

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DEFENDANT ORACLE
AMERICA, INC.'S RESPONSE
TO OFCCP'S OBJECTIONS TO
ORACLE'S DEPOSITION
DESIGNATIONS**

Attached, please find Oracle America, Inc.'s response to OFCCP's objections to Oracle's Deposition Designations. Oracle notes that the objections OFCCP filed with the Court on Friday, December 20, 2019 are identical to those identified in its December 20, 2019 correspondence to Oracle. Consequently, to avoid duplication of efforts, Oracle incorporates its letter as its response to OFCCP's objections filed with the Court.

Respectfully submitted,

December 26, 2019

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Office of Administrative Law Judges
San Francisco, Ca



December 26, 2010

VIA E-MAIL

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Re: *OFCCP v. Oracle America, Inc.*, OALJ Case No. 2017-OFC-00006
OFCCP's Issues with Oracle's Deposition Designations

Dear Mr. Garcia:

I write to follow up on your December 20, 2019 letter regarding Oracle's deposition designations. As a preliminary matter, each of the issues raised in your letter could have been addressed in a timely meet-and-confer letter. You failed to do so.

In addition, nothing in your letter warrants the claims you make. At best, you point to some inconsequential errors. At worst, this is an effort by OFCCP to impugn Oracle. Oracle addresses each of your concerns below.¹

A. Oracle Did Not Waive Any Of Its Objections

OFCCP alleges that Oracle erroneously included a preamble in its submission that states that "to the extent that the testimony designed herein calls for privileged and/or confidential information, Oracle objects." The objections made were raised when the parties designated and counter-designated deposition excerpts. Moreover, we informed the Court that we would file with the Court the objections made along with the deposition excerpts. Finally, privilege objections were made during the deposition, and OFCCP's designations do include testimony during which a privilege objection was made.

In addition, OFCCP erroneously claims that Oracle made new foundational objections in its submissions that were waived because they were not addressed during deposition. This appears to refer to the foundational objections Oracle submitted in connection with Kate Waggoner's July 19, 2019 deposition. However, OFCCP provides no legal support whatsoever for its assertion that these foundational objections were waived. In fact, the Federal Rules of Civil Procedure say the opposite. Pursuant to FRCP Rule 32(d)(3)(A): "An objection to a deponent's competence—or to the competence, relevance, or materiality of testimony—is not waived by a failure to make the objection before or during the deposition,

¹ OFCCP's claim that Oracle was 12 days late in providing designations to OFCCP is ridiculous. The Court never issued an order indicating that designations must be sent to OFCCP by December 5, 2019.



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unless the ground for it might have been corrected at that time." Therefore, Oracle reasserts these objections.

B. Deposition Certifications and Errata

First, OFCCP alleges that Oracle failed to include deposition certifications with its designations. OFCCP cites to no support whatsoever regarding the necessity to include these certifications with its designations. To the extent that such certifications are necessary, Oracle will provide them if the Court so orders.

Further, OFCCP argues that Oracle erroneously omitted OFCCP's deposition modifications, which took place on December 16, 2019. This is factually inaccurate. Each of OFCCP's deposition designation modifications was included in Oracle's submission. In fact, the only change that appears to have been omitted was in connection with Ms. Waggoner's July 27, 2018 deposition. On December 16, 2019, OFCCP made a change in one of its designations from 326:7-348:23 to 336:7-348:23. However, Oracle accidentally included this additional testimony in its submission. Oracle will correct this error. No other omissions were made from OFCCP's December 16 deposition modification email.

You also note that OFCCP wants to change the language of the filing already submitted to the Court from Oracle "submit[s] the following designations, including any errata and/or objections to such testimony by either party" to "Oracle submits the following designations made by the parties and any errata submitted as an exhibit thereto." If the Court wishes this change, Oracle will make it.

C. OFCCP'S Claim that Oracle's Proposed Submission to the Court is Not in Compliance with the Court's February 6, 2019 Prehearing Order

Oracle disagrees with OFCCP's assertion that its Deposition Designation submission was not in compliance with the Court's February 6, 2019 Prehearing Order.

Should the Court disagree, Oracle will amend its submission as ordered by the Court.

D. Oracle's Joyce Westerdahl Supplemental Designations are different from what it represented to the court

With respect to the deposition designations for Joyce Westerdahl, OFCCP complains that Oracle included deposition testimony beyond what it represented to the Court was necessary to respond to the testimony of Kristen Klagenburg. OFCCP is wrong. Oracle made clear to the Court that it would include not only the testimony needed directly refute Ms. Klagenburg's testimony (338:19-25), but the additional testimony necessary to give context to Ms. Westerdahl's testimony and to demonstrate that it is not credible that she would make the comment at issue, given all that she and her department do to promote women's interests and fairness and equity at Oracle (337:14-338:18).



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E. Jane Suhr Deposition Designations

OFCCP claims that Oracle submitted two separate deposition transcript designation documents for the deposition of Jane Suhr. Oracle did this because Jane Suhr participated in two depositions: one in her individual capacity, and as a 30(b)(6) witness. These distinctions were included in Oracle's December 5, 2019 submission. Consequently, Oracle will not withdraw either of these transcripts.

F. OFCCP's Claim That There Were Designation Errors

Oracle takes issue with the manner in which OFCCP describes Oracle's Deposition Designation submissions. After reading OFCCP's letter, one would assume that Oracle made numerous substantive mistakes with its designations. This is not the case. None of the errors are substantive in any way, shape or form.

1. OFCCP Cites to Trivial Errors in the Videos Produced

First, OFCCP alleges that, at times, the ClipReport does not properly match the Deposition Videos, and vice versa. To the extent that OFCCP indicated that, at times, the ClipReport did not properly align with the videos, these errors have been corrected. Oracle notes, however, that each and every one of the errors OFCCP identified were trivial and not substantive in any way.

Second, OFCCP alleges that the videos do not properly match the designations that were made by the parties. To the extent that Oracle did make such errors, the errors in the videos have been corrected. Again, Oracle points out that each of these errors are trivial and not substantive in any way. For example, OFCCP notes that one of the designations for Ms. Cheruvu's deposition was from 77:03-78:03. However, the video itself was only from 77:05-78:03. The testimony that was missing in the video was the following:

03 seems reasonable.
04 BY MS. FLORES:

Similarly, OFCCP indicates that the designation for Ms. Cheruvu's deposition was from 84:22-85:08, but the video itself only contains testimony from 84:22-85:06. The testimony that was missing in the video is as follows:

07 Q. Okay.
08 A. Sometimes.

Again, these omissions are trivial and are not substantive in any way. But, to the extent that the videos did omit testimony, Oracle has corrected them and has filed them with the Court.



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2. OFCCP's Assertion that Oracle Produced Incomplete Lines of Testimony is Wrong

OFCCP claims that Oracle provided incomplete deposition testimony in its designations. OFCCP, however, has only listed one such instance. This took place in connection with Chad Kidder's testimony at 40:3-44:15. Specifically, OFCCP alleges that Oracle erroneously omitted important testimony from this citation at 44:15. It is true that Oracle did in fact omit something from this citation. However, once again, this omission is trivial and not substantive in any way. Below is the testimony from 44:15 from Chad Kidder's deposition.

15 order to comply – in order to create a record. I'm

OFCCP takes issue with the fact that Oracle omitted the word "I'm" from its submission. Again, this is a trivial error that does nothing but waste the Court's time. Nonetheless, this correction has been made in the filing to which this letter is attached.

3. The "Missing Lines" from Deposition Testimony is Likewise Trivial

OFCCP alleges that there are single lines of deposition designation that are missing from "blocks" of testimony. Again, OFCCP exaggerates the nature of these omissions. In fact, many of the "omissions" OFCCP points to are factually inaccurate. For example, OFCCP alleges that Ms. Baxter's transcript omitted line 44:21. This is not true. In fact, 44:21 was included in Ms. Baxter's deposition designation. Likewise, OFCCP alleges that Oracle's designations for Ms. Waggoner's July 27, 2018 Jewett deposition were from 369:22-370:4, but that it should have been from 369:22-370:10. Oracle included this citation to include the lines through 370:10. OFCCP is wrong to argue that Oracle failed to include these lines in its submission. In actuality, there is only one instance in which there was an omission of a deposition designation. This took place in connection with Ms. Holman-Harries' August 1, 2019 deposition, in which line 182:13 was accidentally omitted. The line reads as follows:

13 MS. BREMER: Show you what's been marked

Again, this is a trivial omission that does not arise to the level which OFCCP describes.

OFCCP also alleges that there are "entire blocks" of deposition designations that are missing from Oracle's submission. This is false. There are only two "blocks" of testimony that OFCCP has identified that was accidentally omitted from the deposition designations. First, Oracle accidentally omitted the following testimony from Ms. Baxter's deposition transcript:



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Baxter: 243:1-5

1 business conduct you were talking about that is
2 attached to the employee handbook?
3 A. I believe so. We only have one code of
4 conduct as far as I know. This copy is really hard
5 to read. Sorry.

Further, Oracle accidentally omitted lines 193:1-7 from the deposition Ms. Atkins' deposition transcript. The text reads as follows:

Atkins 193:1-7

1 A. I can't remember.
2 Q. Were you asked to prepare any in advance?
3 A. I don't remember.
4 Q. Did you come to the -- to the conciliation
5 meeting prepared to yourself impart information to
6 Oracle?
7 A. Not specifically.

Again, this omission is trivial and not substantive at all. However, Oracle will correct these two omissions.

4. OFCCP Erroneously Claims Oracle Produced Numerous Blocks of Testimony That Were Never Designated.

OFCCP also argues that Oracle erroneously included numerous lines of testimony that was never included in its designations. Based on OFCCP's letter, Oracle was only able to locate two such instances. First, in connection with Ms. Suhr's June 26, 2019 30(b)(6) testimony, Oracle accidentally included line 62:25. This accidental inclusion reads as follows: "MR. SHWARTS: You may answer."



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Further, Oracle included four lines from Ms. Waggoner's July 19, 2019 30(b)(6) deposition that was not included in its submission. The testimony reads as follows:

Waggoner 30(b)(6) 222:20-24

20 Q. Okay. And would this be used for salary

21 and -- and compensation decisions?

22 MS. CONNELL: Objection. Vague. Calls

23 for speculation.

24 A. Decisions? No. It's recordkeeping.

Again, these are trivial additions that are not substantive in any way.

In addition, OFCCP erroneously alleges that lines 54:10-55:09 from Ms. Baxter's deposition were not included in Oracle's designation. This is false. It was included in Oracle's December 2 designations.

5. OFCCP's Claim that Oracle Failed to Include OFCCP's Revisions Identified on December 16, 2019 is Wrong

OFCCP alleges that Oracle failed to include "numerous" revisions that it provided on December 16, 2019. This is false. There is only one instance in which Oracle failed to include OFCCP's December 16 revisions. On December 16, OFCCP noted that a citation to Waggoner's July 27, 2018 deposition read 326:7-348:23, which the actual designation should be 336:7-348:23. Oracle accidentally included these 10 extra pages in its submission to the Court. Oracle agrees to make these changes. However, each and every other revision submitted by OFCCP was included in its submission. To the extent OFCCP claims that additional omissions and mistakes were made in connection with OFCCP's December 16 revisions, Oracle asks that OFCCP identify them specifically.

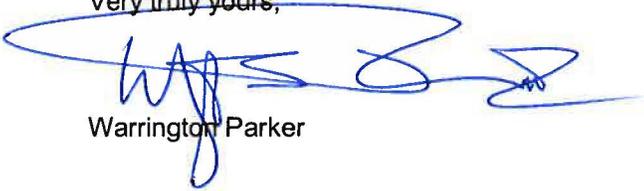
G. Oracle's Editing of Videos into Segments As Small As One, Two or Three Lines Makes the Videos Choppy and Hard to Hear

Finally, OFCCP accuses Oracle of editing videos into segments as small as one, two or three lines for "unknown reasons." However, OFCCP fails to provide any specific examples. In addition, the Court has the relevant transcripts. So, there is little cause to be concerned that the Court cannot follow along.

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In conclusion, Oracle has provided to the Court (1) a notice of errata regarding deposition designations and (2) videos of the depositions in their entirety that include any corrections of errors identified OFCCP.

Very truly yours,



Warrington Parker

cc: Laura C. Bremer (via email)
Ana Hermosillo (via email)
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