



August 4, 2017

VIA ELECTRONIC MAIL

Erin M. Connell
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Re: OFCCP v. Oracle America, Inc., Case No. 2017-OFC-00006,
Follow-Up Regarding OFCCP Document Requests

Dear Erin,

I write to follow up on our call this morning. As we discussed today, for certain RFPs implicating searches of emails (*i.e.*, Nos. 17-18, 22, 24-25, 39-40, 42-45, 46), a final call on Monday, August 7 is likely necessary. I am available that day, except for between 11:00 a.m. and 12:15 p.m. Please advise as to when you are available for a call regarding these RFPs.

I. RFP No. 83: Contact Information

As I stated this morning, in the spirit of compromise, OFCCP will limit RFP No. 83 to the affected current and former employees within HQCA. In other words, OFCCP's request for current and former employees' contact information pertains to females in the Product Development, IT, and Support lines of business; African Americans in the Product Development line of business; Asians in the Product Development line of business; and African Americans, Hispanics, and Whites who applied for positions in the PT1 job group but were unsuccessful.

Notwithstanding OFCCP's compromise, the parties remain at an impasse regarding RFP No. 83. I understand that, despite OFCCP's proposal, Oracle insists on a *Belaire* process; adding an attorneys' eyes only provision to the Protective Order; excluding the production of emails and phone numbers; and limiting any production to current and former employees who were individual contributors. Given these outstanding issues, the parties have agreed that OFCCP's request for contact information is an issue that must be raised with ALJ Larsen.

II. RFP Nos. 27 and 28: Employee Referral Program

Based on Oracle's commitments to produce documents sufficient to show which individuals were hired as a result of the Oracle's Employee Referral Program and which employees received bonuses as a result of the program, at this time, OFCCP will not raise its request for related communications with ALJ Larsen.

III. RFP No. 67: Internal Complaints

Oracle has proposed producing internal complaints regarding race discrimination in the PT1 job group and race or gender discrimination in the Product Development, IT, and Support lines of business in the form of (1) demand letters and complaints made through Oracle's ethics hotline and (2) written complaints received by HR managers responsible for the three relevant lines of business and the PT1 job group at HQCA.

As a counter-proposal, OFCCP requests that Oracle add to this set documents reflecting verbal complaints made to the HR managers identified in Oracle's proposal. Please advise whether Oracle is agreeable to this modification.

IV. Certain Requests Implicating Production of Emails (RFP Nos. 17-18, 22, 24-25, 39-40, 42-45, 46)

During our call, we acknowledged the potential need for one last conversation regarding the above-listed RFPs. If an additional call will either wholly resolve or narrow the issues the parties need to raise in their respective August 8 letters, OFCCP is open to having a final discussion on these issues on Monday, August 7.

As a general matter, you indicated during our call that the sampling Oracle proposes in its written responses to these RFPs is not intended to limit OFCCP's request for documents from the entire relevant period. Rather, you stated that the samples Oracle proposes are intended to facilitate further discussion regarding production of documents from the relevant period. With this principle in mind, OFCCP makes the proposals below.

A. RFP No. 17 (Communications with Colleges and Universities) RFP No. 18 (Communications with College Recruiters) RFP No. 22 (Interview Notes)

In the spirit of compromise, OFCCP can agree to accept an initial sample of documents responsive to these requests encompassing the time period Oracle proposed in its March 7, 2017 Responses and Objections to OFCCP's First Set of Requests for the Production of Documents. There, Oracle committed to producing documents for the period between January 1, 2013 through June 30, 2014.

With respect to the use of search terms, OFCCP requests that Oracle first provide the number of documents implicated by the time period identified above. If this figure warrants the use of search terms, OFCCP can agree to their use, as detailed below:

- **RFP No. 17:** OFCCP is amenable to Oracle's proposal to use the Internet domain names for the domestic colleges and universities identified in the College Recruiting Sourcing Handbook at ORACLE_HQCA_0000020127.

- **RFP No. 18:** OFCCP is amenable to proposing search terms for this RFP after the production of a reasonably-sized set of documents from which it can develop search terms. As we discussed on the call this morning, such a set would not be culled initially by any search terms, but reviewed simply for relevance.
- **RFP No. 22:** OFCCP requires further information regarding what Oracle views as the “search terms consisting of the names of all college applicants to PT1 positions during the relevant period.” For instance,
 - Who does Oracle consider to be college applicants? Are the college applicants the individuals who submit resumes to Oracle, including through the college recruiting inbox? Or are college applicants the individuals who are input to RESUMate after Oracle’s initial screening?
 - What search terms will Oracle use to limit the search to applicants to PT1 positions?

Following production of sample sets for these requests, OFCCP will meet and confer further with Oracle if the production of additional responsive documents is necessary.

- B. RFP No. 39 (Communications Related to Hiring Experienced Recruits)
RFP No. 40 (Communications Related to Hiring Transfer Employees)
RFP No. 42 (Interview Notes for Experienced Recruits)
RFP No. 43 (Interview Notes for Transfer Employees)
RFP No. 44 (Comm’s. Regarding Decisions to Hire Experienced Recruits)
RFP No. 45 (Comm’s. Regarding Decisions to Hire Transfer Employees):**

In the spirit of compromise, as with the RFPs identified above, OFCCP can agree to accept initial samples of documents responsive to these requests. Consistent with the above, OFCCP requests that the samples span the period between January 1, 2013 through June 30, 2014.

As with the above, OFCCP requests that Oracle provide the number of documents implicated by the sample time period. If this figure warrants the use of search terms, OFCCP can agree to the use of search terms, as detailed below:

- **RFP Nos. 42-45:** OFCCP is amenable to using applicant names and requisition numbers in the set of search terms for Request Nos. 42-45, so long as doing so will yield notes and communications regarding the applicants for the PT1 positions during the sample period.
- **RFP Nos. 39-40:** As with RFP No. 18, OFCCP is amenable to proposing search terms for these RFPs after the production of a reasonably-sized set of documents from which it can develop search terms.

Following production of sample sets for these requests, OFCCP will meet and confer further with Oracle if the production of additional responsive documents is necessary.

C. RFP Nos. 24 and 25 (Larry Lynn and Chantal Dumont Emails)

As with RFP Nos. 24 and 25, Oracle initially agreed to produce responsive emails for Mr. Lynn and Ms. Dumont for the period between January 1, 2013 through June 30, 2014. As a compromise, OFCCP can agree to accept an initial sample of documents responsive to these requests for this time period. OFCCP requests that Oracle review these sample sets without the use of search terms. If Oracle nevertheless contends that search terms are necessary for this sample set, please provide the number of documents implicated by each request for this narrower time period.

Based on the production of these samples, OFCCP can meet and confer with Oracle to discuss search terms to be used for the production of Mr. Lynn's and Ms. Dumont's remaining emails.

D. RFP No. 46: Joyce Westerdahl's Emails

During our call this morning, we discussed resolving Oracle's objections by narrowing OFCCP's request. As a compromise, OFCCP proposes the following revisions:

All COMMUNICATIONS (including by not limited to memos, emails, and text messages) to and from Joyce Westerdahl **RELATING TO the PT1 job group or the Product Development, IT, or Support lines of business that RELATE TO: HIRING; COMPENSATION; PROMOTIONS; ~~diversity or affirmative action;~~ race; gender; national origin; or complaints (whether formal or informal) regarding: **race or gender** discrimination (including but not limited to race or gender); ~~retaliation; unfair treatment; unfair COMPENSATION; and/or hostile work environment.~~**

Please advise whether these changes resolve Oracle's objections to producing documents for this request.

Sincerely,

JANET M. HEROLD
Regional Solicitor

By:



MARC A. PILOTIN
Trial Attorney