



June 29, 2018

Via E-Mail

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Re: *OFCCP v. Oracle America, Inc.*, OALJ Case No. 2017-OFC-00006
Response to June 8, 2018 Letter Re: Data Requests

Dear Laura:

This letter serves to respond to your June 8, 2018 letter entitled “Data Requests” (Bremer_DOC239.pdf). In your letter, you request seven expansive categories of additional and supplemental data, including entire categories of data never before requested or discussed in litigation by the parties. For the reasons set forth below, we do not believe these requests are appropriate during the stay, and they ignore the significant additional information and documents that Oracle has provided—and continues to provide—to OFCCP in good faith during the pendency of the agreed-upon stay.

As you know, this case and all discovery therein have been formally stayed, at the request of both parties, since October 30, 2017. During this stay, the parties have submitted joint case management statements to the ALJ asking that it be extended. Most recently, on May 10, 2018, the parties advised the ALJ of their next mediation date (July 20, 2018), their desire to continue their “active efforts to resolve this matter through the mediation process” and their willingness, “with the assistance of Professor Green [the mediator], to engage in a meaningful exchange of data and information to both facilitate the mediation process and ensure that if the case does not resolve, progress has been made towards better preparing the case for hearing.” As a result of this joint request, in an order entered on May 11, 2018, the ALJ extended the stay through August 13, 2018.

OFCCP has not provide any additional “data or information” to Oracle since that time. Oracle, however, has provided significant supplemental data and additional information as follows:



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- On May 10, 2018, I offered to have our team provide your team with a virtual “database tour,” subject to the mediation privilege and confidentiality protection, and with the express understanding that neither OFCCP’s expert, OFCCP, nor any attorneys on the call would rely upon any statements made during the call as the basis of any opinions or for any other evidentiary purpose in litigation. The purpose of the proposed “database tour” was to assist you and your team in better understanding the voluminous data that Oracle compiled and produced back in October 2017. Significant effort and attorney hours were spent by me and my team preparing for, and presenting, that tour.
- On May 15, 2018, I noted in a follow-up call with you that files Oracle had produced back in October 2017 contained definitions of certain codes/entries in the data fields. The next day, I followed up with an email expressly pointing you and your team to the files AAP Location List.xlsx (ORACLE_HQCA_0000062858) and CC Data Dictionary.xlsx (ORACLE_HQCA_0000070737).
- On May 17, 2018, to further assist you and your team in understanding the data produced, I shared with you an index that Orrick created of the data files produced on October 11, 2017 (and reproduced with Bates numbers on October 31, 2017), which included our shorthand descriptions of the files.
- On May 18, 2018, Jinnifer Pitcher, Katie Mantoan, and I provided a ninety-minute “database tour” to both attorneys on your team and—at your request—individuals with OFCCP and the expert witness firm that you have retained, as follows:
 - Laura Bremer
 - Jeremiah Miller
 - Marc Pilotin
 - Norm Garcia
 - Mike Brunetti of OFCCP
 - Tabatha Lupinetti of EConsult



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During that “database tour,” we provided your team with extensive explanations and insights into the contents of, and links/bridges between, various data files and fields, and answered several questions by your team.

- On June 1, 2018, we produced 101 additional Excel files containing historical snapshots of information from which historical values for the “ORGANIZATION_HIERARCHY” field can be constructed. *See* ORACLE_HQCA_0000364082 to ORACLE_HQCA_0000364182. As you know, we made this production based on our discovery—during the stay—that while the values in the “Organization_Name” field in ORACLE_HQCA_0000070738 are historically accurate—*i.e.*, were true for the individual in a given row between the EFFECTIVE_START_DATE and the EFFECTIVE_END_DATE in that row—the values in the “ORGANIZATION_HIERARCHY” field in that file indicate the structure of the lines of business with which each “Organization_Name” was associated as of the data pull date in the scripts used to generate the file. Accordingly, we produced historical snapshot files from which you and your team can determine the “ORGANIZATION_HIERARCHY” values with which a given “Organization_Name” was associated at a given point further back in time.

On June 6, 2018, Professor Green emailed counsel for both Oracle and OFCCP asking whether he should “be facilitating any further information exchange that the parties want to engage in to make mediation more productive.” Oracle promptly responded. Our understanding is that OFCCP did not respond to Professor Green’s outreach seeking to facilitate an exchange.

Nevertheless, we are today responding under separate cover to the 25 detailed technical questions in your June 8, 2018 “Data Questions” letter. We are also producing, by separate e-mail, several additional documents regarding Oracle’s compensation policies and practices, as well as training materials covering compensation processes. The documents also include overviews relevant to job classification, job changes, transfers, and the referral program. We identified these documents as part of our ongoing investigation of the case following our previous productions, and are producing them now, despite the stay.



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We are confident that these efforts, presentations, and productions by Oracle reflect a good faith effort to “engage in a meaningful exchange of data and information” in advance of next month’s continued mediation and during the pendency of the stay. By contrast, we do not believe that the voluminous, burdensome, and in many instances irrelevant additional data and document production you appear to seek is warranted.

With respect to the specific categories of requests in your June 8, 2018 letter:

1. Supplementation of entire October 11, 2017 data production

Contrary to your representation, I did not “acknowledge” on any recent call “the need to supplement the data” during the pendency of the stay and while the parties are actively engaged in mediation efforts. Instead, I said that if we were to move forward with litigation, we had anticipated updating the data at some point pre-hearing given the passage of time since Oracle’s initial data production. A wholesale update of all 75 of the files that Oracle produced back in October 2017—containing more than 1,000 fields of data and tens of thousands of accompanying documents—would be incredibly burdensome and time-consuming, and would defeat the purpose of the stay. We also fail to see how OFCCP could possibly use this data to facilitate any mediation efforts.

2. Complete historical visa and permanent residence card status for employees and individuals who submitted applications

As you are aware, Oracle previously produced a file containing visa information for individuals who were employed at HQCA in the PRODEV, INFTECH and/or SUPP job function at any point from January 1, 2013 through January 17, 2017 (a total of 7,514 individuals).¹ See ORACLE_HQCA_0000360321. For that population, the file reports whether and when each individual has held an H-1B and/or E-3 visa at any time during their employment with Oracle (*i.e.*, not limited to the period from January 1, 2013 forward), as the dates in the file themselves make clear. These visa types were the ones included based on

¹ This group is referred to elsewhere in this letter as the “HQCA compensation population.”



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the understanding that they are the only visa types in use at Oracle that have a “prevailing wage” requirement. OFCCP has never before requested, and thus Oracle did not previously seek to obtain, “data for permanent residence cards.”

Given that OFCCP has not brought a national origin or citizenship discrimination claim, we fail to see the relevance of any other visa information. Moreover, as you know, the visa information previously produced was derived from a review of files retained in the regular course of business on an individual-by-individual basis by Oracle’s immigration counsel. Particularly given the irrelevance of other visa types to OFCCP’s compensation claims, and the irrelevance of any visa information to OFCCP’s hiring claims, it is unreasonable and unduly burdensome to ask Oracle to undertake a significantly more expansive file-by-file review for an expanded group of individuals, many of whom (*e.g.*, individuals who applied to Oracle but were not hired) Oracle would have had no role in sponsoring for any visa of any type.

3. Additional demographic data for individuals in Candidate Offers file (ORACLE HQCA 0000062859)

As confirmed in our response to your “Data Questions” letter, this file does not have a column for ethnicity or for race. This file also does not have a column for gender or country of origin. The file does contain, however, columns “PERSON_ID,” “EMPLOYEE_NUMBER,” and “PARTY_ID,” which may be useful in cross-referencing additional information for a given individual in other data files.

4. Data for individuals who applied to positions not filled with any hire in the PT1 job group at HQCA

OFCCP’s operative complaint in this matter alleges that Oracle “preferred Asian applicants over other qualified applicants in the Professional Technical 1, Individual Contributor [PT1] job group” at its HQCA location. *See* Am. Compl. p. 1; *accord* ¶ 10 (emphasis added) (alleging that Oracle discriminated against “non-Asians ... based upon race *for positions in the [PT1] job group* ... at Oracle Redwood Shores”). OFCCP expressly predicated this

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allegation on the claim that “Oracle *hired* 82% Asians *into the PT1 job group* during the period January 1, 2013 through June 20, 2014, exceeding the approximately 75% of Asians who applied.” *Id.* ¶ 10 (emphasis added). Given the nature of OFCCP’s claims, we fail to see why information about individuals who submitted applications to open requisitions for which no one was ever hired in the PT1 job group at HQCA could be relevant to or form the basis of any claim that any particular group of individuals was “under-hired” or “over-hired” for such requisitions (since, by definition, no one was hired).

5. Supplemental iRecruitment data for the HQCA compensation population (folder I)

The structure of the data queries of the iRecruitment data pull that generated the file in folder I (HQCA_IREC_DATA.xlsx; ORACLE_HQCA_0000070747) and the iRecruitment data pull that generated the file in folder II (PT1_HQCA_IREC_MAIN.xlsx; ORACLE_HQCA_0000128176) appropriately differed. For the folder II file, Oracle sought to identify all vacancies and requisitions that were filled by a hire into the PT1 job group at HQCA from January 1, 2013 through January 17, 2017, and to pull available information on all individuals who applied to each of those vacancies and requisitions (whether or not they were hired). For the folder I file, by contrast, Oracle sought to identify information in iRecruitment for members of the HQCA compensation population for the position for which they were hired. Because folder II contains information related to OFCCP’s hiring claim and folder I contains information related to OFCCP’s compensation claim, the scope of information available in the two files (including the specific fields or tabs) may appropriately differ, given the different claims to which they relate and the different requests for data to which they respond.

6. Historical compensation information for individuals hired from other Oracle entities

Oracle America, Inc.—not any other Oracle affiliate or entity—is the lone defendant in this case. Our understanding is that the scripts that were used to generate the data files produced in October 2017 did not reach data for any other Oracle affiliate or entity. In any event, we fail to see the relevance of an individual’s compensation history at a legally separate entity to OFCCP’s compensation discrimination claims directed at Oracle America, Inc.



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7. E-mails related to college recruiting

Your letter refers to a meet and confer call on August 2, 2018, which obviously is a date in the future, and makes certain assumptions about whether and how certain e-mails related to college recruiting historically have been maintained. In any event, embarking on the time-consuming process of collecting, reviewing, and producing e-mails at this time would defeat the purpose of the stay.

In sum, we do not believe it serves the mediation process to undertake at this time the voluminous data and document collection and production that you have proposed, and in several cases (as outlined above) we do not believe your requests are appropriate even if and when the case returns to litigation. OFCCP has over four years' worth of data for the entire HQCA compensation population (7,514 individuals), and data for all of the PT1 requisitions that were filled at HQCA during that same four-year span. We believe this data—in addition to the thousands of documents and emails Oracle has produced, the informal witness interviews it has facilitated during the course of the litigation, and the responses to data questions that it has provided and will continue to provide—more than suffice to enable the parties to meaningfully evaluate their positions.

If there are specific, discrete pieces of data or information that you believe would materially improve OFCCP's ability to evaluate the case in advance of July 20, we remaining willing to consider such a more limited proposal. We look forward to mediating with you on that date.

Very truly yours,

A handwritten signature in blue ink that reads "Erin M. Connell". The signature is written in a cursive, flowing style.

Erin M. Connell