

March 20, 2019

**VIA ELECTRONIC MAIL ONLY**

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

Dear Katie,

This letter responds to your March 6, 2019 letter to me regarding data production. I provide further support for our requests, but for some of the issues I believe it would be most productive to have a conversation about them. Accordingly, I suggest that we schedule a meet and confer conversation for the end of the week in the hopes of resolving the outstanding issues on Oracle's data production.

**Compa-ratios**

Oracle acknowledges that compa-ratios are relevant, but (so far) refuses to produce them for international transfers. Contrary to your representations, the international transfers' compa-ratios at the Oracle affiliates are routinely available to managers setting pay upon transfer to the United States and are highly relevant to compensation decisions. Oracle's module on "Managing Pay Decisions" directs "To determine appropriate salaries for international transfers transferring to the same position in the new country use the employee's current compa-ratio and keep it constant in the salary range of the new country." As Oracle's training explains, "[t]his methodology places the salary at the same position in range in the new country as in the old country." Similarly, Oracle's "Global Compensation Training" directs managers setting pay during "Cross-Border Transfers" that "[i]f the employee's job code is not changing in the [international] transfer, use the employee's current compa-ratio as a starting point to determine the base salary in the new location."

Your suggestion that salary at the Oracle affiliate could be used as a substitute for compa-ratio is dismissed by Oracle's own training materials. Managing Pay Decisions cautions against using prior salary to set pay. "Do not simply convert the current salary to the new salary." Similarly, Oracle's Global Compensation Training emphasizes, "You should pay appropriately in the new country. Do NOT simply transfer at the same salary level converted to the new currency." Given Oracle's directions to its managers, compa-ratio is the key data point in setting

**Exhibit P-217**

compensation, not prior salary. Thus, Oracle's suggestion that prior salary could be used as a substitute is contradicted by its own training materials.

Oracle's training materials also contradict your statement that compa-ratios are not in Oracle's possession, custody, or control. Oracle's policies and training, as well as the systems interviews we conducted, reveal that Oracle uses a "global compensation system," that includes the data of its affiliates. As stated above, Oracle managers are directed to routinely access data showing the compa-ratios employees in other countries have. Oracle's Information Workbench has data for Oracle global, and can filter by country, by employee, and other categories. Significantly, you do not deny that Oracle wrote scripts to exclude compa-ratios of international transfers from its data pull in 2017.

Finally, your suggestion that some comments include references to compa-ratios is no substitute for the complete data, showing the prior compa-ratios for all international transfers. You acknowledge that the comments do not provide complete data, and, in any event, the comments are not data that can be used in a statistical analysis.

It appears that Oracle is refusing to produce the most relevant piece of data for the compensation of international transfers – data that Oracle itself uses in setting the compensation of international transfers. If Oracle does not reconsider its position on this issue by the end of the week, we intend to bring a motion to compel this data.

### **Compensation History Data**

Your letter requests authority requiring Oracle to produce "pre-liability discovery." The Secretary of Labor in *OFCCP v. Uniroyal, Inc.*, No. OFCCP 1977-1, at 9 (Sec'y June 28, 1979), held that "discovery is not limited to the issues raised by the pleadings and that the correct test for the scope of discovery is relevancy to subject matter of the suit." Accordingly, the Secretary of Labor permitted discovery extending back in time eight years prior to the compliance review. *Id.*; see also, *U.S. Dep't of Labor v. Prudential Ins. Co.*, 1980 WL 275523, \*8 (July 27, 1980) (allowing OFCCP to obtain historical data prior to review period). As I previously explained, the data of employees in the same job functions and for the same period of time for which Oracle produced data for class members is not sought to establish *liability* for the those people; rather it is to conduct a statistical analysis of historical compensation data that includes all relevant data – the data of all persons employed by Oracle in the job functions at issue. In a case alleging, *inter alia*, that "Oracle pays women and Asians less on hire," including "by suppressing their pay relative to other employees in the same or comparable job," it is highly relevant to obtain the data of "other employees in the same or comparable job." Second Amended Complaint, ¶ 18. Thus relevance of data of comparators was recognized in *U.S. Dep't of Labor v. Harris Trust & Savings Bank*, 78 OFC-2 (ALJ Decision Dec. 22, 1986), in which OFCCP obtained data including the initial salaries and promotions of employees who were not included in the class eight years prior to the review period.

Oracle's asserted concerns about producing the private information of employees is not a basis for refusing to produce highly relevant information. As you know, the Court has entered a Temporary Protective Order that will remain in place until it enters a new Protective Order, which the parties agree will protect the privacy interests of former and current Oracle employees.

Moreover, as OFCCP has explained, it plans to use the data in a statistical analysis, based on the aggregated data.

Although Oracle has already produced historical data for employees in the three job functions at issue going back to 1985, OFCCP has offered a compromise: to limit the data production for those employees who left Oracle prior to 2013 to the time frame of 2002-2013. We ask that Oracle reconsider this compromise. Otherwise, OFCCP will consider seeking to compel historical data for the period 1985 to 2013 – the same time frame for which Oracle produced data for Oracle’s employees employed since 2013.

### **Supplementation of Previously-Produced Data Files**

#### “Available Updated Data, If Any”

Despite OFCCP’s request that Oracle identify any files that Oracle does not intend to supplement, Oracle does not do so. Instead, your letter vaguely states that your letter “referenced ‘readily available updated data, if any’ *primarily* because certain of the data files previously produced were pulled from legacy systems no longer in use, such that additional entries post-dating Oracle’s earlier production would not exist.” (emphasis added). Please confirm that Oracle will be supplementing all the data files it previously produced, except (1) those OFCCP specifically stated could be excluded from supplementation; and (2) those files that OFCCP did not exclude, but which contain no data after January 2017. If there are data files OFCCP does not intend to supplement (and does not fall into one of the exclusions above), please identify them.

Oracle did not respond to OFCCP’s request that if there are new sources of data, please identify them, so that we can adequately meet and confer. As OFCCP noted, if Oracle has new databases storing the data that Oracle previously produced, Oracle will need to supplement its data production from such databases.

#### Supplementation of Hiring Data

OFCCP does not agree that Oracle should rewrite its scripts to exclude hiring data previously produced, which will result in the hiring data being produced in a different format. This will make it more burdensome to understand, combine with the other data, and work with. It will also permits Oracle to unilaterally decide what data is relevant, particularly since Oracle has not identified what it intends to exclude from its supplementation.

Moreover, the hiring data for employees hired into Oracle’s PT1 job group after 2013 is highly relevant to the compensation class, since over 99% of the employees in the PT1 job group were also employees in the Product Development, Support, and Information Technology job functions. Contrary to Oracle’s suggestion, this fact does not undermine OFCCP’s request for hiring data for these class members. While Oracle is already producing compensation data for these individuals, Oracle limited its production of data from the hiring process for these individuals, even though such data is also relevant to the compensation claims.

### **Educational Data and Experience of Oracle Employees in Compensation Class**

We appreciate the further explanation in your letter about the educational data that Oracle will be producing. However, your response remains vague. It states that Oracle will supplement information on education “that is available in Oracle’s centralized HRIS data systems.” Please identify the systems Oracle intends to include in this search, and those it intends to exclude.

Earlier today, I requested a telephonic meet and confer with on Friday to further discuss Oracle’s data production. We look forward to talking to you further about these issues on Friday.

Sincerely,

Laura C. Bremer