

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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

Plaintiff,

v.

ORACLE AMERICA, INC.

Defendant.

Case No. 2017-OFC-00006

RECEIVED

MAY 10 2019

Office of Administrative Law Judges
San Francisco, Ca

**DECLARATION OF JEREMIAH MILLER IN SUPPORT OF OFCCP'S MOTION TO
COMPEL THE DEPOSITION OF ORACLE AMERICA, INC. PURSUANT TO 41 C.F.R.
§ 60-30.11 AND FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)**

I, Jeremiah Miller, state and declare as follows:

1. I am Counsel for Civil Rights for the U.S. Department of Labor, Office of the Solicitor, and co-counsel for Plaintiff in this action. I submit this declaration in support of OFCCP's Motion to Compel the Deposition of Oracle America, Inc. I have personal knowledge of the matter set forth in this declaration, and I could and would competently testify thereto if called upon to do so.

2. Oracle has consistently delayed discovery in this case. For example, with less than two months remaining to produce documents in discovery, Oracle delayed scheduling a meet-and-confer date for a period of 12 days, despite OFCCP's repeated requests to arrange a meeting, and ultimately Oracle was unavailable until 17 days after OFCCP sent a meet-and-confer letter regarding Oracle's responses to OFCCP's RFPs 147-165, 169-174, 176-178, and 180-183. To avoid further delays of this kind, OFCCP proposed multiple times that the Parties agree to

schedule meet-and-confers within three days. Oracle refused to respond to this proposal.

Attached as **Exhibit A** is a true and correct copy of email correspondence regarding this issue.

3. Oracle has also delayed in providing OFCCP with dates to depose witnesses. OFCCP's attempt to depose Malory Cohn is one of several examples. OFCCP noticed Cohn's deposition on March 29, 2019, and Oracle's counsel stated they would promptly confer with Ms. Cohn when she returned from maternity leave the week of April 8, 2019. Attached as **Exhibit B** is a true and correct copy of the Parties' email correspondence. However, counsel still had not determined Ms. Cohn's availability after she had been back at work for at least a week and OFCCP made its fourth request for dates for her deposition. As of April 26, 2019, when Ms. Cohn's deposition became unnecessary due to settlement of OFCCP's hiring claim, Oracle had not proposed any dates for her deposition, despite OFCCP's repeated requests. Attached as **Exhibit C** is a true and correct copy of the meet-and-confer correspondence addressing the issue of scheduling Ms. Cohn's deposition. Oracle has also yet to provide dates for OFCCP to depose the 30(b)(6) witnesses it agreed to produce.

4. On April 5, 2019, OFCCP served its Amended Notice of Deposition of Oracle America, Inc., Pursuant to 41 C.F.R. 60-30.11 and Federal Rule of Civil Procedure 30(b)(6), a true and correct copy of that notice is attached hereto as **Exhibit D**.

5. Oracle objected to every topic OFCCP included in the Amended Notice of Deposition of Oracle. Attached as **Exhibit E** is true and correct copy of Defendant's Objections to OFCCP's Amended Notice of Deposition of Oracle America, Inc. Pursuant to 41 C.F.R. § 60-30.11 and Fed. R. Civ. P. 30(b)(6).

6. Attached as **Exhibit F** is a true and correct copy of the Parties' meet-and-confer correspondence regarding Oracle's objections to the topics OFCCP identified for testimony in its deposition notice.

7. After two telephonic meet-and-confer discussions on Oracle's objections on April 18 and 19, 2019, the Parties failed to reach agreement on a number of topics including 9, 11, 12, 18, 19, 26, 27 and 30.

8. On May 1, 2019, I deposed Kate Waggoner. I narrowed my questioning based on my review of Ms. Waggoner's deposition transcript from *Jewett, et al. v. Oracle America, Inc.* and completed the deposition (based on the information currently available to OFCCP) in approximately four hours rather than the full seven hours allowed for the deposition.

9. Attached as **Exhibit G** are true and correct copies of Oracle's Global Approval Matrix spreadsheets Oracle produced in discovery.

10. Attached as **Exhibit H** is a true and correct copy of Oracle's 2014 Manager Training, Compensation Process for Global Corporate Bonus & Fusion Workforce Compensation PowerPoint Oracle produced in discovery.

11. Attached as **Exhibit I** is a true and correct copy of Oracle's 2014 Affirmative Action Plan, produced in discovery.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in Seattle, Washington on May 8, 2019.



JEREMIAH MILLER
Counsel for Civil Rights

①

②

From: [Giansello, John](#)
To: [Flores, Jessica - SOL SAN](#); [Connell, Erin M.](#); [Heath, Jacob M.](#); [Kaddah, Jacqueline D.](#)
Cc: [Song, Charles C - SOL](#); [Miller, Jeremiah - SOL](#); [Bremer, Laura - SOL](#); [Garcia, Norman - SOL](#)
Subject: Re: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183
Date: Friday, April 5, 2019 12:33:18 PM

Yes. I will set up a call. Are there other DOL participants besides you and Mr. Garcia?

Sent from Email+ secured by MobileIron

----- Original Message -----

From: "Flores, Jessica - SOL SAN" <Flores.Jessica@dol.gov>
Date: Fri, Apr 5, 2019, 3:30 PM
To: "Giansello, John" <jgiansello@orrick.com>, "Connell, Erin M." <econnell@orrick.com>, "Heath, Jacob M." <jheath@orrick.com>, "Kaddah, Jacqueline D." <jkaddah@orrick.com>
CC: "Song, Charles C - SOL" <Song.Charles.C@dol.gov>, "Miller, Jeremiah - SOL" <Miller.Jeremiah@dol.gov>, "Bremer, Laura - SOL" <Bremer.Laura@dol.gov>, "Garcia, Norman - SOL" <Garcia.Norman@DOL.GOV>
Subject: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

Hello Mr. Giansello,

It is a pleasure to meet you. I will be attending our meet and confer on Monday.

Are you available at 3:00pm PST or any time after? Please let me know what time works for you.

Thank you,
Jessica Flores

Jessica M. Flores
U.S. Department of Labor, Office of the Solicitor
90 7th Street, Suite 3-700
San Francisco, CA 94103
Tel: (415) 625-7748 | Fax: (415) 625-7772
Pronouns: she, her, hers

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From: Giansello, John <jgiansello@orrick.com>
Sent: Wednesday, April 3, 2019 6:22 PM
To: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Song, Charles C - SOL <Song.Charles.C@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>
Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL

<Miller.Jeremiah@dol.gov>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: Re: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

We will await your availability for Monday afternoon. We are not "avoiding" anything. We are trying to get the matters on the table right now resolved. Parenthetically, i would point out that your and uour colleague's carrying on about this is actively impeding our strenous efforts to get materials to you -- which i assume is what you want.

Sent from Email+ secured by MobileIron

----- Original Message -----

From: "Garcia, Norman - SOL" <Garcia.Norman@DOL.GOV>

Date: Wed, Apr 3, 2019, 8:55 PM

To: "Giansello, John" <jgiansello@orrick.com>,"Song, Charles C - SOL" <Song.Charles.C@dol.gov>,"Connell, Erin M." <econnell@orrick.com>,"Heath, Jacob M." <jheath@orrick.com>

CC: "Bremer, Laura - SOL" <Bremer.Laura@dol.gov>,"Miller, Jeremiah - SOL"

<Miller.Jeremiah@dol.gov>,"Kaddah, Jacqueline D." <jkaddah@orrick.com>

Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

John,

Because of the importance of not having any further delay because of Oracle's non-availability over a 17-day period to meet and confer on issues raised on March 22, 2019, I will do the meet and confer on Monday, April 8, 2019, instead of Charles since he is unavailable on that date. I am waiting on the availability of another person and I will not know that until Friday to set a time. I will follow up on Friday with a time.

However, we note that despite several attempts by OFCCP to establish a process to prevent such a delay in the future, Oracle is avoiding OFCCP's request. Therefore, I am raising it again and repeating it here: we are requesting that Oracle stipulate to scheduling future meet and confers within three business days of a request for a meet and confer call and having the meet and confer calls within three business days of scheduling the meet and confer call. We are suggesting this proposal to avoid a situation wherein so much time was taken simply to schedule a call (12 days) and have a call (17 days) when we have less than two months remaining to produce documents in discovery. Please advise if Oracle will accept this proposal or has a reasonable alternative.

Thanks,

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

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applicable law. Do not disclose without consulting the Office of the Solicitor. If you think you received this e-mail in error, please notify the sender immediately.

From: Giansello, John <jgiansello@orrick.com>
Sent: Wednesday, April 3, 2019 5:15 PM
To: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: Re: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

Mr. Song:

This is posturing. Please give us your availabilities next week.

I have left the office, since it is 8:15 here. I will expect your information in the morning.

John Giansello

Sent from Email+ secured by MobileIron

----- Original Message -----

From: "Song, Charles C - SOL" <Song.Charles.C@dol.gov>
Date: Wed, Apr 3, 2019, 8:04 PM
To: "Giansello, John" <jgiansello@orrick.com>, "Connell, Erin M." <econnell@orrick.com>, "Heath, Jacob M." <jheath@orrick.com>
CC: "Garcia, Norman - SOL" <Garcia.Norman@DOL.GOV>, "Bremer, Laura - SOL" <Bremer.Laura@dol.gov>, "Miller, Jeremiah - SOL" <Miller.Jeremiah@dol.gov>, "Kaddah, Jacqueline D." <jkaddah@orrick.com>
Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

Dear John,

You didn't respond to our request to stipulate to scheduling future meet and confers within three business days of a request for a meet and confer and having the meet and confer calls within three business days of scheduling the meet and confer. Please advise if Oracle will accept this proposal or has a reasonable alternative. If we do not receive a response from you by this Friday, we will assume you will not agree or discuss our proposal.

Charles Song
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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From: Giansello, John <jgiansello@orrick.com>
Sent: Wednesday, April 3, 2019 2:36 PM
To: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

Mr. Song:

Please cut out the invective.

We are not available Friday. I am out of the office all day on urgent personal matters, and I will be incommunicado most of the day.

If you cannot be available Monday, please propose other times that will work for you next week.

The remainder of your communication below is gratuitous argument with which we do not agree, and it does not require a response.

John Giansello

From: Song, Charles C - SOL <Song.Charles.C@dol.gov>
Sent: Wednesday, April 3, 2019 5:32 PM
To: Giansello, John <jgiansello@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

Dear John,

Now that you've waited twelve days after my request to even propose a meet and confer time, I am out of the office on Monday. We propose to meet and confer this Friday which is already unreasonably untimely as it will be fourteen days after I requested the meet and confer. Please let us know what time you are available.

Your representation that we have already met and conferred on most of these matters is not true. While there may have been some overlap between the meet and confer discussions on March 25 and the meet and confer letter you received after the discussions, most, if not all of the above-referenced RFPs were not discussed during the meet and confer on March 25 which was about three different meet and confer letters.

Charles Song
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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From: Giansello, John <jgiansello@orrick.com>
Sent: Wednesday, April 3, 2019 12:26 PM
To: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

Mr. Song:

We are available to meet and confer regarding the remaining issues in respect to the RFPs cited below on Monday, after 1 PM Pacific Time. Please select a time when you can participate and notify us. I will set up a call.

John Giansello

From: Song, Charles C - SOL <Song.Charles.C@dol.gov>
Sent: Tuesday, April 2, 2019 4:57 PM
To: Giansello, John <jgiansello@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

What is unproductive is your refusal to schedule a meet and confer regarding the above-referenced RFPs within a reasonable timeframe.

We first requested a meet and confer on the above-referenced RFPs on March 22, 2019. You represented you would respond by March 25, 2019, but failed to keep your word. We again requested meet and confers March 25, March 27, and March 29, 2019. On March 29, 2019, you stated you would provide us proposed times for a meet and confer yesterday but again failed to keep your word. Please advise us today of proposed times to meet and confer by the end of the week. If we do not receive proposed times to meet and confer times by today and complete the call by the end of the week, we will be forced to consider requesting Court intervention.

Furthermore, as it is completely unacceptable and unreasonable to take over ten days just to schedule a meet confer much less conduct one, we request that you stipulate to scheduling future meet and confers within three business days of a request for a meet and confer and having the meet and confer calls within three business days of scheduling the meet and confer. Please advise if Oracle will accept this proposal. It would apply to both offensive and defensive discovery by both parties.

Charles Song
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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From: Giansello, John <jgiansello@orrick.com>
Sent: Friday, March 29, 2019 12:25 PM
To: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

We will advise you of proposed times on Monday. We are busy today dealing with other matters of getting discovery responses and documents to you. Imposing arbitrary and imperious deadlines is not productive.

From: Song, Charles C - SOL <Song.Charles.C@dol.gov>

Sent: Friday, March 29, 2019 3:20 PM

To: Giansello, John <jgiansello@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>

Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

John,

We requested a meet and confer on the above-referenced RFPs on March 22, March 25, and March 27. You responded on Wednesday by identifying Monday or Tuesday of next week to meet and confer. I replied with a request for specific times you can meet and confer on Monday or Tuesday but you have yet to respond. Please advise us by 5 p.m. PST today of specific times you can meet and confer on Monday or Tuesday of next week. If you are unable or unwilling to meet and confer, please say so.

Charles Song
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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From: Song, Charles C - SOL

Sent: Wednesday, March 27, 2019 4:15 PM

To: Giansello, John <jgiansello@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>

Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

John,

If I recall correctly, I wasn't the one who voluntarily responded below that "We will respond to this on Monday." As to your complaints about the length and detail of my letter, it was necessitated by your seventy-four pages of mostly frivolous, meritless objections. Furthermore, below you also requested OFCCP to "particularize the problems it has with our responses to these RFPs" that

suggests that Oracle was looking for OFCCP to provide an even more detailed response.

Regarding the meet and confer Monday or Tuesday, please advise us of your availability to meet and confer on those days by tomorrow with specific times to meet and confer.

Charles Song
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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From: Giansello, John <jgiansello@orrick.com>
Sent: Wednesday, March 27, 2019 11:43 AM
To: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

Mr. Song.

No. We may be available Monday or Tuesday, assuming other open, time-consuming discovery matters in this case, on which we are working, can be processed by then.

Your letter is twenty-eight pages of dense, single-spaced and argumentative text. It arrived at 10:33 PM my time last Friday night, a little more than an hour after our two hour and twenty minute meet-and-confer call that evening, in which you had participated, and in which some of the subject matter of the letter was addressed. It also arrived after I had left the office for the weekend. As for the matters in it that were not fully responded to in our call last Friday (although we did not have the benefit of the letter during the call), it is taking some time to analyze and follow-up on.

Also, since much of it is duplicative of similar, lengthy letters from Mr. Garcia, it would be helpful if the two of you could coordinate your demands and condense them to a concise list. Time is of the essence at this point if this exercise is to be productive, and it is not furthered by lengthy, competing written disquisitions.

John Giansello

From: Song, Charles C - SOL <Song.Charles.C@dol.gov>
Sent: Wednesday, March 27, 2019 2:31 PM
To: Giansello, John <jgiansello@orrick.com>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>
Cc: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>
Subject: RE: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

John,

You said below you would respond to my meet and confer letter dated March 22, 2019, on Monday but I have yet to receive a response. Do you know when I can expect a response and when we can meet and confer this week? Are you available Friday?

Thanks,

Charles Song
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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From: Giansello, John <jgiansello@orrick.com>
Sent: Friday, March 22, 2019 9:39 PM
To: Song, Charles C - SOL <Song.Charles.C@dol.gov>; Connell, Erin M. <econnell@orrick.com>; Heath, Jacob M. <jheath@orrick.com>
Cc: Parker, Warrington <wparker@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>
Subject: Re: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

Because our call tonight ran very long, and because i did not anticipate this communication, i left the office without the 5th RFPs and our responses. We will respond to this on Monday. In the meantime, it would be helpful and expedite things if the OFCCP could particularize the problems it has with our responses to these RFPs.

Sent from Email+ secured by MobileIron

----- Original Message -----

From: "Song, Charles C - SOL" <Song.Charles.C@dol.gov>
Date: Fri, Mar 22, 2019, 10:33 PM
To: "Connell, Erin M." <econnell@orrick.com>,"Giansello, John" <jgiansello@orrick.com>,"Heath, Jacob M." <jheath@orrick.com>
CC: "Parker, Warrington" <wparker@orrick.com>,"Siniscalco, Gary R." <grsiniscalco@orrick.com>,"Kaddah, Jacqueline D." <jkaddah@orrick.com>,"James, Jessica R. L." <Jessica.james@orrick.com>,"Garcia, Norman - SOL" <Garcia.Norman@DOL.GOV>,"Bremer, Laura - SOL" <Bremer.Laura@dol.gov>,"Daquiz, Abigail - SOL" <Daquiz.Abigail@dol.gov>,"Miller, Jeremiah - SOL" <Miller.Jeremiah@dol.gov>,"Richardson, Cedrick P - SOL" <Richardson.Cedrick.P@DOL.gov>
Subject: Meet and Confer Letter re RFPs 147-165, 169-174, 176-178, and 180-183

Counsel,

Please find attached a meet and confer letter regarding RFPs 147-165 and 169-174, 176-178, and 180-183. Please let us know when you are available next week to meet and confer telephonically regarding these RFPs.

Thanks,

Charles Song
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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From: [Riddell, J.R.](#)
To: [Song, Charles C - SOL](#)
Cc: [Siniscalco, Gary R.](#); [James, Jessica R. L.](#); [Kaddah, Jacqueline D.](#); [Miller, Jeremiah - SOL](#); [Bremer, Laura - SOL](#); [Daquiz, Abigail - SOL](#); [Heath, Jacob M.](#); [Giansello, John](#); [Parker, Warrington](#); [Garcia, Norman - SOL](#); [Robinson, Llewlyn D - SOL](#); [Connell, Erin M.](#)
Subject: RE: Deposition of Shauna Holman-Harries
Date: Wednesday, April 3, 2019 12:50:38 PM

Charles,

We acknowledge you confirmed Ms. Holman-Harries for 5/8/19 in Phoenix and that you will send us an amended notice. As for the other deposition notices you served last Friday (three business days ago), we are actively coordinating with the witnesses and will get back to you on a rolling basis as we have information to share. For now, in addition to confirming Ms. Holman-Harries, we propose Ms. Rahmani for 4/23/19, and Mr. Lynn to be split into two half days on 4/25 and 4/26/19. Ms. Waggoner works and resides in Denver, so we will need to travel to her for deposition. She is available on 5/1/19. We are still working to determine availability for Ms. Carrelli (formerly Palmer), and we will confer with Ms. Cohn promptly upon return from her leave of absence next week. Let us know if you would like us to lock in the dates proposed above.

Finally, please note that because Mr. Juvara is no longer employed by Oracle we will serve an objection to that deposition notice later today.

Thanks,
JR

From: Song, Charles C - SOL <Song.Charles.C@dol.gov>
Sent: Tuesday, April 2, 2019 3:23 PM
To: Connell, Erin M. <econnell@orrick.com>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Giansello, John <jgiansello@orrick.com>; Parker, Warrington <wparker@orrick.com>; Riddell, J.R. <jriddell@orrick.com>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Robinson, Llewlyn D - SOL <robinson.llewlyn.d@dol.gov>
Subject: RE: Deposition of Shauna Holman-Harries

Erin and J.R.,

We would like to confirm May 8 for the deposition of Ms. Holman-Harries in Phoenix. We will notice her deposition shortly.

Regarding the other witnesses we noticed on March 29, 2019, for April depositions, we are concerned they will be unreasonably delayed and scheduled in May and June. The untimely scheduling of these depositions over a month after they are initially requested and so close to the discovery cut-off severely prejudices OFCCP's rights to discovery and ability to prepare for the hearing. Accordingly, can you please advise us of the other witnesses' availability for depositions in April by this week? If you cannot, we will have to consider seeking Court intervention to schedule

these depositions in a timely manner that does not prejudice OFCCP's rights.

Thanks,

Charles Song
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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From: Connell, Erin M. <econnell@orrick.com>
Sent: Tuesday, April 2, 2019 7:53 AM
To: Song, Charles C - SOL <Song.Charles.C@dol.gov>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Giansello, John <jgiansello@orrick.com>; Parker, Warrington <wparker@orrick.com>; Riddell, J.R. <jriddell@orrick.com>
Subject: RE: Deposition of Shauna Holman-Harries

Charles,

I've confirmed that given Ms. Holman-Harries' busy schedule and mine, May 8 and 9 are the earliest dates of availability for her deposition in Arizona. Scheduling a deposition a month out when the discovery cut-off is not until the end of July is not unreasonable – particularly given Ms. Holman-Harries' role at Oracle, and the number of other ongoing and upcoming OFCCP matters she is handling. As you know, we are coordinating with the other witnesses and JR Riddell (copied here) will circle back regarding scheduling.

Please let me know if you would like to confirm May 8 or 9, or if I should release those dates – right now we are holding them.

Thanks,
Erin

From: Song, Charles C - SOL <Song.Charles.C@dol.gov>
Sent: Friday, March 29, 2019 12:06 PM
To: Connell, Erin M. <econnell@orrick.com>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Giansello, John <jgiansello@orrick.com>; Parker, Warrington <wparker@orrick.com>

Subject: RE: Deposition of Shauna Holman-Harries

Erin,

Thank you for your assistance scheduling the deposition of Ms. Holman-Harries.

However, I made the request on March 22, 2019, to take the deposition in early April. You are offering a date 1.5 months after my request. We do not believe it should take 1.5 months to schedule a deposition, particularly when we have tight deadlines as we do here. If Oracle does this with every deposition, it will be impossible to complete discovery by the cut-off date.

Can you please review your calendar and ask Ms. Holman Harries to review her calendar again to find a date in April for the deposition? We believe a month should be more than enough time to schedule a deposition.

I will also be sending you other deposition notices today that I would appreciate help scheduling.

Thanks,

Charles Song
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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From: Connell, Erin M. <econnell@orrick.com>

Sent: Friday, March 29, 2019 8:42 AM

To: Song, Charles C - SOL <Song.Charles.C@dol.gov>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M.

<jheath@orrick.com>; Giansello, John <jgiansello@orrick.com>; Parker, Warrington
<wparker@orrick.com>

Subject: RE: Deposition of Shauna Holman-Harries

Charles,

I have spoken to Ms. Holman-Harries. Unfortunately, the dates you propose do not work for her or for me due to pre-existing commitments and travel. We are both available on May 8 or 9. Please let me know if either date works for you. Also, Ms. Holman-Harries resides in Gilbert, Arizona, so we will need to travel to her for the deposition. I've not been to Gilbert, but it looks like it is close to Phoenix/Scottsdale.

Thanks,
Erin

From: Connell, Erin M.

Sent: Wednesday, March 27, 2019 6:13 PM

To: 'Song, Charles C - SOL' <Song.Charles.C@dol.gov>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Giansello, John <jgiansello@orrick.com>; Parker, Warrington <wparker@orrick.com>

Subject: RE: Deposition of Shauna Holman-Harries

Hi Charles,

I am speaking to Ms. Holman-Harris tomorrow afternoon, and will circle back with you regarding scheduling afterwards.

Thanks,
Erin

From: Song, Charles C - SOL <Song.Charles.C@dol.gov>

Sent: Wednesday, March 27, 2019 3:32 PM

To: Connell, Erin M. <econnell@orrick.com>

Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Giansello, John <jgiansello@orrick.com>; Parker, Warrington <wparker@orrick.com>

Subject: RE: Deposition of Shauna Holman-Harries

Erin,

I am following-up on our request for deposition dates for Ms. Holman-Harries. Have you had a chance to coordinate with her yet? Can you or someone from your team please get back to us by tomorrow?

Thanks,

Charles Song
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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From: Connell, Erin M. <econnell@orrick.com>
Sent: Friday, March 22, 2019 3:19 PM
To: Song, Charles C - SOL <Song.Charles.C@dol.gov>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Giansello, John <jgiansello@orrick.com>; Parker, Warrington <wparker@orrick.com>
Subject: RE: Deposition of Shauna Holman-Harries

Hi Charles,
Thanks for your email. I will coordinate with Ms. Holman-Harries and will circle back with you regarding scheduling.
Erin

From: Song, Charles C - SOL <Song.Charles.C@dol.gov>
Sent: Friday, March 22, 2019 1:44 PM
To: Connell, Erin M. <econnell@orrick.com>
Cc: Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Richardson, Cedrick P - SOL <Richardson.Cedrick.P@DOL.gov>; Daquiz, Abigail - SOL <Daquiz.Abigail@dol.gov>; Heath, Jacob M. <jheath@orrick.com>; Giansello, John <jgiansello@orrick.com>; Parker, Warrington <wparker@orrick.com>
Subject: Deposition of Shauna Holman-Harries

Ms. Connell:

OFCCP would like to schedule the deposition of Ms. Holman-Harries the week of April 8. We are available any day that week except a deposition on Friday, April 12 would have to begin by 8:30 a.m. Can you please advise us of her availability to appear for a deposition that week?

Thanks,

Charles Song
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
350 S. Figueroa St., Suite 370
Los Angeles, CA 90071
(213) 894-5365

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U.S. Department of Labor

Office of the Solicitor
350 S. Figueroa Street, Suite 370
Los Angeles, CA 90071-1202



Reply to:
Charles Song
(213) 894-5365

April 19, 2019

VIA ELECTRONIC MAIL

J.R. Riddell
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814

Re: OFCCP v. Oracle America, Inc., OALJ Case No. 2017-OFC-00006

Mr. Riddell:

This letter is to memorialize our meet and confer discussions on April 18 and 19, 2019, regarding Oracle's objections and responses to OFCCP's Amended 30(b)(6) Notice of Deposition. In general, Oracle stood by its objections for every request, and the parties were unable to resolve numerous topics. Aside from the topic-specific discussions outlined below, the parties met and conferred about the following general topics:

First, OFCCP objected to Oracle's repeated use of the qualifier "generally" to describe what its 30(b)(6) witnesses would testify about. The parties agreed that regardless of Oracle's use of this word, Oracle will comply with its obligation to prepare and produce 30(b)(6) witnesses who will be prepared to testify about information known or reasonably available to Oracle.

Second, the parties disagreed about the role of the *Jewett* deposition transcripts in this litigation. Oracle repeatedly delayed OFCCP's efforts to acquire the *Jewett* transcripts even after OFCCP offered to wait to serve its 30(b)(6) notice. Given Oracle's past and continuing obstructionist behavior in this litigation, it cannot complain that OFCCP refused to wait even longer to serve its notice. In any event, OFCCP is entitled to its own depositions in this action and will not agree to modify its notice to remove topics that may have been discussed in other, according to Oracle, irrelevant litigation to which OFCCP was not a party. However, OFCCP is, of course, still reviewing the *Jewett* deposition transcripts received a few days ago with an eye to limiting duplicative questioning.

Third, the parties were unable to agree on the temporal scope of topics concerning compensation. OFCCP's position is that we are entitled to inquire about facts up to the date of the deposition, whereas Oracle claims that it should be limited to January 18, 2019. Given that Oracle promised to reconsider its position, please let us know by April 23, 2019 whether Oracle will agree to OFCCP's time period.

J.R. Riddell
April 19, 2019

The parties further discussed issues related to specific topics:

Topic 1: OFCCP agreed to limit the period from January 1, 2013 to January 18, 2019 for purposes of testimony regarding this topic. OFCCP expressed concern that Oracle was narrowing the topic to exclude testimony about “identifying, screening, and interviewing COLLEGE RECRUITS, [and] matching COLLEGE RECRUITS to PT1 positions at HQCA.” Oracle clarified that it will produce a witness to testify about those issues as well.

Topic 2: OFCCP agreed to limit the period from January 1, 2013 to January 18, 2019 for purposes of testimony regarding this topic. Again, Oracle clarified that it will produce a witness to testify about all subtopics included.

Topic 3: OFCCP agreed to limit the period from January 1, 2013 to January 18, 2019 for purposes of testimony regarding this topic. Oracle will produce a witness to testify about this topic.

Topics 4-5: Oracle clarified that despite its objection to definition 7 (“transfer employees”), it will produce a witness to testify about compensation for transfers in the Product Development, Support, and Information Technology job functions at HQCA. Oracle, however, refused to allow testimony on the remaining subtopics, including its process and training for recruiting, hiring, and assigning transfers. Oracle claimed that such issues are overbroad and irrelevant. Further, the parties disagreed about the temporal scope for the topic. *See supra* pg. 1.

Topic 6: Oracle agreed to produce a witness to testify about OFCCP’s document and data requests and Oracle’s response to those requests. This includes testimony about Oracle’s response to requests for which they ultimately did not produce documents or data.

Topics 7-8: Oracle refused to produce a witness to testify about these topics. Oracle claimed that it is not possible to prepare even multiple witnesses to testify about these topics. Instead, Oracle offered to answer technical questions in writing. OFCCP noted that Oracle has previously told OFCCP to request this information in depositions during meet and confer discussions.

OFCCP offered to accept testimony on only the four spreadsheets listed in its notice and that Oracle continue to answer questions about other data. Oracle rejected OFCCP’s offer based on its unsupported and unexplained undue burden objection. Oracle also claimed that some of the testimony that OFCCP seeks is protected by the work product doctrine, and that OFCCP should be satisfied with the information it obtained during pre-discovery interviews. OFCCP explained that it cannot rely on those interviews because they were not on the record, under oath, and Oracle instructed its witnesses not to answer multiple times, impeding OFCCP from developing a full understanding of the issues in question.

Topic 9: Oracle refused to commit to producing a witness for this topic. Again, Oracle claims that OFCCP already obtained enough information during its interview of Lisa Ripley. Oracle asked

J.R. Riddell
April 19, 2019

if OFCCP would be willing to travel to Denver for the deposition, but OFCCP noted that it has the legal right to take the deposition in California. Oracle agreed to reconsider its position. Please let us know by April 23, 2019 whether Oracle will agree to produce a witness for this topic.

Topic 10: The parties agreed to continue discussions about stipulating to authentication of documents. OFCCP reserved its right to take a 30(b)(6) deposition on this topic if the parties cannot agree on the terms of a stipulation in a timely manner.

Topic 11: The parties could not reach an agreement on this topic. Oracle refuses to produce someone to testify, because Kate Waggoner discussed the topic during her OFCCP interview and because it claims that the testimony would be duplicative of her testimony in the *Jewett* depositions.

Topic 12: In its response to this topic, Oracle offered testimony on “policies, practices, and procedures regarding the determination of initial compensation and compensation changes for employees in the Product Development, Support, and Information Technology job functions at HQCA.” However, this topic seeks testimony on the assignment of workers to products in those job functions and the impact of those assignments on compensation.

On one hand, Oracle claimed that there is no “assignment” of workers. At the same time, however, Oracle belatedly objected that Kate Waggoner had already testified about this topic during OFCCP interviews. Oracle also claimed that there may be responsive testimony in the *Jewett* deposition transcripts.

Ultimately, Oracle agreed to produce a witness only for the compensation part of this topic. Oracle agreed to reconsider whether it will produce a witness for the remainder of the topic, including worker assignment. Please let us know by April 23, 2019 whether Oracle will agree to produce a witness to testify about the entire topic.

Topic 13-16: OFCCP explained the bases for these topics, including that the lawsuit involves recordkeeping violations, that Oracle has raised undue burden objections in discovery multiple times, and that Oracle itself has told OFCCP to ask about recordkeeping in depositions. *See, e.g.*, OFCCP Letter to Oracle Re April 8, 2019 Meet and Confer, at 3. Still, Oracle refused to produce a witness to testify about these topics.

Topic 17-28: OFCCP explained that it does not consider these topics to be part of a “deficiency” claim. In fact, the language of these topics tracks what Judge Clark has already agreed that OFCCP can litigate. Oracle disagreed and stated that it believes these topics are actually contrary to Judge Clark’s orders. Oracle refused to produce a witness to testify about these topics.

Topic 29, 31-32: Oracle agreed to produce a witness to testify about these topics. The parties, however, disagreed about the time period relevant for this topic. OFCCP explained that it is entitled

J.R. Riddell
April 19, 2019

to explore whether Oracle is currently in compliance with regulations. The parties did not reach an agreement on this time period dispute.

Topic 30: Oracle refused to produce a witness for this topic. Again, Oracle claims that OFCCP already obtained all of the information it needs through pre-discovery interviews.

Scheduling Depositions: OFCCP made its fourth request for Malory Cohn's availability for deposition. Oracle agreed to inquire about Cohn's availability, but refused to state when it would be able to provide such dates. OFCCP reminded Oracle that it noticed Ms. Cohn's deposition on March 29, 2019, and that counsel stated he would promptly confer with Ms. Cohn when she returned from leave the week of April 8, 2019. To date, three weeks after our notice, Oracle has yet to ask Ms. Cohn for her availability.

Oracle requested that OFCCP take the testimony of Ms. Waggoner on 30(b)(6) topics 4, 5, 11, 12, and 28 on the same or consecutive days to her individual deposition on May 1, 2019, in Denver. OFCCP has considered Oracle's request but, unfortunately, will not be able to accommodate Oracle's request.

Finally, for the topics Oracle has agreed to produce witnesses for, please designate witnesses and provide us their availability for depositions. Thank you very much.

Sincerely,

/s/ Charles Song

Jeremiah E. Miller, Counsel
Charles C. Song, Senior Trial Attorney
Jessica M. Flores, Trial Attorney
M.J. Christopher Santos, Trial Attorney
U.S. Department of Labor
Office of the Solicitor



April 22, 2019

Via E-Mail

Charles Song
Office of the Solicitor
U.S. Department of Labor
350 South Figueroa Street, Suite 370
Los Angeles, CA 90071

Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall
8th Floor
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J.R. Riddell

E jriddell@orrick.com
D +1 916 329 7928
F +1 916 329 4900

Re: *OFCCP v. Oracle, Inc., et al.*, Case No. 2017-OFC-00006

Dear Mr. Song:

I write to respond to your letter of April 19, 2019, labeled "Memorialization Letter", which purports to memorialize our April 18 and 19 meet and confer calls, and to correct the misrepresentations and omissions therein. Your letter repeatedly either misstates Oracle's positions or omits them entirely in an apparent effort to construct an inaccurate record. Moreover, while you portray Oracle as uncompromising in its positions, you fail to memorialize that OFCCP was unwilling to discuss any meaningful compromise to its topics, largely because your team still has not reviewed the Jewett PMK deposition transcripts, and to the extent any review has taken place the deposition taking attorneys have failed to coordinate with the team of attorneys who engaged in these meet and confer discussions.

At this point, I write to correct the most glaring and gross mischaracterizations set forth in your letter. First, OFCCP cannot impose an arbitrary deadline (following a holiday weekend, no less) demanding that Oracle reconsider its positions and provide a written response within two business days of your Friday afternoon demand, particularly where OFCCP has and continues to drag its feet with respect to Oracle's 30(b)(6) deposition notice. As explained to you during our first call, I am on vacation this week. While I have taken the time to respond to your Good Friday after hours correspondence, and will continue to coordinate with my team and Oracle regarding the issues discussed during our call, I am not and will not be in a position to respond to your unilateral demand. Instead, as I said during our call, I will work to get back to you regarding those issues and respond as soon as I am in a position to do so.



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Oracle's 30(b)(6) Notice

Furthermore, OFCCP's unwillingness to work with Oracle to reduce the burden on individual witnesses and to save both sides time and expense is particularly troubling in light of OFCCP's position with respect to Oracle's 30(b)(6) deposition notice. Specifically, OFCCP has indicated that it will seek a protective order to prevent Oracle from taking 30(b)(6) depositions if Oracle insists on further responses to its second set of interrogatories. It is impossible to reconcile OFCCP's aggressive refusal to narrow its own 30(b)(6) topics in light of Oracle's good faith efforts to provide information through other means on the one hand, with its simultaneous refusal to produce witnesses in response to Oracle's 30(b)(6) notice. Notwithstanding the discussion of individual topics and issues below, if OFCCP cannot align its diametrically opposed positions, Oracle will have no choice but to involve the court before any 30(b)(6) depositions go forward.

Narrowing of Topics Based on Production of *Jewett* Deposition Transcripts

Your description of OFCCP's position on limiting or removing topics duplicative of sworn testimony Oracle already provided in the *Jewett* PMK deposition transcripts is grossly misleading—and suggests OFCCP has generously offered to limit the questions it will ask of Oracle's 30(b)(6) designees. For that reason, I am compelled to make an accurate record demonstrating OFCCP is now backtracking and wants Oracle to prepare witnesses on all 32 topics, and subtopics, even though the preparation may be unnecessary because OFCCP may decide not to ask questions in light of Oracle's *Jewett* PMK testimony. As you know, after having to spend time and resources addressing the invalid subpoena that OFCCP served on *Jewett* counsel despite having no authority to do so, Oracle agreed to produce transcripts of depositions taken in the *Jewett* matter based on OFCCP's indication that it would review those transcripts and limit or remove topics that were redundant of the prior depositions. However, now that it has those transcripts in hand, OFCCP completely refuses to modify or limit its topics to remove unnecessary and redundant subject matter. Clearly, having gotten what it wanted, OFCCP decided to renege on its prior statements.

In a March 26, 2019, email to John Giansello, Norman Garcia told Oracle that “[a]s stated previously, after we review [the *Jewett* transcripts], we may determine that it is unnecessary to depose some of the witnesses, or may choose to limit our questioning. Thus, providing the depositions will likely lead to efficiencies for both parties.” In a March 28, 2019, email from Mr. Giansello to Mr. Garcia, Oracle then committed to producing the deposition transcripts by the end of the following



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week (April 5, 2019). Mr. Garcia's March 29, 2019, email in response acknowledged Oracle's commitment, and further stated that OFCCP "will also agree to give prior notice to Oracle before noticing PMK depositions on the same topics in the notice of depositions for [the *Jewett*] depositions and will meet and confer with Oracle to attempt to resolve disputes," while couching that promise with the caveat that OFCCP receive the transcripts before filing its notice. Notwithstanding Mr. Garcia's attempt in that email to impose an arbitrary deadline of April 3, Oracle produced the *Jewett* transcripts, as promised, by the deadline discussed between both sides – i.e., on April 5.

Despite knowing that Oracle had agreed to produce the *Jewett* transcripts by April 5, and despite indicating that it would review those transcripts in order to determine whether it could narrow its topics (and potentially avoid deposing some witnesses), and despite promising to give prior notice before noticing any 30(b)(6) depositions on the same topics, OFCCP served its 30(b)(6) notice on April 5, without any prior notice, and mere hours before receiving the promised transcripts. Needless to say, this timing suggests that OFCCP sought to serve its notice *before* receiving the transcripts it had promised to review so that it could renege on its commitment.

In an attempt to place the blame for OFCCP's change of heart on Oracle, OFCCP repeatedly stated during the meet and confer that if only OFCCP had received the *Jewett* deposition transcripts before it served its 30(b)(6) notice, it would have evaluated the testimony to determine if it could more narrowly tailor its 30(b)(6) topics. However, despite having now had those transcripts for two weeks (not a "few days", as your letter suggests), OFCCP indicated during the meet and confer that it is now unwilling to consider limiting any of its repetitive topics based on the content of those transcripts. Instead, OFCCP's position is that it will review the transcripts "with an eye to limiting duplicative questioning," but that Oracle must still prepare witnesses for all of the requested topics, even where those topics were thoroughly covered and explained in the *Jewett* testimony. Such a promise is illusory at best and, of course, does nothing to lessen the burden on witnesses, who will have to be prepared on all of the redundant subject matter included in OFCCP's 30(b)(6) topics.

It is unclear how OFCCP can reconcile its position that it *would* have reviewed the transcripts and limited the scope of its 30(b)(6) notice if it had received the transcripts before serving its notice with the fact that it has yet to complete its review of said transcripts two weeks after receiving them. Moreover, there is no reason why, as part of the ongoing meet and confer process, OFCCP cannot now review the *Jewett* transcripts and work with Oracle to eliminate unnecessarily duplicative Topics and subject matter.



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As described, Oracle has made good faith efforts to provide OFCCP with information that would allow OFCCP to limit or remove certain Topics, thereby saving both sides time and expense and reducing the burden on witnesses. OFCCP's attempt to characterize these efforts as "obstructionist behavior" is ironic indeed, considering it is OFCCP that has reneged on its statements and now refuses to complete its review of the testimony and resume discussions about how the Topics could be narrowed or eliminated. OFCCP has had the *Jewett* transcripts in its possession for two weeks, and has previously committed to reviewing those transcripts with the goal of making the Parties' depositions more efficient and less burdensome. OFCCP's stated reason for refusing to do so – that it served its deposition notice on the same day, but slightly before, receiving the transcripts – does not hold water. We ask that OFCCP complete its review of the *Jewett* transcripts and work with Oracle to limit OFCCP's 30(b)(6) topics to avoid unnecessary repetition and to reduce the burden on witnesses who have already had to sit for deposition on the same topics.

Time Period at Issue

During our call, we discussed the appropriate time period to be applied to the topics listed in OFCCP's 30(b)(6) deposition notice. While we agreed that topics 1, 2, and 3 were limited to the period from January 1, 2013 to January 18, 2019, OFCCP stated that its position was that the other topics should cover the period from January 1, 2013, through the date of the deposition as the notice states. Your letter omits Oracle's reasoning for suggesting a January 18 cutoff for all Topics. Namely, because the parties have agreed to a cutoff date of January 18, 2019, for all documentary and electronic discovery, we do not think it would be appropriate to extend the scope of the 30(b)(6) depositions beyond that date. Among other concerns, this could lead to difficulties wherein a witness might potentially have to review and/or be asked about documents at deposition that were not produced to OFCCP because they post-dated January 18, 2019. In order to avoid any such issues, we think it best to limit the time period at issue in these depositions so that it matches the clean cut-off date for documentary and electronic evidence agreed to by the parties. We did not reach an agreement on this point but Oracle agreed to revisit it, while OFCCP refused to reconsider its position.



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Topics 1 Through 3

While we are largely in agreement with respect to Topics 1 through 3, I want to clarify that, as I stated on our call, Oracle cannot produce a witness to testify as to the “matching” of college recruits (referenced in Topic 1) because Oracle does not “match” or “assign” employees to specific positions. Rather, college recruits self-select. Aside from that issue, Oracle agreed to produce a witness to testify as to Topics 1 through 3 as discussed.

Topics 4 and 5

As we discussed on our call, Topics 4 and 5 reference issues related to hiring and to compensation for transfer employees. Because there are no longer any hiring/recruiting claims related to transfer employees at issue in this case, Oracle noted this in its objection while offering to produce a witness to testify as to the remaining compensation-based issues. We discussed this reasoning specifically on our call, and the parties came to an agreement that Oracle would produce a witness on the compensation issues. Yet your letter decides to present this agreement as “Oracle...refus[ing] to allow testimony on the remaining [hiring-related] subtopics.” This misportrayal of an agreement between the parties is indicative of OFCCP’s continued refusal to meet and confer in good faith.

Topics 7 and 8

In similar fashion, your letter completely misstates my response to OFCCP’s counter-proposal that Oracle produce a witness to testify as to the four spreadsheets listed in Topic 7 while answering other technical questions about the data in writing. To be clear, Oracle did not reject that offer and I told you I would need to look at the spreadsheets and consult with my team. Indeed, that coordination began after our Thursday call. I stated on the call that we would consider OFCCP’s offer, while also cautioning that even just the four listed spreadsheets cover a wide range of information given all the subtopics and details OFCCP seeks here. While we of course appreciate any offer of compromise, the fact remains that even just the four identified spreadsheets are the product of work by multiple different groups. Nevertheless, we will consider what can be done along the lines of your proposal and get back to you.



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Furthermore, your statement that Oracle's objection that producing a witness or witnesses to testify as to almost every aspect of its massive data production would be impractical and unduly burdensome is "unsupported and unexplained" borders on willful blindness. As we discussed on our call (and as Oracle has made clear to OFCCP time and again), Oracle's data production is massive, and consists of multiple large files, hundreds of fields, and millions of individual entries. The identification, pulling, aggregation, cross-checking, and production of that data required incredible amounts of time and effort by many individuals. Moreover, any given data field may have been created by one individual or group, filled by another, and pulled by yet another. As a result, there is no single individual, or even group of individuals, who could testify as to all of the data issues requested in Topics 7 and 8 for all of the data produced in real-time. Not only is it disingenuous to suggest that Oracle has provided no support for its objection to the burdensome nature of these Topics, that burden should, if nothing else, be self-evident from the huge amount of data OFCCP now has in its possession.

Topic 9

While your letter correctly states that Oracle would consider its position regarding re-producing Lisa Ripley, you omit OFCCP's statement that it would consider whether it could travel to Denver to take this deposition. Oracle will consider your request that it produce Ms. Ripley yet again and get back to you. However, consistent with your commitment to consider traveling to Denver, to minimize the burden on the witness where Oracle flew her out her the last time around, that commitment needs to be memorialized as well. We will wait to hear from you.

Topic 11

Your letter again misstates Oracle's position with regard to Topic 11. Specifically, Oracle did not "refuse to produce someone to testify." As described above, Oracle's position is that OFCCP needs to review the transcripts of depositions in the *Jewett* matter and determine whether the topic can be narrowed so that Oracle's witness does not have to testify on duplicative subject matter. Moreover, I stated on our April 19 call that we recognized that, at minimum, sub-topics 11(e) and 11(f) constituted new areas and that we would produce a witness – likely Kate Waggoner – to testify as to those issues. How you can take that affirmative statement and then memorialize that Oracle has refused to produce a witness is puzzling at best. Moreover, I mentioned Kate Waggoner could



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likely be designated to testify on the portions of Topic 11 for which Oracle agrees to produce a witness following meet and confer (and OFCCP's review of the Jewett PMK testimony).

Topic 12

Your letter also misstates Oracle's position and statements during the meet and confer call relating to Topic 12. As I explained on our call, Topic 12 asks for Oracle's "policies, practices, and procedures in assigning of workers..." Our objection to this Topic is based on the fact that Oracle does not "assign" workers to particular jobs. Rather, individuals apply to specific job openings and, if they are hired, are hired into that specific job. As such, there are no policies, practices, or procedures covering the "assigning of workers" to specific products. However, because the Topic also refers to compensation, Oracle offered to produce a witness who could testify as to compensation and compensation changes in the identified job functions. Moreover, and as memorialized above, Mr. Garcia acknowledged that OFCCP would give prior notice to Oracle before noticing 30(b)(6) depositions on the same topics covered in Jewett PMK depositions and that it would meet and confer to resolve disputes in that regard. That, of course, did not happen.

Contrary to your letter, Oracle did not "claim[] that there is no 'assignment' of workers," and, "[a]t the same time . . . belatedly object that Kate Waggoner had already testified about this topic." Rather, I stated during the call that Kate Waggoner had already testified as to separate compensation topics (not the assignment topic that is the focus of Topic 12). There is no belated objection at issue here or anywhere else with respect to any objections based on Jewett PMK testimony. *See, e.g.*, Oracle's Objections, General Objection 7.

Oracle will consider producing a witness to cover "the remainder of the topic," but, as explained during our call, OFCCP needs to review the Jewett transcripts and assess how and where the topic/subtopics can be narrowed. Both sides should discuss how to proceed on this topic once your review is complete. As a result, we cannot commit to meeting your arbitrary deadline.

Topics 13 Through 16

Your letter, which purports to memorialize the Parties' discussions during the meet and confer, omits Oracle's basis for standing on its objections to these topics. As I stated during the call, Topics 13 through 16 seek a witness to testify about Oracle's (and by proxy, Orrick's) underlying



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practices for responding to OFCCP's discovery requests. How a party and its counsel respond to discovery is clearly not relevant to the actual claims at issue in this case and necessarily implicates privileged information. Moreover, your inapposite reference to a letter discussing unrelated discovery requests does not somehow transform Oracle/Orrick's handling of discovery into a proper deposition topic.

Topics 17 Through 27

Your letter, which again purports to memorialize the Parties' discussions, fails to fully state Oracle's explanation of its basis for standing on its objections to these topics. Judge Clark made clear in his March 13 Order that OFCCP's Revised Second Amended Complaint would not be read to extend to "a substantive analysis of the [AAP] developed and maintained by Oracle." OFCCP's permitted claim concerns whether Oracle gave OFCCP information in response to its requests or not. As I stated during our meet and confer, the language of Topics 17 through 27 clearly attempts to reach a substantive review. The topics noticed delve into the way the AAP was structured, its components, and how Oracle ran its Affirmative Action Program. This is precisely the attempted expansion of issues that Oracle feared when it objected to OFCCP's Second Amended Complaint and these topics appears to be an end run around the clear intent of Judge Clark's ruling.

Topic 28

Although your letter lumps Topic 28 in with topics relating to Oracle's Affirmative Action Program, Topic 28 itself asks for a witness to testify about "policies, practices, and procedures related to how [Oracle] decide[s] job placement, project assignment, and compensation for new hires." As Oracle has stated, it does not "place" or "assign" individual employees into specific jobs. However, to the extent Topic 28 includes an inquiry into "compensation for new hires", Oracle has offered to produce a witness to testify regarding the "determination of initial compensation for new hires," in the relevant job functions.

Topic 30

Your letter again fails to accurately memorialize our conversations. Oracle did not refuse to produce a witness here. Rather, I explained Oracle produced three PMK witnesses in Jewett and explained you should review those transcripts because I failed to see what else you could possibly



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want or need that had not already been provided through these three witnesses' testimony. You agreed to look at the transcripts and get back to us. Tellingly, however, even before your team took the time to review these three transcripts, you indicated it was unlikely OFCCP would end up narrowing the topics.

Scheduling Depositions

With regard to Mallory Cohn, while you make much of the amount of time since you noticed Ms. Cohn's deposition and that "Oracle has yet to ask Ms. Cohn for her availability," your letter omits my explanation that Ms. Cohn was on maternity leave and that I've told you this multiple times. Oracle's desire not to intrude on a new mother's maternity leave is, of course, a perfectly valid reason for the delay in setting a date for her deposition – which is no doubt why your letter fails to mention it. As I stated during the meet and confer, now that Ms. Cohn has returned to work, Oracle will work with her to determine her availability and we will get back to you within a reasonable time. However, you also agreed (yet you failed to memorialize this) that you would confer with whoever is going to take her deposition about combining her individual deposition with 30(b)(6) testimony regarding College Recruiting (if we designate her to testify on those topics).

More generally, your letter rejects, without explanation, Oracle's request that OFCCP combine, where possible, the depositions of individuals and 30(b)(6) designees where the topics and deponent overlap. This request applied not only to Kate Waggoner, who you identify, but to any instance where OFCCP has individually noticed a witness that may also be a 30(b)(6) designee (for instance, Shauna Holman-Harries and Mallory Cohn). Moreover, your letter omits any meaningful discussion of Oracle's request. Where OFCCP plans to individually depose witnesses who may also be designated as a 30(b)(6) witness, it would be more efficient and less burdensome to combine those depositions on the same day or at least to take them on back-to-back days. This is particularly true where OFCCP is likely to depose individual witnesses on subjects overlapping with its 30(b)(6) topics. Indeed, as I explained during our calls, it is hard to fathom what else you would want to depose Ms. Waggoner (who resides near Denver) about other than compensation (and you already have her 30(b)(6) interview responses and two days of her Jewett PMK testimony); Ms. Cohn about anything other than College Recruiting; or Ms. Holman-Harries (who resides near Phoenix) about anything other than the audit. It is unclear why OFCCP would reject this request out of hand when it would do much to lessen the burden on witnesses (for some of whom travel can be difficult due to family obligations) and to reduce the expense to the Parties. To the extent Oracle produces these



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witnesses, it intends to prepare and produce them only once. If OFCCP is unwilling to work with Oracle to schedule depositions in a reasonable, logical fashion, Oracle will have no choice but to postpone depositions until these issues are resolved and/or to raise them with Judge Clark.

Finally, Oracle will continue to work to identify witnesses and determine their availability for those Topics on which it is producing a witness, but cannot commit to do so by your arbitrary deadline.

* * *

Very truly yours,

A handwritten signature in cursive script, appearing to read "J.R. Riddell".

J.R. Riddell



UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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

Plaintiff,

v.

ORACLE AMERICA, INC.

Defendant.

OALJ Case No. 2017-OFC-
00006

OFCCP No. R00192699

**OFCCP'S AMENDED NOTICE OF DEPOSITION OF ORACLE PURSUANT TO
41 C.F.R. § 60-30.11 AND FEDERAL RULE OF CIVIL PROCEDURE 30(B)(6)**

PLEASE TAKE NOTICE that, pursuant to 41 C.F.R. § 60-30.11 and Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor ("OFCCP") will take the deposition upon oral examination of Defendant Oracle America, Inc. ("Oracle"), through its designated agent(s). OFCCP requests that Oracle provide the names and employment positions of the individuals Oracle designates to testify on its behalf at least 5 business days before any deposition.

The deposition will commence on May 15, 2019 at 9:00 a.m., at 90 7th Street, Suite 3-700, San Francisco, California 94103, or at such other mutually agreeable time and location. Pursuant to the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure, Oracle is hereby directed to designate one or more officers, directors,

managing agents, or other persons who consent to testify on its behalf about the matters described below.

PLEASE TAKE FURTHER NOTICE that OFCCP reserves the right to record any deposition testimony by videotape and instant visual display, in addition to recording the testimony by stenographic means. OFCCP reserves the right to use the videotape deposition at trial.

DEFINITIONS AND INSTRUCTIONS

1. Except as otherwise defined in this notice of deposition, Plaintiff incorporates by reference the definitions set forth in Fed. R. Civ. P. 26 and 30.
2. "COLLEGE RECRUIT" means any individual who expresses interest or applies to YOU through YOUR college recruiting program or who YOU identify as a potential candidate for YOUR college recruiting program for positions in the Professional Technical I, Individual Contributor Job Group.
3. "COMPA-RATIO" means the ratio of the employee's base salary to the midpoint of their job's salary range multiplied by 100.
4. "COMPENSATION" means any payments made to, or on behalf of, an employee as remuneration for employment, including, but not limited to salary, merit bonuses, relocation expenses, signing bonuses, stock options and grants.
5. "HQCA" means all locations Oracle included in its AAP labelled HQCA.
6. "PT1" means Professional Technical I, Individual Contributor Job Group.
7. "TRANSFER EMPLOYEES" means any of YOUR employees who transferred to HQCA from any other business YOU own or control or with whom you are affiliated, such as Oracle India Pvt. Ltd, from 2013 to the present.
8. "YOU" and "YOUR" mean Oracle America, Inc.

9. The terms “INCLUDING” and “INCLUDES” shall mean “including but not limited to” or the grammatical equivalent, and shall not be construed to exclude items not listed.

MATTERS DESIGNATED FOR DEPOSITION TESTIMONY

1. YOUR policies, practices, and procedures in effect between January 1, 2013, through the date of the deposition for hiring COLLEGE RECRUITS, including identifying, screening, and interviewing COLLEGE RECRUITS, matching COLLEGE RECRUITS to PT1 positions at HQCA, and making offers of employment and COMPENSATION to COLLEGE RECRUITS for PT1 positions at HQCA.

2. Oracle’s processes for hiring COLLEGE RECRUITS, including identifying, recruiting, screening interviewing, matching to positions, and making offers of employment and COMPENSATION to such individuals. Any person or set of persons Oracle designates as being the most knowledgeable about such processes must be prepared to provide testimony on the following non-exclusive list of topics:

- a. The process and criteria Oracle uses in identifying potential COLLEGE RECRUITS (e.g., “sourcing” for example ORACLE_HQCA_0000020131-34) and encouraging them to apply to Oracle (for example ORACLE_HQCA_0000020161-62);
- b. The process by which YOU screen individuals’ resumes sent to YOU, including to the college_us@oracle.com email address;
- c. YOUR process, practice, and procedures for each step of the recruitment, application, and hiring process from expression of interest through an applicant’s start date;

- d. YOUR process, practice, and procedures for tracking each step of the recruitment, application, and hiring process from expression of interest through an applicant's start date (including YOUR use of Resumate);
- e. The college recruiting processes and related criteria identified in the "Sourcing Handbook" (ORACLE_HQCA_0000020125-79); and
- f. How Oracle decides on what to offer COLLEGE RECRUITS as part of an initial COMPENSATION package, including any offers of salary, stock, a relocation allowance, and bonuses.

3. Any training or guidance YOU provide YOUR employees regarding recruiting, interviewing, hiring, and making offers of employment to COLLEGE RECRUITS.

4. YOUR processes for hiring and assigning TRANSFER EMPLOYEES, including recruiting, and offers of employment and COMPENSATION to such individuals. Any person or set of persons YOU designate as being the most knowledgeable about such processes must be prepared to provide testimony on the following non-exclusive list of topics, which is provided by

:

- a. The process and criteria YOU use in identifying TRANSFER EMPLOYEES to apply to positions at HQCA ; and,
- b. How YOU decide on what to offer TRANSFER EMPLOYEES as part of a compensation package, including any offers of salary, stock, relocation allowance, and bonuses.

5. Any training or guidance YOU provide YOUR employees regarding recruiting, hiring, and making offers of employment and COMPENSATION to TRANSFER EMPLOYEES.

6. The documents and data YOU maintained (or failed to maintain) and supplied (or failed to supply) to OFCCP during the compliance review of HQCA, including the compensation snapshots for 2013 and 2014; applicant and hiring data for 2012 through 2014; data for education (e.g., names of school attended and the educational degrees earned), prior salary, and experience from 2012 through 2014; YOUR applicant flow log for the PT1 positions; resumes; employer personnel actions for wage increases, bonus awards, job title hired into, starting stock level, stock level changes, job title and supervisor changes, promotion history, performance evaluations, performance ranking information and the dates associated with the aforementioned actions, internal and external complaints; and analyses from 2013 through 2014 required by 41 C.F.R. 60-2.17, 60-3.15A, 60-3.4.

7. The data produced by YOU in this action through the date of the deposition, including the source of such data, the method of exporting it, the validation of the data, the authenticity of it, the meaning of the data fields, the information included and excluded from such data, and any differences between the data produced in this action and during the compliance review of HQCA. This includes the following data sets and information:

a. The meaning of all column headers on data produced by YOU, including all of the data files produced by YOU on October 11, 2017, all supplementation of the data in 2019, as well as the following spreadsheets:

- (1) ORACLE_HQCA_0000062859.xlsx
- (2) ORACLE_HQCA_0000062858.xlsx
- (3) ORACLE_HQCA_0000360321.xlsx
- (4) ORACLE_HQCA_00000364082-182.xlsx

b. The source of all information contained in the spreadsheets identified in paragraph 4a; and

c. How the data in the spreadsheets identified in paragraph 4a correlate or relate to each other, both within an individual spreadsheet and across different spreadsheets.

8. Documents, including spreadsheets YOU provided to OFCCP in response to data requests to include the source(s) of the information provided, period of time of information provided, the database extracted from, the fields and columns of the information provided, the scripts that were used to pull the information provided.

9. YOUR policies and practices regarding document retention and/or destruction and computer-based record-keeping. This includes all personnel or employment records made or kept by YOU to comply with OFCCP regulations; and includes YOUR written affirmative action program and its documentation.

10. The authenticity of documents YOU produced during the compliance review and this enforcement action, including documents YOU produced in response to discovery requests;

11. The processes and factors affecting COMPENSATION of individuals in the Product Development, Information Technology, and Support lines of business at

HQCA between January 1, 2013, and the date of the deposition, including base salary, salary increases, stock options, stock grants, and bonuses, including:

- a. The budgets YOU develop and provide leaders and managers for headcount, base salary, salary increases, stock options, stock grants, and bonuses, including the cascading of the budgets through different levels of supervisors;
- b. The salary grades and salary ranges applicable to each job in Product Development, Support, and Information Technology job functions at HQCA, including how such salary grades are assigned to each job, how salary ranges are assigned to each salary grades, and how markets surveys are used to set such ranges;
- c. The criteria YOU consider in setting, awarding, or changing COMPENSATION to individuals in the Product Development, Information Technology, and Support job functions at HQCA, including the role that a new hire's or TRANSFER EMPLOYEE's prior compensation plays in setting initial compensation;
- d. The setting of COMPENSATION, salary grades and salary ranges for workers of companies acquired by YOU who work or will work in YOUR Product Development, Information Technology, or Support lines of business at HQCA between January 1, 2013, and the date of the deposition;
- e. The setting of COMPENSATION, salary grades and salary ranges for workers who transfer from Oracle affiliates in other countries

(such as Oracle India Pvt. Ltd.) into jobs in the Product Development, Support, or Information Technology job functions at HQCA; and

- f. YOUR use of COMPA-RATIO for workers who transfer from Oracle affiliates in other countries (such as Oracle India Pvt. Ltd.) into jobs in the Product Development, Support, or Information Technology lines of business at HQCA.

12. YOUR policies, practices, and procedures in assigning of workers in the Product Development, Support, and Information Technology job functions at HQCA between January 1, 2013, to the date of the deposition to products during the time they worked for YOU, and the impact of their assignments on their COMPENSATION. This includes:

- a. The method of setting initial job, product, and team assignments for YOUR employees at the time of hire, to include who makes the assignment decision, the factors considered when making this decision, the evaluation and weighting of these factors;
- b. The process by which YOUR employees transfer between different jobs and products at HQCA or receive promotions from one of them to another, including the method and means for an employee to seek a promotion or transfer, the method and means for YOU to direct a promotion or transfer, the factors considered by YOU in determining whether to permit a promotion or transfer and any method or means used by YOU to inform YOUR employees of the

opportunity to transfer and / or be promoted for a different job or product; and

- c. The process by which YOU determine if a transfer and / or promotion will result in a COMPENSATION change for an employee, including who is involved in making the COMPENSATION change determination, the factors considered by YOU in determining whether to change COMPENSATION, the method and means by which YOU change COMPENSATION.

13. YOUR policies, procedures, and practices used to produce documents in response to any request for production of documents propounded by Plaintiff.

14. YOUR policies, procedures, and practices used to create documents in response to any request for production of documents propounded by Plaintiff.

15. YOUR policies, procedures, and practices used to maintain, organize, collect, or store any information produced in response to any written discovery request by Plaintiff.

16. All actions YOU took in preparation to respond to any request for production of documents propounded by Plaintiff.

17. YOUR policies, procedures, and practices related to how YOU drafted, maintained, adhered to, or enforced your affirmative action plans.

18. YOUR policies, procedures, and practices related to how YOU fulfill YOUR legal obligations pursuant to 41 C.F.R. 60-1.12(b), 60-1.40(a)(1), 60-1.40(b), 60-2.10(c), and 60-2.11 through 60-2.17.

19. YOUR policies, procedures, and practices related to how YOU make, keep, and maintain all personnel or employment records to comply with OFCCP regulations.

20. YOUR policies, procedures, and practices related to developing and maintaining YOUR affirmative action program.

21. YOUR policies, procedures, and practices related to developing and maintaining diagnostic components, including YOUR quantitative analysis, created and designed to evaluate composition of YOUR workforce and affirmative action program.

22. YOUR policies, procedures, and practices related to developing and maintaining action-oriented programs YOU designed to correct problem areas and attain YOUR established goals and objectives for YOUR affirmative action program.

23. YOUR policies, procedures, and practices for developing and maintaining internal auditing and reporting systems to measure YOUR progress for YOUR affirmative action program.

24. YOUR policies, procedures, and practices for monitoring and examining YOUR employment decisions and compensation system for YOUR affirmative action plan, and developing and maintaining these policies, procedures, and practices.

25. YOUR policies, procedures, and practices related to developing and maintaining YOUR availability determination under 41 C.F.R. 60-2.14, YOUR incumbency to availability comparison under 41 C.F.R. 60-2.15, and YOUR placement goals under 41 C.F.R. 60-2.16.

26. YOUR policies, procedures, and practices related to developing and maintaining: how YOU identify or determine problem areas, action-oriented programs, and internal audit and reporting systems under 41 C.F.R. 60-2.17(b) through (d).

27. YOUR policies, procedures, and practices related to creating, maintaining, and make available for inspection YOUR information on impact pursuant to 41 C.F.R. 60-3.4 and 60-3.15.

28. YOUR policies, procedures, and practices related to how YOU decide job placement, project assignment, and compensation for new hires.

29. YOUR policies, procedures, and practices related to how YOU decide to promote someone to a position in management.

30. YOUR policies, procedures, and practices related to how YOU gather and use information about the prior income earned by new hires, including YOUR use of this information to set pay for new hires.

31. YOUR policies, procedures, and practices related to how YOUR employees can file complaints of discrimination and how YOU follow up on those complaints.

32. Whether YOU have received any complaints from any employee related to pay discrimination and how YOU handled those complaints.

CERTIFICATE OF SERVICE

I certify that on this 5th day of April, 2019, the foregoing NOTICE OF DEPOSITION OF ORACLE PURSUANT TO 41 C.F.R. § 60-30.11 AND FEDERAL RULE OF CIVIL PROCEDURE 30(B)(6) was served upon the following individuals by U.S. mail, as well as by courtesy copies via email, at the following addresses:

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Jeremiah Miller

U.S. Department of Labor



**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DEFENDANT'S OBJECTIONS
TO OFCCP'S AMENDED
NOTICE OF DEPOSITION
PURSUANT TO 41 C.F.R. § 60-
30.11 AND FED. R. CIV. P.
30(B)(6)**

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

Defendant Oracle America, Inc. ("Oracle" or "Defendant") hereby objects to Plaintiff the Office of Federal Contract Compliance Programs, United States Department of Labor's ("OFCCP" or "Plaintiff") Amended Notice of Deposition of Oracle Pursuant to 41 C.F.R. § 60-30.11 and Fed. R. Civ. P. 30(b)(6) ("Notice of Deposition" or "Notice"), noticed by Plaintiff on or about April 5, 2019, as follows:

PRELIMINARY STATEMENT

Oracle has not completed its investigation of the facts related to this case and the following responses are, therefore, preliminary. Further discovery, investigation and research may produce additional relevant facts that may change the responses set forth below. Although these responses are complete to the best of Oracle's knowledge, these responses are given without prejudice to its right to subsequently produce additional relevant evidence that may come to light regarding the issues raised in this action. Oracle reserves the right to amend its objections and responses.

GENERAL OBJECTIONS TO NOTICE OF DEPOSITION

Oracle's responses and objections in this Notice are subject to the general objections set forth below. These General Objections form a part of the response to each topic contained in the Notice, and are set forth here to avoid the duplication and repetition of restating them within

each response. Any response or specific objection to a topic should not be construed as a waiver of these General Objections.

1. Oracle objects to the Notice to the extent OFCCP purports to unilaterally set the deposition for May 15, 2019. The notice covers a wide variety of topics and Oracle and its counsel need to identify and prepare those witnesses and coordinate their availability to both prepare and testify. Oracle will work with OFCCP to schedule mutually convenient date(s) to produce witnesses covering topics for which Oracle agrees to produce a witness or witnesses.

2. Oracle further objects to this Notice to the extent that it seeks information that is duplicative and cumulative of information that OFCCP already obtained during its 18-month compliance review for the period of January 1, 2013 to June 30, 2014. By its own admission, OFCCP previously obtained and “reviewed employment policies, practices, and records; *interviewed management, human resources, and non-management employees*; examined employee complaints; analyzed individual employee compensation data and other evidence; [] conducted an onsite inspection of the worksite[;]” and reviewed and analyzed Oracle’s “hiring data and appropriate workforce availability statistics” as part of its 18-month compliance review. OFCCP March 11, 2016 Notice of Violation at 2-5 (emphasis added). Accordingly, by OFCCP’s affirmative admissions, it has already interviewed numerous Oracle employees about many of the topics identified in the Notice and had extensive opportunity to obtain the information it now seeks through deposition.

3. Oracle further objects to the Notice to the extent that it is duplicative and cumulative of OFCCP’s Notice of Deposition Pursuant to 41 C.F.R. § 60-30.11 and Fed. R. Civ. P. 30(b)(6) Regarding Human Resources Databases and Other Records, dated March 28, 2017 (“March 28 Notice”). The Notice seeks testimony on topics that are fundamentally related to and intertwined with the topics of OFCCP’s March 28 Notice. Oracle has already incurred the heavy burden and significant expense associated with preparing and making available to OFCCP nine witnesses in six different locations around the country. OFCCP’s March 28 Notice ostensibly sought testimony about Oracle’s databases, including Oracle’s databases containing employee

compensation information, and this Notice now seeks testimony about information related to and/or housed within those databases—testimony that would likely come from some of the same witnesses that Oracle has already produced, and testimony that OFCCP could have easily requested in its March 28 Notice. Had it requested the testimony it now seeks in its March 28 Notice, OFCCP could have spared Oracle the preparation and travel expenses associated with deposing the same witnesses multiple times. Instead, OFCCP seeks through its Notice to compel objectionable and unduly burdensome serial depositions of Oracle. *See State Farm Mutual Auto. Ins. Co. v. New Horizont, Inc.*, 254 F.R.D. 227, 235 (E.D. Pa. 2008)

(“Taking serial depositions of a single corporation may be as costly and burdensome, if not more so, as serial depositions of an individual. In both cases, each new deposition requires the deponent to spend time preparing for the deposition, traveling to the deposition, and providing testimony. In addition, allowing for serial depositions . . . provides the deposing party with an unfair strategic advantage, offering it multiple bites at the apple, each time with better information than the last.”)

4. Oracle further objects to the Notice to the extent that it otherwise seeks information and documents that are public, already in Plaintiff’s possession, already identified or to be produced by the parties in this action, or otherwise equally or more readily available from public sources or other sources to which Plaintiff has equal or superior access. Such topics are duplicative, cumulative, beyond the scope of permissible discovery, and impose an undue burden on Oracle.

5. Nothing contained in the following objections constitutes or shall be construed as an admission or acknowledgment that the Matters Designated for Deposition Testimony (“Topics”) in the Notice or any testimony elicited thereunder is relevant, material, or admissible at trial. Furthermore, Oracle objects to the topics listed below and seeks to meet and confer regarding the topics and depositions before agreeing to produce witnesses in response to OFCCP’s Notice.

6. Oracle further objects to the Notice to the extent that it is duplicative and cumulative of the six depositions noticed in recent weeks by OFCCP pursuant to 41 CFR 60-30.11(b), which obligates Oracle to produce its employees for deposition. It is clear that these individuals identified in these notices have been noticed by OFCCP because of their knowledge regarding many of the topics identified in the Notice. Oracle and its counsel have worked in good faith to coordinate and schedule these individual depositions, and OFCCP's new Notice amounts to an undue burden and an inconvenience to the witnesses, Oracle, and its counsel, as well as an improper attempt to obtain serial depositions of certain witnesses.

7. Oracle further objects that OFCCP failed to coordinate the scheduling of its 30(b)(6) deposition following the production by Oracle of the transcripts of "Person Most Knowledgeable" (PMK) depositions taken in *Jewett v. Oracle America, Inc.* Counsel for OFCCP represented that the production of these transcripts could result in the reduction or limitation of topics to be covered in subsequent depositions in this action. (See March 26, 2019 Email from N. Garcia to J. Giansello.) Counsel for OFCCP also represented that they would provide "prior notice to Oracle before noticing PMK depositions on the same topics" as the *Jewett* PMK depositions and "will meet and confer with Oracle to attempt to resolve disputes." (March 29, 2019 Email from N. Garcia to J. Giansello.) Even after being informed by Oracle on April 2, 2019 that the *Jewett* PMK deposition transcripts would be produced to them on April 5, 2019, counsel for OFCCP failed to offer any prior notice or to meet and confer, instead choosing to serve this Notice just a few hours in advance of Oracle's production. Oracle therefore requests OFCCP review those transcripts as OFCCP agreed to do and to meet and confer with Oracle regarding what topics in this Notice are still merited.

8. Oracle further objects to the Notice to the extent that it fails to specify with reasonable particularity the topics requested, is vague, ambiguous, overbroad in scope, uncertain as to time, compound, unduly burdensome, oppressive, and/or seeks information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

9. Oracle further objects that the topics noticed by OFCCP are vague as to the time period covered. To the extent Oracle produces a witness or witnesses in response to the notice, Oracle objects to the extent that any topic purports to extend beyond the time period from January 1, 2013, through January 18, 2019.

10. Oracle further objects to any request to produce a person or persons “most knowledgeable about th[e] topic[s]” designated by OFCCP, as Oracle has no obligation to do so under the applicable rules. Witnesses produced in response to the Notice—if any—will, subject to Oracle’s objections, testify in accordance with Oracle’s obligations under Rule 30(b)(6) of the Federal Rules of Civil Procedure.

11. Oracle further objects to the noticed topics to the extent the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, including declarations, interrogatories, and documents produced.

12. Oracle further objects to the Notice to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or protection from disclosure. To the extent Oracle inadvertently produces any information falling within any applicable privilege, Oracle does not waive the applicable privilege/objection. To the extent Oracle provides any information falling within any privilege and it is later held that Oracle waived the applicable privilege/objection, Oracle waives the applicable privilege/objection only to the extent of the information provided.

13. Oracle further objects to the Notice to the extent that Plaintiffs seek proprietary information, trade secrets, or other confidential information.

SPECIFIC OBJECTIONS TO DEFINITIONS AND TOPICS

DEFINITION 1:

Except as otherwise defined in this notice of deposition, Plaintiff incorporates by reference the definitions set forth in Fed. R. Civ. P. 26 and 30.

DEFINITION 2:

“COLLEGE RECRUIT” means any individual who expresses interest or applies to YOU through YOUR college recruiting program or who YOU identify as a potential candidate for YOUR college recruiting program for positions in the Professional Technical I, Individual Contributor Job Group.

OBJECTION TO DEFINITION 2:

Oracle objects to this definition to the extent it seeks information that is not relevant to the discriminatory conduct allegedly engaged in at Oracle’s Redwood Shores, CA location for the PT1 job group.

DEFINITION 3:

“COMPA-RATIO” means the ratio of the employee’s base salary to the midpoint of their job’s salary range multiplied by 100.

DEFINITION 4:

“COMPENSATION” means any payments made to, or on behalf of, an employee as remuneration for employment, including, but not limited to salary, merit bonuses, relocation expenses, signing bonuses, stock options and grants.

OBJECTION TO DEFINITION 4:

Oracle objects to this definition on the grounds that it is vague, ambiguous, overbroad and argumentative, in its use of the term “remuneration for employment” and to the extent that it defines “COMPENSATION” to include items that are not traditionally considered employee compensation, including but not limited to “relocation expenses,” which are considered a reimbursement, not compensation.

DEFINITION 5:

“HQCA” means all locations Oracle included in its AAP labelled HQCA.

DEFINITION 6:

“PT1” means Professional Technical I, Individual Contributor Job Group.

DEFINITION 7:

“TRANSFER EMPLOYEES” means any of YOUR employees who transferred to HQCA from any other business YOU own or control or with whom you are affiliated, such as Oracle India Pvt. Ltd, from 2013 to the present.

OBJECTION TO DEFINITION 7:

Oracle objects to this definition to the extent it purports to include former employees within the definition of “transfer employees.” Oracle further objects to the extent the definition calls for a legal conclusion. Oracle further objects to this definition to the extent it seeks information that is not relevant to the discriminatory conduct allegedly engaged in at Oracle’s Redwood Shores, CA, location for the PT1 job group.

DEFINITION 8:

“YOU” and “YOUR” mean Oracle America, Inc.

DEFINITION 9:

The terms “INCLUDING” and “INCLUDES” shall mean “including, but not limited to” or the grammatical equivalent, and shall not be construed to exclude items not listed.

TOPICS DESIGNATED FOR DEPOSITION TESTIMONY

TOPIC 1:

YOUR policies, practices, and procedures in effect between January 1, 2013, through the date of the deposition for hiring COLLEGE RECRUITS, including identifying, screening, and interviewing COLLEGE RECRUITS, matching COLLEGE RECRUITS to PT1 positions at HQCA, and making offers of employment and COMPENSATION to COLLEGE RECRUITS for PT1 positions at HQCA.

OBJECTION TO TOPIC 1:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle further objects to this topic on the ground that it is overbroad, unduly burdensome, and oppressive, particularly because it is unreasonable for Oracle to produce a witness capable of testifying on all “practices” related to the identifying, screening, and

interviewing of individual college recruits for PT1 positions at HQCA given that decision-making as to hiring college recruits is decentralized and involves hundreds of individual front-line and higher level managers and thus the decisions and “practices” of multiple such managers.

Subject to and without waiving the foregoing objections, Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify generally as to Oracle’s policies, practices, and procedures for hiring and making offers of employment and compensation to college recruits for PT1 positions at HQCA during the time period from January 1, 2013, through January 18, 2019.

TOPIC 2:

Oracle’s processes for hiring COLLEGE RECRUITS, including identifying, recruiting, screening interviewing, matching to positions, and making offers of employment and COMPENSATION to such individuals. Any person or set of persons Oracle designates as being the most knowledgeable about such processes must be prepared to provide testimony on the following non-exclusive list of topics:

- a. The process and criteria Oracle uses in identifying potential COLLEGE RECRUITS (e.g., “sourcing” for example ORACLE_HQCA_0000020131-34) and encouraging them to apply to Oracle (for example ORACLE_HQCA_0000020161-62);
- b. The process by which YOU screen individuals’ resumes sent to YOU, including to the college_us@oracle.com email address;
- c. YOUR process, practice, and procedures for each step of the recruitment, application, and hiring process from expression of interest through an applicant’s start date;
- d. YOUR process, practice, and procedures for tracking each step of the recruitment, application, and hiring process from expression of interest through an applicant’s start date (including YOUR use of Resumate);
- e. The college recruiting processes and related criteria identified in the

- “Sourcing Handbook” (ORACLE_HQCA_0000020125-79); and
- f. How Oracle decides on what to offer COLLEGE RECRUITS as part of an initial COMPENSATION package, including any offers of salary, stock, a relocation allowance, and bonuses.

OBJECTION TO TOPIC 2:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle also objects to producing a person or persons “most knowledgeable about th[e] topic[s]” designated by OFCCP, as Oracle has no obligation to do so under the applicable rules. Witnesses produced in response to the Notice—if any—will, subject to Oracle’s objections, testify in accordance with Oracle’s obligations under Rule 30(b)(6) of the Federal Rules of Civil Procedure.

Subject to and without waiving the foregoing objections Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify generally as to Oracle’s policies, practices, and procedures for identifying, recruiting, hiring and making offers of employment and compensation to college recruits for PT1 positions at HQCA during the time period from January 1, 2013, through January 18, 2019.

TOPIC 3:

Any training or guidance YOU provide YOUR employees regarding recruiting, interviewing, hiring, and making offers of employment to COLLEGE RECRUITS.

OBJECTION TO TOPIC 3:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above.

Subject to and without waiving the foregoing objections, Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify generally as to Oracle’s training and guidance regarding recruiting, interviewing, hiring, and making offers of employment to college recruits for PT1 positions at HQCA during the time period from January 1, 2013, through January 18, 2019.

TOPIC 4:

YOUR processes for hiring and assigning TRANSFER EMPLOYEES, including recruiting, and offers of employment and COMPENSATION to such individuals. Any person or set of persons YOU designate as being the most knowledgeable about such processes must be prepared to provide testimony on the following non-exclusive list of topics, which is provided by

- a. The process and criteria YOU use in identifying TRANSFER EMPLOYEES to apply to positions at HQCA; and,
- b. How YOU decide on what to offer TRANSFER EMPLOYEES as part of a compensation package, including any offers of salary, stock, relocation allowance, and bonuses.

OBJECTION TO TOPIC 4:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle also objects to this topic to the extent that it concerns recruiting and hiring claims that are no longer a part of this action. Furthermore, Oracle objects to producing a person or persons “most knowledgeable about th[e] topic[s]” designated by OFCCP, as Oracle has no obligation to do so under the applicable rules. Witnesses produced in response to the Notice—if any—will, subject to Oracle’s objections, testify in accordance with Oracle’s obligations under Rule 30(b)(6) of the Federal Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify generally as to Oracle’s processes for determining initial compensation for transfer employees into the Product Development, Support, and Information Technology job functions at HQCA during the time period from January 1, 2013, through January 18, 2019.

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TOPIC 5:

Any training or guidance YOU provide YOUR employees regarding recruiting, hiring, and making offers of employment and COMPENSATION to TRANSFER EMPLOYEES.

OBJECTION TO TOPIC 5:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle also objects to this topic to the extent that it concerns recruiting and hiring claims that are no longer a part of this action.

Subject to and without waiving the foregoing objections, Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify generally as to Oracle's training or guidance regarding the determination of initial compensation for transfer employees into the Product Development, Support, and Information Technology job functions at HQCA during the time period from January 1, 2013, through January 18, 2019.

TOPIC 6:

The documents and data YOU maintained (or failed to maintain) and supplied (or failed to supply) to OFCCP during the compliance review of HQCA, including the compensation snapshots for 2013 and 2014; applicant and hiring data for 2012 through 2014; data for education (e.g., names of school attended and the educational degrees earned), prior salary, and experience from 2012 through 2014; YOUR applicant flow log for the PT1 positions; resumes; employer personnel actions for wage increases, bonus awards, job title hired into, starting stock level, stock level changes, job title and supervisor changes, promotion history, performance evaluations, performance ranking information and the dates associated with the aforementioned actions, internal and external complaints; and analyses from 2013 through 2014 required by 41 C.F.R. 60-2.17, 60-3.15A, 60-3.4.

OBJECTION TO TOPIC 6:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects on the ground that the topic is vague and ambiguous, including as to what materials OFCCP believes Oracle "failed to maintain" or "failed to supply",

despite the fact that Oracle has repeatedly asked OFCCP to identify any such materials. Oracle further objects to this topic to the extent that its references to a “failure” to supply or maintain documents or data implies either the existence of an obligation to supply or maintain any particular materials or that a request for any specific material was made. The scope of the topic as stated is also overbroad, unduly burdensome, and disproportionate to the needs of the case under Fed. R. Civ. P. 26. Oracle also objects to this topic to the extent that it is duplicative of information already provided by Oracle through 30(b)(6) interviews of Oracle personnel conducted by OFCCP’s counsel. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

Subject to and without waiving the foregoing objections, Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify as to the requests that were made by OFCCP and the materials produced during the compliance review of HQCA.

TOPIC 7:

The data produced by YOU in this action through the date of the deposition, including the source of such data, the method of exporting it, the validation of the data, the authenticity of it, the meaning of the data fields, the information included and excluded from such data, and any differences between the data produced in this action and during the compliance review of HQCA. This includes the following data sets and information:

- a. The meaning of all column headers on data produced by YOU, including all of the data files produced by YOU on October 11, 2017, all supplementation of the data in 2019, as well as the following spreadsheets:
 - (1) ORACLE_HQCA_0000062859.xlsx
 - (2) ORACLE_HQCA_0000062858.xlsx
 - (3) ORACLE_HQCA_0000360321.xlsx
 - (4) ORACLE_HQCA_00000364082-182.xlsx
- b. The source of all information contained in the spreadsheets identified in

paragraph 4a; and

- c. How the data in the spreadsheets identified in paragraph 4a correlate or relate to each other, both within an individual spreadsheet and across different spreadsheets.

OBJECTION TO TOPIC 7:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle also objects to this topic to the extent the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, including declarations, interrogatories, and documents to be produced. Oracle further objects to this topic to the extent that it is duplicative of information already provided by Oracle through document productions and 30(b)(6) interviews of Oracle personnel that OFCCP elected to conduct in lieu of deposition. The scope of the topic as stated is also overbroad, unduly burdensome, and disproportionate to the needs of the case under Fed. R. Civ. P. 26. Oracle's data productions amount to dozens of spreadsheets, thousands of rows, and millions of individual entries, such that it is unreasonable to expect a deponent, or even multiple deponents, to be able to meaningfully respond to detailed, data-related questions in real-time. Oracle also objects to this topic to the extent that it seeks testimony subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 8:

Documents, including spreadsheets YOU provided to OFCCP in response to data requests to include the source(s) of the information provided, period of time of information provided, the database extracted from, the fields and columns of the information provided, the scripts that were used to pull the information provided.

OBJECTION TO TOPIC 8:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle also objects to this topic to the extent the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive,

including declarations, interrogatories, and documents to be produced. Oracle further objects to this topic to the extent that it is duplicative of information already provided by Oracle through interviews of Oracle personnel by OFCCP. The scope of the topic as stated is also overbroad, unduly burdensome, and disproportionate to the needs of the case under Fed. R. Civ. P. 26. Oracle's data productions amount to dozens of spreadsheets, thousands of rows, and millions of individual entries, such that it is unreasonable to expect a deponent, or even multiple deponents, to be able to meaningfully respond to detailed, data-related questions in real-time. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 9:

YOUR policies and practices regarding document retention and/or destruction and computer-based record-keeping. This includes all personnel or employment records made or kept by YOU to comply with OFCCP regulations; and includes YOUR written affirmative action program and its documentation.

OBJECTION TO TOPIC 9:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle also objects to this topic to the extent that it seeks information or materials that are not relevant to the specific conduct alleged by OFCCP, causes of action or defenses thereto. Oracle also objects on the ground that it previously produced Lisa Ripley as a deponent on this topic, and OFCCP elected to conduct an interview in lieu of a deposition. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 10:

The authenticity of documents YOU produced during the compliance review and this enforcement action, including documents YOU produced in response to discovery requests.

OBJECTION TO TOPIC 10:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle also objects to this topic to the extent the discovery sought is obtainable through other means that are more efficient, less burdensome, or less expensive. Oracle further objects to this topic because it is overbroad and unduly burdensome as it relates to all documents produced during the compliance review, which includes materials that have no relevance or bearing on the claims and defenses at issue in this proceeding. Oracle further objects to this topic on the ground that it is overbroad, unduly burdensome, oppressive, and unreasonable for Oracle to produce a witness to testify regarding the authenticity of every single one of the thousands of documents produced during the audit and in the course of this litigation.

TOPIC 11:

The processes and factors affecting COMPENSATION of individuals in the Product Development, Information Technology, and Support lines of business at HQCA between January 1, 2013, and the date of the deposition, including base salary, salary increases, stock options, stock grants, and bonuses, including:

- a. The budgets YOU develop and provide leaders and managers for headcount, base salary, salary increases, stock options, stock grants, and bonuses, including the cascading of the budgets through different levels of supervisors;
- b. The salary grades and salary ranges applicable to each job in Product Development, Support, and Information Technology job functions at HQCA, including how such salary grades are assigned to each job, how salary ranges are assigned to each salary grades, and how markets surveys are used to set such ranges;
- c. The criteria YOU consider in setting, awarding, or changing COMPENSATION to individuals in the Product Development, Information Technology, and Support job functions at HQCA, including the role that a

new hire's or TRANSFER EMPLOYEE's prior compensation plays in setting initial compensation;

- d. The setting of COMPENSATION, salary grades and salary ranges for workers of companies acquired by YOU who work or will work in YOUR Product Development, Information Technology, or Support lines of business at HQCA between January 1, 2013, and the date of the deposition;
- e. The setting of COMPENSATION, salary grades and salary ranges for workers who transfer from Oracle affiliates in other countries (such as Oracle India Pvt. Ltd.) into jobs in the Product Development, Support, or Information Technology job functions at HQCA; and
- f. YOUR use of COMPA-RATIO for workers who transfer from Oracle affiliates in other countries (such as Oracle India Pvt. Ltd.) into jobs in the Product Development, Support, or Information Technology lines of business at HQCA.

OBJECTION TO TOPIC 11:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the grounds that it is vague and ambiguous, including as to the meaning of the term "budgets [] develop[ed] ... for headcounts," as it assumes and misconstrues the process by which budgets are allocated. Oracle further objects to this topic to the extent that it is duplicative of testimony and information already provided through the production of transcripts of depositions taken in the *Jewett* matter, as the parties previously discussed the possibility of curtailing and limiting depositions based on the production of those transcripts. Oracle further objects to this topic on the ground that it is overbroad, unduly burdensome, and oppressive, particularly because it is unreasonable for Oracle to produce a witness capable of testifying as to all the factors and criteria Oracle considers in setting, awarding, or changing compensation for any given individual in the Product Development, Support, or Information Technology job functions at HQCA given that decision-

making is decentralized and involves hundreds of individual front-line and higher level managers, with any given employee's compensation often impacted by the decisions of multiple such managers.

Subject to and without waiving the foregoing objections, Oracle is willing to meet and confer regarding the testimony OFCCP seeks in this topic, particularly in light of the *Jewett* PMK deposition transcripts that have already produced to OFCCP.

TOPIC 12:

YOUR policies, practices, and procedures in assigning of workers in the Product Development, Support, and Information Technology job functions at HQCA between January 1, 2013, to the date of the deposition to products during the time they worked for YOU, and the impact of their assignments on their COMPENSATION. This includes:

- a. The method of setting initial job, product, and team assignments for YOUR employees at the time of hire, to include who makes the assignment decision, the factors considered when making this decision, the evaluation and weighting of these factors;
- b. The process by which YOUR employees transfer between different jobs and products at HQCA or receive promotions from one of them to another, including the method and means for an employee to seek a promotion or transfer, the method and means for YOU to direct a promotion or transfer, the factors considered by YOU in determining whether to permit a promotion or transfer and any method or means used by YOU to inform YOUR employees of the opportunity to transfer and / or be promoted for a different job or product; and
- c. The process by which YOU determine if a transfer and / or promotion will result in a COMPENSATION change for an employee, including who is involved in making the COMPENSATION change determination, the factors considered by YOU in determining whether to change

COMPENSATION, the method and means by which YOU change
COMPENSATION.

OBJECTION TO TOPIC 12:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle also objects to the incorrect premise embedded in this topic that Oracle “assigns” employees or directs or controls the jobs to which potential employees apply as potential hires self-select the jobs to which they apply. Oracle further objects to this topic on the ground that it is overbroad, unduly burdensome, and oppressive, particularly because it is unreasonable for Oracle to produce a witness capable of testifying on company-wide compensation “practices” given that decision-making is decentralized and involves hundreds of individual front-line and higher level managers, with any given employee’s compensation often impacted by the decisions and “practices” of multiple such managers.

Subject to and without waiving the foregoing objections, Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify generally as to the policies, practices, and procedures regarding the determination of initial compensation and compensation changes for employees in the Product Development, Support, and Information Technology job functions at HQCA between January 1, 2013 and January 18, 2019.

TOPIC 13:

YOUR policies, procedures, and practices used to produce documents in response to any request for production of documents propounded by Plaintiff.

OBJECTION TO TOPIC 13:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the grounds that it does not seek information that is relevant to a party’s claim or defense; the policies, procedures, or practices utilized by Oracle and/or its counsel to respond to discovery requests are not relevant to any claim in this action and are not properly the subject of discovery. Oracle also objects to this

topic to the extent that it seeks to elicit testimony concerning information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 14:

YOUR policies, procedures, and practices used to create documents in response to any request for production of documents propounded by Plaintiff.

OBJECTION TO TOPIC 14:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the grounds that it does not seek information that is relevant to a party's claim or defense; the policies, procedures, or practices utilized by Oracle and/or its counsel to respond to discovery requests are not relevant to any claim in this action and are not properly the subject of discovery. Oracle also objects to this topic on the grounds that it is vague and ambiguous, including as to the meaning of "policies, procedures, and practices" as these terms relate to OFCCP's over two hundred document requests to date. Oracle further objects to this topic to the extent that it implies that either Oracle has a standardized process through which it produces documents or other materials. Oracle further objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 15:

YOUR policies, procedures, and practices used to maintain, organize, collect, or store any information produced in response to any written discovery request by Plaintiff.

OBJECTION TO TOPIC 15:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the grounds that it does not seek information that is relevant to a party's claim or defense; the policies, procedures, or practices utilized by Oracle and/or its counsel to respond to discovery requests are not relevant to any claim in this action and are not properly the subject of discovery. Oracle also objects to this topic on the grounds that it is vague and ambiguous, including as to the meaning of "policies,

procedures, and practices” as these terms relate to OFCCP’s over two hundred document requests to date. Oracle further objects to this topic to the extent that it implies that either Oracle has a standardized process through which it produces documents or other materials. Oracle further objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 16:

All actions YOU took in preparation to respond to any request for production of documents propounded by Plaintiff.

OBJECTION TO TOPIC 16:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the grounds that it does not seek information that is relevant to a party’s claim or defense; the actions taken by Oracle and/or its counsel to respond to discovery requests are not relevant to any claim in this action and are not properly the subject of discovery. Oracle also objects to this topic on the grounds that it is vague and ambiguous, including as to the meaning of “actions” as this term relate to OFCCP’s over two hundred document requests to date. Oracle further objects to this topic to the extent that it implies that either Oracle has a standardized process through which it produces documents or other materials. Oracle further objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 17:

YOUR policies, procedures, and practices related to how YOU drafted, maintained, adhered to, or enforced your affirmative action plans.

OBJECTION TO TOPIC 17:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the ground that it is irrelevant to the claims alleged in OFCCP’s Second Amended Complaint and seeks to expand OFCCP’s

allegations to include a deficiency claim related to the compliance of Oracle's Affirmative Action Programs with regulatory requirements. It is therefore not a proper topic of discovery. The ALJ made clear in his March 13, 2019, Order Filing Revised Second Amended Complaint that any such deficiency claim would be objectionable as it "would take the litigation in a new and different direction," and would require the assessment of requirements "that were not at issue in the compliance review or in this case up to this point." The Order further stated that the ALJ did not read OFCCP's Second Amended Complaint to "require examining the substantive merits of the Affirmative Action Program." As stated, this topic goes beyond the limits set by the March 13 Order and seeks irrelevant information relating to Oracle's Affirmative Action Program generally. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 18:

YOUR policies, procedures, and practices related to how YOU fulfill YOUR legal obligations pursuant to 41 C.F.R. 60-1.12(b), 60-1.40(a)(1), 60-1.40(b), 60-2.10(c), and 60-2.11 through 60-2.17.

OBJECTION TO TOPIC 18:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic to the extent it reaches topic matter that is irrelevant to the claims alleged in OFCCP's Second Amended Complaint and seeks to expand OFCCP's allegations to include a deficiency claim related to the compliance of Oracle's Affirmative Action Programs with regulatory requirements, which is not a proper topic of discovery. The ALJ made clear in his March 13, 2019, Order Filing Revised Second Amended Complaint that any such deficiency claim would be objectionable as it "would take the litigation in a new and different direction," and would require the assessment of requirements "that were not at issue in the compliance review or in this case up to this point." The Order further stated that the ALJ did not read OFCCP's Second Amended Complaint to "require examining the

substantive merits of the Affirmative Action Program.” The CFR sections referenced in this topic cover a variety of regulatory requirements, only some of which relate to the keeping of records related to compliance and making such records available for review. To the extent OFCCP seeks a witness to testify to matters relating to the “substantive regulatory requirements of an Affirmative Action Program,” or matters otherwise beyond those contemplated by the ALJ’s March 13 Order, Oracle objects to the topic as impermissible and beyond the scope of relevant discovery. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 19:

YOUR policies, procedures, and practices related to how YOU make, keep, and maintain all personnel or employment records to comply with OFCCP regulations.

OBJECTION TO TOPIC 19:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the ground that it is irrelevant to the claims alleged in OFCCP’s Second Amended Complaint and seeks to expand OFCCP’s allegations beyond those actually pled. Oracle objects to this topic to the extent that it seeks information related to the substantive regulatory requirements applicable to Oracle’s Affirmative Action Program or information related to Oracle’s Affirmative Action Program beyond the keeping of records related to compliance and the making of such records available for review. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 20:

YOUR policies, procedures, and practices related to developing and maintaining YOUR affirmative action program.

OBJECTION TO TOPIC 20:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the ground that it is irrelevant to the claims alleged in OFCCP's Second Amended Complaint and seeks to expand OFCCP's allegations to include a deficiency claim related to the compliance of Oracle's Affirmative Action Programs with substantive regulatory requirements. It is therefore not a proper topic of discovery. The ALJ made clear in his March 13, 2019, Order Filing Revised Second Amended Complaint that any such deficiency claim would be objectionable as it "would take the litigation in a new and different direction," and would require the assessment of requirements "that were not at issue in the compliance review or in this case up to this point." The Order further stated that the ALJ did not read OFCCP's Second Amended Complaint to "require examining the substantive merits of the Affirmative Action Program." As stated, this topic goes beyond the limits set by the March 13 Order, and seeks irrelevant information relating to Oracle's Affirmative Action Program generally. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 21:

YOUR policies, procedures, and practices related to developing and maintaining diagnostic components, including YOUR quantitative analysis, created and designed to evaluate composition of YOUR workforce and affirmative action program.

OBJECTION TO TOPIC 21:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the ground that it is irrelevant to the claims alleged in OFCCP's Second Amended Complaint and seeks to expand OFCCP's allegations to include a deficiency claim related to the compliance of Oracle's Affirmative Action Programs with substantive regulatory requirements. It is therefore not a proper topic of discovery. The ALJ made clear in his March 13, 2019, Order Filing Revised Second Amended

Complaint that any such deficiency claim would be objectionable as it “would take the litigation in a new and different direction,” and would require the assessment of requirements “that were not at issue in the compliance review or in this case up to this point.” The Order further stated that the ALJ did not read OFCCP’s Second Amended Complaint to “require examining the substantive merits of the Affirmative Action Program.” As stated, this topic goes beyond the limits set by the March 13 Order and seeks irrelevant information relating to Oracle’s Affirmative Action Program generally. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 22:

YOUR policies, procedures, and practices related to developing and maintaining action-oriented programs YOU designed to correct problem areas and attain YOUR established goals and objectives for YOUR affirmative action program.

OBJECTION TO TOPIC 22:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the ground that it is irrelevant to the claims alleged in OFCCP’s Second Amended Complaint and seeks to expand OFCCP’s allegations to include a deficiency claim related to the compliance of Oracle’s Affirmative Action Programs with substantive regulatory requirements. It is therefore not a proper topic of discovery. The ALJ made clear in his March 13, 2019, Order Filing Revised Second Amended Complaint that any such deficiency claim would be objectionable as it “would take the litigation in a new and different direction,” and would require the assessment of requirements “that were not at issue in the compliance review or in this case up to this point.” The Order further stated that the ALJ did not read OFCCP’s Second Amended Complaint to “require examining the substantive merits of the Affirmative Action Program.” As stated, this topic goes beyond the limits set by the March 13 Order and seeks irrelevant information relating to Oracle’s Affirmative Action Program generally. Oracle also objects to this topic to the extent that it seeks

information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 23:

YOUR policies, procedures, and practices for developing and maintaining internal auditing and reporting systems to measure YOUR progress for YOUR affirmative action program.

OBJECTION TO TOPIC 23:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the ground that it is irrelevant to the claims alleged in OFCCP's Second Amended Complaint and seeks to expand OFCCP's allegations to include a deficiency claim related to the compliance of Oracle's Affirmative Action Programs with substantive regulatory requirements. It is therefore not a proper topic of discovery. The ALJ made clear in his March 13, 2019, Order Filing Revised Second Amended Complaint that any such deficiency claim would be objectionable as it "would take the litigation in a new and different direction," and would require the assessment of requirements "that were not at issue in the compliance review or in this case up to this point." The Order further stated that the ALJ did not read OFCCP's Second Amended Complaint to "require examining the substantive merits of the Affirmative Action Program." As stated, this topic goes beyond the limits set by the March 13 Order and seeks irrelevant information relating to Oracle's Affirmative Action Program generally. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

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TOPIC 24:

YOUR policies, procedures, and practices for monitoring and examining YOUR employment decisions and compensation system for YOUR affirmative action plan, and developing and maintaining these policies, procedures, and practices.

OBJECTION TO TOPIC 24:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the ground that it is irrelevant to the claims alleged in OFCCP's Second Amended Complaint and seeks to expand OFCCP's allegations to include a deficiency claim related to the compliance of Oracle's Affirmative Action Programs with substantive regulatory requirements. It is therefore not a proper topic of discovery. The ALJ made clear in his March 13, 2019, Order Filing Revised Second Amended Complaint that any such deficiency claim would be objectionable as it "would take the litigation in a new and different direction," and would require the assessment of requirements "that were not at issue in the compliance review or in this case up to this point." The Order further stated that the ALJ did not read OFCCP's Second Amended Complaint to "require examining the substantive merits of the Affirmative Action Program." As stated, this topic goes beyond the limits set by the March 13 Order and seeks irrelevant information relating to Oracle's Affirmative Action Program generally. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 25:

YOUR policies, procedures, and practices related to developing and maintaining YOUR availability determination under 41 C.F.R. 60-2.14, YOUR incumbency to availability comparison under 41 C.F.R. 60-2.15, and YOUR placement goals under 41 C.F.R. 60-2.16.

OBJECTION TO TOPIC 25:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the ground that it is irrelevant to the

claims alleged in OFCCP's Second Amended Complaint and seeks to expand OFCCP's allegations to include a deficiency claim related to the compliance of Oracle's Affirmative Action Programs with substantive regulatory requirements. It is therefore not a proper topic of discovery. The ALJ made clear in his March 13, 2019, Order Filing Revised Second Amended Complaint that any such deficiency claim would be objectionable as it "would take the litigation in a new and different direction," and would require the assessment of requirements "that were not at issue in the compliance review or in this case up to this point." The Order further stated that the ALJ did not read OFCCP's Second Amended Complaint to "require examining the substantive merits of the Affirmative Action Program." As stated, this topic goes beyond the limits set by the March 13 Order and seeks irrelevant information relating to Oracle's Affirmative Action Program generally. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 26:

YOUR policies, procedures, and practices related to developing and maintaining: how YOU identify or determine problem areas, action-oriented programs, and internal audit and reporting systems under 41 C.F.R. 60-2.17(b) through (d).

OBJECTION TO TOPIC 26:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the ground that it is irrelevant to the claims alleged in OFCCP's Second Amended Complaint and seeks to expand OFCCP's allegations to include a deficiency claim related to the compliance of Oracle's Affirmative Action Programs with substantive regulatory requirements. It is therefore not a proper topic of discovery. The ALJ made clear in his March 13, 2019, Order Filing Revised Second Amended Complaint that any such deficiency claim would be objectionable as it "would take the litigation in a new and different direction," and would require the assessment of requirements "that were not at issue in the compliance review or in this case up to this point." The Order further stated

that the ALJ did not read OFCCP's Second Amended Complaint to "require examining the substantive merits of the Affirmative Action Program." As stated, this topic goes beyond the limits set by the March 13 Order and seeks irrelevant information relating to Oracle's Affirmative Action Program generally. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 27:

YOUR policies, procedures, and practices related to creating, maintaining, and make available for inspection YOUR information on impact pursuant to 41 C.F.R. 60-3.4 and 60-3.15.

OBJECTION TO TOPIC 27:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic on the ground that it is irrelevant to the claims alleged in OFCCP's Second Amended Complaint and seeks to expand OFCCP's allegations beyond those actually pled. Oracle objects to this topic to the extent that it seeks information related to the substantive regulatory requirements applicable to Oracle's Affirmative Action Program or information related to Oracle's Affirmative Action Program beyond the keeping of records related to compliance and the making of such records available for review. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege.

TOPIC 28:

YOUR policies, procedures, and practices related to how YOU decide job placement, project assignment, and compensation for new hires.

OBJECTION TO TOPIC 28:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic to the extent that it is duplicative of testimony and information already provided through the production of transcripts of depositions

taken in the *Jewett* matter, as the parties previously discussed the possibility of curtailing and limiting depositions based on the production of those transcripts. Oracle further objects to the incorrect premise embedded in the topic as phrased that Oracle directs or controls the “placement” or “project assignment” for new hires; potential hires self-select to which jobs they apply. Oracle further objects to this topic on the ground that it is overbroad, unduly burdensome, and oppressive, particularly because it is unreasonable for Oracle to produce a witness capable of testifying on company-wide compensation “practices” given that decision-making is decentralized and involves hundreds of individual front-line and higher level managers, with any given employee’s compensation often impacted by the decisions and “practices” of multiple such managers. Oracle further objects to this topic on the ground that it is overbroad, unduly burdensome, and oppressive because OFCCP has not pled a claim regarding promotions.

Subject to and without waiving the foregoing objections, Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify generally as to the policies, practices, and procedures regarding the determination of initial compensation for new hires in the Product Development, Support, and Information Technology job functions at HQCA between January 1, 2013 and January 18, 2019.

TOPIC 29:

YOUR policies, procedures, and practices related to how YOU decide to promote someone to a position in management.

OBJECTION TO TOPIC 29:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle objects to this topic to the extent that it is duplicative of testimony and information already provided through the production of transcripts of depositions taken in the *Jewett* matter, as the parties previously discussed the possibility of curtailing and limiting depositions based on the production of those transcripts. Oracle further objects that this topic is vague and ambiguous and assumes there is a policy, practice or procedure specific to promoting an employee into a management position. Oracle further objects to this topic on the

ground that it is overbroad, unduly burdensome, and oppressive, particularly it is unreasonable for Oracle to produce a witness capable of testifying on all advancement and promotion “practices” at HQCA for the relevant job functions given that decision-making is decentralized over the appropriate class period and involves hundreds of individual front-line and higher level managers, with any given employee’s advancements and/or promotions often impacted by the decisions and “practices” of multiple such managers. Oracle further objects to this topic on the ground that it is overbroad, unduly burdensome, and oppressive because OFCCP has not pled a claim regarding promotions.

Subject to and without waiving the foregoing objections, Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify generally as to how employees may become managers in Oracle’s Product Development, Support, and Information Technology job functions at HQCA between January 1, 2013 and January 18, 2019.

TOPIC 30:

YOUR policies, procedures, and practices related to how YOU gather and use information about the prior income earned by new hires, including YOUR use of this information to set pay for new hires.

OBJECTION TO TOPIC 30:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle further objects to this topic on the ground that it is overbroad, unduly burdensome, and oppressive, particularly because it is duplicative of testimony and information already provided through the production of transcripts of depositions taken in the *Jewett* matter, as the parties previously discussed the possibility of curtailing and limiting depositions based on the production of those transcripts.

Subject to and without waiving the foregoing objections, Oracle is willing to meet and confer regarding the testimony OFCCP seeks in this topic, but takes the position that it should not have to produce additional testimony on this topic in light of the multiple PMK witnesses in

Jewett who already have testified on it, and given that Oracle already has produced the *Jewett* PMK deposition transcripts that have already produced to OFCCP.

TOPIC 31:

YOUR policies, procedures, and practices related to how YOUR employees can file complaints of discrimination and how YOU follow up on those complaints.

OBJECTION TO TOPIC 31:

Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege. Furthermore, the topic as phrased is overbroad to the extent that it seeks information or materials that are not relevant to the specific conduct alleged by OFCCP or the location and population at issue in its Second Amended Complaint. Oracle likewise objects to this topic based on the lack of a defined time period.

Subject to and without waiving the foregoing objections, Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify generally as to non-privileged policies, procedures, and practices related to how employees can raise complaints of discrimination and how Oracle investigates such complaints.

TOPIC 32:

Whether YOU have received any complaints from any employee related to pay discrimination and how YOU handled those complaints.

OBJECTION TO TOPIC 32:

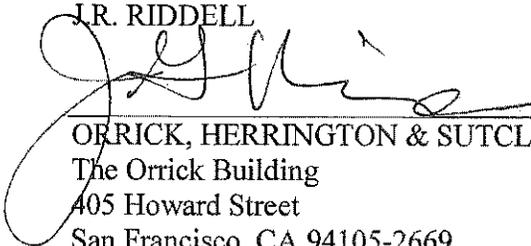
Oracle incorporates by reference its General Objections and its Specific Objections to Definitions set forth above. Oracle also objects to this topic to the extent that it seeks information or materials subject to the attorney-client privilege, the attorney work product doctrine, or any other privilege. Furthermore, the topic as phrased is vague and ambiguous as to time and location, as well as overbroad to the extent that it seeks information or materials that are not relevant to the specific conduct alleged by OFCCP or the location and population at issue in its

Second Amended Complaint. Oracle likewise objects to this topic based on the lack of a defined time period.

Subject to and without waiving the foregoing objections, Oracle will produce a witness (or witnesses) on a mutually agreed-upon day (or days) to testify generally as to complaints of pay discrimination raised by employees within the Product Development, Support, and Information Technology job functions at HQCA during the time period from January 1, 2013, through January 18, 2019 and Oracle's responses thereto.

April 10, 2019

GARY R. SINISCALCO
ERIN M. CONNELL
J.R. RIDDELL



ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
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econnell@orrick.com

Attorneys For Defendant
ORACLE AMERICA, INC.

PROOF OF SERVICE BY ELECTRONIC MAIL

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, California 94105-2669. My electronic service address is [NAME]@orrick.com.

On April 10, 2019, I served the interested parties in this action with the following document(s):

DEFENDANT'S OBJECTIONS TO OFCCP'S AMENDED NOTICE OF DEPOSITION PURSUANT TO 41 C.F.R. § 60- 30.11 AND FED. R. CIV. P. 30(B)(6)

by serving true copies of these documents via electronic mail in Adobe PDF format the documents listed above to the electronic addresses set forth below:

Marc A. Pilotin (pilotin.marc.a@dol.gov)
Laura Bremer (Bremer.Laura@dol.gov)
Jeremiah Miller (miller.jeremiah@dol.gov)
Norman E. Garcia (Garcia.Norman@DOL.GOV)
U.S. Department of Labor, Office of the Solicitor, Region IX – San Francisco
90 Seventh Street, Suite 3-700
San Francisco, CA 94103
Telephone: (415) 625-7769 / Fax: (415) 625-7772

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 10, 2019, at San Francisco, California.

Jacqueline D. Kaddah



U.S. Department of Labor

Office of the Solicitor
90 7th Street, Suite 3-700
San Francisco, California 94103



April 1, 2019

VIA ELECTRONIC MAIL

John D. Giansello
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019-6142

Re: OFCCP v. Oracle America, Inc., OALJ Case No. 2017-OFC-00006

Dear John:

I write in response to your *Jewett* meet and confer communications last week to include on Friday, March 29, 2019, and as a follow up to OFCCP's reply on the same date.

OFCCP is following up on its offer Friday to provide notice in advance to Oracle if it plans to serve a deposition notice for a person most knowledgeable ("PMK") deposition for any of the topics listed in the *Jewett* PMK deposition notice(s) to Oracle. As stated on Friday, we believe that Oracle's suggestion to provide notice for "anything that may range outside the matters for which those witnesses were designated" is unworkable, would lead to further disputes and these deponents did not testify as PMK witnesses for these other topics. OFCCP also noted that while it would give prior notice before serving the PMK deposition notices on the same topics, it could not wait indefinitely for Oracle to file its protective order motion and that it would notice the depositions if the parties could not quickly resolve their differences through the meet and confer process. OFCCP took this position since Oracle would not agree to file its protective order motion within five days of receiving OFCCP's notice. To date, OFCCP is still awaiting Oracle's response to its last offer.

In terms of the non-PMK depositions, counsel for the *Jewett* plaintiffs consented to Oracle producing them to OFCCP in the attached document. This consent satisfies the requirement of Section four of the *Jewett* protective order and resolves Oracle's previous "significant issues of personal privacy" objection. Judge Clark's protective orders resolves Oracle's confidential concerns about its own documents. Lastly, as previously identified last week, these documents are highly relevant because both litigations concern gender pay discrimination against women at Oracle's Redwood Shores Headquarters and Oracle's compensation policies for these women were the same throughout California. Thus, OFCCP is requesting that Oracle produce the non-PMK depositions forthwith.

In terms of the other *Jewett* document production requests, OFCCP is requesting, as a compromise, that Oracle produce a detailed index of *Jewett* documents that it currently does not plan to produce in response to RFP 167. OFCCP will review the items contained therein to address Oracle's burdensome claim. While OFCCP is making this compromise offer, OFCCP still reserves the right to bring a motion to compel for RFP 167 based on Oracle's boilerplate objections being waived because they lacked the required support. For RFP 168, OFCCP does

John D. Giansello
April 1, 2019
Page 2

not believe that the production of the written discovery requests, responses and meet and confer communications thereto in *Jewett* are burdensome and again requests Oracle's production thereof.

Given that OFCCP has been waiting since January for these documents, Oracle did not provide a substantive response until March 25, 2019, and it is now April, OFCCP is requesting a prompt response to these communications for these three RFPs. OFCCP is also requesting unredacted versions of the PMK transcripts by the close of business Wednesday, April 3, 2019. If we do not receive them by that date, we will serve PMK deposition notices without regard to the topics previously noticed in those depositions and do motion practice to obtain these depositions.

Sincerely,


NORMAN E. GARCIA
Senior Trial Attorney

From: [Jim Finberg](#)
To: [Miller, Jeremiah - SOL](#)
Subject: RE: OFCCP v. Oracle-- seeking documents
Date: Friday, March 29, 2019 3:55:41 PM

Jeremiah,

Plaintiffs consent to Oracle producing those materials to you.
Jim

From: Miller, Jeremiah - SOL [mailto:Miller.Jeremiah@dol.gov]
Sent: Thursday, March 28, 2019 6:06 PM
To: Jim Finberg <jfinberg@altshulerberzon.com>
Subject: OFCCP v. Oracle-- seeking documents

Hi Jim,

We are seeking transcripts (and exhibits) for the depositions that the parties took in *Jewett, et al. v. Oracle America, Inc.*, as well as written discovery requests and responses. We are aware that confidential information in that litigation is subject to a protective order, and that that order (in paragraph 4) requires written consent of the other parties prior to the disclosure of confidential information. Therefore, I am writing to you to request your consent on behalf of your clients to the production of un-redacted deposition transcripts and exhibits for depositions taken by the parties in the *Jewett* matter, as well as written discovery requests and responses served in *Jewett*.

It is our position that any confidential information produced through these transcripts and exhibits would be subject to the protective order in our case, *OFCCP v. Oracle America, Inc.* so we do not believe there is any risk that your clients' or the deponents' confidential information (as defined by the Protective Order in *OFCCP v. Oracle America, Inc.*) will be released as a result of this production.

Please let me know if you consent to Oracle producing these materials to us.

Thank you,
Jeremiah

Jeremiah Miller
Counsel for Civil Rights
U.S. Department of Labor, Office of the Solicitor
300 Fifth Avenue, Suite 1120
Seattle, WA 98104
telephone: 206-757-6757
fax: 206-757-6761

This document may contain information that is privileged by the attorney-client privilege or work product doctrine or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor.



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+1 212 506 5000
orrick.com

April 5, 2019

VIA E-mail: (Garcia.Norman@dol.gov; Bremer.Laura@dol.gov)

Norman E. Garcia, Esq.
Senior Trial Attorney
United States Department of Labor
90 Seventh Street, Room 3-700
San Francisco, CA 94103

John D. Giansello

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D +1 212 506 5217
F +1 212 506 5151

**Re: OFCCP v. Oracle America, Inc.
OALJ Case No. 2017-OFC-00006; OFCCP No. R001192699**

Dear Mr. Garcia:

In furtherance of my prior response to your April 1, 2019 letter, today Oracle is producing load files that include the four unredacted transcripts and exhibits from the Persons Most Knowledgeable (PMKs) depositions in the *Jewett* litigation. The PMK materials include transcripts and exhibits from Anje Dodson (produced at ORACLE_HQCA_0000398389 to ORACLE_HQCA_0000399189), Kristina Karstensson Edwards (produced here at ORACLE_HQCA_0000399190 to ORACLE_HQCA_0000399378), Chad Wayne Kidder (produced at ORACLE_HQCA_0000399379 to ORACLE_HQCA_0000399630), and Kate Waggoner (produced here at ORACLE_HQCA_0000399631 to ORACLE_HQCA_0000401021). As I stated in my previous letter, we do not concede that this production is relevant to the issues in this proceeding, and Oracle reserves its rights in that regard.

Furthermore, we are producing these materials in accordance with our e-discovery protocols and they are marked "Confidential" in their entirety due to system limitations that do not facilitate confidential designations by page or line numbers. However, through this letter we narrow our designations as reflected in the attached chart. These materials are only being produced subject to our understanding that you will observe each of the designations in accordance with the protective order in effect in this litigation.

Very truly yours,

John Giansello

cc: Jeremiah Miller, Esq. (via email to Miller.Jeremiah@dol.gov)
Charles C. Song, Esq. (via email to Song.Charles.C@dol.gov)



April 10, 2019

Via E-Mail

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J.R. Riddell

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Re: *OFCCP v. Oracle, Inc., et al.*, Case No. 2017-OFC-00006
Notices of Deposition Pursuant to FRCP 30(b)(6) and 41 C.F.R. 60-30.11

Dear Jeremiah:

I write regarding your notice of deposition pursuant to FRCP 30(b)(6) and 41 C.F.R. 60-30.11, which was served on April 5, 2019, as well as the six depositions noticed pursuant to 41 CFR 60-30.11(b) in recent weeks.

Based on recent meet and confer discussions between counsel, we understand OFCCP intends to proceed with these various depositions, but hold them open to be subsequently resumed after Oracle's completes its document and data production. Oracle is not amenable to producing the witnesses a second time, and I write to make its position clear.

OFCCP pushed Oracle to schedule various fact witness depositions knowing full well that Oracle is actively collecting, reviewing and producing documents, pulling and producing massive amounts of data, preparing responses and objections to a 6th Set of RFPs, and meeting and conferring regarding multiple RFPs from prior sets of discovery. Nevertheless, we responded by coordinating availability and proposing dates as soon as we were in a position to do so (advising you that we were still coordinating with two witnesses regarding their availability). Accordingly, if OFCCP wishes to move forward with these depositions on the dates scheduled, it certainly may do so. However, given the burdens, travel, and time associated with preparing these witnesses, in addition to the inconveniences occasioned on the witnesses, Oracle will only voluntarily produce these employees for fact depositions once. Should OFCCP desire to ask those witnesses about documents and data that will not be produced prior to these depositions, Oracle will work with OFCCP to reschedule mutually convenient deposition dates to occur after Oracle completes its document and data productions, and prior to the July 3, 2019 close of fact discovery.



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In light of the foregoing, please let us know whether you wish to reschedule any of the depositions currently on calendar, and whether you still want to depose Mallory Cohn and Lynne Carrelli in their individual capacities prior to completion of Oracle's document and data production.

As for the 30(b)(6) deposition notice, we need time to coordinate with Oracle and potential witnesses to testify regarding topics where we agree to produce witnesses, but for the time being Oracle's Objections to the 32 topics are enclosed. The Objections reflect there are topics over which we need to meet and confer to facilitate identifying and preparing designees, and so Oracle is unable to confirm deposition dates at this time. We will, however, work with you toward that end.

Moreover, we anticipate that for some of the noticed topics, we may designate as our 30(b)(6) witness some of the witnesses who already have been noticed in their individual capacity. Accordingly, we want to discuss with you how best to schedule these depositions so these individuals do not need to appear for deposition on multiple occasions. Additionally, OFCCP previously stated its intent to review the *Jewett* PMK transcripts we produced last week to determine how and where it could narrow its topics, but, based on the time the notice was sent and the topics identified in the notice, it does not appear that any such review took place. We request that OFCCP do so now and consider narrowing the topics consistent with the spirit of our discussions and agreement to produce these materials.

After you've had an opportunity to review our Objections, I suggest we schedule a meet and confer call. Of course, should you wish to schedule the 30(b)(6) deposition before Oracle completes its production, we will work with you to find mutually agreeable dates. Again, however, please note Oracle will not produce 30(b)(6) designees more than once.

Very truly yours,

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

J.R. Riddell

Enclosures

U.S. Department of Labor

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Reply to:
Charles Song
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April 19, 2019

VIA ELECTRONIC MAIL

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Re: OFCCP v. Oracle America, Inc., OALJ Case No. 2017-OFC-00006

Mr. Riddell:

This letter is to memorialize our meet and confer discussions on April 18 and 19, 2019, regarding Oracle's objections and responses to OFCCP's Amended 30(b)(6) Notice of Deposition. In general, Oracle stood by its objections for every request, and the parties were unable to resolve numerous topics. Aside from the topic-specific discussions outlined below, the parties met and conferred about the following general topics:

First, OFCCP objected to Oracle's repeated use of the qualifier "generally" to describe what its 30(b)(6) witnesses would testify about. The parties agreed that regardless of Oracle's use of this word, Oracle will comply with its obligation to prepare and produce 30(b)(6) witnesses who will be prepared to testify about information known or reasonably available to Oracle.

Second, the parties disagreed about the role of the *Jewett* deposition transcripts in this litigation. Oracle repeatedly delayed OFCCP's efforts to acquire the *Jewett* transcripts even after OFCCP offered to wait to serve its 30(b)(6) notice. Given Oracle's past and continuing obstructionist behavior in this litigation, it cannot complain that OFCCP refused to wait even longer to serve its notice. In any event, OFCCP is entitled to its own depositions in this action and will not agree to modify its notice to remove topics that may have been discussed in other, according to Oracle, irrelevant litigation to which OFCCP was not a party. However, OFCCP is, of course, still reviewing the *Jewett* deposition transcripts received a few days ago with an eye to limiting duplicative questioning.

Third, the parties were unable to agree on the temporal scope of topics concerning compensation. OFCCP's position is that we are entitled to inquire about facts up to the date of the deposition, whereas Oracle claims that it should be limited to January 18, 2019. Given that Oracle promised to reconsider its position, please let us know by April 23, 2019 whether Oracle will agree to OFCCP's time period.

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The parties further discussed issues related to specific topics:

Topic 1: OFCCP agreed to limit the period from January 1, 2013 to January 18, 2019 for purposes of testimony regarding this topic. OFCCP expressed concern that Oracle was narrowing the topic to exclude testimony about “identifying, screening, and interviewing COLLEGE RECRUITS, [and] matching COLLEGE RECRUITS to PT1 positions at HQCA.” Oracle clarified that it will produce a witness to testify about those issues as well.

Topic 2: OFCCP agreed to limit the period from January 1, 2013 to January 18, 2019 for purposes of testimony regarding this topic. Again, Oracle clarified that it will produce a witness to testify about all subtopics included.

Topic 3: OFCCP agreed to limit the period from January 1, 2013 to January 18, 2019 for purposes of testimony regarding this topic. Oracle will produce a witness to testify about this topic.

Topics 4-5: Oracle clarified that despite its objection to definition 7 (“transfer employees”), it will produce a witness to testify about compensation for transfers in the Product Development, Support, and Information Technology job functions at HQCA. Oracle, however, refused to allow testimony on the remaining subtopics, including its process and training for recruiting, hiring, and assigning transfers. Oracle claimed that such issues are overbroad and irrelevant. Further, the parties disagreed about the temporal scope for the topic. *See supra* pg. 1.

Topic 6: Oracle agreed to produce a witness to testify about OFCCP’s document and data requests and Oracle’s response to those requests. This includes testimony about Oracle’s response to requests for which they ultimately did not produce documents or data.

Topics 7-8: Oracle refused to produce a witness to testify about these topics. Oracle claimed that it is not possible to prepare even multiple witnesses to testify about these topics. Instead, Oracle offered to answer technical questions in writing. OFCCP noted that Oracle has previously told OFCCP to request this information in depositions during meet and confer discussions.

OFCCP offered to accept testimony on only the four spreadsheets listed in its notice and that Oracle continue to answer questions about other data. Oracle rejected OFCCP’s offer based on its unsupported and unexplained undue burden objection. Oracle also claimed that some of the testimony that OFCCP seeks is protected by the work product doctrine, and that OFCCP should be satisfied with the information it obtained during pre-discovery interviews. OFCCP explained that it cannot rely on those interviews because they were not on the record, under oath, and Oracle instructed its witnesses not to answer multiple times, impeding OFCCP from developing a full understanding of the issues in question.

Topic 9: Oracle refused to commit to producing a witness for this topic. Again, Oracle claims that OFCCP already obtained enough information during its interview of Lisa Ripley. Oracle asked

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if OFCCP would be willing to travel to Denver for the deposition, but OFCCP noted that it has the legal right to take the deposition in California. Oracle agreed to reconsider its position. Please let us know by April 23, 2019 whether Oracle will agree to produce a witness for this topic.

Topic 10: The parties agreed to continue discussions about stipulating to authentication of documents. OFCCP reserved its right to take a 30(b)(6) deposition on this topic if the parties cannot agree on the terms of a stipulation in a timely manner.

Topic 11: The parties could not reach an agreement on this topic. Oracle refuses to produce someone to testify, because Kate Waggoner discussed the topic during her OFCCP interview and because it claims that the testimony would be duplicative of her testimony in the *Jewett* depositions.

Topic 12: In its response to this topic, Oracle offered testimony on “policies, practices, and procedures regarding the determination of initial compensation and compensation changes for employees in the Product Development, Support, and Information Technology job functions at HQCA.” However, this topic seeks testimony on the assignment of workers to products in those job functions and the impact of those assignments on compensation.

On one hand, Oracle claimed that there is no “assignment” of workers. At the same time, however, Oracle belatedly objected that Kate Waggoner had already testified about this topic during OFCCP interviews. Oracle also claimed that there may be responsive testimony in the *Jewett* deposition transcripts.

Ultimately, Oracle agreed to produce a witness only for the compensation part of this topic. Oracle agreed to reconsider whether it will produce a witness for the remainder of the topic, including worker assignment. Please let us know by April 23, 2019 whether Oracle will agree to produce a witness to testify about the entire topic.

Topic 13-16: OFCCP explained the bases for these topics, including that the lawsuit involves recordkeeping violations, that Oracle has raised undue burden objections in discovery multiple times, and that Oracle itself has told OFCCP to ask about recordkeeping in depositions. *See, e.g.*, OFCCP Letter to Oracle Re April 8, 2019 Meet and Confer, at 3. Still, Oracle refused to produce a witness to testify about these topics.

Topic 17-28: OFCCP explained that it does not consider these topics to be part of a “deficiency” claim. In fact, the language of these topics tracks what Judge Clark has already agreed that OFCCP can litigate. Oracle disagreed and stated that it believes these topics are actually contrary to Judge Clark’s orders. Oracle refused to produce a witness to testify about these topics.

Topic 29, 31-32: Oracle agreed to produce a witness to testify about these topics. The parties, however, disagreed about the time period relevant for this topic. OFCCP explained that it is entitled

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to explore whether Oracle is currently in compliance with regulations. The parties did not reach an agreement on this time period dispute.

Topic 30: Oracle refused to produce a witness for this topic. Again, Oracle claims that OFCCP already obtained all of the information it needs through pre-discovery interviews.

Scheduling Depositions: OFCCP made its fourth request for Malory Cohn's availability for deposition. Oracle agreed to inquire about Cohn's availability, but refused to state when it would be able to provide such dates. OFCCP reminded Oracle that it noticed Ms. Cohn's deposition on March 29, 2019, and that counsel stated he would promptly confer with Ms. Cohn when she returned from leave the week of April 8, 2019. To date, three weeks after our notice, Oracle has yet to ask Ms. Cohn for her availability.

Oracle requested that OFCCP take the testimony of Ms. Waggoner on 30(b)(6) topics 4, 5, 11, 12, and 28 on the same or consecutive days to her individual deposition on May 1, 2019, in Denver. OFCCP has considered Oracle's request but, unfortunately, will not be able to accommodate Oracle's request.

Finally, for the topics Oracle has agreed to produce witnesses for, please designate witnesses and provide us their availability for depositions. Thank you very much.

Sincerely,

/s/ Charles Song

Jeremiah E. Miller, Counsel
Charles C. Song, Senior Trial Attorney
Jessica M. Flores, Trial Attorney
M.J. Christopher Santos, Trial Attorney
U.S. Department of Labor
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April 22, 2019

Via E-Mail

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Re: *OFCCP v. Oracle, Inc., et al.*, Case No. 2017-OFC-00006

Dear Mr. Song:

I write to respond to your letter of April 19, 2019, labeled "Memorialization Letter", which purports to memorialize our April 18 and 19 meet and confer calls, and to correct the misrepresentations and omissions therein. Your letter repeatedly either misstates Oracle's positions or omits them entirely in an apparent effort to construct an inaccurate record. Moreover, while you portray Oracle as uncompromising in its positions, you fail to memorialize that OFCCP was unwilling to discuss any meaningful compromise to its topics, largely because your team still has not reviewed the Jewett PMK deposition transcripts, and to the extent any review has taken place the deposition taking attorneys have failed to coordinate with the team of attorneys who engaged in these meet and confer discussions.

At this point, I write to correct the most glaring and gross mischaracterizations set forth in your letter. First, OFCCP cannot impose an arbitrary deadline (following a holiday weekend, no less) demanding that Oracle reconsider its positions and provide a written response within two business days of your Friday afternoon demand, particularly where OFCCP has and continues to drag its feet with respect to Oracle's 30(b)(6) deposition notice. As explained to you during our first call, I am on vacation this week. While I have taken the time to respond to your Good Friday after hours correspondence, and will continue to coordinate with my team and Oracle regarding the issues discussed during our call, I am not and will not be in a position to respond to your unilateral demand. Instead, as I said during our call, I will work to get back to you regarding those issues and respond as soon as I am in a position to do so.



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Oracle's 30(b)(6) Notice

Furthermore, OFCCP's unwillingness to work with Oracle to reduce the burden on individual witnesses and to save both sides time and expense is particularly troubling in light of OFCCP's position with respect to Oracle's 30(b)(6) deposition notice. Specifically, OFCCP has indicated that it will seek a protective order to prevent Oracle from taking 30(b)(6) depositions if Oracle insists on further responses to its second set of interrogatories. It is impossible to reconcile OFCCP's aggressive refusal to narrow its own 30(b)(6) topics in light of Oracle's good faith efforts to provide information through other means on the one hand, with its simultaneous refusal to produce witnesses in response to Oracle's 30(b)(6) notice. Notwithstanding the discussion of individual topics and issues below, if OFCCP cannot align its diametrically opposed positions, Oracle will have no choice but to involve the court before any 30(b)(6) depositions go forward.

Narrowing of Topics Based on Production of *Jewett* Deposition Transcripts

Your description of OFCCP's position on limiting or removing topics duplicative of sworn testimony Oracle already provided in the *Jewett* PMK deposition transcripts is grossly misleading—and suggests OFCCP has generously offered to limit the questions it will ask of Oracle's 30(b)(6) designees. For that reason, I am compelled to make an accurate record demonstrating OFCCP is now backtracking and wants Oracle to prepare witnesses on all 32 topics, and subtopics, even though the preparation may be unnecessary because OFCCP may decide not to ask questions in light of Oracle's *Jewett* PMK testimony. As you know, after having to spend time and resources addressing the invalid subpoena that OFCCP served on *Jewett* counsel despite having no authority to do so, Oracle agreed to produce transcripts of depositions taken in the *Jewett* matter based on OFCCP's indication that it would review those transcripts and limit or remove topics that were redundant of the prior depositions. However, now that it has those transcripts in hand, OFCCP completely refuses to modify or limit its topics to remove unnecessary and redundant subject matter. Clearly, having gotten what it wanted, OFCCP decided to renege on its prior statements.

In a March 26, 2019, email to John Giansello, Norman Garcia told Oracle that “[a]s stated previously, after we review [the *Jewett* transcripts], we may determine that it is unnecessary to depose some of the witnesses, or may choose to limit our questioning. Thus, providing the depositions will likely lead to efficiencies for both parties.” In a March 28, 2019, email from Mr. Giansello to Mr. Garcia, Oracle then committed to producing the deposition transcripts by the end of the following



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week (April 5, 2019). Mr. Garcia's March 29, 2019, email in response acknowledged Oracle's commitment, and further stated that OFCCP "will also agree to give prior notice to Oracle before noticing PMK depositions on the same topics in the notice of depositions for [the *Jewett*] depositions and will meet and confer with Oracle to attempt to resolve disputes," while couching that promise with the caveat that OFCCP receive the transcripts before filing its notice. Notwithstanding Mr. Garcia's attempt in that email to impose an arbitrary deadline of April 3, Oracle produced the *Jewett* transcripts, as promised, by the deadline discussed between both sides – i.e., on April 5.

Despite knowing that Oracle had agreed to produce the *Jewett* transcripts by April 5, and despite indicating that it would review those transcripts in order to determine whether it could narrow its topics (and potentially avoid deposing some witnesses), and despite promising to give prior notice before noticing any 30(b)(6) depositions on the same topics, OFCCP served its 30(b)(6) notice on April 5, without any prior notice, and mere hours before receiving the promised transcripts. Needless to say, this timing suggests that OFCCP sought to serve its notice *before* receiving the transcripts it had promised to review so that it could renege on its commitment.

In an attempt to place the blame for OFCCP's change of heart on Oracle, OFCCP repeatedly stated during the meet and confer that if only OFCCP had received the *Jewett* deposition transcripts before it served its 30(b)(6) notice, it would have evaluated the testimony to determine if it could more narrowly tailor its 30(b)(6) topics. However, despite having now had those transcripts for two weeks (not a "few days", as your letter suggests), OFCCP indicated during the meet and confer that it is now unwilling to consider limiting any of its repetitive topics based on the content of those transcripts. Instead, OFCCP's position is that it will review the transcripts "with an eye to limiting duplicative questioning," but that Oracle must still prepare witnesses for all of the requested topics, even where those topics were thoroughly covered and explained in the *Jewett* testimony. Such a promise is illusory at best and, of course, does nothing to lessen the burden on witnesses, who will have to be prepared on all of the redundant subject matter included in OFCCP's 30(b)(6) topics.

It is unclear how OFCCP can reconcile its position that it *would* have reviewed the transcripts and limited the scope of its 30(b)(6) notice if it had received the transcripts before serving its notice with the fact that it has yet to complete its review of said transcripts two weeks after receiving them. Moreover, there is no reason why, as part of the ongoing meet and confer process, OFCCP cannot now review the *Jewett* transcripts and work with Oracle to eliminate unnecessarily duplicative Topics and subject matter.



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As described, Oracle has made good faith efforts to provide OFCCP with information that would allow OFCCP to limit or remove certain Topics, thereby saving both sides time and expense and reducing the burden on witnesses. OFCCP's attempt to characterize these efforts as "obstructionist behavior" is ironic indeed, considering it is OFCCP that has reneged on its statements and now refuses to complete its review of the testimony and resume discussions about how the Topics could be narrowed or eliminated. OFCCP has had the *Jewett* transcripts in its possession for two weeks, and has previously committed to reviewing those transcripts with the goal of making the Parties' depositions more efficient and less burdensome. OFCCP's stated reason for refusing to do so – that it served its deposition notice on the same day, but slightly before, receiving the transcripts – does not hold water. We ask that OFCCP complete its review of the *Jewett* transcripts and work with Oracle to limit OFCCP's 30(b)(6) topics to avoid unnecessary repetition and to reduce the burden on witnesses who have already had to sit for deposition on the same topics.

Time Period at Issue

During our call, we discussed the appropriate time period to be applied to the topics listed in OFCCP's 30(b)(6) deposition notice. While we agreed that topics 1, 2, and 3 were limited to the period from January 1, 2013 to January 18, 2019, OFCCP stated that its position was that the other topics should cover the period from January 1, 2013, through the date of the deposition as the notice states. Your letter omits Oracle's reasoning for suggesting a January 18 cutoff for all Topics. Namely, because the parties have agreed to a cutoff date of January 18, 2019, for all documentary and electronic discovery, we do not think it would be appropriate to extend the scope of the 30(b)(6) depositions beyond that date. Among other concerns, this could lead to difficulties wherein a witness might potentially have to review and/or be asked about documents at deposition that were not produced to OFCCP because they post-dated January 18, 2019. In order to avoid any such issues, we think it best to limit the time period at issue in these depositions so that it matches the clean cut-off date for documentary and electronic evidence agreed to by the parties. We did not reach an agreement on this point but Oracle agreed to revisit it, while OFCCP refused to reconsider its position.



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Topics 1 Through 3

While we are largely in agreement with respect to Topics 1 through 3, I want to clarify that, as I stated on our call, Oracle cannot produce a witness to testify as to the “matching” of college recruits (referenced in Topic 1) because Oracle does not “match” or “assign” employees to specific positions. Rather, college recruits self-select. Aside from that issue, Oracle agreed to produce a witness to testify as to Topics 1 through 3 as discussed.

Topics 4 and 5

As we discussed on our call, Topics 4 and 5 reference issues related to hiring and to compensation for transfer employees. Because there are no longer any hiring/recruiting claims related to transfer employees at issue in this case, Oracle noted this in its objection while offering to produce a witness to testify as to the remaining compensation-based issues. We discussed this reasoning specifically on our call, and the parties came to an agreement that Oracle would produce a witness on the compensation issues. Yet your letter decides to present this agreement as “Oracle...refus[ing] to allow testimony on the remaining [hiring-related] subtopics.” This misportrayal of an agreement between the parties is indicative of OFCCP’s continued refusal to meet and confer in good faith.

Topics 7 and 8

In similar fashion, your letter completely misstates my response to OFCCP’s counter-proposal that Oracle produce a witness to testify as to the four spreadsheets listed in Topic 7 while answering other technical questions about the data in writing. To be clear, Oracle did not reject that offer and I told you I would need to look at the spreadsheets and consult with my team. Indeed, that coordination began after our Thursday call. I stated on the call that we would consider OFCCP’s offer, while also cautioning that even just the four listed spreadsheets cover a wide range of information given all the subtopics and details OFCCP seeks here. While we of course appreciate any offer of compromise, the fact remains that even just the four identified spreadsheets are the product of work by multiple different groups. Nevertheless, we will consider what can be done along the lines of your proposal and get back to you.



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Furthermore, your statement that Oracle's objection that producing a witness or witnesses to testify as to almost every aspect of its massive data production would be impractical and unduly burdensome is "unsupported and unexplained" borders on willful blindness. As we discussed on our call (and as Oracle has made clear to OFCCP time and again), Oracle's data production is massive, and consists of multiple large files, hundreds of fields, and millions of individual entries. The identification, pulling, aggregation, cross-checking, and production of that data required incredible amounts of time and effort by many individuals. Moreover, any given data field may have been created by one individual or group, filled by another, and pulled by yet another. As a result, there is no single individual, or even group of individuals, who could testify as to all of the data issues requested in Topics 7 and 8 for all of the data produced in real-time. Not only is it disingenuous to suggest that Oracle has provided no support for its objection to the burdensome nature of these Topics, that burden should, if nothing else, be self-evident from the huge amount of data OFCCP now has in its possession.

Topic 9

While your letter correctly states that Oracle would consider its position regarding re-producing Lisa Ripley, you omit OFCCP's statement that it would consider whether it could travel to Denver to take this deposition. Oracle will consider your request that it produce Ms. Ripley yet again and get back to you. However, consistent with your commitment to consider traveling to Denver, to minimize the burden on the witness where Oracle flew her out her the last time around, that commitment needs to be memorialized as well. We will wait to hear from you.

Topic 11

Your letter again misstates Oracle's position with regard to Topic 11. Specifically, Oracle did not "refuse to produce someone to testify." As described above, Oracle's position is that OFCCP needs to review the transcripts of depositions in the *Jewett* matter and determine whether the topic can be narrowed so that Oracle's witness does not have to testify on duplicative subject matter. Moreover, I stated on our April 19 call that we recognized that, at minimum, sub-topics 11(e) and 11(f) constituted new areas and that we would produce a witness -- likely Kate Waggoner -- to testify as to those issues. How you can take that affirmative statement and then memorialize that Oracle has refused to produce a witness is puzzling at best. Moreover, I mentioned Kate Waggoner could



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likely be designated to testify on the portions of Topic 11 for which Oracle agrees to produce a witness following meet and confer (and OFCCP's review of the Jewett PMK testimony).

Topic 12

Your letter also misstates Oracle's position and statements during the meet and confer call relating to Topic 12. As I explained on our call, Topic 12 asks for Oracle's "policies, practices, and procedures in assigning of workers..." Our objection to this Topic is based on the fact that Oracle does not "assign" workers to particular jobs. Rather, individuals apply to specific job openings and, if they are hired, are hired into that specific job. As such, there are no policies, practices, or procedures covering the "assigning of workers" to specific products. However, because the Topic also refers to compensation, Oracle offered to produce a witness who could testify as to compensation and compensation changes in the identified job functions. Moreover, and as memorialized above, Mr. Garcia acknowledged that OFCCP would give prior notice to Oracle before noticing 30(b)(6) depositions on the same topics covered in Jewett PMK depositions and that it would meet and confer to resolve disputes in that regard. That, of course, did not happen.

Contrary to your letter, Oracle did not "claim[] that there is no 'assignment' of workers," and, "[a]t the same time . . . belatedly object that Kate Waggoner had already testified about this topic." Rather, I stated during the call that Kate Waggoner had already testified as to separate compensation topics (not the assignment topic that is the focus of Topic 12). There is no belated objection at issue here or anywhere else with respect to any objections based on Jewett PMK testimony. *See, e.g.*, Oracle's Objections, General Objection 7.

Oracle will consider producing a witness to cover "the remainder of the topic," but, as explained during our call, OFCCP needs to review the Jewett transcripts and assess how and where the topic/subtopics can be narrowed. Both sides should discuss how to proceed on this topic once your review is complete. As a result, we cannot commit to meeting your arbitrary deadline.

Topics 13 Through 16

Your letter, which purports to memorialize the Parties' discussions during the meet and confer, omits Oracle's basis for standing on its objections to these topics. As I stated during the call, Topics 13 through 16 seek a witness to testify about Oracle's (and by proxy, Orrick's) underlying



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practices for responding to OFCCP's discovery requests. How a party and its counsel respond to discovery is clearly not relevant to the actual claims at issue in this case and necessarily implicates privileged information. Moreover, your inapposite reference to a letter discussing unrelated discovery requests does not somehow transform Oracle/Orrick's handling of discovery into a proper deposition topic.

Topics 17 Through 27

Your letter, which again purports to memorialize the Parties' discussions, fails to fully state Oracle's explanation of its basis for standing on its objections to these topics. Judge Clark made clear in his March 13 Order that OFCCP's Revised Second Amended Complaint would not be read to extend to "a substantive analysis of the [AAP] developed and maintained by Oracle." OFCCP's permitted claim concerns whether Oracle gave OFCCP information in response to its requests or not. As I stated during our meet and confer, the language of Topics 17 through 27 clearly attempts to reach a substantive review. The topics noticed delve into the way the AAP was structured, its components, and how Oracle ran its Affirmative Action Program. This is precisely the attempted expansion of issues that Oracle feared when it objected to OFCCP's Second Amended Complaint and these topics appears to be an end run around the clear intent of Judge Clark's ruling.

Topic 28

Although your letter lumps Topic 28 in with topics relating to Oracle's Affirmative Action Program, Topic 28 itself asks for a witness to testify about "policies, practices, and procedures related to how [Oracle] decide[s] job placement, project assignment, and compensation for new hires." As Oracle has stated, it does not "place" or "assign" individual employees into specific jobs. However, to the extent Topic 28 includes an inquiry into "compensation for new hires", Oracle has offered to produce a witness to testify regarding the "determination of initial compensation for new hires," in the relevant job functions.

Topic 30

Your letter again fails to accurately memorialize our conversations. Oracle did not refuse to produce a witness here. Rather, I explained Oracle produced three PMK witnesses in Jewett and explained you should review those transcripts because I failed to see what else you could possibly



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want or need that had not already been provided through these three witnesses' testimony. You agreed to look at the transcripts and get back to us. Tellingly, however, even before your team took the time to review these three transcripts, you indicated it was unlikely OFCCP would end up narrowing the topics.

Scheduling Depositions

With regard to Mallory Cohn, while you make much of the amount of time since you noticed Ms. Cohn's deposition and that "Oracle has yet to ask Ms. Cohn for her availability," your letter omits my explanation that Ms. Cohn was on maternity leave and that I've told you this multiple times. Oracle's desire not to intrude on a new mother's maternity leave is, of course, a perfectly valid reason for the delay in setting a date for her deposition – which is no doubt why your letter fails to mention it. As I stated during the meet and confer, now that Ms. Cohn has returned to work, Oracle will work with her to determine her availability and we will get back to you within a reasonable time. However, you also agreed (yet you failed to memorialize this) that you would confer with whoever is going to take her deposition about combining her individual deposition with 30(b)(6) testimony regarding College Recruiting (if we designate her to testify on those topics).

More generally, your letter rejects, without explanation, Oracle's request that OFCCP combine, where possible, the depositions of individuals and 30(b)(6) designees where the topics and deponent overlap. This request applied not only to Kate Waggoner, who you identify, but to any instance where OFCCP has individually noticed a witness that may also be a 30(b)(6) designee (for instance, Shauna Holman-Harries and Mallory Cohn). Moreover, your letter omits any meaningful discussion of Oracle's request. Where OFCCP plans to individually depose witnesses who may also be designated as a 30(b)(6) witness, it would be more efficient and less burdensome to combine those depositions on the same day or at least to take them on back-to-back days. This is particularly true where OFCCP is likely to depose individual witnesses on subjects overlapping with its 30(b)(6) topics. Indeed, as I explained during our calls, it is hard to fathom what else you would want to depose Ms. Waggoner (who resides near Denver) about other than compensation (and you already have her 30(b)(6) interview responses and two days of her Jewett PMK testimony); Ms. Cohn about anything other than College Recruiting; or Ms. Holman-Harries (who resides near Phoenix) about anything other than the audit. It is unclear why OFCCP would reject this request out of hand when it would do much to lessen the burden on witnesses (for some of whom travel can be difficult due to family obligations) and to reduce the expense to the Parties. To the extent Oracle produces these



Charles Song
April 22, 2019
Page 10

witnesses, it intends to prepare and produce them only once. If OFCCP is unwilling to work with Oracle to schedule depositions in a reasonable, logical fashion, Oracle will have no choice but to postpone depositions until these issues are resolved and/or to raise them with Judge Clark.

Finally, Oracle will continue to work to identify witnesses and determine their availability for those Topics on which it is producing a witness, but cannot commit to do so by your arbitrary deadline.

* * *

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jonathan Riddell".

J.R. Riddell

U.S. Department of Labor

Office of the Solicitor
350 S. Figueroa Street, Suite 370
Los Angeles, CA 90071-1202



Reply via phone or in writing to:
M.J. Christopher Santos (213-894-0201) &
Charles Song (213-894-5365)

May 2, 2019

VIA ELECTRONIC MAIL

Erin M. Connell
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105

J.R. Riddell
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814

Re: OFCCP v. Oracle America, Inc., OALJ Case No. 2017-OFC-00006

Ms. Connell and Mr. Riddell:

I write to follow up on a few outstanding discovery issues.

OFCCP'S 30(b)(6) NOTICE

Jewett Depositions

We reviewed the *Jewett* deposition transcripts you produced and, while we do not intend to be duplicative, we cannot agree to forfeit or limit our right to inquire into and follow up on the topics discussed during those depositions. As you know, OFCCP is not a party to that case, did not participate in those depositions, and private counsel took those depositions without coordination with OFCCP. OFCCP would be severely prejudiced if unable to make its own decisions on which questions to ask and how, which exhibits to question witnesses about and how, and whether to seek clarification or elaboration from witnesses on specific answers. *See, e.g., Am. Airlines, Inc. v. Travelport Ltd.*, No. 4:11-CV-244-Y, 2012 WL 12884824, at *2 (N.D. Tex. Sept. 19, 2012) (refusing to limit deposition testimony even where the same parties involved in separate cases). Further, it appears that the parties in the private litigation narrowed the topics during meet and confer discussions at which, again, OFCCP was not involved. *See, e.g., ORACLE_HQCA_0000400597*. It is thus unreasonable and prejudicial for OFCCP to limit its questioning based on an incomplete understanding of the scope of the topics discussed during those separate depositions. Given these concerns and the public importance of this case, it is improper for Oracle to attempt to limit OFCCP's discovery rights based on the discovery strategy and choices of a separate, unrelated private party in a different case.

Erin M. Connell, J.R. Riddell
May 2, 2019

Temporal Scope

In its April 22, 2019 letter, Oracle confirmed that it would reconsider its position on whether 30(b)(6) deposition testimony (for all topics except 1-3) encompasses the period from January 1, 2013 to the present. *See, e.g., EEOC v. Autozone, Inc.*, 258 F.Supp.2d 822, 831 (W.D. Tenn. 2003) (“Courts typically will permit discovery in employment discrimination cases to cover a reasonable number of years before and after the alleged discrimination.” (internal citations omitted)). As Oracle has not notified OFCCP that its position has changed, it appears Oracle will not agree that 30(b)(6) deposition testimony will encompass the period from January 1, 2013 to the present. If Oracle has changed its position, please notify us by May 8, 2019.

Topics 7 and 8

In its April 22, 2019 letter, Oracle agreed to consider OFCCP’s offer to limit deposition testimony to the four spreadsheets listed in OFCCP’s notice provided Oracle continues to answer data questions in writing and agree that OFCCP may rely on those written representations at hearing. As Oracle has failed to respond to OFCCP’s offer to limit these topics, it appears Oracle will not agree to OFCCP’s offer to compromise. If this is incorrect, please advise us by May 8, 2019.

Topic 9

OFCCP cannot agree to commit additional, limited resources to depose Oracle’s witness (Lisa Ripley) in Denver, CO when she could have been deposed earlier and Oracle is required by law to produce her in San Francisco, CA. Again, OFCCP previously agreed to interview Ms. Ripley informally because Oracle objected to a deposition under oath at that earlier stage in litigation. Oracle cannot complain about additional costs and burden now, when it knew well that its objections prior to and during Ms. Ripley’s interview—such as instructing her not to answer certain questions—would necessitate future testimony under oath. Accordingly, please confirm by May 8, 2019 whether Oracle will produce Lisa Ripley for deposition under oath about topic 9.

OUTSTANDING REQUESTS FOR PRODUCTION

RFP 46 (Joyce Westerdahl)

In the meet and confer on August 7, 2017, Oracle agreed to OFCCP’s August 4, 2017 proposal to limit RFP 46, but counter-proposed producing Ms. Westerdahl’s emails from a sample period as an initial set, without prejudice to OFCCP requesting additional emails at a later date. In its August 7, 2017 letter, Oracle confirmed:

Erin M. Connell, J.R. Riddell
May 2, 2019

[A]ny agreement by OFCCP to limit Oracle's initial search of Ms. Westerdahl's emails to the January 1, 2013, to June 30, 2014 time period would be without prejudice to OFCCP's ability to later argue that a similar review of her emails for the longer time period is appropriate, based on OFCCP's review of the initial set of emails produced.

After OFCCP agreed to limit Oracle's initial search without the use of search terms to the sample period, Oracle produced 68 emails. After reviewing these emails, OFCCP does not believe search terms are necessary and requests Ms. Westerdahl's remaining emails be produced without the use of search terms. Please advise us of the date Oracle can produce these emails or when you can meet and confer on this matter by May 8, 2019.

RFP 67 (Internal Complaints)

In OFCCP's letter dated August 4, 2017, it acknowledged Oracle's proposal to produce:

[I]nternal complaints regarding race discrimination in the PT1 job group and race or gender discrimination in the Product Development, IT, and Support lines of business in the form of (1) demand letters and complaints made through Oracle's ethics hotline and (2) written complaints received by HR managers responsible for the three relevant lines of business and the PT1 job group at HQCA.

In the same letter, OFCCP counter-proposed that Oracle add "documents reflecting verbal complaints made to HR managers identified in Oracle's proposal." After reviewing OFCCP's request, you agreed to modify the proposal to include a "reasonably diligent search for and production of documents reflecting such verbal complaints." You further stated this was "subject to those documents being 'relevant' in terms of the scope" proposed in your letter dated August 3, 2017.

To date, Oracle has produced only limited external and internal complaints and no complaints from the hotline. OFCCP would like to meet and confer about this request to determine if there are outstanding documents that Oracle has not produced. Please advise us of your availability to meet and confer on this matter by May 8, 2019.

DEPOSITION SCHEDULING

In its April 22, 2019 letter, Oracle agreed to identify certain 30(b)(6) witnesses, their availability, and the topics for which it is producing those witnesses. OFCCP also noticed the deposition of Joyce Westerdahl on April 26, 2019 and asked to reschedule the deposition of Lynne Carrelli. OFCCP has yet to receive the availability for depositions of the 30(b)(6) witnesses, Ms. Westerdahl, or Ms. Carrelli. As the close of discovery is rapidly approaching, please provide their

Erin M. Connell, J.R. Riddell
May 2, 2019

availability for depositions this week.

Sincerely,

/s/ M.J. Cristopher Santos
Jeremiah E. Miller, Counsel
Charles C. Song, Senior Trial Attorney
Jessica M. Flores, Trial Attorney
M.J. Cristopher Santos, Trial Attorney
U.S. Department of Labor
Office of the Solicitor



Key

X	=	required approval level
O	=	in country/out of country rule applies
-	=	no approval required for transaction
-	=	red arrow in top right corner denotes footnote visible when cursor pointed in top corner of cell

Global Approval Matrix - Automated

Last updated: February 1, 2013

Approval Order

M6	M7	M8	M10
----	----	----	-----

Category	SEQ	Data Field Completed:	HR	1	Lvl (4)	VP	SVP	Div Head	Office of the CEO	HR	Notes
Hiring	1	Standard Hire, in Budget							X	X	
Hiring	2	Standard Hire, Out of Budget							X	X	
Hiring	3	Add Sign-On Bonus							X	X	
Hiring	4	Add Relocation							X	X	
Hiring	5	Add Vacation Increase							X	X	
Hiring	6	If Relocate							X	X	
Hiring	7	If Visa Required (hire in budget)							X	X	
Hiring	8	If Visa Required (hire out of budget)							X	X	
Hiring	9	Oracle Temp/Student/Intern (PAID)							X	X	
Hiring	10	Oracle Student/Intern (UNPAID Non-U.S.)							X	X	
Hiring	11	Oracle College Program (PAID) (4)					X				

Assignment	1	Cost Center Change									
Assignment	2	Discretionary Title Change		X							
Assignment	3	Work Schedule/Hours (FT/PT) (4)		X							
Assignment	4	Shift Change		X							
Assignment	5	Manager Change		X							
Assignment	6	Work Location Change									
Assignment	7	Job Change - demotion (decrease level)									
Assignment	8	Job Change (to position below M4)		X							
Assignment	9	Job Change (to M4 or above)		X			X		X (6)		
Assignment	10	Job Change (to M6 or above)		X					X		
Assignment	11	Function Presales changes to Sales								X	

Dollars	1	Base Salary Change - Decrease		X							
Dollars	2	Base Salary Change - Increase		X						X	
Dollars	3	Bonus (All Bonuses, Current & Termed EEs)		X						X	
Dollars	4	Car Allowance Change (6)		X							
Dollars	5	Shift Premium Eligible		X							
Dollars	6	Addition of an Annual Target Variable for the first time						X (7)			
Dollars	7	Annual Target Variable Increase is < 25%						X (7)			
Dollars	8	Annual Target Variable Increase is >= 25%							X (7)		
Dollars	9	If Function=Sales and >= 20% increase in OTE (Base + ATV)								X (7)	
Dollars	10	Add Relocation		X						X	

Stock	1	Stock Options								X	
Termination	1	Voluntary Termination - Regular or Temp EE									
Termination	2	Involuntary Termination - Regular or Temp EE		X							
Termination	3	Involuntary Termination of SVP and above									e
Termination	4	Relocate Flag - NO		X							

Where recruitment has not been implemented, approvals for new hire stock option grants must be forwarded to stock_us@oracle.com by local HR for processing.

Key

x	required approval level
o	in country/out of country rule applies
-	no approval required for transaction
=	red arrow in top right corner denotes footnote visible when cursor pointed in top corner of cell

Global Approval Matrix - Non-Automated

Last updated February 1, 2015

Approval Order

M6 M7 M8 M9 MA0

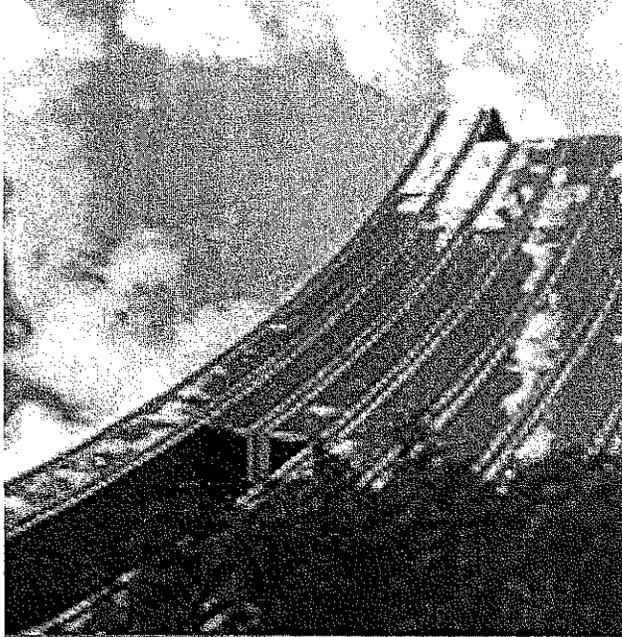
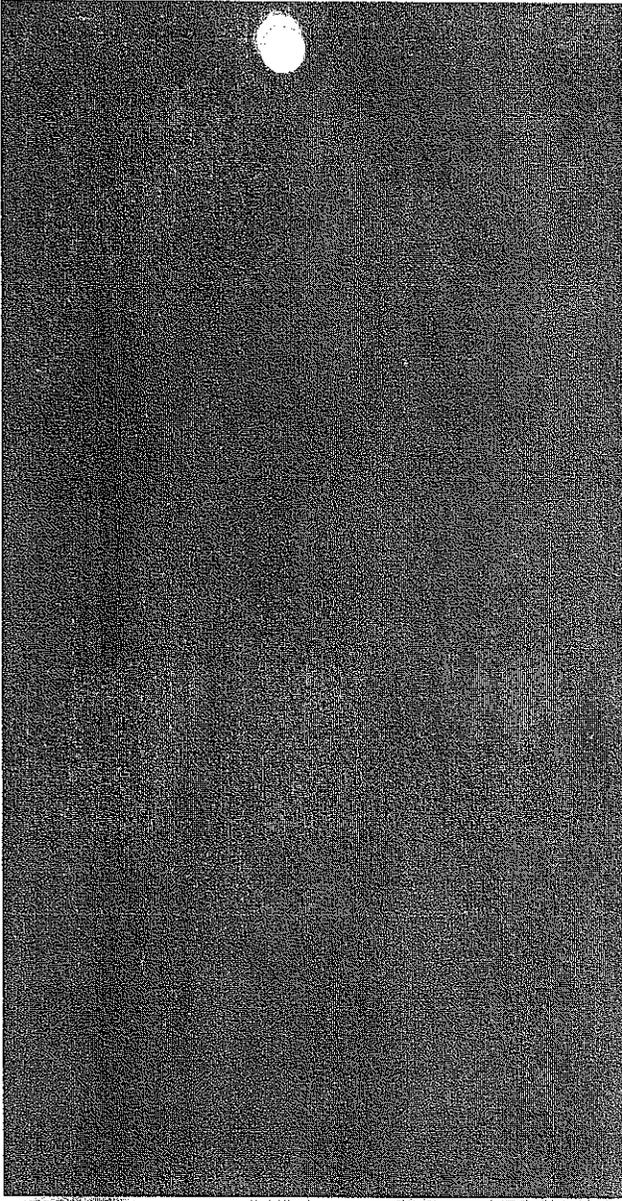
Category	SEQ	Data Field Completed:	HR 1	VP	SVP	Div Head	Office of the CEO	HR	Notes
Hiring	1	If Recruiting agency fee		x					Recruiting VP and LJE approval required
Hiring	3	International Transfers (in budget)					x		
Hiring	4	International Transfers (out of budget)					o		
Hiring	5	Non-Standard Referral Bonus					o		EVP approval for plan and HR SVP approval for actual payments. requires VP HR approval. Cap at 12 mos.
Hiring	6	Notice period >3 months (EMEA specific)					o		requires SVP HR approval. Cap at 12 mos.
Hiring	7	Notice period >3 months (EMEA specific)					o		requires VP HR approval
Hiring	8	Contractual severance payments of any kind (EMEA specific)					o		
Hiring	9	Loans					o		This is not reflected on the Manager version of the approval matrix. Loans are on an exception only basis.
Assignment	1	Residence/ domicile, employment contract or permanent work location in different countries (EMEA specific)			o				
Assignment	2	International Assignment Incremental Cost <= 250k							International Assignment approvals are based on the Finance Spending Approval Matrix. Additionally approval is required from at least two levels of management (not including the proposer of the assignment) and HR Global Mobility. Please consult the Finance SAM to confirm the required approvals based on the projected cost of the assignment and management spending caps.
Assignment	3	International Assignment Incremental Cost > 250k and <= 500k					o		International Assignment approvals are based on the Finance Spending Approval Matrix. Additionally approval is required from at least two levels of management (not including the proposer of the assignment) and HR Global Mobility. Please consult the Finance SAM to confirm the required approvals based on the projected cost of the assignment and management spending caps.
Assignment	4	International Assignment Incremental Cost > 500k					o		International Assignment approvals are based on the Finance Spending Approval Matrix. Additionally approval is required from at least two levels of management (not including the proposer of the assignment) and HR Global Mobility. Please consult the Finance SAM to confirm the required approvals based on the projected cost of the assignment and management spending caps.
Dollars	1	Recruiting Bonuses						o	EVP approval for plan and HR SVP approval for actual payments.
Dollars	2	Commissions (Sales Comp Processing)							Finance approval required
Dollars	3	Patent Bonus							requires LEGAL approval
Dollars	4	Corporate Bonus - I-armed EE					o		except where part of comp plan policy or legally mandated
Dollars	5	Draws (Exception Only)							Draws handled on an exception only basis and are not processed through HR. The process is managed by GIC and GIC retains ALL approvals for audit purposes.
Dollars	6	International Transfer: Recoverable draw <= 100k					o		requires approval from VP HR, Elizabeth Snyder
Dollars	7	International Assignment: Payments (COLA etc)					o		requires approval from HR Global Mobility Group.
Dollars	8	International Assignment: Hardship Allowances AND Hardship Country Assignment					o		To be approved on a case by case basis. VP HR, Elizabeth Snyder, is final approver.
Dollars	9	International Assignment: Temporary salary increase due to international assignment/migration purposes					o		requires approval from VP HR, Elizabeth Snyder
Dollars	10	International Assignment: OFSS host country assignment, hybrid model assignment					o		requires approval from VP HR, Elizabeth Snyder

Dollars	11	International Assignment: Local pay delivery for immigration purposes	e							requires approval from VP HR, Elizabeth Snyder
Dollars	12	International Assignment: Financial Assistance Program	e							Employees of Orade India, Philippines and Latin America (where applicable) who will be working in another country for 2 weeks or more can receive the financial assistance payment. Approval must be obtained at least 2 management levels up (direct manager's manager). Upon approval, the employee will receive payment through monthly salary, the equivalent in local currency of constant-US\$ 50, for each 2 consecutive weeks outside the home country (MUST include weekend stay) the maximum assistance per month would be rebated to US\$100. If you have any question, please feel free to contact the Global Mobility Group.
Dollars	13	OFD Commissions								Anil Vora has final approval authority for OFD commissions.
Dollars	14	Legally Mandated Programs								SVP HR has final approval authority for legally mandated programs
Dollars	15	Consulting Bonuses								Consulting bonuses within budget do not require Safra/UE approval and should be submitted to Comp Comp for review. If it is out of budget than Safra/UE approval is required.
Dollars	16	Payment for On Call and OT for Field Support Specialists and Technical Analyst Support in specific LAD countries. See notes. This is a temporary addition until timesheet systems are updated.	e							In Chile (OTL), Colombia and Venezuela we need to pay the element for On Call ("M.A On Call"). In Brazil (OTL) and Argentina we need to pay on call and overtime ("M.A Overtime" and "M.A On Call"). In Mexico we need to pay overtime (M.A Overtime). Local HR is responsible to obtaining and retaining correct approvals. SVP of Customer Services in LAD in final approval.
Dollars	17	Legal Issues	e							Payments tied to legal issues should be submitted by HR and require Legal approval presented with the transaction.
Dollars	18	Mandatory compensation increases (i.e., bonus, salary changes, etc.) and approved plans	e							Any mandatory increases (salary, bonus, etc) and approved plans will go to the regional Comp Contact and then the VP Corporate Compensation for review and approval. International Assignment or immigration related payments are handled separately and reviewed separately in the approval matrix. Commissions are also excluded from this rule and reviewed separately in this matrix. If you have a question about who needs to approve a mandatory increase, please e-mail: corpcomp_us@oracle.com

Leaves	1	Medical/Family Leave	e							see per policy
Leaves	2	Medical & Maternity Leave	e							see per policy
Leaves	3	PIOA - Start/Change/END	e							One level of management approval required for start and/or change. One level of management approval or Line HR approval to end PLOA.
Leaves	4	PIOA < 2 weeks: Start/Change/END	-							
Leaves	5	PIOA > 2 weeks: Start/Change/END	e							
Leaves	6	Unpaid/sabbaticals (EMEA specific)	e							
Leaves	7	All other Leaves (Jury, Military) < 2 wks	-							
Leaves	8	All other Leaves (Jury, Military) > 2 wks	e							
Leaves	9	Annual leave (EMEA specific)	e							
Leaves	10	Leave without pay <= 6 working days (EMEA specific)	e							
Leaves	11	Leave without pay > 6 working days (EMEA specific)	e							

Benefits	1	Benefits Policy Changes <\$100K (EMEA Specific)	e							requires VP HR, VP/CMY MGR & Div C&B approval
Benefits	2	Benefits Policy Changes >\$100K (EMEA Specific)	e							requires SVP HR, Division Head, & Div C&B approval
Benefits	3	Change of Benefits Provider (EMEA Specific)	e							requires VP HR, VP/CMY MGR & Div C&B approval
Benefits	4	social club, golf membership or other affiliation that includes an initiation or monthly fee	e							
Benefits	5	Adoption Benefit (US)	e							Benefits Group is final approver





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Manager Training Compensation Process for Global Corporate Bonus & Fusion Workforce Compensation

June 2014

ORACLE

Agenda

- Global Corporate Bonus Process
 - Fusion Workforce Compensation Pilot
 - General Info
- Fusion Workforce Compensation
 - How to Access and Use FWC to
 - Allocate Budget / Budget Modeling
 - Rank / Rate Employees
 - Award Stock
 - Work with Excel
 - Review Subordinate Mgr's Recommendations
 - Submit to Next Level
- Tools and Resources
- Fusion Tips

Global Corporate Bonus Process

- Fusion Workforce Compensation (FWC) Tool Pilot
- Select organizations will be using FWC to input bonus recommendations this year
- Your organization will be part of the pilot
- CWB will used by organizations not included in the pilot

Global Corporate Bonus Process - General Info

- Timelines
 - FWC will be open to managers on July 2
 - Each LOB may establish their own internal timeline for the process. Check with your manager for the specifics for your organization
- Budgets
 - Budgets are set at the top executive level for each organization. Each LOB head may determine the method of allocating budgets to their organization
 - The FWC Modeling feature is available to assist in pushing down budgets based on specific criteria

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Global Corporate Bonus Process - General Info (cont.)

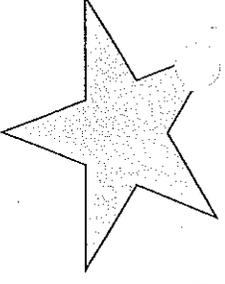
- Eligibility

- Review the eligibility document posted on the Fusion Workforce Compensation homepage (url) and be sure that your employee population is reflected correctly on your FWC worksheet
 - Remember not all employees are eligible for the Global Corp Bonus process

- Communication

- Do not communicate a bonus until final LJE approval is obtained
- Always check FWC before you communicate to ensure that the bonus amounts haven't changed

STAR: Need website from Lorene



What is Fusion Workforce Compensation?

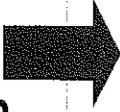
Fusion Workforce Compensation (FWC) is an Oracle Self Service Application for managing compensation processes, allowing you to -

- Model and allocate budgets
- Publish (pass down) budgets to subordinate managers
- Rate, Rank and Award individual employees
- Review historical compensation information
- View and download employee information for off-line work or further analysis
- View submission status of subordinate managers

Note: Firefox is the preferred browser for Fusion applications

How to Access Fusion Workforce Compensation

3. Log on using your SSO credentials



Sign In

Enter your Single Sign-On user name and password.

Username

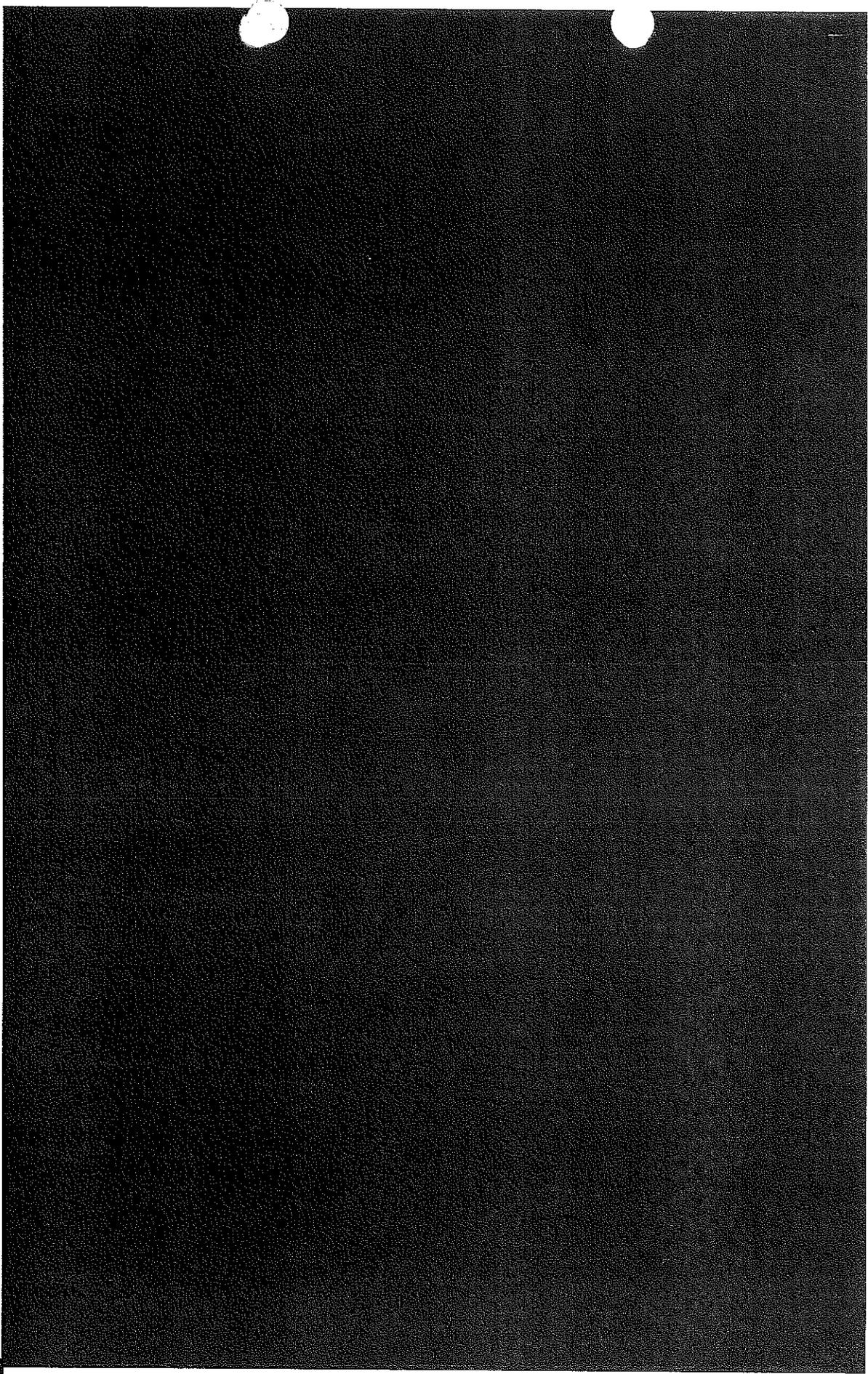
Password

[Lost your password?](#)

Note: Firefox is the preferred browser for Fusion applications

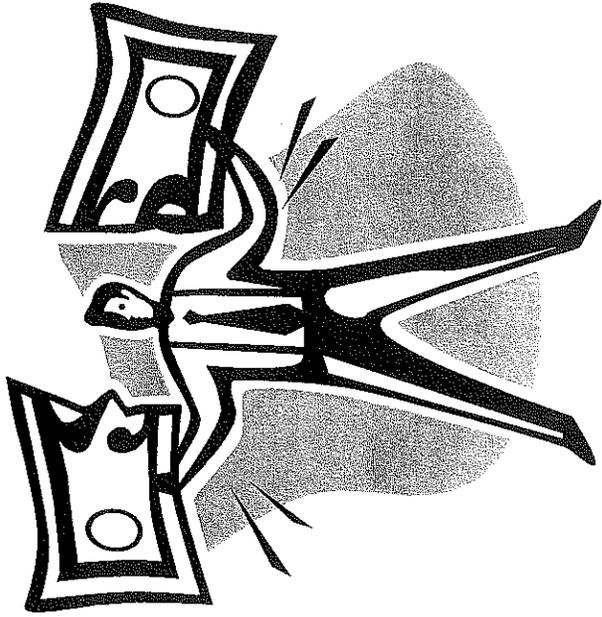
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Workforce Compensation



Bonus Tasks

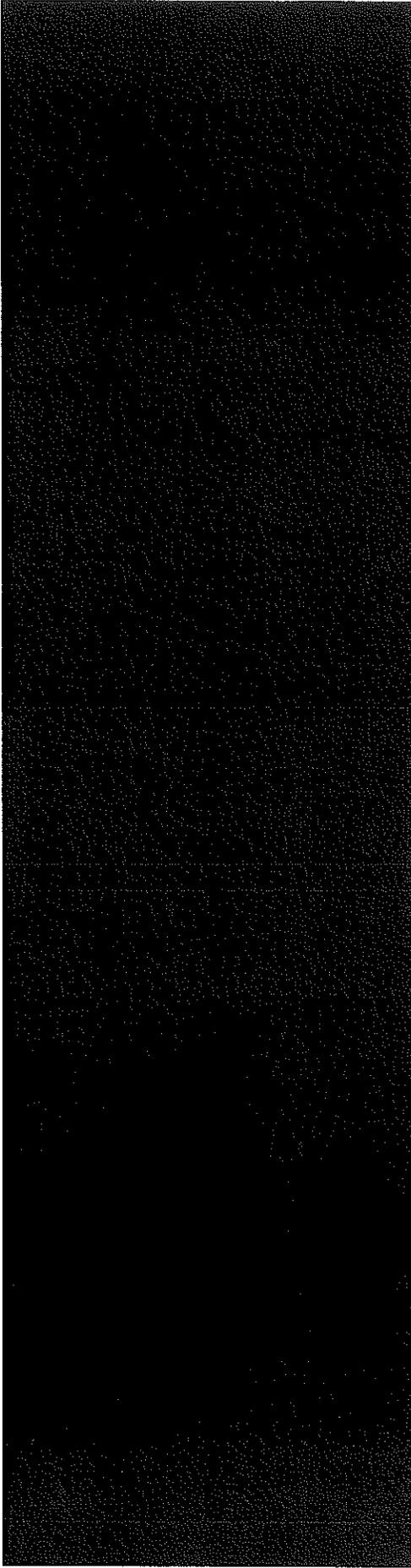
- Allocate Budget / Budget Modeling
- Rank / Rate Employees
- Award Bonus
- Work with Excel
- Review Subordinate Mgr's Recommendations
- Submit to Next Level



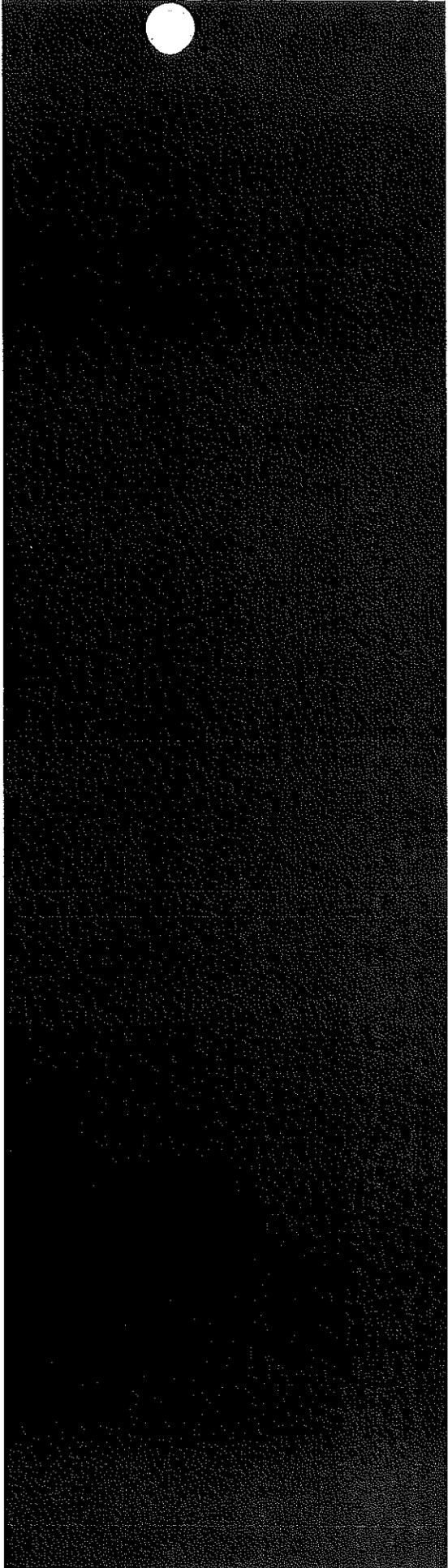
Budget Allocation

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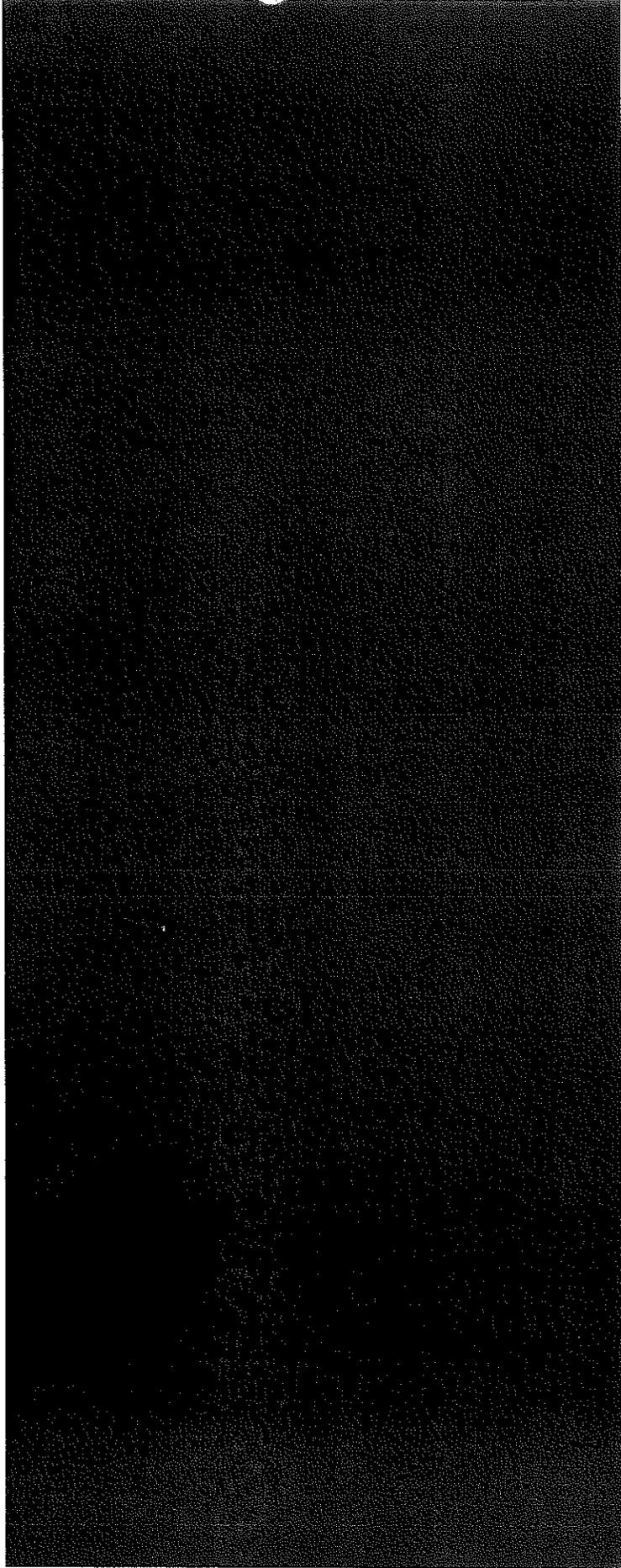
Allocate Budget



The first time the budget is selected you must chose a budget method.
Your selection will affect the budget access settings of subordinate managers.



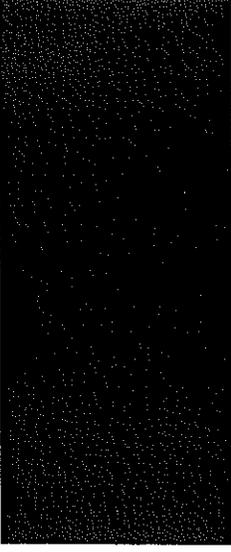
Allocate Budget

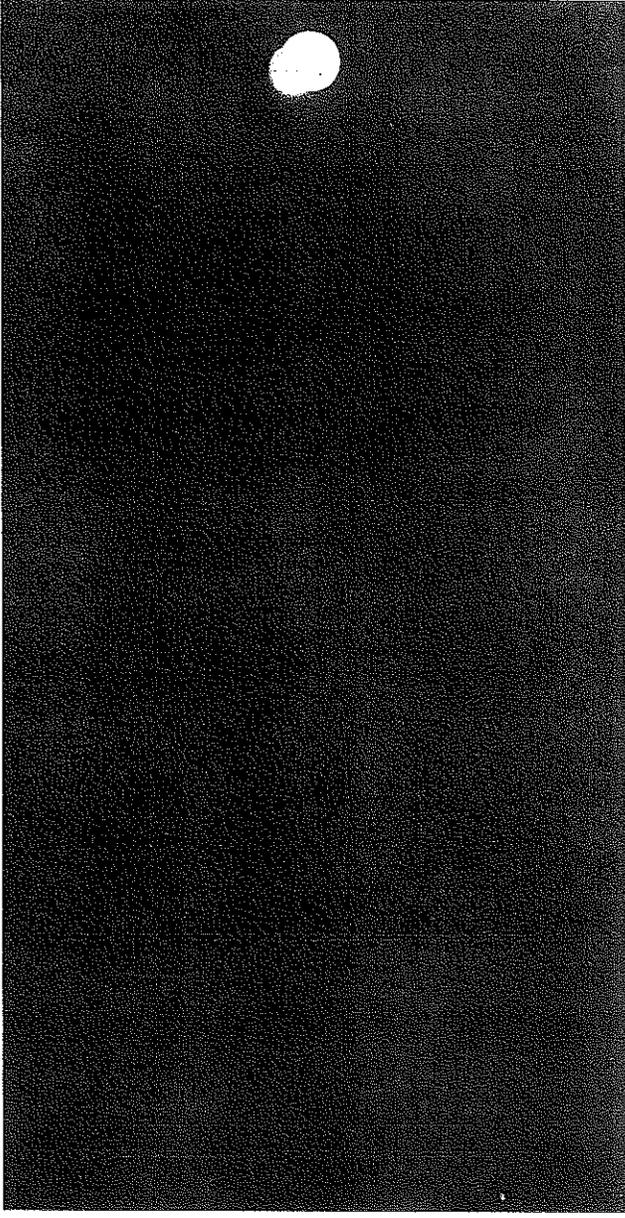


You must publish the Budgets so subordinate managers can award bonuses

Click

If publishing budgets to only a few managers,





Budget Modeling

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Budget Modeling

Models make it easy to see how different allocation methods and criteria affect your budget, worker allocation, and target amounts

Who might create Models –

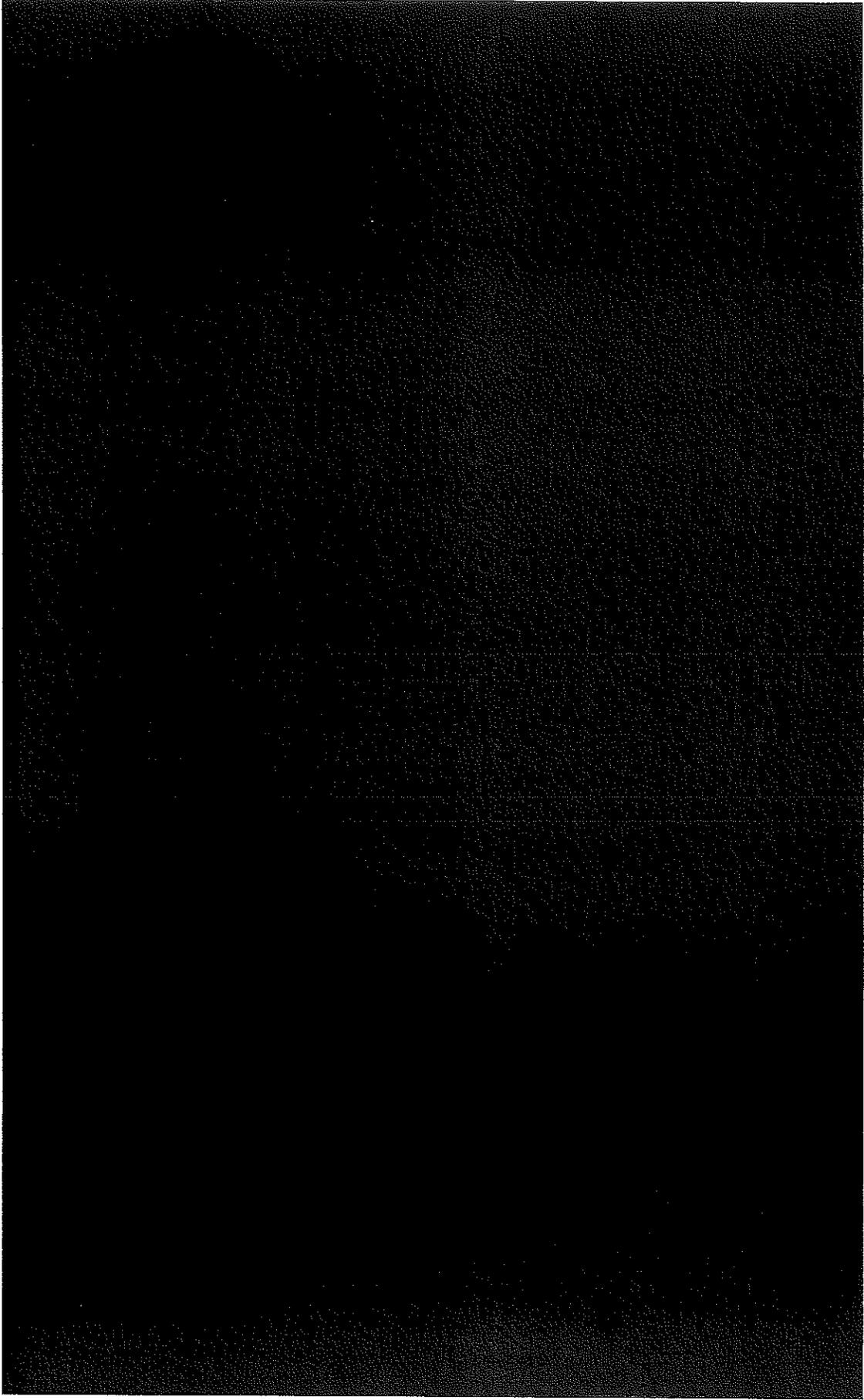
- Managers who intend to pass down budgets to subordinate managers, or
- Managers who intend to make the allocations themselves (holding the entire budget)

Different models can be created, previewed and applied before publishing the budget

NOTE: Applying a Model will overwrite any previously entered bonus amounts

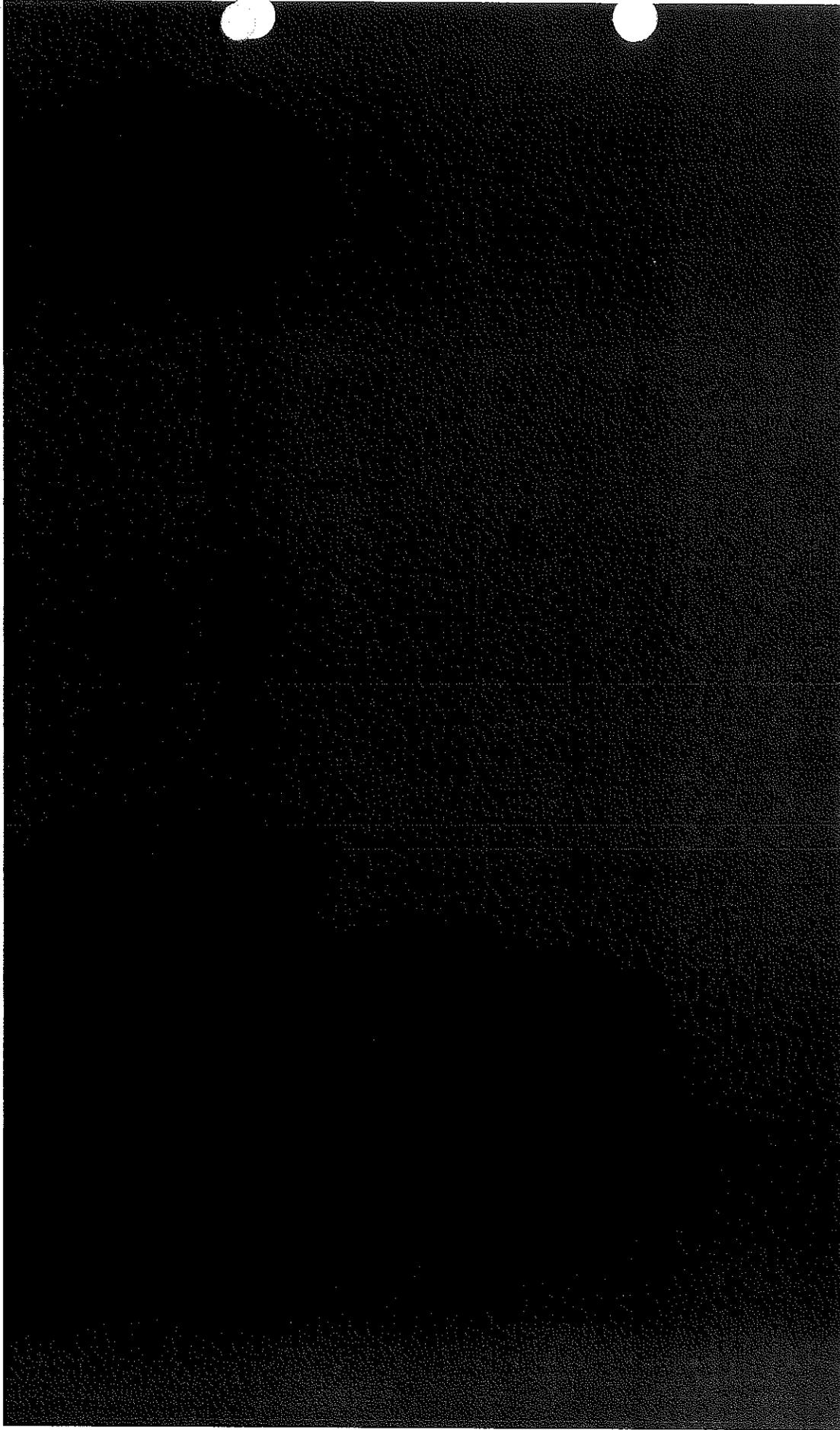
Models should never be applied after the budget has been published

Create a Budget Model



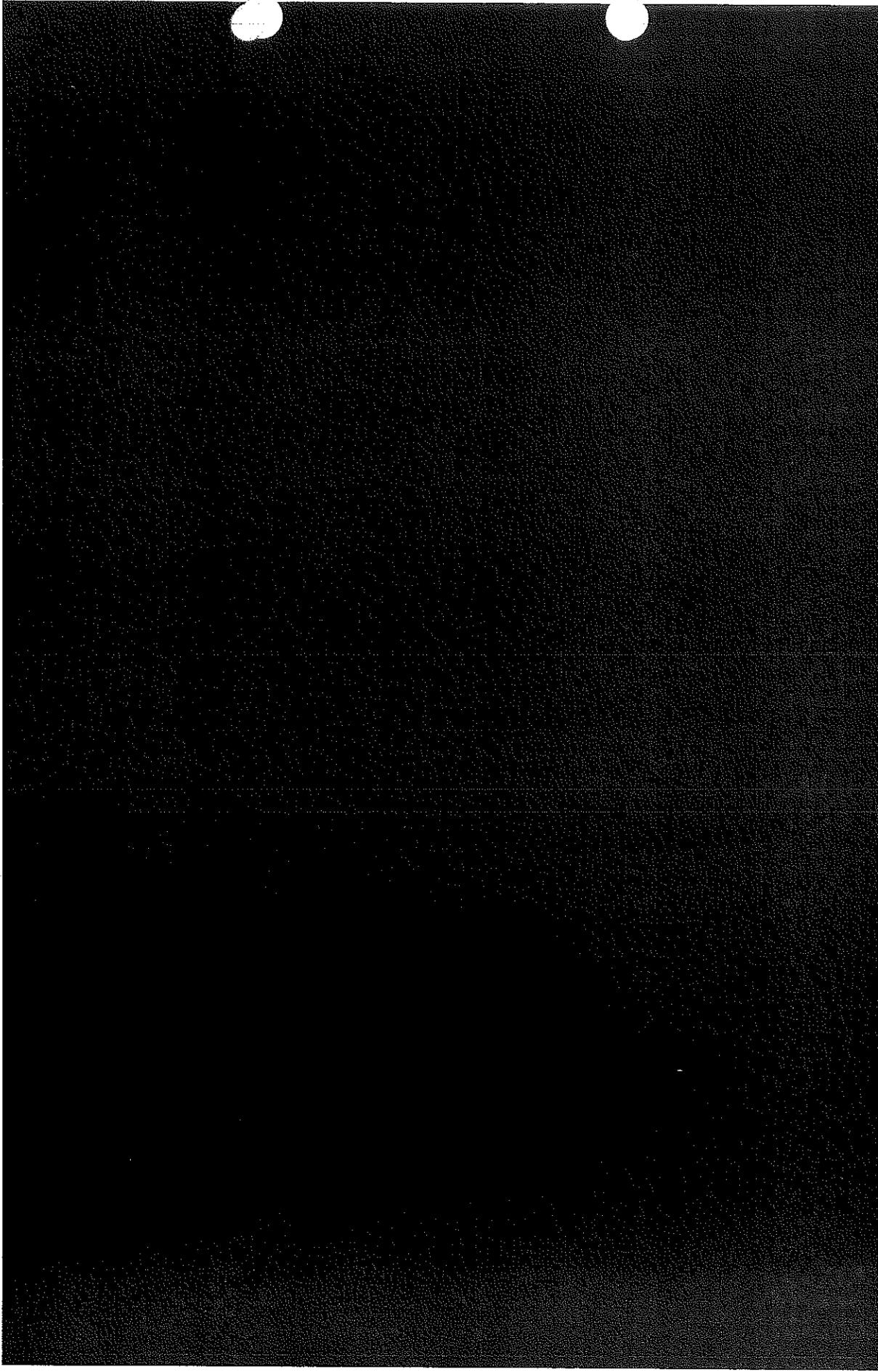
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Create a Budget Model

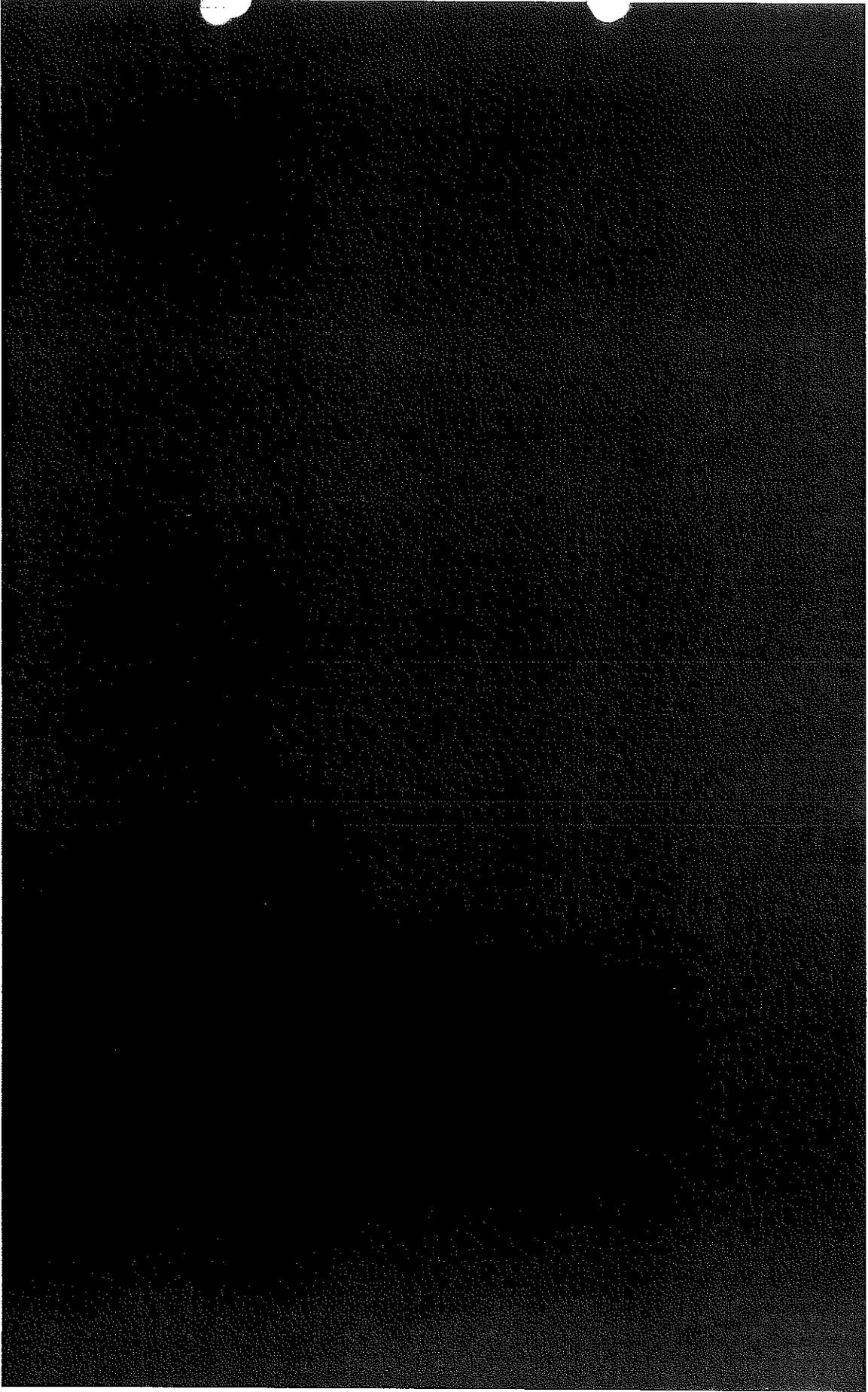


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Create a Budget Model

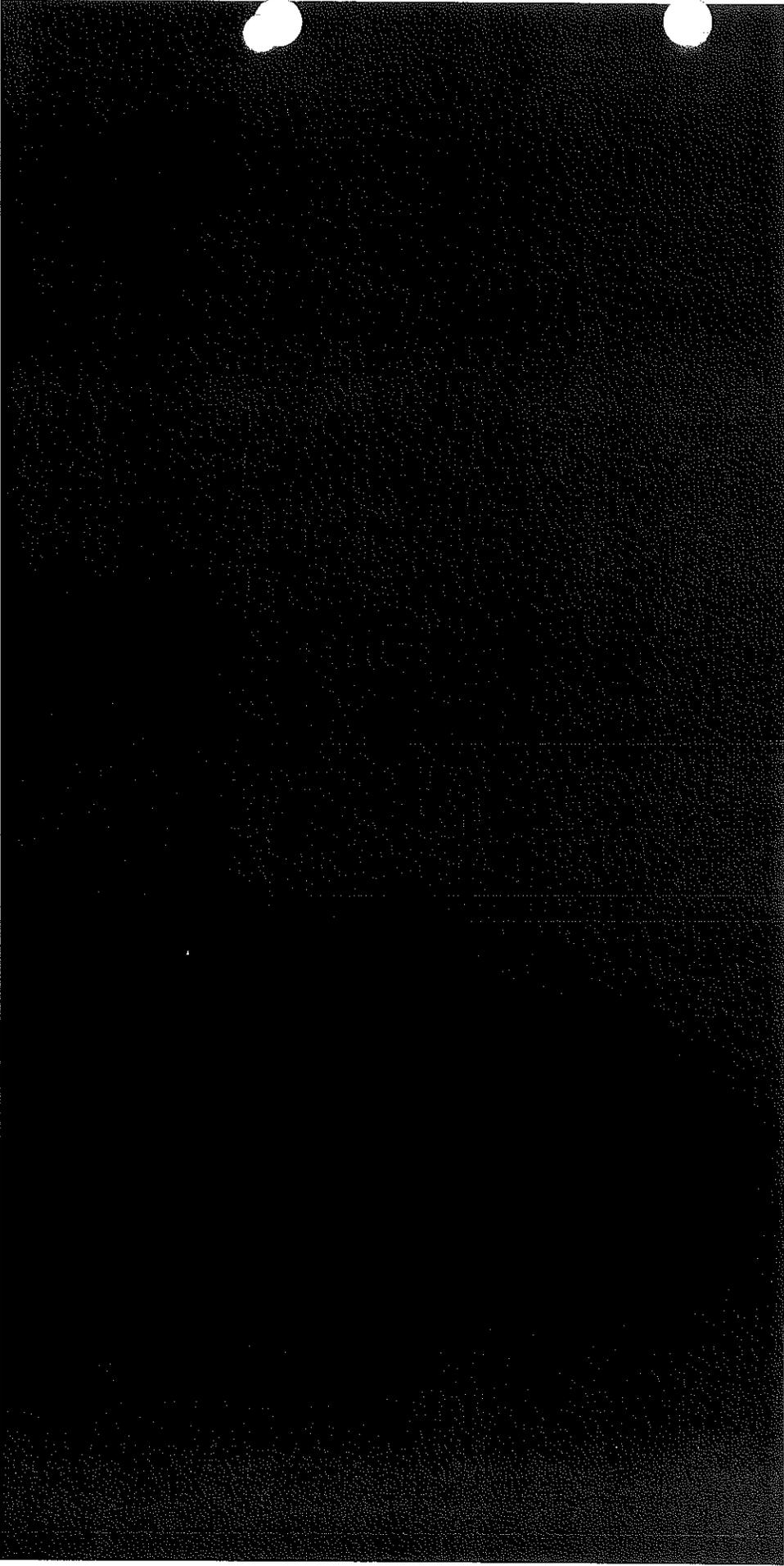


Create a Budget Model



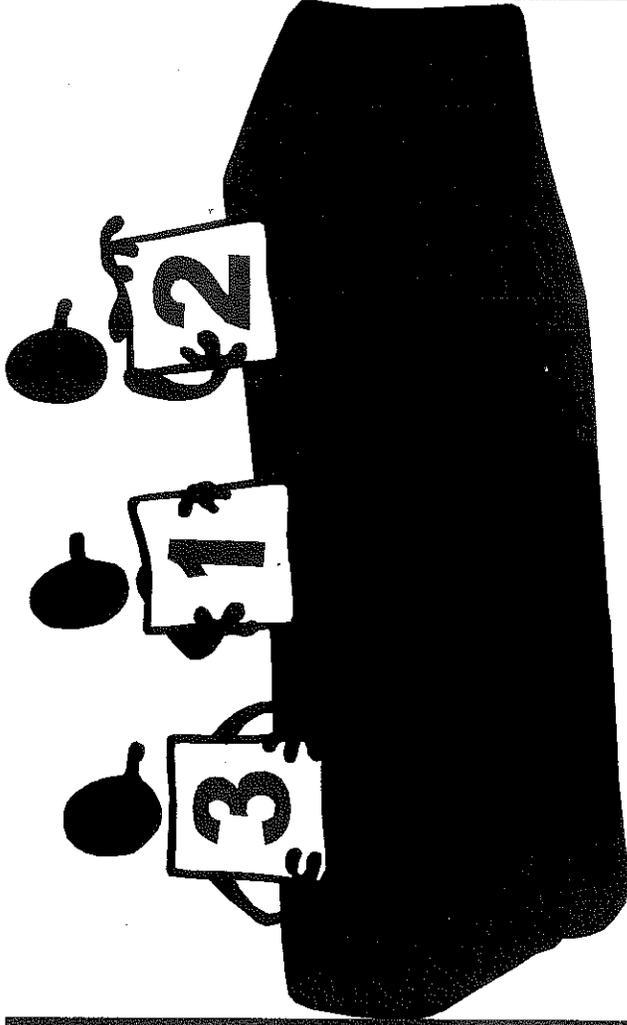
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Create a Budget Model



**Models should never be applied
after the budget has been published**

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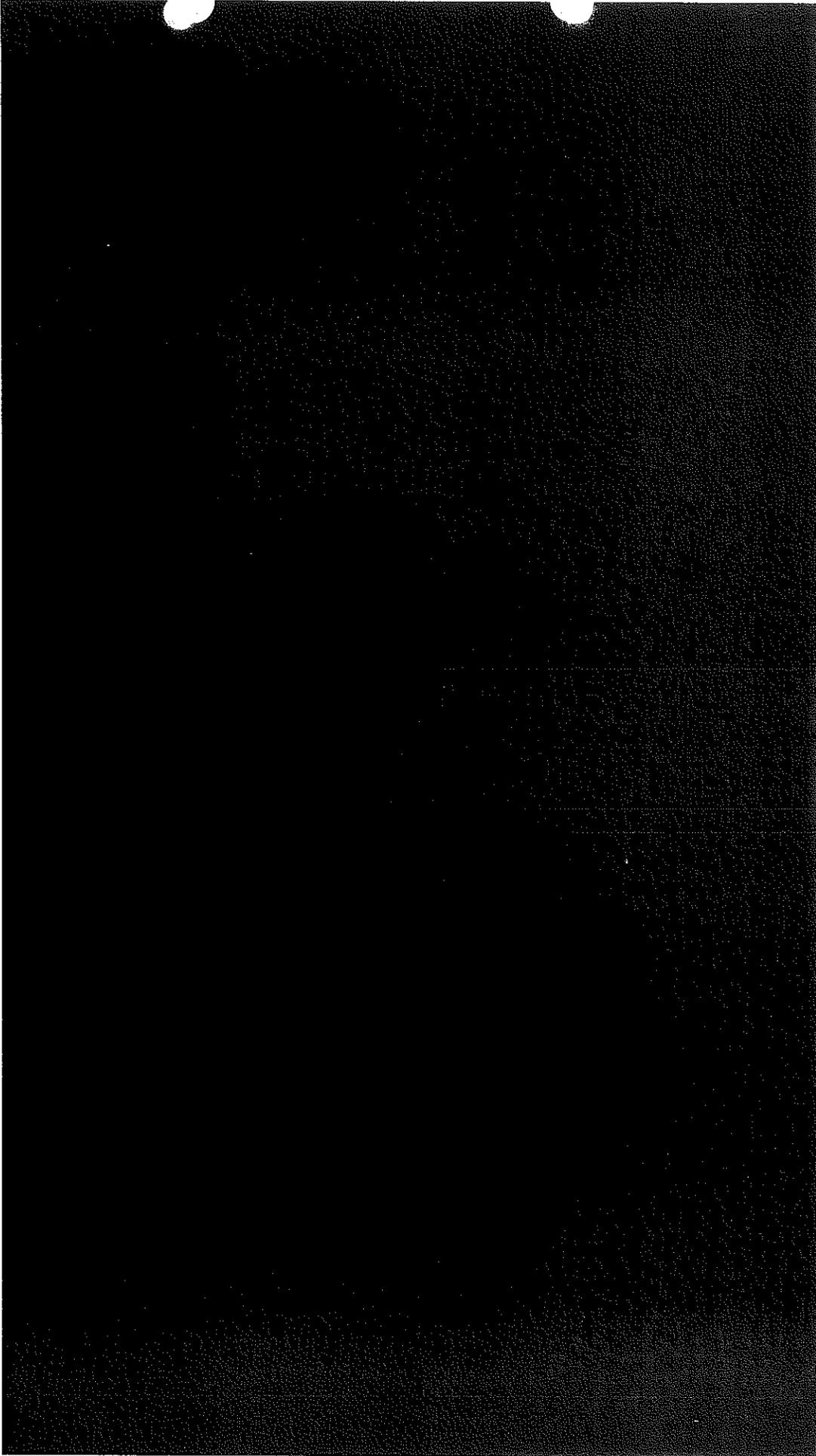


Rank / Rate Employees

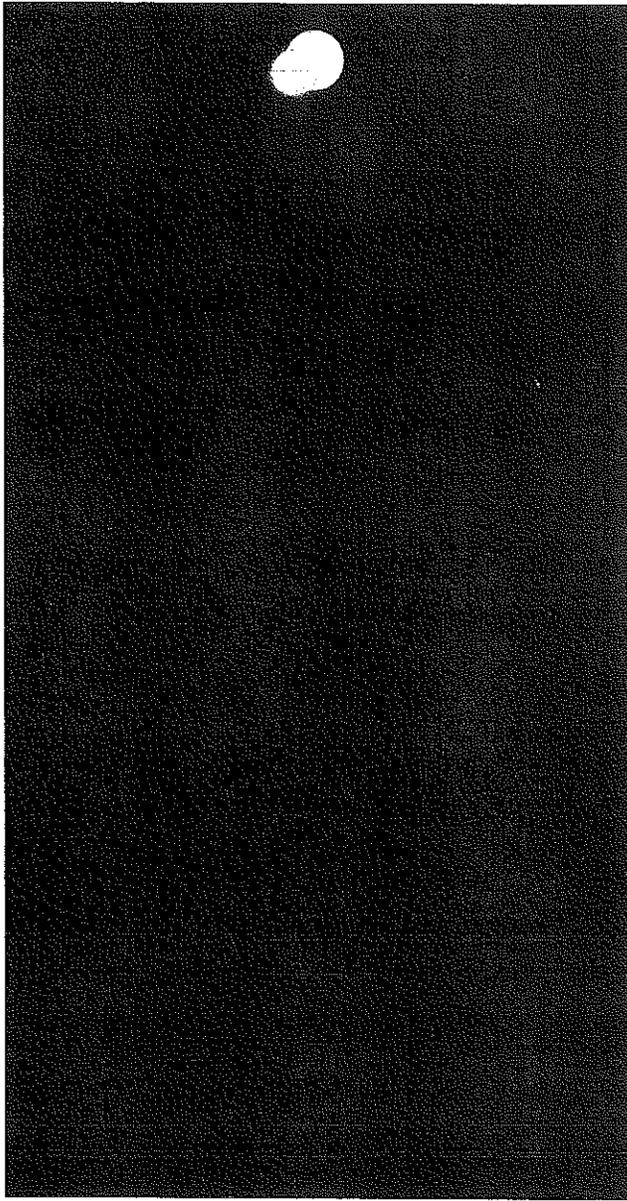
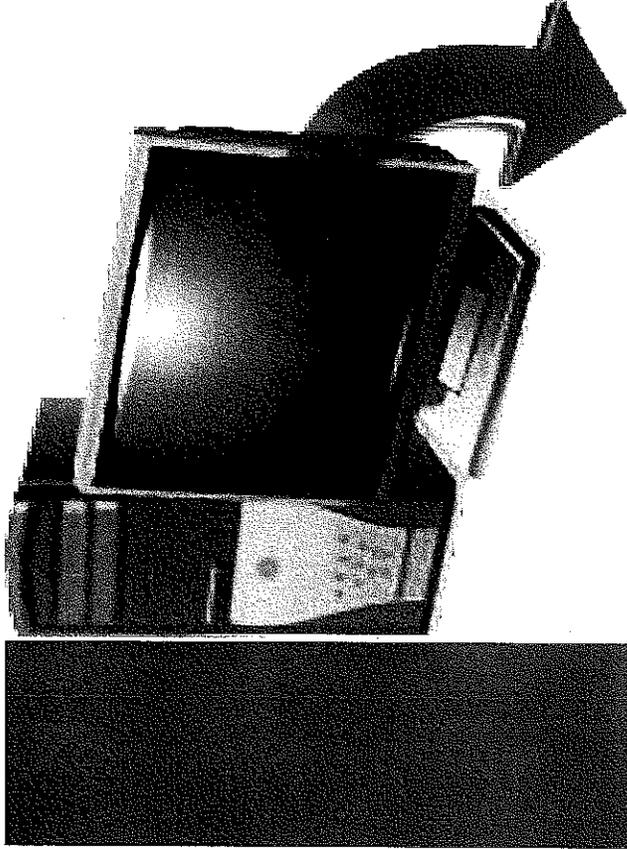
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Rank/Rate Employees

Some LOBs require managers to Rank and/or Rate their employees



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Excel Download & Excel Export

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Excel Download and Excel Export

There are 2 different Excel options for the Compensate Workforce worksheet

Download – Is a quick, easy way to get a copy of the worksheet when you do not need to upload any work.

This is a one-way process.

Export – A two-way process for spreadsheet [REDACTED].

- Requires [REDACTED]
- Configuration of Excel
- **NOTE:** You must download the [REDACTED] to ensure you have the most recent version.

Since a macro based file is being created, ‘Export’ will take longer than ‘Download’ to complete

Excel Export

Installing the [REDACTED]

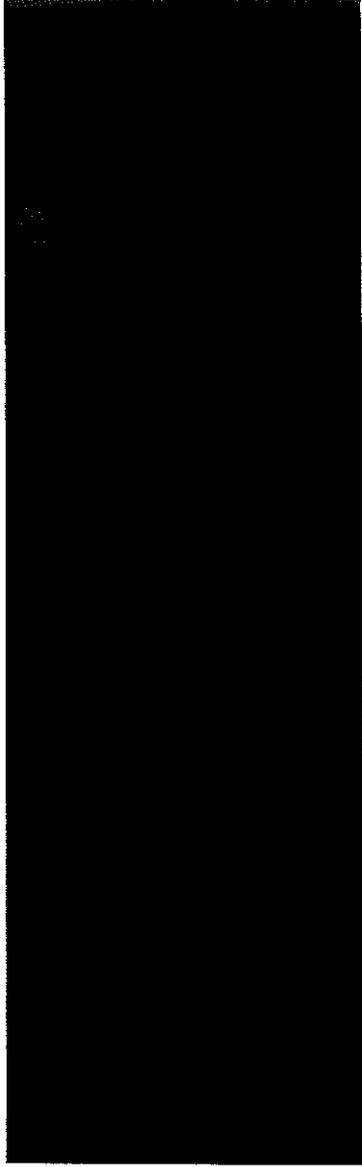
Each year, before using the [REDACTED], you must download and install the [REDACTED]. This will ensure you have the latest [REDACTED] version.

1. Go to Navigator → **Tools** → [REDACTED]

Click the link and **download** the .exe file to your desktop.



2. Double click the setup.exe file to **install** the [REDACTED]
3. Go to your computer's Control Panel > Programs and Features page and **verify** the [REDACTED] has been installed



Configure Excel when using [REDACTED]

After installing the [REDACTED] verify the [REDACTED] add-in is active in Excel

Excel 2007 configuration settings:

1. Open Excel 2007
2. Click the Microsoft Office Button (the button is a circle with the red, blue, yellow, green squares in it)
3. Click Excel Options (bottom of the window)
4. Click Trust Center → Trust Center Settings
5. Click Macro Settings. Select "Disable all macros with notification".
6. Under Developer Macro settings check "Trust Access to the VBA project Object Model"
7. Click OK
8. Under Excel Options, click Add-Ins and verify "Oracle [REDACTED] Add-in for Excel" is in the 'Active Application Add-ins' list.

If the [REDACTED] is not in the Active Application Add-ins list:

1. Go to Excel Options; click Add-Ins.
2. Go to the "Manage" drop down at the bottom of the page
3. Select 'Disabled Items' from the list and click Go.
4. Find and highlight the [REDACTED] add-in; click Enable
5. Return to the 'Manage' list, select 'COM Add-ins' and click Go
6. In the 'COM Add-ins' list, check the box for the [REDACTED] and click OK to enable the add-in.
7. Under Excel Options, click Add-Ins and verify "Oracle [REDACTED] Add-in for Excel" is in the Active Application Add-ins.
8. Under Excel Options, click Trust Center, and click Add-Ins (Note: This add-ins area is different than the add-in area in the previous steps).
9. Verify that none of the three Add-ins boxes are checked (Require Application Add-ins to be signed by Trusted Publisher; Disable notifications for unsigned add-ins (code will remain disabled); Disable all Application Add-in (may impair functionality)).

Configure IE when using [REDACTED]

NOTE: Firefox is the preferred browser for the Fusion applications

Once Excel is configured, check your Internet Explorer Browser Settings:

Navigate to Tools => Internet Options and choose the Security tab.

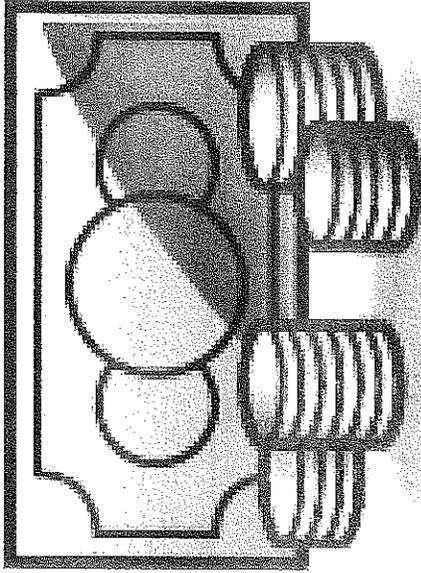
- Select Local Intranet and click the Custom Level button.
- Under 'ActiveX controls and plug-ins', set "*Initialize and script ActiveX controls not marked as safe for scripting*" to "Prompt".
- Under 'Downloads' set "*File download*" to "Enable"
- Click OK

When downloading the [REDACTED], select "Yes" when prompted to accept an ActiveX control to complete the process.

Still having issues? Here are some additional areas to check:

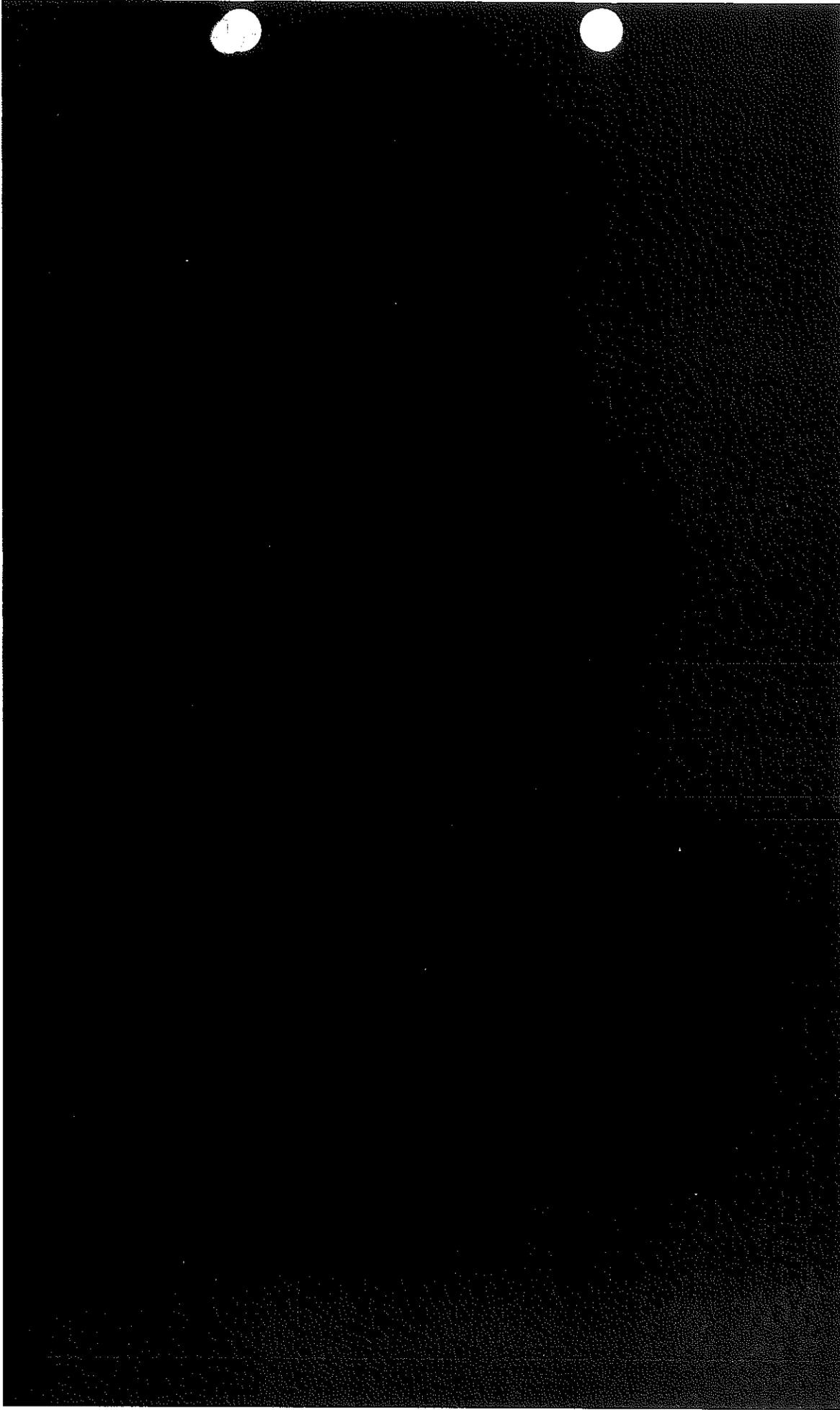
Set Internet Trusted Site options and check the Trusted Site settings.

- Go to Internet Options > Security. Select 'Local Intranet' zone
- Click the 'Sites' button
- You should have '*Automatically detect intranet network*' checked marked.
 - a) Click the 'Advanced' button
 - b) Insure the box for '*Require server verification (https) for all sites in this zone*' is unchecked.



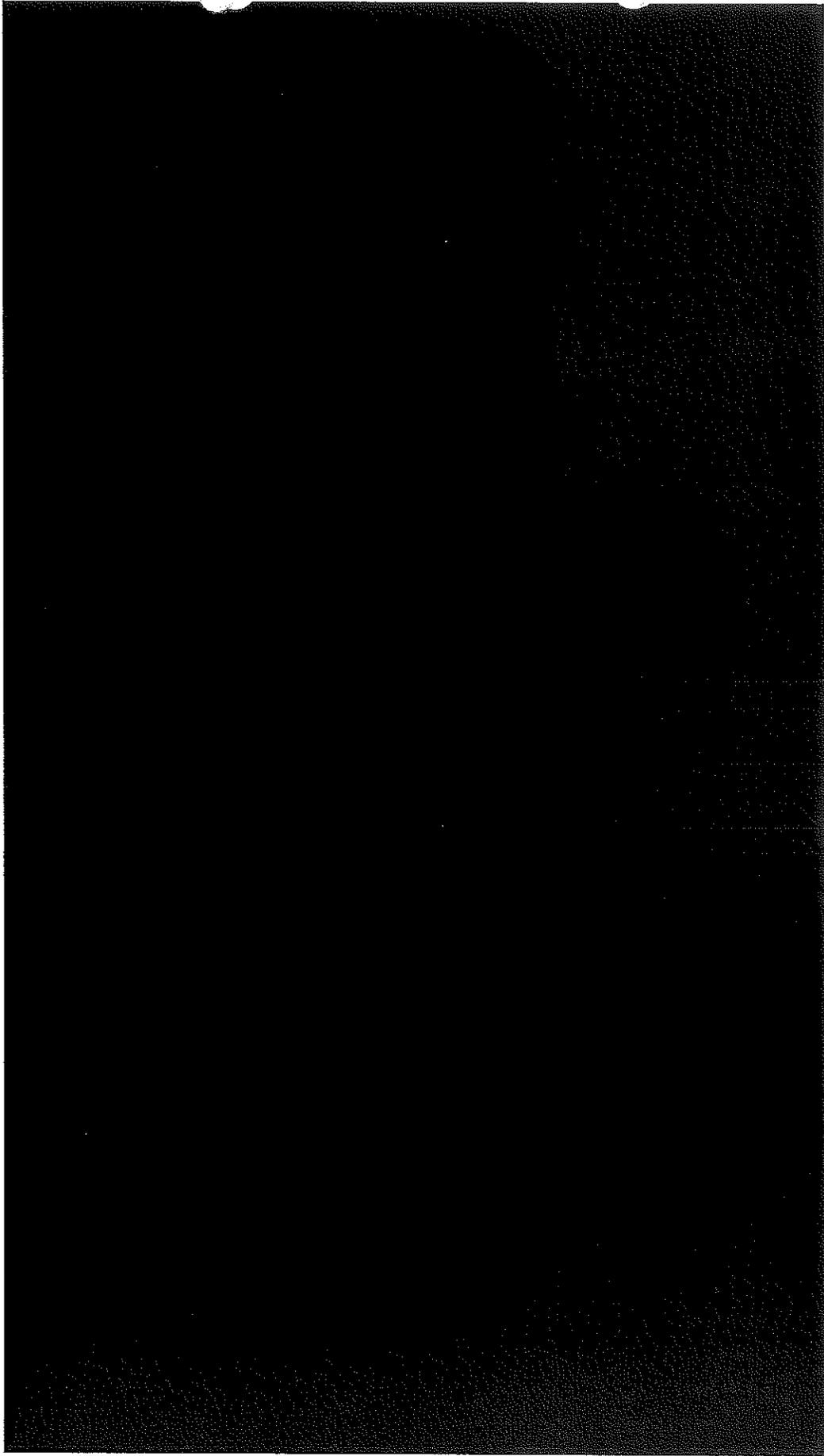
Award Bonuses

Award Bonus: View Your Budget



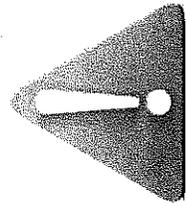
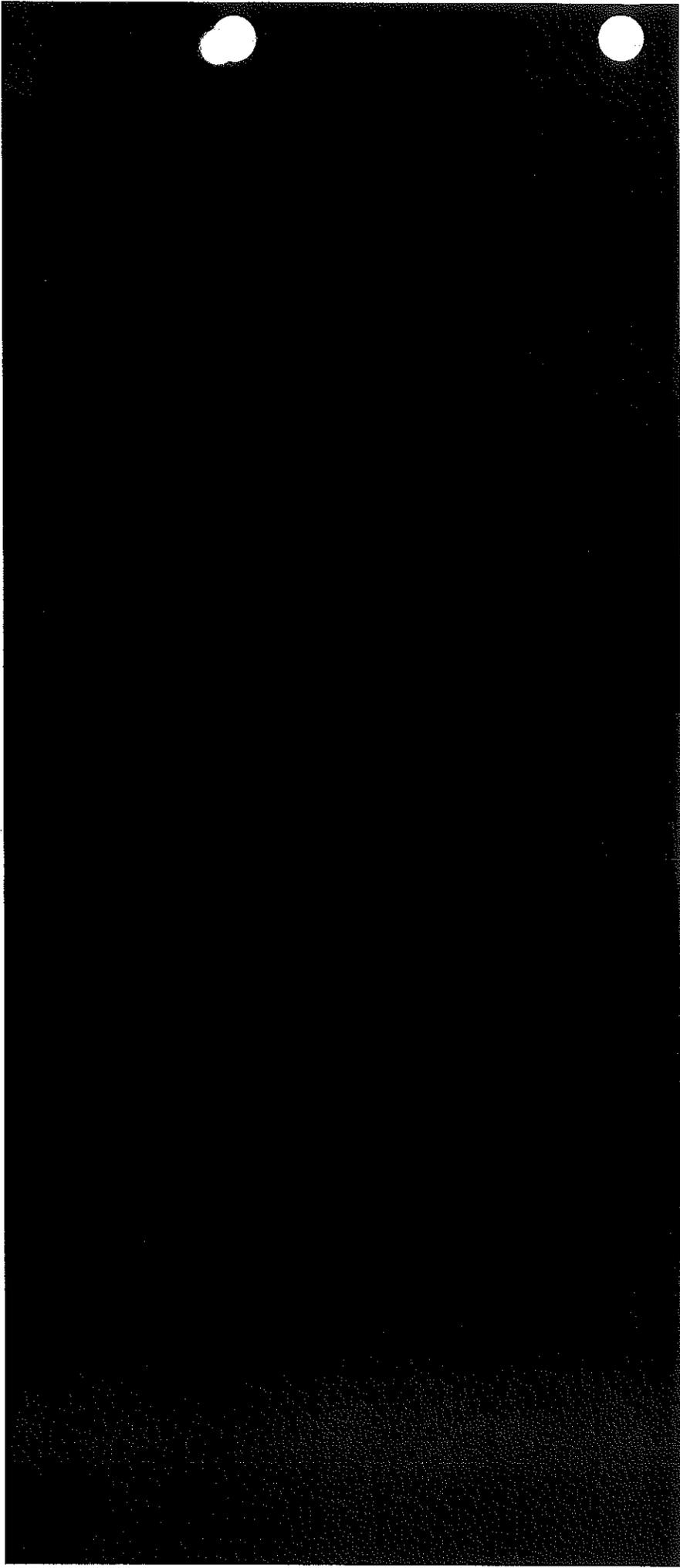
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Award Bonus: View Your Budget



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Award Bonus: Entering Bonus Amounts



WARNING!

DO NOT SUBMIT until all your subordinate managers have submitted their work to you.
Your submittal removes their Update access.

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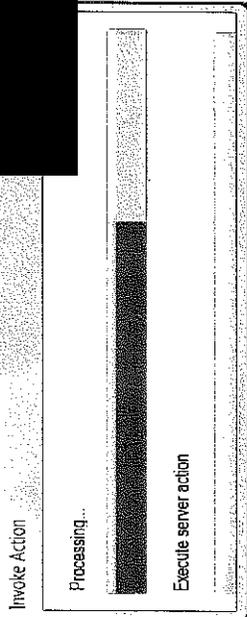
Award Bonus:

1. Click the [redacted] icon in the [redacted]
2. Click Yes on the [redacted] pop up. You will need to log in using your SSO credentials.
3. Once the s [redacted], check that the employees have populated the file and the [redacted]
4. Verify the [redacted] has no background color
5. If your [redacted]

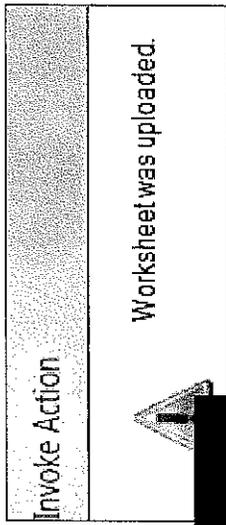
Award Bonus: Excel Upload

NOTE: If you are working remotely, you must connect via VPN to upload your file.

In the spreadsheet, click the Upload button and click OK for the default Upload Options:



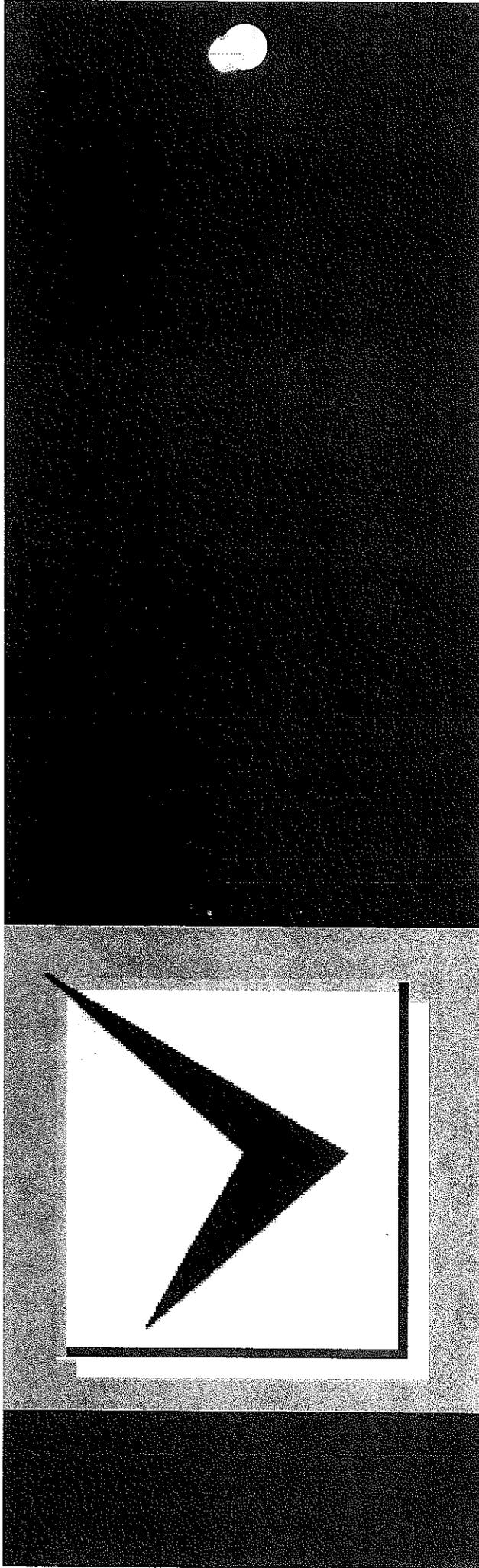
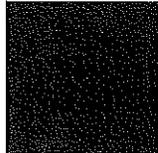
The upload will process:



It is finished when you see the "Invoke Action" pop up that says "Worksheet was uploaded":

Click OK and scroll to col D in the spreadsheet to verify the rows updated successfully:

In FWC, click the plan link to refresh the Worksheet and verify your changes were uploaded.

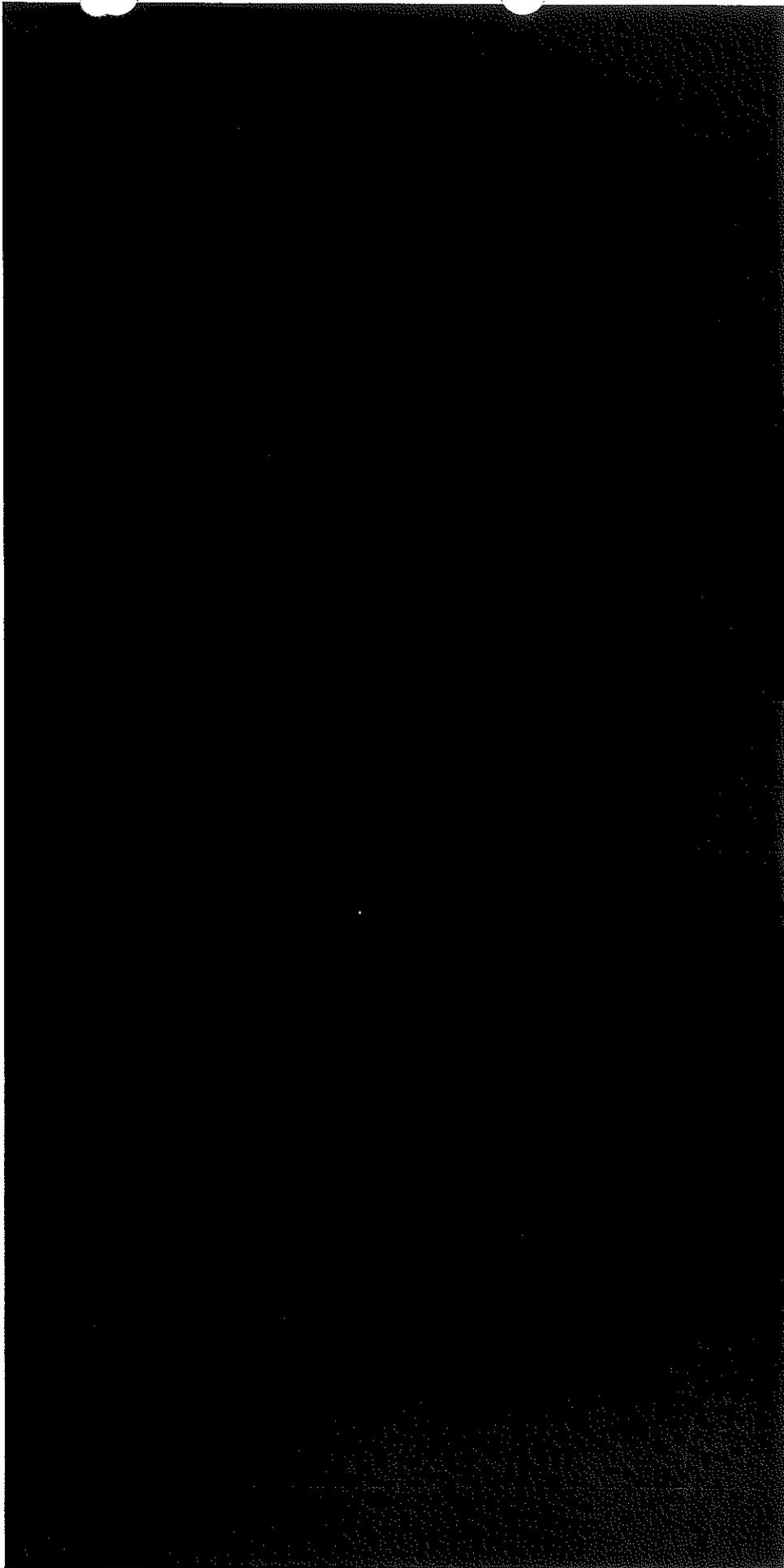


Review, Approve, and Submit

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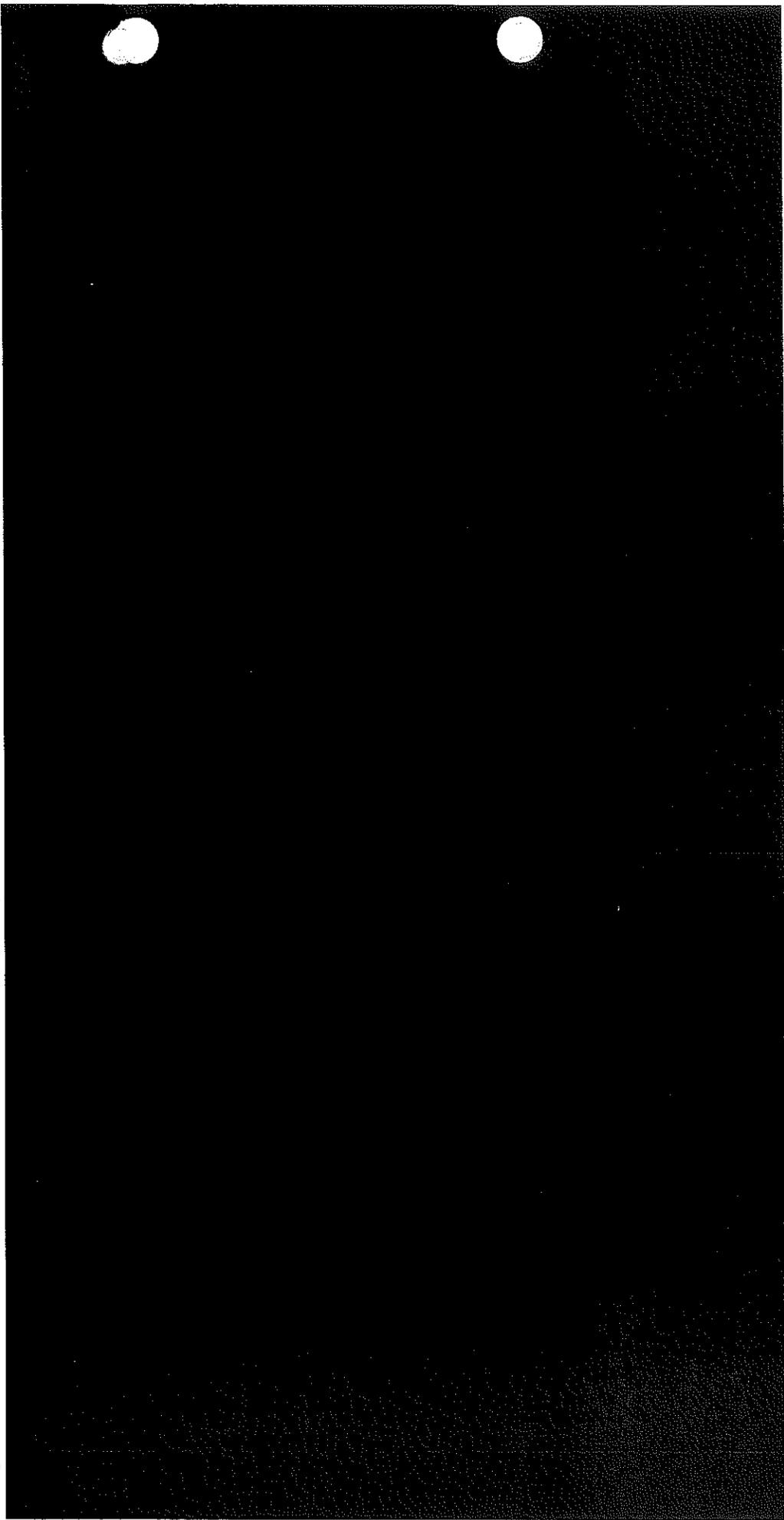
Review

If subordinate managers need to make corrections or you need more information before approving, [REDACTED]



Review

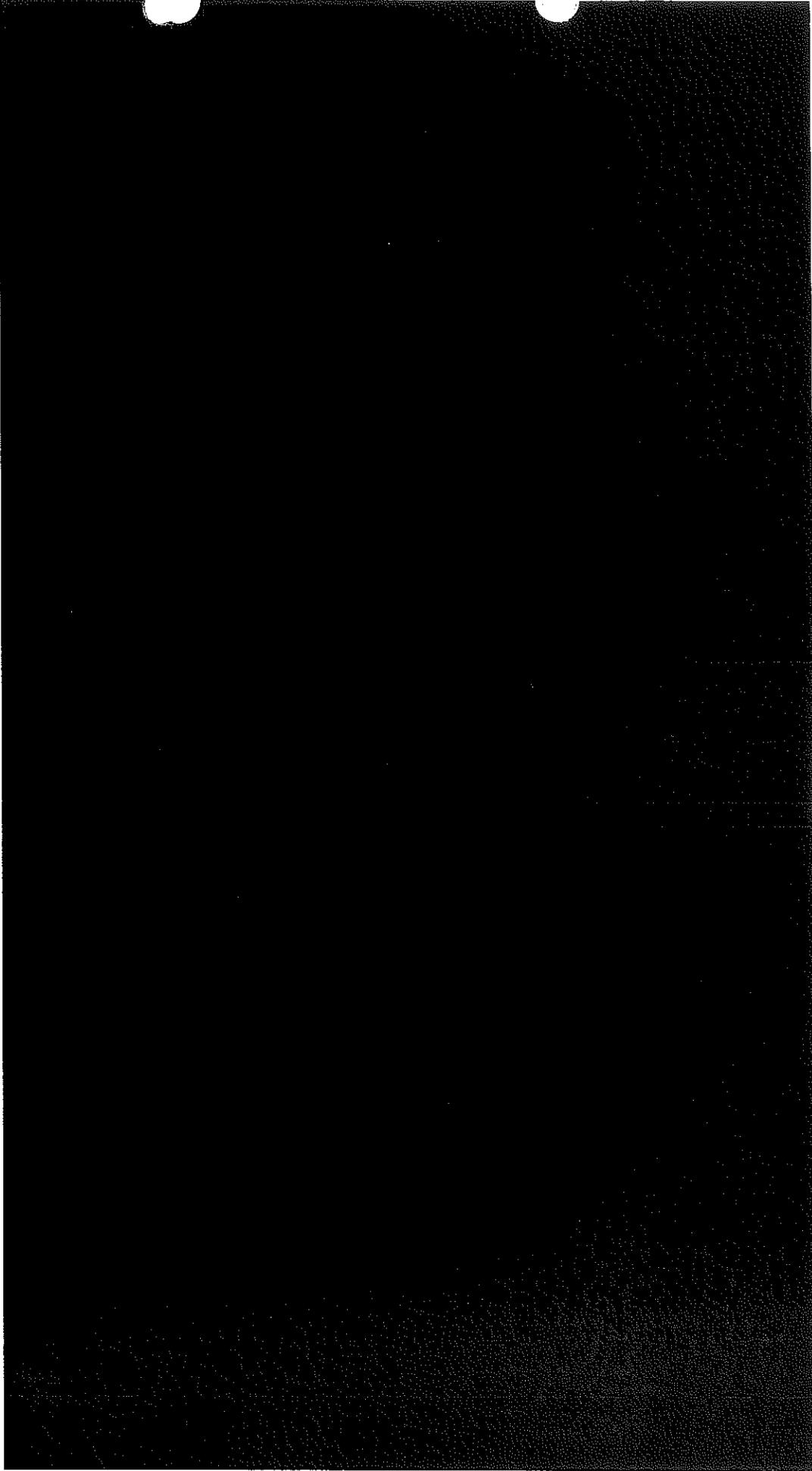
From the Approvals tab you can see your Approval status and the status of your subordinate managers:



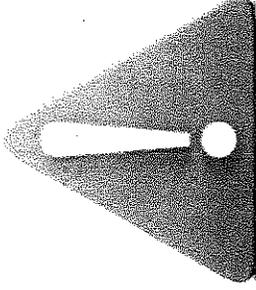
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Approve

Approve your subordinate managers' submissions via the [redacted] tab. Click the [redacted]



Submit Warning



As noted earlier – **DO NOT** submit until your subordinate managers have completed their submission to you

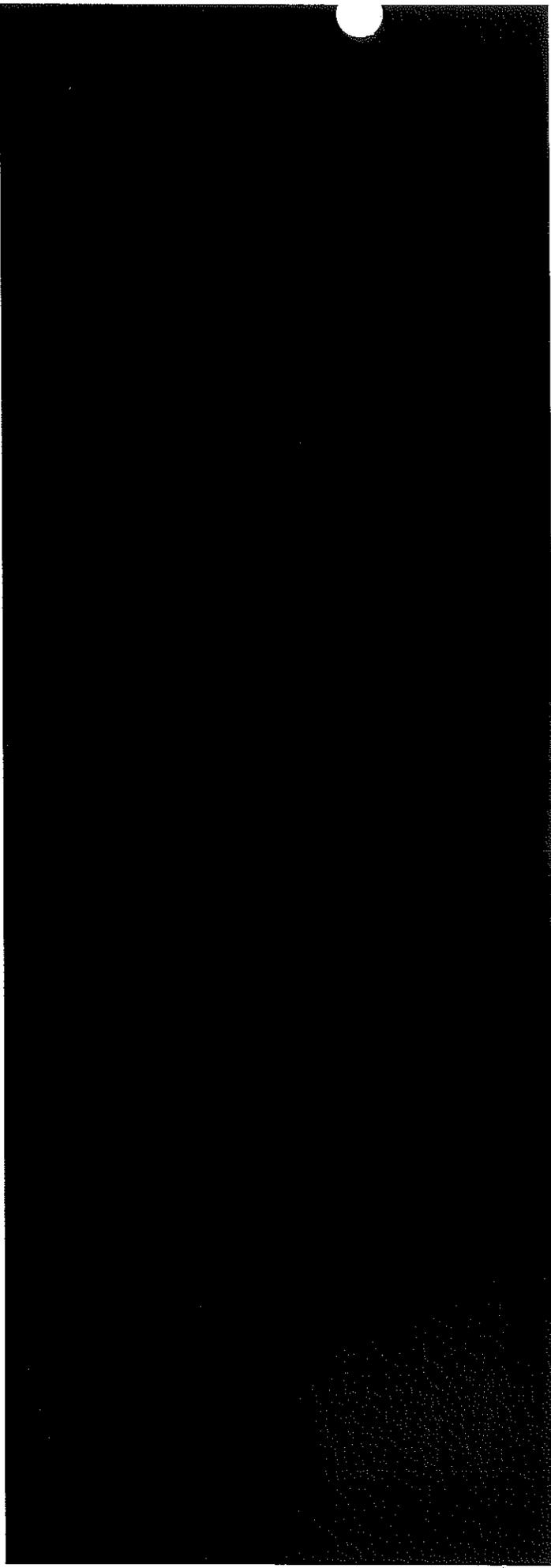
When you submit, you are submitting your entire organization

If you submit before everyone has completed their work, you must manually change the update status for every affected manager

Submit to Next Level

There are two ways to submit for approval to your manager

NOTE: When you submit, you are submitting your entire organization.



Submit to Next Level



At this point you are finished with the process



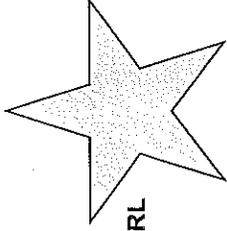
Do not communicate any changes until the 'Last Approval Action' shows "Approved by Larry Ellison"

Before communicating with employees, verify their awards to ensure you are providing the latest information

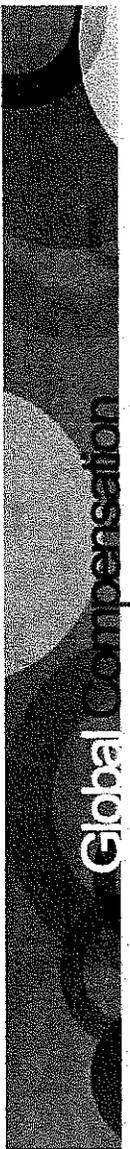
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Tools & Resources

STAR: FWC home page URL



- For questions on your organization's timeline and budgets, contact your manager or HR Business Partner/Manager
- For questions on eligibility, contact your HR Business Partner/Manager
- For questions on Fusion Workforce Compensation access and functionality, contact add OAL support
- Fusion Workforce Compensation home page
(url link here)



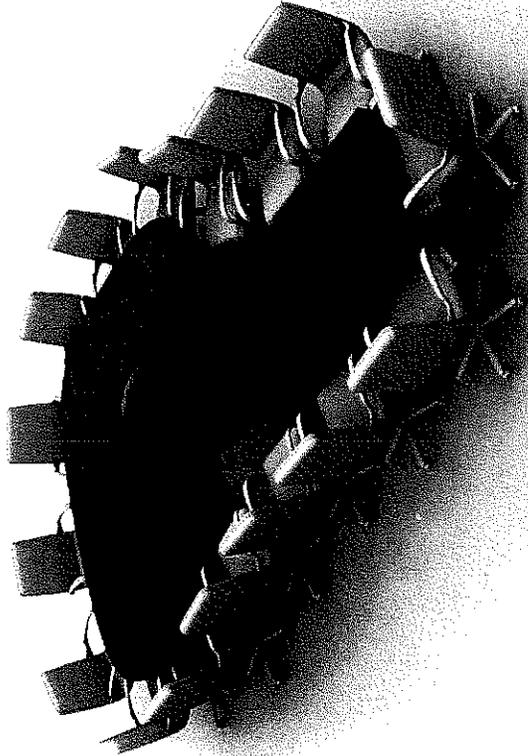
●●● Fusion Workforce Compensation Training, Reference Materials, and FAQs

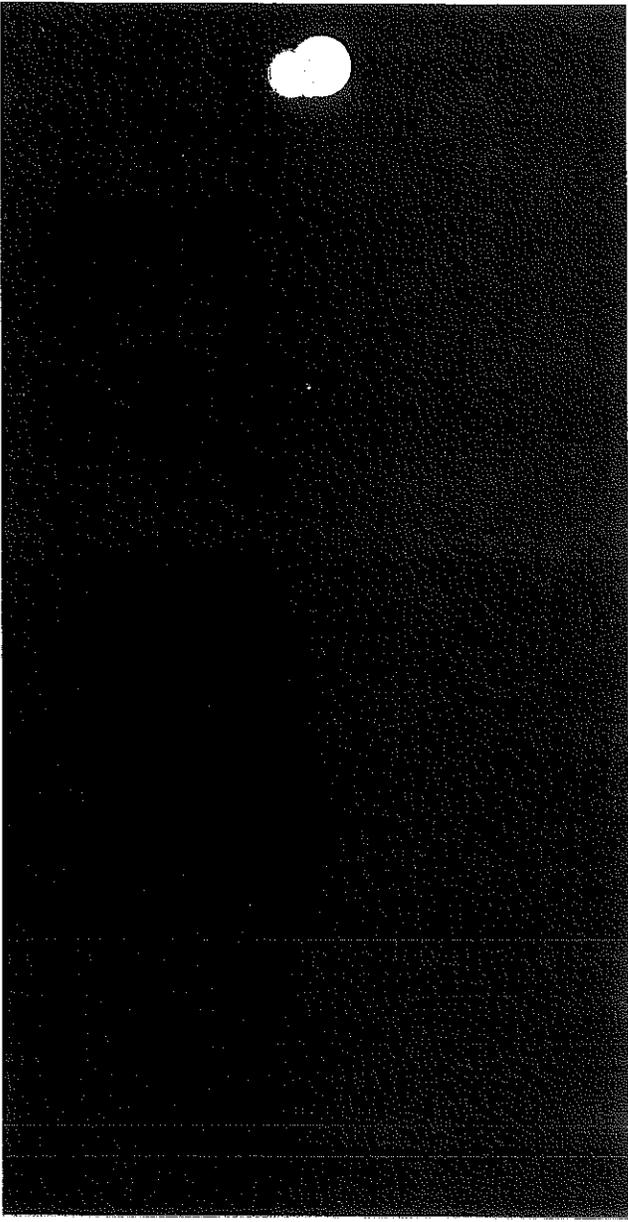
Training Materials

- Fusion Workforce Compensation Manager's Training for Stock Process (viewlet)
- Fusion Workforce Compensation Manager's Training for Stock Process (PowerPoint)
- Fusion Workforce Compensation Manager Users Guide

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Questions



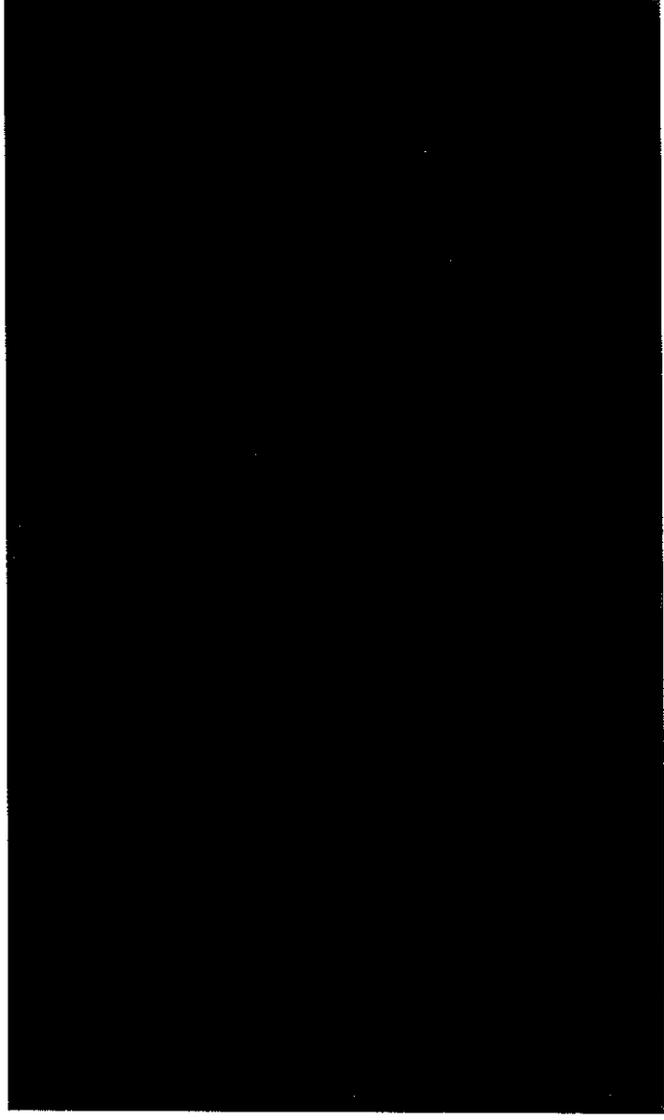


Fusion Tips

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Fusion Tips Collapsible Panes

- Gain more working space by collapsing panes where possible
- Need more space to see your Worksheet? Click the left pointing arrowhead to collapse the Tasks pane

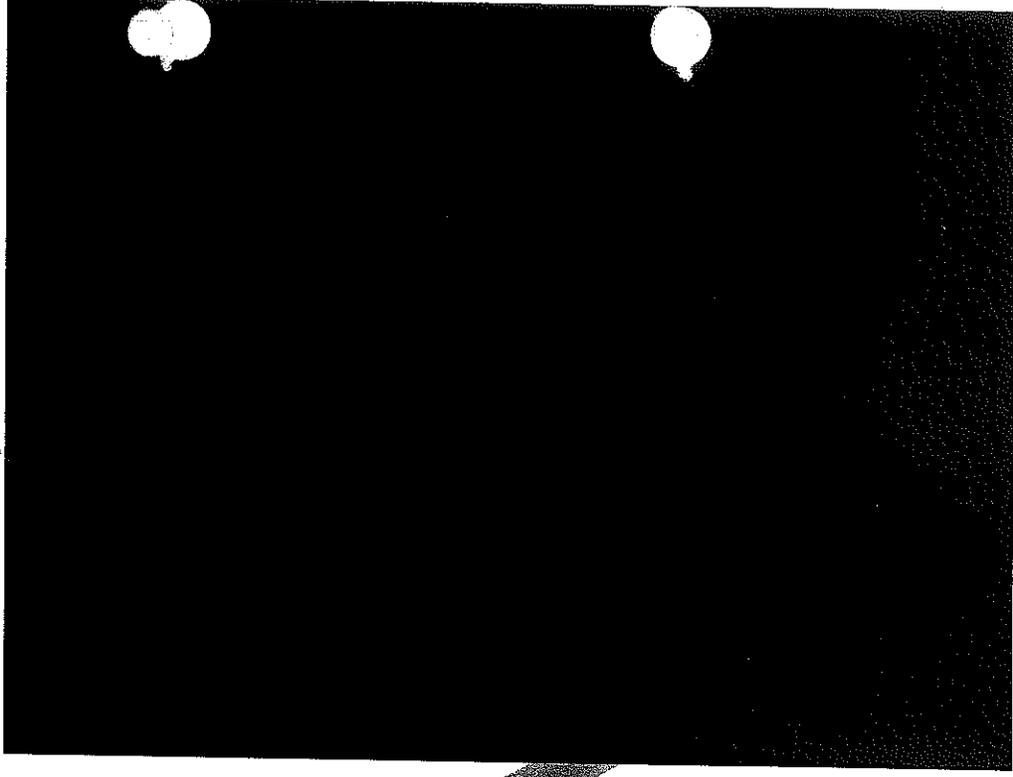


Fusion Tips

Nested Scroll Bars

Fusion has nested scroll bars (inner and outer)

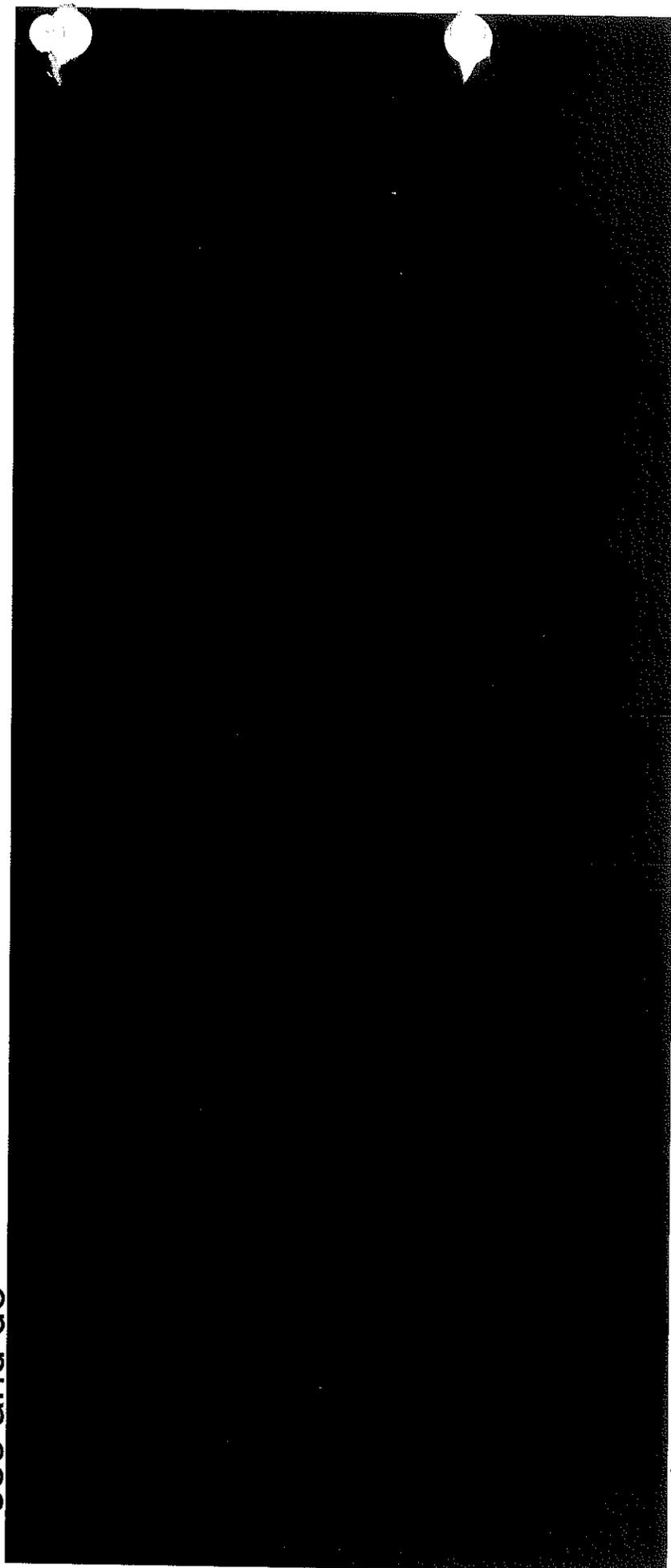
- You may need to use the vertical scroll bar to reveal the horizontal scroll bar at the bottom
- Here, an 'inner' horizontal scroll bar was out of sight
- By using the vertical scroll bar, the inner horizontal scroll bar was revealed



Fusion Tips

Access Level Guide

Setting a manager's Budget and Compensation worksheet access level (No Access, No Updates Allowed, Updates Allowed) determines what they can see and do



¹ Access requires subordinate managers to have a published budget and subordinate managers with direct report workers.

² Not a recommended combination.