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San Francisco, Ca*

**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

**DECLARATION OF KAYLA GRUNDY
IN SUPPORT OF DEFENDANT
ORACLE AMERICA, INC.'S MOTION
TO COMPEL THE DEPOSITIONS OF
THE PERSONS OFCCP INTENDS TO
CALL AS WITNESSES AND WHO
OFCCP REFUSED TO IDENTIFY
BASED ON THE GOVERNMENT
INFORMANTS' PRIVILEGE OR, IN
THE ALTERNATIVE, MOTION IN
LIMINE NO. 1 TO PRECLUDE THE
TESTIMONY OF THOSE WITNESSES**

DECLARATION OF KAYLA GRUNDY ISO ORACLE'S MOTION TO COMPEL DEPOSITIONS, OR, IN
THE ALTERNATIVE, MIL TO PRECLUDE TESTIMONY

CASE NO. 2017-OFC-00006

I, Kayla Grundy, declare as follows:

1. I am a member of the State Bar of California and authorized to practice before this Court. I am an attorney with Orrick, Herrington & Sutcliffe LLP, attorneys of record for Defendant Oracle America, Inc. I make this declaration on personal knowledge, and, if called as a witness, could testify competently to the matters set forth in this declaration.

2. Attached hereto as **Exhibit A** is a true and correct copy of meet and confer correspondence between Norman Garcia and me between September 26, 2019 and October 30, 2019. I first requested OFCCP identify dates for witness depositions on October 25, 2019.

3. Attached hereto as **Exhibit B** is a true and correct copy of my letter to Norman Garcia dated October 30, 2019 regarding witness depositions.

4. In addition to the email correspondence, I met and conferred telephonically with Norman Garcia on November 4, 2019 regarding whether OFCCP intended to produce any previously undisclosed witnesses for deposition following the identification of those individuals on OFCCP's witness list. OFCCP indicated that it had not yet finalized its witness list and therefore could not tell me the locations of OFCCP's intended witnesses for purposes of deposition. Upon OFCCP's request that Oracle provide a time limit for the potential depositions to facilitate OFCCP's internal discussions regarding the request, I stated that Oracle would limit the depositions to three hours or less. OFCCP refused to agree to produce the witnesses for deposition. Also on this call, OFCCP argued that if Oracle was permitted to depose OFCCP's witnesses prior to the hearing, OFCCP should be permitted to depose Oracle's witnesses too. OFCCP also noted that it believed it has a basis to depose Oracle's witnesses even if they had already been deposed in this case. I disagreed.

5. Attached hereto as **Exhibit C** is a true and correct copy of an email I received from Norman Garcia dated November 6, 2019.

6. Attached hereto as **Exhibit D** is a true and correct copy of Defendant Oracle's Interrogatories, Set Two, served March 15, 2019.

DECLARATION OF KAYLA GRUNDY ISO ORACLE'S MOTION TO COMPEL DEPOSITIONS, OR, IN
THE ALTERNATIVE, MIL TO PRECLUDE TESTIMONY

7. Attached hereto as **Exhibit E** is a true and correct copy of an interview memo re-produced by OFCCP on October 24, 2019 pursuant to the Court's October 7, 2019 Order.

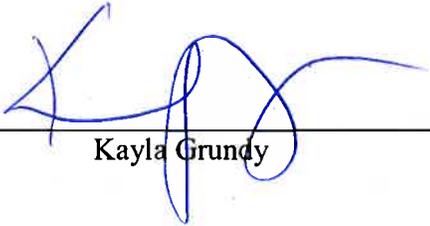
8. Attached hereto as **Exhibit F** is a true and correct copy of an interview memo re-produced by OFCCP on October 24, 2019 pursuant to the Court's October 7, 2019 Order.

9. Attached hereto as **Exhibit G** is a true and correct copy of OFCCP's Second Set of Interrogatories to Oracle America, Inc., served on April 18, 2019.

10. On Wednesday, October 23, I asked OFCCP to produce the unredacted interview notes regarding the seven former employees OFCCP submitted declarations from in support of its summary judgment motion. OFCCP refused to produce those unredacted interview notes. Attached hereto as **Exhibit H** is a true and correct copy of that correspondence.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed in San Francisco, California on November 7, 2019.



Kayla Grundy

EXHIBIT A

From: Grundy, Kayla Delgado <kgrundy@orrick.com>
Sent: Wednesday, October 30, 2019 2:39 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>
Subject: RE: OFCCP v Oracle; Prehearing submissions

Hi Norm,

I once again decline to engage in or respond to your superfluous attacks and unfounded accusations. I again choose to instead respond only to the substantive issues that the parties must reach agreement on.

Stipulations

Contrary to your email, I responded to your single proposed stipulation regarding the authenticity and/or admissibility of the joint exhibits in my email to you dated October 10, 2019. To reiterate, it is Oracle's position that any stipulation regarding the exhibits is premature until the parties have exchanged exhibit lists. To the extent OFCCP is again asking us to stipulate to documents that have yet to be identified, Oracle declines.

As previously stated, Oracle will send OFCCP Oracle's proposed stipulations on 11/4. In light of the holiday, we ask that OFCCP substantively respond by 11/12. We suggest OFCCP follow this same schedule for stipulations, but we, of course, cannot force you to do so. If OFCCP fails to send Oracle its proposed stipulations with sufficient time for review and consideration, Oracle will be forced to say no to any such stipulations.

Exhibit List

It does not appear that the parties are on the same page regarding the exhibit list. Given that OFCCP does not appear to think a meet and confer call is necessary at all regarding the exhibit list, Oracle now proposes the following schedule:

- Initial exchange: 11/5/19. Oracle expects that the exhibit lists exchanged on this date will be substantially complete, and that there will be only insignificant or rebuttal additions (if any) to either parties' exhibit list after this date. The exchanged exhibit list should include each parties' proposed descriptions.
- Second exchange: 11/12/19. Because OFCCP does not agree that any substantive discussion of the exhibit list is necessary, we propose that by 11/12, each party send a revised version of its exhibit list including any additions added in light of the other side's exhibit list, or revisions to its own document descriptions.
- Upon receipt of the second exchange of OFCCP's exhibit list, Oracle agrees to

determine the overlap between each party's list and create the joint exhibit list, including both OFCCP's and Oracle's proposed high-level description of the document (see the Parties' agreement as noted in my October 10 email regarding descriptions). Oracle will provide OFCCP a copy of this joint exhibit list on 11/18 for review prior to filing.

Witness List

As has been clear since the parties initially agreed on October 15, the witness list exchange will proceed as follows:

- Initial exchange 11/19 by 10 a.m.
- Meet and confer 11/20
- Exchange of cross exam times 11/20 by 5 p.m.

As for designations of deposition testimony, OFCCP has stated that it will comply with 29 CFR s 18.803(a)(30) but has not notified Oracle of a date certain by which it will designate testimony. The regulation requires the parties to exchange designations of deposition testimony with enough time to provide a fair opportunity for the opposing party to object or counter-designate. Given the number of other moving pieces that are due to the Court on 11/21, we request that each party designate any deposition testimony it seeks to use at the hearing by 11/15. Please confirm OFCCP will do so, or suggest an alternate date. To the extent OFCCP is unwilling to designate testimony it intends to use, Oracle will seek to exclude it.

Pre-hearing Statement

Oracle agrees to prepare the physical prehearing statement to be filed with the Court.

Depositions

Oracle does not agree with your statements below regarding depositions of previously unidentified witnesses. We will send a follow-up meet and confer letter regarding that issue specifically.

Best,
Kayla

Kayla Delgado Grundy

Attorney at Law

T 415-773-5537

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Sent: Tuesday, October 29, 2019 4:30 PM

To: Grundy, Kayla Delgado <kgrundy@orrick.com>

Cc: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>

Subject: RE: OFCCP v Oracle; Prehearing submissions

Kayla,

Asking us to work a holiday to suit your schedule after previously renegeing on meeting and conferring on the last holiday is directly on point. I also see your continued accelerated demand for stipulations when we have been waiting for a yes or no to our proposed stipulation for over three weeks now for one stipulation and you have provided no response yet to the stipulations we proposed on 10/23/19. Stating that you want an accelerated stipulations schedule for your stipulations while simultaneously holding our proposal in abeyance is problematic.

Additionally we see that in your e-mail below, you give contrary timing demands for the witness list. First you state: **“Oracle also expects that neither party will make any substantial additions to its witness list between 11/5 and 11/14”** which implies a witness submission date on 11/5. Later you state under the heading of **“Witness List:” “Initial exchange 11/19 by 10 a.m.”** This is another example of Oracle giving conflicting scheduling demands.

Given that Oracle does not believe a meet and confer call is necessary on 11/8 to identify exhibit overlap, it is not clear why Oracle desires a meet and confer call on 11/12 to substantially discuss exhibits since the only remaining task for the joint exhibits is what the exhibit will prove. Each side will already be providing their positions on what they will prove on 11/5 and we can provide our proposed revisions by 11/12. If the parties do not agree, which has been the trend for the last couple of months, we can each submit our position for what each joint exhibit provides. As such, we do not see any need to telephonically meet and confer on 11/12 to spend time discussing what the exhibit proves. We also do not see a need to do a second exchange on 11/14/19 nor have you provided a reason for this accelerated date. As such, we propose the second exhibit exchange on 11/18/19. Thank you for agreeing not to add exhibits after the submission of the second exchange. Given that you saw no need to have a meeting to identify the overlap of exhibits on 11/8/19, we do not foresee a need for one after the second exchange. Instead we can just trade e-mails identifying the overlap and proposals for what the exhibits will prove.

Thus, our proposed exhibit schedule is:

- Initial exchange 11/5/19.
- Exchange of proposed language for what the joint exhibits will prove completed by 5:00 p.m. on 11/12/19. If the parties do not agree, then what each party proposes will be listed separately for each exhibit having that situation.
- Second exchange on 11/18/19.
- Exchange of proposed language for what the joint exhibits will prove completed by 5:00 p.m. on 11/19/19. If the parties do not agree, then what each party proposes will be listed separately for each exhibit having that situation.

We do not agree to substantially respond to your stipulations by the Veteran’s Day holiday of 11/11/19 which essentially means that Oracle is demanding a response by the Friday before on 11/8/19 when the replies to two important motions are due. Just like Oracle does not want to meet and confer on 11/8 when the replies are due for a much smaller task, we do not want to spend that valuable time addressing Oracle’s stipulations. As such, OFFCP seeks to have the meet and confer discussion for the whole pre-hearing statement on 11/20/19. You did not comment on whether Oracle would agree to prepare the joint prehearing statement with OFCCP for filing with the Court.

Since you gave conflicting dates for the witness list, please confirm the following:

- Initial exchange 11/19 by 10 a.m.
- Meet and confer 11/20
- Exchange of cross exam times 11/20 by 5 p.m.

We have already responded to your deposition testimony request and you have stated nothing new to require any further response.

We note that you have waited until the last minute to make this deposition request. If Oracle truly wanted to take the depositions, it could have raised this issue more than a month ago when we initially discussed the matter. Instead, Oracle is raising it now when the parties are in the middle of a 11-day period to oppose two significant motions. Given that you have had our notes regarding our conversations with all worker witnesses for months along with any documents these witnesses produced to us in the course of our interviews, it is clear that Oracle has no need for such depositions, other than to take up both our time and the witnesses' time, trying to create additional hurdles for Oracle's own workers to clear before they can have their voices heard by the Court. We have reviewed the Court's order on this subject and do not believe that the Court gave Oracle its carte blanche approval to take the depositions of all of the witnesses that we name. If you believe otherwise, please cite to the portion of the Court's order giving Oracle this permission.

Please advise if Oracle will accept our proposed schedule.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Grundy, Kayla Delgado <kgrundy@orrick.com>
Sent: Friday, October 25, 2019 2:44 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>
Subject: RE: OFCCP v Oracle; Prehearing submissions

Norm,

I will not address each of the irrelevant, unhelpful, and inaccurate accusations below. Not only is it unnecessary, it is unhelpful to the resolution of the issue at hand – determining a mutually agreeable schedule to exchange pre-hearing filings. November is quickly approaching and it is in the interest of both parties to set firm dates to work towards. To

that end, Oracle proposes the following schedule:

Exhibit List

- Initial exchange: 11/5
- Meet and confer: 11/12 a.m. (per OFCCP's request to observe the holiday)
- Second exchange: 11/14
- Final exchange: 11/18

We do not believe a meet and confer call is necessary merely for the parties to identify the overlap between each exhibit list. That parties can do so independently prior to the 11/12 meet and confer call where we can substantively discuss the proposed exhibits. Oracle agrees that neither party should be adding exhibits after the 11/14 exchange. Oracle also expects that neither party will make any substantial additions to its witness list between 11/5 and 11/14 (*i.e.*, the witness lists exchanged on 11/5 should be complete).

Stipulations

As I previously stated, Oracle will provide its proposed stipulations to OFCCP by 11/4 and expects that OFCCP will substantively respond by 11/11. OFCCP is certainly free to send along its proposed fact stipulations at any point. To be clear, however, given the number and complexity of the filings due to the Court on 11/21, Oracle cannot commit to being able to review, discuss, and respond to an unknown number of fact stipulations from OFCCP between 11/19 and 11/20.

Pre-Hearing Statement

For the remainder of the prehearing statement (party name, issues of law, statement of relief, disputed facts, time required, and additional facts), Oracle agrees to OFCCP's request that each party propose its language on 11/19. Should a meet and confer be necessary, Oracle agrees it may occur on 11/20.

Witness List

We have already agreed on the timing related to the witness list, but I include it here for completeness.

- Initial exchange 11/19 by 10 a.m.
- Meet and confer 11/20
- Exchange of cross exam times 11/20 by 5 p.m.

Oracle once again proposes that to the extent either party intends to use deposition testimony, that testimony be designated at the same time as the initial exchange of the witness lists.

Finally, though not previously discussed, I note that there is very little time between the exchange of witness lists and the hearing (particularly in light of the intervening holiday). As OFCCP has long been aware, and as the Court previously noted is proper, Oracle intends to seek the deposition of any newly identified witness prior to the hearing. To the extent OFCCP intends to disclose any previously undisclosed witnesses on 11/19, please also be prepared on 11/20 to discuss deposition dates.

Please let me know if OFCCP agrees to the schedule outlined above.

Thank you,

Kayla

Kayla Delgado Grundy

Attorney at Law

T 415-773-5537

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Sent: Wednesday, October 23, 2019 3:28 PM

To: Grundy, Kayla Delgado <kgrundy@orrick.com>

Cc: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL

<Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R.

<grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington

<wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL

<Eliasoph.Ian@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Flores, Jessica - SOL SAN

<Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>

Subject: RE: OFCCP v Oracle; Prehearing submissions

Hi Kayla,

Thank you for the e-mail, but we do not understand several of your proposals.

In your e-mail, you proposed to do a substantial meet and confer on November 11, 2019. This is Veteran's Day, a federal holiday for 100 years counting when it was formally known as Armistice Day. Moreover, just a few weeks ago, Oracle proposed to do the same thing—to meet and confer on a federal holiday--and then reneged on the parties agreement. As you know, Erin Connell proposed a meet and confer on Monday, October 14th at 9 a.m. which Laura Bremer accepted. Since Columbus Day fell on a Sunday, the holiday fell on Monday, October 14th. Then, on the Friday before, on October 11, 2019, while Laura Bremer was in a deposition, Erin Connell reneged on this agreement and demanded an immediate meeting. We do not agree to be put in the same position again and do not agree to be prejudiced by Oracle reneging on a prior agreement.

As such, for the exhibits, we again go back to first meeting and conferring on the afternoon of Friday, November 8, 2019, to determine which exhibits will be classified as joint exhibits as we originally discussed. As you mentioned in our meet and confer conference call, this meeting should be at 3:00 p.m. when the replies should be finished.

We agree with your proposal to do the second exchange later and propose Monday, November 18, 2018, with a meet and confer by noon on November 19, 2019, regarding any additional joint exhibits. To be clear, the parties will add no new exhibits to their individual exhibit lists after their submission to the other party on November 18, 2019. The only change to the individual exhibit lists provided on November 18, 2019, will be to remove whatever exhibits the parties agree are joint exhibits and to change the exhibit numbers accordingly. Please confirm that this is your understanding too. Lastly, for the exhibits, please note that we plan to use demonstrative exhibits that will not be part of the individual exhibit list.

It is not clear how Oracle arrived at the conclusion that OFCCP will not propose any factual stipulations. Certainly, as Oracle acknowledged below, we stated no such thing and in fact we have already proposed a stipulation on our initial call. On the call, you stated that our proposed stipulation made sense, but that you would have to get approval. Subsequently, you stated below that Oracle was reserving its response.

As a result of Oracle's conduct, this stipulation has been in abeyance for 22 days and counting. To be clear, OFCCP will propose factual stipulations and in fact, proposes that the parties start with the assertions of fact that the parties assert in their statements of undisputed facts that remain undisputed after the replies are filed on November 8, 2019.

Given Oracle's conduct to date and the many pre-hearing actions we are required to perform, we cannot agree to your accelerated time table for the pre-hearing statement especially when you admitted that you

did not foresee the parties agreeing to many stipulations. Additionally, as explained below, in the last several submissions to the Court, the parties were unable to agree on language for a joint submission such that each side provided its own separate position to the court in the same document. As such, we again put forth our proposal for an exchange of prehearing statements on November 19, 2019, a meet and confer on November 20, 2019, regarding the stipulations and then the submission on November 21, 2019, of the joint stipulations that the parties agreed to and a separate listing of each party's position under the other requirements. Please advise if you agree to put this statement together and submit it to the court.

We understand your positions on the transcript and take different positions. As for 29 CFR s 18.803(a)(30), if we go that route, we plan to fully comply with this regulation.

Please let me know if the aforementioned proposals are agreeable to you.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Grundy, Kayla Delgado <kgrundy@orrick.com>
Sent: Monday, October 21, 2019 12:22 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>
Subject: RE: OFCCP v Oracle; Prehearing submissions

Norm,

Thank you for agreeing to our witness list proposal. To confirm, the parties will exchange witness lists by 10am on 11/19/19. On 11/20, the parties will hold a meet and confer call if necessary, and by close of business, will exchange cross examination times.

While we appreciate that the differences we proposed in the exhibit list timeframe are minor, it was our goal to provide as much time as possible for the finalization of the exhibit list and the printing of exhibits. If OFCCP cannot have its exhibit list complete by November 1, however, Oracle proposes a different approach where we build more time at the front to review, respond and potentially object, to the documents. This would also potentially limit the need for, or at least substantially shorten any second meet and confer call regarding the exhibit list.

- Initial exchange 11/5
- Meet and confer 11/11
- Second exchange 11/14
- Exchange final joint portion of exhibit list 11/18

As for the stipulations, we do not understand OFCCP's proposal and interpret it to mean OFCCP will not have any factual stipulations for Oracle to consider. By definition, the Parties must agree to stipulations, and cannot propose competing stipulations to the Court. Oracle will send OFCCP its proposed stipulations for your consideration no later than 11/4, and expect OFCCP will be able to substantively respond by 11/11. With respect to the remaining portions of the prehearing statement (party name, issues of law, statement of relief, disputed facts, time required, and additional facts), Oracle is willing to set an initial exchange date of 11/15. The parties can then meet and confer as necessary on 11/18 as originally proposed by OFCCP and make any changes to their respective portions by 11/20.

Oracle continues to disagree that deposition transcripts (whether in written or video form) are properly exhibits, and will object to any attempt by OFCCP to offer a deposition transcript as an exhibit at hearing. To the extent OFCCP wishes to use deposition testimony, the proper place to designate that testimony is on the witness list. As for designations of the portions of the testimony OFCCP intends to use, it is required by 29 CFR s 18.803(a)(30) (permitting deposition testimony as an exception to the hearsay rule "provided that" there is notice that a party intends to offer such testimony, and testimony "has been served upon the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to object or meet it."). Oracle proposes an initial exchange date of deposition testimony of 11/19 along with witness lists. To be clear, if OFCCP does not agree to designate the portions of the depositions it intends to use, we will ask the Court to order it to do so sufficiently in advance of the hearing. We would rather avoid that exercise, however, as we would prefer the Court focus on the motions for summary judgment and motions to exclude expert testimony.

Please let me know if this schedule is agreeable, or if another call would be useful to work out these details.

Thank you,
Kayla

Kayla Delgado Grundy
Attorney at Law
T 415-773-5537

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Tuesday, October 15, 2019 6:22 PM
To: Grundy, Kayla Delgado <kgrundy@orrick.com>
Cc: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>
Subject: RE: OFCCP v Oracle; Prehearing submissions

Hi Kayla,

We agree to change the deadlines for the Witness List as you propose below.

However, we cannot meet the earlier deadlines you requested for the exhibit list. Since they are only a few days different, we re-request the dates that we identified below.

In terms of the prehearing statement, we question the rush to do the stipulations so quickly and during the time period that the replies are due for the MSJ and Daubert motions for a number of reasons, including:

- in our initial call, you identified the low likelihood that we would agree to many stipulations;
- you suggested a time late in the afternoon of 11/8 to discuss the exhibit stipulations because the MSJ and Daubert replies should be done by then, but now you suggest a time in the middle of drafting the replies for those motion when the parties only have one week to draft them;
- your initial assessment of a low likelihood has gotten worse because Oracle is now stating that it is unwilling to stipulate to the authenticity and admissibility of documents that both parties included as their exhibits prior to seeing the same exhibits that both parties propose;.
- both sides will be identifying exhibits and facts to support or oppose motions with the last submissions due on 11/8. Thus, the parties may find stipulations from these documents and/or facts and will not be able to consult all of them if we do the stipulations on 11/4 & 11/6..

Of course, if you have some stipulations that you would like for us to consider prior to the exchange of the prehearing statements, we would be willing to consider them.

Given the low likelihood of agreeing to the stipulations or other matters identified for the pre-hearing statement and given the low success rate from recent attempts at similar exercises, we propose that we adopt the approach and timeline that we are using for the Witness List wherein we submit one document with each party's position underneath the applicable heading starting on 11/19 and following the schedule you proposed for the Witness List.

It is not clear where you came up with the need for video deposition designations especially when no such designations were required for deposition transcripts. If you can cite to us where you got this requirement, we will consider it.

To us, the video deposition files are more properly identified and located in the exhibits. Of course, since it is a deposition that will be offered, then a statement of what the deposition will prove will be included in the witness list.

Please let us know if these dates are agreeable to you.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Grundy, Kayla Delgado <kgrundy@orrick.com>

Sent: Thursday, October 10, 2019 2:20 PM

To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Cc: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>
Subject: RE: OFCCP v Oracle; Prehearing submissions

Hi Norm,

We suggest these alternative dates for exchanges:

Exhibit List:

- Initial exchange 11/1
- Meet and confer call 11/6
- Second exchange 11/11
- Meet and confer call 11/13

Pre-Hearing Statement:

- Initial exchange of stipulations 11/4
- Meet and confer call re stipulations 11/6
- Second exchange re stipulations and initial exchange for other aspects of prehearing statement 11/13

Norm, note here that we suggest separating out the exchange dates for the stipulations. This is important to the extent any agreed upon stipulations obviate the need for any motions in limine, which are due 11/15. Otherwise, the schedule you propose for the prehearing statement below is fine with us.

Witness List:

- Initial exchange 11/19 by 10am
- Meet and confer call, if necessary, 11/20
- Exchange of cross-examination time by COB 11/20

To the extent video deposition testimony will be used, we propose the following:

- Designation of page and line numbers to be used as testimony 11/29
- Counter designation of testimony by page and line number 12/3

With respect to your other questions:

1. Will Oracle do the binding for the joint exhibits? OFCCP will do the joint pre-hearing list. **Oracle agrees to bind the joint exhibits.**
2. Will Oracle agree to each party producing two copies of the bounded exhibits instead of one? **Yes.**
3. Can the parties stipulate to the authenticity and admissibility of the documents listed as joint exhibits? **Until the joint exhibit list is set, we believe this is premature. We should plan to discuss this on our meet and confer call on 11/6 (pursuant to my proposal above).**
4. In addition to the expert reports, will Oracle be including the data that its expert used? **We do not plan to include on our exhibit list the entire database, but instead**

will include relevant excerpts of data to the extent necessary. We do not believe it appropriate or useful to offer the entire database as an exhibit.

1. Column headers for the exhibit list index are: exhibit #, bates #, document date, document title/document description, proof description. **This is fine.**
2. Column headers for the witness list are: Witness name, proof offered by witness, time for direct and time for cross. **This is fine.**
3. The proof description detail would be at a high level. **I believe one of the examples you offered was “compensation guidance, practices, and philosophies for administering compensation.” We agree to this kind of description for the documents as the “proof description.”**
4. Deposition exhibits will be listed separately from deposition transcript and these both will be listed separately from video deposition files. **This is fine. However, we discussed that OFCCP intends to offer at least some testimony via video deposition. To the extent OFCCP does so, Oracle’s position is that the appropriate place to identify those deposition videos is the witness list, not the exhibit list.**
5. Large files and video files necessitate being produced on a disc or some other mobile medium. Large files will be identified by exhibit number, bates number and title. **This is fine.**
6. PowerPoints will be included as pdfs in the bounded exhibits. **Agreed.**
7. Each bounded exhibit book shall not be more than four inches in depth. **Agreed.**
8. Both parties do not know if they will use telephonic testimony. **Oracle does not intend to offer telephonic testimony.**
9. The parties just have to give notice to the other party if they want a current employee of the other party to appear at the hearing to give testimony. **Agreed, subject of course to objections from the party and the seeking of a protective order under the applicable rules.**

Best,
Kayla

Kayla Delgado Grundy
Attorney at Law
T 415-773-5537

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Tuesday, October 8, 2019 1:57 PM
To: Grundy, Kayla Delgado <kgrundy@orrick.com>
Cc: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>
Subject: RE: OFCCP v Oracle; Prehearing submissions

Kayla,

I am following up on our conference call last Tuesday (10/1/19) regarding the pre-hearing submissions since I have not heard back from you on the topics that you committed to get back to me on.

The first major issue is the timeline for our joint submissions. Is Oracle amendable to the dates that we suggested below on 10/1/19?:

1. Joint pre-hearing exhibit index list:

- The parties first exchange of exhibit index list on 11/5/19 for what we are individually proposing. If there are overlapping documents because both sides proposed them, then these document will be moved to the joint exhibit list.
- Conference call the afternoon on 11/8 to see if we can agree on what a document will prove for documents being put in the joint exhibit list. If we cannot agree then we will each put forth our own. I now propose 2:00 p.m. for this call.
- The parties second exchange of exhibit index list on 11/12/19 to include those documents that will be included on the joint exhibit list.
- Conference call on 11/14 to finalize any issues. I propose 1:00 p.m. for this call.

2. Joint pre-hearing Statement:

- The parties first exchange of statements by COB on 11/13/19.
- Parties discuss stipulations on 11/18. I suggest now this discussion occur at 10:00 a.m.
- The parties second exchange of statements by COB on 11/19/19.

3. Joint pre-hearing witness list:

- By noon on 11/20/19, each side will exchange its witness list. The parties will not combine any overlapping names.
- By the end of the day on 11/20/19, each party will identify the amount of time for its cross of the other side's witnesses identified in the party's initial witness list.

The other items that you told us that you would get back to us on are:

1. Will Oracle do the binding for the joint exhibits? OFCCP will do the joint pre-hearing list.
2. Will Oracle agree to each party producing two copies of the bounded exhibits instead of one?
3. Can the parties stipulate to the authenticity and admissibility of the documents listed as joint exhibits?
4. In addition to the expert reports, will Oracle being including the data that its expert used?

Lastly, it is my understanding that we came to the following agreements on our 10/1/19 conference call. If you believe differently, please let me know.

1. Column headers for the exhibit list index are: exhibit #, bates #, document date, document title/document description, proof description.
2. Column headers for the witness list are: Witness name, proof offered by witness, time for direct and time for cross.
3. The proof description detail would be at a high level.
4. Deposition exhibits will be listed separately from deposition transcript and these both will be

listed separately from video deposition files.

5. Large files and video files necessitate being produced on a disc or some other mobile medium. Large files will be identified by exhibit number, bates number and title.
6. PowerPoints will be included as pdfs in the bounded exhibits.
7. Each bounded exhibit book shall not be more than four inches in depth.
8. Both parties do not know if they will use telephonic testimony.
9. The parties just have to give notice to the other party if they want a current employee of the other party to appear at the hearing to give testimony.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Grundy, Kayla Delgado <kgrundy@orrick.com>
Sent: Friday, September 27, 2019 1:29 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>
Subject: RE: OFCCP v Oracle; Prehearing submissions

Thanks Norm. I will give you a call at the number below then.

Kayla Delgado Grundy
Attorney at Law
T 415-773-5537

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Friday, September 27, 2019 1:22 PM
To: Grundy, Kayla Delgado <kgrundy@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>

Subject: RE: OFCCP v Oracle; Prehearing submissions

Kayla,

Thank you for adding Ian. Tuesday at 3:00 pm will work.

Talk to you then,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Grundy, Kayla Delgado <kgrundy@orrick.com>
Sent: Friday, September 27, 2019 1:14 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>
Subject: RE: OFCCP v Oracle; Prehearing submissions

Hi Norm,

We have added Ian to the service list. Tuesday at 2pm does not work for me, but I can do 3:00pm or later. Will that work?

Thanks,
Kayla

Kayla Delgado Grundy
Attorney at Law
T 415-773-5537

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Friday, September 27, 2019 11:04 AM
To: Grundy, Kayla Delgado <kgrundy@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D.

<jkaddah@orrick.com>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>

Subject: RE: OFCCP v Oracle; Prehearing submissions

Kayla,

Are you available next Tuesday, 10/1, at 2:00 pm to address?

Also, please include Ian Eliasoph on all e-mails between the parties on a going forward basis.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Grundy, Kayla Delgado <kgrundy@orrick.com>

Sent: Thursday, September 26, 2019 12:37 PM

To: Bremer, Laura - SOL <Bremer.Laura@dol.gov>

Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: OFCCP v Oracle; Prehearing submissions

Hi Laura,

Are you available tomorrow afternoon or sometime early next week to discuss the pre-hearing exchanges contemplated by the Court's 2/6/19 Order?

Thanks,
Kayla

Kayla Delgado Grundy

Attorney at Law

Orrick

San Francisco 

T 415-773-5537

kgrundy@orrick.com

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EXHIBIT B



October 30, 2019

Via Email

Norman E. Garcia, Esq.
Senior Trial Attorney
United States Department of Labor
90 Seventh Street, Room 3-700
San Francisco, CA 94103

Orrick, Herrington & Sutcliffe LLP

The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
+1 415 773 5700
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Kayla Delgado Grundy

E kgrundy@orrick.com
D +1 415 773 5537
F +1 415 773 5759

Re: *OFCCP v. Oracle America, Inc.*
OALJ Case No. 2017-OFC-00006

Dear Mr. Garcia:

This letter follows up on our ongoing meet and confer regarding prehearing submissions. This letter specifically responds to OFCCP's position regarding prehearing depositions of as-yet unidentified witnesses.

As you know, OFCCP has taken the position throughout this litigation that the identities of Oracle employees it interviewed in connection with this case should be withheld based on the government informant's privilege. OFCCP has repeatedly reminded Oracle that disclosure of the identities of those informants prior to OFCCP formally designating them as witnesses would be premature.

The deadline for the parties to designate witnesses for trial is approaching and, based on the positions OFCCP has taken regarding government informants, Oracle expects that OFCCP's witness list will contain individuals whose identity was previously withheld. Your October 29 email seems to confirm this is OFCCP's intention. Despite your contrary assertions, both the Court and OFCCP have recognized the likely need for Oracle to conduct additional discovery after the witness lists are disclosed. When the Court upheld OFCCP's claimed privilege over the identities of informants, it recognized that "the parties should have no difficulty arranging for and conducting short depositions of witnesses after they are disclosed...." June 10, 2019 Order Granting in Part and Denying in Part Oracle's Second Motion to Compel, at 13 n.10. OFCCP itself supported this position when it argued that Oracle was not entitled to disclosure of witness identities prior to the exchange of witness lists, but that "Oracle will have ample time to prepare for the testimony of those trial witnesses" after disclosure. May 17, 2019 Opposition to Oracle's Second Motion to Compel.



Norman E. Garcia, Esq.
October 30, 2019
Page 2

Please confirm by noon on Monday, November 4 that upon disclosing its witness list OFCCP will make any newly-disclosed witnesses available for deposition.¹ If OFCCP will not so confirm, please identify a time that OFCCP is available for a meet and confer call on Monday, November 4. If we are not able to reach agreement on this, Oracle will move immediately to compel the depositions of those witnesses or, in the alternative, to have those witnesses' testimony excluded from hearing.

Sincerely,

A handwritten signature in blue ink that reads "Kayla Delgado Grundy". The signature is written in a cursive, flowing style.

Kayla Delgado Grundy

¹ Note that Oracle also expects that at the time OFCCP provides Oracle its witness list, it will produce unredacted interview memoranda for any disclosed witnesses. That OFCCP will do so was confirmed by Abigail Daquiz on October 24. If that is not correct for any reason, please let us know immediately.

EXHIBIT C

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Wednesday, November 6, 2019 11:10 AM
To: Grundy, Kayla Delgado <kgrundy@orrick.com>
Cc: Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Malhan, Ryan <rmalhan@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>
Subject: RE: OFCCP v. Oracle, Case No. 2017-OFC-00006 - pre-hearing matters

Hi Kayla,

Thank you for meeting and conferring with us on the deposition issue.

Based on our discussion on Monday and subsequent evaluation by the OFCCP team, we cannot agree to let Oracle take depositions of all of the witnesses OFCCP identifies on its witness list between the time of the witness list identification and the start of the hearing.

Thanks again,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Grundy, Kayla Delgado <kgrundy@orrick.com>
Sent: Monday, November 4, 2019 1:56 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Cc: Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Malhan, Ryan <rmalhan@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>
Subject: RE: OFCCP v. Oracle, Case No. 2017-OFC-00006 - pre-hearing matters

Norm,

Emails like the one below remain unproductive to determining an agreeable schedule for prehearing exchanges. I respond only with respect to the schedule. It appears we currently have agreement only with respect to the witness list exchange. As far as outstanding items:

- Please let us know whether the parties are exchanging exhibit lists tomorrow. Oracle remains ready and able to do so.
- Regarding the authenticity of exhibits, I have previously explained how we will proceed.
- Below are Oracle's proposed stipulations. Let me know if they are agreeable to OFCCP.
 1. OFCCP is responsible for enforcing Executive Order 11246.
 2. Oracle America, Inc. is a government contractor as defined by Executive Order 11246.
 3. At all relevant times, Oracle America, Inc. has had 50 or more employees.
 4. At all relevant times, Oracle America, Inc. has had at least one federal government contract of \$50,000 or more.
 5. OFCCP conducted a compliance review of Oracle's HQCA facility, which was initiated on September 24, 2014.
 6. The audit period for the compliance review of Oracle's HQCA facility was January 1, 2013 through June 30, 2014.
 7. OFCCP's Regional Director during the 2013-2014 audit period was Janette Wipper.
 8. OFCCP issued a Notice of Violation to Oracle on March 11, 2016 in relation to the compliance review of HQCA.
 9. OFCCP issued a Show Cause Notice to Oracle on June 8, 2016 in relation to the compliance review of HQCA.
 10. OFCCP and Oracle participated in a single in person meeting following the issuance of the Show Cause Notice, which took place on October 6, 2016.
- I will give you a call at 5pm to meet and confer at the number in your signature below. We do not agree with the position you set forth below regarding depositions.

Best,
Kayla

Kayla Delgado Grundy
Attorney at Law
T 415-773-5537

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>
Sent: Monday, November 4, 2019 12:12 PM
To: Grundy, Kayla Delgado <kgrundy@orrick.com>
Cc: Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Malhan, Ryan <rmalhan@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>
Subject: OFCCP v. Oracle, Case No. 2017-OF-00006 - pre-hearing matters

Hi Kayla,

Your correspondence once again takes misstates OFCCP's position and Oracle's prior conduct, speculates on OFCCP's motives and contains another last minute demand like your last minute demand for depositions not previously raised until your 10/25/19 email as acknowledged in this e-mail. Also, I see that your e-mail below did not address Oracle's constantly changing demands for what should occur when. A perfect example of this was stating "**Oracle also expects that neither party will make any substantial additions to its witness list between 11/5 and 11/14**" after the parties had previously agreed to an 11/19 exchange. Thank you for going back to the previously agreed upon 11/19/19 witness list exchange date.

In terms of stipulations, we note that it took Oracle more than three weeks to finally decide regarding OFCCP's proposed stipulation to the authentication and admissibility of any document that was included in the joint exhibits. OFCCP thought that if both parties wanted the exhibit, then it was a no brainer to stipulate to it, but Oracle declined to agree to this reasonable stipulation. Oracle's stipulation decline is even more troubling since you initially stated on the conference call on 10/1/19 that you thought it was a good idea. For Oracle to wait so long to make a decision on OFCCP's simple stipulation and then demand that OFCCP render a response to its stipulations within eight days is problematic. To achieve some agreements, we propose that every fact that was undisputed in the oppositions to the other parties summary judgment motions be stipulated.

Thank you for suggesting a response to Oracle's stipulations for a day other than the Veteran's Day holiday of 11/11/19. However, suggesting the following day, November 12, 2019, is not much better given that the parties have two important replies each on 11/8/19 and we are not going to spend the very short time that we have to prepare these replies to evaluate Oracle's proposed stipulations and provide a response. We again propose that the parties meet and confer on the stipulations on 11/18/19 and do not agree to provide our responses by 11/12/19.

Your statements regarding OFCCP's position on the exhibit list is again contrary to the record. We proposed to meet and confer mid-afternoon 11/18/19 after the parties had effectively written the replies to address exhibit overlap and the joint exhibit list. In your initial response, you suggested that we make it late on this afternoon. We agreed. While OFCCP raised it on 10/1/19, 10/8/15 and 10/23/15, Oracle waited until 10/25 to state that such a meet and confer conference call was not necessary. Thus, it was Oracle who first declined a meet and confer conference call about the exhibit list. In OFCCP's follow-up e-mail we simply noted that if the reason for the subsequent exhibit list meet and confer conference call was for the same reason as the 11/8/19 meet and confer call and if Oracle saw no reason for the earlier one, then OFCCP saw no reason for the latter one since Oracle provided no other grounds for meeting and conferring. Thus, it was Oracle who determined there was no reason to meet and confer regarding the exhibit lists. In terms of the second exhibit exchange, we again propose 11/18/19. We also note that for the *first time*, Oracle is trying to unilaterally impose major conditions for the first exhibit exchange such that "**there will be only insignificant or rebuttal additions**" to the first exchange on 11/5/19. We cannot agree to that especially when the first exchange is within OFCCP's narrow seven-day window for submitting two replies.

In terms of the depositions. We note again that even though the parties have been addressing the pre-hearing work since October 1, 2019, that you waited until 10/25/19 to raise this issue for the first time. We also note that Oracle, after waiting this long, sends us a demand letter on 10/30/19, after 4:00 p.m. while we are putting together two oppositions in the middle of an 11-day period to

respond to those motions. Furthermore, the noon deadline on November 4, 2019, does not even give us three full business days to respond before your unilateral deadline.

Additionally, we note that in your meet and confer deposition letter, Oracle takes the Court's statement out of context and *critically* fails to address the Court's prior comments on this issue in the same paragraph and, more *importantly* in the latter part of the sentence that Oracle quoted that is very relevant to this demand. Oracle failed to mention the predicate for taking those depositions that was at the latter part of the partial sentence it quoted: "insofar as this turns out to actually be necessary." Moreover, the Court addressed this *same* sentiment earlier in the paragraph by stating: "[g]iven the additional production that will be ordered here, it is not evident that there will be any need for further discovery of the witnesses identified for hearing. Insofar as there is such a need later in the case" Additionally, the Court made these statements when trial schedule had a witness disclosure date of 11/1. Now the required witness disclosure date is 11/21, leaving no time for depositions in advance of trial.

The situation has drastically changed from when the Court issued that order. Oracle has received minimally redacted attorney notes, 1857 pages of interrogatory responses and the parties only have two weeks from when the witnesses are first disclosed to the hearing with one of those weeks being Thanksgiving week. Given the amount of information that Oracle has coupled with its own voluminous information about its own employees including personnel files, supervisors, co-workers, and the information that Erin Connell cited in her declaration filed on 11/1/19, etc., Oracle does not need to take depositions and Oracle has made no showing establishing this need. Instead, it appears that Oracle seeks these depositions to disrupt OFCCP's preparation immediately before trial and to erect hurdles to witnesses testifying at trial

If you wish to telephonically meet today to further discuss depositions, I am available at 5:00 p.m.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Garcia, Norman - SOL

Sent: Monday, November 4, 2019 11:45 AM

To: Malhan, Ryan <rmalhan@orrick.com>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>

Cc: Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>;

Connell, Erin M. <econnell@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: OFCCP v. Oracle, Case No. 2017-OFC-00006

Kayla,

We will be responding within the half hour to both your e-mail and your letter. In response to your request to meet and confer today about the depositions, I am available at 5:00 p.m.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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From: Malhan, Ryan <rmalhan@orrick.com>

Sent: Wednesday, October 30, 2019 4:06 PM

To: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>

Cc: Parker, Warrington <wparker@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Grundy, Kayla Delgado <kgrundy@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: OFCCP v. Oracle, Case No. 2017-OFC-00006

Dear Counsel:

Please see attached.

Ryan Malhan

Paralegal

[Orrick](#)

[San Francisco](#) 

T +1-415-773-5689

rmalhan@orrick.com

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EXHIBIT D

**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
INTERROGATORIES, SET TWO**

REQUESTING PARTY: DEFENDANT ORACLE AMERICA, INC.

RESPONDING PARTY: PLAINTIFF OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED STATES
DEPARTMENT OF LABOR

SET NO.: TWO

TO PLAINTIFF AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to 41 C.F.R. § 60-30.9, Defendant Oracle America, Inc. hereby requests that Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor answer the following interrogatories within twenty-five (25) days after service of this notice.

DEFINITIONS AND INSTRUCTIONS

For purposes of these Interrogatories, the following definitions and instructions shall apply:

1. "PERSON" means, unless otherwise specified, any natural person, firm, entity, corporation, partnership, proprietorship, association, joint venture, other form of organization or arrangement, and government and government agency of every nature or type, including, but not limited to, any person employed or formerly employed at Plaintiff Office of Federal Contract

Compliance Programs and any person employed or formerly employed at Defendant Oracle America, Inc.

2. “OFCCP,” “YOU,” “YOUR,” and “PLAINTIFF” mean 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 other PERSONS and entities representing it or acting on its behalf.

3. “DEFENDANT” and “ORACLE” mean Defendant Oracle America, Inc., and its agents, servants, employees, investigators, attorneys, and all other PERSONS and entities representing it or acting on its behalf.

4. “HQCA” is defined to mean ORACLE’s headquarters in Redwood Shores, California.

5. “ANY” shall be understood to include and encompass “all.” As used herein, the singular shall always include the plural and the present tense also shall include the past tense. The words “and” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of each Interrogatory all information, documents, or things that might otherwise be construed to be outside its scope.

6. These Interrogatories are deemed to be continuing in nature, and pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, are subject to the requirement that any responses be supplemented in the event new or additional information is discovered or obtained after service thereof. If, after responding, Plaintiff discovers additional information responsive to any Interrogatory, or part thereof, Defendant requests that Plaintiff provide such information to Defendant within thirty (30) days after acquiring knowledge of such additional information or advise Defendant in writing as to why such additional information cannot be provided within the specified period.

7. For any information withheld based on any ground, including privilege, provide a written statement setting forth: (a) the identity of all person(s) from and to whom the information has been communicated; (b) the names and organizational position, if any, of each such person;

(c) a brief description of the subject matter of the information; and (d) the legal ground upon which you rely in withholding the information; and (e) if work product is asserted, the proceeding for or during which the information was obtained or created.

8. If, after exercising due diligence to secure the information, Plaintiff cannot answer the Interrogatories in full, answer them to the extent Plaintiff can do so. If Plaintiff cannot answer each Interrogatory in full, specify the portion of any Interrogatory to which Plaintiff is unable to fully respond, state the facts upon which Plaintiff bases her contention that she is unable fully to respond to such portion, and state any knowledge, information, or belief Plaintiff has concerning such portion.

9. As to those Interrogatories consisting of related parts or portions, a complete response is required to each such part or portion with the same effect as if it were propounded as a separate Interrogatory. Should any objection to an Interrogatory be interposed, it should clearly indicate to which part or portion of the Interrogatory it is directed. No part of the Interrogatory shall be left unanswered merely because an objection is interposed to another part of the Interrogatory.

10. If, in answering any of these Interrogatories, Plaintiff claims ambiguity in interpreting either the Interrogatory or a definition or instruction applicable thereto, such claim shall not be interposed as a basis for refusing to respond but there shall be set forth as a part of the response language deemed to be ambiguous and the interpretation chosen or used in responding to the Interrogatory.

11. If, in response to any of the Interrogatories, Plaintiff responds by referring to documents containing the requested information, either provide those documents categorized by the Interrogatory(ies) to which they respond or identify the Bates number range of the documents to which Plaintiff refers in her response.

12. Whenever appropriate, any Interrogatory propounded in the disjunctive shall be read as if propounded in the conjunctive, and vice versa.

INTERROGATORIES

INTERROGATORY NO. 26:

State the facts that support the allegations in Paragraph 11 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and computations, and the identity of the women, Asians, and African Americans or Blacks referenced in Paragraph 11.

INTERROGATORY NO. 27:

With regard to OFCCP's allegations of discrimination in the Second Amended Complaint, identify by name and last known contact information each PERSON with knowledge of the facts regarding the alleged discrimination, including the nature of the facts of which the PERSON identified has knowledge.

INTERROGATORY NO. 28:

State the facts that the allegation in Paragraph 13 of the Second Amended Complaint that "Oracle systematically undercompensated female and Asian employees with respect to their total compensation," including ANY statistical data, analyses, methodologies, and computations, and the identity of the female and Asian employees referenced in Paragraph 13.

INTERROGATORY NO. 29:

State the facts that support the allegations in Paragraph 14 of the Second Amended Complaint, and relating to Table 1, that there was or is a disparity between the total compensation for females and males at ORACLE's headquarters, including ANY statistical data, analyses, methodologies, and computations and the identity of the females and males.

INTERROGATORY NO. 30:

State the facts that support the allegation in Paragraph 15 of the Second Amended Complaint, and relating to Table 2, that there was or is a disparity between the total compensation for Asian and White employees at ORACLE's headquarters, including ANY statistical data and analysis, methodologies, and computations and the identity of the Asian and White employees referenced in Paragraph 15.

INTERROGATORY NO. 31:

State the facts that support the allegation in Paragraph 16 of the Second Amended Complaint, and relating to Table 3, that Black or African Americans are significantly undercompensated relative to their White peers, including ANY statistical data, analyses, methodologies, and computations and the identity of the Black or African Americans and White peers referenced in Paragraph 16.

INTERROGATORY NO. 32:

State the facts that support the allegation in Paragraph 18 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 ANY statistical data, analyses, methodologies, and computations, and the identity of the women, Asians and “other employees in the same or comparable job” referenced in Paragraph 18.

INTERROGATORY NO. 33:

State the facts that support the allegations in Paragraph 19 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and computations and the identity of the women and men referenced in Paragraph 19.

INTERROGATORY NO. 34:

State the facts that support the allegations in Paragraph 20 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and computations and the identity of the Black or African American employees and Whites referenced in Paragraph 20.

INTERROGATORY NO. 35:

State the facts that support the allegations in Paragraph 21 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and computations and the identity of the Asians and Whites referenced in Paragraph 21.

INTERROGATORY NO. 36:

State the facts that support the allegations in Paragraph 22 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and computations and the identity of the Asians and women referenced in Paragraph 22.

INTERROGATORY NO. 37:

State the facts that support the allegations in Paragraph 23 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and computations and the identity of the female and male employees referenced in Paragraph 23.

INTERROGATORY NO. 38:

State the facts that support the allegations in Paragraph 24 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and computations and the identity of the Asian and White employees referenced in Paragraph 24.

INTERROGATORY NO. 39:

State the facts that support the allegations in Paragraph 25 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and computations and the identity of the female, Black or African American and Asian employees referenced in Paragraph 25.

INTERROGATORY NO. 40:

State the facts that support the allegations in Paragraph 26 of the Second Amended Complaint, and relating to Table 4, including ANY statistical data, analyses, methodologies, and computations and the identity of the female employees referenced in Paragraph 26.

INTERROGATORY NO. 41:

State the facts that support the allegations in Paragraph 27 of the Second Amended Complaint, and relating to Table 5, including ANY statistical data, analyses, methodologies, and computations and the identity of the Asian and White employees referenced in Paragraph 27.

INTERROGATORY NO. 42:

State the facts that support the allegation in Paragraph 28 of the Second Amended Complaint, and relating to Table 6, including ANY statistical data, analyses, methodologies, and computations and the identity of the Black or African American employees referenced in Paragraph 28.

INTERROGATORY NO. 43:

State the facts that support the allegations in Paragraph 29 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and computations and the identity of the female and Asian employees referenced in Paragraph 29.

INTERROGATORY NO. 44:

State the facts that support the allegations in Paragraph 30 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and computations and the identity of the women and male peers referenced in Paragraph 30.

INTERROGATORY NO. 45:

State the facts that support the allegations in Paragraph 31 of the Second Amended Complaint, including ANY statistical data, analyses, methodologies, and the identity of the Asians and non-Asian peers referenced in Paragraph 31.

INTERROGATORY NO. 46:

State the facts that support the allegations of Paragraph 36 of the Second Amended Complaint that ORACLE utilizes a recruiting and hiring process that discriminates against qualified non-Asians, including African Americans or Blacks, Hispanics and Whites, based on race and ethnicity and that ORACLE's college hiring program strongly prefers hiring Asians over non-Asians, including the process that discriminates, the identity of the qualified non-Asians and the African Americans or Blacks, Hispanics and Whites referenced in Paragraph 36.

INTERROGATORY NO. 47:

State the facts that support the allegations of Paragraph 37 of the Second Amended Complaint, including the “comparison,” and ANY statistical data, analyses, methodologies and computations and the identity of the Asians and non-Asians referenced in Paragraph 37.

INTERROGATORY NO. 48:

State the facts that support the allegations of Paragraph 38 of the Second Amended Complaint, and relating to Table 7, and ANY statistical data, analyses, methodologies, and computations and the identity of the Hispanic college graduates, Black or African Americans college graduates, and the “more than 100 qualified, non-Asian recent college or university graduates” referenced in Paragraph 38.

INTERROGATORY NO. 49:

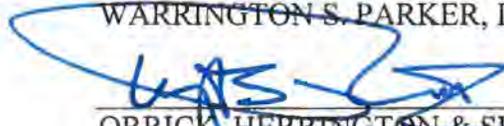
Describe in detail ANY anecdotal evidence of discrimination YOU contend supports ANY allegation in the Second Amended Complaint.

INTERROGATORY NO. 50:

If YOU contend that ANY of the discrimination alleged in the Second Amended Complaint is based upon a theory of disparate impact, identify the policies, practices, procedures, and tests that YOU contend operate to have a disparate impact.

March 15, 2019

GARY R. SINISCALCO
ERIN M. CONNELL
WARRINGTON S. PARKER, III



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
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.

On March 15, 2019, I served the interested parties in this action with the following document(s):

ORACLE'S INTERROGATORIES, SET TWO

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)

Laura Bremer (Bremer.Laura@dol.gov)

Jeremiah Miller (miller.jeremiah@dol.gov)

Norman E. Garcia (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 March 15, 2019, at San Francisco, California.



Jacqueline D. Kaddah

EXHIBIT E

ATTORNEY WORK PRODUCT / SUBJECT TO INFORMER'S PRIVILEGE

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INITIAL INTAKE INTERVIEW

Date: 4/22/19

RSOL Conducting Interview: Karina Wegman, Seattle RO

WITNESS CONTACT INFO (WP-AQ [REDACTED])

Name:	GI [REDACTED]
Contact Date and Time:	4/22/19; 4/15: LM 9am
Non-Work Phone Number:	GI [REDACTED]
Non-Work Email Address:	GI [REDACTED]
Non-Work Mailing Address	
Call Summary/Highlights	GI [REDACTED]

MANAGER STATUS

- Are you/were you an Oracle manager? No
- Do/did you have the authority to hire, fire, discipline, or determine pay of other employees while at Oracle? No

BACKGROUND & VISA STATUS

- Can you please tell me what gender you identify as? male
- Can you please tell me what race you identify as? Asian
- Were you a U.S. citizen, green card holder, or have a work visa while working for Oracle?

- Visa. GI [REDACTED]

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INITIAL INTAKE INTERVIEW

- GI: VISA [REDACTED]

RECRUITMENT AND EMPLOYMENT STATUS

- What is your current job title? GI [REDACTED] IC G [REDACTED]
- Do you currently work at the Redwood Shores facility? Yes
- What are your current job duties? GI [REDACTED]

First Job at Oracle

- When did you first get hired at Oracle? GI [REDACTED]
- What was the job title you got hired for? Same

Recruitment

- Did Oracle give you a job offer for the same job you interviewed for?
 - Does not know
- Do you still have your offer letter? Will look for it
- How did you find out about the job at Oracle? Website
- Were you a student at the time?
 - (If yes) Did you have any competing offers to work, when you were offered a job at Oracle?
 - Yes, from GI [REDACTED] offered a little bit less.
- During the interview were you asked about your prior pay?
 - Had worked in similar job GI [REDACTED] I don't remember if they asked.

First Job Continued

- Organization/ Project: GI [REDACTED]
- Location: RS
- Employment dates: GI [REDACTED]
- Chain of Command
 - Supervisor name and title: GI [REDACTED]

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INITIAL INTAKE INTERVIEW

- Supervisor's supervisor name and title: GI [REDACTED]
 - Who was the senior VP who supervised your supervisors? GI [REDACTED]
- How many people were on your team?
 - 4 under GI [REDACTED]
- How many of those individuals were doing the same work as you?
 - All 4. Don't talk about pay.
 - GI [REDACTED] said not to talk about pay
 - When I first joined OR there was a guy I would have lunch with. He talked to me about his low salary. He asked how much I earned, didn't tell him exact but I told him a range. I think he talked to his manager, GI [REDACTED] told me not to talk to others about their salary. This was GI [REDACTED]
- Did any of those ee get a promotion when you did not?
 - If yes, get demographics.
- Please describe the demographic make-up of your team:
 - Manager GI [REDACTED]
 - GI [REDACTED]
 - They are all IC GI [REDACTED]
- Raises/Promotions:
 - My manager talked to me about a promotion, but he has a concern that if my job title changes GI [REDACTED] so he didn't submit the promotion request. This happened in GI [REDACTED] WP [REDACTED]
 - Only time promotion discussed. Manager brought it up.
- Raises:
 - Never has asked
 - GI [REDACTED] raise
 - Also got raises in GI [REDACTED] and GI [REDACTED]

PERFORMANCE APPRAISALS

- Did your supervisor give you an annual performance review?
 - I would fill out a form, but he never gave us feedback in a form or a meeting. Never got any feedback, good or bad. Every year
- Did you ask your supervisor for a performance review?
 - Everybody does them

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INITIAL INTAKE INTERVIEW

DIRECT EVIDENCE OF DISCRIMINATION

- *Were you ever called any derogatory names at work?* No
- Did anyone ever tell you that you were being paid less than (men/white people)? Who?
 - No, I haven't talked to people about pay, besides my friend who I mentioned earlier.

I. OTHER

- What prompted you to call us?
 - My **GI** talked to someone at another company, she's always told me my pay is too low because of **GI**.
 - **GI**
- Anything else/any questions?
 - Person from lunch. Said his manager left OR. **GI**. (not on class list)

EXHIBIT F

ATTORNEY WORK PRODUCT / SUBJECT TO INFORMER'S PRIVILEGE

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INITIAL INTAKE INTERVIEW

Date:

RSOL Conducting Interview:

WITNESS CONTACT INFO WP: AQ [REDACTED]

Name:	
Contact Date and Time:	
Non-Work Phone Number:	
Non-Work Email Address:	
Non-Work Mailing Address	
Call Summary/Highlights	

INTRODUCTION

WP: AQ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- | [REDACTED]
- | [REDACTED]

[REDACTED]

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INITIAL INTAKE INTERVIEW

WP: AQ

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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INITIAL INTAKE INTERVIEW

- What are your current job duties

-

- WP: AQ [Redacted]

- What is your current job title?

-

- Do you know what your current individual contributor (IC) number (or manager/M number) is?

-

- Do you currently work at the Redwood Shores facility?

-

- What are your current job duties?

-

- WP: AQ [Redacted]

-

- WP: AQ [Redacted]

- When did you first get hired at Oracle?

-

- What was the job title you got hired for?

-

- **Recruitment**

NR

[Redacted]

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INITIAL INTAKE INTERVIEW

NR

- Were you working when you applied to Oracle?
 - Where?
 - What capacity?

NR

- During the interview were you asked about your prior pay?

NR

WP-AQ

- Organization/ Project
 -
- Location
 -
- Employment dates
 -
- Supervisor
 -
- Describe primary job duties
 -

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INITIAL INTAKE INTERVIEW

- Chain of Command
 - Supervisor name and title
 - Supervisor's supervisor name and title
 - Who was the senior VP who supervised your supervisors?

○ WP: AQ [Redacted]

[Redacted]

[Redacted]

[Redacted]

- Did you anyone from your team ever talk about your pay?
 - (If yes) What was said?
- Did you ever ask for a raise?
 - (If yes) Did you get it?
 - (If yes) Was it justified in some way, if so, how?

○ WP: AQ [Redacted]

• WP-AQ [Redacted]

○ WP-AQ [Redacted]

[Redacted]

IV. WP-AQ [Redacted]

• WP-AQ [Redacted]

[Redacted]

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INITIAL INTAKE INTERVIEW

- When you received a promotion did you also receive an increase in pay?
- When you received a promotion, did you have additional job duties?
- When you received a promotion, did your global career level (e.g. IC level) change?
- WP: AQ [REDACTED]

ADDITIONAL JOB QUESTIONS:

- Job Title (INCLUDING IC or M #)
- Organization/ Project
- Location
- Employment dates
- Supervisor
- Describe primary job duties
- Chain of Command
 - Supervisor name and title
 - Supervisor's supervisor name and title
 - Who was the senior VP who supervised your supervisors?
- WP: AQ [REDACTED]
- Did you anyone from your team ever talk about your pay?
 - (If yes) What was said?
- Did you ever ask for a raise?
 - (If yes) Did you get it?
 - (If yes) Was it justified in some way, if so, how?
- WP: AQ [REDACTED]

ADDITIONAL JOB QUESTIONS

- Job Title
- Organization/ Project
- Location
- Employment dates
- Supervisor
- Describe primary job duties
- Chain of Command
 - Supervisor name and title
 - Supervisor's supervisor name and title
 - Who was the senior VP who supervised your supervisors?
- WP: AQ [REDACTED]

ATTORNEY WORK PRODUCT / SUBJECT TO INFORMER'S PRIVILEGE

This document contains information that is privileged or otherwise exempt from disclosure under applicable law.
Do not disclose without consulting the Office of the Solicitor.

INITIAL INTAKE INTERVIEW

- Did you anyone from your team ever talk about your pay?
 - (If yes) What was said?
- Did you ever ask for a raise?
 - (If yes) Did you get it?
 - (If yes) Was it justified in some way, if so, how?
- WP: AQ [REDACTED]

V. PERFORMANCE APPRAISALS

- Did your supervisor give you an annual performance review?
 -
- How often did you receive performance reviews?
 -
- WP: AQ [REDACTED]
-

VI. DIRECT EVIDENCE OF DISCRIMINATION

- WP-AQ [REDACTED]
- [REDACTED]
- [REDACTED]

ATTORNEY WORK PRODUCT / SUBJECT TO INFORMER'S PRIVILEGE

This document contains information that is privileged or otherwise exempt from disclosure under applicable law.
Do not disclose without consulting the Office of the Solicitor.

INITIAL INTAKE INTERVIEW

- ● WP-AQ [Redacted]
- [Redacted]
- [Redacted]

VII. OTHER

- WP-AQ [Redacted]
- [Redacted]

VIII. OTHER POTENTIAL CLASS MEMBERS WP: AQ [Redacted]

EXHIBIT G

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

3 _____ :
4 OFFICE OF FEDERAL CONTRACT :
5 COMPLIANCE PROGRAMS, UNITED :
6 STATES DEPARTMENT OF LABOR, : OALJ Case No. 2017-OFC-00006
7 Plaintiff, : OFCCP No. R00192699
8 v. :
9 ORACLE AMERICA, INC., :
10 Defendant. :
11 _____ :

12 **OFCCP’S SECOND SET OF INTERROGATORIES TO ORACLE AMERICA, INC.**

13 Plaintiff the Office of Federal Contract Compliance Programs, United States Depart-
14 ment of Labor (“OFCCP”), under 41 C.F.R. § 60-30.9 and, as applicable, Rule 33 of the Fed-
15 eral Rules of Civil Procedure, requests that Defendant Oracle America, Inc. (“Oracle”) answer
16 the following interrogatories separately and fully in writing, under oath, and serve a copy of its
17 responses within 25 days after these interrogatories are served.
18

19 **DEFINITIONS**

- 20
- 21 1. “IDENTIFY,” “IDENTITY,” or “IDENTIFICATION,” when used in reference to an
22 individual PERSON, means to state each PERSON’s:
23 a. full name;
24 b. present or last known complete home address and phone number;
25 c. race or ethnicity;
26 d. gender;
27 e. present or last known position, business affiliation, job title, job description; and
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- f. position on the date specified in each interrogatory including job title and job description.
- 2. “IDENTIFY,” “IDENTITY,” or “IDENTIFICATION,” when used in reference to a DOCUMENT, means to:
 - a. state the DOCUMENT’s date and identify its author or authors;
 - b. state the type of DOCUMENT (e.g., letter, memorandum, report, chart, etc.);
 - c. state the title of the DOCUMENT;
 - d. describe the subject matter of the DOCUMENT;
 - e. if a drawing, map, or blueprint, state its number, revision number, revision date, and number of sheets; and
 - f. identify the DOCUMENT’s present location and custodian, and each PERSON who presently and at all relevant times had custody, control, or possession of the DOCUMENT.
- 3. “DESCRIBE IN DETAIL” means to describe fully by reference to underlying facts rather than by ultimate facts or conclusions of fact or law; and particularized as to time, place, manner and identity of PERSONS involved. If asked to state the date upon which a specific event occurred, provide the month, date and year, if known. If such information is not known, identify the date by relating it to some established time.
- 4. “YOU” and “YOUR” mean Oracle America, Inc. and all of its agents, representatives, attorneys, consultants, successors, subsidiaries, or divisions.
- 5. “RELEVANT TIME PERIOD” means **January 1, 2013 to the present** unless otherwise stated.
- 6. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make

1 the request inclusive rather than exclusive.

2 7. "COMMUNICATIONS" means all transactions or transfers of information of any kind,
3 whether orally, in writing, or in any other manner, at any time or place, under any cir-
4 cumstances whatsoever.

5 8. "DOCUMENT" means all writings of any kind, including any written, printed, typed,
6 electronically stored, or other graphic matter of any kind or nature and all mechanical or
7 electronic sound recordings or transcripts thereof, in YOUR possession and/or control
8 or known by YOU to exist, and also means all copies of documents by whatever means
9 made, including, but not limited to: papers, letters, correspondence, emails, text mes-
10 sages, presentations, manuals, computerized files, computerized spreadsheets, tele-
11 grams, interoffice communications, memoranda, notes, notations, notebooks, reports,
12 records, accounting books or records, schedules, tables, charts, transcripts, publications,
13 scrapbooks, diaries, and any drafts, revisions, or amendments of the above, and all other
14 materials enumerated in the definition provided in Rule 34 of the Federal Rules of Civil
15 Procedure.
16
17
18

19 9. "PERSON" means without limitation individuals, firms, associations, partnerships, cor-
20 porations, governmental agencies or offices and employees, and any other entity.

21 10. "ANALYSES" means any AND all draft AND final narratives, summaries, chronolo-
22 gies, determination memorandums, statistical summaries, charts, matrices, spreadsheets,
23 audits, evaluations, studies, methodologies, models, actual computations, AND regres-
24 sion AND other statistical analysis.
25

26 INSTRUCTIONS

27 1. Each interrogatory is to be answered separately and as completely as possible.
28

1 The fact that discovery is not complete may not be used as a basis for failure to answer each in-
2 terrogatory based on the knowledge YOU currently have.

3 2. In answering these interrogatories, furnish all responsive information available
4 to YOU, not merely the information within YOUR own direct or personal knowledge. This
5 means YOU are to furnish all information known to your present and former agents, represent-
6 atives, attorneys, accountants, or any and all persons acting on YOUR behalf or at YOUR di-
7 rection, whether obtained through first-hand knowledge or by inquiry of others.
8

9 3. If YOU maintain that any DOCUMENT or record which refers or relates to any-
10 thing about which these interrogatories ask has been lost or destroyed, set forth the subject mat-
11 ter of such DOCUMENT, the locations and identities of the present custodians of all copies of
12 such DOCUMENT, the dates of destruction, and the identities of the PERSONS authorizing
13 such destruction, if any.
14

15 4. Whenever any objection is made to any numbered or lettered paragraph of any
16 interrogatory, or portion thereof, an answer must be furnished to any other numbered or lettered
17 paragraph of such interrogatory, or portion thereof, as to which there is no objection.
18

19 5. With respect to the application of privileges: If YOU decline to answer all or
20 part of an interrogatory, to identify a DOCUMENT, or to otherwise provide information on the
21 basis of a claim of privilege, so state in response to the interrogatory. Furnish a complete log of
22 any information withheld on the basis of privilege, describing each piece of such information in
23 a manner that will enable OFCCP to assess the applicability of the privilege being asserted.
24

25 This includes, without limitation, the date(s) the information was transmitted or communicated,
26 to and from whom the information was transmitted or communicated, the privilege(s) claimed,
27 and the factual basis for the claim of privilege.
28

1 16. DESCRIBE IN DETAIL all actions YOU took during the RELEVANT TIME
2 PERIOD in response to any ANALYSES YOU conducted pursuant to 41 C.F.R. § 60-2.17(b) for
3 YOUR PT1 Job Group, including those employees in the Information Technology, Product De-
4 velopment, and Support Job Functions, including but not limited to all actions YOU took related
5 to action-oriented programs identified in 41 C.F.R. § 60-2.17(c).

6
7 17. DESCRIBE IN DETAIL all ANALYSES YOU conducted pursuant to 41 C.F.R.
8 § 60-3.15(A during the RELEVANT TIME PERIOD for YOUR PT1 Job Group, including those
9 employees in the Information Technology, Product Development, and Support Job Functions.

10
11 18. DESCRIBE IN DETAIL all actions YOU took during the RELEVANT TIME
12 PERIOD in response to any ANALYSES YOU conducted pursuant to 41 C.F.R. § 60-3.15(A)
13 for YOUR PT1 Job Group, including those employees in the Information Technology, Product
14 Development, and Support Job Functions.

15
16 19. DESCRIBE IN DETAIL the qualifications that YOU consider in hiring employ-
17 ees for YOUR PT1 Job Group (Information Technology, Product Development, and Support Job
18 Functions), including whether each of those qualifications is required or preferred and the reasons
19 why YOU require or prefer each of those qualifications.

20
21 DATED: April 18, 2019

Respectfully submitted,

22 KATE O'SCANNLAIN
23 Solicitor of Labor

24 JANET M. HEROLD
25 Regional Solicitor

26 JEREMIAH MILLER
27 Counsel for Civil Rights

28 LAURA C. BREMER
 Senior Trial Attorney

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NORMAN GARCIA
Senior Trial Attorney

BY: /s/Charles Song
CHARLES SONG
Senior Trial Attorney
U.S. Department of Labor
Office of the Solicitor
350 S. Figueroa St., Suite 370 Los Angeles, CA
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Attorneys for Plaintiff OFCCP

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CERTIFICATE OF SERVICE

I am a citizen of the United States of America and am over eighteen years of age. I am not a party to the instant action; my business address is 350 S. Figueroa St., Suite 370 Los Angeles, CA.

On the date indicated below, I served the foregoing **OFCCP'S SECOND SET OF INTERROGATORIES TO ORACLE AMERICA, INC.** by electronic mail, by prior written agreement between counsel, to the following:

Connell, Erin M.: econnell@orrick.com

Kaddah, Jacqueline D.: jkaddah@orrick.com

James, Jessica R. L.: jessica.james@orrick.com

Siniscalco, Gary: grsiniscalco@orrick.com

I certify under penalty of perjury that the above is true and correct.

Executed: April 18, 2019

/s/ Charles Song
Charles Song

EXHIBIT H

From: Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>
Sent: Thursday, October 24, 2019 12:33 PM
To: Grundy, Kayla Delgado <kgrundy@orrick.com>
Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Flores, Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA <Hermosillo.Mary.A@dol.gov>; Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP v. Oracle; Informant Declarations

Hi Kayla,

We don't believe that Oracle is entitled to the reproduction of attorney notes or any other information sought in your email below. It has been our position that upon identifying trial witnesses, if we have employee statements collected during our investigation we would unredact and produce those statements to Oracle at that time.

To avoid time-consuming conflict over this request, however, please see below identifying which summary in Interr. 49 and which set of interview notes corresponds with which declarant.

Nicole Alexander, Employee 1, attorney notes at DOL000040762
Kristen Garcia, Employee 11, attorney notes at DOL000040852
Christina Kolotouros, Employee 42, attorney notes at DOL000041682
Donna Ng, Employee 27, attorney notes at DOL000040993
Rachel Powers, Employee 29, attorney notes at DOL000041009
Donna Rosberg, Employee 31, attorney notes at DOL000041021
Lynn Snyder, Employee 212, attorney notes at DOL000042358

Abigail G. Daquiz

U.S. Department of Labor | Office of the Solicitor | 206.757.6753 (direct)

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From: Grundy, Kayla Delgado <kgrundy@orrick.com>
Sent: Wednesday, October 23, 2019 9:25 AM
To: Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Eliasoph, Ian - SOL <Eliasoph.Ian@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Flores,

Jessica - SOL SAN <Flores.Jessica@dol.gov>; Hermosillo, Mary A - SOL SEA
<Hermosillo.Mary.A@dol.gov>

Cc: Parker, Warrington <wparker@orrick.com>; Connell, Erin M. <econnell@orrick.com>;
Mantoan, Kathryn G. <kmantoan@orrick.com>; Kaddah, Jacqueline D.
<jkaddah@orrick.com>

Subject: OFCCP v. Oracle; Informant Declarations

Abigail,

As you know, OFCCP submitted 7 declarations from former Oracle employees in support of its motion for summary judgment on Monday. OFCCP has thus waived any government informant protection of the identifies of Christina Kolotouros, Rachel Powers, Donna Rosberg, Donna Kit Yee Ng, Lynn Snyder, Kirsten Hanson Garcia, and Nicole Alexander.

Please produce the unredacted interview memos relating to any of these individuals **today**. Please also identify whether any of these employees' interviews are summarized in OFCCP's response to Interrogatory No. 49, and if so, identify which number each employee was assigned for purposes of that interrogatory response today.

Thank you,
Kayla

Kayla Delgado Grundy
Attorney at Law

[Orrick](#)
[San Francisco](#) 
T 415-773-5537
kgrundy@orrick.com

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