

**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 OBJECTIONS
TO EVIDENCE SUBMITTED BY
OFCCP IN SUPPORT OF ITS
OPPOSITION TO DEFENDANT'S
MOTIONS**

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**Office of Administrative Law Judges
San Francisco, Ca**

I. INTRODUCTION

Defendant Oracle America, Inc. (“Oracle”) submits the following objections to evidence submitted in support of OFCCP’s Opposition to Oracle’s Motion for Summary Judgment (“MSJ Opposition” or “MSJ Opp.”) and OFCCP’s Opposition to Oracle’s Motion to Exclude the Expert Report and Testimony of Janice Fanning Madden (“*Daubert* Opposition” or “*Daubert* Opp.”).

II. OBJECTIONS TO EVIDENCE

A. Oracle Objects and Moves to Strike the Declarations, Deposition Testimony, and Other Documents Cited by OFCCP

OFCCP’s Opposition, like its Motion for Summary Judgment, suffers from numerous significant evidentiary problems. Once again, the declarations, testimony, and documents relied upon by OFCCP lack foundation, contain inadmissible hearsay, and violate the best evidence rule.¹ These documents, attached to the Declaration of Laura Bremer (“Bremer Decl.”), the Declaration of Hea Jung Atkins (“Atkins Decl.”), and the Declaration of Jane Suhr (“Suhr Decl.”) are inadmissible. Rather than repeat the law supporting each of its objections, Oracle refers the Court to its Objections to Evidence in Support of Plaintiff’s Motion for Summary Judgment, filed on November 1, 2019. For the reasons set forth in that document, and for the reasons explained below, Oracle objects to and moves to strike all inadmissible evidence supporting OFCCP’s MSJ Opposition and OFCCP’s *Daubert* Opposition.

While Oracle renews its objections to the Report, Rebuttal, new analyses, and deposition testimony of Dr. Madden, it also objects to the *new* declaration submitted by Dr. Madden. As previously explained in Oracle’s Objections to Evidence in Support of Plaintiff’s Motion for Summary Judgment at § II(B), and in Oracle’s Motion to Exclude the Expert Report and Testimony of Janice Fanning Madden, Dr. Madden’s Report, Rebuttal, and testimony are flawed. Dr. Madden’s Report and Rebuttal are not relevant, and her new analyses (Ex. 9 to the

¹ OFCCP also routinely cites to evidence for propositions that it does not support. Rather than set forth individual objections to each such occurrence, Oracle generally objects to these inaccurate and misleading citations, and refers the Court to its Response to Plaintiff OFCCP’s Statement of Disputed Facts and its Response to Plaintiff OFCCP’s Statement of Additional Uncontested Facts, in which Oracle addresses OFCCP’s numerous mischaracterizations in detail.

Deposition of Dr. Saad and Exhibit B to OFCCP’s *Daubert* Opposition) are untimely, irrelevant, and unreliable. Dr. Madden’s newest declaration, dated October 31, 2019, suffers from similar problems. *See* Ex. A to *Daubert* Opp., Decl. of Dr. Janice F. Madden, Oct. 31, 2019 (“Madden Oct. 31 Decl.”). In addition, the new declaration contains statements that lack foundation and constitute pure speculation. *Id.* at ¶¶ 9-10.

B. Oracle’s Specific Objections to OFCCP’s Evidence

1. Exhibits 3, 5, 16, and 17 to the Bremer Decl., and Exhibits 93 and 94 to the Garcia Declaration, Violate the Best Evidence Rule

Material Objected To	Objection
<p>OFCCP’s characterizations of Bremer Decl., Ex. 3, “Affirmative Action at Oracle,” copyright 2015, ORACLE_HQCA_0000417320-5 and 0000417320-58</p>	<p>Objection #8: Best Evidence Rule</p> <p>OFCCP’s characterization of a document, or witness testimony about a document, is not the best evidence of a document’s contents. These documents speak for themselves, and are the best evidence of their contents.</p>
<p>Bremer Decl., Ex. 5, Shauna Holman-Harries May 8 Dep. Tr. 159:22-160:8; 227:23-24</p>	
<p>Bremer Decl., Ex. 16, Lynne Carrelli Dep. Tr. 130:17-25.</p>	
<p>Bremer Decl., Ex. 17, Kate Waggoner May Dep. Tr. 141:25-142:15.</p>	
<p>OFCCP’s characterizations of Garcia Decl., Ex. 93, Dr. Saad’s July 19, 2019 Report, including but not limited to Saad Rpt. ¶ 148, ¶ 159, ¶ 160 & Attachment C1</p>	
<p>OFCCP’s characterizations of Garcia Decl., Ex. 94, Dr. Saad’s August 16, 2019 Rebuttal, including but not limited to Saad Rebuttal ¶¶ 48-57, 77, 78, 79</p>	

2. **The Declarations of Oracle’s Former Employees, Exhibits 9, 10, 12, 13, 14, 30, 38, and 42 to the Bremer Declaration, Contain Hearsay, Speculative Statements, and Inadmissible Character Evidence.**

Material Objected To	Objection
<p>Bremer Decl., Ex. 9, Declaration of Amit Sharma ¶ 11</p>	<p>Objection #1: Lack of Foundation, Personal Knowledge, Speculation</p> <p>This statement clearly lacks foundation and is pure speculation, given Mr. Sharma’s admission that he “heard rumors” and “could not find out if the rumor was true.” Bremer Decl., Ex. 9 ¶ 11.</p>
<p>Bremer Decl., Ex. 9, Declaration of Amit Sharma ¶ 12</p>	<p>Objection #2: Hearsay</p> <p>These statements contain out-of-court statements offered for the truth of the matter asserted.</p>
<p>Bremer Decl., Ex. 10, Declaration of Colin McGregor, ¶ 11</p>	
<p>Bremer Decl., Ex. 12, Declaration of Avinash Pandey, ¶¶ 13, 18, 19</p>	
<p>Bremer Decl., Ex. 13, Declaration of Diane Boross, ¶ 9</p>	
<p>Bremer Decl., Ex. 14, Declaration of Jill Arehart, ¶ 12</p>	
<p>Bremer Decl., Ex. 30, Declaration of Bhavana Sharma, ¶¶ 5, 8, 10, 12</p>	
<p>Bremer Decl., Ex. 38, Declaration of Donna Rosberg, ¶¶ 5, 6, 9</p>	

Material Objected To	Objection
Bremer Decl., Ex. 42 , Declaration of Dalia Sen, ¶¶ 6, 8, 10, 12	
Bremer Decl., Ex. 38 , Declaration of Donna Rosberg, ¶ 9	<p>Objection #10: Inadmissible Character Evidence</p> <p>Ms. Rosberg’s statements regarding her manager’s refusal to permit her to work remotely to nurse her child is character evidence intended to prove the character of Oracle in order to show action in conformity therewith.</p>

3. **The Interview Notes from OFCCP’s Interviews of Oracle Employees, Exhibits 33 and 34 to the Bremer Declaration and Exhibits B through S to the Atkins Declaration, Lack Foundation and Are Hearsay.**

Material Objected To	Objection
Bremer Decl., Ex. 33 , Interview Notes from March 24, 2015 Interview of John McGinnis, DOL000000525-29	<p>Objection #1: Lack of Foundation, Personal Knowledge, Speculation</p> <p>Several of these documents reflect that the declarant (Ms. Atkins or Ms. Bremer) did not attend the interview they purport to summarize. <i>See, e.g.</i>, Atkins Decl., Exs. L, P; Bremer Decl., Exs. 33, 34. Other documents do not reflect which OFCCP representative conducted the interview at all. <i>See, e.g.</i>, Atkins Decl., Exs. D, G, H, N, O, S. Ms. Atkins and Ms. Bremer thus lack personal knowledge of these documents.</p> <p>Objection #2: Hearsay</p> <p>These interview notes were prepared by OFCCP at an unknown time and were presented to Oracle employees months after the interviews took place. These documents</p>
Bremer Decl., Ex. 34 , Interview notes from March 26, 2015 Interview of Marianna Gurovich, DOL000000554-558	
Atkins Decl., Ex. B , OFCCP’s Summary of March 26, 2015, Interview with Carolyn Balkenhol	
Atkins Decl., Ex. C , OFCCP’s Summary of Interview with Madhawi Cheruvu	
Atkins Decl., Ex. D , OFCCP’s Summary of Interview with Ivgen Guner	

Material Objected To	Objection
Atkins Decl., Ex. E , OFCCP’s Summary of Interview with Shauna Holman-Harries	are thus out-of-court statements offered for the truth of the matter asserted.
Atkins Decl., Ex. F , OFCCP’s Summary of Interview with Shauna Holman Harries, taken in connection with OFCCP’s audit of Oracle’s Pleasanton, CA facility	
Atkins Decl., Ex. G , OFCCP’s Summary of Interview with Chantal Dumont	
Atkins Decl., Ex. H , OFCCP’s Summary of Interview with Thomas Kurian	
Atkins Decl., Ex. I , OFCCP’s Summary of Interview with Christopher Leone	
Atkins Decl., Ex. J , OFCCP’s Summary of Interview with Meg Lloyd	
Atkins Decl., Ex. K , OFCCP’s Summary of Interview with Juan Loaiza	
Atkins Decl., Ex. L , OFCCP’s Summary of Interview with Eduardo Lorente	
Atkins Decl., Ex. M , OFCCP’s Summary of Interview with Peggy (Margaret) Rolly	
Atkins Decl., Ex. N , OFCCP’s Summary of Interview with Juana Schurman	
Atkins Decl., Ex. O , OFCCP’s Summary of Interview with Vickie Thrasher	

Material Objected To	Objection
Atkins Decl., Ex. P, OFCCP's Summary of Interview with Bhagya Yalaksjmi Veeraraghavan	
Atkins Decl., Ex. Q, OFCCP's Summary of Interview with Kemp Kaboga-Miller	
Atkins Decl., Ex. R, OFCCP's Summary of Interview with Editt Gonen-Friedman	
Atkins Decl., Ex. S, OFCCP's Summary of Interview with Gustavo Faerman	

4. **The New York Times Article, Exhibit 19 to the Bremer Declaration, Lacks Foundation and Is Inadmissible Hearsay.**

Material Objected To	Objection
Bremer Decl., Ex. 19, New York Times, The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart	<p>Objection #1: Lack of Foundation, Personal Knowledge, Speculation</p> <p>Ms. Bremer lacks personal knowledge regarding the contents of this article.</p> <p>Objection #2: Hearsay</p> <p>The entirety of this news article is an out of court statement offered for the truth of the matter asserted. OFCCP has provided no evidence demonstrating that an exception to the rule against hearsay is satisfied such that this is admissible evidence.</p>

5. **The “Conciliation Meeting Document,” Exhibit T to the Atkins Declaration, Is Inadmissible Hearsay**

Material Objected To	Objection
<p>Atkins Decl., Ex. T, transcription of Hea Jung Atkins’ handwritten notes from October 6, 2016 “Conciliation Meeting”</p>	<p>Objection #4: Vague & Ambiguous</p> <p>The content and meaning of these notes are vague and ambiguous</p> <p>Objection #8: Hearsay</p> <p>These notes are an out-of-court statement offered for the truth of the matter asserted. OFCCP has not met its burden to show that any of the exceptions to the hearsay rule apply.</p>

6. **Dr. Madden’s New Analyses Are Inadmissible Because They Are Untimely, Irrelevant, and Unreliable.**

Material Objected To	Objection
<p>Garcia Decl., Ex. 89, Madden Oct. 11, 2019 Decl. (Ex. 9 to the Deposition of Dr. Ali Saad and Ex. B to the <i>Daubert</i> Opp.)</p>	<p>Objection #12: Inadmissible as Untimely, Irrelevant, and Unreliable Expert Evidence.</p> <p>Dr. Madden’s new analyses are untimely and are inadmissible for that reason. Even if Dr. Madden’s new analyses had not been untimely disclosed to the prejudice of Oracle (which they were), these new analyses would still be inadmissible as irrelevant and unreliable.</p> <p><i>See also</i> General Objections to OFCCP’s Evidence in Support of MSJ, Section B; Oracle’s <i>Daubert</i> Motion and Reply; and Objection #11 (describing objections to Dr. Madden’s approaches and methodology that are also applicable here).</p>

7. **Dr. Madden’s Testimony, Exhibit 90 to the Garcia Declaration, Presents Numerous Evidentiary Problems.**

Material Objected To	Objection
<p>Garcia Decl., Ex. 90, Madden Dep. Tr. 175:2-176:18</p>	<p>Objection #1: Lack of Foundation, Personal Knowledge, Speculation</p> <p>Dr. Madden assumed, without any basis or personal knowledge, that people with the same job codes performed similar work.</p> <p>Objection #11: Inadmissible as Irrelevant and Unreliable Expert Evidence.</p> <p>Oracle objects to Dr. Madden’s initial and rebuttal reports and testimony for all the reasons set forth in Oracle’s <i>Daubert</i> Motion.</p> <p><i>See also</i> General Objections to OFCCP’s Evidence in Support of MSJ, Section B; Oracle’s <i>Daubert</i> Motion and Reply.</p>
<p>Garcia Decl., Ex. 90, Madden Dep. Tr. 180</p>	<p>Objection #8: Best Evidence Rule</p> <p>Dr. Madden’s report and Dr. Saad’s report are the best evidence of what their reports say.</p> <p>Objection #11: Inadmissible as Irrelevant and Unreliable Expert Evidence.</p> <p>Oracle objects to Dr. Madden’s initial and rebuttal reports and testimony for all the reasons set forth in Oracle’s <i>Daubert</i> Motion.</p> <p><i>See also</i> General Objections to OFCCP’s Evidence in Support of MSJ, Section B; Oracle’s <i>Daubert</i> Motion and Reply.</p>

8. **Dr. Madden’s Report and Rebuttal, Exhibits 91 and 92 to the Garcia Declaration, Are Inadmissible.**

Material Objected To	Objection
<p>Garcia Decl., Ex. 91 & 92, Madden Report & Madden Rebuttal</p> <p>Oracle objects to Dr. Madden’s Report and Rebuttal in their entirety, for the reasons explained in Oracle’s Objections to Evidence in Support of OFCCP’s MSJ.</p>	<p>Objection #8: Best Evidence Rule</p> <p>Throughout its <i>Daubert</i> Opposition, its Opposition to Oracle’s MSJ, and in the above-listed SUFs, OFCCP attempts to characterize Dr. Madden’s Report. In doing so, OFCCP violates the Best Evidence Rule, as Dr. Madden’s Report is the best evidence of what her Report says.</p> <p>Objection #11: Inadmissible as Irrelevant and Unreliable Expert Evidence.</p> <p>Oracle objects to Dr. Madden’s initial and rebuttal reports and testimony for all the reasons set forth in Oracle’s <i>Daubert</i> Motion.</p> <p><i>See also</i> General Objections to OFCCP’s Evidence in Support of MSJ, Section B; and Oracle’s <i>Daubert</i> Motion and Reply.</p>

9. **Dr. Madden’s Oct. 31, 2019 Declaration Is Untimely and Contains Statements That Lack Foundation and Are Improper Lay Witness Testimony.**

Material Objected To	Objection
<p>Madden Oct. 31, 2019 Decl., ¶¶ 9-10</p>	<p>Objection #1: Lack of Foundation, Personal Knowledge, Speculation</p> <p>Dr. Madden has no personal knowledge that would permit her to attest to what data Oracle records or does not record, and how it is recorded or maintained.</p>

Material Objected To	Objection
	<p>Objection #11: Inadmissible as Irrelevant and Unreliable Expert Evidence.</p> <p>Dr. Madden is not an expert on how technology companies are run or how companies maintain data. Mantoan <i>Daubert</i> Decl., Ex. A (Madden Dep.) 71:19-72:16. Dr. Madden’s statement about what she “would have expected Oracle to record” is outside the scope of her expertise and is an improper expert opinion.</p>

Respectfully submitted,

November 8, 2019

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