(b)(6) designee (for instance, Shauna Holman-Harries and Mallory Cohn). Moreover, your letter omits any meaningful discussion of Oracle's request. Where OFCCP plans to individually depose witnesses who may also be designated as a 30(b)(6) witness, it would be more efficient and less burdensome to combine those depositions on the same day or at least to take them on back-to-back days. This is particularly true where OFCCP is likely to depose individual witnesses on subjects overlapping with its 30(b)(6) topics. Indeed, as I explained during our calls, it is hard to fathom what else you would want to depose Ms. Waggoner (who resides near Denver) about other than compensation (and you already have her 30(b)(6) interview responses and two days of her Jewett PMK testimony); Ms. Cohn about anything other than College Recruiting; or Ms. Holman-Harries (who resides near Phoenix) about anything other than the audit. It is unclear why OFCCP would reject this request out of hand when it would do much to lessen the burden on witnesses (for some of whom travel can be difficult due to family obligations) and to reduce the expense to the Parties. To the extent Oracle produces these

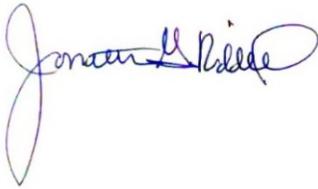
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witnesses, it intends to prepare and produce them only once. If OFCCP is unwilling to work with Oracle to schedule depositions in a reasonable, logical fashion, Oracle will have no choice but to postpone depositions until these issues are resolved and/or to raise them with Judge Clark.

Finally, Oracle will continue to work to identify witnesses and determine their availability for those Topics on which it is producing a witness, but cannot commit to do so by your arbitrary deadline.

* * *

Very truly yours,



J.R. Riddell