

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,

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:

OFCCP'S OBJECTIONS AND ANSWERS TO DEFENDANT ORACLE AMERICA, INC.'S
INTERROGATORIES, SET ONE (AS AMENDED)
(OALJ CASE NO. 2017-OFC-00006)

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.

Ans to Int. 17

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.?

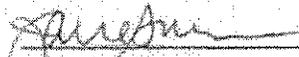
OFCCP objects to this interrogatory because Oracle has already asked the equivalent of 25 interrogatories in that five of its previous interrogatories contained two subparts each, another four subparts and still another contained five subparts. As such, Oracle exceeded the number of interrogatories that 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

DATED: June 12, 2017

Respectfully submitted,

NICHOLAS C. GEALE
Acting Solicitor of Labor

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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