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Support lines of business,” including “full name, home address, home phone number, mobile phone number, and home/personal email address.”

The protective order protects confidential information from getting into the hands of *third* parties to this litigation. That does nothing to address Oracle’s objection to providing the government, a *party* to this litigation, with employee’s constitutionally-protected contact information.

Further, contrary to your suggestion, Oracle’s statement that it worked “diligently to fashion a stipulated protective order that complies with federal law and satisfies Oracle’s goals of protecting its proprietary information and its employees’ private information” does not show that Oracle acknowledged a protective order would protect its employees’ privacy interests in *all* situations. That statement was made in the context of protecting the information from *FOIA requests* and is irrelevant to Oracle’s current objections. Here, Oracle is protecting its employees’ privacy interests against *government intrusion*. Oracle values the privacy of its employees and is therefore unwilling to dismiss its privacy objections based on such a conflation. Indeed, as made clear in Oracle’s May 22 letter, Oracle is compelled by the California Constitution to do just the opposite.<sup>2</sup>

Even if Oracle agreed to produce the information, it would have been impossible to do so by OFCCP’s untenable July 7 deadline, unilaterally set days earlier on June 28. A five business day turnaround over a holiday period is facially unreasonable and is especially so given the circumstances here. There was a clearly identified dispute about providing employee contact information and no resolution or discussion of it for weeks.

**5. July 14 Production Demands: Oracle’s Policies and Procedures.**

Oracle objects to the unilateral bad-faith imposition of an arbitrary deadline on its production of the policies and procedures identified in OFCCP’s June 28 letter. Given what OFCCP has

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<sup>2</sup> For the sake of brevity, Oracle respectfully refers again to the arguments and legal authority contained in its letter dated May 22, 2017.



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already gathered, reviewed and relied upon for its NOV findings and for its amended complaint, OFCCP needs to be forthcoming on what more is needed and why.

Notwithstanding these objections, Oracle has collected a number of these materials and anticipates that many of these will in fact be produced on or about July 14. While we cannot make a definitive commitment regarding when policies, practices and procedures will be produced, and cannot satisfy each and every request as there is not a written policy or procedure that corresponds to each request, we are preparing these materials for production and should be able to get most if not all of them out by the third week of July.

a. *We Have Made Reasonable Search Efforts for Documents Related to Oracle Policies and Procedures and All Other Requests.*

Contrary to OFCCP's accusations, Oracle has made reasonable search efforts to identify potentially responsive policy and procedure documents; Oracle has identified and spoken with the persons responsible for the various departments and categories at issue to try and get these documents. However, this approach does not guarantee instantaneous results and is dependent on Oracle identifying the right person(s), and coordinating with their schedules to search for, locate, and gather the materials.

Oracle is amenable to conferring regarding the reasonable search terms and parameters it has used to identify potentially responsive documents as well as those it will use going forward. However, your unilaterally established July 14 deadline for all past and future search terms is not only untenable, but makes no sense in light of the fact that we are still awaiting clarification on many of the RFPs before we can even begin to know what we are searching for, let alone which search terms we will use in those searches.

b. *Oracle Is Not Obligated to Produce Policy and Procedure Documents It Deems Outside of the Relevant Time Frame.*

As you are well aware, the relevant time period is still being decided. This has naturally affected our production of policy and procedure documents. Given the status of our objections and the pending resolution of temporal issues, we had no obligation to produce documents outside what

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we deemed the relevant time frame. Once we have a ruling from Judge Larsen, consistent with Oracle's supplemental and amended responses and objections, it will produce documents covering the relevant time frame.

c. *Transfer Employees Are Not New Hires.*

Your definition of transfer employees is imprecise and confusing.<sup>3</sup> Oracle's definition of a transfer is the traditional one—a horizontal or lateral movement of an employee from one job, section, department, shift, plant, or position to another at the same or another place where his salary, status, and responsibility are the same, as opposed to applying for and being hired into a new position. If someone was a transfer in the traditional sense, s/he was not a new hire. However, your definition goes far beyond the traditional definition of a transfer employee, including even previous employees and people applying to entirely different jobs with different Oracle affiliate companies.

We stand by our statement that international transfers were treated as continuing employees for certain purposes—for example, we understand that tenure and benefits were based on an employee's start date in his or her originating country. Likewise, current employees who were transferred to a different location were not generally treated as new hires. Nevertheless, in light of our own search and investigation as well as the documents you brought to our attention, we agree that *international* transfer employees are *potentially* relevant, and we are looking for relevant policies and procedures. And it should be noted that international transfer employees *possibly* being relevant is only due to your non-traditional and confusing definition which is at odds with, and over-inclusive according to, the traditional meaning of the word "transfer."

Lastly, you mischaracterize Carla Foster's statements about transfers. Ms. Foster did not assert that "Oracle employees seeking transfers to jobs with new managers and international Oracle employees seeking jobs in the U.S. are treated as outside candidates applying jobs..." Ms. Foster merely described that if one was changing jobs, one would apply to an open requisition

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<sup>3</sup> "TRANSFER EMPLOYEE" means an individual previously employed by YOU (i.e., a rehire) or at the time of hire was employed by YOU (at YOUR headquarters or at any of YOUR other locations) or by a corporate affiliate of YOU (such as Oracle India Pvt. Ltd.)



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through iRecruitment (before July 21, 2014) or Taleo (after July 21, 2014). She also noted that employees simply transferring between Oracle locations and not changing jobs would have no need to apply to requisitions through iRecruitment.

**6. It Is Unreasonable to Demand Oracle Immediately Indicate Whether Responsive Documents Exist Without Allowing Oracle a Chance to Investigate the Question.**

It is simply unproductive to ask Oracle to confirm whether documents exist at a stage where it is still determining whether documents exist and whether they are responsive. We are aware of no requirement that Oracle must state definitively whether documents exist before it has made such a determination; please provide authority for such a proposition in the event it exists. Otherwise, we will do as you already confirmed we agreed to do—to provide that information when we are in a position to. Oracle's revised Responses and Objections—which were held up by your month-long silence on numerous issues—address many of these issues.

**7. Oracle Will Produce a Privilege Log When It Withholds Documents on Privilege Grounds.**

Oracle has agreed to produce a privilege log when it withholds responsive documents from a production on privilege grounds. Oracle anticipates withholding documents from upcoming productions, and will honor its obligation to produce a log in conjunction with those productions. With regard to the June 12 date cited in your letter—Oracle expected an earlier production might involve the review of privileged documents and thus stated that it would produce a privilege log with its June 12 production. As it turned out, no documents were withheld from production on the basis of privilege, thus there was nothing to log and provide OFCCP at that time.

Oracle is committed to providing a privilege log that satisfies its obligations under the Federal Rules. We did not, however, commit to provide a log exactly “like the one OFCCP produced,” nor would we have because as we have made clear, the OFCCP privilege log is woefully inadequate. We simply confirmed that just as the OFCCP is required to produce a privilege log, so too is Oracle.

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**8. Seventy-Five of OFCCP's Ninety-Two Requests for Production Either Implicate or Specifically Request Production of Emails.<sup>4</sup>**

We take issue with the statement in the June 30 letter that "OFCCP's request for emails were narrowly tailored; OFCCP only requested emails of three of Oracle's key decision-makers; and . . . further limited these requests to topics highly relevant to this case." At best, this statement reveals OFCCP's stunning lack of understanding of the nature of its own requests. At worst, it amounts to an intentionally misleading statement that disregards and minimizes dozens of OFCCP's other requests in a blatant effort to defend the indefensible breadth of the particular requests aimed at the emails of Larry Lynn, Chantal Dumont, and Joyce Westerdahl.

First, it is simply not true that OFCCP has "only requested emails of three of Oracle's key decision-makers." In both sets of OFCCP's RFPs, "DOCUMENTS" has been expressly defined to include email and its broad definition of "COMMUNICATIONS" also encompasses email. Of OFCCP's 92 RFPs, 72 of them include a request for DOCUMENTS and/or COMMUNICATIONS. Of the 20 that do not request DOCUMENTS and/or COMMUNICATIONS, 3 of those specifically ask for email, leaving only 17 RFPs in total that don't implicate or directly request the production of email. In total, OFCCP's 75 RFPs implicating or directly requesting email have caused Oracle to collect email from 151 custodians, totaling 4,826,877 documents.

Your RFP Nos. 10, 22, 23, 24, 25, 42, 43, 44, 45, and 83 all explicitly request the production of emails. RFP Nos. 24, 25, and 46 request emails from Larry Lynn, Chantal Dumont's, and Joyce Westerdahl, respectively. The remaining seven RFPs that explicitly request email in no way circumscribe those requests by limiting them to any particular custodians, let alone the three that

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<sup>4</sup> The recent 30(b)(6) interviews and subsequent discussions regarding prioritization make clear that the overwhelming majority of information relevant to OFCCP's requests resides in the databases that are used as the primary tools for decisions related to hiring and compensation. Accordingly, and as recognized in our separate correspondence to Mr. Pilotin regarding database exports, email review and production will take on a lower priority than providing you with other responsive documents and information that Oracle has agreed to produce.



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your June 30 letter suggests. And the three RFPs that do explicitly name custodians, RFP Nos. 24, 25, and 46, are not at all “narrowly tailored” as your letter claims.

For example, RFP Nos. 24 and 25 for Lynn and Dumont respectively, seek “all COMMUNICATIONS *related to* HIRING COLLEGE RECRUITS during the relevant time period.” Both Lynn and Dumont’s entire job position is to oversee Oracle’s college recruiting process. Therefore, as framed, there is no reason to expect any of Lynn or Dumont’s work-related emails will not be responsive to the requests—the requests are not narrowly tailored to return only relevant emails, but are instead designed to turn over the entire email boxes of Lynn and Dumont for 2013 to at least 2017.

Similarly, RFP 46 for Westerdahl is overbroad. It seeks “All COMMUNICATIONS (including but not limited to memos, emails, and text messages) to and from Joyce Westerdahl *RELATING TO*: HIRING; COMPENSATION; PROMOTIONS; diversity or affirmative action; race; gender; national origin; or complaints (whether formal or informal) regarding: discrimination (including but not limited to race or gender); retaliation; unfair treatment; unfair COMPENSATION; and/or hostile work environment.” Ms. Westerdahl is the global head of Oracle’s Human Resources—and so of course a large percentage of her work-related emails would relate to the above listed topics. Assuming *arguendo* one could determine the right combination of search terms to cull the foregoing emails, as framed, the request does little to distinguish between emails that are in any way relevant to this litigation.

In addition to addressing this issue above, we refer you to Oracle’s supplemental and amended responses.

**9. Oracle Requested and Is Still Awaiting Further Information from OFCCP.**

We do appreciate your follow up responses to a few of the questions we posed through the meet and confer process, namely your modifications to RFP Nos. 33, 42, and 44. As a result, they will be addressed in Oracle’s supplemental and amended objections and responses. However, your letters are silent on a number of items that we previously asked about—specifically, RFP Nos. 19, 27, 28, 79, 80, 87, 88, and those about which you made meet and confer commitments RFPs 27, 28, and 65. Oracle again requests you follow up regarding these RFPs. Bare responses, such

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as the June 30 letter statement to the effect that RFPs 87-88 call for relevant documents are not helpful in responding to our requests for clarification.

With regard to RFP Nos. 29 and 89, Oracle maintains its objection to the breadth of these requests, and in particular, to OFCCP's demands for "all documents [Oracle] . . . reviewed" when crafting its answer and affirmative defenses. As written, this request extends to attorney mental impressions and even non-relevant documents by encompassing any and all documents that Oracle's counsel may have reviewed but which were not ultimately relied upon or referenced in Oracle's answer or affirmative defenses. Despite Oracle's long-pending request for relevant authority, OFCCP has yet to identify any case or situation where a request for all documents that a party reviewed in drafting its answer or defenses was deemed permissible under Rule 34, and OFCCP has yet to modify or limit this request in any way.

We appreciate your modification of RFPs 66-69 and these will be addressed in our amended responses and objections.

RFP Nos. 41, 54, and 70, are also addressed in our amended responses and objections. With regard to RFP Nos. 73-76, we are currently engaged in separate discussions, including through correspondence, with your colleague, Marc Pilotin.

With regard to RFP 77, we appreciate you providing the list of names. We are in the process of gathering the Labor Condition Applications and will produce them for the individuals on the list you provided as soon as they become available to us.

Oracle stands by its objection to RFP 82 on the ground that it will seek bifurcation. Your statement that the ALJ did not grant Oracle's bifurcation request in its May 10, 2017, order is misleading. Neither did the Court deny the request. The Court was silent on the issue and as a result it remains an open issue.

**10. OFCCP Has Not Sufficiently Responded to Oracle's Inquiries about RFPs 64 or 65 to Allow Forward Movement on Either.**

Oracle requested a new written request (or alternatively a written explanation clarifying the request) for RFP 64. Your June 28 letter does neither. Instead, your letter incorrectly suggests

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the only issue raised in our meet and confer related to relevance. You then takes great liberties by taking a quote out of context to support your proposition that Oracle identified “performance as a factor in compensation.” What Oracle said was that compensation between individuals with the same job titles varies because “many of Oracle’s technical employees with the same job title perform significantly different work because they work on different software or hardware products which require different skills, knowledge and abilities, or because they have different managerial or other experience and responsibilities.” Clearly the quote does not support the proposition. Putting that aside however, Oracle can agree that some information related to how an employee compares to other employees would be relevant to differences in compensation. If you will confirm that this request only seeks policies, practices and procedures that relate to compensation I believe we can resolve this issue. Please clarify.

With regard to RFP No. 65,<sup>5</sup> Oracle maintains its objections on relevance grounds and again requests that OFCCP provide a new, narrowly-tailored, written request. As written, the request remains unclear (e.g., “job assignments” includes certain categories of information, but is otherwise unexplained). Additionally, policies, practices and procedures related to promotions and demotions is not reasonably related to compensation differences between employees performing similar roles.

**11. Oracle Made No Boilerplate Objections Nor Did It Waive Any Objections.**

Despite OFCCP’s contentions, the mere fact that Oracle used many of the same objections to OFCCP’s RFPs does not render them “boilerplate,” especially in light of the incredibly overbroad and disproportionate nature of so many of those requests, many of which overlap greatly. The burden of justifying such broad requests falls on OFCCP, which, over the course of repeated meet and confer conversations, has failed to explain how many of these requests are

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<sup>5</sup> “All DOCUMENTS provided to YOUR employees, including but not limited to employee handbooks, describing PRACTICES, POLICIES, or PROCEDURES RELATING TO: HIRING; job assignments (including but not limited to initial job assignments, lateral movements, and transfers); COMPENSATION; PROMOTIONS; demotions; diversity and/or affirmative action, for PTI job group positions and positions in the Product Development, Information Technology, and Support lines of business during the RELEVANT TIME PERIOD.”



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reasonably framed to obtain relevant documents and place obligations on Oracle that not wholly disproportionate to the needs of the case. *See Gilead Sciences, Inc. v. Merck & Co.*, No. 5:13-cv-04057, 2016 WL 146574, at \*1 (N.D. Cal. Jan. 13, 2016) (“a party seeking discovery of relevant, non-privileged information must show, before anything else, that the discovery sought is proportional to the needs of the case”). Nevertheless, in light of OFCCP’s clarification and modification of certain requests, Oracle has withdrawn or limited its objections in its supplemental and amended responses and objections where merited.

\* \* \*

In conclusion, Oracle has been more than reasonable and accommodating. Oracle agreed to participate in over 15 hours of meet and confer discussions at your request. Oracle timely memorialized its positions and asked for clarification on a variety of requests to which you have demonstrated an unwillingness to revise. We therefore disagree with your statements contending that Oracle has somehow prejudiced OFCCP by openly sharing with you its positions for discussion to potentially work through. Rather, to the extent you have experienced any delay or prejudice, it is due to your own internal priorities, which clearly ranked responding to my May 24, June 1, and June 9 correspondence quite low. Based on the sheer time and resources Oracle has invested in the meet and confer process, as well as its document collection, review, and production to date, it is disingenuous to suggest that Oracle is not working towards resolving our differences. Further, suggestions that Oracle and its counsel have made inaccurate, incomplete, and/or self-serving misstatements is unproductive and completely unmerited. Putting those issues aside, we hope for and welcome productive dialogue in an effort to resolve the parties’ differences.

Sincerely,

A handwritten signature in black ink, appearing to read "J.R. Riddell". The signature is written in a cursive style with a large initial "J" and "R".

J.R. Riddell

JR/bjo

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# **EXHIBIT I**



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**VIA E-MAIL**

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Re: OFCCP v. Oracle America, Inc.  
OALJ Case No. 2017-OFC-00006: Response to N. Garcia July 18 E-mail

Dear Mr. Garcia:

We disagree with the generalized statements made in your July 18 email regarding certain inaccuracies in my July 11 meet and confer letter. However, rather than wasting time explaining why, this letter will simply focus on the specific requests you identified, Oracle's positions and the path to possible resolution of Oracle's objections.

RFP 19: This request seeks *all* documents and communications exchanged between Oracle and all international colleges and universities relating to hiring college recruits. Your July 18 email says Oracle should produce documents. I refer you to Oracle's Amended and Supplemental Responses through which Oracle already agreed to produce documents, which by the way Oracle previously agreed to do in its initial responses. There is no issue here.

RFPs 27 and 28: These requests seek *all* documents and communications relating to persons referred under an employee referral program and those who received a bonus as a result of such a referral. Although your June 28 letter mentions these requests, it only does so by referencing the term "RELEVANT TIME PERIOD"—which is a term that is not present in requests 27 and 28. If I understand your position correctly, though, you are advising us that the term "RELEVANT TIME PERIOD" is applicable to each of OFCCP's requests unless otherwise stated. If that is the case, then I believe we can move past Oracle's objection as it relates to the time frame for these two requests. So that we can narrow and define the scope of objections to these requests, please confirm that the foregoing understanding is correct.

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Your June 28 letter does not, however, address the other issues raised in Oracle's past meet and confers and in the Amended and Supplemental Responses related to overbreadth. The requests seek all documents and communications relating to referred employees and those who referred them, without limitation; they also seek all documents and communications relating to referral bonuses associated with hires outside of the PT1 job group. We renew our request that OFCCP refine the request in writing and address the concerns set forth in the amended responses.

RFP 65: This request seeks *all* documents provided to Oracle employees that describe practices, policies or procedures related to hiring; job assignments; compensation; promotions; demotions; and diversity/affirmative action. This request is emblematic of the far-reaching nature of the 92 requests, most of which have several subparts (even if not separately numbered or broken down). During the meet and confer on June 1, based on our discussion and the objections, you asked us if Oracle would withdraw various objections related to overbreadth if you changed the request. We told you that we would evaluate the revised request and would revise our response if it addressed our concerns. We then mentioned this in our June 1 correspondence and expected we were going to receive a revised request that addressed the concerns. Your June 28 letter did not include a revised request, but rather a series of unavailing explanations.

First, job assignment, transfers and lateral movement policies have nothing to do with the compensation claims at issue in this litigation that claim Oracle paid certain employees "less than comparable [employees] employed in similar roles" at Redwood Shores based upon data OFCCP analyzed after controlling for job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience and company tenure. Furthermore, your citation to Directive 307 is odd considering that directive identifies what the Compliance Officer should have looked at during the desk audit—the fact that you would now concede that the Compliance Officer never obtained, reviewed or took these materials into consideration during the audit is telling and troubling if it really is something you now claim is necessary. As for Good Faith Efforts, Oracle has indicated it will produce documents in response to RFP 20. Finally, Oracle has already agreed to produce policies, practices and procedures relating to compensation (e.g., RFPs 55-57) and hiring (e.g., RFPs 16 and 34).

In short, Oracle has agreed to produce materials responsive to this request in response to other requests. To the extent you want anything further, we again direct you to Oracle's Amended and Supplemental Responses, which set forth Oracle's objections, and make clear that Oracle has

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requested OFCCP provide a clarified or modified request in writing. OFCCP's unwavering refusal to modify the request does nothing to help resolve these issue.

RFPs 87 and 88: These requests seek Documents relating to validity studies or evaluations relating to any step or component for hiring and compensation processes. During the June 6 meet and confer call, we explained that the request does not make sense and articulated Oracle's relevance objection given that there are no allegations present in this litigation regarding a test or selection procedure. We repeatedly asked for an explanation regarding whether OFCCP is in fact making that allegation, and if so what test or selection procedure is at issue, and none was provided. Notably, Oracle's interrogatories also asked OFCCP to identify any policies, practices, procedures or tests that give rise to claims of discrimination, if any, and OFCCP again chose not to provide an answer.

Your June 30 letter does nothing to advance the issue; instead, you simply take the position that validity studies or evaluations are relevant. We again ask that, if OFCCP contends that Oracle used any test or selection procedure related to hiring or compensation, it be identified. Oracle is entitled to know, and the OFCCP's refusal to make its position known in interrogatory responses and/or through meet and confer does nothing but hamper the process and render it impossible to evaluate whether any documents would be relevant to this litigation. As explained in our meet and confer call on this topic, you will ultimately need to explain the relevance to the judge if you believe OFCCP is entitled to responsive materials, if any. If you explain relevance to the judge but not to Oracle first, then you will not have satisfied your obligation to meet and confer on this topic. Accordingly, please provide this information so that we can respond to the request appropriately.

RFPs 79-80: These requests seek evaluations "as described" and in-depth analyses "as required" in the Code of Federal Regulations. Your June 30 correspondence does not address Oracle's objections head-on, but presumably for purposes of making a misleading record incorrectly claims that Oracle changed its position. We have previously told you that Oracle's primary objection is that we would have to refer to the CFR, determine what the CFR describes and "requires" in multiple subparts, and engage in a legal analysis regarding what the section and subsections describe or purportedly required Oracle to do—with hopes it matches up with OFCCP's legal interpretation of these regulations. Please see my June 9 letter in which I provided related authority. We repeatedly have asked you to clarify the requests without

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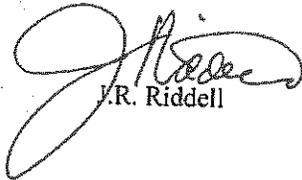
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reference to external regulations. You refused to do so, and your June 30 letter again simply refers us to the CFR sections. To be clear, we are willing to evaluate a revised request—so please provide one that does not call for a legal conclusion or require Oracle to consult a regulation to determine what is being requested and how to respond.

Sincerely,



J.R. Riddell