

**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

**STATEMENT OF UNCONTESTED  
MATERIAL FACTS IN SUPPORT OF  
DEFENDANT ORACLE AMERICA,  
INC.'S MOTION FOR SUMMARY  
JUDGMENT, OR, IN THE  
ALTERNATIVE, PARTIAL SUMMARY  
JUDGMENT**

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Office of Administrative Law Judges  
San Francisco, Ca

**STATEMENT OF UNCONTESTED MATERIAL FACTS ISO ORACLE'S MSJ**

**CASE NO. 2017-OFC-00006**

Pursuant to 41 C.F.R. § 60-30.23 and Federal Rule of Civil Procedure 56, Defendant Oracle America, Inc. (“Oracle”) hereby submits the following statement of material facts not reasonably in dispute in support of Oracle’s Motion for Summary Judgment, or, in the alternative, Partial Summary Judgment (the “Motion”).

**DECLARANTS PROVIDING TESTIMONY IN SUPPORT OF ORACLE’S MOTION**

The following individuals provided testimony on which Oracle relies in support of its Motion:

- **Farouk Abushaban.** Mr. Abushaban is a Program Manager 5 in the Product Development job function.
- **Kow Adjei.** Mr. Adjei is a Software Developer 4 in the Product Development job function.
- **Carolyn Balkenhol.** Ms. Balkenhol is a Business Planning Director.
- **Balaji Bashyam.** Mr. Bashyam is Senior Vice President, Global Customer Support, Cloud Services.
- **Suratna Budalakoti.** Mr. Budalakoti is a Software Developer 4 in the Product Development job function.
- **Janet Chan.** Ms. Chan is a Program Mgmt Sr Director-Prod Dev in the Product Development job function.
- **Leor Chechik.** Ms. Chechik is a Software Developer 4 in the Product Development job function.
- **Erin Connell.** Ms. Connell is one of Oracle’s lawyers and has attached to her declaration certain exhibits cited in this Motion.
- **Kristin Desmond.** Ms. Desmond is a Software Development Director in the Product Development job function.
- **Jon Tyler Eckard.** Mr. Eckard is a Technical Account Manager Director in the Support job function.

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- **Barbara Fox.** Ms. Fox is a Product Mgmt/Strategy Snr Director-ProdDev in the Product Development job function.
- **Suzette Galka.** Ms. Galka is an IT Director in the Information Technology job function.
- **Amanda Gill.** Ms. Gill is Vice President – Talent Advisory, North America.
- **Shauna Holman-Harries.** Ms. Holman-Harries is Senior Director Diversity Compliance and has attached to her declaration certain exhibits cited in this Motion.
- **Cindy Hsin.** Ms. Hsin is a Software Development Senior Director in the Product Development job function.
- **Christina Kite.** Ms. Kite is a Product Management and Strategy Vice President in the Product Development job function.
- **Chandrasekhar Kottaluru.** Mr. Kottaluru is an Applications Developer 3 in the Product Development job function.
- **Steven Miranda.** Mr. Miranda is Executive Vice President of Oracle Applications Product Development and has attached to his declaration certain exhibits cited in this Motion.
- **Brian Oden.** Mr. Oden is a Technical Writer Director in the Product Development job function.
- **Rita Ousterhout.** Ms. Ousterhout is a Software Development Senior Director in the Product Development job function.
- **Leslie Robertson.** Ms. Robertson is a Software Development Vice President in the Product Development job function.
- **Richard Sarwal.** Mr. Sarwal is the Senior Vice President and General Manager for software and hardware support within Oracle’s Customer Services organization.

- **Gary Siniscalco.** Mr. Siniscalco is one of Oracle's lawyers and has attached to his declaration certain exhibits cited in this Motion.
- **Sachin Shah.** Mr. Shah is a Technical Account Manager Sr. Director in the Support job function.
- **Harmohan Suri.** Mr. Suri is a Product Support Senior Director in the Support job function.
- **Chandna Talluri.** Ms. Talluri is an IT Director in the Information Technology job function.
- **Vickie Thrasher.** Ms. Thrasher is Group Vice President of Human Resources – Americas for Oracle.
- **Kate Waggoner.** Ms. Waggoner is Senior Director, Global Compensation and has attached to her declaration certain exhibits cited in this Motion.
- **Campbell Webb.** Mr. Webb is Senior Vice President of Product Engineering and Operations.
- **Athena Wu.** Ms. Wu is a Technical Analyst 4 – Support in the Support job function.
- **Nachiketa Yakkundi.** Mr. Yakkundi is a Product Support Senior Manager in the Support job function.

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**UNCONTESTED MATERIAL FACTS IN SUPPORT OF ORACLE'S MOTION FOR  
SUMMARY JUDGMENT**

**I. ORACLE IS COMMITTED TO EEO AND DIVERSITY**

<b>Uncontested Material Facts</b>	<b>Oracle's Supporting Evidence</b>
1. Oracle's long-time President and current co-CEO, Safra Catz, is female.	Thrasher Decl., ¶ 6.
2. One-third of Oracle's Board of Directors is female or from a diverse background.	Thrasher Decl., ¶ 6.
3. Oracle's General Counsel, Lead Employment Counsel, Global Director of Compensation, Head of Human Resources for the Americas and Global Head of Human Resources are all women.	Thrasher Decl., ¶ 6.
4. Thomas Kurian, who led Oracle's Product Development line of business for most of the relevant time period, is Asian.	Thrasher Decl., ¶ 6.
5. Oracle's managers are required to take regular non-discrimination training.	Yakkundi Decl., ¶ 20; Eckard Decl., ¶ 14; Hsin Decl., ¶ 15; Fox Decl., ¶ 17; Oden Decl., ¶ 12; Talluri Decl., ¶ 17; Suri Decl., ¶ 23; Ousterhout Decl., ¶ 18; Galka Decl., ¶ 11.
6. Oracle's managers are instructed that pay "differences need to be based on fair, justifiable and non-discriminatory criteria."	Waggoner Decl., Ex. B (ORACLE_HQCA_0000364183 at 6), Ex. C (ORACLE_HQCA_0000364272 at 15); Connell Decl., Ex. B (8/1/19 Holman-Harries PMK Dep. 265:23-266:13).

Uncontested Material Facts	Oracle's Supporting Evidence
<p>7. When making compensation decisions, managers are instructed to:</p> <ul style="list-style-type: none"> <li>a) consider how an employee's compensation compares to her peers;</li> <li>b) account for each employee's relevant knowledge, skills, abilities, and experience;</li> <li>c) balance external and internal equity considerations;</li> <li>d) differentiate rewards by performance; and</li> <li>e) consider the employee's importance to the company.</li> </ul>	<p>a) Waggoner Decl., ¶ 30, Ex. B (ORACLE_HQCA_0000364183 at 5), Ex. E (ORACLE_HQCA_0000056234 at 24).</p> <p>b) Waggoner Decl., ¶ 30, Ex. B (ORACLE_HQCA_0000364183 at 5), Ex. E (ORACLE_HQCA_0000056234 at 17, 22, 37); Connell Decl., Ex. A (ORACLE_HQCA_0000400584 at 204:11-20), Ex. B (8/1/19 Holman-Harries PMK Dep. 265:23-266:13), Ex. C (7/19/19 Waggoner PMK Dep. 111:10-22; 142:17-143:12; 180:16-181:21; 182:14-183:2), Ex. U (10/10/19 Madden Dep. 123:18-124:12).</p> <p>c) Waggoner Decl., ¶ 31, Ex. B (ORACLE_HQCA_0000364183 at 6), Ex. C (ORACLE_HQCA_0000364272 at 15), Ex. E (ORACLE_HQCA_0000056234 at 17, 22, 37); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 84:25-85:25; 173:13-174:13).</p> <p>d) Waggoner Decl., Ex. C (ORACLE_HQCA_0000364272 at 15), Ex. E (ORACLE_HQCA_0000056234 at 16, 17, 22); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 111:10-22), Ex. K (ORACLE_HQCA_0000400313 at 313).</p> <p>e) Waggoner Decl., Ex. C (ORACLE_HQCA_0000364272 at 15); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 178:19-179:21).</p>
<p>8. Oracle's managers can partner with HR business partners and compensation consultants to ensure compensation decisions are equitable.</p>	<p>Waggoner Decl., Ex. B (ORACLE_HQCA_0000364183 at 2, 22), Ex. C (ORACLE_HQCA_0000364272 at 8, 15, 37); Connell Decl., Ex. C (7/19/2019 Waggoner Dep. (PMK) at 122:9-17), Ex. H (6/11/19 Cheruvu Dep. 139:19-24), Ex. L (ORACLE_HQCA_0000400403 at 446, 448-49); Gill Decl., ¶ 6; Talluri Decl., ¶ 15; Abushaban Decl., ¶ 15.</p>

**II. ORACLE IS ORGANIZED INTO LINES OF BUSINESS STRUCTURED AROUND THE PRODUCTS AND SERVICES IT DELIVERS**

Uncontested Material Facts	Oracle's Supporting Evidence
9. Oracle is organized into lines of business ("LOBs"), which are organizations within Oracle that are focused on a distinct part of Oracle's business or operations.	Waggoner Decl., ¶ 12; Miranda Decl., ¶ 8.
10. Each LOB has an executive who oversees it, and who is responsible for the products within that LOB.	Connell Decl., Ex. A (ORACLE_HQCA_0000400584 at 85:1-19; 86:4-12; 87:9-88:3).
11. LOBs are divided into specialized organizations and teams that differ by strategic importance or business criticality.	Waggoner Decl., ¶ 13; Miranda Decl., ¶¶ 8, 11.
12. Each LOB has a management reporting hierarchy that starts at the top and ends with first-level (or direct) managers who directly supervise individual contributors.	Waggoner Decl., ¶ 14.
13. Where a particular employee's team is located in this LOB structure may impact her compensation, as budgeting decisions and bonus or raise allocations are distributed within this LOB.	Waggoner Decl., ¶ 15; Miranda Decl., ¶ 11; <i>see also</i> Connell Decl., Ex. A (ORACLE_HQCA_0000400584 at 182:18-183:16; 186:13-188:8).

**III. THE EMPLOYEES AT ISSUE IN THIS CASE WORK ON A VAST ARRAY OF PRODUCTS USING A DIVERSE SET OF SKILLS, DUTIES, AND RESPONSIBILITIES**

Uncontested Material Facts	Oracle's Supporting Evidence
14. Oracle is a global technology company that provides more than 800 software and hardware products and related services to customers worldwide.	Waggoner Decl., ¶ 6; Miranda Decl., ¶¶ 3, 4, 9, Ex. A.
15. Oracle's products include cloud computing services, software, hardware, and business analytics, as well as solutions for managing enterprise resources, human resources, customer relationships, and supply chains, and for assessing governance, risk, and compliance.	Waggoner Decl., ¶¶ 6-7; Robertson Decl., ¶¶ 6-9; Bashyam Decl., ¶ 4; Sarwal Decl., ¶¶ 5, 10; Miranda Decl., ¶¶ 4-5.

Uncontested Material Facts	Oracle's Supporting Evidence
16. Oracle offers product-related services, such as security assessments, software upgrades, and customer support and education services.	Waggoner Decl., ¶ 8; Yakkundi Decl., ¶¶ 3, 6, 10; Bashyam Decl., ¶¶ 2-4; Sarwal Decl., ¶¶ 5, 10.
17. One catalyst to Oracle's growth is acquisitions, which have added hundreds of new products to Oracle's product portfolio, further increasing the diversity of technology products and services Oracle offers.	Waggoner Decl., ¶¶ 9-10; Yakkundi Decl., ¶¶ 6-7; Bashyam Decl., ¶ 8; Galka Decl., ¶ 4.
18. Some of Oracle's products involve cutting-edge technology in high demand, and some constitute legacy products with infrequent updates or enhancements.	Bashyam Decl., ¶¶ 8-9; Sarwal Decl., ¶ 14.
19. Not all of Oracle's products and services have the same value or profitability to the market, and the value of the skills, duties, and responsibilities associated with working on one product can differ among products and change over time.	Miranda Decl., ¶ 11; Sarwal Decl., ¶ 14.

**IV. ORACLE EMPLOYEES HAVE "JOB FUNCTIONS" AND "SYSTEM JOB TITLES"**

Uncontested Material Facts	Oracle's Supporting Evidence
20. Oracle categorizes the jobs in which its employees work by job functions.	Waggoner Decl., Ex. D (ORACLE_HQCA_0000364276 at 7); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 100:13-23).
21. Job functions describe, at a very high level, "the general type of work performed" by employees within the function.	Waggoner Decl., ¶ 17, Ex. D (ORACLE_HQCA_0000364276 at 5), Ex. E (ORACLE_HQCA_0000056234 at 4); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 88:19-89:7).
22. Employees in Product Development are responsible for developing the various components of Oracle's products and services. Their duties are varied and range from writing software code for new products to product management, technical writing, and quality assurance.	Waggoner Decl., ¶ 17; Connell Decl., Ex. I (ORACLE_HQCA_0000399991 at 999), Ex. J (ORACLE_HQCA_0000400010 at 010); Robertson Decl., ¶¶ 3, 6-9; Kottaluru Decl., ¶¶ 8, 11; Oden Decl., ¶ 6; Chan Decl., ¶¶ 5-7.

**STATEMENT OF UNCONTESTED MATERIAL FACTS ISO ORACLE'S MSJ**

Uncontested Material Facts	Oracle's Supporting Evidence
23. Employees within the IT job function specialize in business implementation and planning, data center services, network services, and risk management.	Waggoner Decl., ¶ 17; Webb Decl., ¶¶ 5-7; Talluri Decl., ¶¶ 6-8; Galka Decl., ¶¶ 3, 8.
24. In the Support job function, employees work on everything from legacy on-premise solutions to cloud-based solutions and other emerging technologies.	Waggoner Decl., ¶ 17; Yakkundi Decl., ¶¶ 10-16; Eckward Decl., ¶¶ 3, 5; Wu Decl., ¶¶ 4, 6; Suri Decl., ¶ 3, 5.
25. Within each job function, employees are further divided into job families (e.g., Applications Developers) and then into system job titles with a corresponding numeric job code.	Waggoner Decl., ¶ 20; Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 100:13-23), Ex. I (ORACLE_HQCA_0000399991 at 98).
26. System job titles reflect a progression of development within a job family (e.g., Applications Developer 1, Applications Developer 2, and so on).	Waggoner Decl., ¶ 20; Yakkundi Decl., ¶ 16; Wu Decl., ¶ 8; <i>see</i> Connell Decl., Ex. I (ORACLE_HQCA_0000399991 at 997-99).
27. Job functions, specialty areas, job families, and system job titles are broad and describe the type of work that a person performs at a high level of abstraction.	Waggoner Decl., ¶¶ 17, 22; Connell Decl., Ex. B (8/1/19 Holman-Harries PMK Dep. 35:24-36:16), Ex. C (7/19/19 Waggoner PMK Dep. 102:17-103:23), Ex. I (ORACLE_HQCA_0000399991 at 999), Ex. J (ORACLE_HQCA_0000400010 at 010).
28. Employees who share the same job function, specialty area, job family, or system job title may have very different duties, skills, education, and experience.	Bashyam Decl., ¶¶ 7, 14; Webb Decl., ¶¶ 5-6, 8-11; Sarwal Decl., ¶¶ 4-12; Eckward Decl., ¶¶ 9-10; Kottaluru Decl., ¶ 13; Hsin Decl., ¶ 8; Fox Decl., ¶¶ 12-13; Oden Decl., ¶¶ 7-11; Abushaban Decl., ¶ 10; Suri Decl., ¶ 10; Chan Decl., ¶ 8; Adjei Decl., ¶¶ 8-9; Chechik Decl., ¶ 6; Ousterhout Decl., ¶¶ 11-13; Miranda Decl., ¶¶ 5-8; Budalakoti Decl., ¶ 8.
29. Each system job title associates a given employee with a particular career level.	Waggoner Decl., ¶ 24; Connell Decl., Ex. B (8/1/19 Holman-Harries PMK Dep. 86:14-87:18).
30. Career levels are broad steps that roughly reflect increased skill, knowledge, responsibility, and performance expectations.	Connell Decl., Ex. B (8/1/19 Holman-Harries PMK Dep. 86:14-88:13), Ex. C (7/19/19 Waggoner PMK Dep. 100:24-102:8), Ex. I (ORACLE_HQCA_0000399991 at 997); Bashyam Decl., ¶¶ 7, 14; Webb Decl., ¶ 12; Sarwal Decl., ¶ 13; Wu Decl., ¶ 8; Fox Decl., ¶ 11; Kite Decl., ¶¶ 9-10; Chechik Decl., ¶ 13; Desmond Decl., ¶¶ 5-6; Ousterhout Decl., ¶ 10; Miranda Decl., ¶ 9; Galka Decl., ¶ 4.

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<b>Uncontested Material Facts</b>	<b>Oracle's Supporting Evidence</b>
31. Job functions are not tied to specific LOBs.	Waggoner Decl., Ex. D (ORACLE_HQCA_0000364276 at 5, 7), Ex. E (ORACLE_HQCA_0000056234 at 6).
32. Unlike LOBs, job functions do not have a leader, and individuals within a given job function typically work across different LOBs and report to many different leaders.	Waggoner Decl., ¶ 19; Connell Decl., Ex. A (ORACLE_HQCA_0000400584 at 47:20-48:24; 51:9-21; 146:21-147:23).

**V. ORACLE'S COMPENSATION SYSTEM IS DECENTRALIZED AND PAY VARIES WIDELY BASED ON MARKET DEMAND**

**A. Oracle's Managers Determine New Hire Salaries, Raises, and Bonuses for Their Employees**

<b>Uncontested Material Facts</b>	<b>Oracle's Supporting Evidence</b>
33. An employee's direct manager plays the most significant role in setting that employee's compensation.	Waggoner Decl., ¶ 28, Ex. C (ORACLE_HQCA_0000364272 at 15), Ex. E (ORACLE_HQCA_000005234 at 16, 22); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 111:23-112:3); Chan Decl., ¶ 9.
34. First-line (or direct) managers primarily determine the starting pay for new hires.	Waggoner Decl., ¶ 28, Ex. E (ORACLE_HQCA_0000056234 at 36); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 113:14-114:24; 117:3-11), Ex. H (6/11/19 Cheruvu Dep. 74:22-25); Gill Decl., ¶ 6; Ousterhout Decl., ¶ 16.
35. Direct managers also primarily determine salary increases.	Waggoner Decl., ¶ 27; Fox Decl., ¶ 14; Kite Decl., ¶ 11; Suri Decl., ¶ 16; Chan Decl., ¶ 8.
36. Although individual compensation decisions for new hires and promotions are subject to an approval process by more senior management to ensure they are within budget and/or are not wholly unreasonable, those senior managers generally defer to the decisions of the lower-level managers and only rarely are decisions not approved.	Balkenhol Decl., ¶¶ 6-9; Waggoner Decl., ¶ 28; Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 113:14-114:24; 117:12-121:18; 155:7-156:10; 161:10-162:13; 164:10-165:1; 167:22-169:8; 170:10-23; 171:4-20; 195:16-198:13); Abushaban Decl., ¶ 15; Hsin Decl., ¶ 11; Ousterhout Decl., ¶ 16; Robertson Decl., ¶ 11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13; Yakkundi Decl., ¶ 19; Suri Dec., ¶ 22; Chan Decl., ¶ 13; Desmond Decl., ¶ 13.

Uncontested Material Facts	Oracle's Supporting Evidence
37. Senior management reviews front-line managers' starting offers and off-cycle compensation decisions, including promotions, transfers, and other off-cycle compensation changes, to ensure that the decisions are reasonable under the circumstances – generally a high level “sanity check,” and not a deep dive into the specifics of any particular decision.	Balkenhol Decl., ¶¶ 6, 9, 12.
38. Senior management reviews front-line managers' starting offers and off-cycle compensation decisions, including promotions, transfers, and other off-cycle compensation changes, to look for potential errors or outliers that do not seem sensible from a high-level perspective.	Balkenhol Decl., ¶¶ 7, 12.
39. The majority of salary increases occur during a “focal” review, which is a company-wide review process undertaken periodically, as determined by Oracle's financial performance.	Waggoner Decl., ¶ 28; Connell Decl., Ex. A (ORACLE_HQCA_0000400584 at 177:16-178:25), Ex. C (7/19/19 Waggoner PMK Dep. 187:14-19; 190:5-16; 192:6-193:16), Ex. K (ORACLE_HQCA_0000400313 at 313).
40. During a focal review, LOB heads receive a budget for salary increases, which they can allocate in their discretion to lower-level managers within their organizations.	Waggoner Decl., ¶ 28; Connell Decl., Ex. C (7/19/2019 Waggoner PMK Dep. at 252:15-253:19); Oden Decl., ¶ 13; Ousterhout Decl., ¶ 17.
41. Lower-level managers within an LOB make further decisions about if and how to “cascade” budget down through the organization, which may involve pushing budgetary authority to different levels in different slices of the same organization.	Waggoner Decl., ¶¶ 15, 28, 29, Ex. A (ORACLE_HQCA_0000380438 at 6); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 252:15-253:19); Oden Decl., ¶ 13.
42. The manager who is the last recipient of an LOB's allocation distributes that amount in her discretion as raises to individual employees.	Waggoner Decl., ¶¶ 16, 29-30; Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 195:9-15), Ex. G (5/30/19 Westerdahl Dep. 80:23-81:10); Yakkundi Decl., ¶ 19; Eckard Decl., ¶ 11; Kite Decl., ¶ 11; Suri Decl., ¶ 17.
43. In determining salary increases, managers may exercise their own judgment or consult other managers (for example, if they do not directly supervise the employees at issue).	Waggoner Decl., ¶ 30; Yakkundi Decl., ¶ 19; Eckard Decl., ¶¶ 11-13; Balkenhol Decl., ¶¶ 9, 12; Hsin Decl., ¶ 11; Fox Decl., ¶¶ 14-15; Kite Decl., ¶ 11; Abushaban Decl., ¶¶ 16-18; Suri Decl., ¶ 17; Chan Decl., ¶ 9.

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Uncontested Material Facts	Oracle's Supporting Evidence
44. For the vast majority of salary increases, the senior management approval process acts as a check to review whether managers stay within allotted budgets.	Waggoner Decl., ¶ 28.
45. Bonuses, like salaries, are distributed from a budget within each LOB and can reflect differing allocations to different teams and units based on (among other things) the importance of retaining and motivating employees on that team.	Waggoner Decl., ¶¶ 15, 29; Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 265:14-23; 266:2-267:1), Ex. G (5/30/19 Wester Dahl Dep. 107:2-19).
46. First- and second-line managers usually play the primary role in making a bonus decision.	Waggoner Decl., ¶¶ 29-30; Connell Decl., Ex. A (ORACLE_HQCA_0000400584 at 192:4-194:13), Ex. C (7/19/19 Waggoner PMK Dep. 267:2-12; 268:19-25); Fox Decl., ¶ 14; Suri Decl., ¶ 21; Chan Decl., ¶ 11.
47. Bonuses at Oracle are discretionary and are not entitlements; instead, they are designed to reward employees for achieving strategic company goals, such as profitability.	Connell Decl., Ex. K (ORACLE_HQCA_0000400313 at 314).
48. Managers may award greater compensation—particularly bonuses—to those employees working on products that are particularly complex or for which the labor market is particularly competitive.	Waggoner Decl., ¶ 30; Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 267:13-25); Gill Decl., ¶¶ 5-8; Fox Decl., ¶ 14; Suri Decl., ¶ 21; Chan Decl., ¶ 11.
49. First-line (or direct) managers primarily determine equity for their reports.	Gill Decl., ¶ 6; Robertson Decl., ¶ 12; Fox Decl., ¶ 16; Oden Decl., ¶ 14; Talluri Decl., ¶ 16; Suri Decl., ¶ 21; Chan Decl., ¶ 12; Ousterhout Decl., ¶ 17; Shah Decl., ¶ 15.
50. Compensation decisions are made on a case-by-case basis and are based on a variety of factors, including performance, skills, experience, duties, and pay equity among team members.	Connell Decl., Ex. L (ORACLE_HQCA_0000400403 at 438); Waggoner Decl., Ex. B (ORACLE_HQCA_0000364183 at 21), Ex. E (ORACLE_HQCA_0000056234 at 37); Gill Decl., ¶¶ 6-8; Webb Decl., ¶ 13; Eckard Decl., ¶¶ 11-12; Hsin Decl., ¶¶ 11-12; Fox Decl., ¶ 14; Oden Decl., ¶ 14; Talluri Decl., ¶ 17; Abushaban Decl., ¶¶ 13-16.

**B. Oracle Managers Make Compensation Decisions Based on Employees' Individual Skills and Contributions**

Uncontested Material Facts	Oracle's Supporting Evidence
51. Oracle faces substantial and continuous competition for highly-skilled and talented employees.	Gill Decl., ¶¶ 4-5; Bashyam Decl., ¶ 10; Miranda Decl., ¶ 11; Webb Decl., ¶ 13; Sarwal Decl., ¶ 14.
52. To compete against other companies for employees, Oracle's compensation tools include base salary, bonuses, restricted stock awards, and performance stock and stock options ( <i>i.e.</i> , equity grants).	Gill Decl., ¶ 6; Balkenhol Decl., ¶¶ 5, 10-11; Waggoner Decl., ¶ 31; Fox Decl., ¶ 16; Chan Decl., ¶ 12.
53. Particular teams or projects at Oracle often require highly specialized, rare, and valuable technical skills, and to stay competitive Oracle must actively recruit and retain employees with those specialized skills.	Gill Decl., ¶ 5; Yakkundi Decl., ¶ 17; Sarwal Decl., ¶ 14; Fox Decl., ¶ 16.
54. Oracle's compensation philosophy reflects its business need to recognize individual skills and contributions.	Waggoner Decl., ¶¶ 27, Ex. B (ORACLE_HQCA_0000364183 at 5), Ex. C (ORACLE_HQCA_0000364272 at 15), Ex. E (ORACLE_HQCA_0000056234 at 17, 37).
55. Oracle's compensation framework strives for equitable pay within teams while recognizing each employee's unique knowledge, skills, abilities, performance, experience, and contributions.	Waggoner Decl., ¶ 26-27, Ex. B (ORACLE_HQCA_0000364183 at 5), Ex. C (ORACLE_HQCA_0000364272 at 15); Connell Decl., Ex. B (8/1/19 Holman-Harries PMK Dep. 265:23-266:13), Ex. C (7/19/19 Waggoner PMK Dep. 84:25-85:25); Robertson Decl., ¶ 12; Abushaban Decl., ¶¶ 16-18; Chan Decl., ¶¶ 9-12.
56. Oracle empowers its managers, who are familiar with an individual employee's work and how it compares to others to drive the decision-making in Oracle's decentralized process.	Waggoner Decl., ¶ 28, Ex. B (ORACLE_HQCA_0000364183 at 21); Abushaban Decl., ¶ 16; Chan Decl., ¶¶ 9-12.

**VI. OFCCP FAILED TO MEET ITS MANDATORY PRESUIT OBLIGATIONS**

**A. OFCCP Did Not Have Reasonable Cause to Issue a Show Cause Notice**

Uncontested Material Facts	Oracle's Supporting Evidence
<i>Oracle incorporates herein Uncontested Facts 20-32; 96-125.</i>	
57. On September 24, 2014, OFCCP initiated the audit of Oracle's Redwood Shores headquarters that led to this litigation.	Holman-Harries Decl., ¶ 2.
58. OFCCP issued a Notice of Violation ("NOV") on March 11, 2016, without first issuing a Predetermination Notice.	Holman-Harries Decl., ¶ 3, Ex. B (NOV).
59. The NOV was based solely on the results of OFCCP's statistical analyses and other evidence that OFCCP never disclosed to Oracle.	Holman-Harries Decl., ¶ 3, Ex. B (NOV).
60. The statistical analyses on which the NOV relies do not compare employees who perform similar work because they compare employees by job title, and job titles at Oracle do not account for all the skills, duties, or experience associated with a particular position.	Holman-Harries Decl., ¶ 3, Ex. B (NOV); Waggoner Decl., ¶¶ 17, 22; Bashyam Decl., ¶¶ 7, 14; Webb Decl., ¶¶ 5-6, 8-11; Sarwal Decl., ¶¶ 4-12; Eckward Decl., ¶¶ 9-10; Kottaluru Decl., ¶ 13; Hsin Decl., ¶ 8; Fox Decl., ¶¶ 12-13; Oden Decl., ¶¶ 7-11; Suri Decl., ¶¶ 10-14; Chan Decl., ¶ 8; Adjei Decl., ¶¶ 8-9; Chechik Decl., ¶ 6; Ousterhout Decl., ¶¶ 11-13.
61. OFCCP's Regional Director during the 2013-2014 audit period was Janette Wipper.	Connell Decl., Ex. F (7/1/19 Leu Dep. 79:18-80:6; 97:12-24; 102:10-18; 108:25-109:12; 139:9-23).
62. Ms. Wipper provided Dr. Shirong "Andy" Leu, OFCCP's statistician who prepared the statistical analyses in the NOV, the data for Oracle's employees and the factors to use for the analyses.	Connell Decl., Ex. F (7/1/19 Leu Dep. 79:18-80:6; 102:10-18; 108:25-109:12; 127:19-128:3; 210:15-24).
63. The factors Dr. Leu used in OFCCP's regression model for the NOV were only (1) time at Oracle; (2) age; (3) full-time/part-time; (4) and job title (which includes employees' exempt status, global career level, and job specialty).	Connell Decl., Ex. B (8/1/19 Holman-Harries PMK Dep. 86:14-87:18), Ex. F (7/1/19 Leu Dep. 79:18-80:6; 102:10-18); Waggoner Decl., ¶ 23.
64. Dr. Leu estimated he spent only five to ten hours in total preparing the regression models in the NOV.	Connell Decl., Ex. F (7/1/19 Leu Dep. 154:1-20).

Uncontested Material Facts	Oracle's Supporting Evidence
65. Dr. Leu did not determine whether the employee groupings compared employees who perform similar work, or whether the factors used in OFCCP's regression model are the factors Oracle managers consider when making compensation decisions.	Connell Decl., Ex. F (7/1/19 Leu Dep. 141:25-143:11).
66. OFCCP issued the Show Cause Notice, which was based on the same statistical analyses as was the NOV, on June 8, 2016.	Holman-Harries Decl., Ex. Y (SCN).

**B. OFCCP Did Not Engage in Reasonable Conciliation Efforts**

Uncontested Material Facts	Oracle's Supporting Evidence
67. OFCCP understood that Oracle was requesting additional information in order to respond substantively to the NOV.	Connell Decl., Ex. D (6/26/19 Suhr PMK Dep. 41:20-42:6).
68. As of October 29, 2016, the only information Oracle had received about the alleged violations OFCCP found were from the NOV itself and one subsequent email from an OFCCP employee, which provided no more information than what was already in the NOV.	Connell Decl., Ex. D (6/26/19 Suhr PMK Dep. 41:20-42:6); Siniscalco Decl., Ex. C (4/21/16 Atkins Letter).
69. OFCCP never provided Oracle with a proposed conciliation agreement.	Connell Decl., Ex. D (6/26/19 Suhr PMK Dep. 35:14-21; 50:5-22; 65:7-66:8).
70. OFCCP never explained what non-monetary actions Oracle could take to resolve the alleged violations.	Connell Decl., Ex. D (6/26/19 Suhr PMK Dep. 65:21-66:8).
71. OFCCP gave Oracle rough estimates of alleged monetary damages, but not any backup or supporting facts explaining how the estimates were derived.	Connell Decl., Ex. D (6/26/19 Suhr PMK Dep. 68:23-69:13).

**VII. OFCCP'S COMPENSATION DISCRIMINATION CLAIM FAILS AS A MATTER OF LAW**

**A. OFCCP Has Not Established a Prima Facie Case of Disparate Treatment**

Uncontested Material Facts	Oracle's Supporting Evidence
<i>Oracle incorporates herein Uncontested Facts 1-56.</i>	
72. OFCCP is not accusing any managers in Oracle's Product Development, IT or Support job functions of intentional discrimination or bias.	OFCCP's August 22, 2019 Position Statement at 8.
73. The primary statistical models in the Second Amended Complaint ("SAC") use the same employee groupings and factors as the NOV, and were developed by OFCCP's counsel, not the statistician who prepared the model.	Holman-Harries Decl., ¶ 3, Ex. B (NOV); SAC, ¶¶ 13-32; Connell Decl., Ex. S (7/17/19 Brunetti PMK Dep. 25:20-24; 72:7-73:6; 75:22-77:4; 116:5-117:1; 165:19-166:7; 172:17-173:19; 189:2-22; 192:23-193:10), Ex. T (June 11, 2019 Declaration of Jeremiah Miller in Opposition to Oracle's Motion to Compel OFCCP to Designate and Produce a 30(b)(6) Witness, ¶ 5).
74. When the statistical models OFCCP used for the NOV are applied to other job functions at Oracle's headquarters, they do not yield any statistically significant pay differences adverse to women, Asians, or African-Americans, yet OFCCP did not report those statistically insignificant results.	Connell Decl., Ex. M (Saad Report, ¶¶ 23, 94-97).
75. The analyses and reports of Dr. Janice Madden, OFCCP's expert for litigation purposes, do not aim to compare the pay of employees who perform similar work.	Connell Decl., Ex. P (Madden Rebuttal Report, 10-11), Ex. U (10/10/19 Madden Dep. 14:18-15:6; 43:4-18).
76. The report and opinions of OFCCP's expert Dr. Madden do not consider employees' actual skills, duties or responsibilities.	Connell Decl., Ex. P (Madden Rebuttal Report, 9-11); Ex. U (10/10/19 Madden Dep. 43:4-18; 91:15-24).
77. Dr. Madden's analyses treat all prior work experience equivalently.	Connell Decl., Ex. N (Madden Report, 14).
78. Dr. Madden's analyses measure prior work experience by treating age as a proxy for experience.	Connell Decl., Ex. N (Madden Report, 14).
79. Dr. Madden analyzes education by using the level of educational degree attained – college, Masters, or Ph.D.	Connell Decl., Ex. N (Madden Report, 15).

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Uncontested Material Facts	Oracle's Supporting Evidence
80. Dr. Madden coded as "unknown" the education level of over 50% of the employees she analyzed.	Connell Decl., Ex. O (Saad Rebuttal, ¶ 19; n.21).
81. Dr. Madden created a "job descriptor" variable, not found in Oracle's records, that aggregates job titles within a particular type or category of job, regardless of career level.	Connell Decl., Ex. N (Madden Report, 15-16 & Appx. A), Ex. U (10/10/19 Madden Dep. 47:3-11, 174:1-15).
82. The basis for Dr. Madden's opinion during deposition that the last columns of the tables in her initial report compare employees doing similar work is her assumption that Oracle's job codes classify employees doing similar work.	Connell Decl., Ex. U (10/10/19 Madden Dep. 43:19-45:17).

**B. OFCCP's Theory That Employees Are Assigned Into Lower-Paying Roles Is Meritless**

Uncontested Material Facts	Oracle's Supporting Evidence
83. Dr. Madden's initial report does not analyze whether Oracle employees were hired into the career level to which they applied.	Connell Decl., Ex. O (Saad Rebuttal, ¶¶ 65-66).
84. The majority of applicants are hired into jobs associated with the career level for which they applied.	Connell Decl., Ex. M (Saad Report, ¶¶ 150-156).
85. Dr. Saad analyzed all new hires from 2013 to 2018 in the IC and M career levels and found there is no difference by gender or race in what job applicants were hired into relative to what they applied to.	Connell Decl., Ex. M (Saad Report, ¶¶ 150-156), Ex. O (Saad Rebuttal, ¶¶ 65-66).
86. Dr. Madden's rebuttal report shows statistically significant differences in "up-levelling" or "down-levelling" at hire for only a single IC career level for women and two IC career levels for Asians, and does not report any findings for the other four IC career levels or any of the M career levels.	Connell Decl., Ex. P (Madden Rebuttal, ¶ 36, Charts R1, R2); Waggoner Decl., ¶ 24.

Uncontested Material Facts	Oracle's Supporting Evidence
87. Over 80 percent of applicants are hired into the organizations for which they applied, and there are no statistically significant differences between men, women, Asians, or African-Americans.	Connell Decl., Ex. O (Saad Rebuttal Report, ¶¶ 78-79).
88. Individual front-line managers are the primary decision-makers with respect to which applicant to select for the jobs they post, and whether to adjust the level of the job based on the individual selected.	Gill Decl., ¶ 10; Bashyam Decl., ¶ 15; Webb Decl., ¶ 14; Sarwal Decl., ¶ 15; Hsin Decl., ¶ 10; Talluri Decl., ¶ 15.
89. Over half of the allegedly discriminatory initial job "assignments" occurred before January 1, 2013.	Connell Decl., Ex. M (Saad Report, ¶¶ 159-160; Attachment C1). <sup>1</sup>

**VIII. OFCCP'S DISPARATE IMPACT CLAIM FAILS BECAUSE IT DOES NOT IDENTIFY THE ADVERSE POLICIES OR PROVE CAUSATION**

Uncontested Material Facts	Oracle's Supporting Evidence
<i>Oracle incorporates herein Uncontested Facts 6-8; 33-56; 72-89.</i>	
90. Neither the NOV, SCN, Complaint, First Amended Complaint ("FAC"), nor SAC reference or imply a disparate impact claim, or identify a facially-neutral policy or practice that had a disparate impact on women, Asians, or African-Americans.	Holman-Harries Decl., ¶ 3, Ex. B (NOV), Ex. Y (SCN); Complaint; FAC; SAC.
91. OFCCP has not identified a specific policy or practice causing the statistical disparities it alleges.	Connell Decl., Ex. Q (OFCCP's October 11, 2017 Supplemental Responses to Oracle's Interrogatories, No. 25), Ex. R (OFCCP's July 5, 2019 Supplemental Responses to Oracle's Interrogatories, No. 50).
92. Oracle never had a policy or practice of basing starting pay on prior pay.	Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 203:20-204:7); Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Gill Decl., ¶ 9; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16.
93. Since October 2017, Oracle has prohibited managers or recruiters from inquiring about, or relying on, prior pay in setting starting pay.	Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 40:21-41:4), Ex. H (6/11/19 Cheruvu Dep. 84:22-85:8); Yakkundi Decl., ¶ 17; Gill Decl., ¶ 9; Ousterhout Decl., ¶ 16; Abushaban Decl., ¶ 16; Hsin Decl., ¶ 11.

<sup>1</sup> C1 shows there are 6,035 women, Asian, or African-American employees implicated by OFCCP's claims. Paragraphs 159-160 demonstrate that far fewer than half of that number were hired between 2013-2018.

Uncontested Material Facts	Oracle's Supporting Evidence
94. Oracle's compensation guidelines and practices are job-related and consistent with business necessity.	Waggoner Decl., ¶¶ 27-36, Exs. A-E; Gill Decl., ¶¶ 4-6; Yakkundi Decl., ¶¶ 17, 19; Sarwal Decl., ¶ 14; Fox Decl., ¶¶ 14-16; Bashyam Decl., ¶ 15; Webb Decl., ¶¶ 13-14; Abushaban Decl., ¶¶ 17-18; Suri Decl., ¶¶ 16-20; Chan Decl., ¶¶ 9-12.
95. OFCCP has not identified an equally effective alternative policy or practice without an adverse effect that would serve Oracle's business needs.	Holman-Harries Decl., ¶ 3, Ex. B (NOV), Ex. Y (SCN); Complaint; FAC; SAC; Connell Decl., Ex. Q (OFCCP's October 11, 2017 Supplemental Responses to Oracle's Interrogatories, No. 25), Ex. R (OFCCP's July 5, 2019 Supplemental Responses to Oracle's Interrogatories, No. 50).

**IX. OFCCP'S REFUSAL TO PRODUCE CLAIM SHOULD BE DISMISSED**

**A. Oracle Did Not Refuse to Produce Any Documents or Data Requested By OFCCP to Which OFCCP Was Entitled**

**1. Oracle Did Not Refuse to Produce a Compensation "Snapshot" for 2013, as Alleged in Paragraph 44(a) of the SAC**

Uncontested Material Facts	Oracle's Supporting Evidence
96. In an August 26, 2015 email, OFCCP asked Oracle to "please provide wage information for snapshot date 1/1/13, containing all fields already submitted for snapshot date 1/1/14?"	Holman-Harries Decl., ¶ 20, Ex. Q.
97. On August 28, 2015, OFCCP added a request that the 1/1/2013 compensation snapshot include 16 additional fields.	Holman-Harries Decl., ¶ 20, Ex. Q.
98. Shauna Holman-Harries, Oracle's Senior Director Diversity Compliance, responded to the August 28 request the same day, noting the request was enormous and that Oracle would provide the information as soon as it reasonably could, given OFCCP's other outstanding requests.	Holman-Harries Decl., ¶ 20, Ex. Q.
99. On October 29, 2015, Ms. Holman-Harries sent 29 emails providing information sought by OFCCP, explaining that certain information had already been provided, and asking OFCCP why it sought certain information.	Holman-Harries Decl., ¶ 21, Ex. R.

Uncontested Material Facts	Oracle's Supporting Evidence
100. On November 2, 2015, OFCCP's Acting District Director Robert Doles identified data and documents that OFCCP claimed were not provided.	Holman-Harries Decl., ¶ 22, Ex. S.
101. OFCCP admits that the November 2, 2015 letter identifies all of the data and documents that form the basis of its claims that Oracle failed or refused to produce documents as alleged in Paragraphs 44 and 45 of the Second Amended Complaint.	Connell Decl., Ex. E (6/26/19 Ratliff PMK Dep. 57:10-60:6; 86:1-13; Ex. 14).
102. On November 2, 2015, Ms. Holman-Harries sent an email responding to Mr. Doles' letter noting the October 29 production as responsive to his letter.	Holman-Harries Decl., ¶ 23, Ex. T.
103. On November 2, 2015, OFCCP responded stating that Oracle's October 29 production was not complete.	Holman-Harries Decl., ¶ 23, Ex. T.
104. On November 6, 2015, Ms. Holman-Harries asked OFCCP to review the materials produced on October 29 and to "let [her] know" if OFCCP "still [had] concerns."	Holman-Harries Decl., ¶ 24, Ex. U.
105. OFCCP did not respond to Ms. Holman-Harries' November 6, 2015 email before issuing the NOV.	Holman-Harries Decl., ¶ 25, Ex. V.
106. At no point did Oracle refuse to produce to OFCCP a compensation "snapshot" for 2013 containing the fields of data requested by OFCCP.	Holman-Harries Decl., ¶ 29; Siniscalco Decl., ¶ 7.
107. At the time when OFCCP issued the NOV, Oracle was still working on collecting data and documents responsive to OFCCP's requests.	Holman-Harries Decl., ¶ 3.

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2. **Oracle Did Not “Refuse to Produce” Data Showing Personnel Actions Providing Job and Salary Information, as Alleged in Paragraph 44(c) of the SAC**

Uncontested Material Facts	Oracle’s Supporting Evidence
108. OFCCP sent Oracle a request for data showing personnel actions providing job and salary information on or around February 11, 2015.	Holman-Harries Decl., ¶ 10, Ex. I.
109. Subsequent requests from OFCCP, including on April 27, 2015, also sought data showing personnel actions providing job and salary information.	Holman-Harries Decl., ¶¶ 11, 13, Exs. J, K.
110. On June 16, 2015, Oracle produced a compensation spreadsheet containing some of the job and salary information OFCCP had requested, and informed OFCCP of continuing difficulties in complying with certain aspects of OFCCP’s requests.	Holman-Harries Decl., ¶ 16, Ex. N.
111. On October 29, 2015, Oracle produced additional job and salary information requested by OFCCP, explained to OFCCP that gathering the additional data requested it is “extremely burdensome and time consuming,” and asked OFCCP to let Oracle know if there were “specific issues/persons about whom you have concern.”	Holman-Harries Decl., ¶ 21, Ex. R.
112. OFCCP did not respond to the question posed by Oracle on October 29, 2015.	Holman-Harries Decl., ¶ 21.
113. At no point did Oracle refuse to produce to OFCCP data showing personnel actions providing job and history information.	Holman-Harries Decl., ¶ 29; Siniscalco Decl., ¶ 7.
114. At the time when OFCCP issued the NOV, Oracle was still working on collecting data responsive to OFCCP’s requests.	Holman-Harries Decl., ¶ 3.

**3. Oracle Did Not Refuse to Produce Analyses of Its Compensation Systems, as Required by 41 C.F.R. § 60-2.17**

Uncontested Material Facts	Oracle's Supporting Evidence
115. On November 19, 2014, OFCCP requested from Oracle "[a]ll self-audits/pay equity studies."	Holman-Harries Decl., ¶ 5, Ex. D.
116. Oracle did not respond to OFCCP's November 19, 2014 request because it deems its internal pay equity analyses to be privileged.	Siniscalco Decl., ¶ 4, Ex. B (August 25, 2017 Siniscalco Declaration, ¶¶ 7(e), 10-11, and Ex. A); Waggoner Decl., ¶ 37.
117. On April 27, 2015, OFCCP asked Oracle to provide the "[d]ates of any internal pay equity analysis conducted during the past three years, as required under 60-2.17," and further asked Oracle to provide the "[d]ataset used for that analysis" and "[a]ctions taken, if any, as a result of the analysis."	Holman-Harries Decl., ¶ 13, Ex. K.
118. On June 2, 2015, Ms. Holman-Harries explained to OFCCP what Oracle does to comply with 41 C.F.R. § 60-2.17 to evaluate its compensation systems, and further explained that "pay equity at Oracle, and ensuring fairness and consistency among or between cohorts, is an-going [ <i>sic</i> ] process, and an integral part of Oracle's evaluation of its compensation systems."	Holman-Harries Decl., ¶ 15, Ex. M.
119. On June 2, 2015, Ms. Holman-Harries also explained to OFCCP that "[w]ith regard to pay audits to assess legal compliance with Oracle's non-discrimination obligations and to further ensure Oracle's compensation policies and practices are carried out, those are conducted by our outside EEO compliance counsel at Orrick."	Holman-Harries Decl., ¶ 15, Ex. M.
120. OFCCP admits that Oracle asserted attorney-client privilege over its pay equity analyses from an early date in the compliance evaluation.	Siniscalco Decl., ¶ 3, Ex. B; Connell Decl., Ex. E (6/26/19 Ratliff PMK Dep. 69:11-73:25, Ex. 14).

Uncontested Material Facts	Oracle's Supporting Evidence
121. At no point did Oracle refuse to produce to OFCCP non-privileged data or documents regarding its activities to comply with 41 C.F.R. § 60-2.17 to evaluate its compensation systems.	Holman-Harries Decl., ¶ 29; Siniscalco Decl., ¶ 7.

4. **Oracle Did Not Refuse to Produce Evidence of AAP Compliance, as Alleged in Paragraph 47 of the SAC**

Uncontested Material Facts	Oracle's Supporting Evidence
122. In its Scheduling Letter and attached Itemized Listing dated September 24, 2014, OFCCP asked Oracle to provide its "Executive Order Affirmative Action Program ("AAP")."	Holman-Harries Decl., ¶ 2, Ex. A.
123. Ms. Holman-Harries sent OFCCP Oracle's AAP and related documents on October 28, 2014, in response to OFCCP's initial request for documents at the beginning of the compliance review.	Holman-Harries Decl., ¶ 4, Ex. C.
124. At no point did Oracle refuse to produce to OFCCP any data or documents that are part of its AAP.	Holman-Harries Decl., ¶ 29; Siniscalco Decl., ¶ 7.
125. OFCCP admits that it has no documents indicating there were any further requests during the compliance evaluation period to Oracle for AAP documentation.	Siniscalco Decl., ¶ 3, Ex. B; Connell Decl., Ex. E (6/26/19 Ratliff PMK Dep., 21:14-25:9; 45:9-47:1); Holman-Harries Decl., Exs. A, C.

B. **By Not Bringing a Denial of Access Claim, OFCCP Is Effectively Barred From Seeking Any Relief Based on Oracle's Alleged Refusal to Produce**

Uncontested Material Facts	Oracle's Supporting Evidence
126. In a subsection entitled "Denial of Access," OFCCP's Federal Contract Compliance Manual states, "If a contractor denies access to its premises, records or other information necessary to conduct an onsite or offsite review, the CO must issue an SCN or proceed directly to an enforcement recommendation."	OFCCP Federal Contract Compliance Manual, § 8B02(a) ("Denial of Access").

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Uncontested Material Facts	Oracle's Supporting Evidence
127. OFCCP never brought a right of access case against Oracle before filing the present enforcement action.	Holman-Harries Decl., ¶ 30.

**C. OFCCP's Refusal to Produce Claim Fails Legally Because the Remedies It Seeks Are Unavailable as a Matter of Law**

Uncontested Material Facts	Oracle's Supporting Evidence
128. With the exception of allegations related to OFCCP's college recruiting hiring claim, OFCCP does not allege in the SAC that Oracle destroyed or failed to preserve required records.	SAC, ¶¶ 43-51.
129. OFCCP and Oracle resolved OFCCP's college recruiting hiring claim, as well as all record-keeping allegations related to that claim, and it already has been dismissed with prejudice and is no longer part of this action.	April 30, 2019 Order Adopting Consent Findings Regarding College Recruiting Program Allegations.

**D. OFCCP Is Not Entitled to an Adverse Inference (or Any Relief) Because OFCCP Has Obtained the Information It Claims Oracle Refused to Provide**

Uncontested Material Facts	Oracle's Supporting Evidence
<i>Oracle incorporates herein Uncontested Fact 125.</i>	
130. The requested compensation data for 2013 were, to the extent not produced earlier, produced in the hard-disk drive database produced on October 11, 2017.	Siniscalco Decl., ¶ 5.
131. OFCCP admits that the compensation data referenced in SAC ¶ 44(a) were produced in this litigation.	Siniscalco Decl., ¶ 3, Ex. B; Connell Decl., Ex. E (6/26/19 Ratliff PMK Dep., 77:6-15, Ex. 14).
132. To the extent relevant to OFCCP's remaining claim for compensation discrimination, Oracle has now produced in the litigation, in response to discovery requests from OFCCP, the data regarding job and salary history that OFCCP claims Oracle refused to produce during the audit.	Siniscalco Decl., ¶ 6.

Uncontested Material Facts	Oracle's Supporting Evidence
133. As it did during the audit, Oracle has continued in this litigation to assert the attorney client privilege and work product protection over certain of its pay equity analyses conducted by or at the direction of legal counsel.	Holman-Harries Decl., ¶ 15, Ex. M; Siniscalco Decl., ¶¶ 3, Ex. B (August 25, 2017 Siniscalco Decl., ¶¶ 7(e), 10-11, and Ex. A).
134. Even though the Court already has held that Oracle's compliance with 41 C.F.R. § 60-2.17 is not at issue in this litigation, Oracle already has produced documents to demonstrate what it did to comply with 41 C.F.R. § 60-2.17 with respect to its compensation systems at HQCA from January 1, 2013 to January 18, 2019.	Siniscalco Decl., ¶ 6.
135. Oracle has produced in this litigation the same AAP documents it provided to OFCCP during the underlying HQCA audit.	Siniscalco Decl., ¶ 6.

October 21, 2019

Respectfully submitted,

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