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

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| OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, | : | |
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| Plaintiff, | : | Case No. 2017-OFC-00006 |
| | : | |
| v. | : | |
| | : | |
| ORACLE AMERICA, INC. | : | |
| | : | |
| Defendant. | : | |

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

A. Additional Undisputed Facts Regarding Oracle's Compensation Policies

| Fact # | OFCCP's Undisputed Material Facts | Supporting Evidence |
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| 1. | Oracle's Affirmative Action Plan (AAP) states that Oracle's affirmative action policy and program are "supported by Oracle's executives, Larry Ellison, Safra Catz, and Mark Hurd." | Ex. 63, Affirmative Action Plan, ORACLE_HQCA_0000005013 in Vol. 2. |
| 2. | Oracle admits that its upper level managers and Human Resources department did not carry out any centralized compensation audits to comply with the Affirmative Action internal audit requirement of 41 CFR § 60-2.17. | OEx. 5, Holman-Harries May Dep. 279:17-281:4; OEx. 5 Holman-Harries May Dep. 243:9-244:3, 249:11-18, 252:5-252:8, 255:2-269:6, Ex. 29. |
| 3. | Oracle admits that the only actions it took to allegedly comply with the Affirmative Action internal audit requirement were to instruct first-level managers to take equity into consideration as they made their salary increase recommendations. | OEx. 5, Holman-Harries May Dep. 279:17-281:4; OEx. 5, Holman-Harries May 243:9-244:3, 249:11-18, 252:5-252:8, 255:2-269:6, Ex. 29. |

B. Additional Undisputed Facts Regarding the Issuance of the NOV

| Fact # | OFCCP's Undisputed Material Facts | Supporting Evidence |
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| 4. | The NOV provided Oracle with a list of the variables, including job title, that had been included in the regression analyses and the results of those analyses. | OFCCP SUF Fact 23 Ex. 61, NOV, Attachment A, at 10-12, DOL000000952-53. |
| 5. | Neither prior to the issuance of the NOV, nor later, during the parties' conciliation efforts, did Oracle ever suggest any alternative variable to better account for "all the skills, duties, or experience associated with a particular position" in a regression analysis. | OFCCP SUF Fact 25, 30, 35 Ex. 5, Holman-Harries 30b6 Dep. 185:14-24, 195:1-6 Decl. of Jane Suhr in support of OFCCP's Opposition to Oracle's Mot. for Summ. J. (Suhr. Decl.) ¶18, Ex. K, Letter from Gary Siniscalco to OFCCP, dated May 25, 2016, at p. 3. |

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| | | <p>ORACLE_HQCA_0000002094-2115</p> <p>Ex. 66, Show Cause Notice at 2, attached to Garcia Decl. in Vol. 2</p> <p>Suhr Decl. ¶21, Ex. N, Letter from Hea Jung Atkins to Oracle, dated September 9, 2016, at p. 2;</p> <p>Ex. 71, Consolidated Notes of Oracle employees Charles Nyakundi and Shauna Holman-Harries (Consolidated Notes) (Ex. 131 at Holman-Harries 30b6 Dep. re: conciliation), at p. 4, ORACLE_HQCA_0000607319-25, in Vol. 2;</p> <p>Suhr Decl. ¶31, Ex. T, Letter from Erin Connell to OFCCP, dated October 31, 2016, at pp. 6-12.</p> <p>Suhr Decl. ¶32, Ex. U, Letter from Janette Wipper to Oracle, dated December 9, 2016.</p> |
| 6. | OFCCP identified the data fields it included in its model by using the same titles Oracle used for the data fields in the 2014 snapshot. | <p>Ex. 61, NOV, Ex. A, DOL000000952-53 in Vol. 2</p> <p>OEx. 31, Dep. of Shauna Holman-Harries under Rule 30(b)(6), dated 8/1/19 (Holman-Harries 30b6 Dep.) 76:20-24, 80:17-97:11) (describing data fields in 2014 compensation snapshot, which included the other variables listed in the NOV--annual salary, gender, race, fulltime/part time status,</p> |

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| | | <p>exempt status, global career level, job specialty and job title);</p> <p>Ex. 68 (excerpt of 2014 compensation snapshot, which included data in the columns entitled “Gender,” “Race,” “Job Title,” “Job Function,” “Job Specialty,” “Global Career Level,” “Exempt Status,” “PT/FT,” and “Salary”), in Vol. 2.</p> |
| 7. | Oracle did not supply OFCCP with 2013 compensation data during the compliance review, so OFCCP continued with its compliance review based on the limited 2014 compensation data Oracle produced, along with some of Oracle’s compensation policies, and the evidence OFCCP uncovered in its interviews with Oracle’s management, Human Resources, and non-management employees. | Ex. 61, NOV at 3, n. 3; <i>id.</i> at Attachment A, n.1, in Vol. 2. |
| 8. | OFCCP found statistically significant pay disparities based on gender and race by conducting a regression analysis using the 2014 data Oracle provided, even after controlling for job title. | Ex. 61, NOV at 3-5; <i>id.</i> at Attachment A, in Vol. 2. |
| 9. | OFCCP found 8.41 standard deviations in pay between Men and Women in the Product Development job function, and 6.55 standard deviations in pay between Whites and Asians in Product Development – well above the 2 standard deviations from which discrimination can be inferred. | Ex. 61, NOV, Attachment A at 1-2, in Vol. 2. |
| 10. | The NOV stated that OFCCP was charging Oracle with hiring and compensation discrimination, the time periods during which it occurred (beginning on January 1, 2013 and continuing thereafter), the job functions involved (Product Development, Information Technology, and Support), the specific data fields from Oracle’s 2014 compensation data that OFCCP included in its standard regression analysis, and the results of the regression model. | Ex. 61, NOV, in Vol. 2. |
| 11. | The Order to Show Cause stated that OFCCP was charging Oracle with hiring and compensation discrimination, and attached a copy of the NOV, which | Ex. 61, NOV, in Vol. 2; |

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| | included the time periods during which it occurred, the job functions involved, and that OFCCP's findings were supported by statistical as well as other evidence. | Ex. 66, Order to Show Cause at 3 (stating that OFCCP's findings remain unrebutted and enclosing the NOV to reference the "violations at issue"), in Vol. 2. |
| 12. | The NOV considered the compensation of employees in "similar roles." | Ex. 61, NOV at 3-6, in Vol. 2. |
| 13. | Oracle's compliance attorney represents that he is "extremely well-versed" in "OFCCP's regulations" and "OFCCP's audit practices." | Decl. of Gary Siniscalco in support of Oracle's Opp'n to Mot. to Compel, dated 8/25/17, at ¶ 6, attached as Ex. B to the Decl. of Gary Siniscalco in support of Oracle's MSJ, dated 09/20/19. |
| 14. | Oracle's compliance attorney, Gary Siniscalco, confirmed in his written correspondence that he knew which data fields from Oracle's data OFCCP included in its standard regression model, as described in the NOV. | Ex. 70, Oracle America Inc.'s 5/25/16 email and attached Position Statement, at p. 15 <u>nn.17-18</u> in Vol. 2 |
| 15. | Oracle admits that they carried out pay equity audits to assess their compliance with nondiscrimination obligations at the direction of counsel. | OEx. 5, Homan-Harries May Dep. at 204:23-205:01; Oracle Position Statement re Section 2.17 Compliance, filed 10/3/19, at 9; Letter from Erin Connell, filed with Court on 10/3/19 by Oracle in response to the Court's 9/19/19 Order, with attached 154-page privilege log. |

C. Undisputed Facts Regarding Conciliation

| Fact # | OFCCP's Undisputed Material Facts | Supporting Evidence |
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| 16. | Oracle declined OFCCP's offer to meet in person to discuss the NOV until October 6, 2016. | Suhr Decl. ¶12 & Ex. E; Suhr Decl. ¶13 & Ex. F; Suhr Decl. ¶16 & Ex. I; |

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| | | Suhr Decl. ¶21 & Ex. N; Suhr Decl. ¶22 & Ex. O. |
| 17. | On March 29, 2016, OFCCP sent an email inviting Oracle to participate in a face-to-face meeting for conciliation, and requesting a rebuttal position from Oracle detailing how the observed disparities can be explained by legitimate, nondiscriminatory reasons or business necessity. | Suhr Decl. ¶12 & Ex. E. |
| 18. | On April 11, 2016, OFCCP received a letter from Oracle declining to engage in a face-to-face meeting and including an Appendix of 57 questions about the NOV. OFCCP believed that the questions were irrelevant and sought privileged information and were an attempt to delay conciliation. | Suhr Decl. ¶14 & Ex. F. OEx. 31, Holman-Harries 30b6 Dep. 176:24-177:6, 179:11-180:23; |
| 19. | On April 21, 2016, OFCCP sent a letter to Oracle responding to its 57 questions. OFCCP attempted to answer questions it believed to be relevant to conciliation. OFCCP’s response also provided information to Oracle about the relevant legal framework. | Suhr Decl. ¶15 & Ex. H. OEx. 31, Holman-Harries 30b6 Dep. 182:13-183:22. |
| 20. | On September 9, 2016, OFCCP sent a letter to Oracle. In that letter, OFCCP wrote: “While Oracle declares its desire to engage in conciliation, its stated desire rings hollow, given that it has refused to meet in person, it continues to emphasize and complain about the audit process and other procedural matters, its demand that OFCCP provide answers to approximately 60 questions, and its failure to make a meaningful, substantive response to OFCCP’s findings.” | Suhr Decl. ¶21 & Ex. N at p. 1. |
| 21. | In a letter dated September 23, 2016, OFFCP provided significant additional information regarding the agency’s legal framework for finding the violation and what the agency would consider to be sufficient to rebut the finding of violation. The agency explained that Oracle could not simply point to “a range of factors” that Oracle managers describe as relevant, without providing any “evidence demonstrating whether any factor in the ‘range of factors’ would actually change the statistical results in favor of Oracle.” | Suhr Decl. ¶24 & Ex. Q. |

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| 22. | At the October 6, 2016 conciliation meeting OFCCP advised Oracle that to the extent Oracle was asserting job assignment was an explanation for the pay disparities, OFCCP was prepared to assert that job assignment was a tainted variable, as such a defense would mean that Oracle's compensation discrimination was driven by steering employees into lower-paying job assignments. | Ex. 71, Consolidated Notes of Oracle employees Charles Nyakundi and Shauna Holman-Harries (Consolidated Notes), at p. 5, ORACLE_HQCA_0000607323 in Vol. 2. |
| 23. | At the October 6, 2016 conciliation meeting Oracle's counsel continued to advocate for comparisons of "cohorts," indicating that Oracle's workforce "defies statistical analysis." | Decl. of Hea Jung Atkins (Atkins Opp'n Decl.) ¶26 & Ex. T, DOL000044161. <i>See also</i> Ex. 71, Consolidated Notes of Oracle employees Charles Nyakundi and Shauna Holman-Harries (Consolidated Notes), at p. 4, ORACLE_HQCA_0000607322 in Vol. 2; Suhr Decl. ¶25. |
| 24. | On October 7, 2016, Mr. Siniscalco wrote to Ms. Wipper: "We all feel the conciliation meeting was very productive, and moved both sides in a positive direction." | Suhr Decl. ¶30 & Ex. S. |
| 25. | On October 31, 2016, Oracle sent OFCCP a letter that did not make a counteroffer or provide a counter-statistical analysis. Oracle instead presented narrative information about individuals. | Suhr Decl. ¶31 & Ex. T, at 9-11. |
| 26. | On December 9, 2016, OFCCP wrote to Oracle, noting that "Oracle still has not provided a competing statistical analysis to rebut OFCCP's regressions," and providing case law on the requirements for comparators under Title VII law. | Suhr Decl. ¶32 & Ex. U, at p. 6. |
| 27. | The parties engaged in 16 months of active mediation after OFCCP filed the complaint in this case. | Decl. of Laura Bremer in support of OFCCP's opposition to Oracle's Mot. for Summ. J, dated 11/1/19 (Bremer Decl.) ¶2. |

D. Undisputed Facts Regarding Oracle’s Failure to Produce Documents

| Fact # | OFCCP’s Undisputed Material Facts | Supporting Evidence |
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| 28. | OFCCP first requested educational data in a letter on November 19, 2014 and another email on February 10, 2015. | Holman-Harries Decl., Ex. D, DOL000001362; Holman-Harries Decl., Ex. I, ORACLE HQCA 0000000598 |
| 29. | In an email dated December 11, 2014, Oracle told OFCCP that “we do not maintain education or work experience in our database.” | Holman-Harries Dec., Ex. E, ORACLE_HQCA_0000000296 |
| 30. | OFCCP specifically requested the school attended and educational degree for the 2014 snapshot in a letter on April 27, 2015. | Holman-Harries Dec., Ex. K, DOL000001238. |
| 31. | OFCCP made additional requests for the same educational data on May 11, May 19, May 28, and July 30, 2015. | Siniscalco Decl., Ex. A, Letter from Hea Jung Atkins to Gary Siniscalco, dated 7/30/15, question 2, DOL000001128. |
| 32. | In her October 29, 2015 email responding to outstanding document requests, Shauna Holman-Harries responded to OFCCP’s request for data on “Names of school attended” and “Education degree earned” for the 2014 snapshot by stating: “We don’t have this data in any database and if it is available in any individual employee’s file it would be extremely burdensome and time consuming to compile.” In that email, Ms. Holman Harries Oracle did not indicate that Oracle would attempt to compile this information. | Holman-Harries Decl., Ex. R, Email from Shauna Holman-Harries to Hoan Long dated 10/29/15, question 2 and response, ORACLE_HQCA_000002235. OEx. 31, Holman-Harries PMK Dep. 97:12-24. |
| 33. | In a November 2, 2015 letter from Robert Doles to Gary Siniscalco, OFCCP one again requested this educational information. | Holman-Harries Decl., Ex. K, DOL000001053 |
| 34. | Oracle admits that it did not produce the requested educational data prior to the issuance of the NOV on March 11, 2016. | OEx. 31, Holman Harries PMK Dep. 45:22-46:9 |
| 35. | Oracle did not produce the requested educational data between the filing of the NOV and the filing of the complaint on January 17, 2017. | Bremer Decl. ¶3. |
| 36. | Although Oracle had previously stated twice that they did not maintain education data in their database, Shauna Holman-Harries testified in her August 1, 2019 PMK | OEx. 31, Holman-Harries PMK Dep. 38:25-39:20. <i>See supra</i> AUF 29, 32. |

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| | deposition that in fact at least “some of the education” data was in Oracle’s databases. | |
| 37. | After litigation commenced, in 2018 and 2019, Oracle produced some educational data in database form. | OEx. 40, Letter from Laura Bremer to Erin Connell, dated 2/15/10 at 1. |
| 38. | In her October 29, 2015 email responding to outstanding document requests, Shauna Holman-Harries responded to OFCCP’s request for data on “Prior salary immediately before joining Oracle” by referring to language stating: “We don’t have this data in any database and if it is available in any individual employee’s file it would be extremely burdensome and time consuming to compile.” In that email, Ms. Holman Harries Oracle did not indicate that Oracle would attempt to compile this information. | Holman-Harries Decl., Ex. R, Email from Shauna Holman-Harries to Hoan Long dated 10/29/15, question 2 and response, ORACLE_HQCA_000002235. OEx. 31, Holman-Harries PMK Dep. 97:12-24. |
| 39. | In a November 2, 2015 letter from Robert Doles to Gary Siniscalco, OFCCP once again requested this “prior salary” information. | Holman-Harries Decl., Ex. K, DOL000001053. |
| 40. | Oracle admits that it did not produce the requested prior salary information prior to the issuance of the NOV on March 11, 2016. | OEx. 31, Holman Harries PMK Dep. 45:22-46:9 |
| 41. | Oracle did not produce the requested prior salary information between the filing of the NOV and the filing of the complaint on January 17, 2017. | Bremer Decl. ¶3. |
| 42. | After litigation commenced, Oracle produced documents showing that prior to October 2017, a candidate’s compensation information at his or her previous employer was a “ Mandatory ” field in Oracle’s “Candidate Offer Information” document. | SUF 162 Ex. 48, “Candidate Offer Information” for Redacted , dated 12/22/08, ORACLE_HQCA_0000472274 Ex. 49, “Candidate Offer Information” for Redacted , dated 1/6/15, ORACLE_HQCA_0000464341-44. |
| 43. | After litigation commenced, in 2018 and 2019, Oracle produced some prior salary data in database form. | Ex. 91, Madden Rpt. at 49-50, Table 4, in Vol. 3. |

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| 44. | On March 4, 2015, OFCCP requested a listing of Oracle employees who have made discrimination, harassment or retaliation complaints. | OEx. 43, Email dated 3/4/15 from Brian Mickel of OFCCP to Shauna Holman-Harries, p. 1. OEx. 31, Holman-Harries PMK Dep. 135:19-137:3. |
| 45. | On March 19, 2015, OFCCP requested from Oracle all information related to internal complaints of workplace discrimination. | OEx. 44, Email dated 3/19/15 from Brian Mickel of OFCCP to Shauna Holman-Harries, p. 1 |
| 46. | On March 20, 2015, OFCCP received a response from OFCCP, stating “None” in response to the request for the listing of employees who had made discrimination complaints. | OEx. 45, Letter from Jane Suhr to Gary Siniscalco, dated 4/15/15, at p. 2 (discussing March 20 email). Email from Shauna Holman-Harries to Brian Mickel, dated 3/20/15, included as an attachment to the 4/15/15 Suhr letter (on p. 9 of the complete document, which was marked as Dep. Ex. 128 to the PMK Dep. of Shauna Holman-Harris). OEx. 31, Holman-Harries PMK Dep. 137:4-138:9. |
| 47. | On April 15, 2015, OFCCP sent a letter to Gary Siniscalco recounting that it had found several EEOC charges filed by Oracle employees at the Redwood Shores facility, and expressing concern about Oracle’s lack of candor about the existence of the complaints. | OEx. 45, Letter from Jane Suhr to Gary Siniscalco dated 4/15/15, pp. 1-2. OEx. 31, Holman-Harries PMK Dep. 138:10-22. |
| 48. | OFCCP then requested “all internal and external complaints of discrimination, harassment or retaliation filed at Oracle headquarters within the past three years.” | OEx. 45, Letter from OFCCP to Gary Siniscalco dated 4/15/15, pp. 1-2. OEx. 31, Holman-Harries PMK Dep. 138:23-139:23. |
| 49. | Oracle admits that during the compliance review, Oracle did not provide the full requested information regarding internal and external discrimination complaints. | OEx. 31, Holman-Harries PMK Dep. 140:22-141:1. |

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| 50. | In her PMK Deposition, Shauna Holman-Harries testified that Oracle was waiting for OFCCP to provide a basis for requesting the 2013 compensation snapshot before Oracle would provide it. | OEx. 31, Holman-Harries PMK Dep. 71:14-73:13 |
| 51. | Oracle admits that it did not produce the 2013 snapshot of its compensation data prior to the issuance of the NOV on March 11, 2016. | OEx. 5, Holman-Harries May Dep. 288:14-289:14.; |
| 52. | After the complaint was filed, Oracle resisted attempts at discovery regarding persons outside the classes identified in the NOV. | Bremer Decl. ¶39. OEx. 36, Letter from Erin Connell to Laura Bremer dated 10/11/17 at 3. |

E. Undisputed Facts Regarding Expert Witnesses' Testimonies, Reports, and Analyses

| Fact # | OFCCP's Undisputed Material Facts | Supporting Evidence |
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| 53. | Dr. Madden's expert report relies on a multiple regression statistical analysis. | Ex. 91, Dr. Madden's 7/19/19 Report, pp. 9-11. |
| 54. | Dr. Madden's July 2019 Expert Report uses data on employees' salaries at their prior employers, where available, to show that Oracle perpetuated gender and race based compensation disparities in the wider labor market as to its new hires in its headquarters. | Ex. 91, Madden Report, pp. 49-50, Table 4. |
| 55. | Dr. Saad's Rebuttal Report contains an extensive discussion of the use of prior pay in regression analyses. | Ex. 94, Saad Rebuttal, pp. 71-73 |
| 56. | Dr. Madden's regression analysis controls for education, which is an important variable under the human capital theory of labor economics. | Ex. 91, Madden Report, pp. 5-11, Tables. |
| 57. | Dr. Saad's Rebuttal Report contains an extensive discussion of the use of education in regression analyses. | Ex. 94, Saad Rebuttal, pp. 13-15, 43-48. |

DATED: November 1, 2019

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