

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

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DEFENDANT ORACLE
AMERICA, INC.'S MOTION IN
LIMINE NO. 6 TO EXCLUDE
EVIDENCE OF COMPLAINTS
AND ANECDOTAL EVIDENCE
UNRELATED TO THE CLAIMS
AND JOB FUNCTIONS AT ISSUE**

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San Francisco, Ca*

**ORACLE'S MOTION IN LIMINE NO. 6 TO EXCLUDE EVIDENCE REGARDING UNRELATED
COMPLAINTS**

CASE NO. 2017-OFC-00006

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I. INTRODUCTION

Defendant Oracle America, Inc. (“Oracle”) hereby moves for an order *in limine* to exclude evidence of anecdotal evidence, lawsuits, and administrative or internal complaints unrelated to the subject matter of OFCCP’s claims. Such evidence is not relevant to OFCCP’s claims, and it is impermissible character evidence. Even assuming such evidence has any scant probative value, it is outweighed by the dangers of confusing the issues, misleading the Court, and wasting time.

OFCCP’s claims pertain to compensation discrimination in only three job functions—Product Development (“PD”), Support, and Information Technology (“IT”). Any evidence that OFCCP introduces should be limited to that particular claim in those particular job functions. The evidence should be further limited to the specific groups against whom the discrimination is claimed to be directed.

What should be excluded therefore is evidence such as that offered in the Declaration of Kristen Hanson Garcia (“Hanson Garcia Decl.”), Exhibit 102 to the Declaration of Norman E. Garcia, ¶¶ 2, 4, filed in support of OFCCP’s Motion for Summary Judgment. Because Ms. Hanson Garcia worked in the HR job function, there is no tie between whatever she attests and the job functions at issue here.

Similarly, this motion extends to other claimed anecdotal evidence such as: a female employee’s claim that she experienced “men making disrespectful comments during meetings,” which she believed Oracle managers did nothing to rectify; certain female employees’ statements that they believe they were judged or penalized for taking maternity leave; the statements of some women with children who believe they were perceived as less “committed to their jobs”; the statement of one employee who believes that Oracle managers “were resistant to unconscious bias training”; some employees’ claims that they heard “derogatory remarks about Asians” or other racist comments, such as “a slang term” used “to refer to a certain group of Asian employees at Oracle”; and an employee’s statement that “Oracle is a tough environment, not human centered or employee-centered.” See Omnibus Declaration of Warrington Parker in

Support of Oracle's Motions in Limine ("Parker Decl."), Ex. C (OFCCP's Supp. Resps. to Oracle's Interrog. No. 49).¹

Not only is this evidence irrelevant to OFCCP's claims, it is improper character evidence, and is therefore inadmissible. And even assuming this evidence has any scant probative value, it is outweighed by the dangers of confusing the issues, misleading the Court, and wasting time.

II. ARGUMENT

A. Evidence of Complaints Unrelated to Claims of the Types of Discrimination, Protected Classes, or Job Functions at Issue Is Irrelevant

Evidence is inadmissible unless relevant to a disputed issue. 29 C.F.R. § 18.402. Relevant evidence is that "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Powers v. Union Pac. RR. Co.*, No. 13-034, 2015 WL 1959425, at *16 (ARB Mar. 20, 2015) (quoting 29 C.F.R. § 18.401). This Court is empowered to exclude irrelevant evidence pursuant to 41 C.F.R. § 60-30.15.

OFCCP's claims are *not* that Oracle generally discriminates against women and minorities at Oracle Headquarters; its claims are specific to certain protected classes in certain job functions, as alleged in the SAC. Thus, the only evidence that is relevant is that evidence bearing on *compensation discrimination* in the three functions at issue. And more specifically, evidence bearing on compensation discrimination in *the three functions pertaining to the protected class in those functions* allegedly discriminated against. In short, anecdotal evidence and complaints that fall outside of the groups and claims at issue have no tendency to make it more or less probable that Oracle engaged in the pattern or practice of discrimination alleged in the SAC. 29 C.F.R. § 18.401.

Thus, for example, evidence relating to compensation decisions as to Asians or African-Americans in Support or IT would have no bearing, as there is no alleged discrimination against

¹ As further evidence that OFCCP believes such anecdotes are relevant to its case, OFCCP sought deposition testimony about whether "it is relevant to include the fact that an employee became a new parent in their . . . evaluation." Parker Decl., Ex. D (Cheruvu Dep. Tr.) at 236:6-11; *see also id.* 235:15-237:23.

African-Americans and Asians in those job functions. Such evidence does not make it more or less likely that Oracle discriminatorily channeled women into lower-paying jobs within these particular job functions at HQCA. This is true regardless of whether the complaining individual is a woman, Asian, or African-American. *See, e.g., Syed v. Dir., F.B.I.*, 1990 WL 259734, at *4 (E.D. Pa. Jan. 30, 1991) (discovery of “defendant’s practices in *promotion, transfer, discharge, and tenure* seems one step beyond the parameters of relevance in its broadest sense” where plaintiff alleged *refusal to hire* on account of race, national origin, and religion (emphasis added)); *Robbins v. Camden City Bd. of Educ.*, 105 F.R.D. 49, 62 (D.N.J. 1985) (in individual plaintiff’s suit, evidence of other types of discriminatory actions such as hiring, promotion, transfer, and discharge were irrelevant to claim that plaintiff was denied tenure based on age and race).

Evidence of complaints or anecdotal evidence by individuals from *other protected classes* likewise does not tend to prove that Oracle discriminated against African-Americans or Asians in the PD job function on the basis of race or that Oracle discriminated against women in the PD, IT, or Support job functions on the basis of sex. This is true regardless of whether the complaining individual works in one of these three job functions. For example, evidence of a complaint of racial discrimination by a Hispanic individual working in any job function at Oracle does not make it more or less probable that Oracle had a pattern or practice of discriminating against African-Americans or Asians in the PD job function. Nor does evidence of a complaint of racial discrimination by an African-American in the Support job function make it more or less likely that Oracle discriminated against women in that job function on the basis of sex, or that Oracle discriminated against African-Americans or Asians in the PD job function on the basis of race. And a complaint or anecdotal evidence of disability discrimination brought by an individual in *any* job function does not make it any more or less likely that Oracle had a pattern or practice of discriminating against women, Asians, or African-Americans in the job functions at issue. *See, e.g., Simonetti v. Runyon*, 2000 WL 1133066, at *6 (D.N.J. Aug. 7, 2000) (citing

cases) (“[P]ursuant to Federal Rules of Evidence 401 and 403, plaintiff may not use evidence of one type of discrimination to prove discrimination of another type.”).

In short, having limited its claims in the SAC, OFCCP is bound by those limitations. It cannot now attempt to bring in evidence of complaints relating to everything under the sun. Instead, any anecdotal evidence OFCCP offers must be specific to the claims it has alleged. *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 338 (1977) (citing with approval testimony by African-American and Hispanic individuals who recounted “specific instances of discrimination” relating to their efforts to obtain line-driving jobs, where government sought to prove pattern or practice of discrimination against African-Americans and Hispanics through hiring, payment, and promotion of line drivers); *Obrey v. Johnson*, 400 F.3d 691, 697 (9th Cir. 2005) (finding that testimony by shipyard worker that “local workers were not good enough” relevant when the plaintiff’s “theory of discrimination was that the Navy regularly and purposefully treated the local Asian-Pacific Islanders less favorably than white persons by refusing to promote minority group members on an equal basis”) *Id.* at 694; *OFCCP v. Analogic Corp.*, ALJ No. 2017-OFC-00001, *40 (OALJ March 22, 2019) (where OFCCP brought claim alleging company discriminated against “female assemblers,” proving disparate treatment required “anecdotal evidence of intentional discrimination *against female assemblers*” (emphasis added)).

B. Evidence of Such Unrelated Complaints Is Inadmissible Character Evidence

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” 29 C.F.R. § 18.404(b); Fed. R. Evid. 404(b). Admitting evidence of complaints relating to other job functions, other protected groups, and other alleged conduct could serve *only* to suggest that Oracle, or a particular person or group of people at Oracle, discriminates generally or is otherwise a bad actor. As the court in *White v. U.S. Catholic Conference*, 1998 WL 429842 (D.D.C. May 22, 1998), observed, “only discrimination or retaliation *of the same character and type as that is alleged*” could be probative; evidence of other alleged discrimination merely suggests Oracle’s propensity to engage in bad acts. *Id.* at *5 (emphasis added). Indeed, Rule 404 “would cease to be meaningful

if any act of discrimination was admissible without a nexus to the type of discrimination charged.” *Id.* at *6 (discussing Rule 404(a)). Accordingly, evidence of unrelated complaints and anecdotal evidence of claimed discriminatory conduct should be excluded at the hearing as impermissible character evidence.

C. **Even if Such Evidence Has Some Probative Value, the Court Must Exclude It Because It Risks Confusing the Issues, Misleading the Court, and Wasting Time**

Even assuming anecdotal evidence or evidence relating to complaints about issues outside the scope of the SAC is somehow relevant, it is nonetheless inadmissible because any minor probative value it might have is substantially outweighed by the danger that it will confuse the issues, waste a significant amount of time, and mislead the Court. 29 C.F.R. § 18.403; *Hatai v. Dep’t of Transp.*, 214 Cal. App. 4th 1287, 1297-98 (2013), *disapproved of on other grounds*, 61 Cal. 4th 97 (2015) (plaintiff bringing FEHA discrimination claim not entitled “to present evidence of discrimination against employees outside of [his] protected class to show discrimination or harassment against [him]”). Allowing OFCCP to introduce evidence of such unrelated complaints and anecdotal evidence would require the Court to take unnecessary and time-consuming detours to delve into the specifics of that evidence. The minimal probative value of this evidence does not justify the Court and the parties spending part of the limited time set for the hearing on these detours. *See, e.g., Duran v. City of Maywood*, 221 F.3d 1127, 1133 (9th Cir. 2000) (affirming exclusion of evidence that would have required “full-blown trial within this trial”); Reporter’s Note to 29 C.F.R. § 18.403. Admitting evidence of the type described above relating to other job functions, other protected classes, and other alleged conduct would also create significant confusion—not just for this Court but for any reviewing court—by blurring the precise contours of OFCCP’s claims. *See, e.g., Diederich v. Providence Health & Servs.*, 742 F. App’x 177, 179-80 (9th Cir. 2018) (evidence excluded where it would result in “mini-trials” and confusion about what legal theories are at issue); Reporter’s Note to 29 C.F.R. § 18.403. Finally, the time involved in addressing these issues at the hearing risks misleading the Court and any reviewing court “into believing the issue to be of major importance and

accordingly into attaching too much significance to it in its determination of the factual issues involved.” Reporter’s Note to 29 C.F.R. § 18.403. These risks substantially outweigh any minute probative value such evidence might have. 29 C.F.R. § 18.403.

III. CONCLUSION

For the foregoing reasons, Oracle respectfully requests that the Court exclude evidence of any lawsuits, internal complaints, or administrative complaints unrelated to the subject matter of OFCCP’s claims. This evidence is not relevant and is improper character evidence.

Alternatively, this evidence should be excluded because its negligible probative value is substantially outweighed by the risk of wasting time, confusing the issues, and misleading the Court.

Respectfully submitted,

November 15, 2019

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