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March 8, 2019

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VIA HAND DELIVERY

The Honorable Richard M. Clark
OFFICE OF ADMINISTRATIVE LAW JUDGES
U.S. Department of Labor
90 7th Street, Room 4-815
San Francisco, CA 94103-1516

Office of Administrative Law Judges
San Francisco, Ca

Re: *OFCCP v. Oracle America, Inc.*, Case No. 2017-OFC-00006,
Lodging of Second Amended Complaint

Your Honor:

Pursuant to the Court's Order of March 6, 2019, OFCCP files the attached Second Amended Complaint and affirms that no fact contained therein violates the Court's temporary protective order issued on February 20, 2019.

Please let us know if you need anything further from us on this matter.

Respectfully submitted,

/s/ Jeremiah Miller
JEREMIAH MILLER
Acting Counsel for Civil Rights
Counsel for OFCCP

cc: Gary Siniscalco, grsiniscalco@orrick.com (**--by email**)
Erin Connell, econnell@orrick.com (**--by email**)
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UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

RECEIVED

MAR 08 2019

Office of Administrative Law Judges
San Francisco, Ca

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006
OFCCP No. R00192699

SECOND AMENDED COMPLAINT

Comes now the Office of Federal Contract Compliance Programs (“OFCCP”) and brings its Second Amended Complaint against Oracle America, Inc. (“Oracle”) alleging violations of Executive Order 11246.

JURISDICTION

1. The Court has jurisdiction of this action under sections 208 and 209 of Executive Order 11246, and 41 C.F.R. § 60-1.26 and part 60-30.

ORACLE AND ITS STATUS AS A GOVERNMENT CONTRACTOR

2. Defendant Oracle America, Inc., designs, manufactures, and sells software and hardware products, as well as offers services related to its products. It is

headquartered at Redwood Shores, California, and has 74 locations throughout the United States.

3. At all times relevant hereto, Oracle has had 50 or more employees. In 2014, Oracle employed approximately 45,000 full-time employees in the United States, and approximately 7,500 employees at its United States headquarters at Redwood Shores (“HQCA”).

4. At all times relevant hereto, Oracle has had at least one contract with the federal government of \$50,000 or more. Indeed, during the relevant time frame, Oracle had multiple contracts with the federal government totaling over one hundred million dollars per year.

5. Based on the foregoing, Oracle has been a contractor within the meaning of the Executive Order, and has been subject to the obligations imposed on contractors by the Executive Order and its implementing regulations. These laws require, among other things, that Oracle not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin and to take affirmative action to ensure that applicants and employees are afforded employment opportunities without regard to their race, color, religion, sex, or national origin.

COMPLIANCE EVALUATION OF ORACLE AND FINDINGS OF DISCRIMINATION

6. On or about September 24, 2014, pursuant to its neutral selection process, OFCCP initiated a compliance review under the Executive Order of Oracle’s headquarters in Redwood Shores, California.

7. As a result of the compliance review, on March 11, 2016, OFCCP issued a Notice of Violation, which is attached hereto as Exhibit A, and incorporated herein. The Notice of Violation informed Oracle of OFCCP’s allegations of discrimination, and which

employees were affected by that discrimination.

8. On June 8, 2016, OFCCP issued a Notice to Show Cause why enforcement proceedings should not be initiated.

9. From March 11, 2016 through June 8, 2016, OFCCP attempted to conciliate the alleged violations with Oracle, meeting in person and corresponding about the substance of all allegations and providing Oracle with an ample opportunity to correct its discriminatory practices. After issuing the Notice to Show Cause, OFCCP continued to attempt to resolve the alleged violations through conciliation for another six months. During that time, OFCCP communicated extensively with Oracle, both in writing and in person, giving Oracle additional opportunities to explain its behavior and correct the violations. In January of 2017, OFCCP concluded that its nine-month effort to resolve the violations by conciliation had failed.

10. After efforts to conciliate with Oracle failed, and Oracle refused to remedy the violations OFCCP found, OFCCP initiated this litigation in January 2017.

SPECIFIC ALLEGATIONS OF DISCRIMINATION

11. OFCCP's continued evaluation of Oracle's employment practices reveals widespread discrimination at HQCA. Since initiating this litigation, Oracle produced additional information to OFCCP, including data for the period 2013 through 2016. In light of that additional information, OFCCP conducted additional analyses. As described in detail below, the results of the continued analysis provide additional support for OFCCP's allegations that Oracle discriminated against women, Asians, and African Americans or Blacks in compensation, and discriminated in favor of Asians against non-Asians in hiring. OFCCP's models, results, and theories of causation will continue to be refined as additional discovery is obtained, and expert(s) evaluate the data and evidence.

12. Since at least January 1, 2013, Oracle discriminated against qualified

female employees in its Product Development, Information Technology, and Support Job Functions at HQCA based upon sex by paying them less than comparable males employed in similar roles. Since at least January 1, 2013, Oracle discriminated against qualified Asian and Black or African American employees in its Product Development job function at Oracle's headquarters based on race or ethnicity by paying them less than comparable White employees employed in similar roles.

13. OFCCP's analysis of Oracle's compensation policies and data recording its compensation of employees from 2013 through 2016, shows that Oracle systematically undercompensated female and Asian employees with respect to their total compensation from at least 2013 to 2016. OFCCP analyzed total compensation for Oracle's employees by year and by Job Function (Product Development, Information Technology and Support services) and controlled for time-in-company, previous experience, FLSA exempt status, part time or full time status, global career level, job specialty and standard job title.

14. Using the methodology described in paragraph 13, OFCCP's regression analysis for female employees, based on the data and information obtained thus far, reveals the following disparities between the total compensation for females and males at Oracle's headquarters, corresponding to a loss of at least \$165,000,000 in total compensation for women at Oracle. These results are statistically significant.

<i>Job Function- Year</i>	<i># Female EEs</i>	<i># EEs</i>	<i>Pay gap (%)</i>	<i>Example Annual Wages Lost</i>
<i>IT-2013</i>	124	440	-7.26	-\$13,366.31
<i>IT-2014</i>	124	447	-10.37	-\$19,092.10
<i>IT-2015</i>	136	556	-10.23	-\$18,834.34
<i>IT-2016</i>	143	604	-9.41	-\$17,324.65
<i>PD-2013</i>	1118	3890	-6.78	-\$12,482.59
<i>PD-2014</i>	1104	3855	-7.77	-\$14,305.26
<i>PD-2015</i>	1071	3786	-5.89	-\$10,844.02
<i>PD-2016</i>	1045	3780	-6.84	-\$12,593.05
<i>S-2013</i>	42	232	-14.62	-\$26,916.73
<i>S-2014</i>	42	220	-16.73	-\$30,801.43

<i>Job Function- Year</i>	<i># Female EEs</i>	<i># EEs</i>	<i>Pay gap (%)</i>	<i>Example Annual Wages Lost</i>
<i>S-2015</i>	31	103	-12.77	-\$23,510.71
<i>S-2016</i>	23	95	-20.05	-\$36,913.84

Table 1: analysis of the effect of gender on total compensation at Oracle (IT= InfoTech, PD=Product Development, S = Support Job Functions) (Example Annual Wages Lost=amount lost relative to average total compensation in 2016, per employee)

15. Using the methodology described in paragraph 13, OFCCP's regression analysis, based on the data and information obtained thus far, reveals the following disparities between the total compensation for Asian employees and White employees at Oracle's headquarters, corresponding to a loss of at least \$234,000,000 in total compensation for Asian employees at Oracle. These results are statistically significant.

<i>Job Function- Year</i>	<i># Asian EEs</i>	<i># EEs</i>	<i>Pay gap (%)</i>	<i>Example Annual Wages Lost</i>
<i>PD-2013</i>	2735	3771	-3.37	-\$6,204.47
<i>PD-2014</i>	2747	3738	-7.92	-\$14,581.43
<i>PD-2015</i>	2723	3657	-6.99	-\$12,869.21
<i>PD-2016</i>	2750	3629	-4.02	-\$7,401.18

Table 2: analysis of the effect of being Asian on total compensation at Oracle (PD=Product Development Job Function) (# EEs=total of Asian and White employees) (Example Annual Wages Lost=amount lost relative to average total compensation in 2016, per employee)

16. OFCCP's analysis of base compensation at Oracle (applying the same methodology described in paragraph 13, substituting base compensation or salary for total compensation) shows that Black or African Americans are significantly under-compensated relative to their White peers for some years in the Product Development, resulting in a loss of more than \$1,300,000 to those employees. These results are statistically significant.

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<i>Job Function-Year</i>	<i># Black EEs</i>	<i># EEs</i>	<i>Pay gap (%)</i>	<i>Example Annual Wages Lost</i>
<i>PD-2015</i>	25	962	-7.20	-\$9,521.18
<i>PD-2016</i>	29	910	-7.65	-\$10,116.26

Table 3: analysis of the effect of being Black on base compensation at Oracle (PD=Product Development Job Function) (# EEs=total of Black or African American and White employees) (Example Annual Wages Lost=amount lost relative to average base compensation in 2016, per employee)

17. OFCCP estimates that this underpayment, described in paragraphs 14-16 cost employees at least \$401,000,000 in lost total compensation. Because OFCCP believes that Oracle has not adjusted pay and corrected its compensation practices as of the date of this Amended Complaint, the total cost of Oracle’s discrimination is much higher as these practices have continued to the present date, more than two years after the initial filing of the first Complaint in January 2017.

18. OFCCP’s preliminary analyses show that Oracle’s discriminatory payment practices may start at hire. Oracle pays women and Asians less on hire, either by suppressing their pay relative to other employees in the same or comparable job, or by hiring them for lower-paid jobs. OFCCP evaluated the likelihood that a given employee would be assigned to a higher level within Oracle’s global career level framework (where lower levels correspond to less responsibility and pay), controlling for the year and previous experience.

19. Using the methodology described in paragraph 18, OFCCP’s regression analysis, based on the data and information obtained thus far, reveals that women were only 70% as likely as men to be assigned into higher global career levels as individual contributors, and only 42% as likely as men to be assigned to higher global career levels as managers. These results were statistically significant.

20. Using the methodology described in paragraph 18, OFCCP’s regression analysis, based on the data and information obtained thus far, reveals that Black or African

American employees were only 17% as likely as Whites to be assigned to higher global career levels as individual contributors. There were *zero* Black or African American employees in management career levels at Oracle between 2013 and 2016. The result for individual contributors was statistically significant.

21. Using the methodology described in paragraph 18, OFCCP's regression analysis, based on the data and information obtained thus far, reveals that Asians were only 49% as likely as Whites to be assigned into higher global career levels as managers. This result was statistically significant.

22. After evaluating Oracle's compensation practices, OFCCP's preliminary analyses show that the systematic underpayment of female and Asian employees is due, in part, to suppression of those employees' starting pay. That is, Oracle paid women and Asians less on hire, either by suppressing their pay relative to other employees in the same or comparable job, or by hiring them for lower-paid jobs. As demonstrated in paragraphs 19-21, Oracle is, in part, discriminating against female, Asian and Black or African American employees by placing those employees in lower global career levels. However, even when OFCCP considers those tainted global career levels in its modeling, Oracle still discriminates against Asians and women in their base compensation upon hiring them. OFCCP analyzed employees' base compensation in their year of hire, controlling for the year, previous experience, FLSA exempt status, full time or part time status, and Oracle's assigned global career level.

23. Using the methodology described in paragraph 22, OFCCP's regression analysis, based on the data and information obtained thus far, reveals that female employees are paid less than male employees on hire at Oracle. These results are statistically significant.

24. Using the methodology described in paragraph 22, OFCCP's regression analysis, based on the data and information obtained thus far, reveals that Asian employees

are paid less than White employees on hire at Oracle. This result is statistically significant.

25. After evaluating Oracle’s compensation practices, OFCCP’s preliminary analyses show that the systemic underpayment of female, Black or African American, and Asian employees continued and worsened throughout their employment by Oracle. That is, Oracle suppressed the pay of female and Asian employees by ensuring they remained in lower-paid positions relative to other employees, or at the lower end of the pay range relative to other employees in the same positions. OFCCP analyzed the base compensation for female, Black or African American and Asian employees in Product Development (the largest job function at Oracle’s facility), grouping them into clades with varying amounts of experience, and controlling for year, previous experience, FLSA exempt status and full time or part time status.

26. Using the methodology described in paragraph 25, OFCCP’s regression analysis, based on the data and information obtained thus far, reveals that the pay gap increases for female employees as they remain at Oracle for longer periods of time. These results are statistically significant.

<i>Function-tenure range (years)</i>	<i># Female EEs</i>	<i># EEs</i>	<i>Pay gap (%)</i>	<i>Example Per EE</i>
<i>PD-1 to <3</i>	769	3018	-8.58	-\$11,346.08
<i>PD-3 to <5</i>	561	2124	-11.26	-\$14,890.07
<i>PD-5 to <7</i>	301	1345	-11.99	-\$15,855.42
<i>PD-7 to <9</i>	532	1751	-17.74	-\$23,459.14

Table 4: analysis of the effect of gender on base compensation by tenure group (PD=Product Development Job Function) (Example Per EE=amount lost relative to average base compensation in 2016, per employee)

27. Using the methodology described in paragraph 25, OFCCP’s regression analysis, based on the data and information obtained thus far, reveals that the pay gap increases for Asian employees as they remain at Oracle for longer periods. These results are statistically significant.

<i>Function-tenure range (years)</i>	<i># Asian EEs</i>	<i># EEs</i>	<i>Pay gap (%)</i>	<i>Example Per EE</i>
<i>PD-1 to <3</i>	2373	2843	-5.60	-\$7,405.37
<i>PD-3 to <5</i>	1559	2017	-4.37	-\$5,778.83
<i>PD-5 to <7</i>	961	1290	-6.59	-\$8,714.53
<i>PD-7 to <9</i>	1271	1710	-10.09	-\$13,342.88

Table 5: analysis of the effect of being Asian on base pay by tenure group (PD=Product Development Job Function) (# EEs=total of Asian and White employees) (Example Per EE= amount lost relative to average base compensation in 2016, per employee)

28. Using the methodology described in paragraph 25, OFCCP’s regression analysis, based on the data and information obtained thus far, reveals that the pay gap increases for Black or African American employees as they remain at Oracle for longer periods. These results are statistically significant for 1 to 3 years, 5 to 7 years, and 7 to 9 years.

<i>Function-tenure range (years)</i>	<i># Black EEs</i>	<i># EEs</i>	<i>Pay gap (%)</i>	<i>Example Per EE</i>
<i>PD-1 to <3</i>	15	485	-15.81	-\$20,906.93
<i>PD-3 to <5</i>	19	477	-1.46	-\$1,930.68
<i>PD-5 to <7</i>	15	344	-12.49	-\$16,516.61
<i>PD-7 to <9</i>	11	450	-25.26	-\$33,403.49

Table 6: analysis of the effect of being Black on base pay by tenure group (PD=Product Development Job Function) (# EEs=total of Black or African American and White employees) (Example Per EE=amount lost relative to average base compensation in 2016, per employee)

29. After evaluating Oracle’s compensation practices, OFCCP’s preliminary analyses show that the systemic underpayment of female and Asian employees continued and worsened throughout their employment by Oracle. That is, Oracle suppressed the pay of female and Asian employees by ensuring they remained in lower-paid positions relative to other employees, or at the lower end of the pay range relative to other employees in the same positions. OFCCP analyzed the growth in base compensation for female and Asian employees (excluding those employees whose base compensation dropped by more than

\$1,000 in a year) in Product Development (the largest job function at Oracle's facility), over the period from 2003 to 2016, controlling for the change in those employees' global career levels, the change in those employees' job title, previous experience, time at Oracle and year.

30. Using the methodology described in paragraph 29, based on the data and information obtained thus far, reveals that women experienced slower wage growth than their male peers to a statistically significant degree.

31. Using the methodology described in paragraph 29, based on the data and information obtained thus far, reveals that Asians experienced slower wage growth than their non-Asian peers to a statistically significant degree.

32. After evaluating Oracle's compensation practices, OFCCP's preliminary analyses show that the systemic underpayment of female, Black or African American and Asian employees may be due, in part, to Oracle's reliance on prior salary in setting compensation for employees upon hire.

33. After evaluating Oracle's hiring policies and practices OFCCP's preliminary analyses show that Oracle hired approximately 125 recent college or university graduates per year at its headquarters for low-level Product Development positions in Oracle's Professional Technical 1, Individual Contributor ("PT1") job group, including software development and applications development positions. Oracle's "college recruiting program" recruited graduates in Computer Science, Engineering, and Math from a list of "top schools" Oracle created, primarily hiring students from those schools with Masters degrees.

34. Oracle's data for applicants recruited and hired through its college recruiting program is unreliable. One of the flaws with Oracle's applicant data is that it is incomplete. For example, Oracle failed to maintain and provide to OFCCP data for all applicants who it considered for PT1 positions through its college recruiting program.

Moreover, the database Oracle used to track college recruits did not contain race or ethnicity data for the vast majority of the applicants Oracle did track.

35. The flaws in Oracle's applicant data justify using labor market availability data to analyze Oracle's hiring practices, comparing the race and ethnicity of Oracle's hires to the race and ethnicity of persons available for hire into Oracle's PT1 job group.

36. Since at least January 1, 2013, Oracle utilized and continued to utilize a recruiting and hiring process that discriminates against qualified non-Asians -- including African Americans or Blacks, Hispanics, and Whites -- based on race and ethnicity for positions in the PT1 job group at Oracle's headquarters in Redwood Shores, California. Oracle's college hiring program strongly preferred hiring Asians over non-Asians, under-hiring African American or Black, Hispanic and White individuals relative to the available labor pool.

37. After obtaining data for the years 2013 through 2016, as well as Oracle policies for its college recruiting program, OFCCP compared the race and ethnicity of actual hires at Oracle to an availability pool constructed from data specific to the schools and degrees targeted by Oracle. That comparison revealed that in every year and in the aggregate, Asians are statistically significantly more likely to be hired than available non-Asians into the PT1 job group at Oracle's headquarters. The data produced during this enforcement action, indicates that between 2013 and 2016, Oracle hired approximately 500 recent college graduates into its PT1 job group at its headquarters. It also reveals that 90% of the recent college graduates Oracle hired for these positions were Asian, even though less than 65% of the graduates at the schools where Oracle recruited and who had the degrees Oracle targeted were Asian. Oracle's hiring practices had a statistically significant adverse impact against non-Asians.

38. Moreover, the data analyzed thus far shows that Oracle only hired 5 Hispanic college graduates into its PT1 job group at its headquarters out of close to 500

hires, and hired zero Hispanics in 2015. Similarly, Oracle only hired six Black or African American college graduates into its PT1 job group at its headquarters from 2013 through 2016, and hired zero Black or African American college graduates in 2016. Oracle's under hiring of White and Hispanic applicants is statistically significant, and is responsible for Oracle's failure to hire more than 100 qualified, non-Asian recent college or university graduates.

<i>Race/Ethnicity</i>	<i>Total Hires</i>	<i>Group Hires</i>	<i>% Hires</i>	<i>Availability</i>
<i>Asian v. non-Asian</i>	495	446	90.1%	64.5%
<i>White v. Asian</i>		30	6.3%	27.6%
<i>Hispanic v. Asian</i>		5	1.1%	5.72%

Table 7: analysis of the hiring of recent college graduates into PT1 jobs

39. While Oracle refused to produce complete data showing the students it hired who had been studying in the United States pursuant to student visas, the data and documents provided to date shows that Oracle strongly favored hiring students studying in the United States pursuant to student visas, the vast majority of whom were Asian. This strong preference for a workforce that is dependent on Oracle for authorization to work in the United States contributes to Oracle's suppression of Asian employees' wages.

40. Oracle further increased its hires of Asian recent college graduates by hiring approximately 15 additional Asians each year directly from India through a campus hiring program solely for graduates of colleges in India.

41. Oracle has not produced data for the years 2017 through 2018, or documents showing it remedied or otherwise made changes to its compensation or hiring practices that would reduce the disparities OFCCP found. It is inferred that the discrimination described in Paragraphs 13-40 has continued to the present.

42. Oracle's compensation and hiring practices as described in paragraphs 12-41 constitute violations of the non-discrimination obligations in the Executive Order, and

the related regulations at 41 C.F.R. Part 60, including 41 C.F.R. § 60-1.4(a)(1).

**REFUSAL TO PRODUCE RELEVANT DATA AND RECORDS DURING
COMPLIANCE EVALUATION**

43. As part of the compliance evaluation, OFCCP requested data and documents from Oracle relevant to the agency's determination of whether Oracle had complied with the Executive Order.

44. Regulations require federal contractors like Oracle to maintain personnel and employment records and supply such records to OFCCP upon request. *See* 41 C.F.R. § 60-1.12, 60-1.43, 60-2.32, 60-3.4; *see also* Government Contractors, Affirmative Action Requirements, 62 Fed. Reg. 44174, 44178 (Aug. 19, 1997). Despite its obligations, during the compliance review, Oracle failed to supply records requested by OFCCP. Specifically, Oracle refused to produce:

- a. compensation data for 2013,
- b. applicant and hiring data for 2012,
- c. data showing personnel actions providing job and salary information (such as starting job title, starting salary, and wage increases) for employees,
- d. analyses of Oracle's total employment process as required by 41 C.F.R. § 60-2.17 (including analyses of its compensation system, personnel activity, and selection and recruitment procedures to determine if disparities existed based on race, ethnicity, or gender), and
- e. application materials for those who applied for jobs during the review period.

45. Oracle continues to refuse to produce any detailed analysis of its compensation structure, conducted pursuant to 41 C.F.R. § 60-2.17(b)-(d), despite acknowledging that such records exist in response to discovery requests from OFCCP. Moreover, Oracle failed to provide any evidence that it complied with the other

requirements of 41 C.F.R. § 60-2.17, or conducted an adverse impact analyses required by 41 C.F.R. §§ 60-3.15A and 60-3.4.

46. Oracle admits it failed to collect and maintain information required by 41 C.F.R. § 60-1.12¹ and the Internet Applicant Rule (41 C.F.R. § 60-1.3, 70 FR 58946-01, Obligation to Solicit Race and Gender Data for Agency Enforcement Purposes (2005)). Specifically:

a. Oracle failed to retain resumes and other information about persons who expressed interest in Oracle's college recruiting program and met the basic qualifications for those positions. Oracle continued to delete an email inbox used by college recruits to submit their resumes to Oracle through at least 2016 – four years after OFCCP initiated its investigation. Oracle also deleted the subfolder to this email inbox, which contained the emails and resumes of applicants that Oracle determined met the basic qualifications for its college recruiting program and sent to Oracle's Vice President of College Recruiting for further review. Nor did Oracle retain a record of all these Internet Applicants in its college recruiting database, since Oracle only input information about applicants approved after subsequent screening by its Vice President of College Recruiting.

b. Oracle's college recruiting database is further flawed, because Oracle failed to solicit race, ethnicity, and gender information from the subset of college applicants it did input into its college recruiting database. Oracle's college recruiting database only includes race information for approximately 12% of the applicants.

47. Oracle failed to maintain and make available to OFCCP documentation of

¹ At this time, OFCCP is only pursuing a hiring claim focused on Oracle's college and university hiring program. If discovery or additional analysis of existing data reveals additional discrimination in Oracle's hiring of experienced applicants, OFCCP will amend its Complaint accordingly.

its compliance with its obligation to develop and maintain an Affirmative Action Program by failing to maintain and make available documentation of its organizational profile, job group analysis, placement of incumbents in job groups, determination of availability, comparing incumbency to availability, placement goals, and internal audits of its employment processes (as alleged in paragraphs 45 and 48). *See* 41 C.F.R. §§ 60-1.12(b) (“A contractor ... must maintain its current AAP and documentation of good faith effort...”), 60-1.40(a)(1) “Each nonconstruction... contractor must develop and maintain a written affirmative action program for each of its establishments”), 60-1.40(b) (“Nonconstruction contractors should refer to part 60-2 for specific affirmative action requirements”), 60-2.10(c) (“Contractors must maintain and make available to OFCCP documentation of their compliance with §§ 60-2.11 through 60-2.17”).

48. Oracle’s failure to even collect and maintain information regarding all Internet Applicants to Oracle’s college recruiting program reveals that the applicant and hiring data Oracle produced during the compliance review was inaccurate, Oracle failed to conduct the analysis of Oracle’s recruiting and hiring practices required by the regulations. *See* 41 C.F.R. §§ 60-1.12(a), and 41 C.F.R. Parts 60-2 and 60-3.

49. There is a presumption that the information Oracle has refused to produce or destroyed was unfavorable to Oracle, supporting the allegations in this Complaint. *See* 41 C.F.R. § 60-1.12(e).

50. Oracle’s refusal to supply the records as described in paragraphs 44-48, despite being required to make, keep and produce this information, constitutes a violation of 41 C.F.R. §§ 60-1.12, 2.32, and generally 41 C.F.R. Parts 2, 3.

51. Unless restrained by an administrative order, Oracle will continue to violate its obligations under Executive Order 11246.

PRAYER FOR RELIEF

BASED ON THE FOREGOING, Plaintiff OFCCP requests a decision and order pursuant to 41 C.F.R. Part 60-30, finding that Oracle's compensation and hiring policies violate Executive Order 11426 and providing the following relief:

(a) permanently enjoining Oracle, its successors, officers, agents, servants, employees, divisions, subsidiaries and all persons in active concert or participation with them from violating the Executive Order. This Order should include provisions enjoining Oracle from failing to correct its biased and discriminatory pay system and hiring system to prevent future discrimination, including at least pay adjustments for current employees affected by Oracle's illegal pay practices and additional hiring to offset its discriminatory hiring practices; and it should include provisions enjoining Oracle from failing to correct its recordkeeping practices and procedures to maintain and supply to OFCCP employment records as required by the Executive Order;

(b) an order canceling all of Oracle's federal government contracts and subcontracts and those of its officers, agents, successors, divisions, subsidiaries and those persons in active concert or participation with them, and declaring said persons and entities ineligible for the extension or modification of any such existing Government contract or subcontract;

(c) an order debarring Oracle and its officers, agents, servants, successors, divisions and subsidiaries and those persons in active concert or participation with them from entering into future federal government contracts and subcontracts until such time as Oracle satisfies the Deputy Assistant Secretary for Federal Contract Compliance Programs that it has undertaken efforts to remedy its prior noncompliance and is currently in compliance with the provisions of the Executive Order and the regulations issued pursuant thereto;

(d) an order requiring Oracle to provide complete relief to the affected

classes, including lost compensation, interest, and all other benefits of employment resulting from Oracle's discrimination; and

(e) any other relief as justice may require.

Date: March 8, 2019

Respectfully submitted,

KATE S. O'SCANNLAIN
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

JEREMIAH MILLER
Acting Counsel for Civil Rights

/s/ Laura C. Bremer

LAURA C. BREMER
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Norman E. Garcia, am a citizen of the United States of American and am over 18 years of age. I am not a party to the within action. My business address is 90 7th Street, Suite 3-700, San Francisco, California, 94103.

On March 8, 2019, I served the following:

SECOND AMENDED COMPLAINT

In this action by **e-mail** to:

Gary R. Siniscalco: grsiniscalco@orrick.com
Erin M. Connell: econnell@orrick.com
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Orrick Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105-2669

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

Executed: March 8, 2019

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