



Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
+1 415 773 5700
orrick.com

Kathryn G. Mantoan

E kmantoan@orrick.com
D +1 415 773 5887
F +1 415 773 5759

March 29, 2019

Laura C. Bremer
U.S. Department of Labor
Office of the Solicitor
90 Seventh Street, Suite 3-700
San Francisco, CA 94103

Re: OFCCP's Requests for Supplemental Data Production

Dear Laura:

I write in response to your data-related emails dated March 25, 2019, March 26, 2019, and March 27, 2019, which followed our meet and confer call on the afternoon of March 22, 2019 regarding your letter dated March 20, 2019. The first issue below—the scope of OFCCP's revised hiring/recruiting claims and the supplemental data production that is appropriate in light of that scope—is one we addressed on our March 22 call but you omitted from your emails.

Scope of Supplementation of Group II (Hiring) Data Files

On our March 22 call, you expressed concern that Oracle might not be able to correctly identify the population relevant to OFCCP's revised and narrowed recruiting and hiring claims (*i.e.*, individuals hired into Oracle through the "college recruiting" program) for purposes of providing additional data. I noted that you could address that concern by explaining how OFCCP is defining that population for purposes of the claims in the operative Second Amended Complaint. *See, e.g.*, Second Am. Compl. (Mar. 8, 2019) at ¶¶ 33 (alleging that "Oracle hired approximately 125 recent college or university graduates per year at its headquarters for low-level Product Development positions in Oracle's [PT1] job group"), 37-38 (alleging "statistically significant" "under hiring of White and Hispanic applicants" and providing calculations of 495 "total hires").

Oracle has already served OFCCP with discovery requests directed at the facts supporting these allegations, including all "statistical data, analyses, methodologies, and computations." Oracle's Interrogatories, Set Two, Nos. 47-48 (Mar. 15, 2019). Rather than waiting until the full 30 days have run to respond, I reiterate our request that you identify the definition of "recent college or university graduates" you are using, and the specific data fields you used to identify them, for purposes of the claims OFCCP makes in the operative complaint. Earlier provision of that

Laura C. Bremer
March 29, 2019
Page 2

information should enable the parties to come to agreement as to the relevant population for supplementation of the Group II (Hiring) Data Files. Please provide this information at your earliest opportunity.

Compa-Ratios From International Affiliates of Oracle America, Inc.

In our March 22 call, we spent significant time discussing OFCCP's request for "each employee's last compa-ratio at an Oracle affiliate before transfer to the Support, Product Development, and Info Tech Job Functions at HQCA." Feb. 15, 2019 L. Bremer Ltr. to E. Connell entitled "Data Requests." See also Mar. 6, 2019 L. Bremer Ltr. to E. Connell entitled "Data Requests" (reiterating same request verbatim). In particular, we discussed trying to reach agreement as to specific data fields that we could agree to use to identify the relevant population and requested information. On our call, I proposed trying to determine if Oracle America, Inc. can pull information about the last compa-ratio at an international affiliate for each of the 341 employees designated "International Transfer" in ORACLE_HQCA_0000070747 (HQCA_IREC_DATA.xlsx), tab "OFFER_CANDIDATES," column AR ("HIRE_TYPE"). You indicated that you would take that proposal under advisement and reply indicating any additional fields/values that you contended would be useful in identifying international transfers.

Instead of addressing that issue, your March 25 e-mail proposed that Oracle pull in not only the last pre-Oracle America, Inc. compa-ratio for each of these 341 individuals (plus any other individuals designated "International Transfer" in the supplement iRecruitment data pull for the compensation class), but also additional information never before requested (including each individual's final job code, system job title, job function, job specialty, global career, level, salary, salary range minimum, salary range maximum, and salary range midpoint). March 25, 2019 e-mail, bullet #1. You further requested – again for the first time – that Oracle pull in last compa-ratio as well as complete salary history for all "employees employed prior to 2013" who "transferred from an Oracle affiliate," though you proposed no way to identify such persons. March 25, 2019 e-mail, bullet #2.

With respect to bullet #2 and as discussed in more detail *infra*, OFCCP's request for data on individuals who never worked at HQCA at any point from the start of the audit forward is unreasonable and unduly burdensome; to the extent your March 25 email proposes pulling historical compa-ratio information or other historical data for those people, Oracle does not agree the request is appropriate.

As for members of the compensation population, properly defined and supplemented, and without waiving our previous objection to producing data not within Oracle America, Inc.'s possession, custody and control, we are in the process of requesting and, if feasible, providing

Laura C. Bremer
March 29, 2019
Page 3

information related to the last compa-ratio at an Oracle affiliate for those designated “International Transfers” (as defined above). Compa-ratio is a calculation based on other information—not an independent, separate, and static value—and we are working to determine what information that we can collect and provide would be sufficient to do the needed calculation for individuals in the various international locations in which those designated “International Transfers” previously worked. Though you did not previously request them, we also do not object to requesting and, if feasible, providing the final job code, system job title, salary, salary range minimum, salary range maximum, and salary range midpoint at the last pre-transfer Oracle affiliate for these individuals. (As you know, each job code from the Global Job Table is associated with only one job function, job specialty, and global career level, such that separately pulling and providing that information is duplicative of information OFCCP already has.) We are working with our client to determine the feasibility of obtaining accurate information for these data fields for the “International Transfers” and anticipate responding further next week.

For avoidance of doubt, Oracle will provide this separately-requested information (if feasible) in a separate data pull file, with appropriate identifiers (such as name and PARTY_ID) to enable OFCCP to marry this new data pull with prior data pulls as it deems appropriate.

“Available Updated Data, If Any”

I agreed that Oracle will work to provide updates all of the data files you requested with the two limitations you indicated, and that if any of the fields previously produced have been moved to different centralized HRIS data systems we will pull and produce those fields from those other systems as well.

OFCCP’s Request for Data for Individuals Outside the Populations At Issue

Your March 27 e-mail proposed what you deem a “compromise”: that Oracle produce a dozen different data files containing information for every employee who worked at HQCA prior to January 1, 2013 in any of the three job functions that frame OFCCP’s operative complaint; presumably, based on the size of the population actually at issue in the case, this would amount to collecting, QCing, and producing data for thousands (if not tens of thousands) of additional employees.

Oracle does not agree to produce compensation or assignment history data for employees who have never worked at HQCA after January 1, 2013, and are thus undisputedly outside of the populations at issue in either the underlying audit or this litigation. We have reviewed the legal authority you previously provided and, as discussed on our March 22 call, do not believe it

Laura C. Bremer
March 29, 2019
Page 4

supports the conclusion that OFCCP is entitled to demand, or Oracle is obligated to produce, eight years of data on individuals entirely outside of the reach of OFCCP's claims given the facts of this case. With the supplements being prepared, OFCCP will have complete compensation history data for more than *six years*' worth of Oracle HQCA employees to analyze in whatever statistical model(s) it deems appropriate. A request for any more is burdensome, overbroad, and not proportionate to the needs of the case, and impinges unreasonably on the privacy of third-party non-litigants. For avoidance of doubt, Oracle does not agree to any limitations on its ability to critique whatever statistical analysis(es) OFCCP may seek to introduce as proof of its claims, sight unseen – nor is it reasonable to ask Oracle to do so.

Educational & Experience Data for Oracle Employees in Compensation Population

As I previously indicated, Oracle has produced, and will supplement, information on education and prior experience that is available in Oracle's centralized HRIS data systems for both the original compensation population and the supplemental compensation population through January 18, 2019. Oracle has also produced, and will continue to produce, resumes stored in those systems for the populations at issue, which generally also contain educational and experience information.

Very truly yours,

A handwritten signature in blue ink that reads "Kathryn G. Mantoan".

Kathryn G. Mantoan