



August 2, 2017

**VIA ELECTRONIC MAIL**

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Re: *OFCCP v. Oracle America, Inc.*, Case No. 2017-OFC-00006,  
Follow-Up Regarding OFCCP Document and Data Requests

Dear Erin,

I write to respond to your July 28 and July 31, 2017 letters. We look forward to discussing the matters below with you during our call today at 2:00 p.m.

**I. Oracle's Data Production**

Given ALJ Larsen's order requiring the parties to meet and confer regarding outstanding discovery issues, we request clarification regarding whether Oracle intends to withhold any of the data requested in my June 30, 2017 letter. During our call on July 27, you indicated that, at that time, Oracle was not intending to withhold any of the requested data. However, J.R.'s July 11 letter posed an objection regarding producing data from ORS. During today's call, we would like to discuss whether Oracle will produce data from ORS. Further, to the extent Oracle has any other objections regarding production of the requested data, we ask that Oracle present them now so that the parties can meet and confer about them and seek relief from ALJ Larsen, if necessary.

Relatedly, as I indicated to ALJ Larsen on July 14, OFCCP will be requesting a production schedule, along the lines of the framework identified in Norm Garcia's June 28 letter. In our proposed production schedule, we will include a date by which Oracle must produce the data requested in my June 30 letter. While we would prefer to reach an agreement with Oracle on such a deadline, Oracle is presently representing that it cannot estimate when it will make its production, despite initially indicating that it would be able to produce data by August 7. So that we can limit the number of disputes raised with ALJ Larsen, we ask that Oracle provide during our call this week an estimate as to when it will produce the data requested in my June 30 letter.

Finally, in response to RFP No. 52 (Performance Evaluation Forms), Oracle stated that it "will produce a screenshot (or screenshots) that shows the fields that can be populated in Oracle's Performance Appraisal application." Oracle's Am. & Supp. Responses to 2d Set of

RFPs at 39. Despite committing to produce those screenshots, Oracle has not yet produced them. Please produce those screenshots promptly so that OFCCP can evaluate whether additional data must be requested.

## **II. OFCCP Deposition Notices Served on July 7, 2017**

Based on our conversation on July 27 and your July 28 and July 31 letters, we understand that Oracle will not be objecting outright to producing Mr. Lynn, Ms. Dumont, and Ms. Westerdahl. We further understand that Oracle will produce witnesses in response to the Rule 30(b)(6) deposition notices OFCCP served on July 7 and that Oracle will permit OFCCP to examine these witnesses on the topics identified in those notices.

Other than to determine mutually agreeable dates for the depositions, it appears that the only issues for which meeting and conferring may be necessary are Oracle's impending objections to the deposition of Ms. Westerdahl. Please serve those objections promptly so that the parties can discuss them in advance of the Court's August 4 deadline.

## **III. Scheduling**

Given the state of discovery, OFCCP proposes extending fact discovery by three months. The table below is a proposed modified case management schedule.

Close of Fact Discovery	Friday, April 20, 2018
Initial Expert Disclosures	Friday, May 11, 2018
Rebuttal Expert Disclosures, if any	Friday, June 01, 2018
Close of Expert Discovery	Friday, June 29, 2018
Deadline to File All Pretrial, Discovery, and Dispositive Motions (non-MIL)	Friday, July 06, 2018
Deadline to Oppose Dispositive Motions, if any	Friday, July 20, 2018
Deadline to File Reply ISO Dispositive Motion	Friday, August 03, 2018
Deadline to Meet and Confer re Prehearing Statement and	Friday, August 31, 2018
Pretrial Filings, Including MILs, Prehearing Statement, Exhibit List, and Witness List (Pre-Hearing Order § 4.d)	Tuesday, September 18, 2018
Pretrial Conference	Monday, October 01, 2018
TRIAL (14 days)	Monday, October 15, 2018

This proposed schedule generally tracks the Court's framework for scheduling, with two exceptions. First, we afforded the parties a week more than what the Court's schedule provided to make their initial and rebuttal expert disclosures. Second, we increased by one week the gap between the filing of replies in support of dispositive motions and the deadline to meet and confer regarding the prehearing statement.

In connection with this modified schedule, OFCCP plans to also propose a production timeline and a requirement of monthly case management conferences. OFCCP believes that such measures will ensure that the parties stay on track in meeting the modified schedule.

#### **IV. OFCCP's Requests for Production**

As a general matter, it appears that Oracle does not object producing some documents for some of the RFPs the parties are currently discussing. So that discovery can proceed, OFCCP requests that Oracle produce those documents that are not subject to pending objections. There is no reason for Oracle to withhold such documents.

##### **A. RFP No. 83: Employee Contact Information**

For the first time, Oracle has proposed using the notice and opt-out process identified in *Belaire-West Landscape, Inc. v. Superior Court*, 149 Cal. App. 4th 554 (2007). Further, in light of the decision in *OFCCP v. Google*, Oracle has proposed limiting its production of the requested contact information to 20 percent of the individual contributors in the Product Development, IT, and Support lines of business. OFCCP cannot agree to these terms.

First, Oracle has not identified, nor has OFCCP found, any case law imposing California's *Belaire* procedure on a federal agency. Indeed, courts have held that *Belaire* notice is not required in private federal litigation and have permitted private litigants discovery of employees' "confidential information subject to a protective order, without requiring prior notice." See *Benedict v. Hewlett-Packard Co.*, No. 13-CV-0119-LHK, 2013 WL 3215186, at \*2 (N.D. Cal. June 25, 2013) (rejecting *Belaire* notice in light of protective order) (citing various cases). Here, ALJ Larsen has entered a protective order designed to protect "confidential, trade secret, or private information" (Protective Order at 1), rendering a *Belaire* process unnecessary. Oracle has offered no reason why a federal agency should be treated any differently than private litigants advancing federal claims.

Second, if the *Google* decision were to become a final administrative order, the facts there are distinguishable, rendering that Precision's numerical limits inapplicable here. Unlike in *Google*, which involved a compliance evaluation of an entire facility, the parties here are litigating discrimination claims that only concern segments of the Redwood Shores workforce. Indeed, *Google* ordered disclosure of over 8,000 employees, more than the number of employees implicated here.

While the parties appear to remain at an impasse over contact information, we would be happy to discuss any other proposals Oracle may have to resolve this issue.

##### **B. RFPs Related to Transfer Employees**

Given the parties' mutual understanding as to which employees constitute "transfer employees," we understand that Oracle will now produce documents responsive to RFP Nos. 31,

35, 36, and 57. We also understand that Oracle's production of data responsive to RFP Nos. 73-76 will contain data on transfer employees.

**C. RFPs No. 65: Various Practice, Policy, or Procedure Documents**

OFCCP is willing to agree to much of Oracle's proposed modifications, with the exception of eliminating "job assignments (including but not limited to initial job assignments, lateral movements, and transfers)." An employee's compensation is tied to the job to which that employee is assigned. Thus, any practice, policy, or procedure relating to job assignments are relevant to OFCCP's claims. Please advise whether Oracle is willing to agree to OFCCP's compromise.

OFCCP notes that RFP No. 58 remains outstanding and includes discussion of practices, policies, and procedures governing job assignments. OFCCP hopes to discuss and resolve Oracle's objections during the call this week.

**D. RFP Nos. 67, 68, and 69: Complaints and Surveys/Summaries/Reports/Presentations Regarding Discrimination**

OFCCP counter proposes the following with respect to RFP Nos. 67, 68, and 69. Please advise whether Oracle will agree to produce documents based on OFCCP's compromises.

- **RFP No. 67:** All DOCUMENTS RELATING TO complaints made (whether formal or informal, oral or written) against YOU (including against any and all PERSON(S) involved in HIRING for PT1 job group ~~and/or Product Development job group positions~~ or involved in determining COMPENSATION for employees in the Product Development, Information Technology, and Support lines of business) that allege, in whole or in part, discrimination **based on race or gender** (including but not limited to race or gender); ~~retaliation; unfair treatment; unfair COMPENSATION; and/or hostile work environment~~ 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 **regarding discrimination based on race and/or gender relating to** civil lawsuits; arbitrations; and/or administrative charges of discrimination (including but not limited to race or gender); ~~retaliation; unfair treatment; unfair COMPENSATION; 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 **pertaining to applicants for roles in the PT1 job group or employees in the Product Development, Support, or IT lines of**

**business**, including but not limited to employee surveys, summaries, reports, or presentations, addressing or referencing: discrimination **based on race and/or gender** (including but not limited to race or gender); retaliation; unfair treatment; unfair COMPENSATION; hostile work environment; morale; and/or improper management conduct during the RELEVANT TIME PERIOD.

**E. RFP No. 70: Government Contracts**

In lieu of Oracle producing its government contracts, the parties have discussed entering into a stipulation regarding Oracle's status as a federal contractor. Oracle has proposed stipulating to the facts that it has been a covered federal contractor for over 20 years and that the total amount of its government contracts has exceeded \$100 million.

OFCCP remains open to a stipulation, but requests a more precise figure regarding the value of Oracle's federal contracts. A cursory review of USAspending.gov reveals that Oracle was awarded over \$100 million in 2013 and 2014 alone. To make the figure more precise, OFCCP requests that Oracle identify in good faith and stipulate to the amount of federal funds it has been awarded from 2013 through the date it identifies that amount.

**F. RFP Nos. 78, 79, 80, 87, and 88**

Notwithstanding OFCCP's clarifications, Oracle has maintained its objections regarding these requests. Because the parties are at an impasse, OFCCP intends to raise these RFPs with ALJ Larsen.

**G. RFP No. 54**

To address Oracle's vague and ambiguous objection, OFCCP clarifies further that RFP No. 54 is directed at documents relating to any practices, policies, or procedures Oracle uses to assign employees in the Product Development, IT, and Support lines of business to (1) a salary code or grade and (2) a job title. To illustrate, this request encompasses a policy explaining to managers what job title or salary code/grade an employee should have in light of his or her duties. As another example, this request encompasses a policy governing how employees from an acquired company should be assigned to a particular job title or salary code/grade within Oracle. In light of these clarifying examples, please advise whether Oracle maintains its objection.

**H. RFP Nos. 27 and 28: Employee Referral Program**

Oracle has committed to producing documents sufficient to identify the individuals that were hired into the PT1 job group pursuant to Oracle's Employee Referral Program during the relevant period. It is presently considering whether to produce documents sufficient to show which employees received bonuses based on these referrals; please advise as to whether Oracle will produce these documents so that OFCCP can determine whether ALJ Larsen's guidance is necessary.

In addition to these documents OFCCP further clarifies that Oracle's productions responsive to these document requests should include any communications related to the referrals themselves. If Oracle objects to the production of such communications, please advise promptly.

**I. RFP No. 29: Documents Related to Affirmative Defenses**

In an attempt to resolve the parties' dispute, OFCCP proposes limiting this request to read as follows:

All DOCUMENTS YOU rely upon ~~or reviewed~~ in making each and every affirmative defense set forth in YOUR ANSWER.

Please advise whether this limit resolves Oracle's objection to this request.

**J. RFP No. 64: Practices, Policies, and Procedures Regarding Evaluating Employees**

In an attempt to resolve the parties' dispute, OFCCP restates this request to read as follows:

All DOCUMENTS RELATING TO PRACTICES, POLICIES, or PROCEDURES reflecting how **the job performance** of PERSONS in the Product Development, Information Technology, and Support lines of business ~~are~~ **is** evaluated, ranked, and/or analyzed ~~rated~~, during the RELEVANT TIME PERIOD, including **during focal reviews and/or in connection with awarding bonuses, compensation increases, or equity grants.** ~~but not limited to: standards used; the process for evaluating, ranking, and/or analyzing; positions that evaluate, rank and/or analyze; the review and approval process.~~

Please advise whether this revision resolves Oracle's objections to this request.

\* \* \*

We look forward to speaking with you today.

Sincerely,

JANET M. HEROLD  
Regional Solicitor

By:



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MARC A. PILOTIN  
Trial Attorney