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Issue Date: 22 August 2019

CASE NO.: 2017-OFC-00006

In the Matter of

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS,
U.S. DEPARTMENT OF LABOR,
Plaintiff,

v.

ORACLE AMERICA, INC.,
Defendant.

ORDER TO SUBMIT DOCUMENTS FOR IN CAMERA REVIEW

This matter arises under Executive Order 11246 (30 Fed. Reg. 12319), as amended, ("EO 11246") and associated regulations at 41 C.F.R. Chapter 60. It involves Plaintiff Office of Federal Contract Compliance Programs ("OFCCP") and Defendant Oracle America, Inc. ("Oracle"). On July 30, 2019, Oracle filed a Motion to Compel OFCCP to Comply with the Court's Discovery Orders Regarding Redacted Interview Memoranda and 30(b)(6) Testimony along with a supporting memorandum ("DM"). On August 13, 2019, OFCCP filed an Opposition to Oracle's Motion to Compel Compliance ("PO"). Oracle filed a permitted reply brief ("DR") on August 21, 2019.

Oracle's motion concerns compliance with two prior orders addressing different discovery disputes. On July 1, 2019, I issued an Order Granting Defendant Oracle's Motion to Compel Plaintiff OFCCP to Designate and Produce 30(b)(6) Witnesses. Oracle contended that at the deposition of one of the designated witnesses, counsel for OFCCP invoked privileges in response to questions that the July 1 2019, order clearly determined were permissible. DM at 15-18. OFCCP's opposition argued both that the motion was premature and that the objections were proper. PO at 16-18. However, Oracle's reply represents that at a subsequent deposition, OFCCP provided some answers to the relevant questions. Oracle accordingly withdraws this aspect of its motion. DR at 2, 7-8.

The remaining aspect of Oracle's motion concerns a June 10, 2019, Order Granting in Part and Denying in Part Defendant Oracle America, Inc.'s Second Motion to Compel Plaintiff OFCCP to Produce Documents and Further Respond to Interrogatories. The part of that order at issue now concerns redactions to interview notes from both the compliance review and this litigation. In the June 10, 2019, order, some of OFCCP's claims of privilege were overruled; others were sustained. It

was directed to produce the notes with redactions limited to identifying information protected by the government informant privilege and opinion, but not fact, attorney work product. Oracle contends that OFCCP's redactions are overbroad and improper. DM at 8-13; DR at 3-6. OFFCP argues otherwise, maintaining that it complied with the June 10, 2019, order. PO at 9-16.

The papers submitted contain the privilege logs that were produced as well as examples of some of the documents produced. To resolve this aspect of the motion, I must determine whether or not the privilege claims properly support the redactions. Oracle requests that I engage *in camera* review of some of the documents. DM at 13-14; DR at 7. OFCCP "does not oppose *in camera* review." PO at 10. The parties proposed different methods to review limited documents, *see* PO at 1; DR at 7, but after reviewing the papers filed by the parties, I cannot decide the dispute between the parties without being able to conduct an *in camera* review of all documents at issue. Therefore:

1. Oracle is ordered to submit a copy of all of the documents at issue as produced by OFCCP, to include the interview notes and any interview script, in the form in which it was produced. If OFCCP made multiple productions with different redactions, Oracle should produce the last version. If there are prior versions of the redactions that Oracle maintains must also be reviewed, it may submit those versions as well.[1]

2. OFCCP is ordered to submit an unredacted copy of all documents it produced, to include the interview notes and any interview script.

3. These submissions must be made in electronic format with files saved onto a CD or CDs.

4. These filings may be made under seal. Only cover leads need be served on the opposing party.

5. Oracle and OFCCP are ordered to meet and confer to ensure that they will be submitting the same set of documents in a manner that facilitates expeditious comparison and review, including consistent pagination. Both parties must index the submissions in a manner that provides some neutral identification (i.e. note #15) of each interview note at issue. The parties must adopt a consistent manner of indexing.

6. Submissions must be made by September 5, 2019.

7. No briefing is permitted with these submissions.

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[1] I am only interested in the expeditious review of any disputed documents and not in the continued sniping about the opposing parties' and attorneys' behavior in the past and who was more unreasonable. Prior versions of the redactions should thus be necessary rarely, if at all.

8. After review of the documents *in camera*, further orders will be issued as appropriate.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge