

# **EXHIBIT C**



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May 23, 2018

**Via E-Mail (jfinberg@altshulerberzon.com)**

James M. Finberg  
Altshuler Berzon LLP  
177 Post Street, Suite 300  
San Francisco, CA 94108

Re: *Jewett v. Oracle America, Inc.*, No. 17-cv-2669 (San Mateo Super. Ct.)  
Meet and Confer Regarding Plaintiffs' Third Set of Request for Production (Nos. 44-47)

Dear Counsel:

I write following our May 22, 2018 meet and confer call regarding Plaintiffs' Third Set of Requests for Production (Nos. 44-47) and in response to your April 27, 2018 letter and e-mail. This letter serves to continue the parties' meet and confer efforts.

**RFP No. 44:** This request seeks documents relating to communications with Covered Employees about this lawsuit, including the *Belaire* Notice mailed on January 25, 2018. In our initial response, Oracle agreed to conduct a reasonably diligent search and produce non-privileged communications related to whether or not to opt-in to the *Belaire* Notice that may have been exchanged between (1) women who worked in INFTECH, PRODEV, or SUPP in California during the relevant limitations period and (2) counsel and/or Human Resources employees. Pursuant to your request, we have since confirmed that search would include not only e-mails "To:" or "From:" counsel and/or Human Resources employees, but also communications "Cc:"ed to those individuals.

In your April 13, 2018 letter and on our April 26 call, you argued that Oracle is required to search more broadly in two ways: first, that the search must also include all employees at the Vice President level or above in California; and second, that the search must include fifteen additional terms/topics listed in your April 27 letter. These proposals are overbroad and unduly burdensome, especially given that this request appears to be at root a fishing expedition and is not targeted with any reasonable particularity.

- As is clear from the data produced in this case, your request that Oracle make inquiries of every VP in California is incredibly burdensome. At least 369 unique current employees

with a standard job title including “VP” or “Vice President” appear in that data (*see* ORACLE\_JEWETT\_00001180). It is simply not reasonable to cast the net for collection and review so broadly.

- You have not identified any particular communications that you have reason to believe were sent that would be responsive to this request. On our April 26 call you indicated that you want to know if there was a “blast” e-mail sent from Legal, HR, or any VP regarding this case. After inquiry of our client, we are not aware of any such e-mail having been sent.
- The search terms/topics you proposed in your April 27 letter—including “class action” and “gender discrimination,” untethered to the specific Fair Pay Act (“FPA”) claim at issue in this case—are patently overbroad.

We previewed these concerns for you on our May 22 call, and you proposed a narrower search than you had on April 27. Specifically, you indicated that you would consider Oracle’s response to RFP No. 44 complete if an e-mail was sent to counsel, Human Resources employees, and Vice-Presidents asking them to search for and provide to counsel for review (and, if appropriate, production) communications to or from putative class members related specifically to the *Jewett v. Oracle America, Inc.* lawsuit (including but not limited to the *Belair* Notice sent as a part of this case). We will take this proposal to our client and get back to you; please let us know if we’ve misunderstood in any respect.

**RFP No. 45:** This request seeks documents relating to the separate matter of *Office of Federal Contract Compliance Programs (OFCCP) v. Oracle America, Inc.*, which raises different claims covering a different population in a different forum governed by different procedural rules. As an initial matter, your request references the case number associated with the OFCCP’s 2014 audit of Oracle’s Redwood Shores, California (“HQCA”) location (No. R00192699), but you indicated in your April 13 letter and on our April 26 call that you also intend to seek materials related to the subsequently filed, ongoing administrative proceeding that followed that audit (ALJ Case No. 2017-OFC-00006). You further stated on the April 26 call that you believe you are entitled, through this request, to “wholesale” production of every document and communication exchanged between the parties at any time during that audit or the ongoing administrative proceeding.

Your position is not well-taken. We have previously outlined objections to your position in our May 3, 2018 letter to Mr. Mullan regarding PMK Topic Nos. 23-25, and direct you to that letter. In addition:

- Pleadings, motions, and orders related to the administrative proceeding that have been released under the Freedom of Information Act, 5 U.S.C. § 552(a)(2), are already publicly available pursuant to a July 28, 2017 Notice of Proactive Disclosure issued by the Department of Labor’s Chief Administrative Law Judge. *See* [https://www.oalj.dol.gov/FOIA\\_Frequently\\_Requested\\_Records.htm](https://www.oalj.dol.gov/FOIA_Frequently_Requested_Records.htm). Oracle is not required to incur the time or expense of gathering and producing materials that are already equally available to both parties.
- Further wholesale disclosure of other documents or communications exchanged in the audit or administrative proceeding is not warranted. The lone case you cite in support of your expansive view—*Ratliff v. Davis Polk & Wardwell*, 354 F.3d 165 (2d Cir. 2003)—did **not**, as you contended in your April 27 e-mail, hold “that a private plaintiff could obtain . . . documents produced to the SEC in connection with [ ] SEC investigations.” On the contrary, the case concerned solely the question of whether documents authored by a foreign entity outside of the federal district court’s jurisdiction and subsequently relayed to a law firm within the district were discoverable through a subpoena to the law firm. The Second Circuit rejected this argument and remanded for further proceedings. It did not order disclosure, and neither the district court nor the Second Circuit had yet “address[ed] Davis Polk’s other arguments opposing disclosure,” including arguments “that the subpoena was overbroad and the documents were irrelevant” (*id.* at 167-68)—*i.e.*, precisely the type of arguments I advanced on our April 26 call. And there are a number of other factual and legal distinctions that render *Ratliff* inapplicable. Significantly, the OFCCP litigation (and the audit that preceded it) remains an open, ongoing matter with the Department of Labor, which the parties are entitled to adjudicate to completion in that forum. *Contrast id.* at 167 (describing documents at issue as relating to “now-resolved [SEC] investigation”). We reiterate our request that you provide authority that supports your position that you are entitled, wholesale, to every document and communication exchanged between OFCCP and Oracle in the separate administrative matter.
- Among other important distinctions, the OFCCP audit and administrative proceeding involve claims related to hiring for all employees into PT1 (*i.e.*, lower-level technical) roles at HQCA dating back to January 1, 2013, and claims related to alleged racial disparities in hiring and compensation. The present matter, by contrast, is solely a gender-based FPA case, which plainly does not reach any claims of hiring or race-based discrimination. Reviewing every document and communication exchanged in the OFCCP matter to redact

out this patently irrelevant information and protect the privacy of individuals unrelated to any of the claims at issue here would be enormously burdensome. Please provide any authority that you believe would require Oracle to undertake such an extraordinary burden.

- Finally, you suggested that this request would also capture communications to or from Covered Employees related to the OFCCP administrative proceeding, and said you have been informed that someone at Oracle sent a “blast” e-mail that “trashed the OFCCP complaint.” We have inquired of our client, and they are not aware of any such e-mail. If you wish to facilitate further discussion of this issue, please provide more specific information regarding the purported sender, recipient(s), and/or date of this communication so that we can investigate.

As stated in my May 3 letter and reiterated on our May 22 call, any underlying documents or information that may have been exchanged in connection with other investigations or matters that is also relevant here—for example, policies and procedures related to compensation that apply to decisions impacting women in PRODEV, INFTECH, or SUPP at HQCA during any overlapping time period; or compensation information for those women and men working in the same functions during the same time period—will be or has already been produced directly in this case, pursuant to Plaintiffs’ discovery requests.

**RFP No. 46:** This request seeks Oracle’s EEO-1 reports related to Covered Employees during the “CLASS PERIOD” (an undefined term). As I noted on our April 26 call, Oracle has already produced and will continue to produce data reflecting the gender, compensation, and work location(s) of Covered Employees for the relevant limitations period. The only bases you articulated on that call for demanding that Oracle produce its EEO-1 reports—which contain groupings of those same individuals for regulatory purposes not at issue here—are: (1) that EEO-1 groupings are purportedly relevant to determining which employees worked at the “same establishment” within the meaning of the FPA, and (2) that the reports themselves “go to willfulness.”

Regarding the first issue, we are not aware of any authority suggesting that location groupings for EEO-1 purposes are relevant to the “same establishment” inquiry under the FPA. If you have such authority, please provide it. In any event, the EEO-1 reports themselves do more than associate particular physical locations with particular EEO-1 location codes, and thus the rationale you have provided would not warrant wholesale production.



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Regarding the second issue, as previously expressed in my May 3 letter, your repeated attempt to convert Plaintiffs' required showing of "willfulness" for FPA statute of limitations purposes into a non-existent entitlement to wide-ranging discovery on intent or notice (elements not present in Plaintiffs' FPA claim) is not well-founded. But in any event, the "willfulness" aspect of the statute of limitations seems to be a moot point, given that the maximum limitations period under the FPA is three years but Plaintiffs have also pled a claim under Business & Professions Code section 17200 which would have a four year statute of limitations for otherwise unlawful conduct. If you have legal authority that suggests otherwise, please provide it.

**RFP No. 47:** This request seeks all "compensation audits" (a term you employed in the request, but did not define) related to Covered Employees during the "CLASS PERIOD" (another undefined term). Plaintiffs are not entitled, through meet and confer correspondence, to expand this request to demand categories of documents not fairly encompassed within its text—*i.e.*, to suggest that Oracle's obligation to produce documents is unbounded by and untethered to the language of the request you propounded. Accordingly, references in Ms. Cervantez's April 13 letter, by you and Ms. Cervantez on our April 26 call, and in your April 27 letter to your view of Oracle's obligations as a federal contractor, and your interpretation of the regulations governing federal contractors, are thus entirely beside the point.

As concerns the documents about which you did ask—"compensation audits"—our April 2, 2018 response and objections, made based on our understanding of that term, included assertions of attorney-client and work product privilege. I reiterated those privilege objections on our April 26 call. You have now asked that we provide a privilege log substantiating these assertions. Consistent with the parties' "mutual agreement that both parties will provide categorical privilege logs, rather than document by document logs" (*see* Dec. 20, 2017 letter from T. Higgins to J. Finberg; Feb. 28, 2018 e-mail from J. Finberg to D. Spencer), Oracle responds as follows:

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During the applicable limitations period, counsel for Oracle (both in-house and external counsel) have directed periodic reviews of compensation data, including data related to some or all of the Covered Employees, for the purposes of informing legal advice to be provided to Oracle. These reviews—conducted by agents acting at counsel’s direction—and communications with counsel regarding these reviews are protected from disclosure by the attorney-client privilege and the work product privilege.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Kathryn G. Mantoan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Kathryn G. Mantoan