



July 28, 2017

Via E-Mail

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Re: OFCCP v. Oracle America, Inc. Redwood Shores, California (OALJ
Case No. 2017-OFC-00006)

Dear Mr. Pilotin:

I write to memorialize and follow up on our meet and confer conversation yesterday (July 27, 2017), regarding Oracle's ongoing efforts to respond to your letter about database information dated June 30, 2017, Oracle's objections to your Deposition Notices dated July 7, 2017, and certain of Oracle's responses and objections to OFCCP's Requests for Production.

I. Information from Oracle's Databases

As we explained on our call, Oracle is diligently working to determine if it can produce the information identified in your June 30 letter. In response to your compensation-related requests, Oracle is compiling data for employees in Product Development, IT, and Support, and for hiring and recruiting-related requests, Oracle is gathering data for employees in the PT1 job group. As we explained on the call and have noted in prior meet and confer correspondence, this is not a simple undertaking; compiling the information you identified in your June 30 letter requires more than simply pressing a button and running a report—it requires Oracle IT employees to draft and run complex scripts that identify, map, and pull information from a variety of different databases and modules. It also requires that the data collected be verified and checked for quality control. This process is much less analogous to running a report of information and more akin to creating an entirely new database of information. As that process continues, we will notify you if we come across any issues with respect to specific data points requested.

Oracle is moving forward with compiling the data you requested despite the fact that Judge Larsen has not yet issued an order regarding the relevant period, and any data produced will be limited by whatever time frame Judge Larsen orders. Oracle is using January 17, 2017 as a placeholder end date so as to keep the process moving while we wait for an order from Judge Larsen. Similarly, Oracle is currently working to obtain the data you requested from Taleo—which was not implemented at Oracle until July 2014—in a good faith effort to move forward while we await an order from Judge Larsen on the relevant period that could ultimately affect the relevance of this data. Although you have requested a date certain for production, we reiterate that we cannot

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provide you with one at this time in light of the uncertainty surrounding the end date for the relevant period in addition to the uncertainty of the timeline for writing, validating, and quality controlling the scripts for pulling this information.

With regard to OFCCP's requests for "compensation snapshots" containing the same data as ORACLE_HQCA_0000000004 and compensation information from the Compensation Workbench and Workforce Compensation applications described by Kate Waggoner, OFCCP explained on the July 27 call that it does not need the information in these requests to be provided in these "snapshot" formats to the extent that the same data and the same fields of information are provided through the pull from Oracle's databases.

II. OFCCP's Recent Deposition Notices

As we explained on the call, Oracle is not objecting outright to producing Mr. Lynn, Ms. Dumont, and witnesses responsive to OFCCP's two new 30(b)(6) notices of deposition. As we noted yesterday, any deposition of Ms. Dumont would necessarily be subject to her availability and ability to actually sit for a deposition since she has been on leave of absence and we have not spoken to her since before her leave began. Oracle is willing to produce these witnesses, subject to its objections; however, as we described on the call, the scheduling of such depositions should be part of a more comprehensive discussion with OFCCP that includes whether OFCCP will be seeking additional fact or 30(b)(6) depositions (which you acknowledged as possible on yesterday's call), as well as OFCCP's production of witnesses in response to Oracle's 30(b)(6) notice of deposition dated May 31, 2017. During our discussion, we reiterated that our position is that it is appropriate to take those depositions now. We also noted that Oracle has already produced nine witnesses in response to OFCCP's first 30(b)(6) notices of deposition.

With regard to Ms. Westerdahl, due to her recent unavailability for personal reasons, Oracle has not yet had a chance to speak to her regarding her availability to sit for a deposition or her personal knowledge of facts relevant to this litigation. As noted on yesterday's call, if OFCCP has a particular reason for seeking to depose Ms. Westerdahl—for example, any specific facts that it believes Ms. Westerdahl is in a unique position to speak to—it would be helpful to know that information. You did not offer any specific information on our call. We will be speaking with her next week and will get back to you as soon as possible.



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III. OFCCP's Requests for Production

RFP No. 83: Employee Contact Information

During our call, we discussed whether the parties had modified or altered their positions on OFCCP's Request for Production No. 83 in light of Judge Larsen's July 20 order and his reference to Judge Berlin's recent decision in *OFCCP v. Google, Inc.*, 2017-OFC-00004 (July 14, 2017). I also asked if OFCCP would be willing to agree to a *Belaire* notice process, particularly in light of the California Supreme Court's recent decision in *Williams*. We agreed to get back to each other. Oracle now offers the following proposal.

Your request seeks “[c]ontact information for all current and former employees in the PT1 job group and Product Development, Information Technology, and Support lines of business during the RELEVANT TIME PERIOD.” As we have previously explained, we believe this request is overbroad in scope, unduly burdensome, disproportional to the needs of the case, and seeks confidential information that relates to and invades the privacy rights of individuals who are not a party to this action. Nevertheless, in light of Judge Larsen's letter and reference to the *Google* decision, Oracle is willing to produce contact information for 20 percent of the individual contributor class members from the Product Development, IT, and Support lines of business, subject to a *Belaire* process administered by a third party administrator, by which employees are provided the opportunity to opt out of having their personal information disclosed by Oracle. We believe this proposal provides OFCCP with a tailored and appropriate set of information while mitigating many of Oracle's concerns relating to overbreadth and privacy. We note that the *Belaire* process we suggest here also was used and approved by the California Supreme Court in its recent *Williams* decision.

RFPs Related to “Transfer Employees”

Your colleague, Ms. Bremer, explained that OFCCP is not seeking documents or policies related to individuals who transfer between locations within the United States and maintain the same position (with the same job code and/or the same manager). As we understood your position on the call, OFCCP instead seeks documents and policies relating to individuals who applied for a posted job and received new or different positions at Oracle while currently working for Oracle, regardless of whether they were already working for Oracle within the United States or in another country. In light of your narrowing of the definition of “transfer” employees to include only those employees who apply for a posted job and are selected for that job, we will agree to produce information related to “transfer” employees.



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Overbreadth Objections to RFP Nos. 65, 67, 68, and 69

On our call OFCCP noted that Oracle has maintained its objections to these requests on overbreadth grounds (among other things) and asked whether there are particular terms that Oracle would need to see removed from these requests before agreeing to produce responsive document. OFCCP requested that Oracle offer proposed modifications to these requests for it to consider.

Accordingly, Oracle hereby proposes the following modifications:

RFP No. 65: All DOCUMENTS provided to YOUR employees, including but not limited to employee handbooks, describing PRACTICES, POLICIES, or PROCEDURES RELATING TO: ~~HIRING; job assignments (including but not limited to initial job assignments, lateral movements, and transfers);~~ **and COMPENSATION; PROMOTIONS; demotions; diversity and/or affirmative action,** for PT1 job group positions and positions in the Product Development, Information Technology, and Support lines of business during the RELEVANT TIME PERIOD.

RFP No. 68: All DOCUMENTS initiating legal proceedings against YOU concerning PERSONNEL issues by PERSONS in the PT1 job group or in the Product Development, Information Technology, or Support lines of business during the RELEVANT TIME PERIOD, ~~including but not limited to:~~ **relating to civil lawsuits; arbitrations; and/or administrative charges of: discrimination on the basis of race related to HIRING for PT1 job group positions or discrimination on the basis of race or gender relating to** ~~(including but not limited to race or gender); retaliation; unfair treatment; unfair~~ **COMPENSATION for the Product Development, Information Technology, and Support lines of business ; and/or hostile work environment,** including but not limited to charges filed with the Equal Employment Opportunity Commission, any state equal employment agencies, human rights agencies, or unemployment agencies.

RFP No. 69: All DOCUMENTS, including but not limited to employee surveys, summaries, reports, or presentations, addressing or referencing: **discrimination on the basis of race related to HIRING for PT1 job group positions or discrimination on the basis of race or gender relating to** ~~(including but not limited to race or gender); retaliation; unfair treatment; unfair~~ **COMPENSATION for the Product Development, Information Technology, and Support lines of business; hostile work environment; morale; and/or improper management conduct** during the RELEVANT TIME PERIOD.

We are still discussing Request No. 67 with our client, and will get back to you early next week.



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RFP No. 70: Government Contracts

OFCCP acknowledged that Oracle has offered to stipulate that it is a government contractor in response to this request and stated that it believes the parties should be able to reach an agreement on an appropriate stipulation as opposed to making Oracle produce all of its government contracts as initially sought by this request. OFCCP requested a more detailed stipulation than Oracle's initial proposal; OFCCP suggested that the stipulation should include information such as the length of time that Oracle has served as a government contractor, the number of government contracts to which Oracle is currently a party, the dollar amounts of those contracts, and the time frame for the services provided in those contracts. OFCCP acknowledged that its request for these additional details is not based on its belief that such information is relevant to the proportionality and scope of discovery, but instead OFCCP is asking for this additional detail because Judge Berlin in *OFCCP v Google* found it to be relevant, and OFCCP is concerned that Judge Larsen may find it relevant in this matter as well.

Oracle agrees with OFCCP that the size, scope and duration of Oracle's government contracts are not relevant to the proportionality and scope of discovery. Nevertheless, Oracle is considering your proposal of a more detailed stipulation, and will get back to early next week.

RFP Nos. 78, 79, 87, and 88

Request No. 78 seeks adverse impact analyses purportedly "required" by 41 C.F.R. 60-3.15A, and Request No. 79 seeks evaluations of each step or component of the selection (hiring) process, as described in 41 C.F.R. 60-3.4(C). Request No. 87 seeks documents related to any validity studies or evaluations conducted related to any step or component of the hiring process for the PT 1 job group and Product Development line of business, and Request No. 88 seeks documents related to any step or component of the compensation determination process for employees in the Product Development, Support and IT lines of business.

During our call, OFCCP acknowledged that Request Nos. 78 and 79 cite to the Uniform Guidelines on Employee Selection Procedures. Request Nos. 87 and 88 also contemplate some type of employee selection procedure that could be validated. I asked if there was a particular employee selection procedure OFCCP had in mind with respect to these requests. You did not offer one, but instead offered the clarification that, at least for Request No. 78, OFCCP would like any adverse impact analyses conducted by Oracle with respect to the PT 1 job group during the relevant time period.

Having now had the opportunity to review the meet and confer record and consider your clarification, Oracle maintains its objection that these requests are overbroad and seek information



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not relevant to OFCCP's claims and allegations, as neither the NOV nor the Amended Complaint allege that Oracle has engaged in disparate impact discrimination, nor do they allege Oracle used an employee selection device that has an adverse impact. Similarly, OFCCP's interrogatory responses do not identify any employee selection procedure that is at issue in this litigation, and despite multiple requests by Oracle during the meeting and confer process (including by me yesterday), OFCCP has not identified any employee selection device that is at issue.

Accordingly, Oracle maintains its objections as to these requests. Oracle also notes that even if an employee selection device had been identified by OFCCP and was at issue here, any adverse impact analysis or validity study conduct by Oracle or on Oracle's behalf very likely would be covered by the attorney-client privilege and/or attorney work product doctrine.

RFP No. 54

As we discussed on the call, Oracle maintains its objection to this request on the principal grounds that it is vague and ambiguous. In short, we have not been able to determine what exactly is being sought by this request. OFCCP stated that it will revisit this request and get back to us with any modifications or clarification in a timely fashion.

IV. Scheduling

Finally, OFCCP asked whether Oracle is willing to consider the possibility of raising a joint request with Judge Larsen to move the current fact discovery cutoff and hearing dates to later dates than the ones initially set at the case management conference. We are considering your proposal and will get back to you early next week.

Very truly yours,

A handwritten signature in blue ink that reads "Erin M. Connell". To the right of the signature is a small, stylized blue mark that looks like a combination of the letters "C" and "O".

Erin M. Connell