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MAY 29 2019

Office of Administrative Law Judges
San Francisco, Ca

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
WARRINGTON PARKER IN
SUPPORT OF DEFENDANT
ORACLE AMERICA INC.'S
MOTION TO COMPEL
PLAINTIFF OFCCP TO
DESIGNATE AND PRODUCE
30(b)(6) WITNESSES**

I, WARRINGTON PARKER, hereby declare as follows:

1. I am an attorney admitted to practice in the State of California. I am a Partner at Orrick, Herrington & Sutcliffe LLP ("Orrick") and counsel to Oracle America, Inc. ("Oracle") in the above matter. I make this declaration in support of Oracle's Motion to Compel Plaintiff OFCCP to Designate and Produce 30(b)(6) Witnesses. 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. On April 18, 2019, I participated in a telephonic meet and confer conference with Abigail Daquiz of OFCCP regarding Oracle's Request for Production, Set Two. In that conference, Ms. Daquiz asked if Oracle would withdraw its Notice of 30(b)(6) Deposition, Topics 1-29 in light of OFCCP's production of the statistical analyses underlying OFCCP's allegations in the Second Amended Complaint. If Oracle did not withdraw, Ms. Daquiz stated that OFCCP intended to move for a protective order on Topics 1-29 because it believed Oracle's 30(b)(6) deposition would not be necessary.

3. On May 21, 2019, I participated in a telephonic meet and confer conference with Abigail Daquiz of OFCCP regarding Oracle's Notice of Deposition of OFCCP Pursuant to 41 C.F.R. § 60-30.11 and Fed. R. Civ. P. 30(b)(6).

4. Attached hereto as **Exhibit 1** is a true and correct copy of Oracle's Notice of Deposition of OFCCP Pursuant to 41 C.F.R. § 60-30.11 and Fed R. Civ. P. 30(b)(6), served on May 31, 2017.

5. Attached hereto as **Exhibit 2** is a true and correct copy of Oracle's Notice of Deposition of OFCCP Pursuant to 41 C.F.R. § 60-30.11 and Fed R. Civ. P. 30(b)(6), served on April 3, 2019.

6. Attached hereto as **Exhibit 3** is a true and correct copy of a letter from Abigail Daquiz to Warrington Parker, dated May 9, 2019.

7. Attached hereto as **Exhibit 4** is a true and correct copy of a letter from Warrington Parker to Abigail Daquiz, dated May 13, 2019.

8. Attached hereto as **Exhibit 5** is a true and correct copy of a letter from David Fuad to Abigail Daquiz, dated May 14, 2019.

9. Attached hereto as **Exhibit 6** is a true and correct copy of an email from Abigail Daquiz to Warrington Parker, dated May 21, 2019.

10. Attached hereto as **Exhibit 7** is a true and correct copy of a letter from Abigail Daquiz to Warrington Parker, dated May 24, 2019.

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

Executed in San Francisco, California on May 29, 2019.


Warrington Parker

EXHIBIT 1

**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

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

**TO PLAINTIFF OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR AND ITS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that pursuant to the Code of Federal Regulations, 41 C.F.R. § 60-30.11, and Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendant Oracle America, Inc. ("Oracle") will take the deposition of the Office of Federal Contract Compliance Programs, United States Department of Labor ("OFCCP") through one or more officers, directors, agents, or other representatives who shall be designated to testify on behalf of OFCCP. Oracle requests that OFCCP provide written notice of at least 5 business days before the deposition of the names and employment positions of the individuals designated to testify on OFCCP's behalf.

The deposition will commence on June 29, 2017, at 9:30 a.m. at the offices of Orrick, Herrington & Sutcliffe, 405 Howard Street, San Francisco, CA, 94105 or at such other time and location as agreed upon by the parties, and shall be taken before duly certified court reporter or other officer authorized by law to administer oaths. The deposition may be recorded by stenographic means, audiotaped, videotaped, and transcribed using real time interactive transcription such as LiveNote.

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DEFINITIONS AND INSTRUCTIONS

1. Except as otherwise defined or broadened in this notice of deposition, Defendant incorporates by reference the definitions set forth in Federal Rules of Civil Procedure 26 and 30.
2. 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.
3. “OFCCP” mean Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor, and its directors, officers, subsidiaries, affiliates, agents, servants, employees, investigators, attorneys, and all others representing it or acting on its behalf.
4. “ORACLE” mean Defendant Oracle America, Inc., and its agents, servants, employees, investigators, attorneys, and all others representing it or acting on its behalf.
5. “COMPLIANCE REVIEW” is defined as OFCCP’s compliance evaluation of Oracle’s Redwood Shores location and referenced in OFCCP’s Amended Complaint, and covering the time period from the date of determination that Oracle Redwood Shores was selected for a compliance evaluation until March 11, 2016.

MATTERS DESIGNATED FOR DEPOSITION TESTIMONY

OFCCP is hereby requested and required to designate and produce a person or persons to testify on behalf of OFCCP, on the following matters:

1. OFCCP’s COMPLIANCE REVIEW of ORACLE’s facility in Redwood Shores, California, including the criteria used to select ORACLE for COMPLIANCE REVIEW.
2. The facts that support the allegations of Paragraph 7 of the Amended Complaint, including:
 - a. the qualified female employees referenced in Paragraph 7, and the factual basis for the allegation that the female employees are qualified;
 - b. the comparable males employed in similar roles, including the factual basis for the allegation that the males are comparable and employed in similar roles;
 - c. the statistical data used, the analysis and methodologies used and the

computations used.

3. The facts that support the allegations of Paragraph 8 of the Amended Complaint, including:
 - a. the qualified African American employees referenced in Paragraph 8, and the factual basis for the allegation that the African American employees are qualified;
 - b. the comparable White employed in similar roles, including the factual basis for the allegation that the White employees are comparable and employed in similar roles;
4. the statistical data used, the analysis and methodologies used and the computations used.
5. The facts that support the allegations of Paragraph 9 of the Amended Complaint, including:
 - a. the qualified Asian employees referenced in Paragraph 9, and the factual basis for the allegation that the Asian employees are qualified;
 - b. the comparable White employed in similar roles, including the factual basis for the allegation that the White employees are comparable and employed in similar roles;
 - c. the statistical data used, the analysis and methodologies used and the computations used.
6. The facts that support the allegations of Paragraph 10 of the Amended Complaint, including:
 - a. the qualified non-Asians referenced in Paragraph 10, and the factual basis for the allegation that the non-Asians are qualified;
 - b. the comparable Asians, including the factual basis for the allegation that the Asians are comparable;
 - c. the hiring process(es) that is/are alleged to have discriminated against

- qualified non-Asians;
- d. the recruiting process(es) that is/are alleged to have discriminated against qualified non-Asians;
 - e. the statistical data used, the analysis and methodologies used and the computations used.
7. The records, materials and evidence that Oracle failed or refused to produce as alleged in Paragraphs 12 and 13 of the Amended Complaint, including:
- a. the records, materials and evidence sought by OFCCP;
 - b. the information sought by OFCCP that were contained in the records, materials and evidence;
 - c. the date(s) that OFCCP requested the records, materials and evidence;
 - d. the date(s) of ORACLE's refusal;
 - e. ORACLE's reasons, if any, for refusing to produce or provide the records, materials and evidence;
 - f. as to each record, each material and each item of evidence that OFCCP claims ORACLE failed or refused to produce, the specific allegation(s) contained in Paragraph 7 to 10 that the OFCCP contends can be supported by ORACLE's failure or refusal to produce.
8. As to each allegation of discrimination, the policies, procedures, processes, or tests that OFCCP alleges, if it so alleges, that resulted in a disparate impact.
9. As to each allegation of discrimination, the anecdotal evidence of discrimination.
10. The identity, location, custody, and control of all documents concerning the topics listed above, including subparts.

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Oracle hereby reserves the right to notice and depose OFCCP pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure at a later date on additional subject matters.

May 30, 2017

GARY R. SINISCALCO
ERIN M. CONNELL

Erin Connell

ORRICK, HERRINGTON & SUTCLIFFE LLP

The Orrick Building

405 Howard Street

San Francisco, CA 94105-2669

Telephone: (415) 773-5700

Facsimile: (415) 773-5759

Email: grsiniscalco@orrick.com
econnell@orrick.com

Attorneys For Defendant
ORACLE AMERICA, INC.

PROOF OF SERVICE BY ELECTRONIC MAIL

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, California 94105-2669. My electronic service address is jkaddah@orrick.com.

On May 31, 2017, I served the interested parties in this action with the following document(s):

DEFENDANT ORACLE'S NOTICE OF DEPOSITION OF OFCCP PURSUANT TO 41 C.F.R. § 60-30.11 AND FED. R. CIV. P. 30(b)(6)

by serving true copies of these documents via electronic mail in Adobe PDF format the documents listed above to the electronic addresses set forth below:

Marc A. Pilotin (pilotin.marc.a@dol.gov)
Laura Bremer (Bremer.Laura@dol.gov)
Ian Eliasoph (eliasoph.ian@dol.gov)
Jeremiah Miller (miller.jeremiah@dol.gov)
U.S. Department of Labor, Office of the Solicitor, Region IX – San Francisco
90 Seventh Street, Suite 3-700
San Francisco, CA 94103
Telephone: (415) 625-7769
Fax: (415) 625-7772

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 31, 2017, at San Francisco, California.



Jacqueline D. Kaddah

EXHIBIT 2



**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

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

**TO PLAINTIFF OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR, AND ITS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that pursuant to the Code of Federal Regulations, 41 C.F.R. § 60-30.11 and Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendant Oracle America, Inc. ("Oracle") will take the deposition of the Office of Federal Contract Compliance Programs, United States Department of Labor ("OFCCP"), through one or more officers, directors, agents, or other representatives who shall be designated to testify on behalf of OFCCP. Oracle requests that OFCCP provide written notice of at least 5 business days before the deposition of the names and employment positions of the individuals designated to testify on OFCCP's behalf.

The deposition will commence on June 3, 2019, at 9:30 a.m. PDT at the offices of Orrick, Herrington & Sutcliffe LLP, 405 Howard Street, San Francisco, CA, 94105 or at such other time and location as agreed upon by the parties, and shall be taken before duly certified court reporter or other officer authorized by law to administer oaths. The deposition may be recorded by stenographic means, audiotaped, videotaped, and transcribed using real-time interactive transcription such as LiveNote.

ORACLE'S NOTICE OF DEPOSITION OF OFCCP

DEFINITIONS AND INSTRUCTIONS

1. Except as otherwise defined or broadened in this Notice of Deposition, Oracle incorporates by reference the definitions set forth in Federal Rules of Civil Procedure 26 and 30.
2. 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.
3. “OFCCP” means Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor, and its directors, officers, subsidiaries, affiliates, agents, servants, employees, investigators, attorneys, and all others representing it or acting on its behalf.
4. “ORACLE” means Defendant Oracle America, Inc., and its agents, servants, employees, investigators, attorneys, and all others representing it or acting on its behalf.

MATTERS DESIGNATED FOR DEPOSITION TESTIMONY

OFCCP is hereby requested and required to designate and produce a person or persons to testify on behalf of OFCCP on the following matters:

1. The facts that support the allegations of Paragraphs 12 and 41 of the Second Amended Complaint that Oracle discriminated against qualified female employees in its Product Development, Information Technology, and Support Job Functions at HQCA based upon sex by paying them less than comparable males employed in similar roles, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
2. The facts that support the allegations of Paragraphs 12 and 41 of the Second Amended Complaint that Oracle discriminated against qualified Asian and Black or African American employees in its Product Development job function at Oracle’s headquarters based on race or ethnicity by paying them less than comparable White employees employed in similar roles, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
3. The facts that support the allegations of Paragraphs 13 and 41 of the Second Amended Complaint that Oracle systematically undercompensated female and Asian employees with respect to their total compensation, including, any analyses and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation

4. The facts that support the allegations in Paragraphs 14 and 41 of the Second Amended Complaint that there are disparities between the total compensation for females and males at Oracle's headquarters, corresponding to a loss of at least \$165,000,000 in total compensation for women at Oracle, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
5. The facts that support the allegations of Paragraphs 15 and 41 of the Second Amended Complaint that there are disparities between the total compensation for Asian employees and White employees at Oracle's headquarters, corresponding to a loss of at least \$234,000,000 in total compensation for Asian employees at Oracle, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
6. The facts that support the allegations of Paragraphs 16 and 41 of the Second Amended Complaint that Black or African Americans are significantly under-compensated relative to their White peers for some years in the Product Development, resulting in a loss of more than \$1,300,000 to those employees, including, OFCCP's analysis of base compensation and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
7. The facts that support the allegations of Paragraphs 17 and 41 of the Second Amended Complaint that there is an underpayment of at least \$401,000,000 in total compensation and the facts and calculations that support the alleged total cost of Oracle's discrimination.
8. The facts that support the allegations of Paragraphs 18, 22 and 41 of the Second Amended Complaint that Oracle pays women and Asians less on hire, either by suppressing their pay relative to other employees in the same or comparable job, or by hiring them for lower-paid jobs, including OFCCP's analyses, evaluation of the likelihood that a given employee would be assigned to a higher level within Oracle's global career level framework, and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
9. The facts that support the allegations of Paragraphs 19 and 41 of the Second Amended Complaint that women were only 70% as likely as men to be assigned to higher global career levels as individual contributors, and only 42% as likely as men to be assigned to higher global career levels as managers, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
10. The facts that support the allegations of Paragraphs 20 and 41 of the Second Amended Complaint that Black or African American employees were only 17% as likely as Whites to be assigned to higher global levels as individual contributors and that there were zero Black or African American employees in management career levels at Oracle between 2013 and 2016, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.

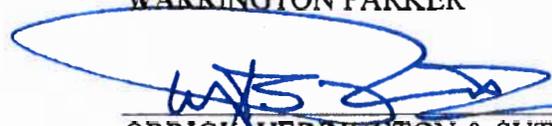
11. The facts that support the allegations of Paragraphs 21 and 41 of the Second Amended Complaint that Asians were only 49% as likely as Whites to be assigned into higher global career levels as managers, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
12. The facts that support the allegations of Paragraphs 22 and 41 of the Second Amended Complaint that Oracle discriminates against female, Asian and Black or African American employees by placing those employees in lower global career levels and that Oracle discriminates against Asians and women in their base compensation upon hiring them, including, OFCCP's analyses, and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
13. The facts that support the allegations of Paragraphs 23 and 41 of the Second Amended Complaint that the female employees are paid less than male employees on hire at Oracle, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
14. The facts that support the allegations of Paragraphs 24 and 41 of the Second Amended Complaint that Asian employees are paid less than White employees on hire at Oracle, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
15. The facts that support the allegations of Paragraphs 25, 29 and 41 of the Second Amended Complaint that the systematic underpayment of female, Black or African American, and Asian employees continued and worsened throughout their employment at Oracle and that Oracle suppressed the pay of female and Asian employees by ensuring they remained in lower-paid positions relative to other employees, or at the lower end of the pay range relative to other employees in the same positions, including, OFCCP's analyses, evaluation, and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
16. The facts that support the allegations of Paragraphs 26 and 41 of the Second Amended Complaint that the pay gap increases for female employees as they remain at Oracle for longer periods of time, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
17. The facts that support the allegations of Paragraphs 27 and 41 of the Second Amended Complaint that the pay gap increases for Asian employees as they remain at Oracle for longer periods, including any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
18. The facts that support the allegations of Paragraphs 28 and 41 of the Second Amended Complaint that the pay gap increases for Black or African American employees as they remain at Oracle for longer periods, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.

19. The facts that support the allegations of Paragraphs 30 and 41 of the Second Amended Complaint that women experienced slower wage growth than their male peers, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
20. The facts that support the allegations of Paragraphs 31 and 41 of the Second Amended Complaint that Asians experienced slower wage growth than their non-Asian peers, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
21. The facts that support the allegations of Paragraphs 32 and 41 of the Second Amended Complaint that the systematic underpayment of female, Black or African American and Asian employees may be due, in part, to Oracle's reliance on prior salary in setting compensation for employees upon hire, including, OFCCP's analyses, evaluations, and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
22. The evaluation and analyses referenced in Paragraphs 33 of the Second Amended Complaint.
23. The facts that support the allegations of Paragraphs 34, 35 and 41 of the Second Amended Complaint that Oracle's data is unreliable and that the flaws in Oracle's applicant data justifies using labor market availability data to analyze Oracle's hiring practices, including, the labor market availability data, any analyses and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
24. The facts that support the allegations of Paragraphs 36 and 41 of the Second Amended Complaint that Oracle utilized and continued to utilize a recruiting and hiring process that discriminates against qualified non-Asians—including African Americans or Blacks, Hispanics, and Whites—based on race and ethnicity for positions in the PT1 job group at Oracle's headquarters in Redwood Shores, California, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
25. The facts that support the allegations of Paragraphs 36 and 41 of the Second Amended Complaint that Oracle's hiring program strongly preferred hiring Asians over non-Asians, under-hiring African American or Black, Hispanic and White individuals relative to the available labor pool, including, any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
26. The facts that support the allegations of Paragraphs 37 and 41 of the Second Amended Complaint that every year Asians are statistically more likely to be hired than available non-Asians into the PT1 job group at Oracle's headquarters and that Oracle's hiring practices had a statistically significant adverse impact against non-Asians, including, OFCCP's comparison, and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.

27. The facts that support the allegations of Paragraphs 38 and 41 of the Second Amended Complaint, including, any analyses and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
28. The facts that support the allegations of Paragraphs 39 and 41 of the Second Amended Complaint, including, any analyses and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
29. The facts that support the allegations of Paragraphs 40 and 41 of the Second Amended Complaint, including, any analyses and any statistical or regression analysis, statistical or regression methodology and statistical or regression computation.
30. The facts that support the allegations of Paragraphs 44, 45, and 47 of the Second Amended Complaint that Oracle refused to produce or supply records or analyses or make documentation available to OFCCP.
31. The facts that support the allegations of Paragraphs 45, 45, 46, and 48 of the Second Amended Complaint that Oracle failed to maintain, collect, or compile information, documents, or conduct analyses.
32. The pay adjustments, lost compensation, interest and benefits of employment that OFCCP seeks as relief for the affected class.

April 3, 2019

GARY R. SINISCALCO
ERIN M. CONNELL
WARRINGTON PARKER



ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: (415) 773-5700
Facsimile: (415) 773-5759
Email: grsiniscalco@orrick.com
econnell@orrick.com
wparker@orrick.com

Attorneys for Defendant
ORACLE AMERICA, INC.

PROOF OF SERVICE BY ELECTRONIC MAIL

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, California 94105-2669. My electronic service address is jkaddah@orrick.com.

On April 3, 2019, I served the interested parties in this action with the following document(s):

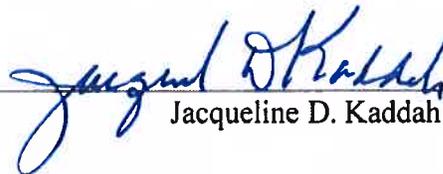
DEFENDANT ORACLE AMERICA, INC.'S NOTICE OF DEPOSITION OF OFCCP PURSUANT TO 41 C.F.R. § 60-30.11 AND FED. R. CIV. P. 30(b)(6)

by serving true copies of these documents via electronic mail in Adobe PDF format the documents listed above to the electronic addresses set forth below:

Marc A. Pilotin (pilotin.marc.a@dol.gov)
Laura Bremer (Bremer.Laura@dol.gov)
Jeremiah Miller (miller.jeremiah@dol.gov)
Norman E. Garcia (Garcia.Norman@DOL.GOV)
U.S. Department of Labor, Office of the Solicitor, Region IX – San Francisco
90 Seventh Street, Suite 3-700
San Francisco, CA 94103
Telephone: (415) 625-7769 / Fax: (415) 625-7772

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 3, 2019, at San Francisco, California.



Jacqueline D. Kaddah

EXHIBIT 3

U.S. Department of Labor

Office of the Solicitor
300 Fifth Avenue, Suite 1120
Seattle, Washington 98104-2397
PHONE (206) 757-6753
MAIN (206) 757-6762
FAX (206) 767-6761
EMAIL daquiz.abigail@dol.gov



May 9, 2019

Via Email Only

Mr. Warrington Parker, III
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard St.
San Francisco, CA 94105-2669

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

Dear Mr. Parker,

I write to ask for responses to my several queries regarding the depositions that Oracle has noticed in this matter.

First, regarding the Notice of Deposition of OFCCP pursuant to 41 C.F.R. § 60-30.11 and Fed. R. Civ. P. 30(b)(6) noticed for June 3, 2019, I have asked Oracle to withdraw its request for a witness as to topics 1-29 to the extent that Oracle is asking for OFCCP's analyses and statistical or regression analysis, statistical or regression methodology and statistical or regression computation. I made this request during our call on April 18, and again by email on April 26 and May 6. As we have discussed, this information is protected from disclosure as work product and under Fed. R. Civ. P. 26(b)(4)(D). The documents produced to date should satisfy any questions about the statistical or regression analysis and, outside of the facts as initially described and produced, OFCCP's work product in preparation for filing its SAC is protected under Fed. R. Civ. P. 26(b)(4)(D). Will Oracle agree to withdraw those topics?

Second, regarding the remaining topics of that 30(b)(6) notice, I have informed you that our witness is unavailable on June 3, 2019, but can be available later that week. Please advise when we can schedule a call to discuss the deposition on the remaining topics.

Third, the OFCCP personnel identified have limited knowledge of the facts underlying the Second Amended Complaint. As we have discussed, we have produced the data and described the processes used to arrive at the allegations set out in the Second Amended Complaint. When we discussed OFCCP's supplementation of our production and Oracle's request that OFCCP confirm that we have done a search for all relevant documents, including outside of the Pacific Region, I did so and confirmed that there were no responsive materials, including from Dr. LaJeunesse. OFCCP personnel have limited

Mr. Warrington Parker, III
May 9, 2019
Page 2

information about the facts underlying the Second Amended Complaint, and most of which is information protected by the deliberative process privilege and/or attorney-client privilege. This case is about Oracle's employment practices and not about the compliance review or OFCCP's internal decision-making process. There are very limited areas of inquiry of OFCCP personnel that are relevant and not privileged. We ask that Oracle withdraw their notices of deposition. In particular Dr. Lajeunesse works in Washington, D.C. and not available to be deposed in San Francisco. Instead of renoting the deposition to be conducted in a more appropriate location, Oracle should withdraw the notice.

If Oracle does not agree to withdraw the notices, OFCCP requests that Oracle agree not to seek information from these witnesses about pre-decisional intra-agency or interagency deliberations protected by the deliberative process privilege, information protected by the investigative files privilege, information protected by the government informant's privilege, and information protected by the attorney-client privilege and the work product doctrine.

Fourth, regarding the depositions of Brian Mikel, noted for June 11, 2019, and Hoan Luong, noted for June 12, 2019, OFCCP not be producing those witnesses as they no longer work for the U.S. Department of Labor. If Oracle locates those individuals to arrange for their depositions directly, please copy us on any revised or re-served Notice of Deposition so that OFCCP may attend.

Thank you for your attention and consideration. Please advise when you have time to discuss these issues on Monday May 13 or Tuesday May 14. I look forward to your response.

Sincerely,



Abigail G. Daquiz
Senior Trial Attorney

cc via email: Ms. Connell, Ms. Kaddah, and Mr. Siniscalco
Ms. Bremer, Mr. Garcia, Mr. Miller, Mr. Richardson, Mr. Song

EXHIBIT 4



May 13, 2019

Abigail G. Daquiz
Office of the Solicitor
300 Fifth Avenue, Suite 1120
Seattle, WA 98104

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

Warrington Parker

E wparker@orrick.com
D +1 415 773 5740
F +1 415 773 5759

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

Dear Ms. Daquiz:

I write in response to your letter of May 9, 2019.

Oracle will not withdraw its 30(b)(6) deposition notice as to topics 1 to 29. Oracle understands OFCCP's position regarding the statistical analyses. But topics 1 to 29 are not limited to statistical analyses. Of course, were OFCCP to stipulate that its proof as to the matters covered by topic 1 to 29 is limited solely to statistical analyses, Oracle will reconsider its position.

Regarding the dates of the 30(b)(6) depositions and the individual depositions, Oracle is more than willing to cooperate to arrive at a convenient date for all.

Your letter mentions the individual deposition notices. Oracle understands and accepts the representation that Brian Mikel and Hoan Luong no longer work for the U.S. Department of Labor. I understand from your letter that they will not be called as witnesses in any manner in this case, including as declarants. If this understanding is not correct, please let me know.

Finally, as to the depositions of Dr. LaJeunesse and the other individuals, they are identified as having knowledge of facts supporting the allegations of the Second Amended Complaint. See Response to Rog No. 27. OFCCP did not specify which facts each individual may know or the limits of the knowledge. Of course, OFCCP could have done that. It chose not to do so. Therefore, Oracle is entitled to depose the individuals. As for the request that Oracle agree that it will not seek information protected by the various privileges identified in your letter, the purpose of the depositions is to seek facts. Oracle is not intending to take the depositions to invade any privileges. However, the parties disagree on what privileges apply



Abigail G. Daquiz
May 13, 2019
Page 2

to what circumstances. Therefore, it may be that OFCCP will object during the deposition and Oracle will believe it is entitled to the information it seeks.

Let's plan to talk on Wednesday, assuming that works, to talk about scheduling.

Sincerely,

A handwritten signature in black ink, appearing to be "Warrington Parker", written over a horizontal dashed line.

Warrington Parker

EXHIBIT 5



May 14, 2019

Abigail G. Daquiz
Office of the Solicitor
300 Fifth Avenue, Suite 1120
Seattle, WA 98104

Orrick, Herrington & Sutcliffe LLP
777 South Figueroa Street
Los Angeles, CA 90017-5855
+1 213 629 2020
orrick.com

David Fuad

E dfuad@orrick.com
D +1 213 612 2369

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

Dear Ms. Daquiz:

I write to follow up on the May 3, 2019 letter from my colleague Warrington Parker, which outlines the parties' prolonged meet and confer process related to Oracle's Amended Request for Production, Set Two, served on March 12, 2019.

As you discussed with Mr. Parker by telephone on May 2, and as memorialized in his May 3 letter, OFCCP has agreed to provide Oracle with the information necessary to support the damages allegations in paragraphs 14, 15, and 16 of OFCCP's Second Amended Complaint (SAC), and the lost wages calculations in Tables 1-6 of the SAC.

We are in receipt of OFCCP's May 6, 2019 production of Excel files related to OFCCP's college hiring analysis, which Mr. Parker requested on April 11, 2019 (prior to resolution of the hiring claims). However, OFCCP has not produced documents or other information on how it computed the damages and lost wages that it alleges, including the actual calculations themselves. Oracle is entitled to this information and we do not understand your delay in production, as these are documents that would necessarily already be in your possession.

By no later than Friday, May 17, 2019, please produce all documents that support the damages allegations in paragraphs 14, 15, and 16 of the SAC and the lost wages calculations in Tables 1-6 of the SAC—*i.e.*, the files that record the actual calculations that OFCCP undertook. We will interpret your failure to do so as a refusal to produce and raise this matter to Judge Clark as part of Oracle's motion to compel.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Fuad". The signature is stylized and somewhat cursive.

David Fuad

EXHIBIT 6

Attachments:

DOL 000040761 (SAC Tables 1-6).xlsx

From: Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>

Sent: Tuesday, May 21, 2019 5:41 PM

To: Parker, Warrington <wparker@orrick.com>

Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Fuad, David <dfuad@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Swirky, Maria <mswirky@orrick.com>

Subject: OFCCP v. Oracle; OALJ Case No. 2017-OFC-00006, SAC Tables 1-6

Warrington, thanks for taking the time to talk with me this afternoon—I know you're out of the office this week.

Following our discussions on the matter and in response to Mr. Fuad's letter dated May 14, 2019, please see the attached spreadsheet. This document is responsive to the Interrogatories and RFPs related to Paragraphs 14, 15, 16 and Tables 1-6 contained within the Second Amended Complaint. The data is from the "All Earnings" database produced by Oracle.

Please let me know if you have any further questions. --Abby

Abigail G. Daquiz

Attorney

U.S. Department of Labor

Office of the Solicitor

300 Fifth Avenue, Suite 1120

Seattle, WA 98104

d 206-757-6753

t 206-757-6762

f 206-757-6761

daquiz.abigail@dol.gov

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EXHIBIT 7

U.S. Department of Labor

Office of the Solicitor
300 Fifth Avenue, Suite 1120
Seattle, Washington 98104-2397
PHONE (206) 757-6753
MAIN (206) 757-6762
FAX (206) 767-6761
EMAIL daquiz.abigail@dol.gov



May 24, 2019

Via Email Only

Mr. Warrington Parker, III
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard St.
San Francisco, CA 94105-2669

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

Dear Warrington,

I write to respond to your email from yesterday.

First, regarding Oracle's 30(b)(6) notice, you are correct that we will not be producing a witness for Topics 1-29 outlined in Oracle's notice. We discussed whether Oracle would confirm whether it would not seek a deposition on topics relating to the hiring claim. Can you confirm that Oracle is not seeking to take the deposition of an agency designee for Topics 22-29?

Second, we will not be producing Mr. LeJeunesse as a witness. OFCCP's supplementation is forthcoming and will be to Oracle early next week. It will be consistent with our conversations about the limited nature of his involvement in this matter and the privileged nature of any communications that involved Mr. LeJeunesse.

Third, regarding the remaining topics, an agency designee can be available in San Francisco June 25, 26, or 27; and may be available in San Diego at some earlier dates during the week of June 17. Regarding the remaining witnesses, Ms. Atkins and Mr. Crossland can be available on the dates they were noted. Ms. Suhr is available starting the week of June 17. I think it would be productive to have a conversation about the schedule when we are both able to review our calendars simultaneously. Please let me know when we can schedule at time to discuss.

Fourth, regarding the privilege log agreement, we agree that the parties need not log privileged communications and bearing the date of December 16, 2016 and thereafter.

Fifth, in response to your request for more information, please see the explanation below. I am also prepared to discuss the damages with you and your team reviewing this data. You have stated that you request the formulas for the figures summarized here:

- “OFCCP’s regression analysis for female employees ... reveals ... a loss of at least \$165,000,000 in total compensation for women at Oracle.” (SAC ¶ 14.)
- “OFCCP’s regression analysis ... reveals ... a loss of at least \$234,000,000 in total compensation for Asian employees at Oracle.” (SAC ¶ 15.)
- “OFCCP’s analysis of base compensation at Oracle ... shows ... a loss of more than \$1,300,000 to [Black or African American] employees.” (SAC ¶ 16.)

Here is the summary of the damages reported in the SAC. The 2013-2016 column (reported in paragraphs 14, 15, and 16 of the SAC.

Damages by Model and Pay Type

Model	Pay Type	# Protected-Years	Class Period	Total Damages
Females	Total Compensation			
Females	Base Pay			
Asians	Total Compensation			
Asians	Base Pay			
Blacks	BasePay			
Total	Total Compensation			
Total	Base Pay			

*Class period damages include nominal damages from 2013-201

*Total Damages assume pay disparities persist in 2017-2018 and include both nominal damages plus interest from 2013-2018.

* #Protected-years is people-years. If an employee is present multiple years, they are counted once for each year.

*Asian and Black damages exclude females from the calculation in order to avoid double counting.

For purposes of computing back pay, all employees in the class are included in the calculation, even if they were excluded in the regression analysis. We calculated the damages by multiplying (1) the number of protected employees in a year and job function times (2) the percentage pay disparity in that year and job function [see pay gap reported in paragraphs 14, 15 and 16 of the SAC] times (3) the non-protected group average pay in that year and job function. The average pay by group is summarized below:

Average Pay by Group	Males		Whites	
	Total Compensation	Base Pay	Total Compensation	Base Pay
INFTECH-2013				
INFTECH-2014				
INFTECH-2015				
INFTECH-2016				
PRODEV-2013				
PRODEV-2014				
PRODEV-2015				
PRODEV-2016				
SUPP-2013				
SUPP-2014				
SUPP-2015				
SUPP-2016				

*Averages exclude records w compensation, records with compensation less than \$1000 are excluded.

total

Mr. Warrington Parker, III
 May 24, 2019
 Page 3

Following directive 2013-04, produced in response to Oracle's Second Set of RFPs and Interrogatories, damages begin on the start day of the discriminatory act and are compounded quarterly. The interest rates applied come from the IRS Publication rr-18-07, also produced to you in April 2015, and are summarized in the Interest Rates table below. The nominal damages were brought to present value as of 12/31/2018.

Interest Rates

Quarter Ending	Annual Rate	Quarterly Rate for Compounding
03/31/2012	5.00%	1.25%
06/30/2012	5.00%	1.25%
09/30/2012	5.00%	1.25%
12/31/2012	5.00%	1.25%
03/31/2013	5.00%	1.25%
06/30/2013	5.00%	1.25%
09/30/2013	5.00%	1.25%
12/31/2013	5.00%	1.25%
03/31/2014	5.00%	1.25%
06/30/2014	5.00%	1.25%
09/30/2014	5.00%	1.25%
12/31/2014	5.00%	1.25%
03/31/2015	5.00%	1.25%
06/30/2015	5.00%	1.25%
09/30/2015	5.00%	1.25%
12/31/2015	5.00%	1.25%
03/31/2016	6.00%	1.50%
06/30/2016	6.00%	1.50%
09/30/2016	6.00%	1.50%
12/31/2016	6.00%	1.50%
03/31/2017	6.00%	1.50%
06/30/2017	6.00%	1.50%
09/30/2017	6.00%	1.50%
12/31/2017	6.00%	1.50%
03/31/2018	6.00%	1.50%
06/30/2018	7.00%	1.75%
09/30/2018	7.00%	1.75%
12/31/2018	7.00%	1.75%

Source:

<https://www.irs.gov/pub/irs-drop/rr-18-07.pdf>

Start and End Dates for Damages

	Year	Date
Start Dates:	2012	01/01/2012
	2013	01/01/2013
	2014	01/01/2014
	2015	01/01/2015
	2016	01/01/2016
	2017	01/01/2017
End Date:	2018	12/31/2018

Please let me know if you have any further questions.

Sincerely,



Abigail G. Daquiz
 Senior Trial Attorney

cc via email: Ms. Connell, Ms. Kaddah, and Mr. Siniscalco
 Ms. Bremer, Mr. Garcia, Mr. Miller, Mr. Richardson, Mr. Song