

**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

**DECLARATION OF NORMAN E. GARCIA IN SUPPORT OF  
OFCCP'S OPPOSITION TO 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**

I, Norman E. Garcia, state and declare as follows:

1. I am a Senior Trial Attorney for the U.S. Department of Labor, Office of the Solicitor, and counsel of record for Plaintiff in this action. I submit this declaration in support of OFCCP's Opposition to Oracle's America Inc.'s Motion to Compel the Depositions of the Persons OFCCP Intends to Call as Witnesses 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. I have personal knowledge of the matter set forth in this declaration, and I could and would competently testify thereto if called upon to do so.

2. Throughout this litigation, Oracle has never served any deposition notices for any of its former or current employees nor has it attempted to schedule such depositions by providing dates and times to OFCCP prior to October 25, 2019. Additionally, Oracle did not attempt to arrange, or allow time for, depositions of the third-party employee witnesses that would be

revealed at the time of the parties' witness exchange prior to October 25, 2019. Further, Oracle never raised this scheduling issue with the Court through scheduling discussions, or its proposed schedule for pre-trial filings and deadlines.

3. On October 25, 2019, Oracle notified OFCCP for the first time that it intended to depose any third-party employee witness OFCCP designated on its November 19 witness list between that time and the commencement of trial on December 5. Throughout the parties' pre-trial scheduling discussions over the past two and a half months, Oracle never raised the issue of reopening discovery to take employee depositions before October 25, 2019.

4. During meet and confer discussions with Oracle on the issue of the employee depositions that Oracle now seeks to schedule between November 20 and December 5, I raised the issue that this short window also encompasses the Thanksgiving holiday when employee witnesses are likely to be unavailable.

5. OFCCP submitted employee witness declarations in support of its summary judgment or *Daubert* motions filed on October 21. Oracle did not seek to depose any of those declarants in the month between October 21, and the November 19 witness exchange.

6. Oracle has been on notice that OFCCP intends to call employee witnesses since at least May of 2019. Oracle has also been on notice that OFCCP counsel has interviewed over 200 Oracle employees, as OFCCP has produced to Oracle its attorney notes for each employee interviewed.

7. Although the parties had been addressing the necessary pre-hearing work since October 1, 2019, Oracle waited until October 25 to address deposing all employee witnesses prior to December 5, and has not previously moved the Court to depose the employees.

8. In an attempt to compromise on this issue, OFCCP offered to facilitate brief depositions of limited employee witnesses on the three days following Thanksgiving weekend and before trial commences on December 5th. Specifically, OFCCP offered to attempt to facilitate three employee witness depositions, as Oracle has already taken seven depositions and has not sought leave from the Court to exceed each side's limit of 10 depositions. Attached here

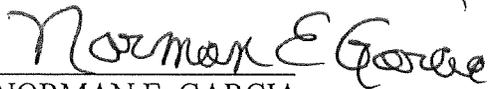
to as **Exhibit A** is a true and correct copy of email correspondence regarding OFCCP's proposed compromise, and Oracle's rejection of this proposal.

9. On November 19, 2019, OFCCP and Oracle exchanged witness lists. OFCCP's list includes 22 third-party employee witnesses. OFCCP also provided Oracle with the interview notes for the identified witnesses without the government informant redactions on November 19, 2019.

10. Oracle's November 19 witness list includes 21 Oracle-affiliated witnesses. Most of these witnesses were never identified during discovery. Oracle has not produced to OFCCP the personnel files for the employee witnesses it has designated as trial witnesses. Attached here to as **Exhibit B** is a true and correct copy of email correspondence regarding Oracle's witness list.

11. Attached hereto as **Exhibit C** is a true and accurate copy of a letter I received from Oracle's counsel dated February 19, 2019.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in San Francisco, California on November 21, 2019.

  
NORMAN E. GARCIA

Office of the Solicitor  
U.S. Department of Labor

**EXHIBIT A**

**EXHIBIT A**

## Garcia, Norman - SOL

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**From:** Grundy, Kayla Delgado <kgrundy@orrick.com>  
**Sent:** Friday, November 15, 2019 5:02 PM  
**To:** Garcia, Norman - SOL; Orlov, Boris - SOL; Connell, Erin M.; Parker, Warrington; Siniscalco, Gary R.; Kaddah, Jacqueline D.; Mantoan, Kathryn G.; Heath, Jacob M.  
**Cc:** Bremer, Laura - SOL; Eliasoph, Ian - SOL; Song, Charles C - SOL; Flores, Jessica - SOL SAN; Hermosillo, Mary A - SOL SEA  
**Subject:** RE: Follow-up e-mail regarding motion to compel depositions

Hi Norm,

We disagree with the characterizations in your email below. As described in our motion, we believe depositions of witnesses whose identities had previously been withheld is not only appropriate but necessary prior to the hearing. See 6/10/2019 Order at 13, n.10 ("the parties should have no difficulty arranging for and conducting short depositions of witnesses after they are disclosed, insofar as this turns out to actually be necessary"). We do not believe the limitations OFCCP proposes below are appropriate and therefore must reject your proposal. We have already asked the court for the relief we believe is appropriate and will await his ruling on the issue.

Best,  
Kayla

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

---

**From:** Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>  
**Sent:** Friday, November 15, 2019 9:53 AM  
**To:** Grundy, Kayla Delgado <kgrundy@orrick.com>; Orlov, Boris - SOL <orlov.boris@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Parker, Warrington <wparker@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Heath, Jacob M. <jheath@orrick.com>  
**Cc:** 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:** Follow-up e-mail regarding motion to compel depositions

Hi Kayla:

We are in receipt of your motion to exclude the testimony of any former and current Oracle employees who OFFCP might include on its witness list next week on November 19th. Your motion takes the position that if OFCCP does not make all of these witnesses available for three-hour depositions during Thanksgiving week, including Thanksgiving weekend, the Court should exclude these witnesses from testifying at trial.

This motion strikes us as extremely unfair to Oracle's present and former employees. The witnesses OFCCP will designate on November 19th are committed to performing what they consider their civil duty to provide testimony to the Court in this proceeding. These employees have done *nothing* wrong or improper that could justify excluding them from fact-finding regarding their compensation and work experiences. As we have advised you in our meet and confer

discussions on this topic, we cannot understand how it is fair to employees to condition their participation in the hearing on their attendance at a deposition during Thanksgiving week -- a week in which nearly everyone, including Oracle's current and former employees, has family and travel plans.

As you are well aware, with trial scheduled to commence on December 5th, there just is not time for Oracle to reopen discovery at this late juncture. If you have raised this scheduling issue during the numerous conversations over the last two months regarding the pre-trial schedule (and notably *none* of your proposed pre-trial schedules you proposed to us or to the Court ever mentioned that you needed time to depose *all* of OFCCP's employee trial witnesses), the parties, with the Court, could have a conversation about the reasonableness of Oracle's demand to reopen discovery and created a schedule which would have allotted time for any reopened discovery to occur. Again, it is extremely unfair to your current and former employees to throw this last minute hurdle in the way of their participation in this proceeding, an effort to exclude employees from the Department's investigation and hearing that is inconsistent with the text of the Executive Order and core principles that the Department honors as central to achieving its mission.

As a factual matter, it is also clear that Oracle has no need for additional discovery into these witnesses' likely testimony since Oracle has full access to: the complete employment records of each of these current and former employee witnesses; all the supervisors and managers who interacted with these witnesses during the course of their employment with Oracle; declarations, if any, given by these employee witnesses (as OFCCP attached all declarations it has collected from employee witnesses to its *Daubert* and summary judgment briefing); and OFCCP's interrogatory responses summarizing the knowledge of relevant employee witnesses and OFCCP's privileged work product notes taken by OFCCP's attorneys during conversations with such witnesses. As we have discussed with you, on the day we exchange witness lists, we will provide you with copies of the attorney notes you already have for these witnesses with all redactions for government informer privileges removed. Also, as you know, when you asked us to identify the attorney notes and interview summaries provided in OFCCP's discovery responses for each employee witness who has executed a declaration in support of OFCCP's summary judgment motion, we immediately provided you with that information. So, for each employee witness listed on OFCCP's witness list on November 19th, you will not only have all their records regarding their time at Oracle, but you will also have our attorney notes, the summary of their knowledge provided by OFCCP in its interrogatory responses, and any declarations given on the matters at issue. The fact that Oracle has ample information regarding the testimony and work experience of any employee witnesses is evidenced by the detailed information Oracle provided through the declaration of Erin Connell in its MSJ briefs directed toward discrediting the employee declarations OFCCP filed with its motions.

Further, during discovery, despite having ample opportunity and already being aware of the names of specific employees who provided OFCCP with information during the course of its compliance review, Oracle chose not to schedule any depositions of any current or former employees who Oracle knew was interviewed or provided information to OFCCP. Indeed, during discovery, Oracle chose to notice only seven (counting Oracle's numerous depositions involved in its 30(b)(6) notice as one deposition) of its 10 permitted depositions. This is probably because unlike in an enforcement case which concerns individual claims, there are thousands of witnesses to Oracle's compensation practices, so Oracle requires no specialized knowledge of each witness' knowledge -- even though Oracle has each witness' full employment record and OFCCP's attorney notes and summaries -- to examine these witnesses regarding their lived experience of Oracle's policies and practices. Oracle also made no attempt to schedule depositions of any of the 16 employee witnesses who provided declarations in support of OFCCP's summary judgment and *Daubert* briefing for any time other than Thanksgiving week and weekend.

Given the very compressed time schedule between the exchange of witness lists on the 19th and the start of trial on December 5th, OFCCP can attempt to facilitate brief depositions (one-hour depositions) of three employee witnesses designated by Oracle on the three days following Thanksgiving weekend and before trial commences on December 5th. Oracle has not sought leave of the Court to conduct additional discovery after the close of discovery and Oracle never sought, nor did the Court grant, leave to exceed each side's limit of 10 depositions. Clearly, Oracle should not be granted a discovery advantage in relation to these post-discovery depositions (depositions which Oracle is unwilling to allow OFCCP to take regarding Oracle's witnesses Oracle will designate and/or who have provided declarations in support of Oracle's MSJ and *Daubert* motions) it has opted to seek at the very last minute before trial. Given that before

and after Thanksgiving weekend is often tied up with family travel and obligations (and not all employee witnesses are local to San Francisco), OFCCP will not agree that an employee witness' opportunity to testify at trial hinges on their availability in these three days, but we will make our best effort to try to make the employee witnesses Oracle choses to examine available, it at all possible, for short depositions.

Please let us know if this proposal is satisfactory and we will work with you to schedule these depositions right after the witness exchange. We remain unconvinced that you have any need for additional discovery, but we make this offer because Oracle's current and former employees have communicated they wish to participate in this proceeding and we are committed to doing everything we can do to make that possible. If our proposal is acceptable, please let us know and we can advise the Court that you are withdrawing your motion.

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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**EXHIBIT B**

**EXHIBIT B**

## Garcia, Norman - SOL

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**From:** Garcia, Norman - SOL  
**Sent:** Wednesday, November 20, 2019 11:01 AM  
**To:** 'Grundy, Kayla Delgado'; Bremer, Laura - SOL; Eliasoph, Ian - SOL; Song, Charles C - SOL; Flores, Jessica - SOL SAN; Hermosillo, Mary A - SOL SEA  
**Cc:** 'Parker, Warrington'; 'Connell, Erin M.'; 'Siniscalco, Gary R.'; 'Kaddah, Jacqueline D.'; 'Mantoan, Kathryn G.'  
**Subject:** RE: OFCCP v. Oracle; prehearing submissions

Hi Kayla,

I'm writing in response to the witness list that Oracle provided. Oracle lists 21 Oracle-affiliated witnesses on its exhibit list – many of whom we have very little information and were not identified in this case until well after the discovery cut off. It will take time to sift through the vast amounts of data we have received spanning hundreds of data files, as well as the hundreds of thousands of documents produced. We have not even been able to find any identifying information regarding some of these people in the data Oracle provided, since some of the witnesses are located outside HQCA. We request that Oracle immediately provide us with the personnel files of the individuals listed as witnesses testifying about their personal experiences, as well as the personnel files of the direct reports of persons testifying about the way they made compensation decisions, so we don't have to comb through the various files Oracle produced to find information about them. As you know, Oracle produced data files with narrative information that do not have titles identifying who the file discusses. Instead, Oracle identifies such documents by number, and a separate list that ties the document numbers to numerical identifiers of people, so it is a multi-step process to find documents relating to individuals in the data files, with multiple files containing different information. It will be a time-consuming process to find such documents, assuming that Oracle even produced documents and data regarding the witnesses it listed. Obviously, OFCCP reserves the right to add documents to its exhibit list for these witnesses that Oracle never previously identified as having information, OFCCP never deposited, and whose documents and data OFCCP has not reviewed.

Further, we note that of the 20 Oracle-affiliated witnesses on Oracle's exhibit list, OFCCP only deposited 4 of the witnesses (one was its expert). OFCCP would have deposited Thomas Kurian had it been able to subpoena him, or had OFCCP known that Oracle would present him as a trial witness. Ideally, OFCCP would depose all 17 witnesses on Oracle's witness list that it has not deposited. Obviously, under the Court's schedule there is no time for that. If, however, the Court entertains Oracle's motion to depose the former and current Oracle employees listed on OFCCP's witness list, OFCCP will seek to depose Oracle's witnesses, and seek a continuance to do so. Oracle has much more information about the witnesses on OFCCP's list, than OFCCP has about the witnesses on Oracle's list. Oracle limited its data production to employees at HQCA and in the 3 job functions at issue. Given that Oracle managers managed teams at other Oracle locations, OFCCP has incomplete data regarding the employees managers managed, for example. Oracle also produced very few emails. In other words, Oracle controls the relevant documents and data, and has not produced it to OFCCP. Further, Oracle produced its attorneys' notes and summaries regarding the information provided by these witnesses, which Oracle has not provided regarding its witnesses. This gives Oracle a substantial advantage that OFCCP does not have. Please let us know whether Oracle will withdraw its motion to depose or exclude OFCCP witnesses.

We were also surprised to see that Oracle listed deposition witnesses on the witness list, since you previously represented that Oracle would not be presented depositions at trial weeks ago. In any event, Oracle's list regarding deposition witnesses does not comply with the Court's pre-trial order. The order requires different sections for live witnesses and depositions, which is the reason we provided you with two lists. The deposition list does not include any time estimate. Please separate the two sections and remove the time estimate for the deposition witnesses. We are requesting that the deposition excerpts and video excerpts be submitted separately for the Court's review, so that the parties do not waste valuable court time reviewing videos and transcripts that can simply be placed in the record. The

Court's order seems to contemplate this. Please let us know if you agree to separate the lists, and submit deposition testimony to the Court for review (rather than courtroom viewing).

Lastly, you still have not responded to my e-mail yesterday about Oracle's previous 11:00 a.m. 11/21/19 commitment to provide OFCCP with its edits to the pre-hearing statement in response to the statement that OFCCP submits today. Oracle made this commitment both in writing on 11/18/19 and orally yesterday. Even though Oracle again committed yesterday to provide its prehearing statement edits at 11:00 a.m. tomorrow, this commitment was missing from your schedule below. Please confirm that this was an inadvertent oversight and that Oracle still plans to keep its commitment for this 11:00 a.m. submission.

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:** Tuesday, November 19, 2019 5:16 PM

**To:** Grundy, Kayla Delgado <kgrundy@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>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>

**Subject:** RE: OFCCP v. Oracle; prehearing submissions

Kayla,

One scheduling item not on your list is Oracle providing its edits to OFCCP's pre-hearing statement at 10:00 am on Thursday, November 21, 2019. This was in the letter that you sent yesterday that OFCCP accepted and we reconfirmed that in our conference call today.

Please confirm.

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:** Tuesday, November 19, 2019 5:02 PM

**To:** Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; 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>; Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>

**Subject:** OFCCP v. Oracle; Joint Exhibit List & Oracle's Witness List

Norm,

Per our agreement, attached is the joint exhibit list and Oracle's witness list.

As I flagged on our call this afternoon, there are certain documents that OFCCP said was on its original list that I cannot find. For those documents, I have highlighted the proof column in yellow. For any other documents where there are not two proof statements, those are documents that OFCCP adopted from Oracle's list and did not offer a competing proof statement.

Please provide any revisions by tomorrow at 5 p.m. as discussed.

Additionally, per our call I understand the schedule to be as follows:

- 11/20 (tomorrow) at 3:30pm – OFCCP will respond with its inserts to the prehearing statement
- 11/21 at 2pm – parties will exchange final portions of the joint prehearing statement and no further edits will be made
- 11/21 – parties will exchange deposition designations. Oracle requests this be complete by 5pm, though you did not commit to a time on our call
- 11/25 – meet and confer regarding schedule for counter designations

Please also let me know who will be conducting the meet and confer regarding confidentiality regarding hearing exhibits.

Thank you,  
Kayla

**Kayla Delgado Grundy**  
Attorney at Law

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San Francisco   
T 415-773-5537  
kgrundy@orrick.com





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**EXHIBIT C**

**EXHIBIT C**



February 19, 2019

*Via E-Mail*

Norman E. Garcia  
Senior Trial Attorney  
U.S. Department of Labor  
90 Seventh Street, Suite 3-700  
San Francisco, CA 94103

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

Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
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Erin M. Connell

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Dear Mr. Garcia:

I write concerning the subpoena you served on counsel for "Rong Jewett as lead class representative" in *Jewett et al. v. Oracle America, Inc.*, San Mateo County State Court Case No. 17-CIV-02669 just before close of business on a holiday weekend. OFCCP must withdraw the subpoena. OFCCP does not have subpoena power. Additionally, the subpoena contains broad requests for records not relevant to this lawsuit, many of which are protected as "confidential," and some of which are protected as "attorneys' eyes only" under the protective order in place in the *Jewett* action. OFCCP's *ultra vires* subpoena along with OFCCP's clear efforts to obtain discovery to which it is not entitled in violation of Oracle's rights in the state court action is improper.

**OFCCP Has No Authority To Issue A Subpoena.**

OFCCP's authority to obtain documents from third parties to a litigation by way of subpoena is not a matter of first impression. Eight years ago OFCCP conceded that it does not have such subpoena authority. As the Court noted in *United Space Alliance, LLC v. Solis*, 824 F.Supp.2d 68, 92 (D.D.C. 2011), "[t]he [OFCCP] concedes that it lacks formal subpoena authority[.]"

Even had OFCCP not made this concession, the relevant regulations and statutes force such a conclusion given the scope of powers authorized by Executive Order 11246. Unlike ERISA (29 U.S.C. § 1134(a)(1)) or the Fair Labor Standards Act (29 U.S.C. § 209), Executive Order 11246 does not confer upon the OFCCP the power to subpoena third parties. Instead EO 11246 only provides that *the contractor* will permit access to its records. § 202(6). OFCCP's Compliance Manual is noticeably silent regarding the issuance of subpoenas and the rules of practice specific to OFCCP include provisions for a number of discovery mechanisms (*i.e.*, interrogatories, requests for admissions, production of documents from a party, and depositions) but does not include any provision regarding third party subpoenas. 41 C.F.R. §§ 60-30.9-11.

It matters not at all that Judge Clark signed the subpoena. The ALJ may only issue a subpoena "authorized by law or statute." 29 C.F.R. § 18.56(a)(1) ("Upon written application of a party the judge may issue a subpoena *authorized by statute or law[.]*") (emphasis added).



Norman E. Garcia  
February 19, 2019  
Page 2

Here, there is no authority for the issuance of a subpoena by OFCCP or by an ALJ at the request of OFCCP to obtain documents from a third party. As the Court noted in *Borbreski v. U.S. Environmental Protection Agency*, 284 F.Supp.2d 67, (D.D.C. 2003) "Congress did not intend to provide the Secretary of Labor (and hence the ALJ) with subpoena authority . . . ." (finding that the plain meaning of the statutes underlying the action reflect that).

Thus, the subpoena signed by Judge Clark and served by OFCCP on the *Jewett* plaintiffs is not valid and is unenforceable.

**Even If OFCCP Could Subpoena Documents, It Is Not Entitled To The Breadth Of Documents It Seeks Here.**

OFCCP's subpoena requests from the *Jewett* Plaintiffs (1) all "unredacted deposition transcripts," (2) all documents produced in the case, (3) all discovery requests and responses; (4) all discovery meet and confer communications; (5) all expert reports; (6) all "analyses," and (7) all stipulations.

As you know, *Jewett* is a different case. There, Plaintiffs allege violation of the California Equal Pay Act, violation of the California Labor Code, and violation of the California Business and Professions Code, and the putative class spans throughout California (including approximately 166 separate location codes). It is not limited to the Redwood Shores office, and the three remaining class representatives never worked in the Redwood Shores office.

Given the differences between this case and *Jewett*, the subpoena is obviously overbroad and seeks information not relevant to the present action. OFCCP's "Instruction" that the requests are limited to Oracle's headquarters location in Redwood Shores, California acknowledges as much. OFCCP ignores (whether intentionally or not) the fact that Plaintiffs in *Jewett* are not in a position to discern what documents are relevant to the Redwood Shores location.

Oracle has produced tens of thousands of documents (and exponentially more pages) to the *Jewett* Plaintiffs that were responsive to document requests covering offices throughout the state of California. The data the *Jewett* Plaintiffs possess, then, includes the private information of hundreds of Oracle employees from offices across the state that are not relevant to OFCCP's action and that OFCCP is not entitled to. The *Jewett* Plaintiffs are in no position to parse the documents and data to determine what information is relevant to which employees and/or locations. And, even if they were, the *Jewett* Plaintiffs are not able to manipulate the information it received to then produce it to OFCCP because any such documents would not be responsive to the subpoena which requests all documents "received from" Oracle – any manipulated documents would not be "received from" Oracle.

Additionally, as OFCCP is well aware, Oracle produced documents to the *Jewett* Plaintiffs pursuant to a Protective Order (much like Oracle did in this matter). Consistent with its disregard of the Protective



Norman E. Garcia  
February 19, 2019  
Page 3

Order Oracle entered into with OFCCP, OFCCP acknowledged its understanding "that the service of this subpoena will cause the invoking of provisions of the protective order [plaintiffs] have with Oracle." OFCCP also specifically requests "unredacted deposition transcripts." Coupled with OFCCP's position that there is currently no protective order governing its handling of Oracle's confidential information, OFCCP's purpose in seeking irrelevant documents marked confidential or attorneys' eyes only in a separate proceeding and specifically requesting *unredacted* transcripts is unsavory.

**The Proper Avenue For OFCCP To Collect Documents Is The Discovery Process In This Case.**

As permitted by the rules of practice governing this matter, and as OFCCP has done in the past in this matter, OFCCP should seek documents from Oracle through requests for production of documents. See 41 C.F.R. § 60-30.10.

On January 30, 2019 OFCCP served Oracle with its fifth set of requests for production of documents. Requests 166, 167, and 168 are substantively identical to Requests 1, 2 and 3 in the subpoena. Oracle's responses and objections to those requests are not even yet due. On February 11, however, counsel for Oracle wrote to initiate the meet and confer process regarding some of OFCCP's requests. OFCCP has yet to respond. Accordingly, it seems apparent that OFCCP would prefer to receive the documents elsewhere to circumvent any objections to the requests by Oracle. This, of course, is contrary to how the discovery process in this case should proceed.

**OFCCP Failed To Serve Oracle With A Copy Of Its Subpoena**

Finally, Oracle notes that OFCCP failed to provide notice of its subpoena to Oracle prior to serving it on plaintiffs in *Jewett*. Indeed, OFCCP did not even serve a copy of the subpoena on Oracle after serving it on the *Jewett* Plaintiffs. Not only is such a failure contrary to normal civil practice, it violates the procedural rules for issuing a subpoena. Both the Code of Federal Regulations and the Federal Code of Civil Procedure require a party that intends to serve a subpoena for production of documents on a third party to first provide notice and a copy of the subpoena to all parties in a case. 29 C.F.R. § 18.56(b)(1); Fed. R. Civ. Proc. 45(a)(4).

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Norman E. Garcia  
February 19, 2019  
Page 4

Because OFCCP (and therefore the ALJ acting on OFCCP's behalf) has no authority to issue a third party subpoena for documents, OFCCP must withdraw its subpoena to the *Jewett* Plaintiffs immediately. Please confirm by close of business today, February 19, 2019, that OFCCP will do so. Absent such confirmation, Oracle will seek relief from the court.

Very truly yours,

A handwritten signature in cursive script that reads "Erin Connell".

Erin M. Connell