

EXHIBIT E



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August 15, 2018

Via Email (ecervantez@altshulerberzon.com)

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Re: *Jewett v. Oracle America, Inc.*, No. 17-cv-2669 (San Mateo Super. Ct.)
Responses to Plaintiffs' Sixth Set of Requests for Production (Nos. 51-66)

Dear Counsel:

I write in response to your July 24, 2018 letter regarding Oracle's Responses and Objections to Plaintiffs' Sixth Set of Requests for Production of Documents ("Set Six Requests"), which were timely served on June 29, 2018. Following our meet and confer call on August 3, 2018, Oracle responds below to certain matters raised in your letter. For avoidance of doubt, our silence in this responsive letter (or more generally) about any specific characterizations or assertions you made in your letter or on our meet and confer call should not be understood as agreement or acquiescence. Discovery in this case is ongoing, and Oracle will continue to review and (as appropriate) produce responsive documents if and when they are identified.

Oracle's Objections

You assert that Oracle's general objections are without merit and ask Oracle to confirm whether it is withholding any responsive documents on the basis of its general objections. Given that Plaintiffs have similarly asserted general objections in response to Oracle's discovery requests, it is unclear why Plaintiffs are now challenging objections in this form. *See, e.g.*, Pl. Wang's Second Am. Resps. to Def.'s Reqs. for Prod. of Docs. (Set One) (July 19, 2018); Pl. Jewett's Resps. to Def.'s Reqs. for Prod. of Docs. (Set One) (Sept. 29, 2017).

Further, as explained in my July 6, 2018 letter, Oracle is not obligated to identify and search every possible location where potentially responsive documents could conceivably exist. This is simply not possible, let alone reasonable, for a company of Oracle's size and given the expansive



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nature of Plaintiffs' requests. California's Civil Discovery Act circumscribes discovery regarding electronically-stored information, for example, where the discovery sought is "unreasonably cumulative or duplicative," or if "[t]he likely burden or expense of the proposed discovery outweighs the likely benefit." Cal. Code Civ. Proc. §§ 2031.060(f), 2031.310(g); *accord id.* § 2031.230 (establishing that responding party may attest to "inability to comply" with document request if no documents are located through "a diligent search and a reasonable inquiry"). We disagree with your suggestion that conducting a reasonable, diligent search as contemplated by Civil Discovery Act is somehow inadequate, or tantamount to "withholding" documents that could conceivably exist in remote locations whose search is neither required nor warranted.

Accordingly, as set forth in Oracle's objections and responses to Plaintiffs' Set Six Requests, Oracle has appropriately objected to specific discovery requests and also agreed to produce categories of documents it believes in good faith will satisfy these requests following a reasonable and diligent search. Oracle has reasonably searched for and produced documents consistent with its responses, and it will continue to do so. With regard to documents withheld as privileged, Oracle directs Plaintiffs to the categorical privilege logs provided on March 8, 2018 and May 23, 2018, pursuant to the parties' agreement.

Finally, you raise concerns with Oracle's objection to "AFFIRMATIVE ACTION PROGRAM" as defined in Definition No. 7. I previously described Oracle's objections to this definition as irrelevant and overbroad in my June 22, 2018 letter. Among other issues, Oracle objects to Plaintiffs' attempt to suggest that the scope of what is "required" under 41 C.F.R. § 60-2.10 *et seq.* includes any document that may be "described" in those regulations. Notwithstanding these objections, Plaintiffs do not actually utilize the term "AFFIRMATIVE ACTION PROGRAM" in any of the specific Set Six Requests. Because this definition is not applicable to any of Oracle's responses, we do not believe that further discussion on this matter is necessary.

Oracle's Responses to Specific Requests

Request for Production No. 51

This request seeks all documents relating to "pay equity analyses conducted by virtue of Oracle being a federal contractor." Although Plaintiffs disagree with Oracle's understanding and interpretation of the term "pay equity analyses," Plaintiffs failed to define this central term in their



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Set Six Requests, and it was entirely proper (and necessary) for Oracle to interpret this phrase in order to formulate a response. Tellingly, your July 24, 2018 letter still makes no effort to define or clarify this central term.

In its response to Request No. 51, Oracle has agreed to produce responsive, non-privileged data and documents, including data from Oracle's system of record related to compensation, that reflect the evaluative process and actions Oracle undertakes to ensure fair and equitable decision-making and the justifications for compensation decisions. *See* 41 C.F.R. § 60-2.17(d) (requiring that federal contractors "implement an auditing system" that, *inter alia*, "[m]onitor[s] records of ... compensation ... to ensure the nondiscriminatory policy is carried out"). Oracle has produced, and will continue to produce, data and documents consistent with this response.

As explained in my June 22, 2018 letter, Oracle performs privileged analyses of its pay data at the direction of counsel and for the purpose of obtaining legal advice. However, it is not obligated to do so, and does not do so, "by virtue of ... being a federal contractor." Accordingly, such documents are not responsive to this request.

Request for Production No. 52

This request seeks all documents relating to "pay audits conducted to assess Oracle's legal compliance with its non-discrimination obligations or to ensure Oracle's compensation policies and procedures were carried out." Notwithstanding your incredulity, documents responsive to this request are protected by the attorney-client privilege and/or the work product doctrine. Oracle directs Plaintiffs to the categorical privilege logs previously provided pursuant to the parties' agreement.

Request for Production No. 53

This request seeks all documents relating to actions taken "in response to ... internal pay equity analyses, including, but not limited to, analyses conducted pursuant to 41 C.F.R. § 60-2.17(d)." As explained above, Oracle it is not obligated to conduct "internal pay equity analyses" pursuant to 41 C.F.R. § 60-2.17(d); indeed, that term appears nowhere in the regulation you cite. Oracle again directs Plaintiffs to the categorical privilege logs previously provided pursuant to the



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parties' agreement that relate to internal, privileged analyses of pay data conducted and communications attending those analyses.

However, consistent with its response to Request No. 51, Oracle agrees to amend its response to Request No. 53 to indicate that it will produce responsive, non-privileged data and documents, including data from Oracle's system of record related to compensation, that reflect the evaluative process and actions Oracle undertakes to ensure fair and equitable decision-making and the justifications for compensation decisions. Oracle also directs Plaintiffs to the significant amount of compensation data already produced in this case, which reflects, *inter alia*, salary changes and other compensation provided to members of the putative class during the relevant time period.

Request for Production No. 54

This request seeks all documents reflecting performance evaluations for individuals in the covered positions during the class period. Oracle has agreed to produce electronic performance evaluation records for "women" employed by Oracle within the relevant job functions and statutory period. Oracle agrees to amend its response to include "employees" otherwise satisfying this definition who have electronic performance evaluation records available via data exports from reasonably accessible centralized Oracle data systems, to the extent this information has not already been produced. Oracle is working diligently to collect, review, and prepare additional data exports for production.

Request for Production No. 55

This request seeks all documents reflecting the prior pay of employees within the covered positions during the class period. Oracle has agreed to produce electronically stored information regarding the prior pay of "women" employed by Oracle within the relevant job functions and statutory period. Oracle agrees to amend its response to include "employees" otherwise satisfying this definition who have electronically stored information regarding prior pay available via data exports from reasonably accessible centralized Oracle data systems, to the extent this information has not already been produced. Oracle is working diligently to collect, review, and prepare additional data exports for production.



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Request for Production No. 56

This request seeks documents relating to complaints regarding gender discrimination made to the EEOC or DFEH by women in covered positions during the class period. Oracle has agreed to produce complaints of gender-based discrimination in compensation made to the [EEOC or the DFEH] by women employed by Oracle within the relevant job functions in California for the statutory period.

The scope of appropriate discovery is limited by the scope of Plaintiffs' claims, which center on alleged violations of the California Equal Pay Act. Your assertion that Oracle must produce "all complaints of gender discrimination," regardless of whether such complaints relate to compensation, is without merit. Nor does the authority you cite in support of Plaintiffs' position govern the claims or scope of discovery for claims arising under the EPA. *Brinker Restaurant Corporation v. Superior Court* involved a class action complaint for wage and hour violations without any reference to gender or discrimination, let alone a discussion on the relevance of complaints by women on such topics. *See* 53 Cal. 4th 1004, 1018-19 (2012). *Kennicott v. Sandia Corporation* involved discrimination claims arising under Title VII, and its holding was specific to the elements of proof required in class actions asserting such claims. *See* No. CIV 17-0188 JB/GJF, 2018 WL 2206880 at *2-3 (D.N.M. May 14, 2018). Neither of these cases are applicable to the Plaintiffs' asserted EPA and derivative claims. As previously explained in my June 22, 2018 letter, the scope of discovery in this case is properly limited to whether Plaintiffs can establish, through class-wide evidence, that women in the putative class were paid less than men who were performing equal or substantially similar work without adequate justification. If you have any authority ordering discovery of complaints unrelated to compensation in an EPA case, please provide it.

Request for Production No. 57

This request seeks all documents relating to or reflecting Oracle's compensation policies that have been provided to OFCCP. Subject to its objections, Oracle responded that, having conducted a reasonably diligent search, it believed in good faith that its production in response to this request was complete. Oracle also invited Plaintiffs to identify any additional documents it believed should have been produced.



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At Plaintiffs' request and as memorialized in my letters dated June 22, 2018 and July 3, 2018, Oracle has produced the three specific documents mentioned by the government in what purport to be its notes of a January 2015 interview of Lisa Gordon, Compensation Director at Oracle, in connection with an audit conducted at Oracle's Pleasanton, CA location. However, as repeatedly explained in the deposition of Kate Waggoner, Oracle's Global Compensation Director and Person Most Knowledgeable designee on Topic No. 9 (as limited by the parties' meet and confer efforts), Oracle disputes Plaintiffs' characterization of these documents as "policies." *See, e.g.,* Waggoner Dep. Tr. Vol. 1 at 79:16-80:13, 154:1-157:13, 164:13-166:9.

Otherwise, as set forth in our letters of May 23, 2018 and June 22, 2018, Oracle has previously explained in detail our objections to Request No. 45 (seeking all documents relating to the separate administrative matter of *OFCCP v. Oracle America, Inc.*), which are applicable here for the same reasons. Documents may or may not be relevant to Plaintiffs' claims and responsive to Plaintiffs' requests in this case; the fact that any particular document was or was not produced in another context in another case is irrelevant.

Request for Production No. 58

This request seeks all documents reflecting, constituting, or relating to presentations given by Lisa Gordon regarding Oracle's "COMPENSATION POLICIES" (defined by Plaintiffs to include "directives, guidelines, limitations, or principles"; *see* Definition No. 10) during the years 2014 to 2016, as well as "materials presented to the audience at those presentations and email correspondence describing the location, audience, or date of such presentations." Oracle has agreed to produce, and at this time believes in good faith that it has produced, responsive presentations given by Ms. Gordon during this time period, as well as materials provided to the audiences to the extent such documents exist.

Your letter attempts to impermissibly expand the scope of Plaintiffs' original request by further demanding production of "non-privileged documents in Oracle's possession adequate to determine when and to whom such presentations were given." As explained during Ms. Waggoner's deposition, Oracle makes various trainings available to managers involved in making compensation decisions, but attendance at these trainings is not required company- or class-wide. *See* Waggoner Dep. Tr. Vol. 1 at 77:20-78:10. Additionally, it is our understanding that Oracle does not centrally monitor or record which managers (or other employees) may have attended or reviewed particular



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trainings. It would be incredibly burdensome for Oracle to identify, search, and review email correspondence for the thousands of employees involved in the planning and distribution of, and attendance at, such presentations. Nor is it possible to confirm whether any such collection of emails would accurately represent when or “to whom such presentations were given.” For these reasons, Oracle does not intend to supplement its response at this time.

Request for Production No. 59

This request seeks documents produced to OFCCP in response to the ALJ Order Granting in Part and Denying in Part OFCCP’s Motion to Compel (Sept. 11, 2017). Oracle responded that it will continue to produce documents relevant to Plaintiffs’ claims and responsive to specific discovery requests in this action. However, Oracle is not obligated to categorically produce all documents subject to an ALJ Order in a separate case, which relates to different claims under a different statute in a different forum governed by different procedural rules.

As discussed in response to Request No. 57 above, this request is also duplicative of Request No. 45, which sought documents relating to Oracle’s litigation with OFCCP. We have previously provided a detailed explanation of our objections to that request (which apply here as well) in letters dated May 23, 2018 and June 22, 2018. Please let us know if you have any further authority to support your position.

Separately, Oracle does not concede the validity of the ALJ Order. Because the ALJ was not appointed in the manner required for officers of the United States, his appointment was unconstitutional under the Appointments Clause. *See* U.S. Const., art. II § 2, cl. 2; *see also Lucia v. Sec. & Exch. Comm’n*, 128 S. Ct. 2044 (2018). Because the ALJ was presiding over the OFCCP administrative action without proper authority at the time he issued the order upon which this request is predicated, the ruling is void *ab initio*.

Request for Production No. 60

This request seeks all documents relating to criteria or qualifications for promotion or advancement to and from the covered positions. Oracle has agreed to produce documents that set forth or reflect the job duties of positions held by “women” employed by Oracle within the relevant job functions and statutory period. Oracle agrees to amend its response to include documents that



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set forth or reflect the job duties of positions held by “employees” otherwise satisfying this definition to the extent this information has not already been produced.

As explained in my May 3, 2018 letter, Oracle disagrees that issues of advancement or promotion are relevant to Plaintiffs’ asserted claims. Without waiving this objection, Oracle has agreed to produce documents responsive to this request that may reflect potential similarities (or lack thereof) in job content between jobs at various levels and with various titles. Oracle has produced, and will continue to produce, documents consistent with its response. However, Oracle cannot reasonably be expected to locate and produce all documents that may reflect the criteria or qualifications for the thousands of job positions at issue in this case, especially given the varying job duties and reporting structures across dozens of lines of business.

In response to your letter’s specific request for “promotion templates documents” for the Support and IT job functions, Oracle directs Plaintiffs to ORACLE_JEWETT_00004887 and ORACLE_JEWETT_00004892. As explained by Ms. Waggoner, Oracle does not require the use of any standard promotion justification template across the putative class. *See* Waggoner Dep. Tr. Vol. 2 at 309:1-312:7. The putative class as framed by Plaintiffs’ complaint includes three distinct job functions that span many different lines of business, and different lines of business (or sub-units within those lines) may individually determine if or how to utilize promotion templates. *See id.*

Request for Production No. 61

This request seeks communications to and from Joyce Westerdahl, Shauna Holman Harries, or Lisa Gordon relating to pay equity between men and women or complaints regarding women in the covered positions. Oracle has agreed to conduct a reasonably diligent search for non-privileged emails sent to or received by these individuals related to pay equity between men and women employees and complaints regarding unequal compensation on the basis of gender by women employed by Oracle in the relevant job functions in California for the statutory period.

Oracle further agrees to produce non-privileged and responsive “memos” located as attachments to emails identified and reviewed as a part of this search. However, it is unreasonably burdensome to ask Oracle to collect, review, and produce “text messages” sent or received by these individuals. Please provide any authority you have to support this demand. Otherwise, Oracle



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proposes that the parties table this matter until Oracle has completed its production of responsive documents.

Request for Production No. 62

This request seeks all documents relating to Oracle's practices, policies, or procedures for employees to raise a complaint of gender discrimination and/or unfair compensation, including documents relating to the investigation and resolution of such complaints. Oracle has agreed to produce documents sufficient to show its policies for employees to raise complaints of gender-based discrimination in compensation for positions held by women employed by Oracle within the relevant job functions in California for the statutory period. Your letter further demands that Oracle produce: (1) "documents reflecting the practices, policies, and procedures relating to the investigation and resolution of any such complaints," (2) documents reflecting responsive "procedures and practices, not just policies", and (3) documents "relating to policies and procedures for all complaints of unfair compensation and/or all complaints of gender discrimination."

In response to the third issue, Oracle has (consistent with its responses to other requests) properly limited the scope of its response to complaints regarding gender-based discrimination in compensation, in light of the specific claims Plaintiffs have pled in this litigation. Oracle disagrees that either "complaints of unfair compensation" unrelated to gender, or complaints of "gender discrimination" unrelated to compensation, are relevant to Plaintiffs' EPA and derivative claims. Otherwise, Oracle agrees to produce documents sufficient to show its "practices, policies, and procedures" for employees to raise complaints of gender-based discrimination in compensation, which it interprets to include the investigation and resolution of such complaints.

Request for Production No. 63

This request seeks documents showing the eligibility requirements for any employment benefit offered to employees in covered positions during the class period. Oracle has agreed to produce non-privileged documents sufficient to show eligibility requirements for employee benefits for "women" employed by Oracle within the relevant job functions and statutory period. Oracle agrees to amend its response to include documents sufficient to show eligibility requirements for "employees" otherwise satisfying this definition to the extent this information has not already been produced.



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Request for Production No. 64

This request seeks “any statistical analysis [that Oracle relied] upon to deny any of the allegations in the Second Amended Complaint or to assert [its] Fourth and Fifth Defenses,” which relate to explanations of wage differentials between employees performing substantially similar work due to bona fide factors other than sex, or as protected by the doctrine of business necessity. Oracle responded that, at the time it filed its Answer to Plaintiffs’ Second Amended Complaint, it did not rely on any statistical analyses, and as such, it had no responsive documents to produce. Discovery in this matter is, of course, ongoing. Oracle reserves the right to produce and rely upon documents in the future in support of its affirmative defenses. Such documents need not be limited to evidence available at the time Oracle filed its Answer, and may include expert analyses undertaken in connection with this litigation (whose disclosure and discovery are still months away, pursuant to the parties’ agreed-upon briefing schedule for motions for class certification and summary judgment).

Request for Production No. 65

This request seeks documents relating to the process by which compensation budgets are set at Oracle and the processes and procedures for approving the allocation of those budgets. As discussed in our meet and confer call on August 3, 2018, it is our understanding that Oracle does not have documents that would reflect the entire process and sequence of budget allocations spanning the putative class for any given year or focal cycle. During our meet and confer call, Plaintiffs requested further information on the total budgets provided to leadership within various lines of business and the exact allocation of these budget at every level of every line of business throughout the class period. We have agreed to relay your request to our client to determine what types of documents or information it may be possible to provide, and we will respond separately when we have additional information to share. Meanwhile, Oracle directs Plaintiffs to the significant amount of compensation data and clarifying information already produced in this case, which reflects, *inter alia*, salary changes and other compensation provided to members of the putative class during the relevant time period, as well as information about the organizations and supervisors to whom members of the putative class reported at various times.

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Request for Production No. 66

This request seeks documents “relating to statements by Oracle regarding whether women employees of Oracle are paid fairly, or have been paid fairly during the class period.” Oracle objected to this request as vague, ambiguous, overly broad, and unduly burdensome. As memorialized in my May 23, 2018 letter, we previously inquired about an internal “blast” e-mail that you hypothesized had been sent from Legal, HR, or a VP regarding this case, and did not identify any such e-mail. Oracle is not obligated to search every source of publicly (and thus equally) available information where responsive “statements” (as Plaintiffs understand that term) could exist. However, in an effort to resolve any dispute about this request, we direct Plaintiffs to two publicly available sources that may contain “statements” that Plaintiffs consider responsive:

<https://www.nbcnews.com/tech/tech-news/oracle-federal-lawsuit-indicative-larger-problem-tech-n708941> and <http://d18rn0p25nwr6d.cloudfront.net/CIK-0001341439/75549bf5-fa4a-4299-bc8b-081d0d224f43.pdf>, p. 72.

If you wish to confer further regarding any of these requests, I suggest that we arrange a call for the week of August 20, 2018.

Very truly yours,

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

Kathryn G. Mantoan