

**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  
Washington, DC

**PLAINTIFF OFCCP'S OPPOSITION TO DEFENDANT ORACLE'S MOTION TO  
COMPEL DEPOSITION OF DR. ROBERT LAJEUNESSE**

## I. INTRODUCTION

Oracle asks this Court to compel the Office of Federal Contract Compliance Programs (“OFCCP”) to produce Dr. LaJeunesse, OFCCP’s Acting Director of Enforcement of OFCCP (OFCCP’s third ranking official in the National Office) and Branch Chief of Expert Services, for deposition simply because OFCCP listed him as a person with knowledge about the allegations in the complaint and Oracle “expects” he would have knowledge, due to his positions. Oracle’s requests fall far short of establishing the “extraordinary circumstances” that could justify compelling a high-ranking government official, such as Dr. LaJeunesse, from testifying in this case. Oracle fails to even assert that Dr. LaJeunesse has “unique or personal knowledge relevant to the case,” or that the information sought from him is not available from another source, both of which it must prove before a high-ranking official can be compelled to testify.

Oracle’s speculation that Dr. LaJeunesse would have knowledge about the case, and OFCCP’s acknowledgement in interrogatory responses that he has limited pre-decisional (and, thus, privileged) knowledge about the allegations in the complaint falls far short of establishing the exceptional circumstances that might warrant compelling Dr. LaJeunesse to testify in this case. Moreover, Oracle will receive far more relevant information about the statistical models OFCCP is using in this case from other sources. Oracle is on the cusp of receiving the expert reports and discovery regarding the statistical models OFCCP will present at trial, OFCCP has already provided Oracle with the results and methodology of its statistical models described in both the original complaint and the operative Second Amended Complaint (“SAC”), and today is producing for deposition the statistician who conducted the statistical analyses described in the Notice of Violation and the original complaint.

Indeed, Oracle’s demand for Dr. LaJeunesse’s deposition fails to even meet the threshold required to compel ordinary deponents to testify – that the deposition is proportional to the needs of this case. Dr. LaJeunesse has no knowledge about the statistical models OFCCP will present at hearing, had no involvement with the statistical models described in the SAC, and neither conducted nor directed the statistical models described in OFCCP’s Notice of Violation (NOV)

and original complaint. Any information Dr. LaJeunesse may have regarding the statistical analyses OFCCP ran prior to issuing the NOV is irrelevant, as OFCCP's case at the scheduled hearing will hinge on new data produced by Oracle and analyzed by an outside expert who will testify at trial. Oracle fails to explain how compelling Dr. LaJeunesse to testify would be proportional to the needs of this case, given his limited knowledge (virtually all of which is privileged). Oracle's continued demand for the Court to compel Dr. LaJeunesse to testify can only be seen as a fishing expedition, and an attempt to waste valuable, taxpayer-financed time.

## II. FACTUAL BACKGROUND

### A. Dr. Robert LaJeunesse, the Third Highest OFCCP Official, Did Not Run any Relevant Statistical Models or Oversee Them.

As the Acting Director of Enforcement, Dr. LaJeunesse is the third highest-ranking government official in OFCCP; that position, when filled, is held by a member of the Senior Executive Service (SES). Dr. LaJeunesse reports to OFCCP Director Craig E. Leen, and the Acting Deputy Director of OFCCP, who in turn report to the Secretary of Labor. Decl. of Robert LaJeunesse ("LaJeunesse Decl."), ¶ 2. In this role, which Dr. LaJeunesse has held since January 2019, he is responsible for coordinating all aspects of OFCCP's enforcement work, including complex investigations and settlements, the areas of policy development, oversight of compliance evaluation procedures, training, and providing strategic guidance on technical issues related to enforcement. *Id.* at ¶ 4. Dr. LaJeunesse also holds the dual position of Branch Chief of Expert Services, who manages OFCCP's statistical work. *Id.* at ¶ 5.

OFCCP listed Dr. LaJeunesse in interrogatory responses as having knowledge about the allegations in the complaint, even though his knowledge is limited. During the meet and confer process, OFCCP agreed to supplement its interrogatory responses to explain its reason for not agreeing to produce Dr. LaJeunesse for deposition. As OFCCP stated in its Supplemental Interrogatory Responses, Dr. LaJeunesse, the Branch Chief of Expert Services during the compliance review and current Acting Director of Enforcement for OFCCP, was notified of pre-decisional statistical analyses related to the compliance review of Oracle, but had no further

involvement in the compliance review of Oracle or this matter after issuance of the NOV. *Id.* at ¶¶ 6-7. As explained further in the declaration of Dr. LaJeunesse, he had no involvement in the statistical analyses conducted in support of the SAC. *Id.* at ¶ 7. He did not conduct or direct the statistical analyses described in the NOV. *Id.* at ¶ 6. Due to his position, he received copies of pre-decisional statistical analyses run by the Regional statistician prior to the issuance of the NOV in 2016. *Id.* He did not receive copies of the analyses of the data Oracle produced in this action in 2017, which formed the basis for the SAC. *Id.* at ¶ 7. Dr. LaJeunesse's involvement in this case has been limited to routine status updates and briefings as part of the agency's internal deliberative process. *Id.* at ¶ 8.

**B. OFCCP Already Produced Non-Privileged Information About Its Statistical Analyses Described in the NOV, Complaint, and SAC.**

While the statistical analyses that supported the NOV and original complaint have been supplanted by OFCCP's analyses of the more comprehensive data Oracle produced during discovery described in the SAC, OFCCP previously produced information about OFCCP's statistical analyses underlying the NOV and original complaint. During OFCCP's compliance review of Oracle's Redwood Shores Headquarters, Oracle produced a "snapshot" of compensation data for workers employed as of January 1, 2014. A statistician in OFCCP's Regional Office conducted the statistical analyses of this data during the compliance review. Decl. of Jane Suhr ("Suhr Declaration"), ¶ 5. These analyses were described in OFCCP's March 11, 2016 NOV to Oracle, OFCCP's original complaint, and First Amended Complaint. After filing this action, OFCCP produced its investigative file, explained the variables used in its statistical analysis of Oracle's data that OFCCP conducted before issuing the NOV and filing the complaint in this action, and that STATA file OFCCP used in making the NOV, and worksheet the statistician created that underlie the NOV. Decl. of Jeremiah Miller ("Miller Decl., June 28"). Furthermore, OFCCP today is producing for deposition Shirong (Andy) Leu, the

statistician in the Regional Office who ran the analyses described in the NOV and original complaint. Suhr Decl., ¶ 5.

When Oracle produced more comprehensive compensation data for workers employed at its headquarters in the Product Development, Information Technology, and Support job functions between 2013 through 2016, OFCCP analyzed the data. OFCCP included a description of these analyses in its SAC, which is now the operative complaint. The econometric models described in the SAC were created by an OFCCP staff labor economist at the direction of OFCCP's Counsel for Civil Rights. Decl. of Jeremiah Miller in Support of OFCCP's Opposition to Oracle's Motion to Compel OFCCP to Designate and Produce 30(b)(6) Witnesses ("Miller Decl., June 11"), ¶ 5.<sup>1</sup> OFCCP's attorney directed the staff labor economist as to what data to use, how to arrange the data, what time period was relevant, which elements of Oracle's employment systems to review, and which factors should serve as controls. *Id.* He also asked the staff labor economist to make damages estimates. *Id.* The results of those analyses were included in the SAC. *Id.*

OFCCP has also identified with specificity the databases and a description of the methodologies for OFCCP's analysis of the data described in the SAC. OFCCP has provided complete mathematical instructions necessary for Oracle to reproduce the results of the econometric model found in the SAC in the form of instruction files (known as "DO files" or "\*.do files"), which was the form requested by Oracle. Decl. of Abigail G. Daquiz in Support of OFCCP's Opposition to Oracle's Motion to Compel OFCCP to Designate and Produce 30(b)(6) Witnesses ("Daquiz Decl., June 12"), ¶ 4.<sup>2</sup>

Although the focus of this enforcement action is Oracle's conduct, and particularly, whether it discriminated against women and minorities in compensation, OFCCP has acceded to

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<sup>1</sup> The Declaration of Jeremiah Miller in Support of OFCCP's Opposition to Oracle's Motion to Compel OFCCP to Designate and Produce 30(b)(6) Witnesses was originally filed on June 12, 2019 and is resubmitted with this Opposition.

<sup>2</sup> The Declaration of Abigail Daquiz in Support of OFCCP's Opposition to Oracle's Motion to Compel OFCCP to Designate and Produce 30(b)(6) Witnesses was originally filed on June 12, 2019 and is resubmitted with this Opposition.

Oracle's requests for extensive discovery. In the spirit of cooperation, OFCCP agreed to produce the numerous OFCCP witnesses Oracle sought for deposition. Decl. of Abigail G. Daquiz in Support of OFCCP's Opposition to Oracle's Motion to Compel the Deposition of Robert LaJeunesse ("Daquiz Decl., June 28"), ¶ 5. Tellingly, OFCCP, whose conduct is not the subject of this action, produced approximately the same number of individuals for deposition (five) that Oracle has (six). The personnel OFCCP voluntarily produced for deposition or has been scheduled for deposition include:

- Jane Suhr, Regional Director;
- Shirong (Andy) Leu, Statistician;
- Milton Crossland, Compliance Officer;
- Hea Jung Atkins, Director of Planning Support; and
- Francisco Melara, Regional Liaison.

*Id.* at ¶¶ 2-4. In addition, OFCCP agreed to produce 30(b)(6) witnesses on the topics of conciliation, the facts supporting OFCCP's allegations that Oracle refused to produce or supply records to OFCCP during the compliance review, and the facts supporting OFCCP's allegations that Oracle failed to maintain or collect information or conduct analyses. *Id.* at ¶ 5.

**C. On July 19, 2019, OFCCP Will Produce Its Expert Reports and Make Its Expert(s) Available for Deposition.**

As stated in the SAC, OFCCP will not rely on the econometric model in the SAC to prove liability or the appropriate remedy at trial. Rather, OFCCP will rely on entirely separate analyses, produced by an outside testifying expert or experts, which will be based on the data and other information Oracle produced in discovery. As this Court knows, the expert disclosure deadline is July 19, 2019. On that date, OFCCP will produce its expert(s) report(s), which will provide more detailed information about the statistical analyses that OFCCP will present at trial. And, between July 19, 2019 and the end of August, Oracle will have the opportunity to conduct expert discovery and depose the testifying expert(s) about their analysis and methodology.

### III. ARGUMENT

#### A. AS A HIGH-RANKING GOVERNMENT OFFICIAL, DR. LAJEUNESSE IS NOT SUBJECT TO DISCOVERY IN THIS MATTER BECAUSE EXTRAORDINARY CIRCUMSTANCES DO NOT EXIST.

##### 1. Dr. LaJeunesse is a High-Ranking Government Official.

It is well-settled that absent extraordinary circumstances, high-ranking officials—who have greater duties and time constraints than other witnesses—should not be called to testify or be deposed. *Bogan v. City of Boston*, 489 F.3d 417, 423-24 (1st Cir. 2007) (trial judge did not abuse discretion preventing deposition of mayor); *In re United States (Kessler)*, 985 F.2d 510, 511-13 (11th Cir. 1993) (defendants were not entitled to subpoena Commissioner of the FDA to testify); *Simplex Time Recorder Co. v. Sec’y of Labor*, 766 F.2d 575, 586-87 (D.C. Cir. 1985) (defendant had no proper need to question Chief of Staff of the Secretary of Labor, the Regional Administrator of OSHA, and the Area Director of OSHA) (citing *United States v. Morgan*, 313 U.S. 409, 421-22 (1941)). *See also Kyle Engineering Co. v. Kleepe*, 600 F.2d 226, 231-32 (9th Cir. 1979) (in contract dispute with Government, trial court did not err in vacating notice of deposition of administrator of government agency); *Wirtz v. Local 30, Int’l Union of Operating Engineers*, 34 F.R.D. 13 (S.D.N.Y. 1963) (vacating union’s deposition of Secretary of Labor). “Extraordinary circumstances” must exist before the involuntary deposition of a high agency official.

Requiring “extraordinary circumstances” is necessary for at least three reasons, all of which are applicable here. First, allowing depositions of high-ranking government officials who have greater responsibilities and time constraints than other witnesses would unduly burden both the officials themselves and the efficient operation of the agency. *In re Kessler*, 985 F.2d at 512. Such officials would spend an inordinate amount of time tending to pending litigation. *Id.*; *Coleman v. Schwarzenegger*, 2008 WL 4300437, at \*2 (E.D. Cal. Sept. 15, 2008). Second, liberal access to high-level officials during pre-trial discovery would likely exert a chilling effect on such officials, making them less willing during the decision-making process to explore and

discuss all available options, including controversial ones. *See Walker v. NCNB Nat'l Bank of Fla.*, 810 F. Supp. 11, 12-13 (D.D.C. 1993); *Coleman*, 2008 WL 4300437, at \*2. Third, constitutional separation-of-powers principles establish that parties litigating against federal agencies may not examine the deliberative process—particularly the thoughts and mental processes—by which federal agency officials exercise their official discretion. *See Vill. of Arlington Heights v. Metro. Hous. Dev.*, 429 U.S. 252, 268, n. 18 (1977) (“judicial inquiries into legislative or executive motivation represents a substantial intrusion into the work of other branches of government. Placing a decision-maker on the stand is therefore ‘usually to be avoided.’”); *Morgan*, 313 U.S. at 422 (“Just as a judge cannot be subjected to such a scrutiny, [] so the integrity of the administrative process must be equally respected.”). It is the burden of the party seeking to depose the official to demonstrate that “extraordinary circumstances” warrant his or her deposition. *See Thomas v. Cate*, 2010 WL 1343789, at\*1 (E.D. Cal. Apr. 5, 2010).

Here, there can be no dispute that Dr. LaJeunesse qualifies as a high-ranking government official of the U.S. Department of Labor. As the Acting Director of Enforcement, he is the third highest-ranking government official in OFCCP; that position, when filled, is held by a member of the Senior Executive Service (SES), and he reports directly to Director Craig E. Leen, who reports to the Secretary of Labor. LaJeunesse Decl., ¶ 2. In this role, Dr. LaJeunesse is responsible for coordinating all aspects of OFCCP’s enforcement work, including complex investigations and settlements, the areas of policy development, oversight of compliance evaluation procedures, training, and providing strategic guidance on technical issues related to enforcement. *Id.* at ¶ 4. In *Simplex*, the D.C. Circuit determined that the Chief of Staff of the Secretary of Labor, the Regional Administrator of OSHA, and the Area Director of OSHA were each considered high-ranking officials subject to protection from depositions. *Simplex*, 766 F.2d at 586-87; *see also U.S. v. Sensient Colors, Inc.*, 649 F. Supp. 2d 309 (D.N.J. 2009) (citations omitted) (finding that the EPA Regional Administrator was a high-ranking official); *Church of Scientology of Boston v. IRS*, 138 F.R.D. 9, 12 (D. Mass. 1990) (applying protection to the Director of Exempt Organizations Technical Division, National Office of the IRS). Courts

considered these individuals, some of whom had only regional oversight, to be high-ranking government officials; certainly Dr. LaJeunesse, who oversees enforcement nationally for all of OFCCP must also be considered a high-ranking government official.

## **2. Extraordinary Circumstances Do Not Exist.**

Because Dr. LaJeunesse qualifies as a high-ranking government official, only a showing of “extraordinary circumstances” could justify compelling his deposition. Such circumstances exist only when: (1) the high-ranking official has unique or personal knowledge relevant to the case; and (2) the same information is not available from another source. *In re Kessler*, 985 F.2d at 512; *Simplex*, 766 F.2d at 586-87; *Bogan*, 486 F.3d at 423; *Coleman*, 2008 WL 4300437, at \*2. Here, however, there are no such extraordinary circumstances warranting Dr. LaJeunesse’s deposition.

The presumption against requiring high-level Executive Branch officials personally to provide information in legal proceedings is even stronger where, as here, the official lacks personal or first-hand knowledge of the detailed information sought. *Bogan*, 489 F.3d at 423 (permitting access to high government officials through the discovery process requires, at a minimum, “first-hand knowledge related to the claim being litigated”); *Simplex*, 766 F.2d at 586 (upholding ALJ’s decision to strike top Department of Labor officials from plaintiff’s witness list because “any testimony which these officials might provide would be irrelevant since they had no first-hand knowledge of the case”). A requirement that the official have personal knowledge of the information sought complements the principle that high officials should not be forced to testify or submit to discovery if an alternate witness could provide the information requested. *See Buono v. City of Newark*, 249 F.R.D. 469, 470 (D.N.J. 2008) (describing requirement that “the official has first-hand information that could not be reasonably obtained from other sources”). *Accord U.S. v. Koubriti*, 305 F. Supp. 2d 723, 754 (E.D. Mich. 2003) (finding “no compelling need” for the Attorney General’s in-court testimony even though “[t]he conduct at issue here unquestionably is that of the Attorney General himself and his direct staff, as opposed to a more general matter of departmental policy or agency decisionmaking”); *Energy Capital*

*Corp. v. U.S.*, 60 Fed. Cl. 315, 318 (2004) (noting that high-ranking government officials may be subject to depositions “if the party has personal knowledge of the facts in issue”). Dr. LaJeunesse has no unique or personal knowledge. He had no involvement in the analyses that will be presented at trial, or even those described in the SAC, the operative complaint. Even with respect to the NOV and original complaint, he neither conducted nor directed the statistical analyses described in those documents. Thus, Dr. LaJeunesse has no unique or personal knowledge relevant to this case that could justify compelling him to testify.

Moreover, the Defendant has not shown that the information it seeks from Dr. LaJeunesse cannot be obtained elsewhere. Any information he may have received in briefings about the allegations in original complaint or the SAC was obtained from others and would thus be repetitive and derivative. OFCCP has already produced information about statistical models described in both the original complaint and the SAC, and produced for deposition the Regional statistician who conducted the statistical analyses described in the NOV and original complaint. Any knowledge Dr. LaJeunesse may have is purely derivative of the information OFCCP already produced to Oracle, and the knowledge of the Regional statistician OFCCP produced for deposition.

Oracle fails to establish any “extraordinary circumstances” that might justify the Court compelling Dr. LaJeunesse, a high ranking official within OFCCP, to testify in this case.

**B. ORACLE’S DEMAND TO DEPOSE DR. LAJEUNESSE IS DISPROPORTIONATE TO THE NEEDS OF THIS CASE.**

The Federal Rules of Civil Procedure do not support Oracle’s attempt to conduct discovery on irrelevant aspects of OFCCP’s investigation and that is disproportional to the needs of the case. As revised in 2015, the Federal Rules of Civil Procedure establish that—

Parties may obtain discovery regarding any *non-privileged matter* that is *relevant* to any party’s claim or defense *proportional to the needs of the case*, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties resources, the importance of discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Fed. R. Civ. P. 26(b)(1) (emphasis added). As Chief Justice Roberts wrote soon after Rule 26 was amended, “the pretrial process must provide parties with *efficient* access to what is needed to prove a claim or defense, *but eliminate unnecessary or wasteful discovery.*” 2015 Year End Report on the Federal Judiciary, <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>, p. 7 (Dec. 31, 2015) (emphasis added).

Oracle has not even met the lower standard required to compel the testimony of a non-high ranking official that testimony it seeks to compel is proportionate to the needs of this case. Oracle’s reliance on OFCCP’s identification of Dr. LaJeunesse as a person with knowledge does not establish that his knowledge is non-privileged and discoverable, or that any the relevance of any non-privileged testimony outweighs the burden and expense of requiring him to testify. It is worth noting that none of the cases Oracle cites apply the proportionality rule.

Oracle has not identified any relevant, non-privileged information it seeks to obtain from Dr. LaJeunesse. OFCCP intends to prove its case based on statistical analysis conducted by outside expert(s) of the data Oracle produced in this case, which Dr. LaJeunesse has neither seen nor analyzed. As explained in *EEOC v. Texas Roadhouse, Inc.*, 2014 WL 4471521, at \*4 (D. Mass. Sept. 9, 2014), discovery regarding the agency’s statistical analysis premature, since the employer can depose the Agency’s expert on this issue. *See also, EEOC v. Pioneer Hotel, Inc.*, 2014 WL 7653921, at \*10 (D. Nev. Sept. 30, 2014) (discovery exploring the adequacy of EEOC’s pre-suit investigation is not relevant). Indeed, Dr. LaJeunesse does not even have relevant knowledge about the statistical analyses described in the SAC (which will be supplanted by the outside experts’ analyses that OFCCP will disclose on July 19, 2019), since he did not conduct or direct the statistical analyses described in the SAC, or even receive copies of them.

The only information Dr. LaJeunesse has about the allegations in the complaint, arise from receiving notifications of pre-decisional statistical analyses run by the Regional statistician prior to the issuance of the NOV. Not only have these analyses been supplanted by the analyses that OFCCP will present at trial, the limited knowledge Dr. LaJeunesse has about these analyses is privileged. These discussions would be protected from disclosure under the deliberative

process privilege. *N.L.R.B. v. Sears-Roebuck & Co.*, 421 U.S. 132, 150 (1975) (the privilege protects “advice, recommendations, and opinions which are part of the deliberative, consultative, decision-making processes of government.”). Even the facts communicated to Dr. LaJeunesse would fall under the deliberative process as “the disclosure of even purely factual material may so expose the deliberative process within an agency that it must be deemed exempt.” *Mead Data Cent., Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977). Any information Dr. LaJeunesse may have regarding OFCCP’s investigative techniques, policies, statistical models, and guidelines are also protected by the investigative files privilege. This privilege protects “informal investigatory material and preliminary determinations.” *Perez v. Blue Mountain Farms*, 2015 WL 11112414, at \*3 (E.D. Wash. Aug. 10, 2015) (citing *NLRB v. Silver Spur Casino*, 623 F.2d 571, 580 (9th Cir. 1980)); see also *In re The City of New York*, 607 F.3d 923, 940-41 (2d Cir. 2010); *Perez v. Mueller*, 2016 WL 6882851, at \*4 (E.D. Wisc. Nov. 22, 2016) (explaining privilege).

While Oracle argues that “OFCCP cannot refuse to produce a witness simply because that witness may have knowledge of potentially privileged information,” that is not the sole justification for not producing Dr. LaJeunesse. Here, the only knowledge Dr. LaJeunesse has about the allegations in the complaint is privileged, unlike the investigator who investigated a charge of discrimination and was compelled to testify in *EEOC v. Fisher Sand & Gravel Co.*, 2009 U.S. Dist. LEXIS 131617 (D.N.M. Oct. 26, 2009), the case that Oracle cites.<sup>3</sup> It would be disproportionate to the needs of the case to require him to testify under these circumstances.

Finally, to the extent that Dr. LaJeunesse received any information regarding the Office of the Solicitor’s opinions or advice for this case, this information is protected from disclosure under the attorney-client privilege. See, e.g., *Coastal States Gas Corp. v. Dep’t of Energy*, 617

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<sup>3</sup> Oracle also provides a partial quote from *Amherst Leasing Corp. v. Emhart Corp.*, 65 F.R.D. 121, 122 (D. Conn. 1974), out of context and without disclosing that the quote reflects the argument by the defendant in the case. The *Lineback v. Coupled Prods.*, 2012 U.S. Dist. LEXIS 71102 (N.D. Ind. May 22, 2012), case involves witnesses the party sought to call to testify at trial, not witnesses like Dr. LaJeunesse, whose only knowledge is privileged and who will not testify at trial.

F.2d 854, 866 (D.C. Cir. 1980) (holding that attorney-client privilege applies to communications between government agencies and their counsel).

The Ninth Circuit has warned that “[d]istrict courts need not condone the use of discovery to engage in ‘fishing expedition[s].’” *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1072 (9th Cir. 2004) (citing *Exxon Corp. v. Crosby-Miss. Res., Ltd.*, 40 F.3d 1474, 1487 (5th Cir. 1995). *See also EEOC v. Harvey I. Walner & Assoc.*, 91 F.3d 963, 971 (7th Cir. 1996) (holding “discovery is not to be used as a fishing expedition.”). Oracle’s motion is nothing more than its backhanded attempt to fish for irrelevant, privileged information through a burdensome deposition that is not proportional to the needs of the case.

Under the proportionality requirement, the burden imposed upon Dr. LaJeunesse for deposition overwhelmingly outweighs the benefit of that deposition to Oracle’s case.

#### IV. CONCLUSION

This Court should deny Oracle’s motion to compel as there is no basis to require the involuntary deposition of Dr. LaJeunesse as a high-ranking official of OFCCP. Oracle has failed to show that extraordinary circumstance exist to compel his deposition. Dr. LaJeunesse has no unique personal knowledge relevant to the case. To the extent he has any knowledge of investigative facts through his notice of pre-decisional analyses, those facts have been superseded by the evidence that OFCCP will present at trial through its expert witness and are available through the depositions that Oracle has already taken of the OFCCP personnel who actually conducted the compliance review. Thus, any information he may have regarding the case is irrelevant and disproportionate to Oracle’s needs in the case. Furthermore, to the extent Dr. LaJeunesse had any involvement in the review in a consultative capacity, his testimony is protected by the deliberative process and a number of other privileges.

For the foregoing reasons, OFCCP respectfully asks this Court to deny Oracle’s motion.

Dated: July 1, 2019

Respectfully submitted,

KATE S. O’SANNLAIN

Solicitor of Labor

JANET M. HEROLD  
Regional Solicitor

JEREMIAH MILLER  
Counsel for Civil Rights

A handwritten signature in black ink that reads "Laura C. Bremer". The signature is written in a cursive style with a long horizontal line extending to the right.

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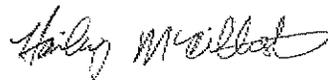
LAURA C. BREMER  
Senior Trial Attorney

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 DEPOSITION OF ROBERT LAJEUNESSE and supporting declarations were served upon the following individuals via email at the following addresses:

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U.S. Department of Labor

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

OFFICE OF FEDERAL CONTRACT  
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**DECLARATION OF ACTING DIRECTOR OF ENFORCEMENT DR. LAJEUNESSE**  
**IN SUPPORT OF PLAINTIFF OFCCP'S OPPOSITION TO**  
**DEFENDANT ORACLE'S MOTION TO COMPEL**

I, Dr. Robert LaJeunesse, hereby declare as follows:

1. I am the Acting Director of Enforcement for the National Office of the United States Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), an agency of the United States Government, with its business address at 200 Constitution Avenue NW, Washington, DC 20210. I have held this position since January 2019.
2. I am currently the third highest-ranking government official in OFCCP. I currently report to the OFCCP Director Craig E. Leen and the Acting Deputy Director of OFCCP, who in turn report to the Secretary of Labor.
3. The position of Director of Enforcement, when filled, is held by a member of the Senior Executive Service.

4. As Acting Director of Enforcement, I am responsible for coordinating all aspects of OFCCP's enforcement work, including complex investigations and settlements, the areas of policy development, oversight of compliance evaluation procedures, training, and providing strategic guidance on technical issues related to enforcement. I oversee a number staff members who report to me throughout the country.
5. I am also OFCCP's Branch Chief of Expert Services. In this role, I manage OFCCP's statistical work and the Regional statisticians' caseload. I have held this position since November 2014.
6. I did not conduct the statistical analyses nor did I direct the statistical analyses that were described in the Notice of Violation ("NOV") or the complaint filed in this action in 2017. Prior to March 11, 2016, I received notifications of pre-decisional statistical analyses conducted by the Regional statistician related to OFCCP's compliance review of Oracle. I also reviewed a draft of the NOV and Compensation Analysis Summary Reports prior to the issuance of the NOV, but did not provide any comments.
7. I lack personal knowledge of the claims alleged in OFCCP's Second Amended Complaint and the underlying facts of Oracle's violations in this matter. I had no involvement in the statistical analyses conducted in support of the Second Amended Complaint. I did not receive copies of the analyses of the data Oracle produced in this action after OFCCP filed the enforcement action against Oracle.
8. My involvement in this case is limited to routine status updates and briefings generally as part of the agency's internal deliberative process.

I declare under penalty of perjury under the law of the United States of America that the above statements are true.

Executed this 28th day of June 2019, in Washington D.C.

A handwritten signature in black ink, appearing to read "Robert Lajeunesse", written over a horizontal line.

ROBERT LAJEUNESSE, Ph.D.  
Acting Director of Enforcement  
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Office of Administrative Law Judges  
Washington, DC

Attorneys for OFCCP

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

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

Plaintiff,

v.

ORACLE AMERICA, INC.

Defendant.

Case No. 2017-OFC-00006

**DECLARATION OF ABIGAIL G. DAUIZ IN SUPPORT OF OFCCP'S OPPOSITION TO  
ORACLE'S MOTION TO COMPEL THE DEPOSITION OF ROBERT LAJUENESSE**

I, Abigail G. Daquiz, state and declare as follows:

1. I am a Senior Trial Attorney for the U.S. Department of Labor, Office of the Solicitor. I submit this declaration in support of OFCCP's Opposition to Defendant's Motion to

Compel the Deposition of Robert LaJuenesse. 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 have coordinated with counsel for Oracle and with the agency to facilitate the depositions of Jane Suhr, the Regional Director, Milton Crossland, a compliance officer, and Hae Jung Atkins, Director of Planning and Support. Oracle's lawyers had sent notices for two other individuals, Mr. Mikel and Mr. Luong, who no longer work for the agency and we were able to come to an agreement and took those depositions off the calendar.

3. On June 7, 2019, Oracle's counsel alerted me for the first time that it intended to take the deposition of Shirong (Andy) Leu, our Regional statistician, and asked for a date to depose him while stating that it could have set the dates unilaterally. I worked with counsel for Oracle to set that deposition, scheduled for Monday July 1.

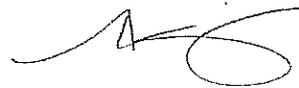
4. As recently as last week, on June 20, 2019, Oracle sent OFCCP a Notice of Deposition for a Regional Liaison, Francisco Melara. Oracle's counsel had never discussed wanting to take Mr. Melara's deposition and OFCCP we had not anticipated needing to produce Mr. Melara. Oracle scheduled the deposition to be conducted within 7 days of the Notice, on the following Thursday, June 27, 2019. Notwithstanding that this deposition had never been discussed and the very short turnaround, I worked with the agency to schedule the deposition and we will produce Mr. Malera on July 1, 2019 to allow Oracle to conduct the discovery it seeks.

5. I have worked with counsel to respond to Oracle's request for 30(b)(6) witnesses on the topics. While OFCCP refused to produce a witness for topics 1-29 (as described in our Opposition to Oracle's Motion to Compel), we produced a witness for the remaining topics sought (Topic 30 and 31) and Oracle was able to take the deposition of an agency designee on those topics on June 26, 2019. Attached to this declaration as **Exhibit 1** is a true and correct copy

of Defendant Oracle America, Inc.'s Notice of Deposition of OFCCP Pursuant to 41 C.F.R. § 60-30.11 and Fed. R. Civ. P. 30(b)(6), dated April 3, 2019.

6. I have also worked with Oracle's attorneys to provide them with sufficient information and responses to obviate the need for further costly discovery. Specifically, Oracle had originally sought an agency designee to answer questions regarding the determination of damages in the agency's Second Amended Complaint. I provided Oracle with the formulas and explanation for the calculation of damages in the Second Amended Complaint and were successful in satisfying Oracle's requests for more information. Attached to this declaration as **Exhibit 2** is a true and correct copy of an email from Mr. Warrington Parker of Orrick, counsel for Oracle, to me dated June 19, 2019, conveying that the information provided regarding the damages calculation was sufficient. We have been able to streamline the fact discovery to the parties' satisfaction and Oracle has not further sought to take an agency deposition on that question (Topic 32).

I swear under penalty of perjury that the foregoing is true to the best of my knowledge and that this document was executed on this 28th day of June, 2019 in Seattle, Washington.



---

Abigail G. Daquiz  
Office of the Solicitor  
United States Department of Labor

DECLARATION OF ABIGAIL G. DAQUIZ  
**EXHIBIT 1**

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

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

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

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

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

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

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

## **DEFINITIONS AND INSTRUCTIONS**

1. Except as otherwise defined or broadened in this Notice of Deposition, Oracle incorporates by reference the definitions set forth in Federal Rules of Civil Procedure 26 and 30.
2. The terms “including” and “includes” shall mean “including, but not limited to” or the grammatical equivalent, and shall not be construed to exclude items not listed.
3. “OFCCP” means Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor, and its directors, officers, subsidiaries, affiliates, agents, servants, employees, investigators, attorneys, and all others representing it or acting on its behalf.
4. “ORACLE” means Defendant Oracle America, Inc., and its agents, servants, employees, investigators, attorneys, and all others representing it or acting on its behalf.

## **MATTERS DESIGNATED FOR DEPOSITION TESTIMONY**

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

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

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

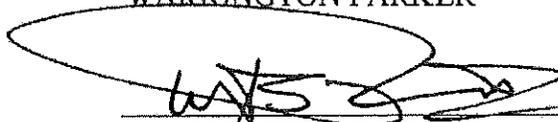
11. The facts that support the allegations of Paragraphs 21 and 41 of the Second Amended Complaint that Asians were only 49% as likely as Whites to be assigned into higher global career levels as managers, including, any statistical or regression analysis, statistical or regression methodology and statistical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

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

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

April 3, 2019

GARY R. SINISCALCO  
ERIN M. CONNELL  
WARRINGTON PARKER



---

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

Attorneys for Defendant  
ORACLE AMERICA, INC.

**PROOF OF SERVICE BY ELECTRONIC MAIL**

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

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

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

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

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

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

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

---

Jacqueline D. Kaddah

DECLARATION OF ABIGAIL G. DAQUIZ  
**EXHIBIT 2**

**From:** [Parker, Warrington](#)  
**To:** [Daquiz, Abigail - SOL](#)  
**Cc:** [Connell, Erin M.](#); [Kaddah, Jacqueline D.](#); [Siniscalco, Gary R.](#); [Bremer, Laura - SOL](#); [Garcia, Norman - SOL](#); [Miller, Jeremiah - SOL](#); [Richardson, Cedrick P - SOL](#); [Song, Charles C - SOL](#)  
**Subject:** RE: OFCCP v. Oracle, No. 2017-OFC-00006, deposition scheduling & discovery correspondence  
**Date:** Wednesday, June 19, 2019 11:07:55 AM

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I am in receipt of your letter of today.

1. I appreciate the additional information on damages. Currently, we believe that the information is sufficient.
2. I pass on responding to your wording regarding your views on the discovery process, but we will depose Jane Suhr on June 26 in her personal capacity and on Topic 33.
3. We accept July 1 for Mr. Leu.
4. Given your position on Ms. Wipper, Mr. Mikel and Mr. Luong, we will do what we think is proper under the circumstances and in light of your representations. I will inform you of next steps.
5. Regarding the privilege log, thank you. I would like to know when you expect it will be updated and supplemented.

**From:** Daquiz, Abigail - SOL [mailto:Daquiz.Abigail@dol.gov]  
**Sent:** Wednesday, June 19, 2019 10:59 AM  
**To:** Parker, Warrington <wparker@orrick.com>  
**Cc:** Connell, Erin M. <econnell@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>  
**Subject:** OFCCP v. Oracle, No. 2017-OFC-00006, deposition scheduling & discovery correspondence

Hi Warrington, please see the attached. Thanks, Abby

Abigail G. Daquiz  
Attorney  
U.S. Department of Labor  
Office of the Solicitor  
300 Fifth Avenue, Suite 1120  
Seattle, WA 98104  
d 206-757-6753  
t 206-757-6762  
f 206-757-6761  
[daquiz.abigail@dol.gov](mailto:daquiz.abigail@dol.gov)

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

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

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

Plaintiff,

v.

**ORACLE AMERICA, INC.**

Defendant.

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Case No. 2017-OFC-00006

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Administrative Law Judges  
1703

**DECLARATION OF JEREMIAH MILLER IN SUPPORT OF OFCCP'S OPPOSITION  
TO MOTION TO COMPEL THE DEPOSITION OF DR. ROBERT LAJEUNESSE**

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. In the Notice of Violation ("NOV") preceding this action, OFCCP informed Oracle of the results of its statistical models as applied to Oracle's data produced during the compliance review. In the NOV, OFCCP identified the controls (derived from Oracle's data) that it used in running a regression against Oracle's data to probe the effect of race and gender in Oracle's employment processes.

3. After OFCCP initiated this action, and in response to discovery requests from Oracle, OFCCP produced all non-privileged portions of its investigative file. OFCCP also

answered interrogatories propounded by Oracle addressing the nature of the statistical analysis conducted by OFCCP.

4. Among the documents that OFCCP produced were non-privileged portions of spreadsheets at Bates numbers DOL 000005299-5330. Those spreadsheets showed the results of OFCCP's model with information about total counts of employees included in OFCCP's model, and mathematical details about the models, including measures of the goodness-of-fit for the model to the data, coefficients for each control in the model, and the associated significance results for each control. Those spreadsheets also included information about the recruiting and hiring allegations in this case that have since been resolved by the parties.

5. In responding to Oracle's interrogatory number two, OFCCP provided a written explanation of the nature of the statistical model, including the type of regression used, the dependent variable (the natural log of an employee's annual salary), and the factors controlled for in the model.

6. In September of 2017, Oracle asked for additional information about the statistical model. I participated in a telephone call with counsel for Oracle, and answered further questions about the models. Counsel stated that they still could not understand OFCCP's model. We invited them to send us specific questions about the model.

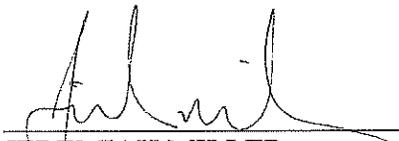
7. After receiving the questions, which included specific requests about how certain controls were calculated, I provided answers explaining (among other things) how OFCCP had calculated years of service at Oracle, which controls were used in the model and where in the produced documents Oracle could find information about how job titles were considered.

8. In October of 2017, OFCCP produced the complete set of mathematical instructions it had applied to Oracle's data to produce the results identified in the NOV and the Complaint in the form of a .DO file used with the STATA statistical analysis program. Those instructions explained all mathematical details of the computation.

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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

JANET M. HEROLD  
Regional Solicitor  
JEREMIAH E. MILLER  
Acting Counsel for Civil Rights  
LAURA C. BREMER  
Senior Trial Attorney  
Office of the Solicitor  
UNITED STATES DEPARTMENT OF LABOR  
300 Fifth Avenue, Suite 1120  
Seattle, Washington 98104  
Tel: (206) 757-6762  
Fax: (206) 757-6761  
Email: [miller.jeremiah@dol.gov](mailto:miller.jeremiah@dol.gov)

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JUL 01 2019

U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
SAN FRANCISCO, CA

Attorneys for OFCCP

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

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

Plaintiff,

v.

**ORACLE AMERICA, INC.**

Defendant.

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Case No. 2017-OFC-00006

**DECLARATION OF JANE SUHR IN SUPPORT OF OFCCP'S OPPOSITION TO  
ORACLE'S MOTION TO COMPEL THE DEPOSITION OF ROBERT LAJUENESSE**

I, JANE SUHR, hereby make this declaration on personal knowledge or upon information provided to me in the normal course of my duties as the Regional Director for the Pacific

Region, Office of Federal Contract Compliance Programs (“OFCCP”), United States Department of Labor:

1. I am the Regional Director for the Pacific Region of OFCCP. In that role, I am responsible for the Pacific Region’s work (covering Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington), including investigations to determine compliance with Executive Order 11246 (30 Fed. Reg. 12319), as amended by Executive Orders No. 11375 (32 Fed. Reg. 14303) and No. 12086 (43 Fed. Reg. 46501).

2. I oversaw the compliance evaluation of Defendant Oracle America, Inc.’s (“Oracle”) headquarters in Redwood Shores.

3. Dr. Robert LaJeunesse is currently the Acting Director of Enforcement for OFCCP. During our compliance review of Oracle his position was Branch Chief of Expert Services and among his duties was to supervise his staff comprising of labor economists and statisticians by monitoring their workload and providing guidance.

4. As is routine in Regional enforcement matters, Dr. LaJeunesse did not have any direct involvement in OFCCP’s compliance review of Oracle, though he may have been copied on some e-mails during the compliance review.

5. Shirong (Andy) Leu, the statistician in OFCCP’s Regional Office, conducted the statistical analyses of the data produced by Oracle during the compliance review, which are described in the NOV and original complaint.

//

//

I swear under penalty of perjury that the foregoing is true to the best of my knowledge and that this document was executed on this 28th day of June, 2019 in San Francisco, California.



---

Jane Suhr, Regional Director  
OFCCP, United States Department of Labor

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

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

Plaintiff,

v.

**ORACLE AMERICA, INC.**

Defendant.

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Case No. 2017-OFC-00006

RECEIVED

JUL 01 2019

Office of Administrative Law Judges  
Sub Area 2019

**DECLARATION OF ABIGAIL G. DAQUIZ IN SUPPORT OF OFCCP'S OPPOSITION  
TO ORACLE'S MOTION TO COMPEL OFCCP TO DESIGNATE AND PRODUCE  
30(B)(6) WITNESSES**

I, Abigail Daquiz, state and declare as follows:

1. I am a Senior Trial Attorney for the U.S. Department of Labor, Office of the Solicitor. I submit this declaration in support of OFCCP's Motion to Compel the Deposition of Oracle America, Inc. 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. On April 5, 2019, I responded to Oracle's RFPs, Set Two, identifying which specific documents from Oracle's voluminous production we analyzed and relied upon for the allegations contained in the SAC. Attached to this declaration as **Exhibit 1** is a true and correct copy of an excerpt of the narrative responses that describes the documents produced. From Oracle's production, we identified the training materials and handbooks it relied upon (the Sourcing Handbook, Customer Services Compensation Training, Master U.S. Manager Orientation, and presentations on Managing Compensation and Global Compensation Training).

OFCCP also identified the spreadsheets and databases created and maintained by Oracle that the agency analyzed. These spreadsheets include years of information about Oracle employees that include individual employee identifiers, compensation, gender, race or ethnicity, their job functions, time spent working at Oracle, employee's previous experience, exemption status under the Fair Labor Standards Act, whether the employee is employed as a full or part time employee, and the employees' global career level, specialty designation, and job title assigned by Oracle.

3. On April 9, 2019 I responded to Oracle's Interrogatories, Set Two, and provided Oracle with a similar list of all of the data sets used to arrive at the allegations asserted in OFCCP's Second Amended Complaint and further informed Oracle that it was waiting for the production of databases and was currently reviewing the document production and that the statistical model OFCCP intends to rely upon at the hearing is still being developed.

4. Counsel for Oracle and I met and discussed the discovery responses as it related to OFCCP's statistical analysis. I had prepared to address questions about the data and the operations OFCCP undertook and counsel did not engage in a discussion about our production, and instead insisted that OFCCP produce its instruction files (\*.do files). On April 26, 2019 I supplemented our production to include the .do files for use in the SAS/STATA programs that OFCCP used in preparation for filing the Second Amended Complaint. This was in the form requested by counsel for Oracle because it is the same program that the parties used extensively during mediation when sharing their analysis. Attached to this declaration as **Exhibit 2** is a true and correct copy of the email that transmitted this supplementation from me to Mr. Parker, dated April 26, 2019. After this exchange, counsel for Oracle has not asked for further information about the statistical analysis and it is unclear what other factual information Oracle seeks with this request for a 30(b)(6) designee on these topics.

5. After I received Oracle's 30(b)(6) Notice in April, I began talking with counsel for Oracle about the data and information that it was producing and disclosing in the written discovery and how that information could satisfy Oracle's need for a 30(b)(6) on Topics 1-29. On May 6, 2019, OFCCP offered that its witness for the remaining topics could be available

during the week of June 3, 2019 as scheduled on Oracle's Notice of Deposition. This invitation to schedule was reiterated in a May 9, 2019 letter to Oracle (Exhibit 3 to Mr. Parker's Declaration in support of the instant motion) and OFCCP received no call or other communication requesting to set the deposition that week until a letter from counsel. On May 13, Oracle stated it was amenable to that week but did not specify when they wanted to set the date. Exhibit 4 to Mr. Parker's Declaration in support of the instant motion.

6. The parties had a teleconference to discuss discovery issues on May 21, 2019 during which I offered a range of dates for OFCCP's agency witnesses including the 30(b)(6) designee. During the call, counsel for Oracle did not commit to any dates and asked for OFCCP to put the witnesses' availability in writing which OFCCP did a few days following the call. I offered that the agency witness could be deposed in San Diego, CA during the week of June 17, and available in San Francisco on June 25, 26 or 27. Mr. Parker by email on June 3, 2019, informed OFCCP that it intended to set the 30(b)(6) deposition on June 26. Attached to this declaration as Exhibit 3 is a true and correct copy of an email from Mr. Parker to me, dated June 3, 2019. The parties worked cooperatively to confirm the depositions of the remaining fact witnesses.

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 12, 2019.



---

ABIGAIL G. DAQUIZ  
Senior Trial Attorney

EXHIBIT 1  
DAQUIZ DECLARATION

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

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

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DEFENDANT ORACLE'S AMENDED  
REQUEST FOR PRODUCTION, SET  
TWO AND OFCCP'S RESPONSES  
THERE TO**

The United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"), by and through the Office of the Solicitor, hereby responds and lodges its objections to Defendant Oracle America, Inc.'s Amended Request for Production, Set Two.

Discovery in this matter is currently ongoing. Each and every following response is rendered and based upon information reasonably available to OFCCP at the time of preparation of these responses. As an initial matter, OFCCP has produced its investigative file for Oracle HQCA, OFCCP Case No. R00192699. To the extent that Oracle's requests seek information already produced in this litigation, OFCCP will not be reproducing those documents. OFCCP reserves the right to amend the responses to these Requests as discovery progresses. OFCCP will provide supplemental responses in the event any further responsive material comes within its knowledge, possession, custody or control. Further, OFCCP will disclose its expert witness and will supplement these responses according to the schedule agreed upon by the parties, and adopted by Judge Clark on March 6, 2019.

OFCCP has not completed its respective discovery in this action. OFCCP, therefore,

specifically reserves the right to introduce any evidence from any source which may hereinafter be discovered in testimony from any witness whose identity may hereafter be discovered.

**REQUEST FOR PRODUCTION NO. 87:**

All DOCUMENTS RELATING to YOUR “evaluation of Oracle’s employment practices” that “reveal[] widespread discrimination at HQCA” as alleged in Paragraph 11 of the Second Amended Complaint.

**RESPONSE:**

OFCCP objects to this Request to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, including the common interest doctrine, the government’s deliberative process privilege, the governmental privilege for investigative files and techniques, the government’s informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects on relevance grounds. Materials reflecting OFCCP’s internal deliberations and processes in its investigation are not relevant because they will not show, one way or the other, whether Oracle violated its equal opportunity obligations, including through engaging in systemic compensation and hiring discrimination.

OFCCP objects to this Request to the extent it seeks documents that were created after March 11, 2016, which was the date the Notice of Violation was issued, because any such documents were created in anticipation of litigation and are protected by the work product doctrine, trial preparation privilege, and/or attorney-client privilege.

OFCCP objects to the phrase “relating to” as overbroad and unduly burdensome.

By referring to Paragraph 11 of the Second Amended Complaint (SAC), OFCCP understands this request to seek information about its continued evaluation of Oracle’s employment practices in light of the data and information it provided to OFCCP.

Subject to and without waiving the foregoing objections, OFCCP responds as follows:

OFCCP will produce the following documents (including re-producing documents produced by Oracle to OFCCP):

BEGBATIES	FILENAME
ORACLE_HQCA_0000020125	Sourcing Handbook.pdf
ORACLE_HQCA_0000042098	Customer Services Comp Training 3 15 - w_new arrows.pptx
ORACLE_HQCA_0000042101	MASTER US Manager Orientation 1202 lg.pptx
ORACLE_HQCA_0000056234	2016_Managing_Compensation_July_2016_v3.ppt
ORACLE_HQCA_0000062858	AAP_Location List.xlsx
ORACLE_HQCA_0000062859	Candidate Offers.xlsx
ORACLE_HQCA_0000070721	AllEarnings.xlsx
ORACLE_HQCA_0000070738	Emp_Personal_Experience_Qualification_Assign_Details.xlsx
ORACLE_HQCA_0000070741	gsi_comp_history.xlsx
ORACLE_HQCA_0000128176	PT1_HQCA_IREC_MAIN.xlsx
ORACLE_HQCA_0000364272	Global Compensation Training - 2011 Salary Ranges Final.pptx
DOL000039877	Directive 310- Calculating Back Pay.pdf
DOL000039894	rr-18-07.pdf
DOL000039913	2017-12-08 ORACLE Ltr re OFCCP Data Questions.pdf
DOL000039915	2017-12-18 ORACLE Ltr re OFCCP Data Questions.pdf
DOL000039918	2018-6-29 - [Oracle] Pitcher ltr to Bremer.pdf
DOL000039928	2018-7-13 - Pitcher ltr to Laura Bremer.pdf
DOL000039931	DEPT_OF_LABOR_2013.xlsx
DOL000039932	DEPT_OF_LABOR_2014.xlsx
DOL000039933	DEPT_OF_LABOR_2015.xlsx
DOL000039934	DEPT_OF_LABOR_2016.xlsx
DOL000039935	STATA_RV_11302018-179.csv
DOL000039936	STATA_RV_11302018-263.csv
DOL000039937	STATA_RV_11302018-413.csv
DOL000039938	STATA_RV_11302018-765.csv

OFCCP further responds that it has produced the investigative file for Oracle HQCA, OFCCP Case No. R00192699.

Discovery in this matter is ongoing and OFCCP will supplement its responses as appropriate. Specifically, OFCCP will disclose its expert witness and will supplement these responses according to the schedule agreed upon by the parties.

**REQUEST FOR PRODUCTION NO. 88:**

All DOCUMENTS RELATING to the allegation in Paragraph 11 of the Second Amended Complaint “that Oracle discriminated against women, Asians, and African Americans or Blacks in compensation, and discriminated in favor of Asians against non-Asians in hiring,” including, but not limited to, any “models, results, and theories of causation.”

way or the other, whether Oracle violated its equal opportunity obligations, including through engaging in systemic compensation and hiring discrimination.

Subject to and without waiving the foregoing objections, OFCCP responds that it has no responsive documents.

**REQUEST FOR PRODUCTION NO. 243:**

All COMMUNICATIONS between YOU and a THIRD PARTY regarding DOCUMENTS or information designated CONFIDENTIAL by DEFENDANT.

**RESPONSE:**

OFCCP objects to this Request on the grounds that it seeks information protected by attorney-client privilege (including the common interest doctrine), attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects on relevance grounds. Materials reflecting OFCCP's internal deliberations and processes in its investigation are not relevant because they will not show, one way or the other, whether Oracle violated its equal opportunity obligations, including through engaging in systemic compensation and hiring discrimination.

Subject to and without waiving the foregoing objections, OFCCP responds that it has no responsive documents.

DATED: April 5, 2019

KATE S. O'SCANNLAIN  
Solicitor of Labor

JANET M. HEROLD  
Regional Solicitor

JEREMIAH E. MILLER  
Counsel for Civil Rights

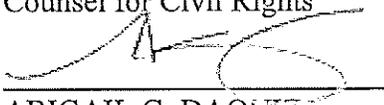
  
ABIGAIL G. DAQUIZ  
Senior Trial Attorney  
Attorneys for OFCCP  
Office of the Solicitor, U.S. Department of Labor

EXHIBIT 2  
DAQUIZ DECLARATION

## Daquiz, Abigail - SOL

---

**From:** Daquiz, Abigail - SOL  
**Sent:** Friday, April 26, 2019 8:32 AM  
**To:** 'Parker, Warrington'  
**Cc:** Siniscalco, Gary R.; Connell, Erin M.; Mantoan, Kathryn G.; Grundy, Kayla Delgado; Riddell, J.R.; Giansello, John; Heath, Jacob M.; Garcia, Norman - SOL; Song, Charles C - SOL; Jeremiah - SOL Miller (Miller.Jeremiah@dol.gov); Bremer, Laura - SOL  
**Subject:** RE: OFCCP v. Oracle, Case No. 2017-OFC-00006, Oracle's Requests  
**Attachments:** basepay\_over\_time.do; Oracle\_Combine\_Data.do; Oracle\_ordered\_logits\_assignment.do; Oracle\_Regressions.do; Starting Salary.do; wage changes.do; OFCCP Privilege Log 2019-04-26.pdf

Good morning Warrington,

Attached is an updated privilege log. Also, as you requested, we are preparing a written response to your letters of April 11, and April 16.; and along with that we may be further supplementing the privilege log.

**Statistical Analysis.** As we discussed on April 18, OFCCP produced all of the information and data we used, including a description of how we analyzed the data provided by Oracle, to arrive at the allegations contained in the Second Amended Complaint. Following your letters requesting supplementation, I had prepared to discuss the questions you posed about the analysis. However, you were not interested in having that discussion during the scheduled call, but instead asked for OFCCP's analysis. This information is protected from disclosure as work product and under Fed. R. Civ. P. 26(b)(4)(D). I understand that in the course of attempting to mediate this matter, in addition to the databases used by OFCCP in its analysis, OFCCP had also produced files to allow Oracle to duplicate the statistical analysis. As requested, attached are the .do files for use in the SAS/STATA programs that OFCCP used in preparation for filing the Second Amended Complaint (as to the analysis regarding the compensation claims). It's my understanding that this should satisfy the request and I remain ready to answer any questions you or your team may have.

**30(b)(6) as to statistical analysis.** Because with these back up files produced today Oracle now has everything that OFCCP had and the information about what it did regarding the statistical analysis, we ask that Oracle withdraw the topics 1-29 from its planned 30(b)(6) deposition. As noted above, outside of the facts as initially described and produced, OFCCP's work product in preparation for filing its SAC is protected under Fed. R. Civ. P. 26(b)(4)(D). Now with the production of the attached files, there is no further factual information to be gained during a deposition regarding those topics. As a side note, I fail to see how this request focused on the statistical analysis is related to the 30(b)(6) deposition that OFCCP has noticed and Oracle's objections to the topics requested there.

**Depositions.** Regarding the depositions noted for June—while it might be more productive to discuss scheduling on a call, I wanted to let you know that Jane Suhr is out of the country from June 1-14, B. Mikel and H. Luong no longer work for OFCCP, and R. LeJeunesse works in Washington D.C. so we will not be producing him in San Francisco.

**Interview memos.** In your letter of April 22, you refer to the review and production of interview memos and you asked that they be produced by April 25. As part of our April 5 production we re-produced documents with revised redactions to reflect the review you and I discussed. A letter from someone else on your team this week indicated that they wanted to designate portions of those interview memos that we produced as confidential. Please advise if you need more information about the production.

I look forward to working through these issues with you. Thank you, Abby

Abigail G. Daquiz  
Attorney  
U.S. Department of Labor  
Office of the Solicitor  
300 Fifth Avenue, Suite 1120  
Seattle, WA 98104  
d 206-757-6753  
t 206-757-6762  
f 206-757-6761  
[daquiz.abigail@dol.gov](mailto:daquiz.abigail@dol.gov)

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EXHIBIT 3  
DAQUIZ DECLARATION

## Daquiz, Abigail - SOL

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**From:** Parker, Warrington <wparker@orrick.com>  
**Sent:** Monday, June 3, 2019 9:28 AM  
**To:** Daquiz, Abigail - SOL  
**Cc:** Connell, Erin M.; Fuad, David; Kaddah, Jacqueline D.; Siniscalco, Gary R.; Bremer, Laura - SOL; Garcia, Norman - SOL; Miller, Jeremiah - SOL; Song, Charles C - SOL; Richardson, Cedrick P - SOL  
**Subject:** RE: OFCCP v. Oracle, Case No. 2017-OFC-00006, Supp Interr. Response & Correspondence

To follow up on our discussion of this morning.

### Depositions

- June 26 for the 30b6 topics that are not the subject of Oracle's motion to compel. It will take place in SF.
- Atkins—you will confirm whether June 10 is still available. Alternative dates if not are June 17 and June 24-July 3
- Crossland—June 13
- Jane Suhr—you offered July 24 to July 3. We select June 26.

### Damages

- You will make further inquiry.

### RFAs

-We discussed our positions. You will notify me if OFCCP will stand on its current response or provide a different response.

### SCER

- I will respond in writing to your May 31, 2019 letter regarding this.

### LaJuenesse

- OFCCP will not be producing him.

**From:** Daquiz, Abigail - SOL [mailto:Daquiz.Abigail@dol.gov]  
**Sent:** Friday, May 31, 2019 9:34 PM  
**To:** Parker, Warrington <wparker@orrick.com>  
**Cc:** Connell, Erin M. <econnell@orrick.com>; Fuad, David <dfuad@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>  
**Subject:** Re: OFCCP v. Oracle, Case No. 2017-OFC-00006, Supp Interr. Response & Correspondence

Talk to you then. Should I call your direct line or cell?  
Have a good weekend, all!

---

**From:** Parker, Warrington <[wparker@orrick.com](mailto:wparker@orrick.com)>  
**Sent:** Friday, May 31, 2019 5:35:13 PM  
**To:** Daquiz, Abigail - SOL  
**Cc:** Connell, Erin M.; Fuad, David; Kaddah, Jacqueline D.; Siniscalco, Gary R.; Bremer, Laura - SOL; Garcia, Norman - SOL; Miller, Jeremiah - SOL; Song, Charles C - SOL; Richardson, Cedrick P - SOL  
**Subject:** Re: OFCCP v. Oracle, Case No. 2017-OFC-00006, Supp Interr. Response & Correspondence

Thank you. Let's plan to talk at 830 on Monday. Let's settle on depo dates on Monday. We will respond to your attachments as is necessary. I have not read them as of this email.

Sent from my iPhone

On May 31, 2019, at 16:56, Daquiz, Abigail - SOL <[Daquiz.Abigail@dol.gov](mailto:Daquiz.Abigail@dol.gov)> wrote:

Warrington,

Please see the attached letter.

Also, please find OFCCP's Supplemental Response to Interr. No. 27.

You requested a meeting and I regret that I do not have time today. I am travelling on Monday and will be in trial, back in the office on Thursday. However, if you're free, we can schedule time on Monday morning before I have to head to the airport. Do you have any time between 8:30-10 AM? I can schedule almost anytime on Thu or Fri of next week.

I've also provided you with dates for the depositions of other deponents and have not heard back from you. We can work to confirm those dates, too.

Abigail G. Daquiz  
Attorney  
U.S. Department of Labor  
Office of the Solicitor  
300 Fifth Avenue, Suite 1120  
Seattle, WA 98104  
d 206-757-6753  
t 206-757-6762  
f 206-757-6761  
[daquiz.abigail@dol.gov](mailto:daquiz.abigail@dol.gov)

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<OFCCP Responses Oracle Interrogatories Set Two, Supp. No. 27 (2019-05-31).pdf>  
<2019-05-31 Daquiz Letter to Parker.pdf>

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UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

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

Plaintiff,

v.

ORACLE AMERICA, INC.

Defendant.

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Case No. 2017-OFC-00006

RECEIVED

JUL 01 2019

**DECLARATION OF JEREMIAH MILLER IN SUPPORT OF OFCCP'S OPPOSITION  
TO ORACLE'S MOTION TO COMPEL OFCCP TO DESIGNATE AND PRODUCE  
30(B)(6) WITNESSES**

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 Motion to Compel the Deposition of Oracle America, Inc. 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.

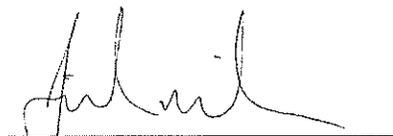
2. Between October of 2017 and winter of 2018, the parties to this litigation engaged in extended mediation in an attempt to resolve this case. The parties had extensive, substantive discussions about the nature of the case and the allegations involved, including discussions of specific data and information produced during discovery.

3. In preparing to file OFCCP's motion for leave to amend the complaint, I helped prepare a draft second amended complaint to be filed with the motion.

4. In drafting the second amended complaint, I reviewed materials produced in discovery by Oracle, and materials from OFCCP's compliance review. The materials from OFCCP's compliance review that I reviewed were principally documents produced by Oracle during the investigatory phase of this matter. These documents were all available to the parties before mediation commenced in October of 2017. My analysis of those materials, including the way I weighed those materials, what I believed was important, and the conclusions to be drawn from those materials informed the allegations made in the second amended complaint.

5. In drafting the second amended complaint, I determined that a statistical analysis should be included to support the allegations in the complaint. I therefore directed a staff labor economist at OFCCP to make certain econometric models supporting those allegations. I directed the staff labor economist as to what data to use, how to arrange the data, what time period was relevant, which elements of Oracle's employment systems to review and which factors should serve as controls. I also asked the staff labor economist to make damages estimates for those econometric models. I included the results of those models in numbered paragraphs in the second amended complaint, including at ¶¶ 14-17, 19-21, 23-24, 26-28 and 30-31, Tables 1-8.

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 11, 2019.

  
\_\_\_\_\_  
JEREMIAH MILLER  
Counsel for Civil Rights