



**Issue Date: 03 July 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 DENYING DEFENDANT ORACLE’S MOTION TO COMPEL  
DEPOSITION OF DR. ROBERT LAJUEESSE WITHOUT PREJUDICE**

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 has been pending at the Office of Administrative Law Judges (“OALJ”) since January 17, 2017. Plaintiff Office of Federal Contract Compliance Programs (“OFCCP”) filed the operative Second Amended Complaint (“SAC”) on March 13, 2019. Defendant Oracle America, Inc. (“Oracle”) answered the SAC on April 2, 2019. Hearing is set to begin on December 5, 2019. On June 17, 2019, Oracle filed a Motion to Compel Deposition of Dr. Robert Lajeunesse (“Motion”). On July 1, 2019, OFCCP filed an Opposition to Defendant Oracle’s Motion to Compel Deposition of Dr. Robert Lajeunesse (“Opposition”).

For the reasons stated below, Oracle’s Motion is denied without prejudice.

**I. BACKGROUND<sup>1</sup>**

On April 18, 2019, Oracle served a Notice of Deposition for Dr. Lajeunesse. Dr. Lajeunesse is presently the Acting Director of Enforcement for OFCCP. Previously—and during the compliance review that is the basis for this case—he was the Branch Chief of Expert Services for San Francisco. Oracle’s request was based on OFCCP’s interrogatory responses. On March 15, 2019, Oracle asked OFCCP to “identify by name and last known contact information each PERSON with knowledge of the facts regarding the alleged discrimination, including the nature of the facts of which the PERSON identified has knowledge.” OFCCP’s April 9, 2019, response incorporated its list of persons from a prior interrogatory that queried the individuals who

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<sup>1</sup> Background facts are taken from the briefs of both parties, which present the same basic factual background. I have also reviewed the exhibits and declarations filed with the Motion and Opposition.

participated in the compliance review. Dr. LaJeunesse was one of the 13 individuals on OFCCP's original list. OFCCP's April 9, 2019, response did not qualify Dr. LaJeunesse's knowledge.

OFCCP declined to produce Dr. LaJeunesse on the grounds that he had only limited information about the facts underling the SAC and that most of this information was privileged in some manner. On May 19, 2019, OFCCP amended its interrogatory responses to qualify its inclusion of Dr. LaJeunesse as an individual with knowledge of the facts regarding the alleged discrimination, now representing that he was only notified of several pre-decisional statistical analyses and had no further involvement. Oracle's Motion followed.

Oracle argues that it is entitled to broad discovery and that the deposition of Dr. LaJeunesse seeks relevant evidence and is proportional to the needs of the case. It observes that OFCCP has represented in other filings that it will rely on statistical proof and that Dr. LaJeunesse's position during the compliance review puts him in a position likely to have relevant evidence about the statistical basis for the allegations. Motion at 3-4. Oracle notes that it was OFCCP that identified Dr. LaJeunesse as possessing relevant knowledge and expresses doubt at the amended interrogatory response made only after Oracle sought to depose him. *Id.* at 4-5. Oracle contends that the extent of Dr. LaJeunesse's knowledge is for a deposition to determine and that any claims of privilege are properly made during the deposition itself, based on the actual questions posed. *Id.* at 5.

OFCCP contends that Dr. LaJeunesse has limited knowledge and did not run or oversee any relevant statistical models. Instead, he received copies of some analyses when the matter was at OFCCP and participated in routine briefings and status updates. Response at 3-4. It avers that it has already produced all of the non-privileged information about its statistical analyses anyway. *Id.* at 4-6. OFCCP argues that Dr. LaJeunesse is a "high-ranking official" who should not be deposed absent "extraordinary circumstances." *Id.* at 7-9. It contends that those circumstances do not exist in this case because Dr. LaJeunesse lacks first-hand knowledge of the case and Oracle can procure whatever information he may have from other sources. *Id.* at 9-10. In addition, OFCCP argues that the importance of the relevant information Dr. LaJeunesse may possess is not proportional to the needs of the case given the burdens imposed. *Id.* at 10-12.

## **II. DISCUSSION**

This is not a case where one party seeks to impose burdens on another by noticing depositions of high ranking or "apex" officials/officers absent clear grounds for doing so. OFCCP invited the deposition by listing Dr. LaJeunesse as an individual with knowledge of the alleged discrimination and not qualifying that answer. OFCCP has now revised that response. But Oracle cannot be faulted for acting in reliance on OFCCP's discovery responses.

After review, I conclude that the issues raised in this motion are not ripe for decision at this time. On June 10, 2010, I issued an Order Granting in Part and Denying in Part Oracle's Second Motion to Compel Plaintiff OFCCP to Produce Documents and Further Respond to Interrogatories. Concurrently with Oracle's Motion here, OFCCP sought reconsideration of that order. On July 2, 2019, that motion was denied. As a result, OFCCP will produce additional documents and provide fulsome, particularized responses to interrogatories. More importantly, on July 1, 2019, I issued an Order Granting Oracle's Motion to Compel Plaintiff OFCCP to Designate and Produce 30(b)(6) Witnesses. As a result, OFCCP will produce a witness or witnesses for deposition who will testify on OFCCP's behalf regarding the allegations in the SAC. That order

turned, in part, on OFCCP's representations that the witnesses it had identified—such as Dr. LaJeunesse—had limited knowledge.

Given other recent orders, it appears to me that discovery soon to be produced or conducted may render this motion unnecessary in that by producing a witness or witnesses who testify on behalf of the agency in a Rule 30(b)(6) deposition or depositions, OFCCP may provide Oracle with any of the information Dr. LaJeunesse could offer. Regardless, the subsequent discovery responses and Rule 30(b)(6) deposition(s) will re-frame the current Motion. After completing the Rule 30(b)(6) depositions, Oracle may determine that there is no need to depose Dr. LaJeunesse. In the alternative, it might be able to explain the narrowed need that still remains. OFCCP might be able to better explain why such a deposition is not necessary.

Since the need and rationale for Dr. LaJeunesse's deposition may well change based on the Rule 30(b)(6) depositions, it is prudent to defer consideration of the current Motion until after those depositions occur. Under the terms of the July 1, 2019, order, those depositions must occur within 30 days, so by July 31, 2019. Therefore, I will deny Oracle's Motion here without prejudice to renewing the Motion after the additional discovery is completed, should it determine there is a need for the deposition.

### **ORDER**

Defendant Oracle's Motion to Compel Deposition of Dr. Robert LaJeunesse is denied without prejudice.

SO ORDERED.

RICHARD M. CLARK  
Administrative Law Judge