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Office of Administrative Law Judges
San Francisco, Ca

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 **DECLARATION OF ERIN CONNELL IN SUPPORT OF DEFENDANT ORACLE AMERICA, INC.'S OPPOSITION TO OFCCP'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT**

I, Erin Connell, declare as follows:

1. I am a partner with Orrick, Herrington & Sutcliffe LLP, attorneys of record for defendant Oracle America, Inc. ("Oracle"). I make this declaration in support of Oracle's Opposition to OFCCP's Motion for Leave to File a Second Amended Complaint. I have personal knowledge of the facts set forth herein, except where stated on information and belief, and if called as a witness could competently testify thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of OFCCP's May 9, 2018 Common Interest Agreement with plaintiffs' counsel in *Jewett v. Oracle America, Inc.*, No. 17-CIV-02669 (Cal. Super. Ct. San Mateo County, June 16, 2017), which was provided to my firm by plaintiffs' counsel.

3. Attached hereto as **Exhibit B** is a true and correct copy of a June 8, 2016 "Notice to Show Cause" from OFCCP and to Oracle, which also attaches OFCCP's March 11, 2016 Notice of Violation ("NOV").

4. Attached hereto as **Exhibit C** is a true and correct copy of OFCCP's verified June 12, 2017 Responses to Oracle's Interrogatories, Set One (As Amended).

5. Attached hereto as **Exhibit D** is a true and correct copy of OFCCP's verified October 11, 2017 Supplemental Responses to Oracle's Interrogatories, Set One.

6. Attached hereto as **Exhibit E** is a true and correct copy of the relevant portions of the transcript of the June 27, 2017 hearing held in the case *OFCCP v. Analogic*, 2017-OFC-00001, before Judge Geraghty in the Department of Labor, Northeast Division.

7. Attached hereto as **Exhibit F** is a true and correct copy of a May 19, 2017 letter to the Court from Oracle and OFCCP (together, the "Parties"), attaching the Parties' Proposed Stipulated Protective Order.

8. Attached hereto as **Exhibit G** is a true and correct copy of the May 26, 2017 Protective Order signed by Judge Larsen and entered in this case.

9. Attached hereto as **Exhibit H** is a true and correct copy of a May 24, 2017 email from counsel for OFCCP to Oracle's counsel regarding the Protective Order.

10. Pursuant to and under the protection of the Protective Order, and relying on OFCCP's commitment to be bound by the Court-ordered Protective Order, Oracle produced data in this case, including employee compensation data, that was marked "CONFIDENTIAL."

11. At no point did OFCCP challenge or object to Oracle's "CONFIDENTIAL" designations.

12. From October 30, 2017, to October 15, 2018, this matter was stayed to allow the parties the opportunity to try and resolve it through mediation, which halted the discovery process. The matter was stayed again from November 13, 2018, to January 11, 2019, pending the Court's resolution of certain motions.

13. On January 18, 2019, the Parties participated in a conference call in advance of the January 22, 2019, call with the Court. During this call, OFCCP provided no indication that it intended to propose a new complaint.

14. On January 22, 2019, the Parties participated in a telephonic conference with the Court. In that call, OFCCP raised for the first time its intention to file a Second Amended Complaint ("SAC"). I requested an opportunity to review the SAC before OFCCP filed it, but OFCCP refused.

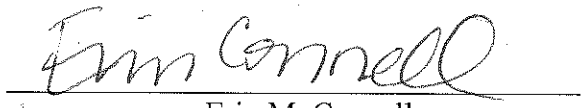
15. Within a few hours of this call with the Court, OFCCP filed its Motion for Leave to File a Second Amended Complaint, attaching its proposed SAC.

16. Later that day, several news outlets published stories or articles about OFCCP's proposed SAC, some of which link directly to OFCCP's motion and proposed SAC.

17. I have since communicated with counsel for OFCCP regarding Oracle's view that OFCCP's SAC discloses information designated "CONFIDENTIAL" under the Protective Order. OFCCP and Oracle disagree over whether the SAC violates the Protective Order.

I declare under penalty of perjury and the law of the United States that the foregoing is true and correct.

Executed on February 5, 2019, in San Francisco, California.



Erin M. Connell

EXHIBIT A

COMMON INTEREST AGREEMENT

This Common Interest Agreement ("Agreement") between the United States Department of Labor and the attorneys for the plaintiffs, in the case entitled *Rong Jewett, et al. v. Oracle America, Inc.*, originally filed on June 16, 2017 in the Superior Court of California, San Mateo County as case no. 17-CIV-02669 (collectively, "the Parties"), memorializes the parties' preexisting oral agreement and is continued by the parties who have collectively signed this agreement below.

A. This agreement is made between the Parties in connection with the litigation in, *OFCCP v. Oracle America, Inc.*, Case No. 2017-OFC-00006 (filed before the Office of Administrative Law Judges, United States Department of Labor) and *Jewett v. Oracle America, Inc.* (the "Actions");

B. The Parties have determined that their common interests will best be served by permitting each to share with the other certain documents, factual materials, mental impressions, memoranda, interview reports, research, and other information (the "Shared Information");

C. The Parties understand that privileges and protections (including, without limitation, the investigative files privilege, government's informant privilege, attorney-client privilege, work product doctrine, and deliberative process privilege) may apply to certain of the Shared Information (the subset of the Shared Information subject to any such privileges or protection is defined as the "Privileged Shared Information"); and

D. The Parties wish to pursue their common but separate interests without waiving any privilege or protection that may apply to the Privileged Shared Information.

WHEREFORE, the Parties agree as follows:

1. Each Party electing to share Privileged Shared Information shall make a reasonable attempt to clearly mark as "privileged" or "protected" any physical material, document, or communication it regards as privileged or protected before providing such Privileged Shared Information to the other Party. However, an inadvertent failure to mark any such material shall not constitute a waiver of any applicable privilege or protection.

2. All Privileged Shared Information shall be shared or exchanged solely pursuant to this Agreement and the common interest it protects.

3. To the extent permitted by applicable procedural and ethical rules and any other applicable law, the Party receiving Privileged Shared Information will maintain the confidentiality of such Privileged Shared Information provided by another Party unless:

3.01 the Party providing the Privileged Shared Information agrees in writing that the Privileged Shared Information need not be treated as confidential; or

3.02 the Privileged Shared Information is now or hereafter becomes public knowledge without violation of this Agreement; or

3.03 the Privileged Shared Information is required to be disclosed by court order or other legal authority.

4. The Party receiving Privileged Shared Information shall use such information solely for the purpose of advancing its legal interest in connection with litigation relating to possible violations of the California Labor Code, the California Business & Professions Code, Title VII of the Civil Rights Act of 1964, or Executive Order 11246.

5. Nothing in this Agreement shall:

5.01 require any Party to share any information with any other Party;

5.02 be deemed to create any attorney-client relationship;

5.03 be used as a basis for seeking to disqualify any counsel from representing any Party in any proceeding;

5.04 prevent a Party from using Privileged Shared Information in examining or preparing to examine any person, so long as Privileged Shared Information is not disclosed to persons not a Party except pursuant to the provisions of this Agreement, or as required by court order or other legal authority;

5.05 prevent a Party, at that Party's sole discretion, from waiving privilege or protection over its own materials (*i.e.*, that it has provided or to which it has granted access to other Parties), in which event the information disclosed shall no longer be deemed Privileged Shared Information pursuant to this Agreement; or

5.06 create any agency or similar relationship among the Parties.

6. No Party has authority to waive any applicable privilege or protection on behalf of the other Party.

7. Should any Party receive from a non-party a request or subpoena that would, fairly construed, seek production of Privileged Shared Information received from another Party, the Party receiving such a request or subpoena shall:

7.01 take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such Privileged Shared Information to non-parties; and

7.02 promptly notify the Party providing such Privileged Shared Information that such a request or subpoena has been received, so that the Party providing such Privileged Shared Information may file any appropriate objections or

motions, or take any other appropriate steps, to preclude or condition the production of such Privileged Shared Information to persons not a Party.

8. The requirements of this Agreement, as applied to all Privileged Shared Information, shall survive all of the following: (a) withdrawal by any Party from this Agreement; (b) termination of this Agreement; (c) final disposition of claims or actions relating to possible violations of the California Labor Code, the California Business & Professions Code, Title VII of the Civil Rights Act of 1964, or Executive Order 11246 and related individuals and entities, whether by judgment, settlement or other means of disposition.

9. A Party may withdraw from this Agreement by written notice to the other Party.

10. The signatories to this Agreement hereby represent that they have the authority to bind their respective clients.

11. This Agreement:

11.01 embodies the entire agreement and understanding among the Parties and supersedes any prior agreements and understandings whether written or oral relating to the subject matter of the Agreement;

11.02 may not be modified or amended except by written agreement signed by each of the Parties;

11.03 may be executed in separate counterparts, which together shall constitute the full Agreement and electronic transmission copies of signatures shall be treated as originals;

11.04 shall be construed in accordance with, and the rights of the Parties hereto shall be governed by federal law, and to any extent not addressed by federal law, by the laws of the State of California;

11.05 the rights and obligations contained therein shall not be assigned by any Party without the written consent of the other Party; and

11.06 shall be binding upon and shall inure to the benefit of the Parties, their experts, consultants and the respective successors and any permitted assigns of the Parties.

Dated: May 9, 2018

Jeremiah Miller
Acting Counsel for OFCCP
U.S. Dept. of Labor,
Office of the Solicitor
300 Fifth Avenue, Ste. 1120
Seattle, Washington 98104

Dated: May 9, 2018

James M. Finberg
Altshuler Berzon LLP
Attorney for *Jewett et al.*

Dated: May 9, 2018

John Mullan
Rudy, Exelrod, Zieff & Lowe, LLP
Attorney for *Jewett et al.*

EXHIBIT B

U.S. Department of Labor

Office of Federal Contract Compliance Programs
Pacific Regional Office
90 7th Street, Suite 18-300
San Francisco, California 94103

Via Certified Mail, Return Receipt Requested
(#7015 0640 0001 7090 3364)

June 8, 2016

Safra A. Catz
Mark Hurd
Chief Executive Officers
Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, CA 94065

RE: COMPLIANCE EVALUATION OF ORACLE AMERICA, INC., REDWOOD SHORES, CALIFORNIA; OFCCP NO. R00192699

Dear Ms. Catz and Mr. Hurd:

On March 11, 2016, the United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"), issued a Notice of Violations against Oracle America, Inc. ("ORACLE") based on the findings of our recent compliance evaluation of ORACLE in Redwood Shores, California. OFCCP conducted the compliance evaluation pursuant to ORACLE's status as a federal contractor subject to nondiscrimination and affirmative action regulations enforced by OFCCP.[1] During the compliance evaluation period to the present, ORACLE voluntarily assumed this status and related obligations in exchange for over $300 million in federal contracts from American taxpayers.

[1] Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; 41 C.F.R. Part 60; *see also First Alabama Bank of Montgomery v. Donovan*, 692 F.2d 714, 716 n.1 (11th Cir. 1982)(Executive Order 11246 "imposes a duty on the contractor or subcontractor to establish and update annually a written affirmative action program, and provides for compliance investigations by the Department of Labor. Sanctions for non-compliance include referral to the Department of Justice for legal action, termination of existing government contracts, and debarment from future government contracts.").

Throughout the recent compliance evaluation, OFCCP reviewed and analyzed ORACLE's individual applicant and employee records, written policies and other information, and concluded that ORACLE engaged in systemic discrimination in recruiting, hiring and compensation practices at its headquarters. For example, OFCCP's analyses uncovered evidence that:

- ORACLE's recruiting practices resulted in systemic disparities against non-Asian applicants, particularly African American, Hispanic and White applicants, at -8, -10, and -80 standard deviations, respectively;

- ORACLE's hiring practices resulted in systemic disparities against non-Asian applicants, particularly African American, Hispanic and White applicants, at -4, -3, and -28 standard deviations, respectively; and

- ORACLE's compensation practices resulted in systemic disparities against African American, Asian American, American and female employees, at -2, -7, -7, and -8 standard deviations, respectively.[2]

To resolve the violations listed in the Notice of Violations, OFCCP attempted to engage ORACLE in a good faith and timely conciliation process on March 16, March 29, and April 21, 2016. ORACLE, however, dismissed the government's conciliation efforts.

For example, ORACLE refused to meet to discuss conciliation with any official from OFCCP. ORACLE also rejected OFCCP's request for a written rebuttal analysis or substantive response to the statistical evidence relied upon in the violations of the Notice. ORACLE instead conditioned its response upon receipt of answers from the Agency to nearly sixty contention questions, which sought the identification of each fact supporting each finding listed in the Notice; and information about every factor, model, iteration, and computation considered in its analysis at any time during the compliance evaluation; among other privileged information. ORACLE also withheld information about employee witnesses, complaints and other records from OFCCP.

ORACLE has not provided a substantive rebuttal analysis, based upon statistical evidence, to the violations of the Notice. ORACLE either cannot or will not provide it. The additional information sought and procedural arguments raised by ORACLE are not a rebuttal.[3] It is

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[2] ORACLE withheld evidence from OFCCP regarding its recruiting, hiring and compensation practices and other information during the compliance evaluation; therefore, additional violations could be uncovered in future enforcement proceedings.

[3] This Federal Contract Compliance Manual (hereafter referred to as the "FCCM" or the "Manual") does not establish substantive agency policy. OFCCP continues to use directives and other issuances to communicate substantive policy guidance, procedures, and agency enforcement priorities to staff and those we regulate. The FCCM does not create new legal rights or requirements or change current legal rights or requirements for federal contractors. The official sources for contractors' compliance obligations remain Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; OFCCP's regulations at 41 CFR Part 60; and applicable case law.

neither a relevant nor appropriate response to the statistical evidence of systemic discrimination uncovered in the compliance evaluation and disclosed in the Notice.

Accordingly, OFCCP's findings remain unrebutted and conciliation efforts have failed to resolve the violations. OFCCP is now issuing this Notice to Show Cause, within 30 calendar days of your receipt of this Notice, why enforcement proceedings should not be initiated pursuant to Executive Order 11246, as amended, as implemented by 41 C.F.R. 60-1.26.

A list of the violations at issue is enclosed. You are required to correct these violations as indicated within 30 calendar days of your receipt of this Notice or OFCCP shall recommend that the Department of Labor initiate enforcement proceedings against ORACLE.

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact Hea Jung Atkins at (415) 625-7829 to schedule a meeting or telephone conference.

Sincerely,

Janette Wipper
Regional Director
Pacific Region

cc: Shauna Holman-Harries (*via* email: shauna.holman.harries@oracle.com)
Director Diversity Compliance, Oracle America, Inc.

Juana Schurman (*via* email: juana.schurman@oracle.com)
Vice President and Associate General Counsel, Oracle America, Inc.

Gary R. Siniscalco (via email: grsiniscalco@orrick.com)
Erin M. Connell (via email: econnell@orrick.com)
Lauri A. Damrell (via email: ldamrell@orrick.com)
Orrick Herrington & Sutcliffe LLP

Enclosure

U.S. Department of Labor

Office of Federal Contract Compliance Programs
Greater San Francisco/Bay District Office
90 7th Street, Suite 11-100
San Francisco, CA 94103

March 11, 2016

VIA CERTIFIED MAIL,
7015 0640 0001 2393 5541
(RETURN RECEIPT REQUESTED)

Safra A. Catz
Mark Hurd
Chief Executive Officers
ORACLE America, Inc.
500 Oracle Parkway
Redwood Shores, CA 94065

RE: COMPLIANCE EVALUATION OF ORACLE AMERICA, INC., REDWOOD SHORES, CALIFORNIA; OFCCP NO. R00192699

Dear Ms. Catz and Mr. Hurd:

The United States Department of Labor ("DOL"), Office of Federal Contract Compliance Programs ("OFCCP"), is conducting a compliance evaluation of ORACLE America, Inc. ("ORACLE") in Redwood Shores, California pursuant to 41 Code of Federal Regulations ("C.F.R.") Chapter 60: Executive Order 11246, as amended ("E.O. 11246"); Section 503 of the Rehabilitation Act of 1973, as amended ("Section 503"); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended ("VEVRAA").

OFCCP found that ORACLE violated E.O. 11246. Consequently, OFCCP is issuing this Notice of Violations to ORACLE. ORACLE's violations, and the corrective actions required to remedy them, are set forth below.

HIRING DISCRIMINATION (VIOLATION 1)

1. <u>VIOLATION</u>:

During the review period from January 1, 2013 through June 30, 2014, ORACLE discriminated against qualified African American, Hispanic and White (hereinafter "non-Asians") applicants in favor of Asian applicants, particularly Asian Indians, based upon race in its recruiting and hiring practices for Professional Technical 1, Individual Contributor ("PT1") roles, in violation of 41 C.F.R. 60-1.4(a)(1).

Specifically, during the period of January 1, 2013 through June 30, 2014, ORACLE recruited approximately 6800 applicants to PT1 roles. Of those applicants, ORACLE recruited 2% African

Americans, 2.5% Hispanics, 19% Whites and 76% Asian applicants. Of the Asian applicants, Asian Indians were nearly 70% of Asian applicants and over 50% of all applicants in PT1.[1]

An analysis of ORACLE's applicant data and appropriate workforce availability statistics[2] show that ORACLE favored Asian applicants, particularly Asian Indians, in recruiting at a standard deviation as significant as +85. ORACLE disfavored non-Asian applicants in recruiting, particularly African American, Hispanic and White applicants, at standard deviations as significant as -8, -10, and -80, respectively.

Additionally, during the period of January 1, 2013 through June 30, 2014, ORACLE hired approximately 670 applicants into PT1 roles. Of those hires, ORACLE hired 1% African Americans, 2% Hispanics, 14% Whites, and 82% Asian applicants. Of the Asian hires, Asian Indians were nearly 60% of Asian hires and 45% of all hires in PT1.

An analysis of ORACLE's hiring data and appropriate workforce availability statistics[3] show that ORACLE favored Asian applicants, particularly Asian Indians, in hiring at a standard deviation as significant as +30. ORACLE disfavored non-Asian applicants in hiring, particularly African American, Hispanic and White applicants, at standard deviations as significant as -4, -3, and -28, respectively.

Evidence gathered during the compliance evaluation demonstrates that ORACLE's discriminatory recruiting and hiring practices skewed the racial composition of the applicant flow data to favor Asians, particularly Asian Indians, and disfavored other racial groups for PT1 roles. In order to further analyze ORACLE's recruitment and hiring practices for PT1 roles, OFCCP made multiple requests to ORACLE for copies of all application materials for all expressions of interest, including but not limited to names of hiring managers, employee referrals, requisition dates, hire dates, and copies of job postings and job requirements. Because ORACLE failed to provide complete and accurate information in response to OFCCP's multiple requests, OFCCP presumes that the information not produced would have been unfavorable to ORACLE.

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE recruited, selected and hired Asian applicants, particularly Asian Indians, for PT1 roles at a rate significantly greater than their non-Asian counterparts who were equally or more qualified for the roles. ORACLE's recruiting and hiring practices resulted in unlawful discrimination against non-Asian applicants based upon race, particularly African American, Hispanic and White applicants.

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[1] Asian Indians make-up less than 1% of the U.S. population. *Asians in the U.S. labor force: profile of a diverse population*, U.S. DOL, Bureau of Labor Statistics, Monthly Labor Review, November 2011, http://www.bls.gov/opub/mlr/2011/11/art1full.pdf.

[2] Availability statistics for the Software Developers, Applications & Systems Software Occupation in the United States is based upon 2006-2010 Census and/or 2013-2014 DOL, Bureau of Labor Statistics' Labor Force Statistics.

[3] See footnote 2.

CORRECTIVE ACTION:

ORACLE must agree to revise its personnel practices and procedures to ensure that the qualified non-Asian applicants for the PT1 roles are afforded equal employment opportunity for recruitment and selection. ORACLE must also agree to provide the following "make-whole relief" to the non-Asian applicants.

a) Notice: Send notification to the class members to inform them of their rights and the potential remedies.

b) Job Offer: Make bona-fide job offers on a priority basis at the rate of pay that class members would now be earning had ORACLE hired them on the date of the first opportunity following their application.

c) Monetary Settlement: Provide back pay plus quarterly compounded interest at the IRS underpayment rate for the class members. Back pay will be calculated from the date class members should have been hired to the date the violation is resolved in a signed Conciliation Agreement or a bona fide job offer is made to the respective class members. Provide any and all employment benefits that the class members would have received had it not been for the discrimination described above; and

d) Policies and Training: Develop recruitment and hiring policies that comply with Executive Order 11246, as amended, and its implementing regulations; provide mandatory training on the policies to supervisory, management and recruitment professionals involved in ORACLE's recruitment and selection process; and evaluate performance and compensation of supervisory, management and recruitment professionals based upon compliance with the policies.

COMPENSATION DISCRIMINATION (VIOLATIONS 2-5)

2. VIOLATION:

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against female employees in Information Technology, Product Development, and Support roles based upon sex by paying them less than comparable males employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).[4]

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review,

[4] ORACLE refused to provide OFCCP with complete compensation data for all relevant employees, including contract and contingent employees, for the full review period. ORACLE also did not provide any data demonstrating that its continuing compensation disparities have been remedied. Accordingly, OFCCP presumes such data would be unfavorable to ORACLE.

OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon sex after controlling for legitimate explanatory factors. The results of OFCCP's regression analyses are attached. **(Attachment A)**.

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid male employees in Information Technology, Product Development, and Support roles at a rate significantly greater than their female counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against female employees based upon sex.

CORRECTIVE ACTION:

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of sex. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Information Technology, Product Development, and Support roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against females in Information Technology, Product Development, and Support roles; 2) provide make-whole remedies to the class of females to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

3. **VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against African Americans in Product Development roles based upon race by paying them less than comparable Whites employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).[5]

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review, OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon race after controlling for legitimate explanatory factors. The results of OFCCP's regression analysis are attached. **(Attachment A)**.

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid White employees in Product Development roles at a rate significantly greater than their African American counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against African American employees based upon race.

[5] See footnote 4.

CORRECTIVE ACTION:

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of race. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Product Development roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against African Americans in Product Development roles; 2) provide make-whole remedies to the class of African Americans to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

4. **VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against Asians in Product Development roles based upon race by paying them less than comparable Whites employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).[6]

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review, OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon race after controlling for legitimate explanatory factors. The results of OFCCP's regression analysis are attached. (**Attachment A**).

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid White employees in Product Development roles at a rate significantly greater than their Asian counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against Asian employees based upon race.

CORRECTIVE ACTION:

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of race. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Product Development roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against Asians in Product Development roles; 2) provide make-whole remedies to the class of Asians to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

[6] See footnote 4.

5. **VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against Americans in Product Development and Support roles based upon national origin by paying them less than comparable non-Americans employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).[7]

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; evaluated public disclosure files and related wage determination memoranda; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review, OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon national origin after controlling for legitimate explanatory factors. The results of OFCCP's regression analysis are attached. **(Attachment A).**

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid non-American employees in Product Development and Support roles at a rate significantly greater than their American counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against American employees based upon national origin.

CORRECTIVE ACTION:

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of national origin. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Product Development and Support roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against Americans in Product Development and Support roles; 2) provide make-whole remedies to the class of Americans to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

AFFIRMATIVE ACTION VIOLATIONS (VIOLATIONS 6-8)

6. **VIOLATION:**

ORACLE failed to perform an in-depth analysis of its total employment processes to determine whether and where impediments to equal employment opportunity exist as required by 41 C.F.R. 60-2.17(b)(3). Specifically, ORACLE failed to identify problem areas in its compensation system(s) to determine whether sex or race based disparities existed.

[7] See footnote 4.

CORRECTIVE ACTION:

ORACLE must agree to perform in-depth analyses of its total employment processes to determine whether and where impediments to equal employment opportunity exist. ORACLE must agree to evaluate its compensation system(s), specifically base salary, bonus programs, starting wages, pay increases, restricted stock units (RSU) or other stock awards, promotions relative to pay, and any other benefits, to determine whether there are sex, race or national origin based pay disparities. ORACLE will incorporate these analyses and determinations into its current AAP and will update these analyses at least annually and incorporate them into future AAPs.

7. **VIOLATION:**

ORACLE failed to demonstrate good faith efforts to develop and execute action-oriented programs designed to correct pay disparities as of January 1, 2013. Specifically, ORACLE was unable to demonstrate that it had conducted any pay equity analyses, or otherwise attempted to correct the problem areas identified in 41 C.F.R. 60-2.17(b)(3) in violation of 41 C.F.R. 60-2.17(c).

CORRECTIVE ACTION:

ORACLE must agree to conduct an in-depth analysis of its total employment processes to determine whether any impediments to equal opportunity exist. ORACLE must then develop and implement action-oriented programs designed to remove any identified impediments and institute salary adjustment procedures to determine where and how equity adjustments should be made to ensure nondiscrimination.

8. **VIOLATION:**

ORACLE failed to develop and implement an internal audit and reporting system that periodically measured the effectiveness of its total affirmative action program as required by 41 C.F.R. 60-2.17(d). Specifically, ORACLE failed to monitor its records of all personnel activities, such as compensation, at all levels to ensure its nondiscriminatory policy was carried out.

CORRECTIVE ACTION:

ORACLE must agree to implement an internal audit and reporting system to periodically measure the effectiveness of its total affirmative action program. ORACLE must agree to take the following corrective actions:

a) Monitor records of all personnel activity, such as all components of compensation, to ensure the non-discriminatory policy is enforced;

b) Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;

c) Review reports with all levels of management;

d) Advise top management about the effectiveness of the equal employment opportunity program and submit recommendations to improve any unsatisfactory performance; and

e) Provide training to all employees who participate in any component of ORACLE's compensation system(s).

RECORDKEEPING AND ACCESS VIOLATIONS (VIOLATION 9-10)

9. VIOLATION:

ORACLE failed to collect and maintain personnel and employment records and conduct adverse impact analyses in accordance with the requirements of 41 C.F.R. 60-1.12(a) and Part 60-3. Additionally, ORACLE failed to conduct the adverse impact analyses required by 41 C.F.R. 60-3.15A and 60-3.4.

CORRECTIVE ACTION:

ORACLE will ensure that its records are collected and maintained in accordance with the requirements of 41 C.F.R. 60-1.12(a) and Part 60-3. ORACLE will conduct adverse impact analyses on at least an annual basis for the purpose of determining whether adverse impact exists against applicants based on race, sex, or national origin/ethnic group in hiring, promotion, termination, and other personnel activities. These analyses will be done by job for each group constituting more than 2% of the labor force in the relevant labor area or 2% of the applicable workforce. If adverse impact is identified in the total selection process, ORACLE will evaluate each individual component of the selection process for adverse impact. If adverse impact is found to exist in any of the individual components of the selection process, ORACLE will validate each such component in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures which do not result in adverse impact.

10. VIOLATION:

ORACLE denied OFCCP access to records, including prior year compensation data for all employees and complete hiring data for PT1 roles during the review period of January 1, 2013 through June 30, 2014, which are relevant to the matter under investigation and pertinent to ORACLE's compliance with Executive Order 11246, as amended, and the regulatory requirements at 41 C.F.R. 60-1.12; 60-1.20; 60-1.43; 60-2.32 and 60-3.4.

CORRECTIVE ACTION:

ORACLE must immediately provide to OFCCP all relevant compensation and hiring data, which was requested on April 27, 2015, May 11, 2015, May 28, 2015, July 30, 2015, October 1, 2015, October 14, 2015, November 2, 2015, and December 15, 2015.

Finally, please note that nothing herein is intended to relieve ORACLE from the obligation to comply with the requirements of E.O. 11246, Section 503, and/or VEVRAA, their implementing regulations, or any other equal employment opportunity/ nondiscrimination statute, executive order or regulation. In addition, this Notice of Violation in no way limits the applicability of the revised regulations implementing Section 503, 41 C.F.R. Part 60-741 (2014) and the revised regulations implementing VEVRAA, 41 C.F.R. Part 60-300 (2014).

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In order to come into compliance, ORACLE must enter into a binding Conciliation Agreement with OFCCP that encompasses all of the corrective actions described above. It is our desire to avoid enforcement proceedings. You may contact me at (415) 625-7839 within five (5) business days of receipt of this letter if ORACLE would like to begin conciliation and resolution of the specified violations.

Sincerely,

for Robert Doles
District Director

cc: Shauna Holman-Harries (*via* email: shauna.holman.harries@ORACLE.com)
Director Diversity Compliance, Oracle America, Inc.

Juana Schurman (*via* email: juana.schurman@ORACLE.com)
Vice President and Associate General Counsel, Oracle America, Inc.

Gary R. Siniscalco (*via* email: grsiniscalco@orrick.com)
Orrick Herrington & Sutcliffe LLP

Enclosure

ATTACHMENT A

COMPENSATION DISCRIMINATION (VIOLATIONS 2-5)

Analysis of Employees' Annual Salary and Gender

The United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") conducted statistical analysis of the employment records Oracle America, Inc. ("Oracle") provided to OFCCP during its equal employment opportunity investigation of Oracle's facility in Redwood Shores, California. OFCCP analyzed Oracle employees' compensation data by Oracle job function using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' gender, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, and job title.

As displayed in the table below, the results of the analysis show a statistically significant salary disparity adverse to female employees in *Information Technology*, *Product Development*, and *Support* roles.

Regression Analysis of Female and Male Employees' Salary Difference at Oracle

Year[1]	Class	Number of Female Class Members	Standard Deviations
2014	Female *Information Technology* Employees	133	-2.71
2014	Female *Product Development* Employees	1,207	-8.41
2014	Female *Support* Employees	47	-3.67

[1] Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide OFCCP with its prior year compensation data.

Analysis of Employees' Annual Salary and Race

The United States Department of Labor, OFCCP conducted statistical analysis of the employment records Oracle provided to OFCCP during its equal employment opportunity investigation of Oracle's facility in Redwood Shores, California. OFCCP analyzed Oracle employees' compensation data by Oracle job function using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' race, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, and job title.

As displayed in the table below, the results of the analysis show a statistically significant salary disparity adverse to African American and Asian employees in *Product Development* roles.

Regression Analysis of African American and White Employees' Salary Difference at Oracle

Year[2]	Class	Number of Black Class Members	Standard Deviations
2014	African American *Product Development* Employees	27	-2.10

Regression Analysis of Asian and White Employees' Salary Difference at Oracle

Year[3]	Class	Number of Asian Class Members	Standard Deviations
2014	Asian *Product Development* Employees	3,086	-6.55

[2] Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide the Agency prior year compensation data.

[3] Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide the Agency prior year compensation data.

Analysis of Employees' Annual Salary and National Origin

The United States Department of Labor, OFCCP conducted statistical analysis of the employment records Oracle provided to OFCCP during its equal employment opportunity investigation of Oracle's facility in Redwood Shores, California. OFCCP analyzed Oracle employees' compensation data by Oracle job function using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' national origin, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, visa status, and job title.

As displayed in the table below, the results of the analysis show a statistically significant salary disparity adverse to American employees in *Product Development* and *Support* roles.

Regression Analysis of American and Non-American Employees' Salary Difference at Oracle

Year[4]	Class	Number of American Class Members	Standard Deviations
2014	American *Product Development* Employees	3,501	-7.07
2014	American *Support* Employees	185	-3.65

[4] Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide the Agency prior year compensation data.

EXHIBIT C

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

OFCCP'S OBJECTIONS AND ANSWERS TO DEFENDANT ORACLE AMERICA, INC.'S INTERROGATORIES, SET ONE (AS AMENDED)

The United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"), by and through the Office of the Solicitor, hereby submits its objections and answers to Defendant Oracle America, Inc.'s Interrogatories, Set One (As Amended).

PRELIMINARY STATEMENT

Discovery in this matter is currently ongoing. Each and every following response is rendered and based upon information reasonably available to OFCCP at the time of preparation of these responses. OFCCP reserves the right to amend the responses to these Interrogatories as discovery progresses. OFCCP will provide supplemental responses in the event any further responsive material comes within its knowledge, possession, custody or control.

OFCCP has not completed its respective discovery in this action. OFCCP, therefore, specifically reserves the right to introduce any evidence from any source which may hereinafter be discovered in testimony from any witness whose identity may hereafter be discovered.

GENERAL OBJECTIONS

1. OFCCP objects to each of Defendant's Interrogatories to the extent that it is premature at this early stage of discovery. At this time, many material facts supporting OFCCP's contentions remain uniquely in Oracle's custody and control. To date, OFCCP has not yet obtained significant discovery from Oracle, including data and documents that Oracle failed to produce during the compliance review (*see* Amended Complaint ¶¶ 1-15) and in this litigation, data and documents regarding Oracle's hiring and compensation practices outside the review period, and depositions of persons knowledgeable about Oracle's hiring and compensation practices. Federal Rule of Civil Procedure 33(a)(2) permits courts to protect parties from abusive interrogatories, particularly those served before discovery is complete, providing that when an interrogatory asks for "opinion or contention[,] . . . the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time." Fed. R. Civ. P. 33(a)(2).

OFCCP's position is supported by ample authority in the Ninth Circuit. *See, e.g., Miles v. Shanghai Zhenhua Port Mach. Co.*, 2009 WL 3837523, at *1 (W.D. Wash. 2009) ("Contention interrogatories which 'systematically track all of the allegations in an opposing party's pleading, and that ask for 'each and every fact' and application of law to fact that support the party's allegations are an abuse of the discovery process because they are overly broad and unduly burdensome.") (*quoting Lucero v. Valdez*, 240 F.R.D. 591, 594 (D. N.M. 2007)) (permitting a plaintiff to rest on allegations in the complaint in response to a contention interrogatory a full eleven months into discovery); *see also Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 201 5).

Courts in the Ninth Circuit also routinely reject a defendant's use of contention interrogatories when they attempt to prematurely narrow a plaintiff's case. *See, e.g., Advocare International, L.P. v. Scheckenbach*, 2009 WL 3064867, at *1 (W.D. Wash. 2009) (denying defendant's motion to compel a response to an "overly broad" contention interrogatory as "an

attempt to prevent the plaintiff from using any evidence or argument, other than that already provided").

Moreover, courts have held that it is inefficient and burdensome to require a plaintiff to provide responses to contention interrogatories that would be incomplete during early phases of discovery, as would be the case here. *See In re eBay Seller Antitrust Litigation*, 2008 WL 5212170, at *2 (N.D. Cal. 2008) (denying defendant's motion to compel responses to contention interrogatories early in discovery because the plaintiff s answers "likely would be materially incomplete," and given "the tentative nature of any responses generated at this stage," they "would be of questionable value to the goal of efficiently advancing the litigation"); *E.E.O.C. v. Sterling Jewelers Inc.*, 2012 WL 1680811, at *8 (W.D. N.Y. 2012) (sustaining EEOC's objections to contention interrogatories as "premature or seeking information currently in [defendant's] own control"); *see also Campbell v. Facebook*, Inc., 2015 WL 3533221, at *5 (N.D. Cal. 2015) (same, noting that the defendant had "better access to the information" sought). The Campbell court also rejected the defendant's request that the plaintiff be ordered to update answers to interrogatories over the course of litigation, explaining that "[i]t strikes the Court as unnecessarily burdensome to constantly revise and update such responses." *Id.* at *6. Defendant's contention interrogatories served on OFCCP are wholly inappropriate at this time for all of the same reasons.[1]

2. OFCCP objects to each of Defendant's Interrogatories to the extent that they seek information subject to any privilege, including but not limited to: the attorney-client privilege,

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[1] Moreover, numerous other courts in the Ninth Circuit have rejected the use of contention interrogatories in similar contexts. *See, e.g.*, *Amgen, Inc. v. Sandoz, Inc.*, 2016 WL 1039029, at *4 (N.D. Cal. 2016) ("[Defendant] has not demonstrated that its interrogatory is appropriate at this stage as it has not shown how responding to its interrogatories before substantial discovery has been conducted will contribute meaningfully to clarifying the issues in the case or narrowing the scope of the dispute."); *Cardoza v. Bloomin' Brands, Inc.*, 2015 WL 3875916, at *1-2 (D. Nev. 2015) (holding that contention interrogatories served shortly after the opening of discovery and ten months before its close were premature); *Folz v. Union Pac. R.R. Co.*, WL 357929, at *2 (S.D. Cal. 2014) ("[C]ourts are reluctant to allow contention interrogatories, especially when the responding party has not yet obtained enough information through discovery to respond."); *S.E.C. v. Berry*, WL 2441706, at *4 (N.D. Cal. 2011) ("Contention interrogatories asking for 'each and *every* fact,' or application of law to fact, that supports particular allegations in an opposing pleading may be held overly broad and unduly burdensome." (*quoting Schwarzer et. al., Cal. Prac. Guide: Fed. Civ. Pr. Before Trial* § 11:1682 (The Rutter Group 2010)).

attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, trial preparation privilege, or any other privilege or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

3. OFCCP objects to each of Defendant's Interrogatories to the extent that they seek any documents or information previously produced or not within OFCCP's custody, possession, or control.

4. OFCCP objects to each of Defendant's Interrogatories to the extent that they seek any documents or information that is irrelevant or otherwise beyond the scope of discovery permitted in this proceeding.

5. OFCCP objects to the "DEFINITIONS AND INSTRUCTIONS" section as containing vague, ambiguous, and unintelligible definitions, and seeking to impose additional requirements on OFCCP that exceed and/or are inconsistent with the Federal Rules of Civil Procedure, Judge Larsen's Pre-Hearing Order, 29 C.F.R. Part 18, and 41 C.F.R. 60-30.

6. OFCCP objects to each of Defendant's Interrogatories to the extent they seek discovery that is not proportional to the needs of the case. Proportionality includes the parties' relative access to relevant information. Fed. R. Civ. P. 26(b)(1). To the extent that Oracle possesses documents or has information that OFCCP does not, including discovery requested by OFCCP but not yet produced by Oracle, OFCCP properly objects. OFCCP further objects to each of Defendant's Interrogatories as being premature to the extent they ask OFCCP to provide information to Oracle that Oracle has prevented OFCCP from obtaining.

7. OFCCP objects to each of Defendant's Interrogatories to the extent they assert or presume that OFCCP was required to allege statistical data in its Amended Complaint. To the contrary, in *OFCCP v. JPMorgan Chase & Co.*, 2017-OFC-00007, at 2 (Apr. 5, 2017), the ALJ recently denied a motion to dismiss that had argued that OFCCP was required to summarize the regression analysis in the Complaint. Instead, the ALJ found that the allegation "that the

discrimination is supported by statistical evidence" was sufficient to put the contractor on notice of the violations and satisfied the pleading requirements of 41 C.F.R. § 60-30(b). *Id.* at 6. Statistical data supporting OFCCP's claims of discrimination will be developed and refined, during and after discovery. Any attempt to bind OFCCP, though these interrogatories, to a particular set of statistics at the pleading stage would be both unfair and inefficient. *See Jenkins v. N.Y. City Transit Auth.*, 646 F.Supp.2d 464, 469 (S.D. N.Y. 2009)("It would be inappropriate to require a plaintiff to produce statistics to support her disparate impact claim before the plaintiff has had the benefit of discovery"). The time for assessing OFCCP's statistical evidence, including whether it accounts for all relevant variables, is after discovery has closed and the case is tried. *See Barrett v. Forrest Laboratories, Inc.*, 39 F.Supp.3d 407, 430 (S.D. N.Y. 2014). Furthermore, it is impossible for OFCCP to make any refinements to statistics in this case until Defendants produce the myriad relevant records they refused to provide to OFCCP and have not yet provided in discovery.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each PERSON by name, title, role, and last known contact information who participated in the "COMPLIANCE REVIEW" referenced in Paragraph 6 of the Amended Complaint, whether by way of providing interviews, conducting interviews, providing information, requesting information, or assessing or reviewing the information provided.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil

Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the term "participated in" as vague and ambiguous because it is not clear what constitutes participation. In the widest sense of the term, participation might include individuals who had no meaningful role in the Compliance Review, such as technical personnel that maintain systems relevant to the investigation but have no knowledge of the actual investigation. OFCCP also objects to the term "role" as vague and ambiguous. For example, "role" could mean the actions that the person took or the person's formal title.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to fully answer this Interrogatory, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who provided information that OFCCP obtained during the compliance review. This would include people involved with the databases, who built spreadsheets or populated some, who were involved in collecting documents, etc.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP further objects to the Interrogatory because it seeks each individual's contact information for persons' represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone who was involved in providing information that OFCCP received during the compliance review, to include managers and supervisory personnel, available to OFCCP so that OFCCP can fully identify everyone who provided information for the compliance review.

Subject to and without waiving the foregoing objections, OFCCP responds that the following persons, excluding OFCCP attorneys at the Office of the Solicitor, that may have, in some capacity, "participated in" or "provid[ed] information" for the compliance review include Oracle's management and supervisory employees, people in Oracle's human resources and/or personnel departments, Oracle employees or agents involved in its compliance with the Executive Order and implementing regulations identified in this litigation, people involved in securing and processing information provided to OFCCP, etc., and the following OFCCP personnel.

1. Janette Wipper, Regional Director
2. Jane Suhr, Deputy Regional Director
3. Robert Doles, District Director
4. Hea Jung Atkins, Special Assistant
5. Brian Mikel, Area Office Director
6. Hoan Luong, Compliance Officer
7. Anna Liu, Compliance Officer
8. Jennifer Yeh, Compliance Officer
9. Milton Crossland, Compliance Officer
10. Molly Almeida, Compliance Officer
11. Francisco Melara, Regional Liaison
12. Shirong (Andy) Leu, Statistician
13. Robert LaJeunesse, Branch Chief of Expert Services

INTERROGATORY NO. 2:

State all facts that support the allegation in Paragraph 7 of the Amended Complaint that "Oracle discriminated against qualified female employees in its Information Technology, Product Development and Support lines of business or job functions at Oracle Redwood Shores based upon sex by paying them less than comparable males employed in similar roles."

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data

for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

Subject to and without waiving the foregoing objections, OFCCP incorporates its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. OFCCP further responds that that upon initiating a compliance review of Oracle's headquarters in Redwood Shores, California, OFCCP conducted a comprehensive analysis and evaluation of the hiring and employment practices of Oracle, the written affirmative action program (AAP), and the results of the affirmative action efforts undertaken by Oracle, including a desk audit, on-site review and off-site analysis.

Specifically, OFCCP analyzed and evaluated Oracle's AAP and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether Oracle complied with the requirements of the Executive Order, VEVRRA, Section 503 and their implementing regulations, including but not limited to: employment policies, practices, records, and actions;

management, human resources, non-management employee, and former employee statements; employee complaints; one-year of individual employee compensation data and other evidence; Labor Condition Applications; Oracle's compliance history by reviewing OFCCP internal database system, and review any information received from EEOC, State or local FEP, and/or other labor and employment agencies, such as the Department of Labor's Veterans' Employment and Training Service and Wage and Hour Division, and publically available company information; and Oracle's hiring data, workforce data and appropriate labor market workforce availability statistics. OFCCP also obtained and analyzed any complaints filed against Oracle through the Equal Employment Opportunity Commission (EEOC), the State and/or Local Fair Employment Practice (FEP) agency, and/or other government agencies. Additionally, OFCCP requested additional information from Oracle during the compliance review that Oracle withheld (*see* Amended Complaint ¶¶ 11-15) that is relevant to a determination of whether Oracle complied with the requirements of the Executive Order and the regulations.

OFCCP further responds that during the compliance review of Oracle headquarters, OFCCP evaluated and analyzed Oracle's compensation information and evidence gathered in the investigation and found statistically significant pay disparities based upon gender between females and males after controlling for legitimate explanatory factors in the Information Technology, Product Development, and Support lines of business. Within these lines of business, OFCCP controlled for the following factors: job title, full-time/part-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure/work experience at Oracle. Even after controlling for such factors in the analysis, female employees were paid significantly less than male employees in the Information Technology, Product Development, and Support lines of business. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 3:

Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraph 7 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the Interrogatory on the basis that it is compound, vague and ambiguous as to "nature of the facts," "knowledge of the facts," and "contact information." "Nature of facts" is so unintelligible that it is unclear what Oracle is seeking. For example, is nature of the facts the date the person acquired the facts, how he acquired the facts, who he acquired the facts from, the contents of the facts, when the facts occurred, who observed or witnessed the facts, etc. In terms of knowledge of the facts: it is not known if Oracle was referring to personal knowledge, constructive knowledge, third-hand knowledge, hearsay knowledge, etc. It is not clear what Oracle means by contact information, is it a person home telephone number, is it a person's business address, etc.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this request, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who has knowledge of the discrimination.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP who might have knowledge of the discrimination so that OFCCP can identify all of the people who have knowledge of the discrimination.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" if the nature of the facts includes every fact, however, minor that the person knows regardless of how the person obtained knowledge of the alleged fact.

OFCCP objects to this interrogatory as it is making two distinct information requests in one interrogatory – identify the name, job title and contact information of the person with knowledge, and the content/nature of this knowledge. OFCCP will count this as two interrogatories.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

OFCCP further objects to the Interrogatory to the extent it seeks each individual's contact information for individuals that are represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

Subject to and without waiving the foregoing objections, OFCCP responds that the following persons, excluding OFCCP attorneys at the Office of the Solicitor, may have knowledge of the facts giving rise to the allegations made in the Amended Complaint include:

Oracle employees, supervisors and managers employed by Oracle during the review period; former employees, supervisors and managers of Oracle; and OFCCP personnel listed in response to Interrogatory No. 1. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 4:

As to each qualified female employee allegedly discriminated against as referenced in Paragraph 7 of the Amended Complaint, identify by name and job title the comparable male or males employed in similar roles.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive

documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its response to Interrogatory No. 2, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the

NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of male employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable male employees in similar roles to female employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of females in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014 through the present, OFCCP expects that additional males, as well female victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 5:

For each qualified female employee allegedly discriminated against as referenced in Paragraph 7 of the Amended Complaint, state all facts that support the allegation that the male(s) identified as similarly situated and comparable were similarly situated and comparable.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2 and 4, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of male employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable male employees in similar roles to female employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of females in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that it determined which roles were similar by reviewing evidence gathered during the compliance review. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014, through the present, OFCCP expects that additional comparable males, as well female victims of discrimination, will be identified. OFCCP will supplement this response as

more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 6:

State all facts that support the table contained in Paragraph 7, which table contains the headings "Class," "Number of Female Class Members," and "Standard Deviations," including the statistical data used, the analysis and methodologies used, the computations used to determine the standard deviations, and the identities of the female employees.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this Interrogatory to the extent it implies that OFCCP was required to allege statistical data. Statistical data supporting OFCCP's claims of discrimination will be developed and refined, during and after discovery. Tying OFCCP to a particular set of statistics at the pleading stage would be both unfair and inefficient.2 The time for assessing OFCCP's statistical evidence, including whether it accounts for all relevant variables, is after discovery has closed and the case is tried.3 Further, it is impossible for OFCCP to make any refinements

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2 *See Jenkins*, 646 F.Supp.2d 469 ("It would be inappropriate to require a plaintiff to produce statistics to support her disparate impact claim before the plaintiff has had the benefit of discovery").

3 *See Barrett*, 39 F.Supp.3d 430.

to statistics in this case until Defendants produce the myriad relevant records they refused to provide to OFCCP and have not yet produced in discovery.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of

forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP also objects to the term "Paragraph 7" as vague and ambiguous because Oracle did not identify the document containing the paragraph 7 to which it refers. OFCCP likewise objects to the terms "statistical data used," "the analysis and methodologies used," the computations used." For these latter three terms the context of "used" it is not known and it is not clear which "statistical data," "analysis," "methodologies" and "computations" that Oracle is referring.

OFCCP objects to this Interrogatory as overbroad, unduly burdensome, oppressive, not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP further objects to producing any in-house statistical analyses performed to include the data, methodology and computations that OFCCP employed. This information is protected under the various privileges asserted above, is irrelevant, and is not proportional to the needs of the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2, 4 and 5, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the

names of male employees in the Product Development, Support and Information Technology lines of business, as well as their job titles that OFCCP alleges were comparable male employees in similar roles to female employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of females in the Product Development, Support and Information Technology lines of business, as well as their job titles, that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that during the compliance review, OFCCP evaluated and analyzed Oracle's compensation information and found statistically significant pay disparities adverse to female employees after controlling for legitimate explanatory factors in the duct Development, Support and Information Technology lines of business. Within these lines of business, OFCCP controlled for the following factors: job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure/work experience within Oracle. Even after controlling for such factors in the analysis, female employees were paid significantly less than in the Product Development line of business at -8.41 standard deviations, the Support line of business at -3.67 standard deviations and the Information Technology line of business at -2.71 standard deviations. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014 through the present, OFCCP expects that additional comparable males, as well as female victims of discrimination, will be identified in the Product Development, Support and Information Technology lines of business. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 7:

State all facts that support the allegation in Paragraph 8 of the Amended Complaint that "Oracle discriminated against qualified African Americans in Product Development roles at

Oracle Redwood Shores based upon race by paying them less than comparable Whites employed in similar roles."

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data

regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

Subject to and without waiving the foregoing objections, OFCCP incorporates its response to Interrogatory No. 2, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. OFCCP further responds that during the compliance review of Oracle headquarters, OFCCP evaluated and analyzed Oracle's compensation information and evidence gathered in the investigation and found statistically significant pay disparities based upon race between African Americans and Whites after controlling for legitimate explanatory factors in the Product Development line of business. Within this line of business, OFCCP controlled for the following factors: job title, full-time/part-time status, exempt status, global career level, job specialty, estimated prior work experience, and work experience at Oracle. Even after

controlling for such factors in the analysis, African American employees were paid significantly less than White employees in the Product Development line of business. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 8:

Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraph 8 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the Interrogatory on the basis that it is compound, vague and ambiguous as to "nature of the facts," "knowledge of the facts," and "contact information." "Nature of facts" is so unintelligible that it is unclear what Oracle is seeking. For example, is nature of the facts the date the person acquired the facts, how he acquired the facts, who he acquired the facts from, the contents of the facts, when the facts occurred, who observed or witnessed the facts, etc. In terms of knowledge of the facts: it is not known if Oracle was referring to personal knowledge, constructive knowledge, third-hand knowledge, hearsay

knowledge, etc. It is not clear what Oracle means by contact information, is it a person home telephone number, is it a person's business address, etc.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this request, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who has knowledge of the discrimination.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP everyone who might have knowledge of the discrimination so that OFCCP can identify all of the people who have knowledge of the discrimination.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" if the nature of the facts includes every fact, however, minor that the person knows regardless of how the person obtained knowledge of the alleged fact.

OFCCP objects to this interrogatory as it is making two distinct information requests in one interrogatory – identify the name, job title and contact information of the person with knowledge, and the content/nature of this knowledge. OFCCP will count this as two interrogatories.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials

outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

OFCCP further objects to the request to the extent it seeks each individual's contact information on the grounds of the Privacy Act and that they are represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

Subject to and without waiving the foregoing objections, OFCCP responds that the following persons, excluding OFCCP attorneys at the Office of the Solicitor, may have knowledge of the facts giving rise to the allegations made in the Amended Complaint include: Oracle employees, supervisors and managers employed by Oracle during the review period; former employees, supervisors and managers of Oracle; and OFCCP personnel listed in response to Interrogatory No. 1. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 9:

As to each African American allegedly discriminated against as referenced in Paragraph 8 of the Amended Complaint, identify by name and job title the comparable White or Whites employed in similar roles.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil

Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of

forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2 and 7, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to African American employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of African Americans in the Product Development line of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014, through the present, OFCCP expects that additional Whites, as well African American victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 10:

For each qualified African American allegedly discriminated against as referenced in Paragraph 8 of the Amended Complaint, state all facts that support the allegation that the White employee(s) identified as similarly situated and comparable were similarly situated and comparable.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example,

as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2, 7 and 9, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP

for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to African American employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of African Americans in the Product Development line of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that it determined which roles were similar by reviewing evidence gathered during the compliance review. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014, through the present, OFCCP expects that additional Whites, as well African American victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 11:

State all facts that support the allegation contained in Paragraph 8 of the Amended Complaint that there was a standard deviation of -2.10, including the statistical data used, the analysis and methodologies used, and the computations used to determine the standard deviations.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant

privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this Interrogatory to the extent it implies that OFCCP was required to allege statistical data. Statistical data supporting OFCCP's claims of discrimination will be developed and refined, during and after discovery. Tying OFCCP to a particular set of statistics at the pleading stage would be both unfair and inefficient.[4] The time for assessing OFCCP's statistical evidence, including whether it accounts for all relevant variables, is after discovery has closed and the case is tried.[5] Further, it is impossible for OFCCP to make any refinements to statistics in this case until Defendants produce the myriad relevant records they refused to provide to OFCCP and have not yet provided in discovery.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and

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[4] *See Jenkins*, 646 F.Supp.2d 469 ("It would be inappropriate to require a plaintiff to produce statistics to support her disparate impact claim before the plaintiff has had the benefit of discovery").

[5] *See Barrett*, 39 F.Supp.3d 430.

obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP likewise objects to the terms "statistical data used," "the analysis and methodologies used," the computations used." For these latter three terms the context of "used" it is not known and it is not clear which "statistical data," "analysis," "methodologies" and "computations" that Oracle is referring.

OFCCP objects to this Interrogatory as overbroad, unduly burdensome, oppressive, not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP further objects to producing any in-house statistical analyses performed to include the data, methodology and computations that OFCCP employed. This information is protected under the various privileges asserted above, is irrelevant, and is not proportional to the needs of the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2, 7, 9 and 10, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to African American employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of African American in the Product Development line of business, as well as their job titles, that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that during the compliance review, OFCCP evaluated and analyzed Oracle's compensation information and found statistically significant pay disparities adverse to African American employees after controlling for legitimate explanatory factors in the Product Development line of business. Within this line of business, OFCCP controlled for the following factors: job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure/Oracle work experience. Even after controlling for such factors in the analysis, African American employees were paid significantly less than White employees in the Product Development line of business at -2.10 standard deviations. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014 through the present, OFCCP

expects that additional comparable Whites, as well as African American victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 12:

State all facts that support the allegation in Paragraph 9 of the Amended Complaint that "Oracle discriminated against qualified Asians in Product Development roles at Oracle Redwood Shores based upon race by paying them less than comparable Whites employed in similar roles."

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to

produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

Subject to and without waiving the foregoing objections, OFCCP incorporates its response to Interrogatory No. 2, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the

NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. OFCCP further responds that during the compliance review of Oracle headquarters, OFCCP evaluated and analyzed Oracle's compensation information and evidence gathered in the investigation and found statistically significant pay disparities based upon race between Asians and Whites after controlling for legitimate explanatory factors. Within this line of business, OFCCP controlled for the following factors: job title, full-time/part-time status, exempt status, global career level, job specialty, estimated prior work experience, and work experience at Oracle. Even after controlling for such factors in the analysis, Asian employees were paid significantly less than White employees in the Product Development line of business. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 13:

Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraph 9 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the Interrogatory on the basis that it is compound, vague and ambiguous as to "nature of the facts," "knowledge of the facts," and "contact information." "Nature of facts" is so unintelligible that it is unclear what Oracle is seeking. For example, is nature of the facts the date the person acquired the facts, how he acquired the facts, who he acquired the facts from, the contents of the facts, when the facts occurred, who observed or witnessed the facts, etc. In terms of knowledge of the facts: it is not known if Oracle was referring to personal knowledge, constructive knowledge, third-hand knowledge, hearsay knowledge, etc. It is not clear what Oracle means by contact information, is it a person home telephone number, is it a person's business address, etc.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this Interrogatory, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who has knowledge of the discrimination.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP still further objects because the interrogatory calls for speculation if Oracle does not make everyone available to OFCCP everyone who might have knowledge of the discrimination so that OFCCP can identify all of the people who have knowledge of the discrimination.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" if the nature of the facts includes every fact, however, minor that the person knows regardless of how the person obtained knowledge of the alleged fact.

OFCCP objects to this interrogatory as it is making two distinct information requests in one interrogatory – identify the name, job title and contact information of the person with knowledge, and the content/nature of this knowledge. OFCCP will count this as two interrogatories.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

OFCCP further objects to the Interrogatory to the extent it seeks each individual's contact information on the grounds of the Privacy Act and that they are represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

Subject to and without waiving the foregoing objections, OFCCP responds that the following persons, excluding OFCCP attorneys at the Office of the Solicitor, may have knowledge of the facts giving rise to the allegations made in the Amended Complaint include: Oracle employees, supervisors and managers employed by Oracle during the review period; former employees, supervisors and managers of Oracle; and OFCCP personnel listed in response to Interrogatory No. 1. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 14:

As to each Asian allegedly discriminated against as referenced in Paragraph 9 of the Amended Complaint, identify by name and job title the comparable White or Whites employed in similar roles.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data

for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2 and 12, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to Asian employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of Asians in the Product Development line of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014, through the present, OFCCP expects that additional Whites, as well

Asian victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 15:

For each qualified Asian allegedly discriminated against as referenced in Paragraph 9 of the Amended Complaint, state all facts that support the allegation that the White employee(s) identified as similarly situated and comparable were similarly situated and comparable.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information

responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2, 12 and 14, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to Asian employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of Asians in the Product Development line of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that it determined which roles were similar by reviewing evidence gathered during the compliance review. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014, through the present, OFCCP expects that additional Whites, as well Asian victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 16:

State all facts that support the allegation contained in Paragraph 9 of the Amended Complaint that there was a standard deviation of -6.55, including the statistical data used, the analysis and methodologies used, and the computations used to determine the standard deviations.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege,

attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this Interrogatory to the extent it implies that OFCCP was required to allege statistical data. Statistical data supporting OFCCP's claims of discrimination will be developed and refined, during and after discovery. Tying OFCCP to a particular set of statistics at the pleading stage would be both unfair and inefficient.[6] The time for assessing OFCCP's statistical evidence, including whether it accounts for all relevant variables, is after discovery has closed and the case is tried.[7] Further, it is impossible for OFCCP to make any refinements to statistics in this case until Defendants produce the myriad relevant records they refused to provide to OFCCP and have not yet provided in discovery.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to

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[6] *See Jenkins*, 646 F.Supp.2d 469 ("It would be inappropriate to require a plaintiff to produce statistics to support her disparate impact claim before the plaintiff has had the benefit of discovery").

[7] *See Barrett*, 39 F.Supp.3d 430.

this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP likewise objects to the terms "statistical data used," "the analysis and methodologies used," the computations used." For these latter three terms the context of "used" it is not known and it is not clear which "statistical data," "analysis," "methodologies" and "computations" that Oracle is referring.

OFCCP objects to this Interrogatory as overbroad, unduly burdensome, oppressive, not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP further objects to producing any in-house statistical analyses performed to include the data, methodology and computations that OFCCP employed. This information is protected under the various privileges asserted above, is irrelevant, and is not proportional to the needs of the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2, 12, 14 and 15, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to Asian employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of Asians in the Product Development line of business, as well as their job titles, that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that during the compliance review, OFCCP evaluated and analyzed Oracle's compensation information and found statistically significant pay disparities adverse to Asian employees after controlling for legitimate explanatory factors in the Product Development line of business. Within this line of business, OFCCP controlled for the following factors: job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure/Oracle work

experience. Even after controlling for such factors in the analysis, Asian employees were paid significantly less than White employees in the Product Development line of business at -6.55 standard deviations. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014 through the present, OFCCP expects that additional comparable Whites, as well as Asian victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 17:

State all facts that support the allegation in Paragraph 10 of the Amended Complaint, that "Oracle utilized . . . a recruiting and hiring process that discriminates against [non-Asian] applicants in favor of Asian applicants, . . . based upon race for positions in the [PT1] job group and Product Development line of business" at HQCA.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as

premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

Subject to and without waiving the foregoing objections, OFCCP incorporates its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the hiring databases that Oracle provided to OFCCP. OFCCP further responds that that upon initiating a compliance review of Oracle's headquarters in Redwood Shores, California, OFCCP conducted a comprehensive analysis and evaluation of the hiring and employment practices of Oracle, the written affirmative action program (AAP), and the results of the affirmative action efforts undertaken by Oracle, including a desk audit, on-site review and off-site analysis.

Specifically, OFCCP analyzed and evaluated Oracle's AAP and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether Oracle complied with the requirements of the Executive Order, VEVRRA, Section 503 and their implementing regulations, including but not limited to: employment policies, practices, records, and actions; management, human resources, non-management employee, and former employee statements; employee complaints; one-year of individual employee compensation data and other evidence; Labor Condition Applications; Oracle's compliance history by reviewing OFCCP internal database system, and review any information received from EEOC, State or local FEP, and/or other labor and employment agencies, such as the Department of Labor's Veterans' Employment and Training Service and Wage and Hour Division, and publically available company information; and Oracle's hiring data, workforce data and appropriate labor market workforce availability statistics. OFCCP also obtained and analyzed any complaints filed against Oracle through the Equal Employment Opportunity Commission (EEOC), the State and/or Local Fair Employment Practice (FEP) agency, and/or other government agencies. Additionally, OFCCP requested additional information from Oracle during the compliance review that Oracle withheld (*see* Amended Complaint ¶¶ 11-15) that is relevant to a

determination of whether Oracle complied with the requirements of the Executive Order and the regulations.

During the compliance review of Oracle headquarters, OFCCP evaluated and analyzed Oracle's recruiting and hiring information and evidence gathered in the investigation and found statistically significant hiring disparities based upon race. OFCCP used U.S. Census data and other workforce data reflecting the potential applicant and hiring pools to evaluate recruiting and hiring decisions for U.S. jobs. This data use is consistent with Title VII and relevant case law to perform this analysis because it was inappropriate to use Oracle's pools.

Specifically, an analysis of Oracle's Professional Technical 1, Individual Contributor ("PT1") applicant data uncovered gross disparities between the expected applicant rate (availability) and the actual applicant rate. In these entry-level technical roles, the Asian applicant rate was over 75%, compared to less than 30% in the available workforce in the relevant labor market. Among Oracle's college applicants, the overrepresentation of Asians was even more extreme: the Asian applicant rate was 85% in 2013 and 92% in 2014. Based upon this data and OFCCP's analysis of Oracle's applicant data and appropriate workforce availability statistics, OFCCP found that Oracle favored Asian applicants, particularly Asian Indians, in recruiting at a standard deviation as significant as +85 and found race disparities in Oracle's recruiting practices against African American, Hispanic and White applicants.

Similarly, OFCCP found gross disparities between the available workforce in the relevant U.S. labor market and Oracle's hires in PT1. In PT1 roles, OFCCP found race disparities in Oracle's hiring practices against African American, Hispanic and White applicants. Notably, even with such a skewed applicant pool in favor of Asians, Oracle's Asian hiring rate significantly exceeded it -- by more than 6% . Compared to approximately 75% Asian applicants (and 74% Asian incumbents), Oracle hired over 82% Asians in PT1 roles during the review period. OFCCP's analysis of Oracle's hiring data and appropriate workforce

availability statistics show that Oracle favored Asian applicants, particularly Asian Indians, in hiring at a standard deviation as significant as +30.

Additional evidence, including anecdotal evidence, also reinforces that these gross statistical findings are not due to chance. OFCCP obtained statements from confidential sources evincing Oracle's reputation as favoring Asians, specifically Asian Indians. Additionally, Oracle's reputation is consistent with its recruiting efforts for engineering roles, which target Asian Indians. Oracle's recruiting priorities on its website has it directly recruiting entry-level software positions from India despite the oversupply of STEM graduates in the United States.

Furthermore, Oracle has a longstanding and well-known preference of sponsoring H1B visas almost exclusively for employees from Asia and particularly India. Over 92% of all of Oracle's H1B employees are Asian. Such preference is most pronounced in entry-level technical roles (or PT1 roles). Nearly one third of Oracle's PT1 workforce are H1B employees, compared to 13% of Oracle's overall workforce. Across Oracle headquarters, approximately 90% of H1B employees work in PT1 roles.

Moreover, despite this heavy concentration of Asians in Oracle's workforce, Oracle relied on word-of-mouth recruiting practices, which further perpetuated already existing disparities. In PT1, most successful employment referrals (or referrals that lead to a hire) originate from Asians. For technical jobs, approximately 74% of successful referrals come from PT1 employees, and approximately 80% of the referrals come from Asians.

Thus, based upon the analyses conducted and the evidence gathered during the compliance evaluation, OFCCP found that Oracle recruited, selected, and hired Asian applicants, particularly Asian Indians, for PT1 roles at a rate significantly greater than their non-Asian counterparts and Oracle's recruiting and hiring practices resulted in discrimination against African American, Hispanic, and White applicants. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 18:

Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraph 10 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the Interrogatory on the basis that it is compound, vague and ambiguous as to "nature of the facts," "knowledge of the facts," and "contact information.". "Nature of facts" is so unintelligible that it is unclear what Oracle is seeking. For example, is nature of the facts the date the person acquired the facts, how he acquired the facts, who he acquired the facts from, the contents of the facts, when the facts occurred, who observed or witnessed the facts, etc. In terms of knowledge of the facts: it is not known if Oracle was referring to personal knowledge, constructive knowledge, third-hand knowledge, hearsay knowledge, etc. It is not clear what Oracle means by contact information, is it a person home telephone number, is it a person's business address, etc.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this request, OFCCP would need to literally interview thousands of Oracle employees to include

employees in supervisory and management positions to ascertain everyone who has knowledge of the discrimination.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP everyone who might have knowledge of the discrimination so that OFCCP can identify all of the people who have knowledge of the discrimination.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" if the nature of the facts includes every fact, however, minor that the person knows regardless of how the person obtained knowledge of the alleged fact.

OFCCP objects to this interrogatory as it is making two distinct information requests in one interrogatory – identify the name, job title and contact information of the person with knowledge, and the content/nature of this knowledge. OFCCP will count this as two interrogatories.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

OFCCP further objects to the request to the extent it seeks each individual's contact information on the grounds of the Privacy Act and that they are represented by counsel.

OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

Subject to and without waiving the foregoing objections, OFCCP responds that the following persons, excluding OFCCP attorneys at the Office of the Solicitor, may have knowledge of the facts giving rise to the allegations made in the Amended Complaint include: Oracle employees, supervisors and managers employed by Oracle during the review period; former employees, supervisors and managers of Oracle; and OFCCP personnel listed in response to Interrogatory No. 1. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 19:

As to each "non-Asian" allegedly discriminated against as referenced in Paragraph 10 of the Amended Complaint, described how the "non-Asian" not hired was equally or better qualified than the Asian hired in that "non-Asian" person's stead.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the

information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP further objects that this interrogatory is compound, and has vague, and ambiguous terms such as "equally or better qualified" and "person's stead." In terms of "equally or better qualified," it is not clear which quality or characteristic or combination

thereof that Oracle is referring. In terms of person's stead, it is not clear if Oracle is referring to the advantage brought by a person standing in good stead or in the position of a replacement or successor when the Asian did not replace the non-Asian but instead was hired instead of the non-Asian.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its response to Interrogatory No. 17, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the hiring databases that Oracle provided to OFCCP and the application materials it provided to include iRecruitment documents, resumes and the recruiting and hiring information in the personnel files. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 20:

State all facts that support the allegation in Paragraph 10 of the Amended Complaint that Oracle's hiring practices resulted in statistically significant adverse impact against non-Asian employees and statistically significant disparities in the hiring of Asians versus non-Asians, including the statistical data used, the analysis and methodologies used, and the computations used.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil

Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this Interrogatory to the extent it implies that OFCCP was required to allege statistical data. Statistical data supporting OFCCP's claims of discrimination will be developed and refined, during and after discovery. Tying OFCCP to a particular set of statistics at the pleading stage would be both unfair and inefficient.8 The time for assessing OFCCP's statistical evidence, including whether it accounts for all relevant variables, is after discovery has closed and the case is tried.[9] Further, it is impossible for OFCCP to make any refinements to statistics in this case until Defendants produce the myriad relevant records they refused to provide to OFCCP and have not yet provided in discovery.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example,

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8 *See Jenkins*, 646 F.Supp.2d 469 ("It would be inappropriate to require a plaintiff to produce statistics to support her disparate impact claim before the plaintiff has had the benefit of discovery").

9 *See Barrett*, 39 F.Supp.3d 430.

as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP likewise objects to the terms "statistical data used," "the analysis and methodologies used," the computations used." For these latter three terms the context of "used" it is not known and it is not clear which "statistical data," "analysis," "methodologies" and "computations" that Oracle is referring.

OFCCP objects to this Interrogatory as overbroad, unduly burdensome, oppressive, not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP further objects to producing any in-house statistical analyses performed to include the data, methodology and computations that OFCCP employed. This information is protected under the various privileges asserted above, is irrelevant, and is not proportional to the needs of the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its response to Interrogatory No. 17, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the hiring database that Oracle provided to OFCCP for the 2014 snapshot and the application materials it provided to include iRecruitment documents, resumes and the recruiting and hiring information in the personnel files. During the compliance review of Oracle headquarters, OFCCP evaluated and analyzed Oracle's recruiting and hiring information and evidence gathered in the investigation and found statistically significant hiring disparities based upon race. OFCCP's analysis of Oracle's applicant data and appropriate workforce availability statistics show that Oracle favored Asian applicants, particularly Asian Indians, in recruiting at a standard deviation as significant as +85. Additionally, an analysis of Oracle's hiring data and appropriate workforce availability statistics show that Oracle favored Asian applicants, particularly Asian Indians, in hiring at a standard deviation as significant as +30. Based upon the analyses conducted and the evidence gathered during the compliance evaluation, OFCCP found that Oracle recruited, selected, and hired Asian applicants, particularly Asian Indians, in the referenced groups at a rate significantly greater than their non-Asian counterparts and Oracle's recruiting and hiring practices resulted in discrimination against African American, Hispanic, and White applicants. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 21:

State all facts that support the allegation in Paragraph 12 and 13 of the Amended Complaint that YOU requested "various records" that Oracle "refused to produce," including a description of the specific records YOU requested, the date(s) on which YOU requested the records, the date(s) on which YOU contend that Oracle refused to produce those records, the PERSON that refused to produce the records, and the COMMUNICATION reflecting the refusal.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of

repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP likewise objects to this Interrogatory as vague and ambiguous because it simultaneously refers to two different paragraphs in the complaint containing different allegations and then it requests the facts to support just one of the allegations located therein when it states "[s]tate all facts that support the allegation in Paragraph 12 and 13." It is not clear which allegation to which Oracle is referring.

OFCCP further objects to this Interrogatory as vague and ambiguous for the following terms "description of the specific records" "refused to produce," and "communication reflecting the refusal." For example, it is not known what Oracle is requesting when it requests a description of the records. Is it the record's title, database, or snapshot; date of record or snapshot; author or custodian of record or data base, etc.? The parties have provided each other with different definitions of what constitutes "refusal to produce" during the investigation and

litigation and it is not clear what definition Oracle is referring to in this Interrogatory. Additionally, it is not clear what Oracle means by "reflecting the refusal." Does this term mean only those communications wherein Oracle actually used the word "refusal" or some deviation of this word; does Oracle mean communications that evidence this refusal, etc.? Furthermore, Oracle just defined communication to oral or documents and not to a party's action or inactions. Thus, its definition of communication is artificially constrained and any response using this definition would be incomplete.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this Interrogatory, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain every person who took part in Oracle's refusal to provide OFCCP the requested information, data and documents and to identify all of their related communications.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP who might have knowledge of Oracle's failure to conduct the reviews and analysis so that OFCCP can identify all of the people involved and their related communications.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to create a compendium from communications that Oracle is already in possession of these communications.

OFCCP objects to this interrogatory as it is making five distinct information requests in one interrogatory: (1) description of the specific records requested; (2) dates records were

requested; (3) dates Oracle refused to provide the records; (4) the person that refused to provide the records; and (5) the communications reflecting refusal.

OFCCP objects to this interrogatory because Oracle, with this interrogatory, makes its 25th interrogatory when seeking information about the "description of the specific records requested" and exceeds the 25 interrogatory limit for the four additional items listed in the previous paragraph.

Subject to and without waiving the foregoing objections, OFCCP will only answer this Interrogatory for a description of the specific records requested. OFCCP incorporates herein its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot and the correspondence between the parties. The categories of information that Oracle refused to produce are: pay equity analysis pursuant to 41 C.F.R. § 60-2.17, some fields of information for the 2014 snapshot; data for the 2013 snapshot, employee contact information, internal complaints, external arbitration complaints and data for the 2012 applicant flow log. Furthermore, Oracle refused to produce most of the various employer personnel actions requested, and a significant amount of the application materials requested. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 22:

Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraphs 12 and 13 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the Interrogatory on the basis that it is compound, vague and ambiguous as to "nature of the facts," "knowledge of the facts," and "contact information." "Nature of facts" is so unintelligible that it is unclear what Oracle is seeking. For example, is nature of the facts the date the person acquired the facts, how he acquired the facts, who he acquired the facts from, the contents of the facts, when the facts occurred, who observed or witnessed the facts, etc. In terms of knowledge of the facts: it is not known if Oracle was referring to personal knowledge, constructive knowledge, third-hand knowledge, hearsay knowledge, etc. It is not clear what Oracle means by contact information, is it a person home telephone number, is it a person's business address, etc.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this Interrogatory, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who has knowledge of the discrimination.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP who might have knowledge of the discrimination so that OFCCP can identify all of the people who have knowledge of the discrimination.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" if the nature of the facts includes every fact, however, minor that the person knows regardless of how the person obtained knowledge of the alleged fact.

OFCCP objects to this interrogatory as it is making two distinct information requests in one interrogatory – identify the name, job title and address of the person with knowledge, and the content/nature of this knowledge. OFCCP will count this as two interrogatories.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

OFCCP further objects to the Interrogatory to the extent it seeks each individual's contact information on the grounds of the Privacy Act and that they are represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

OFCCP objects to this interrogatory because Oracle has already asked more than 25 interrogatories because four of its previous interrogatories contained two subparts each, another Interrogatory contained five subparts, and this Interrogatory contains two subparts. As such, Oracle exceeded the number of interrogatories that it can make without a court order.

Subject to and without waiving the foregoing objections, OFCCP declines to answer this Interrogatory because Oracle exceeded the number of interrogatories allowed without court order.

INTERROGATORY NO. 23:

State all facts that support the allegation in Paragraph 14 of the Amended Complaint that Oracle "defaulted on its obligations under 41 sections 60-2.17(b)-(d), 60-315A, and 60-3.4, including a description of the specific "reviews and analysis" that YOU contend Oracle failed to conduct, the date(s) on which YOU contend that Oracle refused to produce those reviews and analysis, the PERSON that refused to produce the reviews and analysis, and the COMMUNICATION reflecting the refusal.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to

this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP further objects to this Interrogatory as vague and ambiguous for the following terms "description of the specific 'reviews and analysis,'" "Oracle failed to conduct," "Oracle refused to produce those reviews and analysis" and "communication reflecting the refusal." For example, it is not known what Oracle is requesting when it requests a description. Is it the title of the review, the particular requirement or regulation requiring the review, what the review concerned, etc.? The parties have provided each other with different definitions of what constitutes "refusal to produce" during the investigation and litigation and it is not clear what definition Oracle is referring to in this Interrogatory. Additionally, it is not clear what Oracle means by "reflecting the refusal." For example, does this term mean only those communications wherein Oracle actually used the word "refusal" or some deviation of this

word; does Oracle mean communications that evidence this refusal, etc.? Furthermore, Oracle just defined communication to oral or documents and not to a party's action or inactions. Thus, its definition of communication is artificially constrained and any response using this definition would be incomplete. It is also not clear what Oracle means by "failure to conduct." For example, does this term mean only those communications wherein Oracle actually stated that it failed to conduct the review; does it mean communications that Oracle repeatedly failed to provide evidence that it conducted the review after repeated requests, etc.?

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this Interrogatory, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain every person who took part in Oracle's failure to conduct the reviews and analysis and to identify all of their related communications.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to create a compendium from communications that Oracle is already in possession of these communications.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP who might have knowledge of Oracle's failure to conduct the reviews and analysis so that OFCCP can identify all of the people involved and their related communications.

OFCCP objects to this interrogatory as it is making four distinct information requests in one interrogatory: (1) description of the specific "reviews and analysis" that Oracle failed to

conduct; (2) dates Oracle refused to produce reviews; (3) the person that refused to provide the reviews; and (4) the communications reflecting refusal.

OFCCP objects to this interrogatory because Oracle has already asked the equivalent of 25 interrogatories in that five of its previous interrogatories contained two subparts each, another Interrogatory contained five subparts and this Interrogatory contained four subparts. As such, Oracle exceeded the number of interrogatories that it can make without a court order.

Subject to and without waiving the foregoing objections, OFCCP declines to answer this Interrogatory because Oracle exceeded the number of interrogatories allowed without court order.

INTERROGATORY NO. 24:

Describe in detail any anecdotal evidence of discrimination YOU contend supports any allegation in the Amended Complaint.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases

cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP further objects on the ground that Oracle continues, against legal authorities, to withhold its employee contact information, preventing OFCCP from communicating with them in order to obtain further anecdotal evidence of unlawful discrimination. *See, e.g., OFCCP v. Jefferson County Board of Education*, Case No. 1990-OFC-4 (ALJ, Nov. 16, 1990) (granting

OFCCP's motion to compel Defendant to provide "names, addresses, phone numbers, positions, dates of employment educational background, and previous employment for all hires for [a] two-year period."); *see also OFCCP v. American Airlines, Inc.*, Case No. 1994-OFC-9 (ALJ, Jan. 19, 1995) (ordering the defendant "to supply the requested telephone numbers and addresses for all former and current employees except those with authority to speak for the company; and, further, to supply addresses, either work addresses or home addresses, of former and current management employees with authority to bind the company for the limited purpose of allowing OFCCP to notice depositions."); *see also* 79 FR 55712-02, 2014 WL 4593912 (F.R.), Proposed Rules, 41 C.F.R. Part 60-1, RIN 1250-AA06 (interviewing "employees potentially impacted by discriminatory compensation" is "an invaluable way for [OFCCP] to determine whether compensation discrimination in violation of Executive Order 11246 has occurred and to support its statistical findings."); *see also Kasten v. St.-Gobain Performance Plastics Corp.*, 531 U.S. 1, 11-12 (2011) (in order to enforce the FLSA, the Secretary of Labor necessarily relies, "not upon 'continuing detailed federal supervision or inspection of payrolls,' but upon 'information and complaints received from employees seeking to vindicate rights claimed to have been denied.'"); *see also E.E.O.C. v. McLane Co.*, Inc., 804 F.3d 1051, 1056-57 (9th Cir. 2015) (ordering employer to produce employee contact information).

OFCCP further objects to this Interrogatory as vague and ambiguous for the following terms "[d]escribe in detail," and "anecdotal evidence." For example, it is not known what Oracle is requesting when it requests for OFCCP to describe in detail, the level of detail needed and how much information constitutes sufficient detail. To the extent that Oracle's describe in detail means to state all facts, then OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case. In terms of anecdotal evidence it is not clear what definition of evidence that Oracle is

requesting OFCCP to provide and what it considers to be anecdotal as opposed to another form of evidence.

OFCCP objects to this interrogatory because Oracle has already asked the equivalent of 25 interrogatories in that five of its previous interrogatories contained two subparts each, another Interrogatory contained four subparts and still another Interrogatory contained five subparts. As such, Oracle exceeded the number of interrogatories that it can make without a court order.

Subject to and without waiving the foregoing objections, OFCCP declines to answer this Interrogatory because Oracle exceeded the number of interrogatories allowed without court order.

INTERROGATORY NO. 25:

If YOU contend that any of the discrimination alleged in the Amended Complaint is based upon a theory of disparate impact, identify the policies, practices, procedures, and tests that YOU contend operate to have a disparate impact.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain

flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as compound, vague, and ambiguous with respect to the terms "identify," " policies," "practices," "procedures," "tests," and "operate." It is not clear

what information Oracle is seeking to identify and what will constitute a sufficient identification. Is it the title of the policy or other terms referenced; is it the date they became effective, etc. It is not clear what Oracle considers a governing policy, practice, procedure to be, what constitutes an official or formal policy, practice or procedure of Oracle as opposed to an individual practice of an Oracle supervisor, etc. It is not clear what test Oracle is referring. Is it referring to a validity test or some other kind of test. Operate is also vague and ambiguous. There are multiple ways that operate can be interpreted, does it mean how it functions, what Oracle created, how it is managed or run, etc.?

OFCCP objects to this interrogatory because Oracle has already asked the equivalent of 25 interrogatories in that five of its previous interrogatories contained two subparts each, another four subparts and still another contained five subparts. As such, Oracle exceeded the number of interrogatories that it can make without a court order.

Subject to and without waiving the foregoing objections, OFCCP declines to answer this Interrogatory because Oracle exceeded the number of interrogatories allowed without court order.

Declaration

I declare under penalty of perjury that to the best of my knowledge, the foregoing is true and correct.

Executed June 12, 2017

JANE SUHR
Deputy Regional Director, OFCCP Pacific Region

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AS TO OBJECTIONS

Respectfully submitted,

DATED: June 12, 2017

NICHOLAS C. GEALE
Acting Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

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/s/ Norman E. Garcia
NORMAN E. GARCIA
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NATALIE A. NARDECCHIA
Trial Attorney

Attorneys for OFCCP

Office of the Solicitor
United States Department of Labor

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and am over eighteen years of age. I am not a party to the instant action; my business address is 90 7th Street, Suite 3-700, San Francisco, CA 94103.

On the date indicated below, I served the foregoing **OFCCP'S OBJECTIONS AND ANSWERS TO DEFENDANT ORACLE AMERICA, INC.'S INTERROGATORIES, SET ONE (AS AMENDED)** by electronic mail, by prior written agreement between counsel, to the following:

Connell, Erin M.: econnell@orrick.com

Kaddah, Jacqueline D.: jkaddah@orrick.com

James, Jessica R. L.: jessica.james@orrick.com

Siniscalco, Gary: grsiniscalco@orrick.com

I certify under penalty of perjury that the above is true and correct.

Executed: June 12, 2017

/s/ Norman E. Garcia
NORMAN E. GARCIA
Senior Trial Attorney

Office of the Solicitor
U.S. Department of Labor

EXHIBIT D

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

OFCCP'S SUPPLEMENTAL OBJECTIONS AND ANSWERS TO DEFENDANT ORACLE AMERICA, INC.'S INTERROGATORIES, SET ONE (AS AMENDED)

The United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"), by and through the Office of the Solicitor, hereby submits its supplemental objections and answers to Defendant Oracle America, Inc.'s Interrogatories, Set One (As Amended).

PRELIMINARY STATEMENT

Discovery in this matter is currently ongoing. Each and every following response is rendered and based upon information reasonably available to OFCCP at the time of preparation of these responses. OFCCP reserves the right to amend the responses to these Interrogatories as discovery progresses. OFCCP provides these supplemental responses pursuant to the Court's September 11, 2017, Order and the parties' previous meet and confer agreements. In referring to documents in these responses, OFCCP adopted an err on the side of caution approach to ensure that the applicable documents relied upon were identified.

OFCCP has not completed its respective discovery in this action. OFCCP, therefore, specifically reserves the right to introduce any evidence from any source which may hereinafter be discovered in testimony from any witness whose identity may hereafter be discovered.

GENERAL OBJECTIONS

1. OFCCP objects to each of Defendant's Interrogatories to the extent that it is premature at this early stage of discovery. At this time, many material facts supporting OFCCP's contentions remain uniquely in Oracle's custody and control. To date, OFCCP has not yet obtained significant discovery from Oracle, including data and documents that Oracle failed to produce during the compliance review (*see* Amended Complaint ¶¶ 1-15) and in this litigation, data and documents regarding Oracle's hiring and compensation practices outside the review period, and depositions of persons knowledgeable about Oracle's hiring and compensation practices. Federal Rule of Civil Procedure 33(a)(2) permits courts to protect parties from abusive interrogatories, particularly those served before discovery is complete, providing that when an interrogatory asks for "opinion or contention[,] . . . the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time." Fed. R. Civ. P. 33(a)(2).

OFCCP's position is supported by ample authority in the Ninth Circuit. *See, e.g., Miles v. Shanghai Zhenhua Port Mach. Co.*, 2009 WL 3837523, at *1 (W.D. Wash. 2009) ("Contention interrogatories which 'systematically track all of the allegations in an opposing party's pleading, and that ask for 'each and every fact' and application of law to fact that support the party's allegations are an abuse of the discovery process because they are overly broad and unduly burdensome.") (*quoting Lucero v. Valdez*, 240 F.R.D. 591, 594 (D. N.M. 2007)) (permitting a plaintiff to rest on allegations in the complaint in response to a contention interrogatory a full eleven months into discovery); *see also Aldapa v. Fowler Packing Co. Inc.*, 310 F.R.D. 583, 591 (E.D. Cal. 201 5).

Courts in the Ninth Circuit also routinely reject a defendant's use of contention interrogatories when they attempt to prematurely narrow a plaintiff's case. *See, e.g., Advocare International, L.P. v. Scheckenbach*, 2009 WL 3064867, at *1 (W.D. Wash. 2009) (denying defendant's motion to compel a response to an "overly broad" contention interrogatory as "an attempt to prevent the plaintiff from using any evidence or argument, other than that already provided").

Moreover, courts have held that it is inefficient and burdensome to require a plaintiff to provide responses to contention interrogatories that would be incomplete during early phases of discovery, as would be the case here. *See In re eBay Seller Antitrust Litigation*, 2008 WL 5212170, at *2 (N.D. Cal. 2008) (denying defendant's motion to compel responses to contention interrogatories early in discovery because the plaintiff s answers "likely would be materially incomplete," and given "the tentative nature of any responses generated at this stage," they "would be of questionable value to the goal of efficiently advancing the litigation"); *E.E.O.C. v. Sterling Jewelers Inc.*, 2012 WL 1680811, at *8 (W.D. N.Y. 2012) (sustaining EEOC's objections to contention interrogatories as "premature or seeking information currently in [defendant's] own control"); *see also Campbell v. Facebook*, Inc., 2015 WL 3533221, at *5 (N.D. Cal. 2015) (same, noting that the defendant had "better access to the information" sought). The Campbell court also rejected the defendant's request that the plaintiff be ordered to update answers to interrogatories over the course of litigation, explaining that "[i]t strikes the Court as unnecessarily burdensome to constantly revise and update such responses." *Id.* at *6. Defendant's contention interrogatories served on OFCCP are wholly inappropriate at this time for all of the same reasons.[1]

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[1] Moreover, numerous other courts in the Ninth Circuit have rejected the use of contention interrogatories in similar contexts. *See, e.g., Amgen, Inc. v. Sandoz, Inc.*, 2016 WL 1039029, at *4 (N.D. Cal. 2016) ("[Defendant] has not demonstrated that its interrogatory is appropriate at this stage as it has not shown how responding to its interrogatories before substantial discovery has been conducted will contribute meaningfully to clarifying the issues in the case or narrowing the scope of the dispute."); *Cardoza v. Bloomin' Brands, Inc.*, 2015 WL 3875916, at *1-2 (D. Nev. 2015) (holding that contention interrogatories served shortly after the opening of discovery and ten months before its close were premature); *Folz v. Union Pac. R.R. Co.*, WL 357929, at *2 (S.D. Cal. 2014) ("[C]ourts are reluctant to allow contention interrogatories, especially when the responding party has not yet obtained enough

2. OFCCP objects to each of Defendant's Interrogatories to the extent that they seek information subject to any privilege, including but not limited to: the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, trial preparation privilege, or any other privilege or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

3. OFCCP objects to each of Defendant's Interrogatories to the extent that they seek any documents or information previously produced or not within OFCCP's custody, possession, or control.

4. OFCCP objects to each of Defendant's Interrogatories to the extent that they seek any documents or information that is irrelevant or otherwise beyond the scope of discovery permitted in this proceeding.

5. OFCCP objects to the "DEFINITIONS AND INSTRUCTIONS" section as containing vague, ambiguous, and unintelligible definitions, and seeking to impose additional requirements on OFCCP that exceed and/or are inconsistent with the Federal Rules of Civil Procedure, Judge Larsen's Pre-Hearing Order, 29 C.F.R. Part 18, and 41 C.F.R. 60-30.

6. OFCCP objects to each of Defendant's Interrogatories to the extent they seek discovery that is not proportional to the needs of the case. Proportionality includes the parties' relative access to relevant information. Fed. R. Civ. P. 26(b)(1). To the extent that Oracle possesses documents or has information that OFCCP does not, including discovery requested by OFCCP but not yet produced by Oracle, OFCCP properly objects. OFCCP further objects to each of Defendant's Interrogatories as being premature to the extent they ask OFCCP to provide information to Oracle that Oracle has prevented OFCCP from obtaining.

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information through discovery to respond."); *S.E.C. v. Berry*, WL 2441706, at *4 (N.D. Cal. 2011) ("Contention interrogatories asking for 'each and *every* fact,' or application of law to fact, that supports particular allegations in an opposing pleading may be held overly broad and unduly burdensome." (*quoting Schwarzer et. al., Cal. Prac. Guide: Fed. Civ. Pr. Before Trial* § 11:1682 (The Rutter Group 2010)).

7. OFCCP objects to each of Defendant's Interrogatories to the extent they assert or presume that OFCCP was required to allege statistical data in its Amended Complaint. To the contrary, in *OFCCP v. JPMorgan Chase & Co.*, 2017-OFC-00007, at 2 (Apr. 5, 2017), the ALJ recently denied a motion to dismiss that had argued that OFCCP was required to summarize the regression analysis in the Complaint. Instead, the ALJ found that the allegation "that the discrimination is supported by statistical evidence" was sufficient to put the contractor on notice of the violations and satisfied the pleading requirements of 41 C.F.R. § 60-30(b). *Id.* at 6. Statistical data supporting OFCCP's claims of discrimination will be developed and refined, during and after discovery. Any attempt to bind OFCCP, though these interrogatories, to a particular set of statistics at the pleading stage would be both unfair and inefficient. *See Jenkins v. N.Y. City Transit Auth.*, 646 F.Supp.2d 464, 469 (S.D. N.Y. 2009)("It would be inappropriate to require a plaintiff to produce statistics to support her disparate impact claim before the plaintiff has had the benefit of discovery"). The time for assessing OFCCP's statistical evidence, including whether it accounts for all relevant variables, is after discovery has closed and the case is tried. *See Barrett v. Forrest Laboratories, Inc.*, 39 F.Supp.3d 407, 430 (S.D. N.Y. 2014). Furthermore, it is impossible for OFCCP to make any refinements to statistics in this case until Defendants produce the myriad relevant records they refused to provide to OFCCP and have not yet provided in discovery.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each PERSON by name, title, role, and last known contact information who participated in the "COMPLIANCE REVIEW" referenced in Paragraph 6 of the Amended Complaint, whether by way of providing interviews, conducting interviews, providing information, requesting information, or assessing or reviewing the information provided.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the term "participated in" as vague and ambiguous because it is not clear what constitutes participation. In the widest sense of the term, participation might include individuals who had no meaningful role in the Compliance Review, such as technical personnel that maintain systems relevant to the investigation but have no knowledge of the actual investigation. OFCCP also objects to the term "role" as vague and ambiguous. For example, "role" could mean the actions that the person took or the person's formal title.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to fully answer this Interrogatory, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who provided information that OFCCP obtained during the compliance review. This would include people involved with the databases, who built spreadsheets or populated some, who were involved in collecting documents, etc.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP further objects to the Interrogatory because it seeks each individual's contact information for persons' represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone who was involved in providing information that OFCCP received during the compliance review, to include managers and supervisory personnel, available to OFCCP so that OFCCP can fully identify everyone who provided information for the compliance review.

Subject to and without waiving the foregoing objections, OFCCP responds that the following persons, excluding OFCCP attorneys at the Office of the Solicitor, that may have, in some capacity, "participated in" or "provid[ed] information" for the compliance review include Oracle's management and supervisory employees, people in Oracle's human resources and/or personnel departments, Oracle employees or agents involved in its compliance with the Executive Order and implementing regulations identified in this litigation, people involved in securing and processing information provided to OFCCP, etc., and the following OFCCP personnel.

1. Janette Wipper, Regional Director
2. Jane Suhr, Deputy Regional Director
3. Robert Doles, District Director
4. Hea Jung Atkins, Special Assistant
5. Brian Mikel, Area Office Director
6. Hoan Luong, Compliance Officer
7. Anna Liu, Compliance Officer
8. Jennifer Yeh, Compliance Officer
9. Milton Crossland, Compliance Officer
10. Molly Almeida, Compliance Officer
11. Francisco Melara, Regional Liaison

12. Shirong (Andy) Leu, Statistician

13. Robert LaJeunesse, Branch Chief of Expert Services

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections, OFCCP responds that the following OFCCP personnel also have meaningful first-hand knowledge of the compliance review:

14. Rhea Lucas, Compliance Officer

15. Marianne Montler, Compliance Officer

16. Stacy Stevens, Compliance Officer

17. Phuong Kim Nguyen, Compliance Officer

INTERROGATORY NO. 2:

State all facts that support the allegation in Paragraph 7 of the Amended Complaint that "Oracle discriminated against qualified female employees in its Information Technology, Product Development and Support lines of business or job functions at Oracle Redwood Shores based upon sex by paying them less than comparable males employed in similar roles."

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain

flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term

"all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

Subject to and without waiving the foregoing objections, OFCCP incorporates its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. OFCCP further responds that that upon initiating a compliance review of Oracle's headquarters in Redwood Shores, California, OFCCP conducted a comprehensive analysis and evaluation of the hiring and employment practices of Oracle, the written affirmative action program (AAP), and the results of the affirmative action efforts undertaken by Oracle, including a desk audit, on-site review and off-site analysis.

Specifically, OFCCP analyzed and evaluated Oracle's AAP and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether Oracle complied with the requirements of the Executive Order, VEVRRA, Section 503 and their implementing regulations, including but not limited to: employment policies, practices, records, and actions; management, human resources, non-management employee, and former employee statements; employee complaints; one-year of individual employee compensation data and other evidence; Labor Condition Applications; Oracle's compliance history by reviewing OFCCP internal database system, and review any information received from EEOC, State or local FEP, and/or other labor and employment agencies, such as the Department of Labor's Veterans' Employment and Training Service and Wage and Hour Division, and publically available company information; and Oracle's hiring data, workforce data and appropriate labor market workforce availability statistics. OFCCP also obtained and analyzed any complaints filed against Oracle through the Equal Employment Opportunity Commission (EEOC), the State and/or Local Fair Employment Practice (FEP) agency, and/or other government agencies.

Additionally, OFCCP requested additional information from Oracle during the compliance review that Oracle withheld (*see* Amended Complaint ¶¶ 11-15) that is relevant to a determination of whether Oracle complied with the requirements of the Executive Order and the regulations.

OFCCP further responds that during the compliance review of Oracle headquarters, OFCCP evaluated and analyzed Oracle's compensation information and evidence gathered in the investigation and found statistically significant pay disparities based upon gender between females and males after controlling for legitimate explanatory factors in the Information Technology, Product Development, and Support lines of business. Within these lines of business, OFCCP controlled for the following factors: job title, full-time/part-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure/work experience at Oracle. Even after controlling for such factors in the analysis, female employees were paid significantly less than male employees in the Information Technology, Product Development, and Support lines of business. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

Facts known to OFCCP at the time it filed its Amended Complaint to support the following statement in Paragraph 7 of this Complaint: "Oracle discriminated against qualified female employees in its Information Technology, Product Development and Support lines of business or job functions at Oracle Redwood Shores based upon sex by paying them less than comparable males employed in similar roles."

- Compensation Database also known as 2014 snapshot at Bates stamp number ("BSN") DOL 26401 in the Native000027 folder. This snapshot provided, inter alia, the following information: person's name, employee identification number, gender, race, job title, Job Function or Line of Business ("LOB," e.g., Product Development, Support, Information Technology), job specialty, Job Group (e.g. Professional Technical 1, "PT1"), grade, global career level, company tenure, salary, exempt status, part time or full time status, salary, total compensation, estimated prior work experience, H-1B and visa status, and national origin. OFCCP determined the national origin information in column L from the following two websites: http://forebears.co.uk/surnames and http://www.behindthename.com/name/.
- Wage determination memos contained in the Labor Condition Applications ("LCAs") that Oracle provided for employees working under H-1B status at BSN DOL 6523-6620, 6689-6715, 7261-8040, 8100-12674, 33204-35301. These memos, their LCAs and notices provided, inter alia, wage range information for different job titles and position descriptions.
- Wages and job information contained in personnel files and payroll related documents Oracle produced with these personnel files at BSN DOL 30664-31981.
- Interviews of Oracle personnel provided information about Oracle's payroll policies, practices and procedures and how they were implemented at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.

- Oracle's written compensation policies, procedures and practices in its U.S. Employee Handbook (BSN DOL 37217-23), Global Compensation Training Managing Pay Module (BSN DOL 4730-4753), Oracle Compensation Guidelines (BSN DOL 4726-29), Compensation Review & Oversight (BSN DOL 4724), and other compensation documents Oracle provided to OFCCP at BSN DOL 4719, 4721, 4723, 4725, 4734, 4754-95, 4816-40, 4944-69, 4971-75 provided information regarding how Oracle administered its compensation.
- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.
- Oracle's Affirmative Action Program ("AAP") information at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132 provided information related to Oracle's general AAP plan; how Oracle organized its job titles by both Job Group and organization/work force; identified the numbers of its employees in these Job Groups and job titles by: total, gender, total for all minorities, specific totals for individual minorities, and percentages; identified the numbers of its employees in these organizations/work forces and job titles by: salary total, EEO code, female gender total, total for all minorities, specific totals for individual minorities, and percentages; and provided detailed job information for each job position such as: job code, job title, job function, global career level, brief and detailed descriptions and job responsibilities.
- Facts in the articles and filing at BSN DOL 37746-47, 37792, 37795-99, 37803-04, 37809-10, 37818-25, 37827-34, 38754-55, 39442-43, 39446-39790, 39832-74 and at the following URLs:
    - http://www.oracle.com/us/corporate/press/executives/016380.htm;

- http://www.thehindu.com/business/Industry/new-oracle-chiefs-kerala-roots/article6775912.ece;
- https://www.oracle.com/corporate/citizenship/workforce/diversity.html;
- http://guestworkerdata.org/wp-content/uploads/2014/02/H1BNationalFactsheet11_13_13FINAL.pdf;
- http://www.lpfi.org/wp-content/uploads/2015/04/code2040_lpfi_final.pdf;
- http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H1B/h1b-fy-12-characteristics.pdf;
- http://www.nytimes.com/2015/11/11/us/large-companies-game-H1B-visa-program-leaving-smaller-ones-in-the-cold.html;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=0;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=1;
- http://www.epi.org/press/1b-visa-program-attracting-brightest-workers/;
- http://www.epi.org/files/2013/outstanding-talent-high-skilled-immigration.pdf;
- http://www.eeoc.gov/policy/docs/national-origin.html;
- http://www.eeoc.gov/eeoc/newsroom/release/8-28-14.cfm;
- https://blogs.oracle.com/campusrecruitment/entry/my_journey_from_college_to;
- https://www.sec.gov/Archives/edgar/data/1341439/000119312514251351/d725622d10k.htm;
- https://www.usatoday.com/story/tech/2014/10/12/silicon-valley-diversity-tech-hiring-computer-science-graduates-african-american-hispanic/14684211/;
- http://www.sfgate.com/bayarea/article/Oraclescozinesswithgovernmentgoesbackto2820370.Php;
- https://www.eeoc.gov/eeoc/statistics/reports/hightech/;

- https://c.ymcdn.com/sites/ascendleadership.site-ym.com/resource/resmgr/Research/HiddenInPlainSight_Paper_042.pdf;
- http://www.cxotoday.com/story/why-india-is-becoming-so-important-for-oracle/.

Conclusions reached for Paragraph 7:

- The conclusions reached are identified for female employees in the Notice of Violation ("NOV") dated March 11, 2016, at BSN DOL 945-46, 952 and in the chart below.

Class	Number of Female Class Members	Standard Deviations
Female Information Technology Employees	133	-2.71
Female Product Development Employees	1,207	-8.41
Female Support Employees	47	-3.67

Linkage between the facts and the conclusions:

For the statistical results identified in Paragraph 7 of the Amended Complaint, OFCCP relied on databases produced by Oracle during the investigation to conduct them, including the spreadsheets produced in this litigation at BSN DOL 26401-03 in the Native000027 folder and 32196-98 in the Native000033 folder. The methodology OFCCP used to derive these results is explained in the NOV at BSN DOL 945-46, 952.

To reiterate it briefly, OFCCP conducted a standard or ordinary regression analyses of the databases, with the natural log of annual salary as dependent variable, controlling for (1) gender, (2) work experience at Oracle, (3) the employee's age (as a proxy for work experience prior to employment by Oracle), (4) full/part-time status, (5) exempt status, (6) global career level, (7) job specialty and (8) job title. OFCCP grouped these analyses by Job Function at Oracle. These analyses revealed statistically significant disparities in pay for women in the identified LOBs/Job Functions at Oracle, and produced the corresponding standard deviations described in both Attachment A to the NOV and Paragraph 7 of the Amended Complaint. This model and its results are at BSN DOL 5298-5320. The identities of the affected class members

and their comparators are referenced below in response to Interrogatory Nos. 4 and 5 and are incorporated herein by reference.

INTERROGATORY NO. 3:

Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraph 7 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the Interrogatory on the basis that it is compound, vague and ambiguous as to "nature of the facts," "knowledge of the facts," and "contact information." "Nature of facts" is so unintelligible that it is unclear what Oracle is seeking. For example, is nature of the facts the date the person acquired the facts, how he acquired the facts, who he acquired the facts from, the contents of the facts, when the facts occurred, who observed or witnessed the facts, etc. In terms of knowledge of the facts: it is not known if Oracle was referring to personal knowledge, constructive knowledge, third-hand knowledge, hearsay knowledge, etc. It is not clear what Oracle means by contact information, is it a person home telephone number, is it a person's business address, etc.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this

request, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who has knowledge of the discrimination.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP who might have knowledge of the discrimination so that OFCCP can identify all of the people who have knowledge of the discrimination.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" if the nature of the facts includes every fact, however, minor that the person knows regardless of how the person obtained knowledge of the alleged fact.

OFCCP objects to this interrogatory as it is making two distinct information requests in one interrogatory – identify the name, job title and contact information of the person with knowledge, and the content/nature of this knowledge. OFCCP will count this as two interrogatories.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

OFCCP further objects to the Interrogatory to the extent it seeks each individual's contact information for individuals that are represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

Subject to and without waiving the foregoing objections, OFCCP responds that the following persons, excluding OFCCP attorneys at the Office of the Solicitor, may have knowledge of the facts giving rise to the allegations made in the Amended Complaint include: Oracle employees, supervisors and managers employed by Oracle during the review period; former employees, supervisors and managers of Oracle; and OFCCP personnel listed in response to Interrogatory No. 1. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP identifies that all persons (other than persons affiliated with Defendant) who have knowledge of the material facts alleged in Paragraph 7 of the Amended Compliant at the time of filing this Complaint are the people listed in OFCCP's initial and supplemental responses to Interrogatory No. 1.

INTERROGATORY NO. 4:

As to each qualified female employee allegedly discriminated against as referenced in Paragraph 7 of the Amended Complaint, identify by name and job title the comparable male or males employed in similar roles.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil

Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of

forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its response to Interrogatory No. 2, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of male employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable male employees in similar roles to female employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of females in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014 through the present, OFCCP expects that additional males, as well female victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the

whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process. The Compensation Database also known as 2014 Snapshot at BSN DOL 26401 in the Native000027 folder, standing alone, readily identifies the names and job titles of the persons who are the subject of this interrogatory by crossing references the names in columns A & B with the female gender in column D with the Job Function in column H with the title in column G. In column H the Product Development LOB is abbreviated as "PRODEV;" the Support LOB is abbreviated as "SUPP;" and the Information Technology LOB is abbreviated as "INFTECH."

INTERROGATORY NO. 5:

For each qualified female employee allegedly discriminated against as referenced in Paragraph 7 of the Amended Complaint, state all facts that support the allegation that the male(s) identified as similarly situated and comparable were similarly situated and comparable.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2 and 4, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of male employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable male employees in similar roles to female employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of females in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that it determined which roles were similar by reviewing evidence gathered during the compliance review. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014, through the present, OFCCP expects that additional comparable males, as well female victims of discrimination, will be identified. OFCCP will supplement this response as

more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process. The Compensation Database also known as 2014 Snapshot at BSN DOL 26401 in the Native000027 folder, standing alone, readily identifies the names and job titles of the persons who are the subject of this interrogatory by crossing references the names in columns A & B with the male gender in column D with the Job Function/LOB in column H with the title in column G. The process for identifying qualified females was previously identified in response to Interrogatory No. 4 and is incorporated herein by reference.

The male comparators are similarly situated by job function, which is closely aligned with Oracle's Job Functions/LOBs. Females in the Product Development LOB were compared to males in the same LOB as was the case with the Information Technology and Support LOBs. Many of the facts that were identified in response to Interrogatory No. 2 are applicable here and are stated below:

- Compensation Database also known as 2014 snapshot at BSN DOL 26401 in the Native000027 folder. This snapshot provided, inter alia, the following information: person's name, employee identification number, gender, race, job title, Job function/LOB (e.g., Product Development, Support, Information Technology), job specialty, job group

(e.g. PT1), grade, global career level, company tenure, salary, exempt status, part time or full time status, salary, total compensation, estimated prior work experience, H-1B and visa status, and national origin. OFCCP determined the national origin information in column L from the following two websites: http://forebears.co.uk/surnames and http://www.behindthename.com/name/.

- Wage determination memos contained in the LCAs that Oracle provided for employees working under H-1B status at BSN DOL 6523-6620, 6689-6715, 7261-8040, 8100-12674, 33204-35301. These memos, their LCAs and notices provided, inter alia, wage range information for different job titles and position descriptions.
- Wages and job information contained in personnel files and payroll related documents Oracle produced with these personnel files at BSN DOL 30664-31981.
- Interviews of Oracle personnel provided information about Oracle's payroll policies, practices and procedures and how they were implemented at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.
- Oracle's written compensation policies, procedures and practices in its U.S. Employee Handbook (BSN DOL 37217-23), Global Compensation Training Managing Pay Module (BSN DOL 4730-4753), Oracle Compensation Guidelines (BSN DOL 4726-29), Compensation Review & Oversight (BSN DOL 4724), and other compensation documents Oracle provided to OFCCP at BSN DOL 4719, 4721, 4723, 4725, 4734, 4754-95, 4816-40, 4944-69, 4971-75 provided information regarding how Oracle administered its compensation.
- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.

- Oracle's AAP information at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132 provided information related to Oracle's general AAP plan; how Oracle organized its job titles by both Job Group and organization/work force; identified the numbers of its employees in these Job Groups and job titles by: total, gender, total for all minorities, specific totals for individual minorities, and percentages; identified the numbers of its employees in these organizations/work forces and job titles by: salary total, EEO code, female gender total, total for all minorities, specific totals for individual minorities, and percentages; and provided detailed job information for each job position such as: job code, job title, job function, global career level, brief and detailed descriptions and job responsibilities.

INTERROGATORY NO. 6:

State all facts that support the table contained in Paragraph 7, which table contains the headings "Class," "Number of Female Class Members," and "Standard Deviations," including the statistical data used, the analysis and methodologies used, the computations used to determine the standard deviations, and the identities of the female employees.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this Interrogatory to the extent it implies that OFCCP was required to allege statistical data. Statistical data supporting OFCCP's claims of discrimination will be

developed and refined, during and after discovery. Tying OFCCP to a particular set of statistics at the pleading stage would be both unfair and inefficient.2 The time for assessing OFCCP's statistical evidence, including whether it accounts for all relevant variables, is after discovery has closed and the case is tried.[3] Further, it is impossible for OFCCP to make any refinements to statistics in this case until Defendants produce the myriad relevant records they refused to provide to OFCCP and have not yet produced in discovery.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot,

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2 *See Jenkins*, 646 F.Supp.2d 469 ("It would be inappropriate to require a plaintiff to produce statistics to support her disparate impact claim before the plaintiff has had the benefit of discovery").

3 *See Barrett*, 39 F.Supp.3d 430.

Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP also objects to the term "Paragraph 7" as vague and ambiguous because Oracle did not identify the document containing the paragraph 7 to which it refers. OFCCP likewise objects to the terms "statistical data used," "the analysis and methodologies used," the computations used." For these latter three terms the context of "used" it is not known and it is not clear which "statistical data," "analysis," "methodologies" and "computations" that Oracle is referring.

OFCCP objects to this Interrogatory as overbroad, unduly burdensome, oppressive, not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP further objects to producing any in-house statistical analyses performed to include the data, methodology and computations that OFCCP employed. This information is protected under the various privileges asserted above, is irrelevant, and is not proportional to the needs of the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials

outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2, 4 and 5, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of male employees in the Product Development, Support and Information Technology lines of business, as well as their job titles that OFCCP alleges were comparable male employees in similar roles to female employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of females in the Product Development, Support and Information Technology lines of business, as well as their job titles, that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that during the compliance review, OFCCP evaluated and analyzed Oracle's compensation information and found statistically significant pay disparities adverse to female employees after controlling for legitimate explanatory factors in the duct Development, Support and Information Technology lines of business. Within these lines of business, OFCCP controlled for the following factors: job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure/work experience within Oracle. Even after controlling for such factors in the analysis, female employees were paid significantly less than in the Product Development line of business at -8.41 standard deviations, the Support line of business at -3.67 standard deviations and the Information Technology line of business at -2.71 standard deviations. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014 through the present, OFCCP expects that additional comparable males, as well as female victims of discrimination, will be identified in the Product

Development, Support and Information Technology lines of business. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

For the statistical results identified in Paragraph 7 of the Amended Complaint, OFCCP relied on databases produced by Oracle during the investigation to conduct them, including the spreadsheets produced in this litigation at BSN DOL 26401-03 in the Native000027 folder and 32196-98 in the Native000033 folder. The methodology OFCCP used to derive these results is explained in the NOV at BSN DOL 945-46, 952.

To reiterate it briefly, OFCCP conducted a standard or ordinary regression analyses of the databases, with the natural log of annual salary as dependent variable, controlling for (1) gender, (2) work experience at Oracle, (3) the employee's age (as a proxy for work experience prior to employment by Oracle), (4) full/part-time status, (5) exempt status, (6) global career level, (7) job specialty and (8) job title. OFCCP grouped these analyses by job function at Oracle. These analyses revealed statistically significant disparities in pay for women in the identified LOBs/Job Functions at Oracle, and produced the corresponding standard deviations described in both Attachment A to the NOV and Paragraph 7 of the Amended Complaint. This model and its results are at BSN DOL 5298-5320.

INTERROGATORY NO. 7:

State all facts that support the allegation in Paragraph 8 of the Amended Complaint that "Oracle discriminated against qualified African Americans in Product Development roles at Oracle Redwood Shores based upon race by paying them less than comparable Whites employed in similar roles."

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and

obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

Subject to and without waiving the foregoing objections, OFCCP incorporates its response to Interrogatory No. 2, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. OFCCP further responds that during the compliance review of Oracle headquarters, OFCCP evaluated and analyzed Oracle's compensation information and evidence gathered in the investigation and found statistically significant pay disparities based upon race between African Americans and Whites after controlling for legitimate explanatory factors in

the Product Development line of business. Within this line of business, OFCCP controlled for the following factors: job title, full-time/part-time status, exempt status, global career level, job specialty, estimated prior work experience, and work experience at Oracle. Even after controlling for such factors in the analysis, African American employees were paid significantly less than White employees in the Product Development line of business. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

Facts known to OFCCP at the time it filed its Amended Complaint to support the following statement in Paragraph 8 of this Complaint: "Oracle discriminated against qualified African Americans in Product Development roles at Oracle Redwood Shores based upon race by paying them less than comparable Whites employed in similar roles."

- Compensation Database also known as 2014 snapshot at BSN DOL 26401 in the Native000027 folder. This snapshot provided, inter alia, the following information: person's name, employee identification number, gender, race, job title, Job function/LOB (e.g., Product Development, Support, Information Technology), job specialty, job group (e.g. PT1), grade, global career level, company tenure, salary, exempt status, part time or full time status, salary, total compensation, estimated prior work experience, H-1B and

visa status, and national origin. OFCCP determined the national origin information in column L from the following two websites: http://forebears.co.uk/surnames and http://www.behindthename.com/name/.

- Wage determination memos contained in the LCAs that Oracle provided for employees working under H-1B status at BSN DOL 6523-6620, 6689-6715, 7261-8040, 8100-12674, 33204-35301. These memos, their LCAs and notices provided, inter alia, wage range information for different job titles and position descriptions.
- Wages and job information contained in personnel files and payroll related documents Oracle produced with these personnel files at BSN DOL 30664-31981.
- Interviews of Oracle personnel provided information about Oracle's payroll policies, practices and procedures and how they were implemented at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.
- Oracle's written compensation policies, procedures and practices in its U.S. Employee Handbook (BSN DOL 37217-23), Global Compensation Training Managing Pay Module (BSN DOL 4730-4753), Oracle Compensation Guidelines (BSN DOL 4726-29), Compensation Review & Oversight (BSN DOL 4724), and other compensation documents Oracle provided to OFCCP at BSN DOL 4719, 4721, 4723, 4725, 4734, 4754-95, 4816-40, 4944-69, 4971-75 provided information regarding how Oracle administered its compensation.
- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.
- Oracle's AAP information at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132 provided information related to Oracle's general AAP plan; how Oracle organized its job

titles by both Job Group and organization/work force; identified the numbers of its employees in these Job Groups and job titles by: total, gender, total for all minorities, specific totals for individual minorities, and percentages; identified the numbers of its employees in these organizations/work forces and job titles by: salary total, EEO code, female gender total, total for all minorities, specific totals for individual minorities, and percentages; and provided detailed job information for each job position such as: job code, job title, job function, global career level, brief and detailed descriptions and job responsibilities.

- Facts in the articles and filing at BSN DOL 37746-47, 37792, 37795-99, 37803-04, 37809-10, 37818-25, 37827-34, 38754-55, 39442-43, 39446-39790, 39832-74 and at the following URLs:
    - http://www.oracle.com/us/corporate/press/executives/016380.htm;
    - http://www.thehindu.com/business/Industry/new-oracle-chiefs-kerala-roots/article6775912.ece;
    - https://www.oracle.com/corporate/citizenship/workforce/diversity.html;
    - http://guestworkerdata.org/wp-content/uploads/2014/02/H1BNationalFactsheet11_13_13FINAL.pdf;
    - http://www.lpfi.org/wp-content/uploads/2015/04/code2040_lpfi_final.pdf;
    - http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H1B/h1b-fy-12-characteristics.pdf;
    - http://www.nytimes.com/2015/11/11/us/large-companies-game-H1B-visa-program-leaving-smaller-ones-in-the-cold.html;
    - http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=0;
    - http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=1;

- http://www.epi.org/press/1b-visa-program-attracting-brightest-workers/;
- http://www.epi.org/files/2013/outstanding-talent-high-skilled-immigration.pdf;
- http://www.eeoc.gov/policy/docs/national-origin.html;
- http://www.eeoc.gov/eeoc/newsroom/release/8-28-14.cfm; https://blogs.oracle.com/campusrecruitment/entry/my_journey_from_college_to;
- https://www.sec.gov/Archives/edgar/data/1341439/000119312514251351/d725622d10k.htm;
- https://www.usatoday.com/story/tech/2014/10/12/silicon-valley-diversity-tech-hiring-computer-science-graduates-african-american-hispanic/14684211/;
- http://www.sfgate.com/bayarea/article/Oraclescozinesswithgovernmentgoesbackto2820370.Php;
- https://www.eeoc.gov/eeoc/statistics/reports/hightech/;
- https://c.ymcdn.com/sites/ascendleadership.site-ym.com/resource/resmgr/Research/HiddenInPlainSight_Paper_042.pdf;
- http://www.cxotoday.com/story/why-india-is-becoming-so-important-for-oracle/.

Conclusions reached for Paragraph 8:

The conclusions reached are identified for African-American employees in the NOV at BSN DOL 946, 953 wherein African American employees showed a standard deviation of -2.10.

Linkage between the facts and the conclusions:

For the statistical results identified in Paragraph 8 of the Amended Complaint, OFCCP relied on databases produced by Oracle during the investigation to conduct them, including the spreadsheets produced in this litigation at BSN DOL 26401-03 in the Native000027 folder and 32196-98 in the Native000033 folder. The methodology OFCCP used to derive these results is explained in the NOV at BSN DOL 946, 953.

To reiterate it briefly, OFCCP conducted a standard or ordinary regression analysis of the databases, with the natural log of annual salary as dependent variable, controlling for (1)

gender, (2) work experience at Oracle, (3) the employee's age (as a proxy for work experience prior to employment by Oracle), (4) full/part-time status, (5) exempt status, (6) global career level, (7) job specialty and (8) job title. OFCCP grouped these analyses by job function at Oracle. These analyses revealed statistically significant disparities in pay for African Americans in the Product Development Job Function/LOB at Oracle and produced the corresponding standard deviation described in both Attachment A to the NOV and Paragraph 8 of the Amended Complaint. This model and its results are at BSN DOL 5298-5320.

Identification of qualified African Americans and their White comparators:

- The Compensation Database also known as 2014 Snapshot at BSN DOL 26401 in the Native000027 folder, standing alone, readily identifies the names and job titles of the qualified African Americans by crossing references the names in columns A & B with the African American race identifier in column E with the Product Development Job Function/LOB in column H with the title in column G.
- The Compensation Database also known as 2014 Snapshot at BSN DOL 26401 in the Native000027 folder, standing alone, readily identifies the names and job titles of the White comparators by crossing references the names in columns A & B with the White race identifier in column E with the Product Development Job Function/LOB in column H with the title in column G.

INTERROGATORY NO. 8:

Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraph 8 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this

Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the Interrogatory on the basis that it is compound, vague and ambiguous as to "nature of the facts," "knowledge of the facts," and "contact information." "Nature of facts" is so unintelligible that it is unclear what Oracle is seeking. For example, is nature of the facts the date the person acquired the facts, how he acquired the facts, who he acquired the facts from, the contents of the facts, when the facts occurred, who observed or witnessed the facts, etc. In terms of knowledge of the facts: it is not known if Oracle was referring to personal knowledge, constructive knowledge, third-hand knowledge, hearsay knowledge, etc. It is not clear what Oracle means by contact information, is it a person home telephone number, is it a person's business address, etc.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this request, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who has knowledge of the discrimination.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP everyone who might have knowledge of the

discrimination so that OFCCP can identify all of the people who have knowledge of the discrimination.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" if the nature of the facts includes every fact, however, minor that the person knows regardless of how the person obtained knowledge of the alleged fact.

OFCCP objects to this interrogatory as it is making two distinct information requests in one interrogatory – identify the name, job title and contact information of the person with knowledge, and the content/nature of this knowledge. OFCCP will count this as two interrogatories.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

OFCCP further objects to the request to the extent it seeks each individual's contact information on the grounds of the Privacy Act and that they are represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

Subject to and without waiving the foregoing objections, OFCCP responds that the following persons, excluding OFCCP attorneys at the Office of the Solicitor, may have knowledge of the facts giving rise to the allegations made in the Amended Complaint include: Oracle employees, supervisors and managers employed by Oracle during the review period; former employees, supervisors and managers of Oracle; and OFCCP personnel listed in response to Interrogatory No. 1. OFCCP will supplement this response as more documents and

data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP identifies that all persons (other than persons affiliated with Defendant) who have knowledge of the material facts alleged in Paragraph 8 of the Amended Compliant at the time of filing this Complaint are the people listed in OFCCP's initial and supplemental responses to Interrogatory No. 1.

INTERROGATORY NO. 9:

As to each African American allegedly discriminated against as referenced in Paragraph 8 of the Amended Complaint, identify by name and job title the comparable White or Whites employed in similar roles.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See*

cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials

outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2 and 7, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to African American employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of African Americans in the Product Development line of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014, through the present, OFCCP expects that additional Whites, as well African American victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used

during the investigation and conciliation process. OFCCP identifies that its response to Interrogatory No. 7 identifies the qualified African Americans and their White comparators and is incorporated herein by reference.

INTERROGATORY NO. 10:

For each qualified African American allegedly discriminated against as referenced in Paragraph 8 of the Amended Complaint, state all facts that support the allegation that the White employee(s) identified as similarly situated and comparable were similarly situated and comparable.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information

responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2, 7 and 9, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to African American employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of African Americans in the Product Development line of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that it determined which roles were similar by reviewing evidence gathered during the compliance review. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014, through the present, OFCCP expects that additional Whites, as well African American victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing

may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

The White comparators are similarly situated by Job Function, which is closely aligned with Oracle's LOB's. The identification of the qualified African Americans and their White comparators was identified in OFCCP's response to Interrogatory No. 7 and is incorporated herein by reference. Many of the facts that were listed in response to Interrogatory No. 7 are applicable here and are stated below:

- Compensation Database also known as 2014 snapshot at BSN DOL 26401 in the Native000027 folder. This snapshot provided, inter alia, the following information: person's name, employee identification number, gender, race, job title, Job function/LOB (e.g., Product Development, Support, Information Technology), job specialty, job group (e.g. PT1), grade, global career level, company tenure, salary, exempt status, part time or full time status, salary, total compensation, estimated prior work experience, H-1B and visa status, and national origin. OFCCP determined the national origin information in column L from the following two websites: http://forebears.co.uk/surnames and http://www.behindthename.com/name/.
- Wage determination memos contained in the LCAs that Oracle provided for employees working under H-1B status at BSN DOL 6523-6620, 6689-6715, 7261-8040, 8100-12674, 33204-35301. These memos, their LCAs and notices provided, inter alia, wage range information for different job titles and position descriptions.
- Wages and job information contained in personnel files and payroll related documents Oracle produced with these personnel files at BSN DOL 30664-31981.
- Interviews of Oracle personnel provided information about Oracle's payroll policies, practices and procedures and how they were implemented at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.

- Oracle's written compensation policies, procedures and practices in its U.S. Employee Handbook (BSN DOL 37217-23), Global Compensation Training Managing Pay Module (BSN DOL 4730-4753), Oracle Compensation Guidelines (BSN DOL 4726-29), Compensation Review & Oversight (BSN DOL 4724), and other compensation documents Oracle provided to OFCCP at BSN DOL 4719, 4721, 4723, 4725, 4734, 4754-95, 4816-40, 4944-69, 4971-75 provided information regarding how Oracle administered its compensation.
- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.
- Oracle's AAP information at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132 provided information related to Oracle's general AAP plan; how Oracle organized its job titles by both Job Group and organization/work force; identified the numbers of its employees in these Job Groups and job titles by: total, gender, total for all minorities, specific totals for individual minorities, and percentages; identified the numbers of its employees in these organizations/work forces and job titles by: salary total, EEO code, female gender total, total for all minorities, specific totals for individual minorities, and percentages; and provided detailed job information for each job position such as: job code, job title, job function, global career level, brief and detailed descriptions and job responsibilities.

INTERROGATORY NO. 11:

State all facts that support the allegation contained in Paragraph 8 of the Amended Complaint that there was a standard deviation of -2.10, including the statistical data used, the

analysis and methodologies used, and the computations used to determine the standard deviations.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this Interrogatory to the extent it implies that OFCCP was required to allege statistical data. Statistical data supporting OFCCP's claims of discrimination will be developed and refined, during and after discovery. Tying OFCCP to a particular set of statistics at the pleading stage would be both unfair and inefficient.4 The time for assessing OFCCP's statistical evidence, including whether it accounts for all relevant variables, is after discovery has closed and the case is tried.5 Further, it is impossible for OFCCP to make any refinements to statistics in this case until Defendants produce the myriad relevant records they refused to provide to OFCCP and have not yet provided in discovery.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See*

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[4] *See Jenkins*, 646 F.Supp.2d 469 ("It would be inappropriate to require a plaintiff to produce statistics to support her disparate impact claim before the plaintiff has had the benefit of discovery").

[5] *See Barrett*, 39 F.Supp.3d 430.

cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP likewise objects to the terms "statistical data used," "the analysis and methodologies used," the computations used." For these latter three terms the context of "used" it is not known and it is not clear which "statistical data," "analysis," "methodologies" and "computations" that Oracle is referring.

OFCCP objects to this Interrogatory as overbroad, unduly burdensome, oppressive, not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP further objects to producing any in-house statistical analyses performed to include the data, methodology and computations that OFCCP employed. This information is protected under the various privileges asserted above, is irrelevant, and is not proportional to the needs of the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2, 7, 9 and 10, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to African American employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of African American in the Product Development line of business, as well as their job titles, that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that during the compliance review, OFCCP evaluated and analyzed Oracle's compensation information and

found statistically significant pay disparities adverse to African American employees after controlling for legitimate explanatory factors in the Product Development line of business. Within this line of business, OFCCP controlled for the following factors: job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure/Oracle work experience. Even after controlling for such factors in the analysis, African American employees were paid significantly less than White employees in the Product Development line of business at -2.10 standard deviations. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014 through the present, OFCCP expects that additional comparable Whites, as well as African American victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

Facts known to OFCCP at the time it filed its Amended Complaint to support the allegation contained in Paragraph 8 of the Amended Complaint that there was a standard deviation of -2.10, including the statistical data used, the analysis and methodologies used, and the computations used to determine the standard deviations.

- Compensation Database also known as 2014 snapshot at BSN DOL 26401 in the Native000027 folder. This snapshot provided, inter alia, the following information: person's name, employee identification number, gender, race, job title, Job function/LOB (e.g., Product Development, Support, Information Technology), job specialty, job group (e.g. PT1), grade, global career level, company tenure, salary, exempt status, part time or full time status, salary, total compensation, estimated prior work experience, H-1B and visa status, and national origin. OFCCP determined the national origin information in column L from the following two websites: http://forebears.co.uk/surnames and http://www.behindthename.com/name/.
- Wage determination memos contained in the LCAs that Oracle provided for employees working under H-1B status at BSN DOL 6523-6620, 6689-6715, 7261-8040, 8100-12674, 33204-35301. These memos, their LCAs and notices provided, inter alia, wage range information for different job titles and position descriptions.
- Wages and job information contained in personnel files and payroll related documents Oracle produced with these personnel files at BSN DOL 30664-31981.
- Interviews of Oracle personnel provided information about Oracle's payroll policies, practices and procedures and how they were implemented at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.
- Oracle's written compensation policies, procedures and practices in its U.S. Employee Handbook (BSN DOL 37217-23), Global Compensation Training Managing Pay Module (BSN DOL 4730-4753), Oracle Compensation Guidelines (BSN DOL 4726-29), Compensation Review & Oversight (BSN DOL 4724), and other compensation documents Oracle provided to OFCCP at BSN DOL 4719, 4721, 4723, 4725, 4734, 4754-95, 4816-40, 4944-69, 4971-75 provided information regarding how Oracle administered its compensation.

- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.
- Oracle's AAP information at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132 provided information related to Oracle's general AAP plan; how Oracle organized its job titles by both Job Group and organization/work force; identified the numbers of its employees in these Job Groups and job titles by: total, gender, total for all minorities, specific totals for individual minorities, and percentages; identified the numbers of its employees in these organizations/work forces and job titles by: salary total, EEO code, female gender total, total for all minorities, specific totals for individual minorities, and percentages; and provided detailed job information for each job position such as: job code, job title, job function, global career level, brief and detailed descriptions and job responsibilities.
- Facts in the articles and filing at BSN DOL 37746-47, 37792, 37795-99, 37803-04, 37809-10, 37818-25, 37827-34, 38754-55, 39442-43, 39446-39790, 39832-74 and at the following URLs:
    - http://www.oracle.com/us/corporate/press/executives/016380.htm;
    - http://www.thehindu.com/business/Industry/new-oracle-chiefs-kerala-roots/article6775912.ece;
    - https://www.oracle.com/corporate/citizenship/workforce/diversity.html;
    - http://guestworkerdata.org/wp-content/uploads/2014/02/H1BNationalFactsheet11_13_13FINAL.pdf;
    - http://www.lpfi.org/wp-content/uploads/2015/04/code2040_lpfi_final.pdf;

- http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H1B/h1b-fy-12-characteristics.pdf;
- http://www.nytimes.com/2015/11/11/us/large-companies-game-H1B-visa-program-leaving-smaller-ones-in-the-cold.html;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=0;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=1;
- http://www.epi.org/press/1b-visa-program-attracting-brightest-workers/;
- http://www.epi.org/files/2013/outstanding-talent-high-skilled-immigration.pdf;
- http://www.eeoc.gov/policy/docs/national-origin.html;
- http://www.eeoc.gov/eeoc/newsroom/release/8-28-14.cfm; https://blogs.oracle.com/campusrecruitment/entry/my_journey_from_college_to;
- https://www.sec.gov/Archives/edgar/data/1341439/000119312514251351/d725622d10k.htm;
- https://www.usatoday.com/story/tech/2014/10/12/silicon-valley-diversity-tech-hiring-computer-science-graduates-african-american-hispanic/14684211/;
- http://www.sfgate.com/bayarea/article/Oraclescozinesswithgovernmentgoesbacktо2820370.Php;
- https://www.eeoc.gov/eeoc/statistics/reports/hightech/;
- https://c.ymcdn.com/sites/ascendleadership.site-ym.com/resource/resmgr/Research/HiddenInPlainSight_Paper_042.pdf;
- http://www.cxotoday.com/story/why-india-is-becoming-so-important-for-oracle/.

Data, analysis, method and computations used:

For the statistical results identified in Paragraph 8 of the Amended Complaint, OFCCP relied on databases produced by Oracle during the investigation to conduct them, including the

spreadsheets produced in this litigation at BSN DOL 26401-03 in the Native000027 folder and 32196-98 in the Native000033 folder. The methodology OFCCP used to derive these results is explained in the NOV at BSN DOL 946, 953.

To reiterate it briefly, OFCCP conducted a standard or ordinary regression analysis of the databases, with the natural log of annual salary as dependent variable, controlling for (1) gender, (2) work experience at Oracle, (3) the employee's age (as a proxy for work experience prior to employment by Oracle), (4) full/part-time status, (5) exempt status, (6) global career level, (7) job specialty and (8) job title. OFCCP grouped these analyses by Job Function at Oracle. These analyses revealed statistically significant disparities in pay for African Americans in the Product Development Job Function/LOB at Oracle and produced the corresponding standard deviation described in both Attachment A to the NOV and Paragraph 8 of the Amended Complaint. This model and its results are at BSN DOL 5298-5320.

INTERROGATORY NO. 12:

State all facts that support the allegation in Paragraph 9 of the Amended Complaint that "Oracle discriminated against qualified Asians in Product Development roles at Oracle Redwood Shores based upon race by paying them less than comparable Whites employed in similar roles."

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

Subject to and without waiving the foregoing objections, OFCCP incorporates its response to Interrogatory No. 2, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. OFCCP further responds that during the compliance review of Oracle headquarters, OFCCP evaluated and analyzed Oracle's compensation information and evidence gathered in the investigation and found statistically significant pay disparities based upon race between Asians and Whites after controlling for legitimate explanatory factors. Within this line of business, OFCCP controlled for the following factors: job title, full-time/part-time status, exempt status, global career level, job specialty, estimated prior work experience, and work experience at Oracle. Even after controlling for such factors in the analysis, Asian employees were paid significantly less than White employees in the Product Development line of business. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing

may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

Facts known to OFCCP at the time it filed its Amended Complaint to support the following statement in Paragraph 9 of this Complaint: "Oracle discriminated against qualified Asians in Product Development roles at Oracle Redwood Shores based upon race by paying them less than comparable Whites employed in similar roles."

- Compensation Database also known as 2014 snapshot at BSN DOL 26401 in the Native000027 folder. This snapshot provided, inter alia, the following information: person's name, employee identification number, gender, race, job title, Job function/LOB (e.g., Product Development, Support, Information Technology), job specialty, job group (e.g. PT1), grade, global career level, company tenure, salary, exempt status, part time or full time status, salary, total compensation, estimated prior work experience, H-1B and visa status, and national origin. OFCCP determined the national origin information in column L from the following two websites: http://forebears.co.uk/surnames and http://www.behindthename.com/name/.
- Wage determination memos contained in the LCAs that Oracle provided for employees working under H-1B status at BSN DOL 6523-6620, 6689-6715, 7261-8040, 8100-12674, 33204-35301. These memos, their LCAs and notices provided, inter alia, wage range information for different job titles and position descriptions.
- Wages and job information contained in personnel files and payroll related documents Oracle produced with these personnel files at BSN DOL 30664-31981.
- Interviews of Oracle personnel provided information about Oracle's payroll policies, practices and procedures and how they were implemented at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.
- Oracle's written compensation policies, procedures and practices in its U.S. Employee Handbook (BSN DOL 37217-23), Global Compensation Training Managing Pay Module

(BSN DOL 4730-4753), Oracle Compensation Guidelines (BSN DOL 4726-29), Compensation Review & Oversight (BSN DOL 4724), and other compensation documents Oracle provided to OFCCP at BSN DOL 4719, 4721, 4723, 4725, 4734, 4754-95, 4816-40, 4944-69, 4971-75 provided information regarding how Oracle administered its compensation.

- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.
- Oracle's AAP information at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132 provided information related to Oracle's general AAP plan; how Oracle organized its job titles by both Job Group and organization/work force; identified the numbers of its employees in these Job Groups and job titles by: total, gender, total for all minorities, specific totals for individual minorities, and percentages; identified the numbers of its employees in these organizations/work forces and job titles by: salary total, EEO code, female gender total, total for all minorities, specific totals for individual minorities, and percentages; and provided detailed job information for each job position such as: job code, job title, job function, global career level, brief and detailed descriptions and job responsibilities.
- Facts in the articles and filing at BSN DOL 37746-47, 37792, 37795-99, 37803-04, 37809-10, 37818-25, 37827-34, 38754-55, 39442-43, 39446-39790, 39832-74 and at the following URLs:
    - http://www.oracle.com/us/corporate/press/executives/016380.htm;
    - http://www.thehindu.com/business/Industry/new-oracle-chiefs-kerala-roots/article6775912.ece;

- https://www.oracle.com/corporate/citizenship/workforce/diversity.html;
- http://guestworkerdata.org/wp-content/uploads/2014/02/H1BNationalFactsheet11_13_13FINAL.pdf;
- http://www.lpfi.org/wp-content/uploads/2015/04/code2040_lpfi_final.pdf;
- http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H1B/h1b-fy-12-characteristics.pdf;
- http://www.nytimes.com/2015/11/11/us/large-companies-game-H1B-visa-program-leaving-smaller-ones-in-the-cold.html;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=0;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=1;
- http://www.epi.org/press/1b-visa-program-attracting-brightest-workers/;
- http://www.epi.org/files/2013/outstanding-talent-high-skilled-immigration.pdf;
- http://www.eeoc.gov/policy/docs/national-origin.html;
- http://www.eeoc.gov/eeoc/newsroom/release/8-28-14.cfm;
- https://blogs.oracle.com/campusrecruitment/entry/my_journey_from_college_to;
- https://www.sec.gov/Archives/edgar/data/1341439/000119312514251351/d725622d10k.htm;
- https://www.usatoday.com/story/tech/2014/10/12/silicon-valley-diversity-tech-hiring-computer-science-graduates-african-american-hispanic/14684211/;
- http://www.sfgate.com/bayarea/article/Oraclescozinesswithgovernmentgoesbackto2820370.Php;
- https://www.eeoc.gov/eeoc/statistics/reports/hightech/;
- https://c.ymcdn.com/sites/ascendleadership.site-ym.com/resource/resmgr/Research/HiddenInPlainSight_Paper_042.pdf;

- http://www.cxotoday.com/story/why-india-is-becoming-so-important-for-oracle/.

Conclusions reached for Paragraph 9:

The conclusions reached are identified for Asian employees in the NOV at BSN DOL 947, 953 wherein Asian employees showed a standard deviation of -6.55.

Linkage between the facts and the conclusions:

For the statistical results identified in Paragraph 9 of the Amended Complaint, OFCCP relied on databases produced by Oracle during the investigation to conduct them, including the spreadsheets produced in this litigation at BSN DOL 26401-03 in the Native000027 folder and 32196-98 in the Native000033 folder. The methodology OFCCP used to derive these results is explained in the NOV at BSN DOL 947, 953.

To reiterate it briefly, OFCCP conducted a standard or ordinary regression analysis of the databases, with the natural log of annual salary as dependent variable, controlling for (1) gender, (2) work experience at Oracle, (3) the employee's age (as a proxy for work experience prior to employment by Oracle), (4) full/part-time status, (5) exempt status, (6) global career level, (7) job specialty and (8) job title. OFCCP grouped these analyses by Job Function at Oracle. These analyses revealed statistically significant disparities in pay for Asians in the Product Development Job Function/LOB at Oracle and produced the corresponding standard deviation described in both Attachment A to the NOV and Paragraph 9 of the Amended Complaint. This model and its results are at BSN DOL 5298-5320.

INTERROGATORY NO. 13:

Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraph 9 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the Interrogatory on the basis that it is compound, vague and ambiguous as to "nature of the facts," "knowledge of the facts," and "contact information." "Nature of facts" is so unintelligible that it is unclear what Oracle is seeking. For example, is nature of the facts the date the person acquired the facts, how he acquired the facts, who he acquired the facts from, the contents of the facts, when the facts occurred, who observed or witnessed the facts, etc. In terms of knowledge of the facts: it is not known if Oracle was referring to personal knowledge, constructive knowledge, third-hand knowledge, hearsay knowledge, etc. It is not clear what Oracle means by contact information, is it a person home telephone number, is it a person's business address, etc.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this Interrogatory, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who has knowledge of the discrimination.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP still further objects because the interrogatory calls for speculation if Oracle does not make everyone available to OFCCP everyone who might have knowledge of the discrimination so that OFCCP can identify all of the people who have knowledge of the discrimination.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" if the nature of the facts includes every fact, however, minor that the person knows regardless of how the person obtained knowledge of the alleged fact.

OFCCP objects to this interrogatory as it is making two distinct information requests in one interrogatory – identify the name, job title and contact information of the person with knowledge, and the content/nature of this knowledge. OFCCP will count this as two interrogatories.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

OFCCP further objects to the Interrogatory to the extent it seeks each individual's contact information on the grounds of the Privacy Act and that they are represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

Subject to and without waiving the foregoing objections, OFCCP responds that the following persons, excluding OFCCP attorneys at the Office of the Solicitor, may have knowledge of the facts giving rise to the allegations made in the Amended Complaint include: Oracle employees, supervisors and managers employed by Oracle during the review period; former employees, supervisors and managers of Oracle; and OFCCP personnel listed in

response to Interrogatory No. 1. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP identifies that all persons (other than persons affiliated with Defendant) who have knowledge of the material facts alleged in Paragraph 9 of the Amended Compliant at the time of filing this Complaint are the people listed in OFCCP's initial and supplemental responses to Interrogatory No. 1.

INTERROGATORY NO. 14:

As to each Asian allegedly discriminated against as referenced in Paragraph 9 of the Amended Complaint, identify by name and job title the comparable White or Whites employed in similar roles.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the

information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials

outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2 and 12, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to Asian employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of Asians in the Product Development line of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014, through the present, OFCCP expects that additional Whites, as well Asian victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing

may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

- The Compensation Database also known as 2014 Snapshot at BSN DOL 26401 in the Native000027 folder, standing alone, readily identifies the names and job titles of the qualified Asians by crossing references the names in columns A & B with the Asian race identifier in column E with the Product Development Job Function/LOB in column H with the title in column G.
- The Compensation Database also known as 2014 Snapshot at BSN DOL 26401 in the Native000027 folder, standing alone, readily identifies the names and job titles of the White comparators by crossing references the names in columns A & B with the White race identifier in column E with the Product Development Job Function/LOB in column H with the title in column G.

INTERROGATORY NO. 15:

For each qualified Asian allegedly discriminated against as referenced in Paragraph 9 of the Amended Complaint, state all facts that support the allegation that the White employee(s) identified as similarly situated and comparable were similarly situated and comparable.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2, 12 and 14, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable White employees in similar roles to Asian employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of Asians in the Product Development line of business, as well as their job titles that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that it determined which roles were similar by reviewing evidence gathered during the compliance review. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014, through the present, OFCCP expects that additional Whites, as well Asian victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

The White comparators are similarly situated by Job Function, which is closely aligned with Oracle's LOB's. The identification of the qualified Asians and their White comparators was identified in OFCCP's response to Interrogatory No. 14 and is incorporated herein by reference. Many of the facts that were listed in response to Interrogatory No. 12 are applicable here and are stated below:

- Compensation Database also known as 2014 snapshot at BSN DOL 26401 in the Native000027 folder. This snapshot provided, inter alia, the following information: person's name, employee identification number, gender, race, job title, Job function/LOB (e.g., Product Development, Support, Information Technology), job specialty, job group (e.g. PT1), grade, global career level, company tenure, salary, exempt status, part time or full time status, salary, total compensation, estimated prior work experience, H-1B and visa status, and national origin. OFCCP determined the national origin information in column L from the following two websites: http://forebears.co.uk/surnames and http://www.behindthename.com/name/.
- Wage determination memos contained in the LCAs that Oracle provided for employees working under H-1B status at BSN DOL 6523-6620, 6689-6715, 7261-8040, 8100-

12674, 33204-35301. These memos, their LCAs and notices provided, inter alia, wage range information for different job titles and position descriptions.

- Wages and job information contained in personnel files and payroll related documents Oracle produced with these personnel files at BSN DOL 30664-31981.
- Interviews of Oracle personnel provided information about Oracle's payroll policies, practices and procedures and how they were implemented at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.
- Oracle's written compensation policies, procedures and practices in its U.S. Employee Handbook (BSN DOL 37217-23), Global Compensation Training Managing Pay Module (BSN DOL 4730-4753), Oracle Compensation Guidelines (BSN DOL 4726-29), Compensation Review & Oversight (BSN DOL 4724), and other compensation documents Oracle provided to OFCCP at BSN DOL 4719, 4721, 4723, 4725, 4734, 4754-95, 4816-40, 4944-69, 4971-75 provided information regarding how Oracle administered its compensation.
- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.
- Oracle's AAP information at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132 provided information related to Oracle's general AAP plan; how Oracle organized its job titles by both Job Group and organization/work force; identified the numbers of its employees in these Job Groups and job titles by: total, gender, total for all minorities, specific totals for individual minorities, and percentages; identified the numbers of its employees in these organizations/work forces and job titles by: salary total, EEO code, female gender total, total for all minorities, specific totals for individual minorities, and

percentages; and provided detailed job information for each job position such as: job code, job title, job function, global career level, brief and detailed descriptions and job responsibilities.

INTERROGATORY NO. 16:

State all facts that support the allegation contained in Paragraph 9 of the Amended Complaint that there was a standard deviation of -6.55, including the statistical data used, the analysis and methodologies used, and the computations used to determine the standard deviations.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this Interrogatory to the extent it implies that OFCCP was required to allege statistical data. Statistical data supporting OFCCP's claims of discrimination will be developed and refined, during and after discovery. Tying OFCCP to a particular set of statistics at the pleading stage would be both unfair and inefficient.[6] The time for assessing OFCCP's statistical evidence, including whether it accounts for all relevant variables, is after discovery has closed and the case is tried.[7] Further, it is impossible for OFCCP to make any refinements

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[6] *See Jenkins*, 646 F.Supp.2d 469 ("It would be inappropriate to require a plaintiff to produce statistics to support her disparate impact claim before the plaintiff has had the benefit of discovery").

[7] *See Barrett*, 39 F.Supp.3d 430.

to statistics in this case until Defendants produce the myriad relevant records they refused to provide to OFCCP and have not yet provided in discovery.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of

forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP likewise objects to the terms "statistical data used," "the analysis and methodologies used," the computations used." For these latter three terms the context of "used" it is not known and it is not clear which "statistical data," "analysis," "methodologies" and "computations" that Oracle is referring.

OFCCP objects to this Interrogatory as overbroad, unduly burdensome, oppressive, not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP further objects to producing any in-house statistical analyses performed to include the data, methodology and computations that OFCCP employed. This information is protected under the various privileges asserted above, is irrelevant, and is not proportional to the needs of the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its responses to Interrogatory Nos. 2, 12, 14 and 15, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot. The compensation database provided to OFCCP by Oracle lists the names of White employees in the Information Technology, Support, and Product Development lines of business, as well as their job titles that OFCCP alleges were comparable

White employees in similar roles to Asian employees based on the snapshot of data Oracle provided as of January 1, 2014. The compensation database provided to OFCCP by Oracle also lists the names of Asians in the Product Development line of business, as well as their job titles, that OFCCP alleges were victims of discrimination based on the snapshot of data Oracle provided as of January 1, 2014. OFCCP further responds that during the compliance review, OFCCP evaluated and analyzed Oracle's compensation information and found statistically significant pay disparities adverse to Asian employees after controlling for legitimate explanatory factors in the Product Development line of business. Within this line of business, OFCCP controlled for the following factors: job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure/Oracle work experience. Even after controlling for such factors in the analysis, Asian employees were paid significantly less than White employees in the Product Development line of business at -6.55 standard deviations. As more data is produced, including data from 2013 and since the snapshot from January 1, 2014 through the present, OFCCP expects that additional comparable Whites, as well as Asian victims of discrimination, will be identified. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

Facts known to OFCCP at the time it filed its Amended Complaint to support the allegation contained in Paragraph 9 of the Amended Complaint that there was a standard deviation of -6.55, including the statistical data used, the analysis and methodologies used, and the computations used to determine the standard deviations.

- Compensation Database also known as 2014 snapshot at BSN DOL 26401 in the Native000027 folder. This snapshot provided, inter alia, the following information: person's name, employee identification number, gender, race, job title, Job function/LOB (e.g., Product Development, Support, Information Technology), job specialty, job group (e.g. PT1), grade, global career level, company tenure, salary, exempt status, part time or full time status, salary, total compensation, estimated prior work experience, H-1B and visa status, and national origin. OFCCP determined the national origin information in column L from the following two websites: http://forebears.co.uk/surnames and http://www.behindthename.com/name/.
- Wage determination memos contained in the LCAs that Oracle provided for employees working under H-1B status at BSN DOL 6523-6620, 6689-6715, 7261-8040, 8100-12674, 33204-35301. These memos, their LCAs and notices provided, inter alia, wage range information for different job titles and position descriptions.
- Wages and job information contained in personnel files and payroll related documents Oracle produced with these personnel files at BSN DOL 30664-31981.
- Interviews of Oracle personnel provided information about Oracle's payroll policies, practices and procedures and how they were implemented at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.
- Oracle's written compensation policies, procedures and practices in its U.S. Employee Handbook (BSN DOL 37217-23), Global Compensation Training Managing Pay Module (BSN DOL 4730-4753), Oracle Compensation Guidelines (BSN DOL 4726-29), Compensation Review & Oversight (BSN DOL 4724), and other compensation

documents Oracle provided to OFCCP at BSN DOL 4719, 4721, 4723, 4725, 4734, 4754-95, 4816-40, 4944-69, 4971-75 provided information regarding how Oracle administered its compensation.

- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.
- Oracle's AAP information at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132 provided information related to Oracle's general AAP plan; how Oracle organized its job titles by both Job Group and organization/work force; identified the numbers of its employees in these Job Groups and job titles by: total, gender, total for all minorities, specific totals for individual minorities, and percentages; identified the numbers of its employees in these organizations/work forces and job titles by: salary total, EEO code, female gender total, total for all minorities, specific totals for individual minorities, and percentages; and provided detailed job information for each job position such as: job code, job title, job function, global career level, brief and detailed descriptions and job responsibilities.
- Facts in the articles and filing at BSN DOL 37746-47, 37792, 37795-99, 37803-04, 37809-10, 37818-25, 37827-34, 38754-55, 39442-43, 39446-39790, 39832-74 and at the following URLs:
    - http://www.oracle.com/us/corporate/press/executives/016380.htm;
    - http://www.thehindu.com/business/Industry/new-oracle-chiefs-kerala-roots/article6775912.ece;
    - https://www.oracle.com/corporate/citizenship/workforce/diversity.html;

- http://guestworkerdata.org/wp-content/uploads/2014/02/H1BNationalFactsheet11_13_13FINAL.pdf;
- http://www.lpfi.org/wp-content/uploads/2015/04/code2040_lpfi_final.pdf;
- http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H1B/h1b-fy-12-characteristics.pdf;
- http://www.nytimes.com/2015/11/11/us/large-companies-game-H1B-visa-program-leaving-smaller-ones-in-the-cold.html;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=0;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=1;
- http://www.epi.org/press/1b-visa-program-attracting-brightest-workers/;
- http://www.epi.org/files/2013/outstanding-talent-high-skilled-immigration.pdf;
- http://www.eeoc.gov/policy/docs/national-origin.html;
- http://www.eeoc.gov/eeoc/newsroom/release/8-28-14.cfm; https://blogs.oracle.com/campusrecruitment/entry/my_journey_from_college_to;
- https://www.sec.gov/Archives/edgar/data/1341439/000119312514251351/d725622d10k.htm;
- https://www.usatoday.com/story/tech/2014/10/12/silicon-valley-diversity-tech-hiring-computer-science-graduates-african-american-hispanic/14684211/;
- http://www.sfgate.com/bayarea/article/Oraclescozinesswithgovernmentgoesbackto2820370.Php;
- https://www.eeoc.gov/eeoc/statistics/reports/hightech/;
- https://c.ymcdn.com/sites/ascendleadership.site-ym.com/resource/resmgr/Research/HiddenInPlainSight_Paper_042.pdf;
- http://www.cxotoday.com/story/why-india-is-becoming-so-important-for-oracle/.

Data, analysis, method and computations used:

For the statistical results identified in Paragraph 9 of the Amended Complaint, OFCCP relied on databases produced by Oracle during the investigation to conduct them, including the spreadsheets produced in this litigation at BSN DOL 26401-03 in the Native000027 folder and 32196-98 in the Native000033 folder. The methodology OFCCP used to derive these results is explained in the NOV at BSN DOL 947, 953.

To reiterate it briefly, OFCCP conducted a standard or ordinary regression analysis of the databases, with the natural log of annual salary as dependent variable, controlling for (1) gender, (2) work experience at Oracle, (3) the employee's age (as a proxy for work experience prior to employment by Oracle), (4) full/part-time status, (5) exempt status, (6) global career level, (7) job specialty and (8) job title. OFCCP grouped these analyses by Job Function at Oracle. These analyses revealed statistically significant disparities in pay for Asians in the Product Development Job Function/LOB at Oracle and produced the corresponding standard deviation described in both Attachment A to the NOV and Paragraph 9 of the Amended Complaint. This model and its results are at BSN DOL 5298-5320.

INTERROGATORY NO. 17:

State all facts that support the allegation in Paragraph 10 of the Amended Complaint, that "Oracle utilized . . . a recruiting and hiring process that discriminates against [non-Asian] applicants in favor of Asian applicants, . . . based upon race for positions in the [PT1] job group and Product Development line of business" at HQCA.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant

privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that

OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

Subject to and without waiving the foregoing objections, OFCCP incorporates its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the hiring databases that Oracle provided to OFCCP. OFCCP further responds that that upon initiating a compliance review of Oracle's headquarters in Redwood Shores, California, OFCCP conducted a comprehensive analysis and evaluation of the hiring and employment practices of Oracle, the written affirmative action program (AAP), and the results of the affirmative action efforts undertaken by Oracle, including a desk audit, on-site review and off-site analysis.

Specifically, OFCCP analyzed and evaluated Oracle's AAP and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether Oracle complied with the requirements of the Executive Order, VEVRRA, Section 503 and their implementing regulations, including but not limited to: employment policies, practices, records, and actions; management, human resources, non-management employee, and former employee statements; employee complaints; one-year of individual employee compensation data and other evidence; Labor Condition Applications; Oracle's compliance history by reviewing OFCCP internal database system, and review any information received from EEOC, State or local FEP, and/or other labor and employment agencies, such as the Department of Labor's Veterans' Employment and Training Service and Wage and Hour Division, and publically available

company information; and Oracle's hiring data, workforce data and appropriate labor market workforce availability statistics. OFCCP also obtained and analyzed any complaints filed against Oracle through the Equal Employment Opportunity Commission (EEOC), the State and/or Local Fair Employment Practice (FEP) agency, and/or other government agencies. Additionally, OFCCP requested additional information from Oracle during the compliance review that Oracle withheld (*see* Amended Complaint ¶¶ 11-15) that is relevant to a determination of whether Oracle complied with the requirements of the Executive Order and the regulations.

During the compliance review of Oracle headquarters, OFCCP evaluated and analyzed Oracle's recruiting and hiring information and evidence gathered in the investigation and found statistically significant hiring disparities based upon race. OFCCP used U.S. Census data and other workforce data reflecting the potential applicant and hiring pools to evaluate recruiting and hiring decisions for U.S. jobs. This data use is consistent with Title VII and relevant case law to perform this analysis because it was inappropriate to use Oracle's pools.

Specifically, an analysis of Oracle's Professional Technical 1, Individual Contributor ("PT1") applicant data uncovered gross disparities between the expected applicant rate (availability) and the actual applicant rate. In these entry-level technical roles, the Asian applicant rate was over 75%, compared to less than 30% in the available workforce in the relevant labor market. Among Oracle's college applicants, the overrepresentation of Asians was even more extreme: the Asian applicant rate was 85% in 2013 and 92% in 2014. Based upon this data and OFCCP's analysis of Oracle's applicant data and appropriate workforce availability statistics, OFCCP found that Oracle favored Asian applicants, particularly Asian Indians, in recruiting at a standard deviation as significant as +85 and found race disparities in Oracle's recruiting practices against African American, Hispanic and White applicants.

Similarly, OFCCP found gross disparities between the available workforce in the relevant U.S. labor market and Oracle's hires in PT1. In PT1 roles, OFCCP found race

disparities in Oracle's hiring practices against African American, Hispanic and White applicants. Notably, even with such a skewed applicant pool in favor of Asians, Oracle's Asian hiring rate significantly exceeded it -- by more than 6% . Compared to approximately 75% Asian applicants (and 74% Asian incumbents), Oracle hired over 82% Asians in PT1 roles during the review period. OFCCP's analysis of Oracle's hiring data and appropriate workforce availability statistics show that Oracle favored Asian applicants, particularly Asian Indians, in hiring at a standard deviation as significant as +30.

Additional evidence, including anecdotal evidence, also reinforces that these gross statistical findings are not due to chance. OFCCP obtained statements from confidential sources evincing Oracle's reputation as favoring Asians, specifically Asian Indians. Additionally, Oracle's reputation is consistent with its recruiting efforts for engineering roles, which target Asian Indians. Oracle's recruiting priorities on its website has it directly recruiting entry-level software positions from India despite the oversupply of STEM graduates in the United States.

Furthermore, Oracle has a longstanding and well-known preference of sponsoring H1B visas almost exclusively for employees from Asia and particularly India. Over 92% of all of Oracle's H1B employees are Asian. Such preference is most pronounced in entry-level technical roles (or PT1 roles). Nearly one third of Oracle's PT1 workforce is H1B employees, compared to 13% of Oracle's overall workforce. Across Oracle headquarters, approximately 90% of H1B employees work in PT1 roles.

Moreover, despite this heavy concentration of Asians in Oracle's workforce, Oracle relied on word-of-mouth recruiting practices, which further perpetuated already existing disparities. In PT1, most successful employment referrals (or referrals that lead to a hire) originate from Asians. For technical jobs, approximately 74% of successful referrals come from PT1 employees, and approximately 80% of the referrals come from Asians.

Thus, based upon the analyses conducted and the evidence gathered during the compliance evaluation, OFCCP found that Oracle recruited, selected, and hired Asian

applicants, particularly Asian Indians, for PT1 roles at a rate significantly greater than their non-Asian counterparts and Oracle's recruiting and hiring practices resulted in discrimination against African American, Hispanic, and White applicants. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

Facts known to OFCCP at the time it filed its Amended Complaint to support the following statement in Paragraph 10 of this Complaint: "Oracle utilized ... a recruiting and hiring process that discriminates against [non-Asian] applicants in favor of Asian applicants, ... based on race for positions in the [PT1] job group and Product Development line of business."

- Applicant and hiring databases at BSN DOL 12676, 12677, 12681 in the Native0000013 folder, BSN DOL 32194 in the Native0000033 folder, and BSN DOL 39444-45. The applicant and hiring databases at BSN DOL 12676 and 12677 are for January 1 – December 31, 2013, for non-college and college respectively. The applicant and hiring databases at BSN DOL 12681 and 32194 are for January 1 – June 30, 2014, for non-college and college hires respectively. The applicant and hiring database at BSN DOL 39444 combines the data of the two non-college hire databases and adds national origin and year information while the applicant and hiring database at BSN DOL 39445 does the

same for the two college databases. All three of the non-college applicant and hiring databases have the following information: the person's name, department/organization, gender, race, job title, vacancy number, disposition and Job Group. All three of the college applicant and hiring databases have the following information: the person's name, hire vs. applicant determination, department/organization, gender, race, job title, and Job Group. OFCCP determined the national origin information in column I for BSN DOL 39444 and column H for BSN DOL 39445 from the following two websites: http://forebears.co.uk/surnames and http://www.behindthename.com/name/.

- OFCCP used H-1B information that Oracle provided in the Compensation Database also known as 2014 snapshot at BSN DOL 26401 in the Native000027 folder. Also, from 2012 through 2014, OFCCP found that Oracle submitted 1,279 H1B visa applications for its headquarters facility, of which 1,007 were for the PT1 Job Group.
- Interviews of Oracle personnel provide information about Oracle's recruiting and hiring policies, practices and procedures and how Oracle implemented them at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.
- Oracle's written recruiting and hiring policies in its U.S. Employee Handbook (BSN DOL 37221-24) and Oracle's Recruitment Process Summary (BSN DOL 4722).
- Oracle's Irecruitment documents that identified vacancy number, vacancy job title and code, applicant's name, applicant number, application date, citizenship status, education, location of schools attended (e.g., state, countries such as India), and contained resumes.
- Compensation Database also known as 2014 snapshot at Bates stamp number ("BSN") DOL 26401 in the Native000027 folder. This snapshot provided, inter alia, the following information: person's name, employee identification number, gender, race, job title, Job Function or Line of Business ("LOB," e.g., Product Development, Support, Information Technology), job specialty, Job Group (e.g. Professional Technical 1, "PT1"), grade, global career level, company tenure, salary, exempt status, part time or full time status,

salary, total compensation, estimated prior work experience, H-1B and visa status. This databased provided information for applicants Oracle hired in 2013 and / or 2014 who were employed by Oracle in 2014.

- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.
- Oracle's AAP information at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132 provided information related to Oracle's general AAP plan; how Oracle organized its job titles by both Job Group and organization/work force; identified the numbers of its employees in these Job Groups and job titles by: total, gender, total for all minorities, specific totals for individual minorities, and percentages; identified the numbers of its employees in these organizations/work forces and job titles by: salary total, EEO code, female gender total, total for all minorities, specific totals for individual minorities, and percentages; and provided detailed job information for each job position such as: job code, job title, job function, global career level, brief and detailed descriptions and job responsibilities.
- Bureau of Labor Statistics ("BLS") data for the software developers, applications & systems software occupations at BSN DOL 36078-83, 36111-16, 36148-53 and 36169-74 provided employment data (numbers and percentages) by race.
- Facts in the articles and filing at BSN DOL 37746-47, 37792, 37795-99, 37803-04, 37809-10, 37818-25, 37827-34, 38754-55, 39442-43, 39446-39790, 39832-74 and at the following URLs:
    - http://www.oracle.com/us/corporate/press/executives/016380.htm;

- http://www.thehindu.com/business/Industry/new-oracle-chiefs-kerala-roots/article6775912.ece;
- https://www.oracle.com/corporate/citizenship/workforce/diversity.html;
- http://guestworkerdata.org/wp-content/uploads/2014/02/H1BNationalFactsheet11_13_13FINAL.pdf;
- http://www.lpfi.org/wp-content/uploads/2015/04/code2040_lpfi_final.pdf;
- http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H1B/h1b-fy-12-characteristics.pdf;
- http://www.nytimes.com/2015/11/11/us/large-companies-game-H1B-visa-program-leaving-smaller-ones-in-the-cold.html;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=0;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=1;
- http://www.bls.gov/opub/mlr/2011/11/art1full.pdf;
- http://www.epi.org/press/1b-visa-program-attracting-brightest-workers/;
- http://www.epi.org/files/2013/outstanding-talent-high-skilled-immigration.pdf;
- http://www.eeoc.gov/policy/docs/national-origin.html;
- http://www.eeoc.gov/eeoc/newsroom/release/8-28-14.cfm;
- https://blogs.oracle.com/campusrecruitment/entry/my_journey_from_college_to;
- https://www.sec.gov/Archives/edgar/data/1341439/000119312514251351/d725622d10k.htm;
- https://www.usatoday.com/story/tech/2014/10/12/silicon-valley-diversity-tech-hiring-computer-science-graduates-african-american-hispanic/14684211/;
- http://www.sfgate.com/bayarea/article/Oraclescozinesswithgovernmentgoesbackto2820370.Php;

- https://www.eeoc.gov/eeoc/statistics/reports/hightech/;
- https://c.ymcdn.com/sites/ascendleadership.site-ym.com/resource/resmgr/Research/HiddenInPlainSight_Paper_042.pdf;
- http://www.cxotoday.com/story/why-india-is-becoming-so-important-for-oracle/.

Conclusions reached for Paragraph 10:

- The conclusions reached are identified in the NOV at BSN DOL 943-44.

Linkage between the facts and the conclusions:

For the statistical results identified in Paragraph 10 of the Amended Complaint, OFCCP relied on databases produced by Oracle during the investigation to conduct them (e.g., BSN DOL 12676, 12677, 12681 in the Native0000013 folder and BSN DOL 32194 in the Native0000033 folder) that OFCCP consolidated to just one non-college and one college spreadsheet to which it added national origin data (e.g., BSN DOL 39444-45). OFCCP also relied on labor force data compiled by the BLS for 2013-2014 at BSN DOL 36078-83, 36111-16, 36148-53 and 36169-74. OFCCP used information from the two consolidated databases for the PT1 Job Group coupled with the BLS data to conduct a statistical analysis of Oracle's hiring practices for the protected groups.

OFCCP used BLS data instead of Oracle's data because Oracle's data is unreliable since its record keeping and discriminatory practices skewed the results. Oracle's selective record keeping skewed the results because Oracle did not maintain complete records. For example, on the college side, not all "applicants" were included in the data base. For non-college applicants, OFCCP obtained information that Oracle's in-house recruiters conducted searches and had communications with persons expressing an interest in a position at Oracle, but all such persons were not included in Oracle's applicant databases for non-college applicants.

OFCCP made the discriminatory practices determination after comparing Oracle's PT1 AAP Job Group statistics with BLS' availability statistics for the relevant labor market – software developers, applications & systems software occupations because over 65% of job

titles in the PT1 Job Group are software and applications developers. OFCCP found that Oracle's PT1 Job Group displayed a significant concentration of Asians (over 70%) compared to less than 30% in the available workforce in BLS' labor market data. Moreover, even though Oracle already had a skewed applicant pool in favor of Asians, Oracle's Asian hiring rate significantly exceeded it -- *by more than 6%* . Compared to approximately 75% Asian applicants (and 74% Asian incumbents), Oracle hired over 82% Asians in PT1 roles during the review period. To date, Oracle has provided no explanation for the gross disparities between Asians and non-Asians in its recruiting and hiring practices. Another factor compelling the use of BLS data is the antidotal information OFCCP acquired during the investigation, including from interviews, that Oracle has a reputation of hiring Indians. This reputation correlates with the aforementioned data analyses.

Indeed, with respect to COLLEGE RECRUITS, OFCCP has obtained evidence through discovery demonstrating how Oracle's applicant flow data may be skewed. According to Oracle Senior Sourcing Manager Mallory Cohn, Oracle college recruiters conduct an initial screening of applicants prior to entering candidates into RESUMate, the system Oracle uses to track its COLLEGE RECRUITS. *See also* ORACLE_HQCA_0000020140-41 (explaining sourcing of COLLEGE RECRUITS through "College Recruiting Inboxes"). Ms. Cohn made clear that RESUMate does not contain all COLLEGE RECUITS who submitted resumes to apply to Oracle, demonstrating that the applicant flow data Oracle has produced thus far may not reflect the pool of persons applying to Oracle.

The methodology OFCCP used to derive these results is explained in the NOV at BSN DOL 943-44. To reiterate it briefly, OFCCP (1) compared Oracle's applicant pool to the availability data from BLS and (2) compared Oracle hiring rates against the availability data from BLS. OFCCP analyzed these results by conducting an impact ratio analysis of the applicants and hires relative to the availability data. The results of those comparisons are provided at BSN DOL 5324-26, 5328-30, and 39446-47. Lastly, it should be noted that while

OFCCP did not rely on U.S. Census data to calculate the NOV results, it did examine this data, as well as other data, and found it to be supportive of the BLS data.

INTERROGATORY NO. 18:

Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraph 10 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the Interrogatory on the basis that it is compound, vague and ambiguous as to "nature of the facts," "knowledge of the facts," and "contact information.". "Nature of facts" is so unintelligible that it is unclear what Oracle is seeking. For example, is nature of the facts the date the person acquired the facts, how he acquired the facts, who he acquired the facts from, the contents of the facts, when the facts occurred, who observed or witnessed the facts, etc. In terms of knowledge of the facts: it is not known if Oracle was referring to personal knowledge, constructive knowledge, third-hand knowledge, hearsay knowledge, etc. It is not clear what Oracle means by contact information, is it a person home telephone number, is it a person's business address, etc.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this request, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who has knowledge of the discrimination.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP everyone who might have knowledge of the discrimination so that OFCCP can identify all of the people who have knowledge of the discrimination.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" if the nature of the facts includes every fact, however, minor that the person knows regardless of how the person obtained knowledge of the alleged fact.

OFCCP objects to this interrogatory as it is making two distinct information requests in one interrogatory – identify the name, job title and contact information of the person with knowledge, and the content/nature of this knowledge. OFCCP will count this as two interrogatories.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

OFCCP further objects to the request to the extent it seeks each individual's contact information on the grounds of the Privacy Act and that they are represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

Subject to and without waiving the foregoing objections, OFCCP responds that the following persons, excluding OFCCP attorneys at the Office of the Solicitor, may have knowledge of the facts giving rise to the allegations made in the Amended Complaint include: Oracle employees, supervisors and managers employed by Oracle during the review period; former employees, supervisors and managers of Oracle; and OFCCP personnel listed in response to Interrogatory No. 1. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP identifies that all persons (other than persons affiliated with Defendant) who have knowledge of the material facts alleged in Paragraph 10 of the Amended Compliant at the time of filing this Complaint are the people listed in OFCCP's initial and supplemental responses to Interrogatory No. 1.

INTERROGATORY NO. 19:

As to each "non-Asian" allegedly discriminated against as referenced in Paragraph 10 of the Amended Complaint, described how the "non-Asian" not hired was equally or better qualified than the Asian hired in that "non-Asian" person's stead.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege,

attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive

documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP further objects that this interrogatory is compound, and has vague, and ambiguous terms such as "equally or better qualified" and "person's stead." In terms of "equally or better qualified," it is not clear which quality or characteristic or combination thereof that Oracle is referring. In terms of person's stead, it is not clear if Oracle is referring to the advantage brought by a person standing in good stead or in the position of a replacement or successor when the Asian did not replace the non-Asian but instead was hired instead of the non-Asian.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its response to Interrogatory No. 17, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the hiring databases that Oracle provided to OFCCP and the application materials it provided to include iRecruitment documents, resumes and the recruiting and hiring information in the personnel files. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing

may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

BLS availability data provided the number of equally or better qualified non-Asian individuals because Oracle's data is unreliable since its record keeping and discriminatory practices skewed the results. Oracle's selective record keeping skewed the results because Oracle did not maintain complete records. For example, on the college side, not all "applicants" were included in the data base. For non-college applicants, OFCCP obtained information that Oracle's in-house recruiters conducted searches and had communications with persons expressing an interest in a position at Oracle, but all such persons were not included in Oracle's applicant databases for non-college applicants.

OFCCP made the discriminatory practices determination after comparing Oracle's PT1 AAP Job Group statistics with BLS' availability statistics for the relevant labor market – software developers, applications & systems software occupations because over 65% of job titles in the PT1 Job Group are software and applications developers. OFCCP found that Oracle's PT1 Job Group displayed a significant concentration of Asians (over 70%) compared to less than 30% in the available workforce in BLS' labor market data. Moreover, even though Oracle already had a skewed applicant pool in favor of Asians, Oracle's Asian hiring rate significantly exceeded it -- *by more than 6%* . Compared to approximately 75% Asian applicants (and 74% Asian incumbents), Oracle hired over 82% Asians in PT1 roles during the review period. To date, Oracle has provided no explanation for the gross disparities between Asians and non-Asians in its recruiting and hiring practices. Another factor compelling the use of BLS data is the antidotal information OFCCP acquired during the investigation, including from interviews, that Oracle has a reputation of hiring Indians. This reputation correlates with the aforementioned data analyses.

Indeed, with respect to COLLEGE RECRUITS, OFCCP has obtained evidence through discovery demonstrating how Oracle's applicant flow data may be skewed. According to Oracle Senior Sourcing Manager Mallory Cohn, Oracle college recruiters conduct an initial

screening of applicants prior to entering candidates into RESUMate, the system Oracle uses to track its COLLEGE RECRUITS. *See also* ORACLE_HQCA_0000020140-41 (explaining sourcing of COLLEGE RECRUITS through "College Recruiting Inboxes"). Ms. Cohn made clear that RESUMate does not contain all COLLEGE RECUITS who submitted resumes to apply to Oracle, demonstrating that the applicant flow data Oracle has produced thus far may not reflect the pool of persons applying to Oracle.

INTERROGATORY NO. 20:

State all facts that support the allegation in Paragraph 10 of the Amended Complaint that Oracle's hiring practices resulted in statistically significant adverse impact against non-Asian employees and statistically significant disparities in the hiring of Asians versus non-Asians, including the statistical data used, the analysis and methodologies used, and the computations used.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this Interrogatory to the extent it implies that OFCCP was required to allege statistical data. Statistical data supporting OFCCP's claims of discrimination will be developed and refined, during and after discovery. Tying OFCCP to a particular set of statistics

at the pleading stage would be both unfair and inefficient.[8] The time for assessing OFCCP's statistical evidence, including whether it accounts for all relevant variables, is after discovery has closed and the case is tried.[9] Further, it is impossible for OFCCP to make any refinements to statistics in this case until Defendants produce the myriad relevant records they refused to provide to OFCCP and have not yet provided in discovery.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data

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[8] *See Jenkins*, 646 F.Supp.2d 469 ("It would be inappropriate to require a plaintiff to produce statistics to support her disparate impact claim before the plaintiff has had the benefit of discovery").

[9] *See Barrett*, 39 F.Supp.3d 430.

for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP likewise objects to the terms "statistical data used," "the analysis and methodologies used," the computations used." For these latter three terms the context of "used" it is not known and it is not clear which "statistical data," "analysis," "methodologies" and "computations" that Oracle is referring.

OFCCP objects to this Interrogatory as overbroad, unduly burdensome, oppressive, not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP further objects to producing any in-house statistical analyses performed to include the data, methodology and computations that OFCCP employed. This information is protected under the various privileges asserted above, is irrelevant, and is not proportional to the needs of the case.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

Subject to and without waiving the foregoing objections, OFCCP incorporates herein its response to Interrogatory No. 17, its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the hiring database that Oracle provided to OFCCP for the 2014 snapshot and the application materials it provided to include iRecruitment documents, resumes and the recruiting and hiring information in the personnel files. During the compliance review of Oracle headquarters, OFCCP evaluated and analyzed Oracle's recruiting and hiring information and evidence gathered in the investigation and found statistically significant hiring disparities based upon race. OFCCP's analysis of Oracle's applicant data and appropriate workforce availability statistics show that Oracle favored Asian applicants, particularly Asian Indians, in recruiting at a standard deviation as significant as +85. Additionally, an analysis of Oracle's hiring data and appropriate workforce availability statistics show that Oracle favored Asian applicants, particularly Asian Indians, in hiring at a standard deviation as significant as +30. Based upon the analyses conducted and the evidence gathered during the compliance evaluation, OFCCP found that Oracle recruited, selected, and hired Asian applicants, particularly Asian Indians, in the referenced groups at a rate significantly greater than their non-Asian counterparts and Oracle's recruiting and hiring practices resulted in discrimination against African American, Hispanic, and White applicants. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still (1) waiting for updated databases from Oracle covering the whole period of this suit, (2) reviewing documents produced by Oracle and (3) developing the statistical model it will rely on at hearing in this matter. OFCCP does not regard its models

during the investigation and conciliation phase as determinative of the statistical evidence it will use to support its Amended Complaint at hearing in this case. The model used at the hearing may rely on different factors, different mathematics and different data than the model used during the investigation and conciliation process.

Facts known to OFCCP at the time it filed its Amended Complaint to support the following statement in Paragraph 10 of this Complaint: "Oracle utilized ... a recruiting and hiring process that discriminates against [non-Asian] applicants in favor of Asian applicants, ... based on race for positions in the [PT1] job group and Product Development line of business."

- Applicant and hiring databases at BSN DOL 12676, 12677, 12681 in the Native0000013 folder, BSN DOL 32194 in the Native0000033 folder, and BSN DOL 39444-45. The applicant and hiring databases at BSN DOL 12676 and 12677 are for January 1 – December 31, 2013, for non-college and college respectively. The applicant and hiring databases at BSN DOL 12681 and 32194 are for January 1 – June 30, 2014, for non-college and college hires respectively. The applicant and hiring database at BSN DOL 39444 combines the data of the two non-college hire databases and adds national origin and year information while the applicant and hiring database at BSN DOL 39445 does the same for the two college databases. All three of the non-college applicant and hiring databases have the following information: the person's name, department/organization, gender, race, job title, vacancy number, disposition and Job Group. All three of the college applicant and hiring databases have the following information: the person's name, hire vs. applicant determination, department/organization, gender, race, job title, and Job Group. OFCCP determined the national origin information in column I for BSN DOL 39444 and column H for BSN DOL 39445 from the following two websites: http://forebears.co.uk/surnames and http://www.behindthename.com/name/.
- OFCCP used H-1B information that Oracle provided in the Compensation Database also known as 2014 snapshot at BSN DOL 26401 in the Native000027 folder. Also, from

2012 through 2014, OFCCP found that Oracle submitted 1,279 H1B visa applications for its headquarters facility, of which 1,007 were for the PT1 Job Group.

- Interviews of Oracle personnel provide information about Oracle's recruiting and hiring policies, practices and procedures and how Oracle implemented them at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.
- Oracles written recruiting and hiring policies in its U.S. Employee Handbook (BSN DOL 37221-24) and Oracle's Recruitment Process Summary (BSN DOL 4722).
- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.
- Oracle's Irecruitment documents that identified vacancy number, vacancy job title and code, applicant's name, applicant number, application date, citizenship status, education, location of schools attended (e.g., state, countries such as India), and contained resumes.
- Compensation Database also known as 2014 snapshot at Bates stamp number ("BSN") DOL 26401 in the Native000027 folder. This snapshot provided, inter alia, the following information: person's name, employee identification number, gender, race, job title, Job Function or Line of Business ("LOB," e.g., Product Development, Support, Information Technology), job specialty, Job Group (e.g. Professional Technical 1, "PT1"), grade, global career level, company tenure, salary, exempt status, part time or full time status, salary, total compensation, estimated prior work experience, H-1B and visa status. This databased provided information for applicants Oracle hired in 2013 and / or 2014 who were employed by Oracle in 2014.
- Oracle's AAP information at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132 provided information related to Oracle's general AAP plan; how Oracle organized its job

titles by both Job Group and organization/work force; identified the numbers of its employees in these Job Groups and job titles by: total, gender, total for all minorities, specific totals for individual minorities, and percentages; identified the numbers of its employees in these organizations/work forces and job titles by: salary total, EEO code, female gender total, total for all minorities, specific totals for individual minorities, and percentages; and provided detailed job information for each job position such as: job code, job title, job function, global career level, brief and detailed descriptions and job responsibilities.

- BLS data for the software developers, applications & systems software occupations at BSN DOL 36078-83, 36111-16, 36148-53 and 36169-74 provided employment data (numbers and percentages) by race.
- Facts in the articles and filing at BSN DOL 37746-47, 37792, 37795-99, 37803-04, 37809-10, 37818-25, 37827-34, 38754-55, 39442-43, 39446-39790, 39832-74 and at the following URLs:
    - http://www.oracle.com/us/corporate/press/executives/016380.htm;
    - http://www.thehindu.com/business/Industry/new-oracle-chiefs-kerala-roots/article6775912.ece;
    - https://www.oracle.com/corporate/citizenship/workforce/diversity.html;
    - http://guestworkerdata.org/wp-content/uploads/2014/02/H1BNationalFactsheet11_13_13FINAL.pdf;
    - http://www.lpfi.org/wp-content/uploads/2015/04/code2040_lpfi_final.pdf;
    - http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H1B/h1b-fy-12-characteristics.pdf;
    - http://www.nytimes.com/2015/11/11/us/large-companies-game-H1B-visa-program-leaving-smaller-ones-in-the-cold.html;

- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=0;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=1;
- http://www.bls.gov/opub/mlr/2011/11/art1full.pdf;
- http://www.epi.org/press/1b-visa-program-attracting-brightest-workers/;
- http://www.epi.org/files/2013/outstanding-talent-high-skilled-immigration.pdf;
- http://www.eeoc.gov/policy/docs/national-origin.html;
- http://www.eeoc.gov/eeoc/newsroom/release/8-28-14.cfm;
- https://blogs.oracle.com/campusrecruitment/entry/my_journey_from_college_to;
- https://www.sec.gov/Archives/edgar/data/1341439/000119312514251351/d725622d10k.htm;
- https://www.usatoday.com/story/tech/2014/10/12/silicon-valley-diversity-tech-hiring-computer-science-graduates-african-american-hispanic/14684211/;
- http://www.sfgate.com/bayarea/article/Oraclescozinesswithgovernmentgoesbacktо2820370.Php;
- https://www.eeoc.gov/eeoc/statistics/reports/hightech/;
- https://c.ymcdn.com/sites/ascendleadership.site-ym.com/resource/resmgr/Research/HiddenInPlainSight_Paper_042.pdf;
- http://www.cxotoday.com/story/why-india-is-becoming-so-important-for-oracle/.

Conclusions reached for Paragraph 10:

- The conclusions reached are identified in the NOV at BSN DOL 943-44.

Data, analysis, method and computations used:

For the statistical results identified in Paragraph 10 of the Amended Complaint, OFCCP relied on databases produced by Oracle during the investigation to conduct them (e.g., BSN DOL 12676, 12677, 12681 in the Native0000013 folder and BSN DOL 32194 in the

Native0000033 folder) that OFCCP consolidated to just one non-college and one college spreadsheet to which it added national origin data (e.g., BSN DOL 39444-45). OFCCP also relied on labor force data compiled by the BLS for 2013-2014 at BSN DOL 36078-83, 36111-16, 36148-53 and 36169-74. OFCCP used information from the two consolidated databases for the PT1 Job Group coupled with the BLS data to conduct a statistical analysis of Oracle's hiring practices for the protected groups.

OFCCP used BLS data instead of Oracle's data because Oracle's data is unreliable since its record keeping and discriminatory practices skewed the results. Oracle's selective record keeping skewed the results because Oracle did not maintain complete records. For example, on the college side, not all "applicants" were included in the data base. For non-college applicants, OFCCP obtained information that Oracle's in-house recruiters conducted searches and had communications with persons expressing an interest in a position at Oracle, but all such persons were not included in Oracle's applicant databases for non-college applicants.

OFCCP made the discriminatory practices determination after comparing Oracle's PT1 AAP Job Group statistics with BLS' availability statistics for the relevant labor market – software developers, applications & systems software occupations because over 65% of job titles in the PT1 Job Group are software and applications developers. OFCCP found that Oracle's PT1 Job Group displayed a significant concentration of Asians (over 70%) compared to less than 30% in the available workforce in BLS' labor market data. Moreover, even though Oracle already had a skewed applicant pool in favor of Asians, Oracle's Asian hiring rate significantly exceeded it -- *by more than 6%* . Compared to approximately 75% Asian applicants (and 74% Asian incumbents), Oracle hired over 82% Asians in PT1 roles during the review period. To date, Oracle has provided no explanation for the gross disparities between Asians and non-Asians in its recruiting and hiring practices. Another factor compelling the use of BLS data is the antidotal information OFCCP acquired during the investigation, including

from interviews, that Oracle has a reputation of hiring Indians. This reputation correlates with the aforementioned data analyses.

Indeed, with respect to COLLEGE RECRUITS, OFCCP has obtained evidence through discovery demonstrating how Oracle's applicant flow data may be skewed. According to Oracle Senior Sourcing Manager Mallory Cohn, Oracle college recruiters conduct an initial screening of applicants prior to entering candidates into RESUMate, the system Oracle uses to track its COLLEGE RECRUITS. *See also* ORACLE_HQCA_0000020140-41 (explaining sourcing of COLLEGE RECRUITS through "College Recruiting Inboxes"). Ms. Cohn made clear that RESUMate does not contain all COLLEGE RECUITS who submitted resumes to apply to Oracle, demonstrating that the applicant flow data Oracle has produced thus far may not reflect the pool of persons applying to Oracle.

The methodology OFCCP used to derive these results is explained in the NOV at BSN DOL 943-44. To reiterate it briefly, OFCCP (1) compared Oracle's applicant pool to the availability data from BLS and (2) compared Oracle hiring rates against the availability data from BLS. OFCCP analyzed these results by conducting an impact ratio analysis of the applicants and hires relative to the availability data. The results of those comparisons are provided at BSN DOL 5324-26, 5328-30, and 39446-47. Lastly, it should be noted that while OFCCP did not rely on U.S. Census data to calculate the NOV results, it did examine this data, as well as other data, and found it to be supportive of the BLS data.

INTERROGATORY NO. 21:

State all facts that support the allegation in Paragraph 12 and 13 of the Amended Complaint that YOU requested "various records" that Oracle "refused to produce," including a description of the specific records YOU requested, the date(s) on which YOU requested the records, the date(s) on which YOU contend that Oracle refused to produce those records, the

PERSON that refused to produce the records, and the COMMUNICATION reflecting the refusal.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data

regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP likewise objects to this Interrogatory as vague and ambiguous because it simultaneously refers to two different paragraphs in the complaint containing different allegations and then it requests the facts to support just one of the allegations located therein when it states "[s]tate all facts that support the allegation in Paragraph 12 and 13." It is not clear which allegation to which Oracle is referring.

OFCCP further objects to this Interrogatory as vague and ambiguous for the following terms "description of the specific records" "refused to produce," and "communication reflecting the refusal." For example, it is not known what Oracle is requesting when it requests a description of the records. Is it the record's title, database, or snapshot; date of record or snapshot; author or custodian of record or data base, etc.? The parties have provided each other with different definitions of what constitutes "refusal to produce" during the investigation and litigation and it is not clear what definition Oracle is referring to in this Interrogatory. Additionally, it is not clear what Oracle means by "reflecting the refusal." Does this term mean only those communications wherein Oracle actually used the word "refusal" or some deviation of this word; does Oracle mean communications that evidence this refusal, etc.? Furthermore,

Oracle just defined communication to oral or documents and not to a party's action or inactions. Thus, its definition of communication is artificially constrained and any response using this definition would be incomplete.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this Interrogatory, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain every person who took part in Oracle's refusal to provide OFCCP the requested information, data and documents and to identify all of their related communications.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP who might have knowledge of Oracle's failure to conduct the reviews and analysis so that OFCCP can identify all of the people involved and their related communications.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to create a compendium from communications that Oracle is already in possession of these communications.

OFCCP objects to this interrogatory as it is making five distinct information requests in one interrogatory: (1) description of the specific records requested; (2) dates records were requested; (3) dates Oracle refused to provide the records; (4) the person that refused to provide the records; and (5) the communications reflecting refusal.

OFCCP objects to this interrogatory because Oracle, with this interrogatory, makes its 25th interrogatory when seeking information about the "description of the specific records

requested" and exceeds the 25 interrogatory limit for the four additional items listed in the previous paragraph.

Subject to and without waiving the foregoing objections, OFCCP will only answer this Interrogatory for a description of the specific records requested. OFCCP incorporates herein its statements in the Amended Complaint and refers Oracle to the responsive documents that it produced during discovery, including, but not limited to, the NOV and Attachment, and the compensation database that Oracle provided to OFCCP for the 2014 snapshot and the correspondence between the parties. The categories of information that Oracle refused to produce are: pay equity analysis pursuant to 41 C.F.R. § 60-2.17, some fields of information for the 2014 snapshot; data for the 2013 snapshot, employee contact information, internal complaints, external arbitration complaints and data for the 2012 applicant flow log. Furthermore, Oracle refused to produce most of the various employer personnel actions requested, and a significant amount of the application materials requested. OFCCP will supplement this response as more documents and data are produced during discovery under the supervision of the office of administrative law judges.

INTERROGATORY NO. 22:

Identify by name and last known contact information each PERSON with knowledge of the facts alleged in Paragraphs 12 and 13 of the Amended Complaint, including the nature of the facts of which the PERSON identified has knowledge.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant

privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP further objects to the Interrogatory on the basis that it is compound, vague and ambiguous as to "nature of the facts," "knowledge of the facts," and "contact information." "Nature of facts" is so unintelligible that it is unclear what Oracle is seeking. For example, is nature of the facts the date the person acquired the facts, how he acquired the facts, who he acquired the facts from, the contents of the facts, when the facts occurred, who observed or witnessed the facts, etc. In terms of knowledge of the facts: it is not known if Oracle was referring to personal knowledge, constructive knowledge, third-hand knowledge, hearsay knowledge, etc. It is not clear what Oracle means by contact information, is it a person home telephone number, is it a person's business address, etc.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this Interrogatory, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain everyone who has knowledge of the discrimination.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to interview potentially thousands of employees to obtain their last known contact information when Oracle is already in possession of this information.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP who might have knowledge of the discrimination so that OFCCP can identify all of the people who have knowledge of the discrimination.

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term

"all facts" if the nature of the facts includes every fact, however, minor that the person knows regardless of how the person obtained knowledge of the alleged fact.

OFCCP objects to this interrogatory as it is making two distinct information requests in one interrogatory – identify the name, job title and address of the person with knowledge, and the content/nature of this knowledge. OFCCP will count this as two interrogatories.

To the extent that the following objection that Defendant used during written discovery is a valid objection since the parties are meeting and conferring about it: the request/Interrogatory "requires [the party answering the written discovery] to refer to materials outside of the request itself," OFCCP makes this objection here because this Interrogatory referred to materials outside of the Interrogatory itself.

OFCCP further objects to the Interrogatory to the extent it seeks each individual's contact information on the grounds of the Privacy Act and that they are represented by counsel. OFCCP's personnel (current or former) may be contacted through OFCCP's counsel at the Office of the Solicitor.

OFCCP objects to this interrogatory because Oracle has already asked more than 25 interrogatories because four of its previous interrogatories contained two subparts each, another Interrogatory contained five subparts, and this Interrogatory contains two subparts. As such, Oracle exceeded the number of interrogatories that it can make without a court order.

Subject to and without waiving the foregoing objections, OFCCP declines to answer this Interrogatory because Oracle exceeded the number of interrogatories allowed without court order.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP identifies that all persons (other than persons affiliated with Defendant) who have knowledge of the material facts alleged in Paragraphs 12 and 13 of the Amended

Compliant at the time of filing this Complaint are the people listed in OFCCP's initial and supplemental responses to Interrogatory No. 1.

INTERROGATORY NO. 23:

State all facts that support the allegation in Paragraph 14 of the Amended Complaint that Oracle "defaulted on its obligations under 41 sections 60-2.17(b)-(d), 60-315A, and 60-3.4, including a description of the specific "reviews and analysis" that YOU contend Oracle failed to conduct, the date(s) on which YOU contend that Oracle refused to produce those reviews and analysis, the PERSON that refused to produce the reviews and analysis, and the COMMUNICATION reflecting the refusal.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive

documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP further objects to this Interrogatory as vague and ambiguous for the following terms "description of the specific 'reviews and analysis,'" "Oracle failed to conduct," "Oracle refused to produce those reviews and analysis" and "communication reflecting the refusal." For example, it is not known what Oracle is requesting when it requests a description. Is it the title of the review, the particular requirement or regulation requiring the review, what the review concerned, etc.? The parties have provided each other with different definitions of what constitutes "refusal to produce" during the investigation and litigation and it is not clear what definition Oracle is referring to in this Interrogatory. Additionally, it is not clear what Oracle

means by "reflecting the refusal." For example, does this term mean only those communications wherein Oracle actually used the word "refusal" or some deviation of this word; does Oracle mean communications that evidence this refusal, etc.? Furthermore, Oracle just defined communication to oral or documents and not to a party's action or inactions. Thus, its definition of communication is artificially constrained and any response using this definition would be incomplete. It is also not clear what Oracle means by "failure to conduct." For example, does this term mean only those communications wherein Oracle actually stated that it failed to conduct the review; does it mean communications that Oracle repeatedly failed to provide evidence that it conducted the review after repeated requests, etc.?

OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case.

OFCCP also objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case because for OFCCP to truly answer this Interrogatory, OFCCP would need to literally interview thousands of Oracle employees to include employees in supervisory and management positions to ascertain every person who took part in Oracle's failure to conduct the reviews and analysis and to identify all of their related communications.

OFCCP again objects to the Interrogatory as being unduly burdensome, overly broad, not relevant, oppressive and not proportional to the case for OFCCP to create a compendium from communications that Oracle is already in possession of these communications.

OFCCP still further objects because the Interrogatory calls for speculation if Oracle does not make everyone available to OFCCP who might have knowledge of Oracle's failure to conduct the reviews and analysis so that OFCCP can identify all of the people involved and their related communications.

OFCCP objects to this interrogatory as it is making four distinct information requests in one interrogatory: (1) description of the specific "reviews and analysis" that Oracle failed to conduct; (2) dates Oracle refused to produce reviews; (3) the person that refused to provide the reviews; and (4) the communications reflecting refusal.

OFCCP objects to this interrogatory because Oracle has already asked the equivalent of 25 interrogatories in that five of its previous interrogatories contained two subparts each, another Interrogatory contained five subparts and this Interrogatory contained four subparts. As such, Oracle exceeded the number of interrogatories that it can make without a court order.

Subject to and without waiving the foregoing objections, OFCCP declines to answer this Interrogatory because Oracle exceeded the number of interrogatories allowed without court order.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still waiting for Oracle to produce documents in response to the Court's Motion to Compel Order dated September 11, 2017, and in response to multiple sets of documents production requests. As such, the evidence used at the hearing may rely on different facts and different documentary evidence that is identified in response to this interrogatory. Facts known to OFCCP at the time it filed its Amended Complaint to support the following statement in Paragraph 14 of this Complaint: "Oracle defaulted on its obligations under 41 [sic] sections 60-2.17(b)-(d), 60-315A [sic], and 60-3.4."

- The implementing regulation at 41 C.F.R. § 60-2.17(b) requires Oracle to have an AAP that identifies its problem areas. Under this regulation, Oracle is required to evaluate its:
    - "workforce by organizational unit and job group to determine whether there are problems of minority or female utilization (*i.e.,* employment in the unit or group),

or of minority or female distribution (*i.e.,* placement in the different jobs within the unit or group);"

- "[p]ersonnel activity (applicant flow, hires, terminations, promotions, and other personnel actions) to determine whether there are selection disparities;"
- "[c]ompensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities;"
- "[s]election, recruitment, referral, and other personnel procedures to determine whether they result in disparities in the employment or advancement of minorities or women;"
- "[a]ny other areas that might impact the success of the affirmative action program."

- The implementing regulation at 41 C.F.R. § 60-2.17(c) requires Oracle to "develop and execute action-oriented programs designed to correct any problem areas identified pursuant to § 60-2.17(b) and to attain established goals and objectives. In order for these action-oriented programs to be effective, the contractor must ensure that they consist of more than following the same procedures which have previously produced inadequate results. Furthermore, a contractor must demonstrate that it has made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results."
- The implementing regulation at 41 C.F.R. § 60-2.17(d) requires Oracle to "develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program. The actions listed below are key to a successful affirmative action program:"
    - "[m]onitor records of all personnel activity, including referrals, placements, transfers, promotions, terminations, and compensation, at all levels to ensure the nondiscriminatory policy is carried out;"

- "[r]equire internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;"
- "[r]eview report results with all levels of management;"
- "[a]dvise top management of program effectiveness and submit recommendations to improve unsatisfactory performance."

- The implementing regulation at 41 C.F.R. § 60-3.15(A) requires Oracle to "maintain and have available for each job information on adverse impact of the selection process for that job and, where it is determined a selection process has an adverse impact, evidence of validity." Under sub-paragraphs (2)-(3) of this regulation, Oracle is required to:
  - "maintain and have available for each job records or other information showing whether the total selection process for that job has an adverse impact on any of the groups for which records are called for by section 4B of this part. Adverse impact determinations should be made at least annually for each such group which constitutes at least 2 percent of the labor force in the relevant labor area or 2 percent of the applicable workforce. Where a total selection process for a job has an adverse impact, the user should maintain and have available records or other information showing which components have an adverse impact. Where the total selection process for a job does not have an adverse impact, information need not be maintained for individual components except in circumstances set forth in subsection 15A(2)(b) of this section. If the determination of adverse impact is made using a procedure other than the 'four-fifths rule,' as defined in the first sentence of section 4D of this part, a justification, consistent with section 4D of this part, for the procedure used to determine adverse impact should be available."
  - "[w]henever the total selection process for a particular job has had an adverse impact, as defined in section 4 of this part, in any year, but no longer has an

adverse impact, the user should maintain and have available the information on individual components of the selection process required in the preceding paragraph for the period in which there was adverse impact. In addition, the user should continue to collect such information for at least two (2) years after the adverse impact has been eliminated."

- "[w]here there has been an insufficient number of selections to determine whether there is an adverse impact of the total selection process for a particular job, the user should continue to collect, maintain and have available the information on individual components of the selection process required in paragraph 15(A)(2)(a) of this part until the information is sufficient to determine that the overall selection process does not have an adverse impact as defined in section 4 of this part, or until the job has changed substantially."
- "[w]here a total selection process has an adverse impact (see section 4 of this part) the user should maintain and have available for each component of that process which has an adverse impact, one or more of the following types of documentation evidence:"
    - "[d]ocumentation evidence showing criterion-related validity of the selection procedure (see section 15B, of this section);"
    - "[d]ocumentation evidence showing content validity of the selection procedure (see section 15C, of this section);"
    - "[d]ocumentation evidence showing construct validity of the selection procedure (see section 15D, of this section);"
    - "[d]ocumentation evidence from other studies showing validity of the selection procedure in the user's facility (see section 15E, of this section);"

        - "[d]ocumentation evidence showing why a validity study cannot or need not be performed and why continued use of the procedure is consistent with Federal law."
    - "compile[the evidence] in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity, or reports describing validity studies completed before the issuance of these guidelines are acceptable if they are complete in regard to the documentation requirements contained in this section, or if they satisfied requirements of guidelines which were in effect when the validity study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines."
    - Produce validation reports in accordance with 41 C.F.R. §§ 60-3.15(A)(3)(c); 60-3.15(B)(C).
- The implementing regulation at 41 C.F.R. § 60-3.4 requires Oracle to
    - "maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group as set forth in subparagraph B of this section in order to determine compliance with these guidelines. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size."

- "maintain[these records by] sex, and the following races and ethnic groups: Blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic, and totals. The race, sex, and ethnic classifications called for by this section are consistent with the Equal Employment Opportunity Standard Form 100, Employer Information Report EEO-1 series of reports. The user should adopt safeguards to insure that the records required by this paragraph are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used improperly. See sections 4E and 17(4), of this part."
- evaluate "the individual components of the selection process . . . for adverse impact" "If the information called for by sections 4A and B of this section shows that the total selection process for a job has an adverse impact . . . . If this information shows that the total selection process does not have an adverse impact, the Federal enforcement agencies, in the exercise of their administrative and prosecutorial discretion, in usual circumstances, will not expect a user to evaluate the individual components for adverse impact, or to validate such individual components, and will not take enforcement action based upon adverse impact of any component of that process, including the separate parts of a multipart selection procedure or any separate procedure that is used as an alternative method of selection. However, in the following circumstances the Federal enforcement agencies will expect a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual components: (1) where the selection

procedure is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices, (2) where the weight of court decisions or administrative interpretations hold that a specific procedure (such as height or weight requirements or no-arrest records) is not job related in the same or similar circumstances. In unusual circumstances, other than those listed in paragraphs (1) and (2) of this section, the Federal enforcement agencies may request a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual component."

- Oracle failed to produce documents documenting its compliance with the aforementioned regulatory requirements when requested by OFCCP during the underlying investigation. OFCCP considers Oracle's repeated failures to produce the requested documents to be a refusal to comply in addition to Oracle's outright refusal statements.
- Documents identifying OFCCP's requests for documents pertaining to these regulations and Oracle's responses thereto are at BSN DOL 575-93, 987-1006, 1027-30, 1042-44, 1116-17, 1128-31, 1053-58, 1087-91, 1093-1097, 1114-17, 1124, 1128-34, 1212-13, 1235-40, 1242-46, 1327-28, 1336-42, 1350-51, 1371-75, 38548-57, 38673-77, 38764-67, 38876-95, 38991-95, 39025-26, 39128-29. These documents identify the dates in question, the persons involved and the communications.

INTERROGATORY NO. 24:

Describe in detail any anecdotal evidence of discrimination YOU contend supports any allegation in the Amended Complaint.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal

complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP further objects on the ground that Oracle continues, against legal authorities, to withhold its employee contact information, preventing OFCCP from communicating with them in order to obtain further anecdotal evidence of unlawful discrimination. *See, e.g., OFCCP v. Jefferson County Board of Education*, Case No. 1990-OFC-4 (ALJ, Nov. 16, 1990) (granting OFCCP's motion to compel Defendant to provide "names, addresses, phone numbers, positions, dates of employment educational background, and previous employment for all hires for [a] two-year period."); *see also OFCCP v. American Airlines, Inc.*, Case No. 1994-OFC-9 (ALJ, Jan. 19, 1995) (ordering the defendant "to supply the requested telephone numbers and addresses for all former and current employees except those with authority to speak for the company; and, further, to supply addresses, either work addresses or home addresses, of former and current management employees with authority to bind the company for the limited purpose of allowing OFCCP to notice depositions."); *see also* 79 FR 55712-02, 2014 WL 4593912 (F.R.), Proposed Rules, 41 C.F.R. Part 60-1, RIN 1250-AA06 (interviewing "employees potentially impacted by discriminatory compensation" is "an invaluable way for [OFCCP] to determine whether compensation discrimination in violation of Executive Order 11246 has occurred and to support its statistical findings."); *see also Kasten v. St.-Gobain Performance Plastics Corp.*, 531 U.S. 1, 11-12 (2011) (in order to enforce the FLSA, the Secretary of Labor necessarily relies, "not upon

'continuing detailed federal supervision or inspection of payrolls,' but upon 'information and complaints received from employees seeking to vindicate rights claimed to have been denied.'"); *see also E.E.O.C. v. McLane Co.*, Inc., 804 F.3d 1051, 1056-57 (9th Cir. 2015) (ordering employer to produce employee contact information).

OFCCP further objects to this Interrogatory as vague and ambiguous for the following terms "[d]escribe in detail," and "anecdotal evidence." For example, it is not known what Oracle is requesting when it requests for OFCCP to describe in detail, the level of detail needed and how much information constitutes sufficient detail. To the extent that Oracle's describe in detail means to state all facts, then OFCCP objects to this Interrogatory as overly overbroad, unduly burdensome, oppressive, not relevant, and not proportional to the needs of the case with respect to the term "all facts" because this term is not confined to the principal or material facts of the case, but seeks the identity of each and every fact, however minor, that may relate to the case. In terms of anecdotal evidence it is not clear what definition of evidence that Oracle is requesting OFCCP to provide and what it considers to be anecdotal as opposed to another form of evidence.

OFCCP objects to this interrogatory because Oracle has already asked the equivalent of 25 interrogatories in that five of its previous interrogatories contained two subparts each, another Interrogatory contained four subparts and still another Interrogatory contained five subparts. As such, Oracle exceeded the number of interrogatories that it can make without a court order.

Subject to and without waiving the foregoing objections, OFCCP declines to answer this Interrogatory because Oracle exceeded the number of interrogatories allowed without court order.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still waiting for Oracle to produce documents in response to the Court's Motion to Compel Order dated September 11, 2017, and in response to multiple sets of documents production requests. As such, the evidence used at the hearing may rely on different facts and different anecdotal evidence than which is identified in response to this interrogatory.

Anecdotal evidence of discrimination can be found in the following documents:

- Wage determination memos contained in the Labor Condition Applications ("LCAs") that Oracle provided for employees working under H-1B status at BSN DOL 6523-6620, 6689-6715, 7261-8040, 8100-12674, 33204-35301.
- Information contained in personnel files at BSN DOL 30664-31981.
- Interviews of Oracle personnel at BSN DOL 507-904, 36573-806, 39030-37, 39151-73.
- Oracle's correspondence, including e-mails, providing or explaining its policies or submissions at BSN DOL 926-31, 943-54, 987-1006, 1027-30, 1031-34, 1053-58, 1087-91, 1093-97, 1128-34, 1143, 1174-76, 1180-84, 1193-1204, 1212-13, 1233-34, 1237-40, 1243-46, 1322-23, 1327-45, 1350-58, 1362-66, 1395-1406, 37175-78, 37528-33, 38548-57, 38673-77, 38764-67, 38876-95, 38898-906, 39128-29.
- Oracle's AAP at BSN DOL 4377-4710, 32150-52, 31982-98, 31999-32132.
- Information in complaints against Oracle BSN DOL 37732-42.
- Facts in the articles and filing at BSN DOL 37746-47, 37792, 37795-99, 37803-04, 37809-10, 37818-25, 37827-34, 38754-55, 39442-43, 39446-39790, 39832-74 and at the following URLs:
    - http://www.oracle.com/us/corporate/press/executives/016380.htm;
    - http://www.thehindu.com/business/Industry/new-oracle-chiefs-kerala-roots/article6775912.ece;
    - https://www.oracle.com/corporate/citizenship/workforce/diversity.html;

- http://guestworkerdata.org/wp-content/uploads/2014/02/H1BNationalFactsheet11_13_13FINAL.pdf;
- http://www.lpfi.org/wp-content/uploads/2015/04/code2040_lpfi_final.pdf;
- http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H1B/h1b-fy-12-characteristics.pdf;
- http://www.nytimes.com/2015/11/11/us/large-companies-game-H1B-visa-program-leaving-smaller-ones-in-the-cold.html;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=0;
- http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html?_r=1;
- http://www.epi.org/press/1b-visa-program-attracting-brightest-workers/;
- http://www.epi.org/files/2013/outstanding-talent-high-skilled-immigration.pdf;
- http://www.eeoc.gov/policy/docs/national-origin.html;
- http://www.eeoc.gov/eeoc/newsroom/release/8-28-14.cfm;
- https://blogs.oracle.com/campusrecruitment/entry/my_journey_from_college_to;
- https://www.sec.gov/Archives/edgar/data/1341439/000119312514251351/d725622d10k.htm;
- https://www.usatoday.com/story/tech/2014/10/12/silicon-valley-diversity-tech-hiring-computer-science-graduates-african-american-hispanic/14684211/;
- http://www.sfgate.com/bayarea/article/Oraclescozinesswithgovernmentgoesbackto2820370.Php;
- https://www.eeoc.gov/eeoc/statistics/reports/hightech/;
- https://c.ymcdn.com/sites/ascendleadership.site-ym.com/resource/resmgr/Research/HiddenInPlainSight_Paper_042.pdf;
- http://www.cxotoday.com/story/why-india-is-becoming-so-important-for-oracle/.

INTERROGATORY NO. 25:

If YOU contend that any of the discrimination alleged in the Amended Complaint is based upon a theory of disparate impact, identify the policies, practices, procedures, and tests that YOU contend operate to have a disparate impact.

RESPONSE:

OFCCP incorporates the general objections stated above, and further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, the government's deliberative process privilege, the governmental privilege for investigative files and techniques, the government's informant privilege, the trial preparation privilege described in Rule 26(b)(3) of the Federal Rules of Civil Procedure, or exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence, or the common law.

OFCCP objects to this contention Interrogatory as overly broad and unduly burdensome because OFCCP should be provided the opportunity to conduct discovery and maintain flexibility about its contentions before responding to contention interrogatories, as the information necessary to respond to this Interrogatory becomes more readily available. *See* cases cited in General Objection No. 1. OFCCP further objects to this Interrogatory as premature because OFCCP has only obtained minimal discovery from Oracle because Oracle refused to provide a person for the Rule 30(b)(6) deposition that OFCCP noticed, refused to produce any documents pending a protective order to include not even producing responsive documents that were not covered by the protective order, and has produced information responsive only to a fraction of OFCCP's discovery requests. Furthermore, OFCCP objects to this premature Interrogatory because Oracle is attempting to benefit from its unclean hands of repeatedly failing to produce requested information during the compliance review and obstructing OFCCP's ability

to acquire this same information during discovery. For example, as repeatedly identified in the documents that OFCCP produced during this litigation and the underlying investigation, Oracle failed to produce: applicant and hiring data, such as data regarding name of school attended and prior degrees earned, years of prior work experience and prior salary before being hired by Oracle, compensation data such as the 1/13/13 snapshot, Oracle's pay equity analysis, employee personnel actions, employee contact information, data for the 2012 applicant flow log, internal complaints, external arbitration complaints, documents regarding compensation and hiring, etc. Additionally, in this litigation, Oracle, in its written document production responses identified that it would not be producing any responsive documents for 55 requests or 60% of OFCCP's document production requests. This failure to produce is in addition to refusing to produce a person for the Rule 30(b)(6) deposition that OFCCP noticed. Moreover, this Interrogatory is premature to the extent it will be the subject of forthcoming expert testimony. Finally, OFCCP objects to this interrogatory insofar as it seeks disclosure of information protected under Fed. R. Civ. P. 26(b)(4)(D).

OFCCP objects to this Interrogatory as compound, vague, and ambiguous with respect to the terms "identify," " policies," "practices," "procedures," "tests," and "operate." It is not clear what information Oracle is seeking to identify and what will constitute a sufficient identification. Is it the title of the policy or other terms referenced; is it the date they became effective, etc. It is not clear what Oracle considers a governing policy, practice, procedure to be, what constitutes an official or formal policy, practice or procedure of Oracle as opposed to an individual practice of an Oracle supervisor, etc. It is not clear what test Oracle is referring. Is it referring to a validity test or some other kind of test. Operate is also vague and ambiguous. There are multiple ways that operate can be interpreted, does it mean how it functions, what Oracle created, how it is managed or run, etc.?

OFCCP objects to this interrogatory because Oracle has already asked the equivalent of 25 interrogatories in that five of its previous interrogatories contained two subparts each, another four subparts and still another contained five subparts. As such, Oracle exceeded the number of interrogatories that it can make without a court order.

Subject to and without waiving the foregoing objections, OFCCP declines to answer this Interrogatory because Oracle exceeded the number of interrogatories allowed without court order.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the foregoing objections and notwithstanding the forgoing, OFCCP notes it is still waiting for Oracle to produce documents in response to the Court's Motion to Compel Order dated September 11, 2017, and in response to multiple sets of documents production requests. As such, the evidence used at the hearing may rely on different facts and different policies, practices, procedures and tests than which is identified in response to this interrogatory.

OFCCP does contend that discriminations alleged in the Amended Complaint are also based upon a theory of disparate impact. As noted above, while discovery remains ongoing, OFCCP identifies, at this time, the following Oracle policies, practices, procedures, and tests that may have a disparate impact:

- Oracle's recruiting and hiring practices to include: absence of objective criteria; subjective decision making; centralized recruiting; centralized hiring; resume screening; interview screening; employee referral practices; use of internal recruiters; selective school recruiting; recruiting from Oracle India; H-1B visa use;
- Oracle's pay practices to include: absence of objective criteria in setting pay, pay increases, performance, and raises; subjective decision making in setting pay, pay increases, performance, raises; pay secrecy culture; limited, inconsistent use of

performance evaluations, promotions and raises; centralized budgeting; pay setting practices for starting pay, increases, and interns.

Declaration

I declare under penalty of perjury that to the best of my knowledge, the foregoing is true and correct.

Executed October 10, 2017

JANE SUHR
Deputy Regional Director, OFCCP Pacific Region

AS TO OBJECTIONS

Respectfully submitted,

DATED: October 10, 2017

NICHOLAS C. GEALE
Acting Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

IAN ELIASOPH
Counsel for Civil Rights

/s/ Norman E. Garcia
NORMAN E. GARCIA
Senior Trial Attorney

Attorneys for OFCCP

Office of the Solicitor
United States Department of Labor

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and am over eighteen years of age. I am not a party to the instant action; my business address is 90 7th Street, Suite 3-700, San Francisco, CA 94103.

On the date indicated below, I served the foregoing **OFCCP'S SUPPLEMENTAL OBJECTIONS AND ANSWERS TO DEFENDANT ORACLE AMERICA, INC.'S INTERROGATORIES, SET ONE (AS AMENDED)** by electronic mail, by prior written agreement between counsel, to the following:

Connell, Erin M.: econnell@orrick.com

Kaddah, Jacqueline D.: jkaddah@orrick.com

James, Jessica R. L.: jessica.james@orrick.com

Siniscalco, Gary: grsiniscalco@orrick.com

I certify under penalty of perjury that the above is true and correct.

Executed: October 11, 2017

/s/ Norman E. Garcia
NORMAN E. GARCIA
Senior Trial Attorney

Office of the Solicitor
U.S. Department of Labor

EXHIBIT E

Page 1

1 BEFORE THE
2 U.S. DEPARTMENT OF LABOR
3 NORTHEAST REGION
4
5 ----------X
6 In the Matter of: :
7 :
8 OFFICE OF FEDERAL CONTRACT :
9 COMPLIANCE PROGRAMS, UNITED :
10 STATES DEPARTMENT OF LABOR, :
11 :
12 Plaintiff, : Case No.: 2017-OFC-00001
13 :
14 v. :
15 :
16 ANALOGIC CORPORATION, :
17 :
18 Defendant. :
19 ----------X
20
21 U.S. Department of Labor
22 Office of Administrative Law Judges
23 O'Neill Federal Building
24 10 Causeway Street, Room 403
25 Boston, MA 02222
26
27 Tuesday,
28 June 27, 2017
29
30
31
32 The above-entitled matter came on for a hearing,
33 pursuant to notice, at 1:00 p.m.
34 BEFORE: COLLEEN A. GERAGHTY,
35 Administrative Law Judge

Page 2

1 APPEARANCES:
2
3 On behalf of the Plaintiff:
4
5 KELLY M. LAWSON, Esq.
6 RACHEL A. CULLEY, Esq.
7 GARRETT J. LEE, Esq.
8 JFK Federal Building
9 Suite E375
10 Boston, Massachusetts 02203
11 (617) 565-2500
12 lawson.kelly@dol.gov
13 culley.rachel@dol.gov
14 lee.garrett@dol.gov
15
16
17 On behalf of the Defendant:
18
19 KENNETH M. BELLO, Esq.
20 JUSTIN ENGEL, Esq.
21 25 Summer Street, Suite 1200
22 Boston, Massachusetts 02110
23 (617) 247-4100
24 kbello@bellowelsh.com
25 jengel@bellowelsh.com

Page 3

1 Reporter: Sharon Saalfield Date: June 27, 2017
2 OALJ Case Name & Number: OFCCP/Analogic Corp., 2017-OFC-00001
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4
5
6 WITNESS (FULL NAME) DIRECT CROSS REDIRECT RECROSS
7
8 None.
9
10 EXHIBITS
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12 EXHIBITS IDENTIFICATION RECEIVED WITHDRAWN REJECTED
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14 None.
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Page 4

1 PROCEEDINGS
2 (1:10 p.m.)
3 JUDGE GERAGHTY: We are on the record now in the
4 matter of the Office of Federal Contract Compliance versus
5 Analogic Corporation. The case number is 2017-OFC-00001.
6 And we are here today because I have several motions related to
7 discovery in this case and I'm just going to briefly identify
8 the motions. If I make a mistake, I will ask the parties to
9 let me know, and then I'm going to ask the parties to enter
10 their appearance and then we'll get going.
11 So the very first thing I have is Analogic
12 Corporation's Motion to Compel Rule 30(b) deposition. In
13 response to that, I have from OFCCP a Motion for a Protective
14 Order Limiting the Deposition of OFCC Personnel, and then I
15 have Analogic's Opposition to the Cross Motion for a Protective
16 Order. So that's the first motion.
17 And then I believe they came in – the second motion
18 came in, it was Analogic's Motion to Compel Production In
19 Camera Review of Redacted and Withheld Documents, then OFCCP's
20 opposition to that, and I received a reply brief from Analogic.
21 And then the last motion was the OFCCP's Motion for
22 Partial Summary Judgment, Analogic's opposition, OFCCP's reply
23 brief, and then Analogic's sur-reply.
24 Did I miss anything that was filed before me?
25 MR. BELLO: I don't believe so.

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1 JUDGE GERAGHTY: So I have just a question. Does the
2 government agree that if you were not successful in
3 establishing an underlying violation occurred during the audit
4 period, that's the end of it? You don't get to then try to
5 establish a later? Because isn't your continuing violation
6 based on an initial violation during that audit period?
7 MS. LAWSON: It is, Your Honor. It is based on that.
8 I think the only clarification I would say is, again, the
9 testimony of our expert, which they are going to have. They've
10 got the original report, the rebuttal. They're going to get
11 another one based on their more recent. They're going to get a
12 deposition. All of that. It's going to be our expert's
13 testimony about that violation, yes. If our expert -- if you
14 do not believe our expert's testimony --
15 JUDGE GERAGHTY: Correct.
16 MS. LAWSON: -- and there was no violation during
17 that period --
18 JUDGE GERAGHTY: There is no continuing violation.
19 MS. LAWSON: -- there is no continuing violation.
20 Correct, Your Honor.
21 JUDGE GERAGHTY: All right.
22 MR. BELLO: With due respect to Ms. Lawson, she's
23 wrong. Mach Mining is not as a matter of law applied to OFCCP.
24 There's a different term, okay? It's a different context.
25 Reasonable is the term used under this statute, okay? And in

Page 66

1 fact, I read Mach Mining before I came over. They actually put
2 in quotes, okay, the word that's used in Mach Mining which I'm
3 sorry, I'm losing, but it was --
4 JUDGE GERAGHTY: Endeavor.
5 MR. BELLO: Endeavor. And they are -- the fact that
6 EEOC standards are used as guidance and direction in OFCCP
7 cases, no one disputes that. That doesn't mean it gloms on
8 completely four square. They are two different laws. And they
9 do arise fundamentally in different circumstances. EEOC arises
10 in many individual cases, on occasion systemic cases, usually
11 complaint driven. OFCCP cases, most of them arise out of an
12 audit. It is not a footnote. It's not a "you get your day in
13 court," that a contractor is by their own regulations and
14 guidelines required to get certain information. It says it
15 right in there. I quoted it earlier. So it can make a
16 judgment about whether or not to fight, to settle, to try to
17 convince them. It is not a footnote that we did not get the
18 regression and we did not get any anecdotal evidence.
19 Even after, one of the things that's been alleged is
20 that there were comments and reviews. They use the word
21 "likability," but basically teamwork. And somehow these
22 comments were made more about females than males, which is
23 actually factually not correct. But that was known. You've
24 got the interviews. They're done in 2012. You've got an NOV
25 that's issued in December '14. You've got a show cause --

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1 January. You've got a show cause.
2 JUDGE GERAGHTY: Okay, but you know -- you obviously
3 know this anecdotal evidence at this point, right?
4 MR. BELLO: But the fact is --
5 JUDGE GERAGHTY: Then your argument is you needed to
6 know it --
7 MR. BELLO: Sure.
8 JUDGE GERAGHTY: -- prior to the notice of violation
9 or else they can't raise it now.
10 MR. BELLO: Absolutely. But also, it undermines
11 what's the purpose of a conciliation if we don't have the
12 information? It's not a footnote that Analogic has spent a
13 small fortune to defend itself here for its day in court, okay?
14 It shouldn't -- it should have had the information so it could
15 have meaningfully conciliated and made a judgment whether it
16 would be here or would settle. It didn't get that opportunity.
17 And even after, what's stunning to me is in July of
18 2015 when they amend the show cause, they don't add anything to
19 it, okay? So it is -- and certainly we have the deposition --
20 one of the issues that I don't understand why they filed this
21 now because we had depositions. And I know you don't want more
22 paper, but it's material on this issue. Ms. Aubin-Smith
23 testified about the conciliation. She testified about the
24 phone calls. She testified that Analogic specifically asked
25 for the database so it could replicate to try to make a

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1 judgment as to whether it should settle.
2 Mr. Frye will testify that had they got that and it
3 showed a problem, they would have tried to fix it. So it is
4 not a footnote. It's very meaningful, okay, to have that.
5 It's not endeavor. Those words have to have meaning. And to
6 file a Motion for Summary Judgment, in the end there may be a
7 summary judgment the other way on this issue, that they failed
8 to conciliate and the case cannot go forward, all right?
9 That's a legitimate issue. It's not ripe because we have to
10 finish the discovery. But the notion that this doesn't matter
11 from a conciliation perspective is fundamentally at odds with
12 the guidelines, which actually link. They link.
13 JUDGE GERAGHTY: So let me ask a question --
14 MR. BELLO: Sure.
15 JUDGE GERAGHTY: -- Mr. Bello, just to follow that
16 reasoning a little bit. Supposing you had gotten everything
17 you say you need in terms of the dataset.
18 MR. BELLO: Yeah.
19 JUDGE GERAGHTY: And you know, you still weren't
20 able, you still didn't agree. I think we'd still be here
21 today. And I think we'd still be here today because at least
22 what you're telling me is that your labor market expert and the
23 government's labor market expert don't agree on their analysis
24 right now. Is that --
25 MR. BELLO: No, I actually don't think that's a

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1 interested?
2 MR. BELLO: At this juncture, that's correct.
3 JUDGE GERAGHTY: That's fine. Okay. So we'll
4 proceed. All right. Thank you all very much for your
5 presentations.
6 MS. LAWSON: Thank you, Your Honor.
7 JUDGE GERAGHTY: And I will try to get these orders
8 out as soon as I can. Thank you.
9 MS. LAWSON: Thank you.
10 MR. BELLO: Thank you.
11 (Whereupon, at 2:44 p.m., the hearing in the above-
12 entitled matter was closed.)
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Page 74

1 C E R T I F I C A T E
2
3 This is to certify that the attached proceedings before the
4
5 Administrative Law Judge Colleen A. Geraghty, Boston, MA
6 Insert Title of Officer Name and Office
7
8 In the matter of: Office of Federal Contract Compliance
9 Programs, United States Department of
10 Labor v. Analogic Corporation
11
12 Case/Docket Number: 2017-OFC-00001
13
14 Place: Boston, MA
15
16 Date: June 27, 2017
17
18 were held as therein appears, and that this is the original
19 transcript thereof for the files of the Department of Labor.
20
21 Free State Reporting, Inc.
22 (Name of Reporting Company)
23
24 By _____
25 (Official Reporter Signature)

EXHIBIT F

May 19, 2017

VIA HAND DELIVERY

Hon. Christopher Larsen
United States Department of Labor
Office of Administrative Law Judges
Federal Building
90 Seventh Street, Room 4-815
San Francisco, CA 94103-1516

Re: *OFCCP v Oracle America, Inc.*
OALJ Case No. 2017-OFC-00006

Dear Judge Larsen:

Pursuant to the Court's Order After Pre-Hearing Conference dated May 10, 2017, Plaintiff Office of Federal Contract Compliance Programs ("OFCCP") and Defendant Oracle America, Inc. ("Oracle") write jointly to notify the Court that the parties have largely reached an agreement as to the scope of a protective order, with the exception of one issue about which the parties have extensively met and conferred and remain unable to reach an agreement. Attached to this letter is Oracle's proposed protective order with OFCCP's proposed edits identified in tracked changes. This letter sets forth the parties' respective position on the disputed issue below, and the parties submit this remaining disputed issue to the Court for resolution.

PARAGRAPH 7.1: OFCCP'S ABILITY TO USE CONFIDENTIAL INFORMATION OBTAINED IN THIS CASE FOR PURPOSES OTHER THAN PROSECUTING, DEFENDING, OR ATTEMPTING TO SETTLE THIS ACTION

Oracle's Position

Oracle's proposed protective order contains a standard provision, at paragraph 7.1, that confidential information produced in this action be used "only for prosecuting, defending or attempting to settle this action," except where disclosure is required by law. This provision is based on the Northern District of California's model, which the parties used as a template (except where OFCCP took the position that federal law required a change or the parties agreed a change was appropriate, neither of which is the case here). This provision is necessary to ensure that OFCCP cannot circumvent the procedural and constitutional safeguards that apply to other OFCCP compliance evaluations for the sake of "efficiency." OFFCP's arguments to the contrary misstate the actual effect of the provision and ignore the fact that virtually identical provisions

are commonplace in similar cases involving government agencies, including the Department of Labor and the EEOC.

Although Oracle agreed to two exceptions to the scope of paragraph 7.1 as part of the parties' negotiations,[1] OFCCP nevertheless will not agree to the rest of this provision, on the basis that OFCCP wants to use confidential information produced by Oracle in this litigation in any other audit or litigation of its choice. Notably, despite Oracle's request, OFCCP has provided no authority to support any entitlement to such a sweeping ability to freely use confidential information obtained in one matter in connection with other matters.

Oracle's proposed provision would not hamper OFCCP's ability to *disclose* Oracle's confidential information with OFCCP employees or its counsel, including those with no involvement in this litigation or the underlying audit. (See Paragraph 2.8 of the proposed protective order, defining a "Party" to whom Protected Material may be disclosed). The provision merely bars OFCCP from *using* the confidential information produced in this action in other open, pending or future OFCCP compliance evaluations, claims, or litigation.

Indeed, provisions like the one at issue here are commonplace, and constitute one of the primary reasons parties enter into protective orders. In fact, both the DOL and the EEOC have entered into protective orders with similar provisions in the recent past. *See, e.g.*, *EEOC v. Sterling Jewelers*, W.D.N.Y Case No. 08-CV-0706 (Dkt. No. 206) at ¶ 10 ("Confidential Information as defined herein, disclosed by a Producing Party to any Receiving Party, may be used solely for purposes of this action or the Arbitration Proceeding(s) from the arbitrator."); *Edward C. Hugler, Acting Secretary of Labor v. Himanshu Bhatia*, C.D. Cal. Case No. 8:16-cv-01548-JVS-JCG (Dkt. No. 29) (Exh. H to Connell Decl. filed in support of Mot. for Protective Order "Connell Decl." at p. 8, ¶ 7.1 ("A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action."); *Thomas E. Perez, Sec'y of Lab. v. Vesuvio's Pizza*, M.D.N.C. Case No. 1:15-cv-00519-LCB-LPA (Dkt. No. 30-1) Exh. H. to Connell Decl. at p. 17, ¶ 1 ("By entering into this SPO, the Secretary and his counsel and the

[1] These exceptions provide that "OFCCP may share Protected Material with (1) the Equal Employment Opportunity Commission (EEOC) to the extent required pursuant to the Memorandum of Understanding between the Department of Labor and the EEOC and (2) any other federal agency where disclosure is required by law, provided that the EEOC and/or other federal agency is provided a copy of this Protective Order prior to receipt of the Protected Material."

Defendants and their counsel shall only use information and/or documents disclosed pursuant to this SPO for purposes of litigating this action . . . ."). There is no reason for a departure from that practice here.

Not only are similar provisions frequently agreed to in cases like this, but to allow the Agency unlimited use of Oracle's confidential information to bolster its investigations into other establishments would be inconsistent with the governing regulations and ignores OFCCP's constitutional obligations. OFCCP's regulations provide for establishment-based reviews. The regulations require "a contractor establishment" to develop a written affirmative action plan. . ." (41 CFR 60-1.12 (b)), provide for a desk audit of that AAP (41 CFR 60-1.20 (a)(1)(i)), and allow an onsite review, conducted at the contractor's "establishment." 41 CFR 60-1.25 (a)(1)(ii). In reviewing the Agency's efforts to obtain documents from a contractor during an establishment audit, "[t]he critical questions are: (1) whether Congress has granted the authority to investigate; (2) whether procedural requirements have been followed; and (3) whether the evidence is relevant and material to the investigation." *Reich v. Montana Sulphur*, 32 F.3d 440, 444 (9th Cir. 1994). "Even if the test is met, a Fourth Amendment 'reasonableness' inquiry must also be satisfied." *Id.* at 444 n. 5; *see also United Space Alliance v. Solis*, 824 F. Supp. 2d 68, 91 (D.D.C. 2011) (OFCCP's compliance with its Fourth Amendment obligations is a prerequisite for it to begin an audit or seek information from a contractor). The Fourth Amendment requires that the request be "limited in scope, relevant in purpose and specific in directive so that compliance will not be unreasonably burdensome." *Donovan v. Lone Steer*, 464 U.S. 408, 415 (1984). These requirements afford protection "for a subpoenaed employer by allowing him to question the reasonableness of the subpoena" through judicial review. *Id.*

These regulations and the Fourth Amendment set forth the confines of OFCCP's authority and limit the scope of its investigative power to a particular establishment. If OFCCP and a contractor cannot agree that the request is reasonable, OFCCP may bring a denial of access case pursuant to the expedited proceedings provisions in 41 CFR 60-30.31. OFCCP's unsupported insistence that it may freely use the confidential information produced in this action in any other audit or action of its choice is tantamount to proclaiming that it may exceed the scope of its regulatory authority, and to insisting that Oracle waive in advance its Fourth Amendment rights in every other audit or action OFCCP pursues.

To be clear, Oracle's concern about this issue is not an abstract one. OFCCP has scheduled more than ***40*** separate compliance evaluations of separate Oracle facilities since early 2013, and several of those compliance reviews remain open today. The

instant matter emanates from single establishment review where OFCCP scheduled and limited its review to Oracle's Redwood Shores facility. Now, OFCCP demands unfettered use of any confidential document Oracle produces in this litigation for use in any pending and any future separate and distinct audits. But OFCCP's regulations and the Fourth Amendment clearly confine audits to specific establishments and require that OFCCP meet its obligation to establish that its requests are relevant to the specific matter at issue and not unreasonable. Further, the Fourth Amendment affords Oracle the opportunity to object to an unreasonable request and OFCCP's recourse is to seek a remedy by way of an access case, where the disputed issue will be fairly adjudicated by an ALJ. Allowing OFCCP unfettered authority to use the documents gained in discovery here in other matters would permit the Agency to bypass the limits placed on it by its regulations and the Fourth Amendment and provide no recourse for Oracle.

In its Opposition to Oracle's Motion for Protective Order, as well as in the parties' meet and confer, OFCCP presented two arguments (neither supported by any authority) to support its position that it should be free to use confidential information in other matters. First, OFCCP stated that it would not impose any "burden" on Oracle since the information is already in OFCCP's possession. This glib response is beside the point. The regulations and Fourth Amendment require not only that information sought by an administrative agency not be unduly burdensome for the other party to produce, but also that the information be *relevant to the matter at issue*. *See Reich*, 32 F.3d at 444 (evidence must be "relevant and material to the investigation"). The vast majority of the confidential information that Oracle has and will produce in this matter is comprised of data involving employees *at the Redwood Shores facility* –the particular establishment at issue in the underlying audit. Before OFCCP attempts to utilize that establishment-specific confidential information in other audits – for example, by aggregating that data with other data to support a finding of violation – Oracle is entitled to contest whether that data is relevant for the matter under review.

Second, OFCCP argued that it should be able to use confidential information obtained in this litigation in other compliance reviews or audits because otherwise the protective order would "stop the Agency from talking to itself and sharing information critical for efficiently completing its mission." As an example, OFCCP postulates that, under Oracle's proposed paragraph 7.1, if an Oracle compensation official admitted to discriminating in setting compensation nationwide, OFCCP would be "entirely unable to share this clearly relevant information with itself in relation to other reviews." OFCCP is wrong. First, it is unclear how the hypothetical admission that Oracle discriminates nationally would be subject to the protective order at all. Second, and more fundamentally, the protective order does not preclude OFFCP from internal sharing of information or from the benefits it gains to its collective knowledge; it precludes only actual use

in other cases of the specific confidential information produced in this case. The confidential information produced in this case may not be relevant, appropriate, or admissible in other compliance evaluations or litigation depending on the facts of those cases, and Oracle has a constitutional right to the appropriate notice and process in each separate case. Clearly, given that it is commonplace for the EEOC and other government agencies to enter into protective orders with similar provisions restricting use of confidential information to the matter in which it was produced, government agencies are capable of "completing their mission" without exceeding their regulatory authority or bypassing private parties' constitutional rights.

OFCCP's Position

OFCCP has worked diligently to fashion a stipulated protective order that complies with federal law and satisfies Oracle's goals of protecting its proprietary information and its employees' private information. However, Oracle's proposed restriction on OFCCP's *internal* use of purportedly confidential material to this case only serves none of these purposes. OFCCP cannot agree to this restriction, which prevents OFCCP from doing its job and serves only to shield Oracle from potential additional liability.

First, Oracle's use restriction impedes OFCCP's law enforcement efforts. For instance, if OFCCP unearthed an email detailing how a manager discriminated against an employee based on religion, Oracle's restriction would bar OFCCP from using that email to initiate a new enforcement proceeding to vindicate that employee's rights. Similarly, if OFCCP discovered in this case—which involves Oracle's headquarters—that Oracle employs a nationwide practice that depresses women's compensation relative to men, Oracle's proposed use restriction would bar OFCCP from using that evidence in its reviews of Oracle's other establishments. To vindicate employees' rights, under the use restriction, OFCCP would need to seek Oracle's blessing to use such evidence for these other purposes. Such a procedure would place the fox in charge of the investigative and enforcement henhouse, undermining OFCCP's ability to perform its mission.

Second, Oracle's use restriction would be costly in both time and money. As Oracle has acknowledged, OFCCP currently has a number of other open reviews against Oracle. OFCCP, like the rest of the federal government, must operate as efficiently as possible to maximize the limited taxpayer-funded resources it has. To that end, OFCCP coordinates its enforcement efforts, including through coordinating its teams and resolving multiple compliance evaluations and other proceedings against a single employer in a global fashion.[2] Oracle's proposed use

[2] *See, e.g.*, Press Release, Mar. 22, 2012, *available at* https://www.dol.gov/opa/media/press/ofccp/OFCCP20120507.htm (resolution of violations across 22 facilities); Press Release, Nov. 19, 2015, *available at* https://www.dol.gov/opa/media/press/ofccp/OFCCP20152242.htm (global resolution of facilities across country).

restriction would prevent such cost-saving coordination efforts, putting in place what would amount to be an adversarial and invasive procedure over how OFCCP processes information in its possession.

To justify its restriction, Oracle has only invoked the Fourth Amendment and an OFCCP regulation. However, as explained further below, the Fourth Amendment—which protects against unreasonable searches and seizures—does not restrict how the government uses information it obtains, so long as that information is obtained lawfully. Nor is Oracle's use restriction mandated by the requirement that contractors give OFCCP access to information that "may be relevant" to a compliance evaluation. 41 C.F.R. § 60-1.43. The regulation's plain language governs what a contractor must give OFCCP; it does not restrict, as Oracle argues, OFCCP's use of information. Moreover, the Eighth Circuit rejected a similar argument made against the Equal Employment Opportunity Commission ("EEOC") over three decades ago. *See Emerson Elec. Co. v. Schlesinger*, 609 F.2d 898, 905-906 (8th Cir. 1979) (obtaining information through OFCCP does not circumvent statute defining EEOC's entitlement to information). Indeed, § 60-1.43 expressly authorizes OFCCP to use information it obtains to enforce any law within its jurisdiction and can be shared to enforce Title VII, which is outside of OFCCP's jurisdiction.

Oracle's desire to limit its liability through its use restriction does not constitute the requisite good cause to tie OFCCP's hands and restrict use of purportedly confidential evidence to this case only. *See Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211-12 (9th Cir. 2002) (moving party "bears the burden of showing specific prejudice or harm will result if no protective order is granted"). The Court should thus reject Oracle's proposed language, and accept OFCCP's version.

Courts Reject Protective Orders That Hamstring Law Enforcement by Restricting the Use of Evidence.

OFCCP "is charged with conducting periodic reviews of entities that have contracted with the government to ensure that the contractors have complied with their non-discrimination and affirmative action obligations." *Bd. of Governors of Univ. of N. Carolina v. U.S. Dep't of Labor*, 917 F.2d 812, 815 (4th Cir. 1990). Materials disclosed in those reviews may be used for any purpose to enforce Executive Order 11426, the Civil Rights Act of 1964, and any law within OFCCP's jurisdiction. *See* 41 C.F.R. § 60-1.43; *see also id.* § 60-1.7 (reports required under OFCCP regulation "shall be used only in connection with the administration of the order, the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act").

To promote efficient law enforcement, it is OFCCP policy "to cooperate with other public agencies as well as private parties seeking to eliminate discrimination in employment." 41

C.F.R. § 60-40.1. To that end, under its Memorandum of Understanding ("MOU") with the EEOC, OFCCP "shall share any information relating to the employment policies and/or practices of employers holding government contracts or subcontracts that supports the enforcement mandates of each agency as well as their joint enforcement efforts." MOU § 1(a), *available at* https://www.eeoc.gov/laws/mous/eeoc_ofccp.cfm. Over contractors' objections, courts have approved OFCCP's and the EEOC's coordinated efforts. *See, e.g.*, *Emerson*, 609 F.2d at 907 (rejecting challenge to MOU); *Reynolds Metals Co. v. Rumsfeld*, 564 F.2d 663, 666 (4th Cir. 1977). Because "[b]oth agencies are charged with the responsibility of eliminating employment discrimination," sharing information between the two agencies "facilitates the operation of both agencies and eliminates wasteful duplication of effort." *Reynolds Metals*, 564 F.2d at 668.

Oracle's use restriction does the precise opposite, preventing OFCCP from sharing information internally and taking cost-effective steps to coordinate its enforcement efforts. Under Oracle's proposal, absent Oracle's permission, OFCCP is barred in perpetuity from using information obtained in this case for any other law enforcement purpose OFCCP may ever have for that information. This would be an incongruous result, particularly since OFCCP can share such information with the EEOC, which could use the information for any purpose, while OFCCP was barred from sharing the information internally and doing the same. Amplifying this incongruity is that, while Oracle is barred from interfering with its employees reporting wrongdoing to OFCCP (41 C.F.R. § 60-1.32), the use restriction would enable Oracle to interfere with OFCCP's ability to share evidence of wrongdoing among its compliance personnel. No good cause exists to support such a restriction that would prevent OFCCP from doing its job and increase taxpayers' costs.

With this in mind, courts readily reject protective orders that waste public resources and hamstring agencies in carrying out their functions. *See, e.g.*, *Am. Tel. & Tel. Co. v. Grady*, 594 F.2d 594, 597 (7th Cir. 1978) ("We are impressed with the wastefulness of requiring government counsel to duplicate the analyses and discovery already made."); *United States ex rel. Kaplan v. Metro. Ambulance & First-Aid Corp.*, 395 F. Supp. 2d 1 (S.D.N.Y. 2005) (rejecting limit on government's use of discovery to case as doing so would "limit[] the government's ability to perform its functions as a health oversight agency"); *United States ex rel. Stewart v. La. Clinic*, No. Civ. A. 99-1767, 2002 WL 31819130, at *10 (E.D. La. Dec. 12, 2002) (same); *see also Barker v. Engineered Steel Concepts, Inc.*, No. 2:09-MC-72-PRC, 2010 WL 4852640, at *3 (N.D. Ind. Nov. 22, 2010) (rejecting use restriction that "prohibits the NLRB from carrying out its responsibility to share information with other government agencies"). Here, by preventing the left hand from using what the right hand has in grasp, OFCCP will be at Oracle's mercy in being able to ensure Oracle fulfills all of its non-discrimination obligations. Oracle's attempt to put itself in charge of OFCCP's law enforcement functions, through confidentiality designations, prevents OFCCP from fulfilling its responsibilities efficiently.

Indeed, courts have long rejected arguments that a protective order is necessary to prevent use of discovery in one case in another case or that a protective order is necessary to prevent a party from sharing information with another party. It is well-established that "where the discovery sought is relevant . . . the mere fact that it may be used in other litigation does not mandate a protective order." *Dove v. Atl. Capital Corp.*, 963 F.2d 15, 19 (2d Cir. 1992). And, going further than the issue presented here, "courts have refused to enter protective orders which prevent disclosure to others litigating similar issues on the grounds that the Federal Rules of Civil Procedure do not foreclose collaboration in discovery." *Grady*, 594 F.2d at 597; *see also Cipollone v. Liggett Grp., Inc.*, 113 F.R.D. 86, 91 (D.N.J. 1986) ("[S]o long as the interests of those represented in the initial litigation are being fully and ethically prosecuted, the Federal Rules do not foreclose the collaborative use of discovery."); *Patterson v. Ford Motor Co.*, 85 F.R.D. 152, 154 (W.D. Tex. 1980) (noting that "sharing information obtained through discovery . . . may allow for effective, speedy, and efficient representation"). Here, if a protective order is not warranted to prevent sharing of discovery with other parties, it is certainly not necessary here where OFCCP would only be sharing the discovery internally with teams working on other proceedings involving Oracle.

Because Oracle's use restriction interferes with OFCCP's law enforcement functions, the Court should reject it.

The Fourth Amendment Does Not Provide Good Cause Supporting Oracle's Use Restriction.

Oracle insists that the Fourth Amendment requires a protective order restricting OFCCP's use of confidential materials. This novel argument, for which Oracle offered no support during the meet-and-confer process, is readily dismissed.

The Fourth Amendment protects "against unreasonable searches and seizures." U.S. Const. amend. IV. This prohibition does not restrict how the government uses information it obtains, so long as that information is obtained lawfully. *See, e.g.*, *United States v. Jacobsen*, 466 U.S. 109, 117 (1984) ("The Fourth Amendment is implicated only if the authorities use information with respect to which the expectation of privacy has not already been frustrated."); *Johnson v. Quander*, 440 F.3d 489, 499 (D.C. Cir. 2006) (if evidence is obtained "in conformance with the Fourth Amendment, the government's storage and use of it does not give rise to an independent Fourth Amendment claim"); *Green v. Berge*, 354 F.3d 675, 680 (7th Cir. 2004) ("[T]he fourth amendment does not control how properly collected information is deployed.") (Easterbrook, J., concurring). Demonstrating this principle are the myriad cases establishing that the Fourth Amendment permits law enforcement agencies to use lawfully obtained fingerprint and DNA evidence to prosecute crimes other than the one leading to the collection of such evidence. In such cases, the Fourth Amendment is not implicated because there is no "separate search under

the Fourth Amendment." *Boroian v. Mueller*, 616 F.3d 60, 68 (1st Cir. 2010) (citing various cases).

Here, as with fingerprint and DNA evidence maintained criminal law enforcement agencies, there is no "search" triggering Fourth Amendment protections if OFCCP simply uses information it obtains in this litigation for another purpose. OFCCP will be lawfully obtaining evidence through the discovery process, which the Court oversees and various procedural rules govern. Oracle has not argued, nor could it credibly, that obtaining discovery through this litigation violates the Fourth Amendment given the existing procedural restrictions on discovery. *See, e.g.*, *Lease v. Fishel*, No. 1:07–CV–0003, 2009 WL 922486, at *5 (M.D. Pa. Apr. 3, 2009) (noting safeguards under procedural rules "ensure that civil discovery does not run afoul of the Fourth Amendment"); *United States v. Int'l Business Machines Corp.*, 83 F.R.D. 97, 103 (S.D.N.Y. 1979) ("[I]t is clear that the fourth amendment if applicable would hold subpoenas in civil litigation to a standard of reasonableness no more rigorous than that imposed by rule 45(b)."). Thus, the Fourth Amendment does not restrict OFCCP's use of information it obtains from Oracle through discovery in this case.

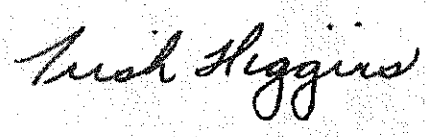
Insofar as Oracle argues that Fourth Amendment restrictions on administrative subpoenas are somehow triggered here, Oracle fares no better. While courts have used such restrictions to evaluate what OFCCP can request in a compliance evaluation, no court has ever applied that analysis to what OFCCP may use in an investigation. In any event, the Supreme Court established long ago that the function of such subpoenas "is essentially the same as. . . the court's in issuing other pretrial orders for the discovery of evidence" and are subject to the same constitutional limitations. *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 216 (1946). Therefore, as noted above, if OFCCP obtains evidence pursuant to the discovery rules governing this case, the Fourth Amendment is satisfied.

OFCCP Regulation Does Not Provide Good Cause Supporting the Use Restriction.

Finally, Oracle has argued that the regulation requiring contractors to give OFCCP information that "may be relevant" to a compliance evaluation somehow bars OFCCP's use of evidence obtained in this case for other law enforcement purposes. *See* 41 C.F.R. § 60-1.43. *Emerson* rejected a nearly identical argument contractors made in attempting to halt sharing between OFCCP and the EEOC. There, contractors argued that the EEOC's ability to obtain evidence from OFCCP was an end run around a statute providing that the EEOC may access information that "is relevant to the charge under investigation." *See Emerson*, 609 F.2d at 905. The court rejected the argument, noting that the statutory language did not pertain to "information in the lawful possession of another agency." *Id.* The court also rejected the argument because "the information sought by the EEOC from the OFCCP is, almost by definition, relevant to a pending employment discrimination charge." *Id.*

Here, as in *Emerson*, the regulatory language does not address how OFCCP may use information it lawfully possesses. However, even if it did, evidence OFCCP obtains through this litigation involving Oracle's employment practices is likely to satisfy the "may be relevant" standard in the context of other cases. Thus, § 60-1.43 offers no basis to restrict OFCCP's use of information.

Respectfully submitted,



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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 **[PROPOSED] STIPULATED PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery activity in the above captioned action may involve production of confidential, trade secret, or private information for which public disclosure may not be warranted. Accordingly, the Office of Federal Contract Compliance Programs, United States Department of Labor ("OFCCP") and Oracle America, Inc. (each a "Party" and collectively the "Parties") hereby stipulate to and petition the court to enter the following Stipulated Protective Order.

The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the information or items that are entitled to protection under applicable legal principles. The parties further acknowledge that this Stipulated Protective Order cannot, and therefore does not, afford protections inconsistent with any statute (*e.g.*, the Freedom of Information Act and the Records Disposal Act), regulation, or other law.

The parties further acknowledge that this Stipulated Protective Order does not entitle them to file confidential information under seal; the party designating material as confidential must seek permission from the court to have its material designated as confidential filed under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party that challenges the designation of information or items

under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that, based on the Designating Party's good faith belief, may be subject to Freedom of Information Act ("FOIA") Exemptions 4 or 6, 5 U.S.C. § 552(b)(4) or (6).

2.3 Counsel: any attorney serving as legal counsel for a party, as well as their support staff.

2.4 Designating Party: a Party that designates information or items that it produces in disclosures or in responding to discovery as "CONFIDENTIAL."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action

2.8 Party: Either Party, meaning the Office of Contract Compliance Programs and Oracle America, Inc. (collectively "Parties") including any officers, directors, employees, consultants, and Counsel (and their support staffs).

2.9 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.10 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.11 Protected Material(s): any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

2.12 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also (1) all copies, excerpts, summaries, compilations of, or written materials containing Protected Material, and (2) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure in this proceeding by means other than through the Designating Party's production in the underlying compliance evaluation or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at a hearing on a dispositive motion or the final hearing shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect unless a Designating Party agrees otherwise, an order otherwise directs, or a subsequent change in the law or regulation provides otherwise. If Counsel become aware of a change in law or regulation that affects the terms of this provision during the pendency of this litigation, such Counsel will advise Counsel for the other Party. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and

exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Designating Material for Protection. Each Party that designates information or items for protection under this Order must take care to limit any such designation to material that qualifies under the appropriate standards. Mass, indiscriminate, or routinized designations are prohibited. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, the Designating Party must promptly notify the other Party that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), to the extent practicable, that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party will make reasonable efforts to clearly identify the protected portion(s). A Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page that contains Protected Material.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify all protected testimony on the record at the time of testimony or in a written notice served on all parties within 14 days of delivery of the final transcript.

(c) for information produced in some form other than documentary, including the production of electronic files in native format that cannot be marked as "CONFIDENTIAL", and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the medium or container in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the Producing Party shall make reasonable efforts to identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, meaning corrected as soon as practicable after discovered, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

5.4 Designations of Material Produced by Another Party. If any Party in good faith deems material it provided in the underlying compliance evaluation that is produced by another Party in this litigation to constitute "CONFIDENTIAL" information as defined in this Protective Order, it may timely designate such material, meaning designated as soon as practicable after discovered. Upon such timely designation, the Parties must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at any time. A Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and providing the basis

for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The Parties shall attempt to resolve each challenge in good faith and must begin the process by conferring within 14 days of the date of service of the notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, the explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without the ALJ's intervention, the Designating Party may file and serve a motion to retain confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier, unless the Parties agree to extend this time period. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within the time indicated by this paragraph, or as otherwise agreed by the Parties, shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation within the time indicated by this paragraph, or as otherwise agreed by the Parties, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating

Party. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the ALJ rules on the challenge.

The procedures set forth in this section 6 do not apply to responses to requests for information under the FOIA, which are governed by section 9 below.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. ~~A Receiving Party may use Protected Material that is disclosed or produced by another Party in connection with this case only for prosecuting, defending, or attempting to settle this action. Furthermore, such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of paragraph 13 below (FINAL DISPOSITION). Consistent with the foregoing limitation, Protected Material may not be used by a Party or Counsel in furtherance or any open, pending or future OFCCP compliance evaluation, OFCCP conciliation process, claims or litigation other than the above captioned action. Additionally, Protected Material may not be shared with any other governmental departments or agencies outside the OFCCP, except that OFCCP may share Protected Material with (1) the Equal Employment Opportunity Commission (EEOC) to the extent required pursuant to the Memorandum of Understanding between the Department of Labor and the EEOC, and (2) any other federal agency where disclosure is required by law, provided that the EEOC and/or other federal agency is provided a copy of this Protective Order prior to receipt of Protected Material.~~

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Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the ALJ or permitted in writing by the Designating Party, in addition to the individuals encompassed by the definition of Receiving Party above, a Receiving Party may

disclose any information or item designated "CONFIDENTIAL" only to:

(a) the ALJ and her or his personnel;

(b) court reporters and their staff to whom disclosure is reasonably necessary for this litigation;

(c) experts (as defined in this Order), professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) witnesses or potential witnesses in the action who have not been or applied to be Oracle employees to whom disclosure is reasonably necessary for this litigation, unless otherwise ordered by the ALJ, and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(e) witnesses or potential witnesses in the action who have been or applied to be Oracle employees to whom disclosure is reasonably necessary for this litigation, unless otherwise ordered by the ALJ, and who have signed the "Acknowledgement and Agreement to Be Bound (Exhibit B);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(g)(1) the Equal Employment Opportunity Commission (EEOC) to the extent required pursuant to the Memorandum of Understanding between the Department of Labor and the EEOC, and (2) any other federal agency where disclosure is required by law, provided that the EEOC and/or other federal agency is provided a copy of this Protective Order prior to receipt of Protected Material; and~~(g)(1); and~~

(h) recipients to whom disclosure is required pursuant to law, regulation, or court order.

Nothing in this Protective Order limits or is intended to limit the way a Party uses its own Protected Material.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party will (1) promptly notify in writing the Designating Party (and such notification shall include a copy of the subpoena); (2) promptly notify in writing the party that caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order (and such notification shall include a copy of this Protective Order); and (3) cooperate in good faith with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the subpoena is served on OFCCP or its agents, the agency will follow the procedures for handling such subpoenas set forth at 29 C.F.R. §§ 2.20-2.25 in responding to the subpoena. To the extent permitted by law and regulation, where the Designating Party timely seeks a protective order in the proceedings from which the subpoena arose, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. PROTECTED MATERIAL REQUESTED UNDER THE FREEDOM OF INFORMATION ACT

If OFCCP or OFCCP's Counsel receive a request under FOIA that seeks Protected Material, OFCCP or OFCCP's Counsel shall respond consistent with the U.S. Department of Labor's rules for processing requests for records under FOIA, 29 C.F.R. part 70. With respect to material marked in good faith as CONFIDENTIAL, OFCCP shall follow the procedures set forth at 29 C.F.R. § 70.26 before any disclosure is made under FOIA.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected

Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, and (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order and (d) request such person or persons to execute the "Acknowledgement and Agreement to Be Bound" that is attached hereto as Exhibit A. If the person or persons to whom unauthorized disclosures were made refuses to execute the "Acknowledgment and Agreement to Be Bound" (Exhibit A) or to otherwise comply with this Protective Order, and judicial intervention is required, the Receiving Party will, at its own expense, use its best efforts to maintain the protection of the improperly disclosed material.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in 29 C.F.R. § 18.51(e)(2), which is adopted by reference. This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502, and by agreement of the Parties, no Party shall be deemed to have waived claims of privilege as a result of production in this matter.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the ALJ or any court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. If a Receiving Party intends to file with the Office of Administrative Law Judges ("OALJ") briefs, exhibits or other materials containing material designated "CONFIDENTIAL" by the opposing Party, the Receiving Party must give notice to the Producing Party of the filing of the document at the time of filing or before.

If the Designating Party seeks to have the Protected Material sealed, the Designating Party must file a motion within ten business days of the filing of the Protective Material a motion to seal pursuant to 29 C.F.R. § 18.85(b).

A motion pursuant to this provision is not subject to the Court's pre-filing requirement.

13. FINAL DISPOSITION

Following final disposition of this case, as defined in paragraph 4 above, the parties agree that Protected Materials in OFCCP's possession will be maintained and disposed of pursuant to the requirements of the Federal Records Disposal Act, 44 U.S.C. §§ 3301, *et seq.*, any applicable regulations promulgated thereunder, and any other applicable law. Pending disposal of the records, the confidentiality obligations imposed by this Order remain in effect consistent with paragraph 4 (DURATION).

IT IS SO STIPULATED.

Respectfully submitted,

Date: May __, 2017

NICHOLAS C. GEALE
Acting Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

IAN H. ELIASOPH
Counsel for Civil Rights

_____

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E-Mail: Pilotin.Marc.A@dol.gov

Attorneys for Plaintiff OFCCP

Date: May __, 2017

_____

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E-Mail: grsiniscalco@orrick.com

Attorneys for Defendant Oracle America, Inc.

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States Department of Labor Office of Administrative Law Judges on _____ in the case of *Office of Federal Contract Compliance Programs, United States Department of Labor v. Oracle America, Inc.*, OALJ Case No. 2017-OFC-00006. I agree to comply with and to be bound by all the terms of this Protective Order. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States Department of Labor Office of Administrative Law Judges for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

EXHIBIT B

NOTICE OF RIGHTS AND AGREEMENT TO ORDER REGARDING MATERIAL DESIGNATED CONFIDENTIAL

The U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") has filed a lawsuit against Oracle America, Inc. ("Oracle") alleging that Oracle has engaged in discriminatory employment practices at its Redwood Shores facility on account of race and sex. Specifically, OFCCP alleges that, with respect to certain specific job categories, Oracle has discriminated against its female, African American, and Asian employees in compensation and has discriminated against its African American, Hispanic and White applicants in hiring.

You have been provided information that Oracle has disclosed as part of that lawsuit and has designated as "Confidential" because the company believes the information constitutes (1) trade secrets or confidential commercial information; or (2) personnel records the disclosure of which would be an invasion of personal privacy. This information is subject to the attached Order by the U.S. Department of Labor Office of Administrative Law Judges. By signing below, you declare under penalty of perjury that you have read the attached Protective Order, that you agree to comply with and to be bound by all the terms of the Order, and promise not to disclose any information or item that is subject to this Order to any person or entity except in strict compliance with the provisions of this Order. You further agree to submit to the jurisdiction of the U.S. Department of Labor Office of Administrative Law Judges for the purpose of enforcing the terms of the Protective Order, even if such enforcement proceedings occur after termination of this Order.

Your agreement is limited to the specific information Oracle has identified as confidential, and you retain rights protecting your ability to discuss your experiences in applying to or being employed by Oracle. You have the right to discuss your experiences with Oracle with law enforcement agencies and legal counsel of your choosing. If you are a current or former Oracle employee, you also have the right to discuss the terms and conditions of your

employment with your Oracle colleagues.

In addition, Oracle may not intimidate or harass you, threaten or interfere in any way, or take any other adverse actions against you for talking or having talked to anyone at the Department of Labor about Oracle's employment practices, giving testimony in the case that OFCCP has brought against Oracle, or otherwise participating in the administrative proceedings and litigation under the Executive Order. In other words, no adverse actions can be taken against you for talking or having talked to anyone at the Department of Labor, for giving testimony in the case that OFCCP has brought against Oracle, or for otherwise participating in the administrative proceedings brought by OFCCP. If you feel that Oracle has in any way interfered with your ability to do so or has harassed, intimidated, threatened, coerced, or discriminated against you for doing so, please contact the Department of Labor.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

EXHIBIT G

U.S. Department of Labor

Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

(415) 625-2200
(415) 625-2201 (FAX)

Issue Date: 26 May 2017

CASE NO.: 2017-OFC-00006

In the Matter of:

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

vs.

ORACLE AMERICA, INC.,
Defendant.

PROTECTIVE ORDER

This matter arises under Executive Order 11246 (30 Fed.Reg. 12319), as amended, and associated regulations at 41 C.F.R. Chapter 60. It is currently set for hearing in San Francisco, California, on June 26, 2018.

The parties have met and conferred with respect to issuance of a Protective Order in this matter. The court, having considered the stipulations and arguments of the parties,[1] orders:

1. PURPOSES AND LIMITATIONS

Discovery activity in this action may involve production of confidential, trade secret, or private information for which public disclosure may not be warranted. This Order does not confer blanket protections on all disclosures or responses to dis-

[1] The parties disagree on paragraph 7.1 of their Proposed Stipulated Protective Order, which would limit the use of "Protected Material" only to "prosecuting, defending, or attempting to settle this action," with certain exceptions. The court concludes that Oracle's cited authorities, including the Fourth Amendment, restrain the government's ability to acquire information in the first place, rather than limiting the use of that information once the government has acquired it. Therefore, in issuing this order, the court neither limits nor extends OFCCP's authority, as otherwise provided under law, to use "Protected Material" it has properly obtained in compliance with this Protective Order. The court accordingly excises most of paragraph 7.1 and all of paragraph 7.2, subsection (g), as they appear in the Proposed Stipulated Protective Order.

covery. The protection it affords from public disclosure and use extends only to the information or items that are entitled to protection under applicable legal principles. This Protective Order cannot, and therefore does not, afford protections inconsistent with any statute (*e.g.*, the Freedom of Information Act and the Records Disposal Act), regulation, or other law.

This Protective Order does not entitle the parties to file confidential information under seal. A party designating material as confidential must seek permission from the court to have its material designated as confidential filed under seal.

2. DEFINITIONS

2.1 Challenging Party: a party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored, or maintained) or tangible things that, based on the Designating Party's good faith belief, may be subject to Freedom of Information Act ("FOIA") Exemptions 4 or 6, 5 U.S.C. § 552(b)(4) or (6).

2.3 Counsel: any attorney serving as legal counsel for a party, as well as their support staff.

2.4 Designating Party: a Party that designates information or items that it produces in disclosures or in responding to discovery as "CONFIDENTIAL."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.8 Party: either Party, meaning the Office of Contract Compliance Programs ("OFCCP") and Oracle America, Inc. ("Oracle"), (collectively "Parties") including any officers, directors, employees, consultants, and Counsel (and their support staffs).

2.9 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.10 Professional Vendors: persons or entities that provide litigation support services (e.g. photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.11 Protected Material(s): any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

2.12 Receiving Party: a Party that received Disclosure or Discovery Material from a Producing Party.

3. SCOPE

This Order covers not only Protected Material (as defined above), but also (1) all copies, excerpts, summaries, compilations of, or written materials containing Protected Material, and (2) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, this Order does not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party before the disclosure in this proceeding by means other than through the Designating Party's production in the underlying compliance evaluation or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at a hearing on a dispositive motion or the final hearing shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order remain in effect unless a Designating Party agrees otherwise, an order otherwise directs, or a subsequent change in the law or regulation provides otherwise. If Counsel become aware of a change in law or regulation that affects the terms of this provision during the pendency of this litigation, such Counsel will advise Counsel for the other Party. Final disposition is the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; or (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time under applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Designating Material for Protection. Each Party that designates information or items for protection under this Order must take care to limit any such designation to material that qualifies under the appropriate standards. Mass, indiscriminate, or routinized designations are prohibited. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, the Designating Party must promptly notify the other Party that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order or as otherwise stipulated or ordered, Disclosure and Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in discovery form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), to the extent practicable, that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party will make reasonable efforts clearly to identify the protected portion(s). A Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copies and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page that contains Protected Material.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify all protected testimony on the record at the time of testimony or in a written notice served on all parties within 14 days of delivery of the final transcript.

(c) for information produced in some form other than documentary, including the production of electronic files in native format that cannot be marked as "CONFDIENTIAL," and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the medium or container in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the Producing Party shall make reasonable efforts to identify the protected portion(s).

5.3 Inadvertent Failure to Designate. If timely corrected, meaning corrected as soon as practicable after discovered, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with this Order.

5.4 Designations of Material Produced by Another Party. If any Party in good faith deems material it provided in the underlying compliance evaluation that is produced by another Party in this litigation to constitute "CONFIDENTIAL" information as defined in this Protective Order, it may timely designate such material, meaning designated as soon as practicable after discovered. Upon such timely designation, the Parties must make reasonable efforts to assure that the material is treated in accordance with this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at any time. A Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party initiates the dispute resolution process by providing written notice of each designation it is challenging and providing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made under this specific paragraph of this Order. The Parties must attempt to resolve each challenge in good faith and must begin the process by conferring within 14 days of the date of service of the notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has first engaged in this meet-and-confer process, or establishes that the Designating Party is unwilling to participate in the meet-and-confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without the ALJ's intervention, the Designating Party may file and serve a motion to retain confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet-and-confer process will not resolve their dispute, whichever is earlier, unless the Parties agree to extend this time period. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet-and-confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the re-

quired declaration within the time indicated by this paragraph, or as otherwise agreed by the Parties, automatically waives the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation within the time indicated by this paragraph, or as otherwise agreed by the Parties, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought under this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet-and-confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceedings is on the Designating Party. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the ALJ rules on the challenge.

The procedures set forth in this Section 6 do not apply to responses to requests for information under FOIA, which are governed by Section 9 below.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Storage of Protected Material. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the ALJ or permitted in writing by the Designating Party, in addition to the individuals encompassed by the definition of Receiving Party above, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the ALJ and her or his personnel;

(b) court reporters and their staff to whom disclosure is reasonably necessary for this litigation;

(c) experts (as defined in this Order), professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" in the form attached as Exhibit "A" to the "[Proposed] Stipulated Protective Order" which the Parties submitted to the court on May 19, 2017.

(d) witnesses or potential witnesses in the action who have not been or applied to be Oracle employees to whom disclosure is reasonably necessary for this litigation, unless otherwise ordered by the ALJ, and who have signed the "Acknowledgment and Agreement to Be Bound" in the form attached as Exhibit "A" to the

"[Proposed] Stipulated Protective Order" which the Parties submitted to the court on May 19, 2017.

(e) witnesses or potential witnesses in the action who have been or applied to be Oracle employees to whom disclosure is reasonably necessary for this litigation, unless otherwise ordered by the ALJ, and who have signed the "Acknowledgment and Agreement to Be Bound" in the form attached as Exhibit "B" to the "[Proposed] Stipulated Protective Order" which the Parties submitted to the court on May 19, 2017.

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) recipients to whom disclosure is required by law, regulation, or court order.

Nothing in this Protective Order limits or is intended to limit the way a Party uses its own Protected Material.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party will (1) promptly notify in writing the Designating Party (and such notification must include a copy of the subpoena); (2) promptly notify in writing the party that caused the subpoena or other order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order (and such notification must include a copy of this Protective Order); and (3) cooperate in good faith with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the subpoena is served on OFCCP or its agents, the agency will follow the procedures for handling such subpoenas set forth at 29 C.F.R. §§ 2.20-2.25 in responding to the subpoena. To the extent permitted by law and regulation, where the Designating Party timely seeks a protective order in the proceedings from which the subpoena arose, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party bears the burden and expense of seeking protection in that court of its confidential material, and nothing in this Order authorizes or encourages a Receiving Party in this action to disobey a lawful directive from another court.

9. PROTECTED MATERIAL REQUESTED UNDER THE FREEDOM OF INFORMATION ACT

If OFCCP or OFCCP's Counsel receive a request under FOIA that seeks Protected Material, OFCCP or OFCCP's Counsel shall respond consistent with the U.S. Department of Labor's rules for processing requests for records under FOIA, 29 C.F.R. Part 70. With respect to material marked in good faith as CONFIDENTIAL, OFCCP shall follow the procedures set forth at 29 C.F.R. § 70.26 before any disclosure is made under FOIA.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies of the Protected Material; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" in the form attached as Exhibit "A" to the "[Proposed] Stipulated Protective Order" which the Parties submitted to the court on May 19, 2017. If the person or persons to whom unauthorized disclosures were made refuses to executed the "Acknowledgement and Agreement to Be Bound," or otherwise to comply with this Protective Order, and judicial intervention is required, the Receiving Party will, at its own expense, use its best efforts to maintain the protection of the improperly-disclosed material.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Protected Party gives notice to Receiving Parties that certain inadvertently-produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in 29 C.F.R. § 18.51(e)(2), which is adopted by reference. This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Under Federal Rule of Evidence 502, and by agreement of the Parties, no Party shall be deemed to have waived claims of privilege as a result of production in this matter.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the ALJ or any court in the future.

12.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. If a Receiving Party intends to file with the Office of Administrative Law Judges ("OALJ") briefs, exhibits or other materials containing material designated "CONFIDENTIAL" by the opposing Party, the Receiving Party must give notice both to the Producing Party, and to this court, of the filing of the document at the time of filing or before.

If the Designating Party seeks to have the Protected Material sealed, the Designating Party must file a motion to seal under 29 C.F.R. § 18.85(b) within ten business days of the filing of the Protective Material.

A motion under this provision is not subject to the Court's pre-filing requirement.

13. FINAL DISPOSITION

Following final disposition of this case, as defined in paragraph 4 above, Protected Materials in OFCCP's possession must be maintained and disposed of under the Federal Records Disposal Act, 44 U.S.C. §§ 3301, *et seq.*; any applicable regulations promulgated thereunder; and any other applicable law. Pending disposal of the records, the confidentiality obligations imposed by this Order remain in effect consistent with Paragraph 4 (DURATION).

SO ORDERED.

Digitally signed by John C. Larsen
DN: CN=John C. Larsen, OU=Administrative Law Judge, O=US DOL Office of Administrative Law Judges, L=San Francisco, S=CA, C=US
Location: San Francisco CA

CHRISTOPHER LARSEN
Administrative Law Judge

SERVICE SHEET

Case Name: **OFCCP_v_ORACLE_AMERICA_INC_**

Case Number: **2017OFC00006**

Document Title: **Protective Order**

I hereby certify that a copy of the above-referenced document was sent to the following this 26th day of May, 2017:

Digitally signed by VIVIAN CHAN
DN: CN=VIVIAN CHAN, OU=LEGAL ASSISTANT, O=US DOL Office of Administrative Law Judges, L=San Francisco, S=CA, C=US
Location: San Francisco CA

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EXHIBIT H

From: Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Sent: Wednesday, May 24, 2017 1:45 PM
To: Connell, Erin M.; Pilotin, Marc A - SOL
Cc: Siniscalco, Gary R.; Riddell, J.R.; Eliasoph, Ian - SOL; Kaddah, Jacqueline D.
Subject: RE: OFCCP v. Oracle - Protective Order

Erin,

As we have indicated, since the parties have agreed to every provision of the protective order, except for one, the protective order issue should no longer present an obstacle to Oracle producing information and documents to OFCCP. Accordingly, we will agree that documents and information Oracle produces after the proposed protective order was submitted to Judge Larson on May 19, 2017 will be governed by the most restrictive version of the protective order, pending a ruling by Judge Larson. Once Judge Larson issues a Protective Order, the documents and information Oracle produces after May 19, 2017 will be governed by that Order. We look forward to receiving Oracle's production.

Laura C. Bremer
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
90 7th Street, Suite 3-700
San Francisco, California 94103
(415) 625-7757

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor. If you believe you received this e-mail in error, please notify the sender immediately.

From: Connell, Erin M. [mailto:econnell@orrick.com]
Sent: Wednesday, May 24, 2017 9:55 AM
To: Pilotin, Marc A - SOL; Bremer, Laura - SOL
Cc: Siniscalco, Gary R.; Riddell, J.R.; Eliasoph, Ian - SOL; Kaddah, Jacqueline D.
Subject: OFCCP v. Oracle - Protective Order

Marc and Laura,

We are in receipt of correspondence from both Marc and Norm dated yesterday regarding discovery, and plan to respond substantively to both letters today. In the meantime, however, I want to clarify one issue addressed in both letters: the protective order. Although we have not heard from Judge Larsen regarding the final terms of the protective order, the correspondence seemed to indicate that OFCCP would be willing to abide by the protective order even before it is entered. As you note in your email yesterday, there is only one provision about which the parties dispute (the provision allowing OFCCP to use confidential information for matters other than this litigation). If OFCCP is willing to confirm now that it will abide by the terms of the protective order the parties proposed, including the additional limitation Oracle proposed unless and until Judge Larsen enters something different, we will do the same, and will begin producing our documents.

Please confirm.

Thanks,

Erin

Erin M. Connell
Partner

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Employment Blog

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