



July 5, 2017

Via E-Mail

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Dear Mr. Garcia:

I write with respect to OFCCP's objections and responses to Oracle's Amended Interrogatories.

General Objections

*Objection No. 1*

Oracle addressed this objection in its meet and confer letter of March 27, 2017. The response contained in that letter is incorporated herein by this reference. One additional note: the cases cited by OFCCP for the position that contention interrogatories are improper depend for their analysis on *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007), which is a case that did, in fact, require responses to what OFCCP now deems to be contention interrogatories.

And to underscore a point raised in the letter of March 27, OFCCP investigated Oracle for over a year during its compliance review. Following the compliance review, OFCCP then requested additional documents from Oracle, which Oracle provided. OFCCP then made the decision to file a Complaint and Amended Complaint. OFCCP clearly must possess facts supporting its allegations.

Finally, as with this and all general objections, Oracle requests that OFCCP notify Oracle whether OFCCP is withholding or refusing to provide information and facts presently known to OFCCP on the basis of this objection.

*Objection No. 2*

Oracle incorporates by reference the discussion of this objection set forth in its letter of March 27, 2017.



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*Objection No. 3*

Oracle incorporates by reference the discussion of this objection set forth in its letter of March 27, 2017.

*Objection No. 4*

Because the General Objections are incorporated into each and every one of OFCCP's interrogatory responses, Oracle cannot make a determination whether information is being withheld or not provided based on the objection that an interrogatory is "otherwise beyond the scope of discovery permitted in this proceeding." This objection does not appear to be a privilege objection as those objections have been made. And beyond that, it is not possible to determine what information falls within the scope of the stated objection. Therefore, OFCCP should strike this objection and, if pertinent to a specific interrogatory response, should identify what this objection specifically means.

*Objection No. 5*

Because this objection is incorporated into each of the responses, it is not clear what definitions and instructions are found to be vague, ambiguous and unintelligible. Please clarify whether, in response to each interrogatory, OFCCP has identified those defined words it contends fall within the scope of this objection. If OFCCP has, then this general objection should be withdrawn. If OFCCP has not, then this objection is improper as Oracle cannot then know what definitions are at issue.

With regard to the objection that the definitions and instructions exceed and/or are inconsistent with the Federal Rules and the Pre-Hearing Order, OFCCP should identify in what respects this is so.

*Objection No. 6*

OFCCP's proportionality objection is stated in two parts. The first sentence appears to be a general proportionality objection. The remainder of the objection appears to relate to OFCCP's claim that Oracle has not provided information.

As to the first sentence, Oracle has only asked for information relating to the allegations of the Amended Complaint. OFCCP must provide that information and cannot hide behind a proportionality objection.

As to the remainder of the objection, if there is information that OFCCP does not possess, it can so state. This objection is not a basis for withholding or failing to provide information known to OFCCP and pertinent to an interrogatory.



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*Objection No. 7*

This objection is not well-taken as Oracle has made no assertion or presumed that OFCCP was required to allege statistical data. Rather, Oracle has based its Interrogatories, to the extent they bear on statistical data, on the fact that OFCCP *did* place statistical data in its Amended Complaint.

Interrogatories

*Interrogatory No. 1*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

Oracle is entitled to know the names of the Oracle personnel that are relevant to this interrogatory. Identifying broad swathes of persons such as Oracle management, supervisory employees or people in Oracle's human resources and Oracle employees or agents is not sufficient and does not provide a response.

For last known contact information there is no need whatsoever to interview thousands or indeed any employee or other individuals. If individuals identified by you in response to our discovery requests are current employees you need only state the name of the individual and whether you believe he/she is a current employee; if he/she is a former employee or a third party, you need only provide the name and location/employer and any business contact information you have; and if individuals you identify are known by OFCCP to be represented by counsel, provide the name of the individual and the name and contact information of their counsel. With regard to government employees (including former government employees), provided that OFCCP will agree that they can be contacted through the Office of the Solicitor, Oracle does not require contact information.

OFCCP is not relieved of its burden to respond by claiming that OFCCP would need to interview thousands of Oracle employees. Likewise, the objection that the interrogatory calls for speculation until such time as Oracle makes everyone available to OFCCP is not tenable. OFCCP is required to make reasonable efforts to respond to an interrogatory. *See, e.g., Haney v. Saldana*, 2010 U.S. Dist. LEXIS 93447, \*9 (E.D. Cal. Aug. 24, 2010). While the parties may ultimately disagree on what is reasonable, this objection does not excuse OFCCP from responding to this interrogatory.

"Participated In" Objection. Oracle believes that the phrase beginning with the word "whether" provides the confines of what is sought. Therefore, the persons to be identified are those who provided interviews, conducted interviews, provided information, requested information or assessed or reviewed



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the information provided. This may or may not include a person with no knowledge of the investigation provided that the person fulfilled one of those roles in connection with the investigation.

"Role" Objection. OFCCP is correct that the term role can either mean actions taken or a person's formal title. Provided the title indicates what role a person had—whether it is conducting an interview or providing information or so on—then Oracle will be satisfied with the title of the person, subject to revisiting that issue if this is proven to be incorrect.

#### *Interrogatory No. 2*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (E.D. Cal. June 18, 2013) (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As examples, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to . . ." In the paragraph beginning with the word "Specifically," OFCCP references "documentation" and "documents related to" without specifying what those are. Indeed the reference to documents are additionally vague as OFCCP then hedges by stating that the documents reviewed are those that "may be relevant to a determination of whether Oracle complied with the requirements of the Executive Order, VEVRRRA, Section 503 and their implementing regulations, including but not limited to . . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \*3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the Bates stamp number(s) where the information can be located.



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The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, in the paragraph that appears on page 10 of the response, OFCCP claims to have "evaluated and analyzed compensation information and evidence . . . ." Oracle is entitled to know the compensation information and evidence that OFCCP relied on. The same is true of references to internal databases, information received from EEOC and the like. If that type of information is the basis for the allegations in Paragraph 7 of the Amended Complaint, the relevant information obtained should be disclosed.

### *Interrogatory No. 3*

Interrogatories of this nature are routine. Oracle seeks the name and last known contact information of each person with personal knowledge of the facts alleged in Paragraph 7 of the Amended Complaint and what facts OFCCP understands the person to have personal knowledge of. Such requests have withstood challenge. *See, e.g., King v. Wadkins*, 2017 U.S. Dist. LEXIS 95963, \*8 (E.D. Cal. June 21, 2017); *Silba v. AvalonBay Communities*, 2015 U.S. Dist. LEXIS 180517, \*19 (C.D. Cal. Oct. 2015); *Montgomery v. Wal-Mart Stores, Inc.*, 2015 U.S. Dist. LEXIS 188010, \*11-12 (S.D. Cal. July 2015).

For last known contact information there is no need whatsoever to interview thousands or indeed any employee or other individuals. If individuals identified by you in response to our discovery requests are current employees you need only state the name of the individual and whether you believe he/she is a current employee; if he/she is a former employee or a third party, you need only provide the name and location/employer and any business contact information you have; and if individuals you identify are known by OFCCP to be represented by counsel, provide the name of the individual and the name and contact information of their counsel. With regard to government employees (including former government employees), provided that OFCCP will agree that they can be contacted through the Office of the Solicitor, Oracle does not require contact information.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

OFCCP is not relieved of its burden to respond by claiming that OFCCP would need to interview thousands of Oracle employees. Likewise, the objection that the interrogatory calls for speculation until such time as Oracle makes everyone available to OFCCP is not tenable. OFCCP is required to make reasonable efforts to respond to an interrogatory. *See, e.g., Haney v. Saldana*, 2010 U.S. Dist. LEXIS



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93447, \*9 (E.D. Cal. Aug. 24, 2010). While the parties may ultimately disagree on what is reasonable, this objection does not excuse OFCCP from responding to this interrogatory.

Finally, with regard to objections, this interrogatory cannot be counted as two. Courts have counted as one interrogatory those that request the names of persons, including the nature of the information possessed by the persons identified. *See, e.g., Johnson v. Cate*, 2014 U.S. Dist. LEXIS 119864, \*22 (E.D. Cal. Aug. 27, 2014).

With regard to the response, it is inadequate for the same reasons that the response to Interrogatory No. 1 is inadequate.

#### *Interrogatory No. 4*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. *See, e.g., Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 86636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, the response refers to documents "including, but not limited to" without specifying what those are. If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); *see also, e.g., Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \* 3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 196218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.



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Finally, OFCCP incorporates by reference its response to Interrogatory No. 2. Such a reference is improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### *Interrogatory No. 5*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85536 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to. . . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \* 3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.



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In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, OFCCP claims to have "review[ed] evidence" to determine which roles were similar. Oracle is entitled to know the evidence that is referenced.

Finally, OFCCP incorporates by reference its response to Interrogatory Nos. 2 and 4. Such references are improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### *Interrogatory No. 6*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

Oracle is seeking by this interrogatory the statistical data and the analyses and methods used to arrive at the statistical results identified in the Amended Complaint. The data and the means used to arrive at it are not protected by the deliberative process privilege. It is a final agency decision. Moreover, OFCCP has relied on that statistical data to respond to the interrogatories that are the subject of this letter by incorporating into the responses the Amended Complaint and NOV as supportive of the claims alleged. Therefore, the request is timely and proper. *See, e.g., EEOC v. FAPS, Inc.*, 2012 U.S. Dist. LEXIS 65591, \*13-25 (D.N.J. May 10, 2012); *EEOC v. Peoplemark, Inc.*, 2010 U.S. Dist. LEXIS 17526, \*22-23 (W.D. Mich. 2010).

To be sure, there may be additional statistical data developed and refined during and after discovery. However, the fact that there may be additional data in the future does not preclude the discovery of the information on which OFCCP relies as the factual basis for its allegations.

In addition, the interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. *See, e.g., Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.



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With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, the response refers to documents "including, but not limited to" without specifying what those are. If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \* 3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the data and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, OFCCP claims to have "evaluated and analyzed Oracle's compensation information" without specification as to what that information is. Oracle is entitled to know.

Finally, OFCCP incorporates by reference its response to Interrogatory Nos. 2, 4 and 5. Such references are improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### ***Interrogatory No. 7***

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The Interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.



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With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to. . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \*3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, OFCCP claims to have "evaluated and analyzed compensation information and evidence. . . ." Oracle is entitled to know the compensation information and evidence that OFCCP relied on.

Finally, OFCCP incorporates by reference its response to Interrogatory No. 2. Such a reference is improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### ***Interrogatory No. 8***

Interrogatories of this nature are routine. Oracle seeks the name and last known contact information of each person with personal knowledge of the facts alleged in Paragraph 8 of the Amended Complaint and what facts OFCCP understands the person to have personal knowledge of. Such requests have withstood challenge. See, e.g., *King v. Wadkins*, 2017 U.S. Dist. LEXIS 95963, \*8 (E.D. Cal. June 21, 2017); *Silba v. AvalonBay Communities*, 2015 U.S. Dist. LEXIS 180617, \*19 (C.D. Cal. Oct. 2015); *Montgomery v. Wal-Mart Stores, Inc.*, 2015 U.S. Dist. LEXIS 188010, \*11-12 (S.D. Cal. July 2015).

For last known contact information there is no need whatsoever to interview thousands or indeed any employee or other individuals. If individuals identified by you in response to our discovery requests are current employees you need only state the name of the individual and whether you believe he/she is a current employee; if he/she is a former employee or a third party, you need only provide the name and location/employer and any business contact information you have; and if individuals you identify are known by OFCCP to be represented by counsel, provide the name of the individual and the name and



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contact information of their counsel. With regard to government employees (including former government employees), provided that OFCCP will agree that they can be contacted through the Office of the Solicitor, Oracle does not require contact information.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

OFCCP is not relieved of its burden to respond by claiming that OFCCP would need to interview thousands of Oracle employees. Likewise, the objection that the interrogatory calls for speculation until such time as Oracle makes everyone available to OFCCP is not tenable. OFCCP is required to make reasonable efforts to respond to an interrogatory. See, e.g., *Haney v. Saidana*, 2010 U.S. Dist. LEXIS 93447, \*9 (E.D. Cal. Aug. 24, 2010). While the parties may ultimately disagree on what is reasonable, this objection does not excuse OFCCP from responding to this interrogatory.

This interrogatory cannot be counted as two. Courts have counted as one interrogatory those that request the names of persons, including the nature of the information possessed by the persons identified. See, e.g., *Johnson v. Cate*, 2014 U.S. Dist. LEXIS 119864, \*22 (E.D. Cal. Aug. 27, 2014).

With regard to the response, it is inadequate for the same reasons that the response to Interrogatory No. 1 is inadequate.

#### *Interrogatory No. 9*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As examples, the response refers to documents "including, but not limited to" without specifying what those are. If the OFCCP is going to rely on documents, it must



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identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); *see also, e.g., Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \* 3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

Finally, OFCCP incorporates by reference its response to Interrogatory Nos. 2 and 7. Such references are improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### *Interrogatory No. 10*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. *See, e.g., Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to. . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); *see also, e.g., Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \* 3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*,



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The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, OFCCP claims to have "review[ed] evidence" to determine which roles were similar. Oracle is entitled to know the compensation the evidence that is referenced.

Finally, OFCCP incorporates by reference its response to Interrogatory Nos. 2, 7 and 9. Such references are improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### *Interrogatory No. 11*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

Oracle is seeking by this interrogatory the statistical data and the analyses and methods used to arrive at the statistical results identified in the Amended Complaint. The data and the means used to arrive at it are not protected by the deliberative process privilege. It is a final agency decision. Moreover, OFCCP has relied on that statistical data to respond to the interrogatories that are the subject of this letter by incorporating into the responses the Amended Complaint and NOV as supportive of the claims alleged. Therefore, the request is timely and proper. See, e.g., *EEOC v. FAPS, Inc.*, 2012 U.S. Dist. LEXIS 65591, \*13-25 (D.N.J. May 10, 2012); *EEOC v. Peoplemark, Inc.*, 2010 U.S. Dist. LEXIS 17526, \*22-23 (W.D. Mich. 2010).

To be sure, there may be additional statistical data developed and refined during and after discovery. However, the fact that there may be additional data in the future does not preclude the discovery of the information on which OFCCP relies as the factual basis for its allegations.

In addition, the interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclear hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing



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party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to. . . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \* 3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, OFCCP claims to have "evaluated and analyzed Oracle's compensation information" without specification as to what that information is. Oracle is entitled to know.

Finally, OFCCP incorporates by reference its response to Interrogatory Nos. 2, 7, 9 and 10. Such references are improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### ***Interrogatory No. 12***

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP



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rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85638 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to. . . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \*3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, OFCCP claims to have "evaluated and analyzed compensation information and evidence . . . ." Oracle is entitled to know the compensation information and evidence that OFCCP relied on.

Finally, OFCCP incorporates by reference its response to Interrogatory No. 2. Such a reference is improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### *Interrogatory No. 13*

Interrogatories of this nature are routine. Oracle seeks the name and last known contact information of each person with personal knowledge of the facts alleged in Paragraph 9 of the Amended Complaint and what facts OFCCP understands the person to have personal knowledge of. Such



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requests have withstood challenge. See, e.g., *King v. Wadkins*, 2017 U.S. Dist. LEXIS 95963, \*8 (E.D. Cal. June 21, 2017); *Silba v. AvalonBay Communities*, 2015 U.S. Dist. LEXIS 180517, \*19 (C.D. Cal. Oct. 2015); *Montgomery v. Wal-Mart Stores, Inc.*, 2015 U.S. Dist. LEXIS 188010, \*11-12 (S.D. Cal. July 2015).

For last known contact information there is no need whatsoever to interview thousands or indeed any employee or other individuals. If individuals identified by you in response to our discovery requests are current employees you need only state the name of the individual and whether you believe he/she is a current employee; if he/she is a former employee or a third party, you need only provide the name and location/employer and any business contact information you have; and if individuals you identify are known by OFCCP to be represented by counsel, provide the name of the individual and the name and contact information of their counsel. With regard to government employees (including former government employees), provided that OFCCP will agree that they can be contacted through the Office of the Solicitor, Oracle does not require contact information.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

OFCCP is not relieved of its burden to respond by claiming that OFCCP would need to interview thousands of Oracle employees. Likewise, the objection that the interrogatory calls for speculation until such time as Oracle makes everyone available to OFCCP is not tenable. OFCCP is required to make reasonable efforts to respond to an interrogatory. See, e.g., *Haney v. Saldana*, 2010 U.S. Dist. LEXIS 93447, \*9 (E.D. Cal. Aug. 24, 2010). While the parties may ultimately disagree on what is reasonable, this objection does not excuse OFCCP from responding to this interrogatory.

This interrogatory cannot be counted as two. Courts have counted as one interrogatory those that request the names of persons, including the nature of the information possessed by the persons identified. See, e.g., *Johnson v. Cate*, 2014 U.S. Dist. LEXIS 119864, \*22 (E.D. Cal. Aug. 27, 2014).

With regard to the response, it is inadequate for the same reasons that the response to Interrogatory No. 1 is inadequate.

#### *Interrogatory No. 14*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery



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based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. For example, the response refers to documents "including, but not limited to" without specifying what those are. If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \*3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

Finally, OFCCP incorporates by reference its response to Interrogatory Nos. 2 and 12. Such references are improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### *Interrogatory No. 15*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.