

**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. 9 FOR AN ORDER  
EXCLUDING EVIDENCE OR  
ARGUMENT REGARDING  
ORACLE'S NET WORTH,  
INCOME, DIVIDENDS, OR  
EXECUTIVE COMPENSATION**

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**NOV 15 2019**

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

**ORACLE'S MOTION IN LIMINE NO. 9 FOR ORDER EXCLUDING EVIDENCE OF NET WORTH**

**CASE NO. 2017-OFC-00006**

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## **I. INTRODUCTION**

Based on its proposed fact stipulations, OFCCP apparently intends to attempt to introduce evidence at trial regarding Oracle's net worth, profit, and dividends. OFCCP may also attempt to introduce evidence about the compensation of Oracle's senior executives (*e.g.*, Larry Ellison or Safra Catz).

Oracle's financial resources and its executive compensation have no relevance whatsoever to OFCCP's allegations of intentional compensation discrimination. OFCCP will likely attempt to use evidence of Oracle's income to contend that Oracle "could have" paid more money to its employees, or to create a David and Goliath impression between Oracle and its employees, or to imply that Oracle would not be affected by any judgment on this action. Any effort to raise these matters would be improper and, given the total lack of relevance to its claims, designed solely to mislead or distract the Court. It would also waste time and confuse the issues, leading to a sideshow into Oracle's business and executive compensation decisions. Accordingly, Oracle seeks an order precluding OFCCP at the hearing from asking about, or introducing any evidence regarding, the net worth, income, or dividends of Oracle America, Inc. or its parent company Oracle Corporation, as well as any evidence or argument regarding earnings of Oracle executives.

## **II. ARGUMENT**

On November 13, 2019, OFCCP sent Oracle its proposed stipulations of fact. Those stipulations included such facts as, "In FY 2019, Oracle America, Inc.'s parent company, Oracle Corp. earned a net income of \$11.083 billion[,]" and "In FY 2019, Oracle America, Inc.'s parent company, Oracle Corp. declared a \$0.81 cash dividend per common stock of which there were 3.335 billion, totaling about \$2.702 billion in cash dividends." *See* Omnibus Declaration of Warrington Parker ISO Oracle's Motions in Limine, ¶ 2.

In connection with its Motion for Summary Judgment, OFCCP attached a New York Times article titled "The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart." *See* Declaration of Laura Bremer, Ex. 19. Oracle objected to this document

(see Oracle's Objections to Evidence at 6), but it demonstrates that OFCCP believes Oracle's executive compensation is somehow relevant to its case.

**A. Evidence of Oracle's Financial Resources Should Be Excluded Because It Is Not Relevant to Any Theory of Liability in This Case**

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.*, 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.

Here, OFCCP alleges that Oracle engaged in a "pattern or practice" of intentional discrimination. OFCCP contends that Oracle mis-uses the money it sets aside for compensation by allocating it improperly to men and white employees to the detriment of women, Asians, and African-Americans. But how much money Oracle earns, or what dividends it decides to issue, is wholly irrelevant to the question of how it distributes the money reserved for raises or other compensation decisions. In other words, the question in this case is how Oracle slices the compensation pie, *not* how big the pie is. By attempting to introduce evidence of Oracle's net worth, income, or dividends, OFCCP apparently intends to argue that Oracle was in a financial position to award additional raises or higher compensation for its employees.

This argument fails. To give an extreme example, Oracle could distribute every dollar of its income to shareholder dividends and decide that no employees are entitled to raises. That would not get OFCCP one inch closer to proving its case, because it sheds no light on whether Oracle **intentionally** discriminated against certain groups. By definition, a decision about how much money is available for *all* employees cannot be discriminatory towards only certain groups.

Introducing evidence of Oracle's income or decisions regarding its stock would also waste time and confuse the issues, because it would result in an extended tangent into Oracle's

business strategy and reasoning regarding how it deploys its assets, none of which have anything to do with whether Oracle discriminated against its employees.

**B. Evidence Regarding Compensation of Oracle Executives Is Not Relevant**

OFCCP may also attempt to argue that the compensation of its executives, such as Larry Ellison or Safra Catz, is relevant to its claim. It is not. There is no logical connection between the compensation of Oracle executives on the one hand, and whether Oracle intentionally discriminated against certain groups on the other hand. Again using the extreme example above, if Oracle awarded every dollar of its income to Larry Ellison and Safra Catz and nothing to other employees, that proves nothing about whether Oracle intentionally discriminates against women, Asians, or African-Americans. And any suggestion by OFCCP that Oracle had an obligation to “correct” pay disparities fails because it assumes its premise, *i.e.*, that there were unlawful disparities in the first place that required “correction.”

Moreover, to the extent OFCCP contends Oracle has put its financial condition at issue by, for example, explaining that whether focal reviews (*i.e.*, raises) are awarded is determined by Oracle’s business performance, this still does not work. Again, the question OFCCP has put to this Court is whether Oracle uses gender or race in making its compensation decisions. A top-line budget decision about how much money will be available for distribution to all employees, by definition, has no gender or race component. OFCCP will likely attempt to use this information to smear Oracle’s executives or to portray them as receiving unjustified compensation in light of alleged complaints about employee pay. But OFCCP’s intentional discrimination claim does not entitle it to be an Oracle board member or to second-guess Oracle’s business decisions.

And as above, introducing evidence regarding Oracle’s executive compensation would waste time and confuse the issues. Oracle would be required to introduce evidence regarding executive compensation generally and common compensation practices in the tech industry, which is far afield from whether it discriminated against its own employees.

**III. CONCLUSION**

For the foregoing reasons, the Court should issue an order precluding OFCCP from introducing evidence or argument regarding (1) the net worth, income, or dividends of Oracle or its parent company Oracle Corp., and (2) the compensation of its senior executives, including but not limited to Larry Ellison and Safra Catz.

November 15, 2019

Respectfully submitted,

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