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Attorneys for OFCCP

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

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JUL 01 2019

Office of Administrative Law Judges
San Francisco, Ca

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

Plaintiff,

v.

ORACLE AMERICA, INC.

Defendant.

Case No. 2017-OFC-00006

**PLAINTIFF OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAM'S
OPPOSITION TO DEFENDANT ORACLE AMERICA, INC.'S "MOTION TO COMPEL
PLAINTIFF OFCCP'S FURTHER RESPONSE TO ORACLE AMERICA, INC.'S
REQUESTS FOR ADMISSION, SET ONE"**

OFCCP's responses¹ go straight to the substance of Oracle's Requests for Admission – denying all that is not admitted – and OFCCP's objection is necessary to avoid unwarranted inferences. Oracle's Motion to Compel what would be a misleading admission is a waste of judicial resources and should be denied.

I. BACKGROUND

Stated simply, the mission of the Department of Labor is to protect workers. Within this larger framework, OFCCP's mission is to “protect workers, promote diversity and enforce the law. OFCCP holds those who do business with the federal government (contractors and subcontractors) responsible for complying with the legal requirement to take affirmative action and not discriminate on the basis of race, color, sex,” or other protected categories.

<https://www.dol.gov/ofccp/aboutof.html>.

Just like every enforcement agency within the Department, an important component of OFCCP's enforcement mission is to educate and inform workers about their rights. The Department's website, including OFCCP's webpages, provide “Worker Fact Sheets – Know Your Rights” on various issues and provide numbers to call for more information. *See, e.g.,*

¹ As explained in Oracle's Motion to Compel, the four RFAs and responses are similar and are as follows:

Request for Admission No. 1: Admit that PLAINTIFF does not accuse any ORACLE manager of any wrongdoing with respect to the claims asserted against ORACLE in the Second Amended Complaint.

Response: OFCCP objects that this request is vague and ambiguous with regard to the phrase "accuse any ORACLE manager" in relation to any acts by individual Oracle managers in that OFCCP is tasked with the enforcement of the Executive Order 11246 with regard to government contractors, namely Oracle America, Inc., and not any individual employee. OFCCP admits that it has not named any Oracle employees as a defendant in this matter. Except as expressly admitted, OFCCP denies. *See* Defendant Oracle America, Inc.'s Motion to Compel OFCCP's Further Response to Oracle America, Inc.'s Requests for Admission at 2.

https://www.dol.gov/ofccp/regs/compliance/factsheets/FACT_Workplace_Aug2016_ENGESQA_508c.pdf.

Further, when Department of Labor investigators conduct inspections or audits of employers, they advise workers of their rights both during and after investigations. For example, Wage and Hour investigators provide fact sheets or other publications to employees, and the employees may be told information regarding the requirements they must satisfy to be paid backwages. Decl. of Susan Seletsky (“Seletsky Decl.”) ¶2. When employers interfere with Department of Labor investigators’ attempts to communicate with employees, Courts have issued injunctions prior to final judgment, requiring employers to read statements of workers’ rights to communicate with representatives of the Department of Labor and to be free from retaliation. *See* Seletsky Decl. ¶6 Ex. 3 (Preliminary Injunction under the FLSA). The Department’s Wage and Hour Division also may send a “16(b) letter” to impacted workers when WHD investigates a case and finds violations of the Fair Labor Standards Act (“FLSA”) but, in exercising its discretion, does not refer the matter to the Solicitor’s Office. Seletsky Decl. ¶¶2-3, Ex. 1. Such letters advise workers of the FLSA violations that WHD found and may include WHD’s calculations of wages it determined were owed to the workers. *Id.* Given the limited resources the Department has for enforcement, it must prioritize its obligation to educate workers about their rights, to empower them to enforce their own rights in the future.

II. FACTS

In August 2017, OFCCP brought a motion to compel Oracle to produce contact information for the former and current Oracle employees that OFCCP claimed were impacted by Oracle’s discrimination--female employees in the Product Development, Information Technology, and Support job functions, and Asian and Black employees in the Product

Development job function, who had worked at Oracle's Redwood Shores headquarters after 2013. In bringing its motion, OFCCP explained to Judge Larsen that it would use the contact information to contact the employees in the affected groups to obtain information about their claims that could be presented to the Court:

OFCCP seeks the contact information of current and former Oracle employees within the affected groups so that it can speak to potential employee-witnesses and amass further anecdotal evidence that "is important to bring [the agency's] discrimination claims convincingly to life." *Wellens v. Daiichi Sankyo Inc.*, 2014 WL 969692, at *3 (N.D. Cal. 2014). As the Supreme Court has recognized, the Secretary of Labor necessarily relies upon "information and complaints received from employees seeking to vindicate rights claimed to have been denied." *Kasten v. St.-Gobain Performance Plastics Corp.*, 531 U.S. 1, 11-12 (2011). The Supreme Court has also acknowledged these same concerns with respect to Title VII. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67 (2006) (recognizing enforcement of Title VII depends on communications and cooperation between employees and officials); *see also* 79 Fed. Reg. 55712-02, 55715 (interviewing "employees potentially impacted by discriminatory compensation" is "an invaluable way for [OFCCP] to determine whether compensation discrimination in violation of Executive Order 11246 has occurred and to support its statistical findings.") (Sept. 17, 2014).

OFCCP's Mot. to Compel, p. 13 (Aug. 18, 2017). In his Order compelling Oracle to produce contact information for all affected class members, Judge Larsen rejected Oracle's argument that it should not be compelled to produce contact information for Oracle managers. Order re OFCCP's Mot. to Compel (Sept. 11, 2017).² Accordingly, on October 11, 2017, Oracle produced contact information for women and minorities who had worked in the job functions at issue at Oracle's headquarters between 2013 and January 2017.³ *See* 5/24/19 Bremer Decl., Ex.

² OFCCP References to Orders by Judge Larsen to provide background information relevant to this motion, not to suggest that such orders remain in effect.

³ OFCCP does not have contact information for affected employees hired after January 2017, since Oracle refused to supplement its response, and OFCCP did not bring a motion to compel further response. *See* 5/24/19 Bremer Decl., Ex. 12 (email from E. Connell to L. Bremer) ("On the issue of whether we will agree to provide OFCCP updated contact information (*i.e.*, contact information for the approximately 800 people who have joined the 'class' since we last produced

43, p.2 (stating Oracle “is producing data exports containing personal contact information consistent with the Court’s September 11, 2017 order”).

After a failed attempt to resolve the case through mediation, OFCCP filed a Second Amended Complaint, and Oracle employees called our office about the case. Miller Decl. ¶5. Counsel for OFCCP notified Oracle that we were being contacted by employees, including managers, and intended to talk to them in confidence about their individual experiences related to discrimination at Oracle. *Id.* ¶6.

After obtaining agreement from Oracle regarding contact with current managers, in April 2019, OFCCP used the information Oracle had been compelled to produce as the parties had anticipated--to send a letter to former and current Oracle employees whom OFCCP contends were the victims of Oracle’s compensation discrimination. *See* Miller Decl. ¶7; OFCCP’s Mot. to Compel, p. 13 (Aug. 18, 2017); Order re OFCCP’s Mot. to Compel (Sept. 11, 2017). Specifically, OFCCP sent the letter to current and former non-manager individual contributors and managers for whom it had contact information (workers employed at Oracle’s headquarters before January 2017) who were female employees in the Product Development, Support, or Information Technology job functions or Asian or Black employees in the Product Development job function. Miller Decl. ¶¶ 4, 7. More than two-thirds of the workers on the contact list were individual contributors (non-managers). *Id.* ¶7. OFCCP did not send the letter to anyone not in the protected class. *Id.*

The letter provided members of the protected class with basic information about the litigation and invited them to contact the Department of Labor if they had questions or

contact information to OFCCP in 2017 pursuant to Judge Larsen’s order), Oracle declines to do so.”)

information about the pending litigation. The purpose of the invitation to contact the Department was to learn about individuals' experiences with Oracle's employment practices, and their experiences of discrimination while working with Oracle. Miller Decl. ¶ 7. OFCCP was not seeking to obtain information that would bind Oracle as to its employment practices. *Id.* The letter included the statement, "We want to assure you that you have not been accused of any wrongdoing." *Id.*

OFCCP did not send the letter to managers in the relevant job functions who were not members of the protected class for whom OFCCP seeks relief (for example, White males in the Product Development job function). Miller Decl. ¶7. OFCCP did not send the letter to managers in the relevant job functions who did not work at Oracle's headquarters (even if they managed and made salary recommendations for members of the protected class who worked at Oracle's headquarters). *Id.* ¶¶ 4, 7. OFCCP did not send letters to Oracle's managers of Oracle's Human Resources job function, including managers in charge of OFCCP compliance, Oracle's Global Compensation Group, Oracle's U.S. Compensation Group, or Oracle's H.R. Business Partners.⁴ *Id.* ¶7. OFCCP did not send letters to Oracle's Executive Vice Presidents (even EVPs in charge of the Product Development, Support, and Information Technology job functions), Senior

⁴ Managers and executives in Oracle's Human Resources and Oracle's top executives make key decisions impacting employees' compensation and adjustments to compensation at Oracle. For example, Phil Jenish, a VP of Compensation (in Oracle's Human Resources job function), sets the budget for salary increases, which is approved by Safra Catz, Mark Hurd, and Larry Ellison. Miller Decl. ¶8, Ex. B, at 13:11-14:18, 76:5-77:4. No salary increases or adjustments can be made without that budget. Recommendations of salary increases by lower level managers are limited by the budgets allotted to them from above, and must be approved by Human Resources, as well as the ultimate business head—Safra Catz, Larry Ellison, or Mark Hurd—before they can be communicated to the person receiving the increase. *Id.* ¶8, Ex. B, at 78:1-85:17.

Executive Vice Presidents, President, Officers, CEOs Safra Catz or Mark Hurd, Board members, or Larry Ellison, who is currently Oracle’s Chief Technology Officer. *Id.* ¶¶ 4, 7.

Oracle propounded a request for admission (“RFA”) that did not exactly track the statement OFCCP included in its letter (in addition to covering entire swaths of managers who did not receive OFCCP’s letter): “Admit that PLAINTIFF does not accuse *any ORACLE manager* of any wrongdoing *with respect to the claims asserted against ORACLE in the Second Amended Complaint.*” (emphasis added). OFCCP objected to the terms Oracle added, and OFCCP admitted the RFAs in part, and denied them in part.

III. ARGUMENT

The rules provide that “[w]hen good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest.” 29 C.F.R. § 18.63(a)(4); FRCP 36(a)(4). Qualification is proper where a request for admission (RFA), “standing alone and out of context of the whole truth[,] conveys unwarranted and unfair inferences.” *Sanchez Y Martin, S.A. De C.V. v. Dos Amigos, Inc.*, 2018 WL 3020192, at *3 (S.D. Cal. 2018); *Diedrich v. Dep’t of Army*, 132 FRD 614, 619 (S.D.N.Y. 1990). “The grounds for objecting to a request must be stated.” 29 C.F.R. § 18.63(a)(5); FRCP 36(a)(5).

OFCCP’s responses fulfill these requirements. Oracle took OFCCP’s April 2019 letter assuring potential witnesses “you have not been accused of any wrongdoing; and we will keep your identity confidential,” and seeks to expand this statement into an umbrella admission that OFCCP is not “accus[ing] *any ORACLE manager* of any wrongdoing *with respect to the claims asserted against ORACLE . . .*” See 5/24/19 Bremer Decl., Ex. 8 (OFCCP’s April 2019 letter) (emphasis added). OFCCP’s objection and qualification were proper because Oracle took the

statement out of context, and sought to leverage it into an admission that OFCCP never intended and is much broader than the statement made.

First, Oracle refused to define its RFAs, stating only that “accuse” and “wrongdoing” are “intended to have the same meaning as OFCCP intended.” *See* Decl. of Warrington Parker (“Parker Decl.”), Ex. 3.⁵ Since OFCCP intended “you have not been accused of any wrongdoing” to mean that OFCCP was not bringing individual claims against Oracle’s employees, OFCCP’s response to the RFAs, which acknowledged this definition, was entirely appropriate. Miller Decl. ¶7.

Second, even if the phrase of “you have not been accused of any wrongdoing” is interpreted to mean something more than the bringing a lawsuit against individuals, as OFCCP intended, the phrase still needs to be interpreted in light of the context and purpose of the letter. Consistent with OFCCP’s mission of educating workers about their rights and holding contractors responsible for their obligations to take affirmative action and not discriminate on the basis of sex or race, the letter served this dual purpose. *See* <https://www.dol.gov/ofccp/aboutof.html>. It provided basic information about the case to the female, Asian, and Black employees for whom OFCCP sought relief, and it invited them to ask questions or provide information about their experiences of discrimination—information that the Department of Labor routinely relies upon in enforcement actions. Miller Decl. ¶¶ 3, 7. This context—seeking information about the individual experiences of Oracle’s women and minorities—is critical to interpreting the limited meaning of “We are not accusing you of any wrongdoing.” Over two-thirds of the letters were sent to individual contributors at Oracle, and

⁵ The Parker Declaration was filed by Oracle on June 17, 2019, in support of Oracle’s Motion to Compel Further Responses to Requests for Admission, Set One.

less than a third went to managers, and then only to those managers *who were also part of the protected class*. *Id.* ¶7. The letter explained to the protected class members that OFCCP’s focus in its interactions with them would be on their prior experiences of discrimination, not what they did (including talking to the government, which OFCCP understood Oracle had discouraged).⁶ With respect to the managers who received the letter, it assured them that OFCCP was not seeking information about actions they had taken that could be used against Oracle. *Id.* ¶7. This was consistent with OFCCP’s discussions with Oracle in advance of sending the letter that OFCCP would not seek information from managers that it would then seek to use as an admission against Oracle.⁷ *Id.* ¶6, Ex. A. Thus, even if “you have not been accused of any wrongdoing” were interpreted more broadly than OFCCP intended, it was still limited to the context of seeking information from members of the protected class that would not be imputed to Oracle. It would not be appropriate to re-interpret this language to mean that information OFCCP obtains outside of responses to the letter seeking information about individual experiences of discrimination cannot be used against Oracle “with respect to the claims” in this case.⁸ Oracle’s RFAs broaden the meaning from what OFCCP intended to convey to the members of the protected class to whom OFCCP sent its letter.

⁶ OFCCP is also cognizant of the fact that it is a common experience of victims of gender and race discrimination to feel responsible for the discrimination they suffered. The letter also provided assurances that they were not to blame.

⁷ OFCCP certainly did not intend to use the letter to trick Oracle’s managers into providing information to OFCCP that it would impute to Oracle – which OFCCP had already agreed not to do. And, this letter obviously would have been different if it had been directed to managers (such as former managers) who were not in the protected class seeking information that could be used against Oracle.

⁸ OFCCP’s case rests largely on statistical evidence, from which intentional discrimination can be inferred. Since Oracle claims that this data “reflect the evaluative processes and actions Oracle undertakes to ensure fair and equitable decision-making and the justifications for the

Third, Oracle’s addition of “any Oracle manager” render the RFAs significantly broader than the line in OFCCP’s letter, as OFCCP advised Oracle during the meet and confer. *See* Decl. of Erin Connell (“Connell Decl.”), Ex. H at 6 – 7 (letter from OFCCP to Oracle).⁹ OFCCP’s letter was not directed solely to Oracle’s managers, though *some* managers received it.¹⁰ Miller Decl. ¶7. Certainly, not *all* Oracle managers received OFCCP’s letter.¹¹ *Id.* ¶7. And, in fact, key managers in Oracle’s Human Resources job function and executives that OFCCP contends are responsible for the intentional pay discrimination did not receive the letter. *See, supra*, at 4–6, p.6, n.4. For example, as stated in OFCCP’s motion to compel Oracle’s compensation analyses, OFCCP also can support a finding of intentional discrimination with evidence showing that Oracle’s Director of Diversity Compliance (in Oracle’s Human Resources job function), analyzed and detected pay disparities for female, Asian, and Black employees, but she and the executives to whom she reported took no steps to remedy the pay disparities revealed by such

aforementioned compensation and hiring decisions,” by extension Oracle could argue that OFCCP cannot even rely on the data it produced to prove its discrimination claims. *See* Response to RFP No. 150, Bremer Decl. in support of motion to compel compensation analyses (filed June 19, 2019), Ex. 22 at pp. 42–44. Such a result would improperly broaden OFCCP’s statement to protected class members well beyond its intended context.

⁹ The Connell Declaration was filed by Oracle on May 23, 2019, in support of Oracle’s Reply In Support of Oracle’s Motion to Compel Documents and Further Interrogatory Responses.

¹⁰ More than two-thirds of the individuals to whom OFCCP sent the letter were individual contributors (non-managers). Miller Decl. ¶ 7.

¹¹ OFCCP did not send the letter to centralized decision-makers who determine whether and how much to pay the employees in the Product Development, Information Technology, and Support job functions, including managers in Oracle’s Humans Resources group, which determines the budget, works with managers in making compensation recommendations, approves pay, and handles complaints about compensation. Nor did OFCCP send the letters to the heads of the Product Development, Support, and Information Technology lines of business or high level Oracle executives, who make ultimate decisions impacting compensation, including whether to correct disparities in compensation.

analyses.¹² Accordingly, OFCCP properly denies that it is not accusing “any Oracle manager of any wrongdoing.”

Since Oracle changed OFCCP’s statement in critical ways that broadened its application in a manner that OFCCP never intended, good faith required OFCCP to object and qualify OFCCP’s responses to Oracle’s RFAs. Otherwise, a “flat-out admission or denial” “would likely lead to confusion” and improperly “infer certain conclusions.” *ExxonMobil Oil Corp. v. S. Cal. Edison Co.*, 2013 WL 12166331, at *2 (C.D. Cal. 2013) (finding RFAs properly qualified to avoid confusion).

The three cases that Oracle cites reveal the frivolity and unorthodoxy of Oracle’s motion. None of them involve ordering a responding party to withdraw its objections, as Oracle is requesting here. Rather, in *Sanchez*, the court permitted the responding party to reassert them. *Sanchez*, 2018 WL 3020192 at *4. These cases also explain that “an important purpose” of RFAs is to “narrow the scope of disputed issues and eliminate the necessity of proving undisputed facts.” *Thalheim v. Eberheim*, 124 F.R.D. 34, 35 (D. Conn. 1988) (citations omitted). Accordingly, “the phraseology of requests” is crucial and, “with respect to requests, “facts

¹² As described further in OFCCP’s motion to compel Oracle’s compensation analyses, Safra Catz, Oracle’s President (and now co-CEO) appointed Ms. Holman-Harries (as its Director of Diversity Compliance, Human Resources job function) to “monitor[] all Equal Employment Opportunity activities,” and “implement[]” its Affirmative Action Plan, and “analyz[] the results of employment actions on a regular basis to determine their impact on Oracle’s AA/EEO objectives,” including “performance in . . . compensation.” Decl. of Laura C. Bremer in Support of OFCCP’s Mot. to Compel Oracle’s Compensation Analyses, ¶ 4, Ex. 3, pp. 5 and 11. Oracle’s failure to correct disparities found would run afoul of its affirmative action obligations pursuant to its government contracts and OFCCP regulations and constitute evidence of intentional discrimination. *Gonzales v. Police Dep’t, City of San Jose, Cal.*, 901 F.2d 758, 761 (9th Cir.1990) (citing cases) (“[E]vidence that the employer violated its own affirmative action plan may be relevant to the question of discriminatory intent”).

should be stated singly.’” *Id.* The RFAs discussed in these cases illustrate singly stated facts, such as where a boat was moored before a storm, *id.* at 36, whether a document is genuine, *Sanchez*, 2018 WL 3020192 at *2, or whether the parties had communicated about payment. *Havenfield Corp. v. H & R Block, Inc.*, 67 F.R.D. 93, 96–97 (W.D. Mo. 1973). In *Thalheim*, after the requesting party demonstrated that the responding party’s responses were “cute” and avoided providing what it “easily could have provided”, such as whether a boat was floating, the requesting party was awarded attorney’s fees. 124 F.R.D. at 38 – 39.

These examples stand in stark contrast to Oracle’s all-encompassing RFAs seeking an admission that OFCCP is not accusing **any** manager of any wrongdoing in any way related to the claims in the complaint. Oracle is not attempting to narrow the scope of any disputed facts, nor is Oracle asking OFCCP about any facts that it can later prove or disprove. In seeking to catch OFCCP in a “gotcha” moment, Oracle drastically expands the reach of OFCCP’s original statement, taking it out of the context of the audience to whom it was sent and its purpose, apparently seeking an inference from OFCCP’s statement that would absolve Oracle decision-makers who never received the letter of any wrongdoing that could be used against Oracle, including its executives and managers in its Human Resources functions who made decisions about the compensation of the Oracle employees for whom OFCCP seeks relief in this action. Oracle cannot compel the outcome it seeks.

OFCCP’s responses to Oracle’s RFAs were entirely appropriate. The “requesting party should not state ‘half of fact’ or ‘half truths’ which require the answering party to qualify responses,” as Oracle has done here. *Havenfield Corp.*, 67 F.R.D. at 96–97. In asking this Court to order OFCCP to admit or deny without any objection and explanation, Oracle is abusing the RFA process and this Court’s time to coerce a misleading admission. There could be no proper

use for a misleading admission in terms of narrowing the scope of disputed facts or chilling potential witnesses.

IV. CONCLUSION

OFCCP's objections are justified to avoid confusion and unwarranted inferences, and its flat denial except as admitted provides a straightforward response to Oracle's RFAs. Oracle is wasting this Court's resources with this motion to compel and it should be denied.

DATED: July 1, 2019

Respectfully submitted,

KATE O'SCANNLAIN
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

JEREMIAH E. MILLER
Counsel for Civil Rights



LAURA C. BREMER
Senior Trial Attorney
U.S. Department of Labor

CERTIFICATE OF SERVICE

I certify that on this 1st day of July, 2019, the foregoing PLAINTIFF'S OPPOSITION TO ORACLE AMERICA INC.'S MOTION TO COMPEL FURTHER RESPONSE TO REQUESTS FOR ADMISSION and supporting declarations were served upon the following individuals via email at the following addresses:

ERIN M. CONNELL: econnell@orrick.com
GARY R. SINISCALCO: grsiniscalco@orrick.com
JESSICA R.L. JAMES: jessica.james@orrick.com
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Attorneys for Defendant Oracle America, Inc.



U.S. Department of Labor

**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.

Case No. 2017-OFC-00006

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JUL 01 2019

Office of Administrative Law Judges
San Francisco, Ca

**DECLARATION OF JEREMIAH MILLER IN SUPPORT OF OFCCP'S OPPOSITION
TO MOTION TO COMPEL FURTHER RESPONSES TO ORACLE'S REQUESTS FOR
ADMISSION**

I, Jeremiah Miller, state and declare as follows:

1. I am Counsel for Civil Rights for the U.S. Department of Labor, Office of the Solicitor, and co-counsel for Plaintiff in this action. I submit this declaration in support of OFCCP's Reply in support of its Motion to Compel Jewett Documents. I have personal knowledge of the matter set forth in this declaration, and I could and would competently testify thereto if called upon to do so.

2. I take my ethical obligations under the relevant rules of professional conduct and court rules seriously in all matters I litigate on behalf of the Department of Labor. I do not sign my name to frivolous filings or statement I know to be untrue.

3. In preparing to litigate this matter we intended to contact workers in order to further understand Oracle's employment practices and to obtain information about how they may have been harmed by Oracle's employment practices. This is a standard practice at the

Department of Labor during litigation on behalf of the Department to enforce the laws entrusted to it.

4. In this case, we have defined the group of employees impacted by Oracle's discrimination to include employees in three job functions at its headquarters facility, from January 2013 to the present. This group of employees is comprised of both non-managers and managers. It does not include Oracle's Executive Vice Presidents (even EVPs in charge of the Product Development, Support, and Information Technology job functions), Senior Executive Vice Presidents, President, Officers, CEOs Safra Catz or Mark Hurd, Board members, or Larry Ellison, who is currently Oracle's Chief Technology Officer.

5. After the public filing of the Complaint in this matter, we received contacts from Oracle employees inquiring about the case. Those contacts increased in volume after the lodging of the Second Amended Complaint. Those contacts included individuals who were currently managers at Oracle.

6. Accordingly, on March 15, 2019, I sent an email to counsel for Oracle seeking to make counsel aware that we were being contacted by current managers and that we intended to interview them in confidence. I exchanged further emails with counsel, in which I clarified that we did not seek to obtain statements from Oracle's managers that would act as admissions of party opponents, and that we sought to learn about their individual experiences related to discrimination at Oracle. On March 15th, I also indicated that "we think it remains an open question as to Oracle's right to represent current managers or intervene in current managers' contact with us given the obvious conflict of interest between individuals affected by the discrimination we have alleged and Oracle." In response, on March 20, 2019, counsel for Oracle replied that "We disagree, however, that there remains an 'open question' regarding Oracle's right to represent current managers. Though it is not entirely clear what this broad statement is intended to mean, it is indisputable in our view that Oracle represents its current managers whose actions (and statements) may bind Oracle in this matter." I understood this statement to indicate

that counsel for Oracle believed that they represented Oracle's current managers in this matter. A true and correct copy of those email exchanges are attached to this declaration as **Exhibit A**.

7. After obtaining agreement from Oracle regarding contact with current managers, in April of 2019 I caused a letter bearing my signature to be sent to members of the protected classes for whom we had contact information. More than two-thirds of the former and current Oracle members of the affected for whom Oracle provided contact information and OFCCP used to send its letter were individual contributors (non-managers). That letter invited members of the protected class to contact the Department if they had questions or information about the pending litigation in this matter. The purpose of that letter was to learn about individuals' experiences with Oracle's employment practices, and their experiences of discrimination while working with Oracle. Consistent with our agreement, we were not seeking to obtain information that would bind Oracle as to its employment practices. I also included the statement, "We want to assure you that you have not been accused of any wrongdoing" in the letter to let recipients of the letter know that OFCCP was not bringing individual claims against them.

8. Attached hereto as Exhibit B are true and correct excerpts of the deposition of Joyce Westerdahl, taken in this case on May 30, 2019.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in Seattle, Washington on June 28, 2019.

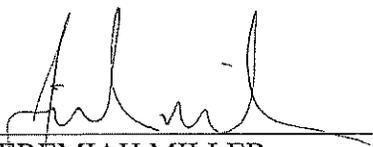

JEREMIAH MILLER
Counsel for Civil Rights

EXHIBIT A

EXHIBIT A

From: [Connell, Erin M.](#)
To: [Miller, Jeremiah - SOL](#); [Parker, Warrington](#)
Cc: [Siniscalco, Gary R.](#); [Bremer, Laura - SOL](#); [Garcia, Norman - SOL](#); [Kaddah, Jacqueline D.](#)
Subject: RE: OFCCP v. Oracle-- contact with current managers
Date: Wednesday, March 27, 2019 11:48:56 PM
Attachments: [image002.png](#)
[image006.png](#)

Hi Jeremiah,

As a follow up on the below, I'm not sure what you would raise with the court at this time. We expect OFCCP to abide by the rules of professional conduct and we expect OFCCP to abide by the rules of discovery. The proposed agreement below sounds like it would comply with the former, but your unwillingness to acknowledge OFCCP's contacts with Oracle managers would be subject to discovery sounds like OFCCP does not intend to comply with the latter. You are correct that because we don't yet have OFCCP's discovery responses, it's not clear there is a discovery dispute, but your email signals there is likely to be one (and we don't understand why you don't just articulate your position now). In any event, regarding OFCCP's contacts with Oracle managers, as long as OFCCP abides by the agreement below, it doesn't seem we would have a basis to object to such contacts, but we certainly reserve our right to take issue with such contacts if we learn OFCCP has not abided by the agreement and/or has acted inconsistently with the rules of professional conduct, which is part of the reason we believe transparency is particularly important in this circumstance. Let me know if you want to discuss further.

Thanks,
Erin

From: Connell, Erin M.
Sent: Wednesday, March 27, 2019 6:19 PM
To: 'Miller, Jeremiah - SOL' <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>
Cc: Siniscalco, Gary R. <grrsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP v. Oracle-- contact with current managers

Hi Jeremiah,
I have been traveling and in depositions all week. I fly back to San Francisco tonight and will be back in the office tomorrow and Friday. I will get back to you on the below this week and will try my best by noon tomorrow, but may need a bit more time in light of other deadlines and commitments. It will not be later than noon Friday.

Thanks,
Erin

From: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>
Sent: Wednesday, March 27, 2019 3:50 PM
To: Connell, Erin M. <econnell@orrick.com>; Parker, Warrington <wparker@orrick.com>
Cc: Siniscalco, Gary R. <grrsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: FW: OFCCP v. Oracle-- contact with current managers

Hi Erin,

Please let me know if Oracle agrees that we may have contact with current Oracle managers as described in my email from last Friday below. If Oracle does not agree, or I don't hear from you by noon on March 28, 2019, then we will have to seek relief from the court.

Thank you,
Jeremiah

Jeremiah Miller
Acting Counsel for Civil Rights
telephone: 206-757-6757; fax: 206-757-6761

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From: Miller, Jeremiah - SOL
Sent: Monday, March 25, 2019 9:53 AM
To: Connell, Erin M. <econnell@orrick.com>; Parker, Warrington <wparker@orrick.com>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP v. Oracle-- contact with current managers

Hi Erin,

Well, I can't say I totally understand your position here. To me, there are at least two separate issues here (1) our contact with current managers at Oracle and (2) what is responsive in discovery to requests related to our contact with witnesses and others with information about this matter.

The first issue is largely about the scope of the contact in light of the relevant rules of professional conduct and the rights of individuals to redress the harms they have suffered in court proceedings. The agreement, as I restated it, seems to be a reasonable balancing of those competing interests for now. To the extent that it seems I have shifted our discussion from managers who contact us to our contacts with current managers generally, that wasn't my intention. I always intended this to be a discussion about our contact with current managers, whether they reached out to us, or we reached out to them. I do think there are additional considerations favoring confidential contacts with individuals who seek to petition the government for redress, but in light of our agreement, it doesn't seem necessary to consider those here. I don't understand why you would need something more than our agreement about the scope of our communications to move forward. We certainly won't go outside what we promised in my email.

The second issue is about what is discoverable in this matter. We are, of course, preparing to respond to discovery requests you served in this matter. Our responses will fulfill our obligations

under the rules. If you disagree that we have responded as required, there is a process to resolve that disagreement. Hopefully, we will find a resolution to whatever disagreements there are, but if not, we can get a ruling from the court. I don't see any reason why the balance between Oracle's right to have counsel represent it and the right of individuals to vindicate their claims requires us to resolve discovery disputes that aren't currently in existence. You will have our responses to discovery soon, and we can attempt to resolve whatever issues you have (if any) then.

If you are no longer willing to agree that we may have contact with your current managers as described in my email below, please let me know.

Thanks,
Jeremiah

Jeremiah Miller
Acting Counsel for Civil Rights
telephone: 206-757-6757; fax: 206-757-6761

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From: Connell, Erin M. <econnell@orrick.com>
Sent: Friday, March 22, 2019 12:21 PM
To: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Connell, Erin M. <econnell@orrick.com>
Subject: RE: OFCCP v. Oracle-- contact with current managers

Hi Jeremiah,

Thanks for your email, but unfortunately it does not summarize our agreement accurately. I did not state nor suggest that the discoverability of OFCCP's communications with current Oracle managers does not impact any agreement about the parameters OFCCP's discussions with current Oracle managers – instead, the issue I suggest does not impact the agreement is the issue about Oracle's representation of Oracle managers. To clarify, by attempting to defer the discovery issue, are you suggesting that OFCCP's communications with Oracle's current managers will be shielded from discovery? If so, on what basis? If OFCCP is not willing to be transparent about its communications with current Oracle managers, then we do have an issue with OFCCP engaging in those discussions, both because there is no legitimate basis upon which to shield from the discovery (and they are responsive to pending requests), and because we are entitled to be able to verify that OFCCP is abiding by the agreement reached.

I also note that your correspondence has now shifted from Oracle's current managers contacting OFCCP to OFCCP contacting Oracle's current managers. Is OFCCP affirmatively reaching out to current Oracle managers to discuss this case with them? If

that is the case, our ability to review and know about those discussions through discovery is even more critical. As long as OFCCP is abiding by the agreement outlined below, there should be no problem with OFCCP being transparent about these communications.

Please confirm OFCCP's position on the discoverability of its communications with current Oracle managers.

Thanks,
Erin

From: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>

Sent: Friday, March 22, 2019 9:44 AM

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

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: OFCCP v. Oracle-- contact with current managers

Hi Erin,

Thanks for getting back to me about this. I'm glad we have an agreement regarding OFCCP's contact with current managers; just to confirm my understanding:

For the time being, the parties agree that OFCCP and its counsel can contact current managers for Oracle in their individual capacity about their individual experience outside the presence of counsel for Oracle. We further agree that, for those contacts with current managers that occur outside the presence of representatives for or counsel for Oracle, we will not seek to use statements by those managers as admissions of a party-opponent (i.e. Oracle) in this matter. In their contacts with current managers outside the presence of counsel for Oracle, OFCCP and its counsel will not seek information from current managers about decisions they made as managers affecting hiring or compensation in their contacts with current managers outside the presence of counsel for Oracle.

We agree that the discussion about Oracle's representation of managers, and what is responsive to discovery does not affect the substance of the agreement about OFCCP's contact with Oracle managers, and can be deferred to a later time.

Let me know if you think we need to discuss further.

Thanks,
Jeremiah

Jeremiah Miller
Acting Counsel for Civil Rights
telephone: 206-757-6757; fax: 206-757-6761

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consulting the Office of the Solicitor.

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

Sent: Wednesday, March 20, 2019 6:18 PM

To: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Parker, Warrington <wparker@orrick.com>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Connell, Erin M. <econnell@orrick.com>

Subject: RE: OFCCP v. Oracle-- contact with current managers

Hi Jeremiah,

I believe we are largely in agreement regarding OFCCP's contact with current Oracle managers at HQCA. Based on your representations that OFCCP will only speak to current managers at HQCA in their individual capacity and about their individual experiences, and that OFCCP will not seek to use any statements by these managers as admissions by Oracle in this matter (absent Oracle's express consent), Oracle will not object to these communications at this time.

Of course, these communications (as well as communications with any current or former Oracle employee) are subject to discovery and would likely be responsive at least to RFP 116 (requesting documents related to communications between OFCCP and third parties, including possible class members, relating to allegations in the SAC), Interrogatory 27 (asking OFCCP to identify each person with knowledge of facts regarding alleged discrimination), and Interrogatory 49 (asking OFCCP to describe any anecdotal evidence of discrimination). We believe these communications also are responsive to a number of additional RFPs requesting all documents relating to the specific allegations of discrimination in OFCCP's complaint including, for example, RFPs 88-93. We expect that OFCCP will produce its written communications with Oracle managers pursuant to these discovery requests and disclose responsive information from these communications in its interrogatory responses.

We disagree, however, that there remains an "open question" regarding Oracle's right to represent current managers. Though it is not entirely clear what this broad statement is intended to mean, it is indisputable in our view that Oracle represents its current managers whose actions (and statements) may bind Oracle in this matter.

We do not believe that this issue affects the substance of our agreement at this time regarding the appropriate parameters of any direct communications between OFCCP and current Oracle managers at HQCA, but please let us know if you disagree or would like to discuss further.

Thanks,
Erin

Erin M. Connell
Partner

Orrick
San Francisco 

T +1-415-773-5969
M +1-415-305-8008
econnell@orrick.com



[Employment Blog](#)

From: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>
Sent: Wednesday, March 20, 2019 3:43 PM
To: Connell, Erin M. <econnell@orrick.com>; Parker, Warrington <wparker@orrick.com>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Subject: FW: OFCCP v. Oracle-- contact with current managers

Hi Erin and Warrington,

I just left Erin a message about this matter; can you let me know Oracle's position on this? I'd like to get this wrapped up if possible.

Thanks,
Jeremiah

Jeremiah Miller
Acting Counsel for Civil Rights
telephone: 206-757-6757; fax: 206-757-6761

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From: Miller, Jeremiah - SOL
Sent: Friday, March 15, 2019 4:45 PM
To: Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Subject: RE: OFCCP v. Oracle-- contact with current managers

Hi Warrington,

Thanks for the response. I think we can probably reach an agreement here, at least for the time being.

In the context of discussions with current managers outside the presence of counsel for Oracle, we can agree that we will only talk to current managers about their individual experiences with compensation and hiring at Oracle. To the extent those individual experiences include their understanding about Oracle's practices, policies or procedures, we can agree not to treat them as admissions of a party-opponent in this matter. We can agree not to seek information about pay or hiring decisions they made as managers.

However, we think it remains an open question as to Oracle's right to represent current managers or intervene in current managers' contact with us given the obvious conflict of interest between individuals affected by the discrimination we have alleged and Oracle. Also, there may be a different set of considerations with respect to managers who affirmatively contact us. We can make this agreement for now, but we may need to revisit the issue later.

I also wanted to respond to your individual questions below:

1. We cannot categorically agree that California rules of professional conduct govern the actions of our attorneys in this case. While they certainly apply to any attorney who is a member of the bar in California, the applicability to those of us (like myself) who are not members of the bar in California is less obvious. However, we can agree that, for the purposes of contacts with current managers, we will follow California Rule 2-100.
2. We can agree that we would not seek to have the statement of any current manager treated as an admission of a party-opponent absent Oracle's explicit consent that we are permitted to speak to the current manager employee in his or her capacity as a manager outside the presence of counsel for Oracle or if the statement were obtained in the course of a properly conducted deposition.
3. We agree, for the time being, that in our contact with Oracle's current managers, outside the presence of Oracle's counsel, we will not seek any information about those managers' decisions as a manager. As stated above in number two, we can agree that current managers' opinions about Oracle's hiring and compensation practices, policies or procedures as it relates to their individual experiences, obtained outside the presence of Oracle's counsel, are not considered statements made by Oracle for the purposes of this action.

Please let me know if this is acceptable to Oracle.

Thank you,
Jeremiah

Jeremiah Miller
Acting Counsel for Civil Rights
telephone: 206-757-6757; fax: 206-757-6761

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

Sent: Thursday, March 14, 2019 4:20 PM

To: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Connell, Erin M. <econnell@orrick.com>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Subject: Re: OFCCP v. Oracle-- contact with current managers

Further to me email of today

As the Parties previously discussed during the meet and confer process leading up to OFCCP's August 18, 2017 Motion to Compel regarding employee contact information, Oracle does not believe it to be appropriate, or permissible under the applicable rules of professional conduct, for OFCCP or its attorneys to communicate with current Oracle managers *ex parte* regarding issues implicated in this case and by their role as managers.

California Rule of Professional Conduct 2-100 prohibits communication with a represented party without the consent of that party's attorney. CRC 2-100(B) (2) explains that an employee of a party company may not be contacted without consent of company counsel where "the subject of the communication is any act or omission of such person in connection with the matter which may be binding upon or imputed to the organization," or where the employee's "statement may constitute an admission on the part of the organization." While to date, OFCCP has not argued that the California Rules of Professional Conduct do not govern the conduct of its attorneys in this matter, we note that several jurisdictions include the same, or a substantially similar, provision – including both Washington State (*see* RPC 4.2, Comment 7) and the ABA Model Rules (*see* ABA Model Rule 4.2, Comment 7).

OFCCP alleges Oracle engaged in both hiring and compensation discrimination. Both the hiring and compensation processes at Oracle are decentralized and individual managers can make many of these fundamental employment-related decisions on behalf of the company. Thus, any direct communications between OFCCP and these managerial employees fall within the scope of the Rules of Professional Conduct and Oracle does not agree as a general matter that OFCCP "may communicate with Oracle's current managers in this case without counsel for Oracle's participation."

As OFCCP may be aware, Oracle was able to reach a compromise position

with counsel for plaintiffs in the *Jewett* action. There, Oracle maintains its objection to Plaintiffs having any communications with current Oracle managers regarding any decisions impacting the pay of other employees, including anything from questions about the process to questions about the specific factors used in determining pay levels for particular employees or groups or any other decisions that may impact pay. However, Oracle has raised no objection to communication between Plaintiffs' counsel and current Oracle managers to discuss the current manager's individual experiences as an employee of Oracle. The only communications Oracle has continued to object to (and thus are prohibited under the rules of professional conduct) are those related to the current manager's knowledge, process, and decisions as a manager.

Oracle is open to reaching a similar cooperative position here. However, OFCCP's prior position regarding this matter is troublesome and warrants clarification. In its motion to compel, OFCCP stated its desire for employee contact information was "so that it can speak to potential employee-witnesses and amass further anecdotal evidence that is important to bring the agency's discrimination claims convincingly to life." (Mot. to Compel at 13 (citation omitted).) By Oracle's read of OFCCP's prior stated position, it appears that OFCCP wants to contact these current employee managers *specifically* for the purpose of obtaining information about how they made hiring and pay decisions which it would in turn seek to use as an admission against Oracle, and not to learn of their views of their own personal hiring and/or compensation.

In order for us to effectively continue our meet and confer on this issue, please confirm the following points:

1. That OFCCP agrees that California Rules of Professional Conduct govern the conduct of its counsel in this matter;
2. That OFCCP agrees it would be prohibited from using any statements of any current Oracle manager employee as an admission by Oracle, or to impute conduct to Oracle absent Oracle's explicit consent that OFCCP be permitted to speak to the current manager employee in his or her capacity as a manager; and
3. That OFCCP will limit any communications with current Oracle managers so as to exclude seeking or recording any information about those managers' knowledge, processes, and/or decisions as a manager.

On Mar 14, 2019, at 12:44 PM, Parker, Warrington <wparker@orrick.com> wrote:

We do not agree that OFCCP "may communicate with Oracle's current managers in this case without counsel for Oracle's participation." Your proposed agreement suggests OFCCP may have ex parte communications with any Oracle manager on any topic, including topics that could bind the company. Please cite the legal authority you believe authorizes you to do so. We are looking into this issue as well and will circle back shortly with a more detailed response.

From: Miller, Jeremiah - SOL [<mailto:Miller.Jeremiah@dol.gov>]

Sent: Thursday, March 14, 2019 10:14 AM

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

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Subject: OFCCP v. Oracle-- contact with current managers

Hi Erin,

As this case progresses, we are being contacted by current managers at Oracle whom we believe to be class members covered by our action. We believe we should be able to interview them in confidence about matters related to the Second Amended Complaint, outside the presence of counsel for Oracle. In the interest of transparency, efficiency, and avoiding future disputes, we are seeking your agreement that we may communicate with Oracle's current managers in this case without counsel for Oracle's participation. Please let me know if you agree, or if you would like to discuss this issue further.

Thanks,
Jeremiah

Jeremiah Miller
Acting 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 B

EXHIBIT B

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UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

OFFICE OF FEDERAL CONTRACT)	OALJ Case No.
COMPLIANCE PROGRAMS, UNITED)	2017-OFC-00006
STATES DEPARTMENT OF LABOR,)	
)	OFCCP No.
Plaintiff,)	R00192699
)	
vs.)	
)	
ORACLE AMERICA, INC.,)	
)	
Defendant.)	
)	

VIDEOTAPED DEPOSITION OF JOYCE WESTERDAHL

May 30, 2019

Orange, California

Reported by:
Michael McMorran
CSR No. 13735
JOB No. 190530RCR

09:08 1 trying to see my direct reports and what they do.
2 Oh, systems. We run internal IT systems with our
3 own software, and we run all of those
4 implementations and maintain those systems for --
09:09 5 for the HCM software and the recruiting software.

6 Q Okay. Is there anything that you don't do
7 at Oracle?

8 A Well, I actually do help sell. I was going
9 to say I don't sell anything, but I do sell our HR
09:09 10 product, yeah.

11 Q I was just kidding. Sorry. Would you say
12 you're the top human resources person at Oracle?

13 A I am.

14 Q Okay. And who do you report to?

09:09 15 A Safra Catz.

16 Q Okay. And Safra reports to?

17 A The board. She's the CEO.

18 Q The board?

19 A She's a co-CEO at Oracle.

09:09 20 Q Okay. And what about Mr. Ellison?

21 A Mr. Ellison is -- I would -- he's our chief
22 technology officer at this point.

23 Q Okay. So she doesn't necessarily report to
24 him?

09:10 25 A No.

09:10 1 Q Okay. And that's your only -- that's the
2 only person you report to is Ms. Safra Catz?

3 A Correct.

4 Q Okay. This could be a long list, but who
09:10 5 reports to you or your reports?

6 A Okay, Elizabeth Snyder, Jonn Nolitt --

7 MR. SHWARTS: Why don't you do it this way?
8 It will be easier. Why don't you do it, give the
9 name, give the position. That way it will help you
09:10 10 remember all of them. He's going to ask anyways.

11 THE WITNESS: All right. Okay.

12 Elizabeth Snyder, and that's Oracle Academy,
13 Foundation, the high school, data privacy, and
14 international immigration.

09:10 15 Peter Shott, global benefits and M&A,
16 activity on the onboarding side.

17 Phil Jenish. He is executive compensation
18 and Americas' compensation.

19 Vickie Thrasher runs all kinds of programs
09:11 20 from all of our diversity programs to our affinity
21 groups, training, communications, all that fun
22 stuff.

23 Vance Kearney who runs EMEA, HR.

24 Alison Sibree who runs Asia PAC Japan HR.

09:11 25 And we own another company called OFSS. That's

10:21 1 the record is clear.

2 THE WITNESS: Yeah. No, and I don't deliver
3 the training either. Yeah. No and no.

4 BY MR. SONG:

10:21 5 Q Okay. And then can we talk about salary
6 increases?

7 A Sure.

8 Q Is there a process for that or --

9 A Yes.

10:21 10 Q Okay. And can you explain the process,
11 please?

12 A For -- we call it "focal." So it starts
13 with a focal budget being set by country, and Phil's
14 team does that work.

10:22 15 Q Okay.

16 A And then we roll the budget out by country,
17 around the world, and we start communications that
18 focal -- the focal process is coming.

19 Q And when approximately does it start?

10:22 20 A It's just wrapping up now. So we try to
21 typically do it -- we close our year May 31st. We
22 try to do our stock, our bonus, and our focal at
23 this time and wrap up this week. It doesn't always
24 happen that way.

10:22 25 Q And then can we talk about the budget a

10:22 1 little -- the focal budget? How is the focal budget
2 developed?

3 A Like I said, it's based on CPI and in
4 country and there is some market work that goes on,
10:23 5 what our competitors are doing. And there's
6 probably some other factors. Phil would be the best
7 person to ask what he actually does on that.

8 Q Okay. And he's doing -- so is there -- is
9 there one focal budget per country? It's not by
10:23 10 department?

11 A It's by country.

12 Q By country. Okay. And Phil's group does
13 all of them?

14 A Correct, including the inflationary
10:23 15 increases.

16 Q And once Phil comes up with the -- or Phil's
17 group, I'm sorry -- comes up with the focal budget,
18 what's the approval process for the budget?

19 A It goes to Safra and Mark and Larry for
10:23 20 approval.

21 Q Okay. So once Phil's group develops these
22 focal budgets by country, it just goes to Safra,
23 Mark, and Larry. And if they approve, that's it?

24 A Yes.

10:24 25 Q Okay. And then I'm sorry. I cut you off.

10:24 1 So after the focal budget is approved by
2 country, then how does the process play out?
3 A It's then loaded in our product, HCM product
4 and the product within HCM is called
10:24 5 Compensation Workbench. And it's distributed to
6 every manager through a technical system.
7 Q Okay. And can you explain, like, what's --
8 well, what is Compensation Workbench first of all?
9 A It's an application.
10:25 10 Q Okay. That helps -- just helps with
11 determining salary increases?
12 A No. It processes the actual event.
13 Q The increase?
14 A It -- it manages the event, the focal event.
10:25 15 Q Okay. And sorry for my ignorance --
16 A No, no.
17 Q -- is that included in Fusion? Is that part
18 of Fusion?
19 A Yes. It's a part of the HCM. Because we
10:25 20 agreed we were going to call it "HCM," not Fusion.
21 So I'm pointing to your notepad right there. It's
22 part of the HCM suite.
23 Q Okay. Okay. So if the -- so how does
24 the -- so you have a focal budget for each country.
10:25 25 Let's take the U.S.

10:25 1 So then how does that get divided up between
2 all the employees?

3 MR. SHWARTS: Objection. Overbroad.

4 You may answer.

10:26 5 THE WITNESS: Yeah. It's a -- so Phil and
6 his team put it in this tool, and it is distributed.
7 The tool calculates your world. Let's just say
8 "you."

9 BY MR. SONG:

10:26 10 Q Okay.

11 A And you have 300 employees, and they're in
12 20 countries. And this tool will calculate your
13 budgets by employees by countries and put it in this
14 tool for you to distribute your budget.

10:26 15 Q Okay. So are the salary increases
16 determined before the focal budget is approved?

17 THE WITNESS: Can you read that back?

18 (Record read.)

19 THE WITNESS: No.

10:27 20 BY MR. SONG:

21 Q Okay. So when are employees salary
22 increases determined?

23 A Once -- once you -- you're in your
24 Comp Workbench, fancy spreadsheet, kind of think of
10:27 25 it that way --

10:27 1 Q Okay.

2 A -- you determine what you're going to give
3 your people in all -- you have 30 countries we
4 talked about.

10:27 5 Q Okay.

6 A And you hit "Approved."

7 Q Okay.

8 A It then goes up for further approvals.

9 Q Okay.

10:27 10 A And then once it's approved, it comes back
11 to you and says your spreadsheet's approved,
12 basically. You may talk to your employees.

13 Q I see. Now, in developing the focal budget,
14 do individual managers get to recommend that
10:27 15 their -- let's say they get to -- they have one
16 really good employee or maybe five or whatever, do
17 they get to recommend that these five get raises
18 before the focal budget is approved?

19 A They would do it after the budgets are
10:28 20 actually approved.

21 Q Okay. After?

22 A Yeah.

23 Q Okay. So manager -- so once the -- so the
24 focal budget is approved and the managers are told,
10:28 25 "This is how much money you have for increases"; is

10:28 1 that correct?

2 A Correct.

3 Q Oh, okay. And so then it's at that point
4 that the manager decides how much increase to give
10:28 5 each employee, if any, correct?

6 A Correct.

7 Q Okay. And is it done by the direct manager
8 of the employee, like the direct supervisor of the
9 employee?

10:28 10 A Yes.

11 Q Okay. So, for example, you would decide on
12 your reports' increases?

13 A Correct.

14 Q Okay. And if we go to let's say an M-1,
10:28 15 then does it go all the way up to the top? Or how
16 far does the review or approval process go?

17 MR. SHWARTS: Objection. Vague.

18 BY MR. SONG:

19 Q Okay. All right --

10:29 20 A I don't even know how to answer that --

21 MR. SHWARTS: I think I know where you were
22 going, but I don't think you asked it the way you
23 wanted to. Try again.

24 BY MR. SONG:

10:29 25 Q Okay. Let's say an M -- we'll take as an

10:29 1 example, an M-1 -- how many employees would they
2 supervise? Maybe just a few?

3 A It -- they -- it's a varied answer.

4 Q Okay.

10:29 5 A Yeah.

6 Q It could be --

7 A It could be --

8 Q Okay.

9 A -- 17. It could be a lot more.

10:29 10 Q Okay. Let's take, for example, the M-1
11 because I'm thinking that's the lowest management
12 level; is that correct?

13 A Yes.

14 Q So they decide, "I'm going to give salary
10:29 15 increases to, you know, five of my employees," just
16 for example, is there any oversight or review of
17 that manager's decision?

18 A Yes.

19 Q Okay. So how many levels?

10:29 20 A For an M-1?

21 Q Mmm-hmm.

22 A Well, in reality, it's probably only -- I
23 don't know. I mean, I don't -- I don't know if
24 everyone looks at it. I certainly don't look at all
10:30 25 of them.

10:30 1 Q Okay.

2 A But the HR people look at all of them.

3 Q Okay. So you don't know how many levels of

4 review. But somebody from your department will look

10:30 5 at the decisions that the managers make for salary

6 increases?

7 A Yes.

8 Q Okay. And you don't need to approve every

9 salary increase, you directly?

10:30 10 A Technically I do. Like, if we're talking

11 about my organization. But my comp person has kind

12 of gone through and given me summaries, and she --

13 my comp person is Kate.

14 Q Okay.

10:31 15 A See, I can answer that question.

16 Q Thank you.

17 A So -- but it doesn't happen -- different

18 managers are different about how deep or how

19 detailed they look. Some are very detailed. Some

10:31 20 of them have full discussions with people.

21 Q Okay. So you personally don't need to

22 review every salary increase but your department

23 does?

24 A No.

10:31 25 Q No? Okay.

10:31 1 A No. I think we're getting hung up on
2 approval levels.
3 Q Okay.
4 A So the approvals, there is -- the approvals
10:31 5 do go all the way up --
6 Q Okay.
7 A -- to Safra.
8 Q To Safra?
9 A In Safra's world.
10:31 10 Q Okay. Safra's world. Okay.
11 MR. SONG: Oh, five minutes to end of media.
12 MR. SHWARTS: That's where we'll take a
13 break.
14 THE WITNESS: I forgot what I was going to
10:31 15 say.
16 MR. SHWARTS: You were -- well, what you
17 said was in Safra's world, the approvals go all the
18 way up to her in her world. That's what you said.
19 THE WITNESS: But I think we're getting hung
10:32 20 up on -- I'm answering -- I'm answering to our
21 approval matrix, and you're looking to see who
22 approves.
23 And technically they're approved in every
24 organization up to either Larry, Mark, or Safra --
25 / / /

10:32 1 BY MR. SONG:

2 Q Okay.

3 A You're -- I think --

4 THE WITNESS: I'm not supposed to tell
10:32 5 him -- I think he's trying to say what oversight.

6 I don't know what you're trying to say.

7 BY MR. SONG:

8 Q Well -- and how much oversight -- so -- but
9 I think you're trying to say that there's not
10:32 10 necessarily five or six levels --

11 A There can be.

12 Q There can be, but it's not always. But
13 everyone needs to be approved by either Mark or --

14 A Overall.

10:32 15 Q -- or Larry or Safra?

16 A The entire -- that entire budget, the final
17 sign-off is the head of the business leader.

18 Q Okay. The business leader. Okay.

19 MR. SONG: Okay. All right. Maybe we'll
10:33 20 take a break here, then, since we're almost out of
21 tape.

22 THE WITNESS: Okay.

23 MR. SHWARTS: Thank you.

24 THE VIDEOGRAPHER: This is end of
10:33 25 Media No. 1 of video deposition of Joyce Westerdahl.

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DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, Michael McMorran, hereby certify:

I am a duly qualified Certified Shorthand Reporter in the state of California, holder of Certificate Number CSR 13735 issued by the Court Reporters Board of California and which is in full force and effect. (Fed. R. Civ. P. 28(a)).

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b), and prior to being examined, the witness was first duly sworn by me. (Fed. R. Civ. P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. (Fed. R. Civ. P. 28).

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a

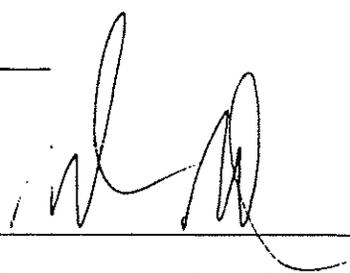
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true record of the testimony given by the witness.
(Fed. R. Civ. P. 30(f)(1)).

Before completion of the deposition, review
of the transcript [X] was [] was not requested.
If requested, any changes made by the deponent (and
provided to the reporter) during the period allowed,
are appended hereto. (Fed. R. Civ. P. 30(e)).

Dated: 6/3/2019



MICHAEL G. MCMORRAN, CSR No. 13735

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

RECEIVED

JUL 01 2019

Office of Administrative Law Judges
San Francisco, Ca

**DECLARATION OF SUSAN SELETSKY IN SUPPORT OF
OFCCP'S OPPOSITION TO ORACLE AMERICA INC.'S MOTION TO COMPEL
OFCCP'S FURTHER RESPONSE TO ORACLE AMERICA, INC.'S REQUESTS FOR
ADMISSIONS, SET ONE**

I, Susan Seletsky, state and declare as follows:

1. I am a Wage and Hour Counsel in the Regional Office of the Solicitor ("RSOL"), United States Department of Labor, for the Western Region, assigned to the Los Angeles office. I oversee the development of cases investigated by the Wage and Hour Division ("WHD" or "Agency") for the Western Region, supervise the litigation of cases that have been referred to the RSOL, and advise the WHD on legal issues and complex cases as needed. Many of the cases on which I work closely with the Agency involve violations of the Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq. ("FLSA") and other wage statutes. I have personal knowledge of the matters set forth in this declaration and I could and would competently testify thereto if called upon to do so.

2. Effective enforcement of the FLSA requires workers to be aware of their employers' obligations under the law, as well as the workers' rights to file complaints regarding unfair wage practices without fear of retribution. Consequently, a significant element of the Agency's cases involves educating and informing workers about the law in a variety of ways,

both during and after investigations. Employers are required, under federal regulations, to post information about the FLSA in the workplace, and one component of an investigation is to assure that such postings have been made. WHD Investigators provide workers with fact sheets and other publications issued by the Agency or information about the specific requirements for wage compliance in their workplace. One example of such communication with workers is through a “16(b) letter”. WHD issues this letter to impacted workers when the Agency has investigated a case and found violations of the FLSA but, in exercising its discretion, does not refer the matter to the Solicitor’s Office for litigation. The letter advises the workers employed by the investigated employer of the FLSA violations WHD found, and may include the Agency’s calculations of wages owed.

3. A true and correct copy of a 16(b) letter that was sent to a worker that has been redacted to remove information disclosing the identity of the recipient is attached hereto as **Exhibit 1**.

4. RSOL assists WHD’s enforcement efforts by securing court orders requiring affirmative measures by an employer to educate its work force on wage and hour provisions and workers’ rights to be free from coercion and retaliation. RSOL’S standard practice requires the employer to post and distribute a “Notice of Rights” in every Consent Judgment filed in resolution of litigation filed in the U.S. district courts. The Notice generally identifies the specific violations found in the investigation, provides information about the correct wage practices, and includes telephone number(s) to report violations.

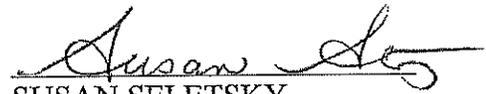
5. A true and correct copy of a sample Notice of Rights is attached hereto as **Exhibit 2**.

6. The Solicitor’s office has also sought, and secured, Temporary Restraining Orders and/or Preliminary Injunctions designed specifically to educate the workforce as well as the employer, on the requirements of the FLSA. *Perez v. Fatima/Zahra, Inc. dba Lake Alhambra*, was a case against an employer who operated a care home for the elderly where workers were coerced into working long hours for substandard wages. The U.S. District Court, Northern

District of California, entered a Preliminary Injunction in this matter requiring, *inter alia*, one of the employers, a named Defendant, to read aloud to her workers, in the presence of WHD investigators, a notice that the Solicitor's Office had drafted, to inform workers of their rights, including their right to file complaints with the Department of Labor.

7. A true and correct copy of the Preliminary Injunction entered in the *Lake Alhambra* case is attached hereto as **Exhibit 3**.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in Los Angeles, California on July 1, 2019.


SUSAN SELETSKY

Wage and Hour Counsel
Office of the Solicitor
U.S. Department of Labor

EXHIBIT 1

United States Department of Labor

Wage and Hour Division
230 North 1st Avenue, #402
Phoenix, Arizona 85003



September 11, 2015

[REDACTED]

Subject: [REDACTED]

Dear [REDACTED]:

A recent investigation of the above named firm was conducted under the Fair Labor Standards Act (FLSA) by the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL). The FLSA requires covered employers to pay employees no less than the federal minimum wage and overtime premium pay (at time and one-half the regular rate of pay) for all hours worked in excess of 40 hours in a single workweek. The FLSA contains numerous exemptions from these basic standards.

The investigation indicates that you might not have been paid as required by the law for the period March 2, 2014 to December 21 2014. According to our calculations, you are owed \$11,393.80 in unpaid overtime compensation. Specifically, the company failed to pay the additional premium pay for hours worked over 40 in a workweek. The WHD contacted the firm and explained the FLSA requirements. The firm was requested to pay any back wages owed but it did not agree to make additional payments to you. Under the law, the WHD has the authority to supervise voluntary payment of back wages but cannot itself order such payment. The DOL is authorized to file lawsuits against employers and request that a court order the payment of back wages; however, after reviewing all of the circumstances in this case, it has been decided that it is not suitable for litigation by the DOL. Consequently, no further action will be taken to secure payment of additional money possibly owed to you.

The fact that DOL will take no further action on your behalf does not affect your private right under the FLSA to bring an independent suit to recover any back wages due. The Congress, recognizing that all complaints may not be resolved or developed for litigation by the DOL, has included provisions in FLSA section 16(b) that give individuals the right to file lawsuits on their own behalf if they believe their rights have been violated. An employee may retain an attorney to file a lawsuit in federal or state court against the employer for back wages and an equal amount as liquidated damages plus attorney's fees and court costs. The DOL does not encourage or discourage such suits. The decision is entirely up to you. However, keep in mind that recovery of back wages under this law is subject to a statute of limitations. A copy of the Handy Reference Guide to the Fair Labor Standards Act is enclosed for your information.

If you choose to pursue a private lawsuit, you may request the following documents under the Freedom of Information Act (FOIA):

- 1) Your personal complaint documents (e.g. written statements, records of hours worked, pay stubs) you provided to the WHD;
- 2) Back wage computations/WH-55 or equivalent, pertaining to you only;
- 3) Your interview statement;
- 4) Case File Investigation Narrative report.

For additional information about 16(b) you may wish to contact Community Legal Services (CLS) located at 305 S. Second Avenue, Phoenix, Arizona 85003 or call at telephone: 1-800-852-9075. Please reference "Department of Labor "and provide a copy of this letter. In addition, you also may wish to refer to the Arizona Employment Lawyers Association (AzELA) website at www.azela.org which has a specific web page devoted to connecting 16b claimants with licensed attorneys who have represented themselves as knowledgeable and experienced in handling Wage & Hour matters for clients.

Sincerely,

Eric Murray
District Director

Enclosure: HRG

cc: file

EXHIBIT 2

1 **EXHIBIT 2**

2 **LEGAL NOTICE TO ALL EMPLOYEES**

3
4 This car wash and its owners have settled a lawsuit with the U.S. Department of
5 Labor and entered into a settlement agreement, which has been approved by a judge.
6 Under this settlement agreement, the car wash will pay the Department of Labor money
7 for former and current employees who worked at the car wash since June 23, 2013, and
8 the Department of Labor will distribute the money directly to the employees. The
9 employer may not request that you return this money to them.
10

11
12 Your employer must pay you at least the minimum wage for all hours worked.
13 This includes time that you are required to be at the worksite and time spent performing
14 work duties. In addition, the car wash must pay you overtime for all the hours worked
15 over 40 in a workweek at a rate of 1.5 times your regular wage rate.
16

17
18 All employees who are on the premises during business hours and are available to
19 work must be punched in on the time clock and must be paid for this time. Meal breaks
20 of at least 30 minutes during which the employee is completely free from work are
21 exempted from this requirement. All employees who perform any work at the car wash
22 before it opens or after it closes, such as preparing work materials and cleaning the car
23 wash, must be punched in on the time clock and paid for this time.
24

25
26 You have the right to speak with the Department of Labor and to assert your right
27 to be paid for all hours worked. Your employer, supervisor, or manager may not fire,
28

1 threaten to fire, retaliate, or discriminate against employees (including you) in any way
2 because the employee cooperated with the Department of Labor or asserted their rights
3 to be paid minimum wage, overtime, and/or provide information to the Department of
4 Labor.
5

6 **If you think you are not being paid in accordance with the law, or if anybody**
7 **associated with your employer retaliates against employees or tells them to return**
8 **their wages, please call the U.S. Department of Labor, Wage and Hour Division, at**
9 **(714) 621-1650 and your name will be kept confidential.**
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EXHIBIT 3

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 THOMAS E. PEREZ, Secretary of
5 Labor, United States Department
6 of Labor,

6 Plaintiff,

7 v.

No. C 14-2337 CW
ORDER GRANTING
PRELIMINARY
INJUNCTION AS
MODIFIED

(Docket No. 3)

8 FATIMA/ZAHRA, INC., d/b/a LAKE
9 ALHAMBRA ASSISTED LIVING CENTER,
10 a California corporation;
11 MEHRANGIZ SARKESHIK, an
12 individual; and ABOLFAZL
13 SARKESHIK, an individual;

12 Defendants.
13 _____/

14 On May 21, 2014, Plaintiff Thomas E. Perez, Secretary of the
15 United States Department of Labor (DOL), moved for a temporary
16 restraining order (TRO) and for an order to show cause (OSC) why a
17 preliminary injunction should not be granted to enjoin Defendants
18 Fatima/Zahra, Inc., d/b/a Lake Alhambra Assisted Living Center,
19 Mehrangiz Sarkeshik, and Abolfazl Sarkeshik from interfering with
20 Plaintiff's investigation of Defendants' workplace under the Fair
21 Labor Standards Act (FLSA). The Court granted the TRO as modified
22 and set an OSC hearing. Docket No. 6. Defendants filed an
23 opposition to the OSC. On June 5, 2014, the Court held an OSC
24 hearing. Investigator Hart appeared at the hearing but Dr. and
25 Ms. Sarkeshik did not. Having considered the papers and the
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1 arguments of counsel, the Court GRANTS the requested preliminary
2 injunction, as modified.

3 BACKGROUND

4 Lake Alhambra, which is owned by Dr. Abolfazl Sarkeshik and
5 his wife Ms. Mehrangiz Sarkeshik, is a care center for patients
6 with dementia, Alzhemier's disease, and mental illness. Hart
7 Decl. ¶ 14. Ms. Sarkeshik manages the staff and sets their
8 schedules. Id.

9
10 In 2007, an investigation by the DOL established that Lake
11 Alhambra violated the overtime and record-keeping provisions of
12 the FLSA. Hart Decl. ¶ 4. These provisions require employers to
13 maintain accurate time and payroll records to guarantee that
14 employees are paid a minimum wage for all hours worked and paid
15 overtime wages when they are due. See 29 U.S.C. §§ 206, 207, 211,
16 215. As a result of the finding, Defendants agreed to come into
17 compliance with the FLSA by paying back wages, paying overtime,
18 and maintaining time and payroll records. Hart Decl. ¶ 4.

19
20 In March 2014, a confidential informant lodged a complaint
21 with the DOL that Lake Alhambra was again not paying overtime.
22 Id. ¶ 3. Investigator Edward Hart, Jr. was assigned to
23 investigate the complaint. Id. On March 19, 2014, Investigator
24 Hart went to Lake Alhambra to observe business operations, to
25 interview the employer and employees about hours worked and wages
26 paid, and to obtain documents such as payroll records. Id. ¶ 5.
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28

1 The DOL and Defendants present vastly different versions of
2 what occurred next. According to Investigator Hart, the
3 investigation occurred as follows. On that day, he was wearing
4 clothing with the Wage and Hour Division insignia with "Department
5 of Labor" and "Wage and Hour Investigator" embroidered below the
6 insignia. Id. Investigator Hart identified himself as a Wage and
7 Hour Investigator to an employee who answered the door, Maricela
8 Torres, and showed her his credentials. Id. He stated that he
9 was conducting an investigation of the premises and asked to speak
10 to the manager. Id. ¶¶ 4-5. Ms. Torres put Ms. Sarkeshik on the
11 phone, who yelled at Investigator Hart, saying, "You didn't tell
12 me you were coming" and "Leave right now!" Id. ¶ 5. Investigator
13 Hart overheard Ms. Sarkeshik telling the employee over the phone,
14 "You need to get him out of there or you will be fired!" Id. ¶ 7.
15 Ms. Sarkeshik arrived and had called the police, who arrived
16 shortly thereafter; the police refused to remove Investigator
17 Hart. Id. ¶¶ 8-9. Ms. Sarkeshik requested that Investigator Hart
18 speak to her attorney and, while he did so, he noticed Ms.
19 Sarkeshik speaking quickly and intently to her employees, who
20 seemed uncomfortable. Id. ¶ 10. Investigator Hart alleges that
21 some employees initially showed interest in speaking to him,
22 saying, "If it's not to get anyone in trouble, we'll talk." Id. ¶
23 11. However, after Ms. Sarkeshik again spoke to the employees,
24 she told Investigator Hart in front of the employees that "no one
25 wants to talk to you." Id. ¶ 12. Investigator Hart asked, "Are
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1 you sure?" and Ms. Sarkeshik responded, "Yes, and you are
2 delusional; they did not want to speak with you." Id. Ms.
3 Sarkeshik's son-in-law, who was also present, added, "You need to
4 respect their rights." Id. Nevertheless, Investigator Hart was
5 able to speak to the employees to get each of their names, but all
6 of them declined to answer any of his questions. Id. ¶ 13. One
7 employee stated she was uncomfortable talking to him, while
8 another stated that Ms. Sarkeshik told the employees that if they
9 talked to the DOL, they would not have a job. Id. ¶ 13.

11 On March 24, 2014, Investigator Hart met with Dr. Sarkeshik
12 and his attorney. Id. ¶ 14. Dr. Sarkeshik and his attorney
13 agreed they would cooperate fully with the investigation and
14 provided some documents, including some time cards and the names
15 and addresses of employees. Id. ¶ 15. Time cards created after
16 the end of October 2013 did not identify the date or pay period,
17 but only the day of the week. Id. Investigator Hart sent letters
18 to the employees at the addresses provided, but about half were
19 returned as undeliverable. Id. ¶ 16. Investigator Hart was able
20 to speak to a few employees, who told him that Ms. Sarkeshik told
21 them that if they received a letter from the DOL, they should tell
22 her and not respond to the letter. Id. ¶ 17. The employees
23 stated that many others were too scared to talk to or cooperate
24 with the DOL. Id.

27 Defendants filed declarations by Ms. Sarkeshik and Ms. Torres
28 reporting a different story. Ms. Torres stated that Investigator

1 Hart mentioned he was from the DOL and did not deny that he was
2 wearing his identifying insignia. Torres Decl. ¶ 3. However, Ms.
3 Torres said Investigator Hart did not state his name or show her
4 his credentials. Id. Ms. Torres called Ms. Sarkeshik. Id. ¶ 4.
5 Ms. Sarkeshik acknowledges that she spoke to Investigator Hart
6 over the phone before she arrived at the office, but disputes that
7 she knew who he was or why he was there. Sarkeshik Decl. ¶ 3.
8 This is contradicted by Ms. Torres, who said that she told her
9 employer someone from the DOL was at Lake Alhambra. Torres Decl.
10 ¶ 4. Ms. Sarkeshik said that all she could "remember was that he
11 spoke to me in a very short, mean, and rude manner." Id. She
12 told him she was on the way back to the office, and Investigator
13 Hart hung up the phone. Id. Ms. Sarkeshik flatly denies that she
14 yelled at Ms. Torres, stating, "At no point did I tell Maricela,
15 'You need to get him out of there or you will be fired!'" Id. ¶
16 15. Ms. Torres corroborates this point. Torres Decl. ¶ 11. Ms.
17 Sarkeshik then called Ms. Torres, who said Investigator Hart was
18 looking around the private office where only staff is permitted
19 and had started taking photos. Id. ¶ 6; Sarkeshik Decl. ¶ 5. Ms.
20 Torres alleges she told him to wait in the lobby, but he refused
21 and said, "I'm going to take what I need before I leave." Torres
22 Decl. ¶ 6. Ms. Sarkeshik asked to speak to Investigator Hart
23 again, questioned why he was taking photos of her personal items,
24 and Investigator Hart hung up again. Sarkeshik Decl. ¶ 5. Ms.
25 Torres was frightened by Investigator Hart's behavior and asked
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1 him for identification. Torres Decl. ¶ 8. In response, she
2 alleges he "threw an identification card at the desk and demanded
3 [that she] fax it to" Ms. Sarkeshik. Id. Because Ms. Torres did
4 not have access to a fax machine, she did not do so. Id.

5 Ms. Sarkeshik states that she was concerned that Investigator
6 Hart was unauthorized because the home is in an unsafe
7 neighborhood of downtown Antioch where homeless people or vagrants
8 often try to gain entry. Sarkeshik Decl. ¶ 8. Previously, a
9 homeless and mentally unstable man tried to enter the premises
10 stating that he was a CIA agent, but Defendants refused him entry.
11 Id. ¶ 7. Ms. Sarkeshik felt scared and called the police, who
12 arrived at about the same time as she did. Id. ¶ 16.

13 Investigator Hart then produced his credentials to the police, who
14 informed Ms. Sarkeshik of his position and purpose. Id.

15 Ms. Sarkeshik called her attorney, who arrived and spoke with
16 Investigator Hart. Id. ¶ 17. She alleges she cooperated fully
17 after that. Id. She denies that she ever threatened to fire
18 employees if they spoke to Investigator Hart or complied with the
19 investigation. Id. ¶ 18. She denies that she said at any point
20 that "no one wants to talk to you" or "yes, you are delusional;
21 they did not want to speak with you." Id. ¶ 19. She states she
22 is unaware that anyone received a letter from the DOL and denies
23 that she tried to take the letters from them. Id. ¶ 20.

24 Ms. Sarkeshik also denies that Defendants purposely omitted
25 the dates or pay periods from the employees' time cards. Id.

1 ¶ 21-22. She states that the omissions were inadvertent and the
2 result of purchasing a new time card machine, which has now been
3 replaced with a new machine that does stamp the day and times when
4 the employees punch in. Id.

5 Before the OSC hearing, the DOL filed supplemental evidence
6 that Defendants retaliate against their employees. On May 27,
7 2014, Investigator Hart again visited Lake Alhambra and was able
8 to speak individually with each of the five employees on duty.
9 Supplemental Hart Decl. ¶ 12. One employee, Blanca, stated
10 publicly, "Do we have to meet with you?" and that she was very
11 happy working there. Id. While Investigator Hart spoke to the
12 employees, Defendants' lawyer sat outside. Id. ¶ 14. All of the
13 workers appeared nervous to be speaking with Investigator Hart,
14 and one repeated that she worked "eight hours a day," as if
15 coached. Id. ¶ 13. Employees told Investigator Hart that
16 Defendants often reduce employees' hours or completely remove them
17 from the schedule to punish them for doing something Defendants do
18 not like, such as complaining or engaging in protected activities.
19 Id. ¶ 8. The hours on the schedule dictate the amount each
20 employee is paid. Id. ¶ 17. The employees who spoke to
21 Investigator Hart on May 27, 2014 all saw their schedule hours
22 reduced the following week, except Blanca, who made the public
23 statement that she did not want to speak to Investigator Hart.
24 Id. ¶¶ 16-17; see also Exs. C-E. For example, the schedule shows
25 that the employee who was in the room with Investigator Hart for
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1 the longest period saw her hours reduced from thirty-nine to
2 twenty-seven. Id., Ex. E.

3 The DOL also filed a number of declarations under seal of
4 employees who wished to remain anonymous. See Docket No. 11. The
5 employees corroborate that Investigator Hart acted calmly when he
6 first visited Lake Alhambra. The employees also state that Ms.
7 Sarkeshik, as well as other employees of Lake Alhambra purportedly
8 following Defendants' directions, have tried to intimidate the
9 employees and discourage them from talking to the DOL.
10

11 LEGAL STANDARD

12 To obtain either a TRO or a preliminary injunction under
13 Federal Rule of Civil Procedure 65, the moving party must
14 demonstrate "(1) a likelihood of success on the merits; (2) a
15 significant threat of irreparable injury; (3) that the balance of
16 hardships favors the applicant; and (4) whether any public
17 interest favors granting an injunction." Raich v. Ashcroft, 352
18 F.3d 1222, 1227 (9th Cir. 2003); see also Winter v. Natural Res.
19 Def. Council, Inc., 129 S. Ct. 365, 374 (2008). The Ninth Circuit
20 has recognized that an injunction could issue if "serious
21 questions going to the merits were raised and the balance of
22 hardships tips sharply in plaintiff's favor," so long as the
23 plaintiff demonstrates irreparable harm and shows that the
24 injunction is in the public interest. Alliance for the Wild
25 Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation
26 and internal quotation marks omitted). Injunctive relief is "an
27
28

1 extraordinary remedy that may only be awarded upon a clear showing
2 that the plaintiff is entitled to such relief." Winter, 555 U.S.
3 at 22.

4 DISCUSSION

5 To enforce the FLSA, Congress empowered the Secretary to
6 investigate employers for compliance with the act, including the
7 right to "enter and inspect such places and such records (and make
8 such transcriptions thereof), question such employees, and
9 investigate such facts, conditions, practices, or matters as he
10 may deem necessary or appropriate to determine whether any person
11 has violated any provision of this chapter, or which may aid in
12 the enforcement of the provisions of this chapter." 29 U.S.C.
13 § 211. The Secretary may conduct such an investigation as long as
14 there is a "reasonable ground" for doing so. CSG Workforce
15 Partners, LLC v. Watson, 512 F. App'x 830, 835 (10th Cir. 2013);
16 Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 208 (1946)
17 (administrative investigation must be reasonable). The FLSA
18 grants the Secretary these investigatory powers because the
19 statute's enforcement depends "not upon continuing detailed
20 federal supervision or inspection of payrolls, but upon
21 information and complaints received from employees seeking to
22 vindicate rights claimed to have been denied." Kasten v. Saint-
23 Gobain Performance Plastics Corp., 131 S. Ct. 1325, 1333 (2011).
24 To encourage workers to provide freely the information necessary
25 for enforcement, the FLSA further protects workers who cooperate
26
27
28

1 with the Secretary from retaliation by their employers. 29 U.S.C.
2 § 215. This anti-retaliation provision prevents "fear of economic
3 retaliation from inducing workers quietly to accept substandard
4 conditions." Kasten, 131 S. Ct. at 1333.

5 The Court finds that there is substantial evidence that,
6 during Investigator Hart's visit and afterwards, Ms. Sarkeshik
7 threatened employees that they would lose their jobs if they
8 cooperated with the investigation. Despite assurances by
9 Defendants' attorney, there is evidence that Ms. Sarkeshik
10 retaliated against employees who spoke to Investigator Hart. The
11 undisputed evidence shows that employees who did so had their
12 hours and pay reduced the following week. Accordingly, the DOL is
13 likely to succeed in establishing that Defendants engaged in
14 retaliatory activity against their employees.
15

16 Further, the DOL also demonstrates a likelihood of success on
17 the merits of its recordkeeping FLSA claims. The records must be
18 "clear and identifiable by date or pay period." 29 C.F.R.
19 § 516.1. At least some of the timecards produced by Defendants do
20 not identify the dates or pay period. Hart Decl. ¶ 15, Exs. B-C.

21 The impact of Defendants' actions, if left unchecked, is
22 severe. Irreparable harm will ensue because the DOL will not be
23 able to enforce fully the protections of the FLSA. Ms.
24 Sarkeshik's conduct appears to have chilled several employees from
25 speaking to the DOL. Should Ms. Sarkeshik's retaliation continue,
26 the DOL will not be able to gather the information necessary to
27
28

1 conduct the wage and hour investigation. Employee interviews play
2 a crucial role in establishing FLSA violations. See id. ¶ 19;
3 Kasten, 131 S. Ct. at 1333. If Defendants are able to block the
4 DOL's investigation, then Defendants' employees' rights to receive
5 fair pay and working conditions may be irreparably injured. See
6 Arcamuzi v. Cont'l Air Lines, Inc., 819 F.2d 935, 938-39 (9th Cir.
7 1987) (where "employees may be deterred from engaging in
8 legitimate conduct," retaliation for the exercise of protected
9 activity represents "possible irreparable harm far beyond economic
10 loss").

11
12 The balance of the equities and the public interest weigh in
13 the DOL's favor. The Court gives substantial weight to the fact
14 that "the secretary seeks to vindicate a public, and not a private
15 right." Perez v. Jie, 2014 WL 1320130, at *2 (W.D. Wash.)
16 (quoting Marshall v. Chala Enterprises, Inc., 645 F.2d 799, 808
17 (9th Cir. 1983)). There is a strong public interest in favor of
18 enforcement of the FLSA, which seeks to eliminate "labor
19 conditions detrimental to the maintenance of the minimum standard
20 of living" of workers. 29 U.S.C. § 202(a). On the other hand,
21 Defendants have no legitimate interest in preventing the DOL from
22 conducting a reasonable and lawful investigation.
23

24
25 At the OSC hearing, Defendants stated that they did not
26 oppose entry of a preliminary injunction, but urged that certain
27 terms be narrowly tailored. Defendants asked that the statements
28 to be read by the DOL and signed by Ms. Sarkeshik be revised so

1 that they do not contain any admissions of wrongdoing. In
2 response, the DOL submitted revised statements that do not contain
3 any such admissions. Defendants also objected to the provision
4 restricting them from reducing the schedule of any employee below
5 thirty-six hours per week prior to final resolution of this action
6 because some employees might regularly work a schedule of less
7 than thirty-six hours. This concern can be addressed by a
8 provision requiring that, for any employee whose median weekly
9 schedule over the last three months does not exceed thirty-six
10 hours, Defendants need only refrain from reducing that employee's
11 schedule below her three-month median.

12
13 CONCLUSION

14 Defendants Fatima/Zahra, Inc., doing business as Lake
15 Alhambra Assisted Living Center, and its owners Mehrangiz
16 Sarkeshik and Abolfazl Sarkeshik, along with their agents,
17 attorneys, employees, and all those in active concert or
18 participation with Defendants, are hereby enjoined:
19

- 20 1. From terminating or threatening to terminate any
21 employee, or retaliating or discriminating against any
22 employee in any other way, based on their belief that
23 such employee spoke with or otherwise cooperated with
24 the DOL;
- 25 2. From telling anyone who works for them not to speak to
26 representatives of the DOL or to provide false
27 information to the DOL regarding the terms and
28

1 conditions of their employment, or asking anyone who
2 works for them to give them any documents or business
3 cards provided by a representative of the DOL;
4 3. From obstructing the DOL's investigation in any way;
5 4. On Monday, June 23, 2014, to allow a representative of
6 the DOL, in the presence of Mehrangiz Sarkeshik and
7 Abolfazl Sarkeshik and their attorneys, to read aloud in
8 both English and Spanish, during the morning shift,
9 afternoon shift, and evening shift of the employees'
10 paid working hours, the following statement to all
11 employees employed at Lake Alhambra informing them of
12 their right to speak with representatives of the DOL
13 free from retaliation or threats of retaliation or
14 intimidation by Defendants. Defendants and their
15 attorneys shall be videotaped throughout the duration of
16 the reading of the statement; no employee shall be
17 videotaped.
18
19

20 You are protected by the Fair Labor Standards Act
21 and have the right to participate freely in the
22 U.S. Department of Labor's investigation into your
23 employer's pay practices. You have the right to
24 speak freely with investigators or other officials
25 from the Department of Labor. Your employer must
26 not retaliate against you in any way because you
27 spoke with the Department of Labor.

28 The U.S. District Court for the Northern District
of California has ordered Mehrangiz (Gita)
Sarkeshik, and anyone acting on her behalf, not to
retaliate against, threaten to retaliate against,
intimidate, or attempt to influence or in any way
threaten employees from providing information to

1 the Department of Labor. She cannot fire, threaten
2 to fire, or reduce your hours below 36 hours or
3 your regular working hours, whichever is lower.
4 She cannot encourage your coworkers to engage in
5 retaliation or assist her in retaliation. She
6 cannot turn a blind eye to retaliation by your
7 coworkers, or instruct one employee to tell another
8 employee that they will be fired if they cooperate
9 with the Department of Labor. She cannot threaten
10 to have any employee deported or refer to her
11 immigration status because of cooperation or
12 perceived cooperation with the Department of Labor.

- 8 5. To post at Lake Alhambra a hard copy of the statement
9 above, in both English and Spanish, and to permit a
10 representative of the DOL to provide each employee with
11 a copy of the written statement, as well as contact
12 information for representatives of the DOL in English
13 and in Spanish;
14
15 6. To provide a written statement by Mehrangiz Sarkeshik
16 addressed individually to all current and former
17 employees, along with its Spanish translation, signed
18 and dated, as follows. (Defendants must file signed
19 copies of these letters with the Court within one week
20 of entry of this preliminary injunction.)
21

22 I, Mehrangiz Sarkeshik, hereby agree that no
23 employer can fire any employee for cooperating with
24 the Department of Labor. If you believe any
25 statement to the contrary, that is not correct.
26 Neither I nor any other employer may threaten any
27 employee with deportation or otherwise reference
28 their immigration status in retaliation for
cooperation with the Department of Labor. Neither
I nor any other employer may give a bad reference
or in any way discriminate against any employee in
retaliation for their cooperation with the
Department of Labor.

- 1 7. From threatening to have any employee deported, or
2 referring to any employee's immigration status, because
3 of cooperation or perceived cooperation with the DOL;
- 4 8. From encouraging employees to engage in retaliation
5 against their coworkers, or turning a blind eye to
6 retaliation by coworkers, or instructing one employee to
7 tell another that the employee will be fired for
8 cooperating with the DOL;
- 9 9. To maintain accurate records of the hours worked and
10 wages paid to their employees, as required under the
11 FLSA, including having the date, month, day, and year,
12 as well as the correct hours worked, stamped on each
13 time card;
- 14 10. From destroying any records or modifying any past
15 records, including all versions of records, such as
16 those containing handwritten notations, before final
17 resolution of this action;
- 18 11. To provide, within one week of entry of this preliminary
19 injunction, an accurate list of persons employed with
20 Defendants in the past three years, including former
21 employees, with their address, phone number, cell phone
22 number, e-mail address, hourly rate or salary, job
23 title, hire date, and termination date if applicable;
- 24 25 26 27 28

- 1 12. From terminating, laying off, or otherwise ending
2 employment of any employee, without providing seven days
3 advance written notice to the employee and to the DOL by
4 copy to Celeste Hale, Assistant District Director, Wage
5 and Hour Division, U.S. Department of Labor, 90 7th
6 Street, Suite 12-100, San Francisco, California 94103,
7 and Susan Seletsky in the Office of the Solicitor at
8 seletsky.susan@dol.gov;
9
10 13. From reducing the weekly schedule of any employee below
11 36 hours or the employee's median weekly hours computed
12 over the last three months, whichever is lower; and
13 14. From providing a job reference for any employee that
14 states anything other than the employee's dates of
15 employment, position, and salary.

16
17 IT IS SO ORDERED.

18
19 Dated: 6/20/2014

CLAUDIA WILKEN
United States District Judge