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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 **DECLARATION OF ERIN M. CONNELL IN SUPPORT OF ORACLE AMERICA, INC.'S MOTION TO SEAL LIMITED PORTIONS OF REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT**

I, Erin M. Connell, declare as follows:

1. I am a member of the State Bar of California and authorized to practice before this Court. I am a partner with Orrick, Herrington & Sutcliffe LLP, attorneys of record for Defendant Oracle America, Inc. in the above-titled action. I make this declaration in support of Defendant Oracle America, Inc.'s ("Oracle") Motion to Seal limited portions of the materials submitted in support of its Reply in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment (collectively, "Reply"). The facts set forth in this declaration I know to be true of my own personal knowledge, except where such facts are stated to be based on information and belief, and those facts I believe to be true. If called as a witness, I could and would testify competently to the matters set forth in this declaration.

2. I have reviewed the materials that Oracle seeks to seal in its Motion to Seal its Reply. I have also reviewed the attached versions of the aforementioned documents. The attached versions include redactions covering the information that Oracle both deems confidential and seeks to seal through its motion; more specifically:

Exhibit	Document Name	Confidential Material
A	Defendant Oracle America, Inc.'s Response to Plaintiff OFCCP's Statement of Disputed Facts in Opposition to Oracle's Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment	Identifying information of non-party job candidates: pp. 50, 59, 168, 245, 247, 260; Identifying information of non-party employee: p. 151; Information related to budgets, bonuses and/or raises: pp. 12, 13, 45-47, 64, 104, 113, 121, 131-132, 142-146, 158-159, 163-164; Salary range information: pp. 23-24; Internal job structure: pp. 33-36; Information regarding equity grants: pp. 46, 141-142, 164; Compensation and/or salary offer information of non-party job candidate: pp. 50, 246; and Compensation information of non-party employees: pp. 160-161.
B	Defendant Oracle America, Inc.'s Response to Plaintiff OFCCP's Statement of Additional Uncontested Facts in Opposition to Oracle's Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment	Identifying information of non-party job candidates: p. 37.
C	Defendant Oracle America, Inc.'s Responses to Plaintiff's Objections to Evidence in Support of Oracle's Motion for Summary Judgment	Salary range information: p. 13.

3. The materials that Oracle seeks to seal in its Motion to Seal include excerpts from depositions and/or documents produced to OFCCP and expressly designated as "Confidential," materials filed in this matter with a concurrent motion to seal, and/or materials filed in this matter that Oracle indicated to this Court and OFCCP, by letter, it will move to seal, pursuant to the May 22, 2019 Protective Order adopting and amending Judge Larsen's May 26, 2017 Protective Order ("Protective Order"):

a. Declaration of Kate Waggoner in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment, or in the Alternative, For Partial Summary Judgement ("Waggoner Decl."), filed with a concurrent Motion to Seal on October 21, 2019;

b. Waggoner Decl., Ex. D, produced confidential at ORACLE_HQCA_0000364276;

c. Declaration of Norman E. Garcia in Support of OFCCP's Motion for Summary Judgment ("Garcia Decl."), Ex. 29, produced confidential at ORACLE_HQCA_0000001729-32;

d. Garcia Decl., Ex. 30, produced confidential at ORACLE_HQCA_0000432004–06;

e. Garcia Decl., Ex. 33, produced confidential at ORACLE_HQCA_0000437696–701;

f. Garcia Decl., Ex. 34, produced confidential at ORACLE_HQCA_0000434971–72;

g. Garcia Decl., Ex. 48, produced confidential at ORACLE_HQCA_0000472274;

h. Garcia Decl., Ex. 49, produced confidential at ORACLE_HQCA_0000464341–44;

i. Garcia Decl., Ex. 52, produced confidential at ORACLE_HQCA_0000029001 & 0000033810;

j. Garcia Decl., Ex. 54, produced confidential at ORACLE_HQCA_0000034108;

k. Garcia Decl., Ex. 84, produced confidential at ORACLE_HQCA_0000022961;

l. Declaration of Laura C. Bremer ("Bremer Decl."), Ex. 11, Deposition of Juan Loaiza taken on June 14, 2019 ("Loaiza Dep."), with relevant portions designated confidential on July 10, 2019;

m. Bremer Decl., Ex. 8, 30(b)(6) Deposition of Kate Waggoner taken on July 19, 2019, with relevant portions designated confidential on August 12, 2019;

n. Bremer Decl., Ex. 2, produced confidential at ORACLE_HQCA_0000400688-89;

o. Bremer Decl., Ex. 11, Loaiza Dep.;

p. Bremer Decl., Ex. 12, Declaration of Avinash Pandey, which Oracle notified this Court and OFCCP it will move to seal by its November 6, 2019 letter;

q. Bremer Decl., Ex. 27, produced confidential at ORACLE_HQCA_0000011640;

r. Bremer Decl., Ex. 29, produced confidential at ORACLE_HQCA_0000036993-94; and

s. Declaration of Harmohan Suri in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment, or in the Alternative, For Partial Summary Judgement, filed with a concurrent Motion to Seal on October 21, 2019.

I declare under penalty of perjury in accordance with the laws of the United States of America that the foregoing is true and correct.

Executed on November 8, 2019, in San Francisco, California.

Erin M. Connell

EXHIBIT A

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 ORACLE AMERICA, INC.'S RESPONSE TO PLAINTIFF OFCCP'S STATEMENT OF DISPUTED FACTS IN OPPOSITION TO ORACLE'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT**

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

As the content of Oracle's replies below confirm, OFCCP's responses fail to create any material disputes of fact. Between the below additional replies and Oracle's response to OFCCP's additional 57 facts in opposition—to which Oracle responds separately—OFCCP has made *many* attempts at conjuring a material dispute of fact. It fails in each instance and Oracle's Motion should be granted.

EVIDENCE IN SUPPORT OF ORACLE'S STATEMENT OF DISPUTED FACTS

The following individuals provided testimony on which Oracle relies in support of its Motion for Summary Judgment and whose declarations also are cited in support of Oracle's Statement of Disputed Facts and in the below replies:

- **Farouk Abushaban**. Mr. Abushaban is a Program Manager 5 in the Product Development job function. ("Abushaban Decl.").
- **Kow Adjei**. Mr. Adjei is a Software Developer 4 in the Product Development job function. ("Adjei Decl.").
- **Carolyn Balkenhol**. Ms. Balkenhol is a Business Planning Director.
- **Balaji Bashyam**. Mr. Bashyam is Senior Vice President, Global Customer Support, Cloud Services. ("Balkenhol Decl.").
- **Suratna Budalakoti**. Mr. Budalakoti is a Software Developer 4 in the Product Development job function. ("Budalakoti Decl.").
- **Janet Chan**. Ms. Chan is a Program Mgmt Sr Director-Prod Dev in the Product Development job function. ("Chan Decl.").
- **Leor Chechik**. Ms. Chechik is a Software Developer 4 in the Product Development job function. ("Chechik Decl.").

- **Erin Connell**. Ms. Connell is one of Oracle's lawyers and has attached to her declaration in support of Oracle's motion for summary judgment, or, in the alternative partial summary judgment certain exhibits cited in this Reply. ("Connell Decl."). Ms. Connell also submitted a declaration in support of Oracle's opposition to OFCCP's motion for summary judgment that attaches certain exhibits cited in this Reply ("Connell Opp. Decl."). Ms. Connell also submits a declaration concurrently with this response that attaches certain exhibits cited in this Reply ("Connell Reply Decl.").
- **Kristin Desmond**. Ms. Desmond is a Software Development Director in the Product Development job function. ("Desmond Decl.").
- **Jon Tyler Eckard**. Mr. Eckard is a Technical Account Manager Director in the Support job function. ("Eckard Decl.").
- **Barbara Fox**. Ms. Fox is a Product Mgmt/Strategy Snr Director-ProdDev in the Product Development job function. ("Fox Decl.").
- **Suzette Galka**. Ms. Galka is an IT Director in the Information Technology job function. ("Galka Decl.").
- **Amanda Gill**. Ms. Gill is Vice President – Talent Advisory, North America. ("Gill Decl.").
- **Shauna Holman-Harries**. Ms. Holman-Harries is Senior Director Diversity Compliance and has attached to her declaration certain exhibits cited in this Reply. ("Holman-Harries Decl.").
- **Cindy Hsin**. Ms. Hsin is a Software Development Senior Director in the Product Development job function. ("Hsin Decl.").
- **Christina Kite**. Ms. Kite is a Product Management and Strategy Vice President in the Product Development job function. ("Kite Decl.").

- **Chandrasekhar Kottaluru**. Mr. Kottaluru is an Applications Developer 3 in the Product Development job function. ("Kottaluru Decl.").
- **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. ("Miranda Decl.").
- **Brian Oden**. Mr. Oden is a Technical Writer Director in the Product Development job function. ("Oden Decl.").
- **Rita Ousterhout**. Ms. Ousterhout is a Software Development Senior Director in the Product Development job function. ("Ousterhout Decl.")
- **Leslie Robertson**. Ms. Robertson is a Software Development Vice President in the Product Development job function. ("Robertson Decl.").
- **Richard Sarwal**. Mr. Sarwal is the Senior Vice President and General Manager for software and hardware support within Oracle's Customer Services organization. ("Sarwal Decl.").
- **Gary Siniscalco**. Mr. Siniscalco is one of Oracle's lawyers and has attached to his declaration in support of Oracle's motion for summary judgment or, in the alternative partial summary judgement certain exhibits cited in this Reply. ("Siniscalco Decl.")
- **Sachin Shah**. Mr. Shah is a Technical Account Manager Sr. Director in the Support job function. ("Shah Decl.").
- **Harmohan Suri**. Mr. Suri is a Product Support Senior Director in the Support job function. ("Suri Decl.").
- **Chandna Talluri**. Ms. Talluri is an IT Director in the Information Technology job function. ("Talluri Decl.").
- **Vickie Thrasher**. Ms. Thrasher is Group Vice President of Human Resources – Americas for Oracle. ("Thrasher Decl.").

- **Kate Waggoner**. Ms. Waggoner is Senior Director, Global Compensation and has attached to her declaration certain exhibits cited in this Reply. ("Waggoner Decl.").
- **Campbell Webb**. Mr. Webb is Senior Vice President of Product Engineering and Operations. ("Webb Decl.").
- **Athena Wu**. Ms. Wu is a Technical Analyst 4 – Support in the Support job function. ("Wu Decl.").
- **Nachiketa Yakkundi**. Mr. Yakkundi is a Product Support Senior Manager in the Support job function. ("Yakkundi Decl.").

I. ORACLE IS COMMITTED TO EEO AND DIVERSITY

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
1. Oracle's long-time President and current co-CEO, Safra Catz, is female. **Supporting Evidence:** Thrasher Decl., ¶ 6.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
2. One-third of Oracle's Board of Directors is female or from a diverse background. **Supporting Evidence:** Thrasher Decl., ¶ 6.	**Undisputed.** 1) OFCCP does not dispute the fact that two-thirds of Oracle's Board of Directors are white males.	**OFCCP concedes this fact is undisputed and material.** However, OFCCP adds that "OFCCP does not dispute the fact that two-thirds of Oracle's Board of Directors are white males." This is not the fact that Oracle submitted nor does OFCCP offer any support for its alternative fact. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). OFCCP's alternative fact should be disregarded.
3. Oracle's General Counsel, Lead Employment Counsel, Global Director of	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Compensation, Head of Human Resources for the Americas and Global Head of Human Resources are all women. **Supporting Evidence:** Thrasher Decl., ¶ 6		
4. Thomas Kurian, who led Oracle's Product Development line of business for most of the relevant time period, is Asian. **Supporting Evidence:** Thrasher Decl., ¶ 6.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
5. Oracle's managers are required to take regular non-discrimination training. **Supporting Evidence:** 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.	**Disputed.** 1) OFCCP contests this fact because Oracle's managers were not required to take affirmative action training until October 2015, and when they did take it, it did not address compensation. A) Oracle first made affirmative action training mandatory for all US managers and HR personnel in October 2015. Citation: - OFCCP Statement of Undisputed Facts, Filed October 21, 2019 (OFCCP SUF), Fact 228; - Ex. 77,[1] "Affirmative Action Training at	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP introduces no evidence that rebuts that "Oracle's managers are required to take regular non-discrimination training." 1) OFCCP disputes the fact because it (wrongly) asserts "Oracle's managers were not required to take affirmative action training until October 2015, and when they did take it, it did not address compensation." This does not directly rebut the fact that "Oracle's managers are required to take regular non-discrimination training," which was about *all*

[1] OFCCP used two exhibit references in its Statement of Genuine Disputes of Material Fact. In the second column, "Ex." refers to the exhibits that were attached to the Garcia Declaration Supporting OFCCP's Motion for Summary Judgment. "OEx" refers to exhibits attached to the Bremer Declaration Opposing Oracle America, Inc.'s (Oracle) Motion for Summary Judgment, or, in the Alternative, for Partial Summary Judgment.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Oracle," dated 10/12/15, slide 2 (notes), slide 6, and slide 6 (notes), ORACLE_HQCA_00004 16488 -2, -11, -12 in Vol. 3. B) Vice President of Human Resources Madhavi Cheruvu (Ms. Cheruvu), Oracle's Human Resource Partner for President Thomas Kurian's Product Development line of business (LOB) and seven other LOBs, testified that she has not taken any affirmative action training and does not know any affirmative action requirements that Oracle has to meet. Citation: ☐ OFCCP SUF: Facts 48, 49, 231; ☐ OEx. 4, Dep. of Madhavi Cheruvu, dated 6/11/19 (Cheruvu Dep.) 11:8-17, 60:12-19, 240:23–241:11, 276:3–14. C) Ms. Cheruvu testified that she has not taken any affirmative action training and does not know any affirmative action requirements that Oracle has to meet. Citation: ☐ OFCCP SUF: Fact 231; ☐ OEx. 4, Cheruvu Dep. 23:2-10, 240:23–241:11. D) Oracle's Executive Vice President of Human Resources Joyce Westerdahl (Ms. Westerdahl) testified that she did not know if	non-discrimination training, and therefore all evidence submitted under this heading does not contradict Oracle's fact and should be disregarded. A) Oracle incorporates its response to OFCCP's SUF 228. B) Oracle incorporates its responses to OFCCP's SUFs 48, 49, 231. C) Oracle incorporates its response to OFCCP's SUF 231. D) This assertion is about "affirmative action plan training," not *all* non-discrimination training, and is therefore non-responsive. E) Oracle incorporates its response to OFCCP's SUF 225. F) Oracle incorporates its response to OFCCP's SUF 226. G) Oracle incorporates its response to OFCCP's SUF 227. H) This assertion is about "affirmative action non-discrimination training," not *all* non-discrimination training, and is therefore non-responsive. I) This assertion is about "guidance or training as to how to ensure that men and woman were paid equitably or how to ensure that minorities and whites were paid equitably," not *all* non-discrimination training, and is therefore non-responsive. J) This assertion is about "training or guidance as to how to ensure that men and woman were paid equitably or how to ensure that minorities and whites were paid equitably," not *all* non-

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Oracle conducted any affirmation action plan training. She just assumed that it did. Citation: ☐ OFCCP SUF: Fact 42; ☐ OEx. 1, Dep. of Joyce Westerdahl dated 5/30/19 (Westerdahl Dep.) 12:14-16, 306:16-23. E) The U.S. Employee Handbook that Oracle provided to OFCCP in the audit contains a section titled "Internal Training and Development" with subsections titled "Required Training" and "Online Training" that do not list any training for affirmative action. Citation: ☐ OFCCP SUF: Fact 225; ☐ Ex. 11, "U.S. Employee Handbook," latest revision date February 2014 (Handbook) (Ex. 25 at Holman-Harries May Dep.), ORACLE_HQCA_0000000509-10 in Vol. 1. F) The Affirmative Action Section of the U.S. Employee Handbook that Oracle provided to OFCCP in the audit did not address compensation. Citation: ☐ OFCCP SUF: Fact 226; ☐ Ex. 11, ORACLE_HQCA_0000000474 in Vol. 1. G) Oracle has never revised the	discrimination training, and is therefore non-responsive. 2) OFCCP also disputes the fact by arguing that Oracle conducted an affirmative action training in 2015, but only because of an increased political emphasis on regulatory compliance. This does not directly rebut the fact that "Oracle's managers are required to take regular non-discrimination training," which was about *all* non-discrimination training, and therefore all evidence submitted under this heading is non-responsive and should be disregarded. A) Oracle incorporates its response to OFCCP's SUF 229. B) Oracle incorporates its response to OFCCP's SUF 230. This evidence is also about "affirmative action training," not *all* non-discrimination training, and is therefore non-responsive.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	U.S. Employee Handbook to address equity or affirmative action with respect to employee compensation. Citation: ☐ OFCCP SUF: Fact 227; ☐ OEx. 5, Dep. of Shauna Holman-Harries dated 5/8/19 (Holman-Harries May Dep.) 159:22–160:8. H) While Oracle did conduct affirmative action non-discrimination training in 2015, its focus was on non-discrimination in hiring. This training did not address how to ensure compensation equity. Citation: ☐ OEx. 3, "Affirmative Action at Oracle," copyright 2015, ORACLE_HQCA_00004 17320-5. I) Former Senior Director of Global Organization and Talent Development Kristen Hanson Garcia (Ms. Hanson Garcia), a management position within Oracle's Human Resources Department, testified that she did receive any guidance or training as to how to ensure that men and women were paid equitably or how to ensure that minorities and whites were paid equitably. She was also not aware that Oracle had an Affirmative Action Plan. Citation:	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	▯ OEx. 6, Kirstin Hanson Garcia Decl. (KHG Decl.) ¶ 9. J) Former Senior Director of Customer Experience User Experience Christina Kolotouros (Ms. Kolotouros) testified that while she worked at Oracle, she did not receive any training or guidance as to how to ensure that men and woman are paid equitably or how to ensure that minorities and white are paid equitably. Citation: ▯ OEx 7, Christina Kolotouros Decl. (Kolotouros Decl.) ¶10. 2) OFCCP further disputes this fact because even though Oracle recognized its obligation to conduct affirmative action training for employees involved in personnel and compensation decisions of its employees, it only conducted the mandatory October 2015 training because of the administration's increased emphasis on regulatory compliance at that time. A) Oracle stated that this affirmative action training was "required" due to the Administration's focus on hiring, selection, promotional opportunities and pay, and other terms and conditions of employment. Citation: ▯ OFCCP SUF: Fact 229; ▯ Ex. 77, "Affirmative Action Training at Oracle," dated 10/12/15,	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	slide 3, ORACLE_HQCA_00004 16488-5 in Vol. 3. B) Oracle waited until enforcement to comply even though it recognized that the affirmation action training was "required" because federal contractor employees must take this course if they are involved in recruitment, screening, selection, hiring, promotion, or other related employment making decisions. Citation: ☐ OFCCP SUF: Fact 230; ☐ Ex. 77, slide 4, ORACLE_HQCA_00004 16488-7 in Vol. 3.	
6. Oracle's managers are instructed that pay "differences need to be based on fair, justifiable and non-discriminatory criteria." **Supporting Evidence:** Waggoner Decl., Ex. B (ORACLE_HQCA_00 00364183 at 6), Ex. C (ORACLE_HQCA_00 00364272 at 15); Connell Decl., Ex. B (8/1/19 Holman-Harries PMK Dep. 265:23-266:13).	**Disputed.** 1) OFCCP contests this fact because Oracle's managers are not required to take the training wherein this statement is made. If the managers do not take the training, they do not receive this instruction. A) Kate Waggoner (Ms. Waggoner), Oracle's Senior Director of Global Compensation who Oracle designated as the person most knowledgeable (PMK) about Oracle's compensation topics in *Jewett v. Oracle Corp. Inc.*, testified that managers are not required to listen to or go online to review the compensation training. Oracle confirmed that PMK admissions in *Jewett* are binding in this case.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP disputes this fact because it contends that managers are "not required to take the training wherein this statement is made" and therefore they "do not receive this instruction." This does not directly rebut the fact, which is about the instruction that is given, not whether trainings are mandatory. OFCCP offers no evidence to rebut the fact that Oracle instructs its managers that pay "differences need to be based on fair, justifiable, and non-discriminatory criteria." A) OFCCP's response is about whether trainings are mandatory, not the instructions that are in the training, and is therefore non-responsive. B) OFCCP's response is about

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Citation: □ OEx. 2, PMK Dep. of Kate Waggoner in *Jewett v. Oracle Corp. Inc.*, Case No. 17-cv-02669 (Sup. Ct. San Mateo), dated 7/26/18, (Waggoner PMK *Jewett* Dep.) ORACLE_HQCA_00004 00660-62, 7:14-15, 77:3-78:5; □ Ex. 85, Email from Oracle to OFCCP, dated 7/12/19, in Vol 3. B) Ms. Waggoner, who Oracle again designated as the PMK for compensation topics in this case a year later, and who continues to serve as Oracle's Senior Director of Global Compensation, again testified that managers are not required to take the compensation training. Citation: □ OFCCP SUF: Fact 110; □ OEx. 8, Dep. of Kate Waggoner under Rule 30(b)(6) dated 7/19/19 (Waggoner PMK Dep.) 7:12-15, 79:2-20, 81:19-82:4 in Vol. 2. C) Oracle's Senior Director of Diversity Compliance Shauna Holman-Harries (Ms. Holman-Harries) also did not also know whether this compensation training was required training for managers. Citation: □ OEx. 5, Holman-Harries	whether trainings are mandatory, not the instructions that are in the training, and is therefore non-responsive. OFCCP also cites to SUF 110, which is about corporate budgets and is therefore non-responsive. C) OFCCP's response is about whether trainings are mandatory, not the instructions that are in the training, and is therefore non-responsive. D) OFCCP's response is about whether an individual was asked by his managers "if he thought any of his reporting employees' pay should be adjusted because their pay was not equitable." It has nothing to do Oracle's instructions to its managers and is therefore non-responsive. E) OFCCP's response is about whether an individual had "the authority to adjust the pay of his reporting employees if he believed the pay of an employee was too low for the work performed or too low as indicated by Oracle's compensation ratio." It has nothing to do Oracle's instructions to its managers and is therefore non-responsive. 2) OFCCP also disputes this fact because "Oracle prevents compliance by providing a limited budget." This has nothing to do with Oracle's instructions to its managers that pay "differences need to be based on fair, justifiable, and non-discriminatory criteria." A) OFCCP's response is about whether employees are paid at the

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	May Dep. 18:4-11; 121:25-126:17. D) Former Software Development Director Amit Sharma (Mr. Sharma) testified that he was never asked by his managers if he thought any of his reporting employees' pay should be adjusted because their pay was not equitable. Citation: ☐ OEx. 9, Decl. of Amit Sharma Decl. (A. Sharma Decl.) ¶ 8. E) Current Director of User Assistance Colin McGregor (Mr. McGregor) testified that he did not have the authority to adjust the pay of his reporting employees if he believed the pay of an employee was too low for the work performed or too low as indicated by Oracle's compensation ratio. Citation: ☐ OEx.10, Wilbur A. Colin McGregor Decl. (McGregor Decl.) ¶ 12. 2) OFCCP further contests this fact because Oracle prevents compliance by providing a limited budget. A) Oracle's Executive Vice President of Mission Critical Databases Juan Loaiza (EVP Loaiza) testified that [redacted]% of the employees in his organization are paid below the market rate because not enough money is provided for them in the budget. Citation:	market rate and has nothing to do with Oracle's instructions to its managers. It is therefore non-responsive and should be disregarded. Oracle also incorporates its responses to OFCCP's SUFs 40 and 129. B) OFCCP's response is about the budget Oracle provides managers for salary increases and has nothing to do with Oracle's instructions to its managers. It is therefore non-responsive and should be disregarded. Oracle also incorporates its responses to OFCCP's SUFs 40 and 129. C) OFCCP's response is about the budget for salary increases and has nothing to do with Oracle's instructions to its managers. It is therefore non-responsive and should be disregarded. 3) OFCCP also disputes this fact by discussing "dive and save" salary requests and budget restraints. This has nothing to do with Oracle's instructions to its managers that pay "differences need to be based on fair, justifiable, and non-discriminatory criteria." Therefore, all evidence submitted under this heading fails to dispute this fact and should be disregarded.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ OFCCP SUF: Fact 40, 129; ☐ OEx. 11, Dep. of Juan Loaiza, dated 6/14/19 (Loaiza Dep.) 16:3-12, 283:6–284:22, 305:7–306:3. B) While testifying as Oracle's PMK, Ms. Waggoner, stated that the budget Oracle provides its managers for salary increases is insufficient to keep up with the market rate and that only [redacted]% of the employees may get a raise in a year because of budget pressures. Citation: ☐ OFCCP SUF: Fact 127; ☐ OEx. 8, Waggoner PMK Dep. 247:4–13, 308:8–24 in Vol 2. C) Mr. McGregor testified that he had reporting employees who were paid below the range for their job, and the small raise pool he received was insufficient to put these employees in the salary range for their position. Citation: ☐ OEx. 10, McGregor Decl. ¶ 12. 3) OFCCP additionally disputes this fact because in "dive and save" salary requests, other senior managers identify that they face significant "salary compression" for their employees because of the budget and face a "rob Peter to pay Paul" situation. Citation: ☐ OFCCP SUF: 133, 134;	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ OEx. 11, Loaiza Dep. 282:15-285:11, 290:3-12; ☐ Ex. 33, "Request for Dive-and-Save Salary Adjustment," dated 5/7/14, ORACLE_HQCA_00004 37696–701, in Vol. 2; ☐ Ex. 34, Out of Cycle Salary Adjustment Proposal, dated 6/15/15, ORACLE_HQCA_00004 34971–72, in Vol. 2.	
7. When making compensation decisions, managers are instructed to: a) consider how an employee's compensation compares to her peers; b) account for each employee's relevant knowledge, skills, abilities, and experience; c) balance external and internal equity considerations; d) differentiate rewards by performance; and e) consider the employee's importance to the company. **Supporting Evidence:** a) Waggoner Decl., ¶ 30, Ex. B (ORACLE_HQCA_00 00364183 at 5), Ex. E (ORACLE_HQCA_00	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
00056234 at 24). b) Waggoner Decl., ¶ 30, Ex. B (ORACLE_HQCA_00 00364183 at 5), Ex. E (ORACLE_HQCA_00 00056234 at 17, 22, 37); Connell Decl., Ex. A (ORACLE_HQCA_00 00400584 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). c) Waggoner Decl., ¶ 31, Ex. B (ORACLE_HQCA_00 00364183 at 6), Ex. C (ORACLE_HQCA_00 00364272 at 15), Ex. E (ORACLE_HQCA_00 00056234 at 17, 22, 37); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 84:25-85:25; 173:13-174:13). d) Waggoner Decl., Ex. C (ORACLE_HQCA_00 00364272 at 15), Ex. E (ORACLE_HQCA_00 00056234 at 16, 17,		

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
22); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 111:10-22), Ex. K (ORACLE_HQCA_00 00400313 at 313). e) Waggoner Decl., Ex. C (ORACLE_HQCA_00 00364272 at 15); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 178:19-179:21).		
8. Oracle's managers can partner with HR business partners and compensation consultants to ensure compensation decisions are equitable. **Supporting Evidence:** Waggoner Decl., Ex. B (ORACLE_HQCA_00 00364183 at 2, 22), Ex. C (ORACLE_HQCA_00 00364272 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_00 00400403 at 446, 448-49); Gill Decl., ¶ 6; Talluri Decl., ¶ 15; Abushaban Decl., ¶	**Disputed.** 1) The portion of Oracle's claim stating "to ensure compensation decisions are equitable" is unsupported by the Supporting Evidence. The alleged support does not identify consulting occurred for this purpose.	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP disputes this fact because of some missing words in a document. However, as is clear from any of the evidence Oracle cites, managers can consult with HR business partners and compensation consultants in order to implement the compensation guidelines, which include making sure decisions are equitable. For example, in Waggoner Decl., Ex. B, a training entitled "Managing Pay Module," the training explains that HR and compensation consultants are important resources for mangers. Waggoner Decl., Ex. B at 22. This is in a slide at the end of the training, which overall emphasizes equity. It also immediately follows a slide giving an overview of all of the important topics that had been covered, including that a manager must consider equity when making compensation decisions. *Id.* at 21. It is logical that the instruction to contact HR business partners and

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15.		compensation consultants with questions comes in the implementation of the training that was just given.

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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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. **Supporting Evidence:** Waggoner Decl., ¶ 12; Miranda Decl., ¶ 8.	**Undisputed.** 1) While the OFCCP does not dispute Oracle's Material Fact 9, OFCCP objects to paragraph 12 of Ms. Waggoner's declaration on the basis that she lacks personal knowledge about the facts contained therein.	**OFCCP concedes this fact is undisputed and material.** *See also* Oracle's Response to OFCCP's Evidentiary Objections.
10. Each LOB has an executive who oversees it, and who is responsible for the products within that LOB. **Supporting Evidence:** Connell Decl., Ex. A (ORACLE_HQCA_00 00400584 at 85:1-19; 86:4-12; 87:9-88:3).	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
11. LOBs are divided into specialized organizations and teams that differ by strategic importance or business criticality. **Supporting Evidence:**	**Disputed.** 1) Campbell Webb (Mr. Webb) testifies in his Oracle declaration that while he and his employees work in information technology and provide internal services to Oracle, his organization also provides application and infrastructure	**OFCCP's evidence fails to create a material dispute of fact.** Oracle's fact is that the LOBs differ by "strategic importance or business criticality." OFCCP's evidence fails to create a material dispute of fact. 1) OFCCP's response is about

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Waggoner Decl., ¶ 13; Miranda Decl., ¶¶ 8, 11.	services to "Oracle's public cloud customers" and that several of Oracle's [information technology] vice presidents, who Mr. Webb managed, worked to supported "Oracle's Cloud Business." Citation: Declaration of Campbell Webb in Support of Oracle's Motion (Webb Decl.), ¶¶ 2, 5, 6. 2) Mr. Webb also testifies in his Oracle declaration that parts of his team have skills that are interchangeable between the information technology and product development LOBs. In speaking of one of his team members, Mr. Webb states that "[t]his [information technology vice president] has since transitioned to the [product development vice president] role, where she and her team now apply many of the *same skills to a different kind of work* (performance testing of Oracle database code)." Citation: Webb Decl., ¶ 6, emphasis added. 3) OFCCP additionally disputes this fact because it relies on paragraph 13 of Ms. Waggoner's declaration. OFCCP objects to Oracle's reliance on paragraph 13 of Ms. Waggoner's declaration because she lacks personal knowledge regarding the facts contained therein. 4) Oracle employees and managers testified that their skills are interchangeable as proved by the fact that they and/or their reports have transferred across teams as well as lines of business, and were able to	individuals within the Information Technology job function providing services to "Oracle's public cloud customers" and "Oracle's Cloud Business." This has nothing to do with the different "strategic importance or business criticality" of the LOBs. It is therefore and should be disregarded. 2) OFCCP's response is about employees whose work may be relevant to more than one *job function*. Job functions are not tied to specific LOBs, a fact OFCCP does not dispute (see Oracle's SUF 31). This has nothing to do with the different "strategic importance or business criticality" of the LOBs. It is therefore and should be disregarded. 3) *See* Oracle's Response to OFCCP's Evidentiary Objections. 4) OFCCP's response is about employees and managers who believe that their "skills are interchangeable." This has nothing to do with the different "strategic importance or business criticality" of the LOBs. It is therefore non-responsive and should be disregarded.

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	perform their duties without additional trainings. Citation: - OEx. 12, Decl. of Avinash Pandey (Pandey Decl.) ¶¶ 6, 12; - OEx. 7, Kolotouros Decl. ¶ 4; - OEx. 13, Decl. of Diane Boross (Boross Decl.) ¶¶ 8, 9, 11; - OEx. 14, Decl. of Jill Arehart (Arehart Decl.) ¶ 10; - OEx. 15, Decl. of Donna Kit Yee Ng (Ng Decl.) ¶¶ 6, 10, 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. **Supporting Evidence:** Waggoner Decl., ¶ 14.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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. **Supporting Evidence:** Waggoner Decl., ¶ 15; Miranda Decl., ¶ 11;	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
see also 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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
14. Oracle is a global technology company that provides more than 800 software and hardware products and related services to customers worldwide. **Supporting Evidence:** Waggoner Decl., ¶ 6; Miranda Decl., ¶¶ 3, 4, 9, Ex. A.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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. **Supporting Evidence:** Waggoner Decl., ¶¶ 6-7; Robertson Decl., ¶¶	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
6-9; Bashyam Decl., ¶ 4; Sarwal Decl., ¶¶ 5, 10; Miranda Decl., ¶¶ 4-5.		
16. Oracle offers product-related services, such as security assessments, software upgrades, and customer support and education services. **Supporting Evidence:** Waggoner Decl., ¶ 8; Yakkundi Decl., ¶¶ 3, 6, 10; Bashyam Decl., ¶¶ 2-4; Sarwal Decl., ¶¶ 5, 10.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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. **Supporting Evidence:** Waggoner Decl., ¶¶ 9-10; Yakkundi Decl., ¶¶ 6-7; Bashyam Decl., ¶ 8; Galka Decl., ¶ 4.	**Disputed.** 1) This fact is unsupported. The Yakkundi, Bashvam and Galka declarations combined only provide support for Oracle acquiring a handful of companies and less than twenty products. Their declarations do not identify Oracle's acquisitions as a "catalyst to Oracle's growth," or as "adding hundreds of new products to Oracle's product portfolio." Further, these declarations contain no statements claiming that Oracle's acquisitions increase the diversity of Oracle's products and services. Thus, these declarations leave Ms. Waggoner's declaration as the sole support for these factual assertions. As identified in the objections OFCCP filed against Ms. Waggoner's declaration, her statements as to Oracle's acquisitions lack foundation because of a lack of personal knowledge.	**OFCCP's evidence fails to create a material dispute of fact.** 1) *See* Oracle's Response to OFCCP's Evidentiary Objections. 2) The evidence OFCCP relies on does not support its assertion, nor does its assertion contradict this fact. Dr. Saad did not testify that acquisitions are "not relevant to this case." Dr. Saad explained there are only a small number of acquired employees in the data set in this case (unlike in *Jewett*), which does not rebut Oracle's fact, which is about the catalyzing role of acquisitions to Oracle's growth as a company overall. OFCCP's evidence is therefore to disputing this fact and should be disregarded.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	2) Dr. Saad testified that acquisitions were not relevant to this case because his data set for Oracle HQCA only contained seven employees whereas for the *Jewett* case the acquisitions contained a large share of the non-headquarters population. Citation: ☐ Ex. 89, Dep. of Expert Ali Saad, dated 10/11/19 (Saad Dep.) 128:11-129:13.	
18. Some of Oracle's products involve cutting-edge technology in high demand, and some constitute legacy products with infrequent updates or enhancements. **Supporting Evidence:** Bashyam Decl., ¶¶ 8-9; Sarwal Decl., ¶ 14.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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. **Supporting Evidence:** Miranda Decl., ¶ 11; Sarwal Decl., ¶ 14.	**Disputed.** 1) OFCCP disputes this fact because Oracle's documents and witness declarations do not support and also contradict the statements therein. A) Oracle's factual assertions are repeatedly contradicted by its compensation instructions over the years, which clearly state that jobs having the same salary grade have the *same value* to Oracle. Citation: ☐ Ex. 16, "Global Compensation Training:	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's evidence does not rebut the fact. A) OFCCP asserts that "jobs having the same salary grade have the *same value* to Oracle." But on its face, this does not contradict Oracle's fact, and in any event, OFCCP's assertion is not supported by the evidence to which it cites and should therefore be disregarded. The evidence on which OFCCP relies in fact demonstrates that salary ranges (which are incredibly broad,

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Salary Ranges at Oracle," copyright 2011, slide 8 (notes) ORACLE_HQCA_00003 64272-15 in Vol. 1; □ *See also* Ex. 8, "Q4FY15 HR Webinar Oracle Compensation" dated March 2015, slide 20 (notes), ORACLE_HQCA_00000 56391-39 in Vol. 1; □ Ex. 12, Untitled, Compensation-related presentation, copyright 2012 (Ex. 3 to the Waggoner May Dep.), slide 19 (notes), ORACLE_HQCA_00000 42098-35 in Vol. 1; □ Ex. 13, "Managing Compensation," July 2016 (Ex. 7 to the Waggoner May Dep.), slide 17 (notes), ORACLE_HQCA_00000 56234-30 in Vol. 1; □ Ex. 14, "Managing Compensation at Oracle," no date, slide 22 (notes) ORACLE_HQCA_00003 82580-42 in Vol. 1. 2) Oracle's compensation training slides demonstrate that jobs can have the same salary grade (and thus the same value to Oracle) across individual contributor or manager positions and across different job functions. For example, one of Oracle's training slide's notes state: "you will also notice that Grade 8 has an IC4, IC5, M2 and M3." These four global career levels are for seven different job functions (A, B, F, G,	sometimes spanning [redacted] dollars), rather than defining some kind of inherent value to Oracle, merely reflect external *market value of a job*. Exhibit 13 makes this clear, stating that "Jobs that have the *same local market value* are grouped into the same local grade level, and have the same salary range." Ex. 13, ORACLE_HQCA_0000056234-30 (emphasis added). Exhibits 8 and 12 say the exact same thing. Ex. 8, ORACLE_HQCA_0000056391-39; Ex. 12, ORACLE_HQCA_0000042098-35. OFCCP's Exhibit 16 says the same thing: "jobs that pay similarly in the local labour market are allocated to the same range." Ex. 16, ORACLE_HQCA_0000364272 - 10. 2) OFCCP's assertion is not supported by the evidence and should therefore be disregarded. OFCCP asserts that jobs that have the same salary grade "thus have the same value to Oracle." The evidence does not support this assertion. In fact, as explained above, salary ranges at Oracle represent the external market value of a job, not an internal value to Oracle. Exhibit 13 makes this clear, stating that "Jobs that have the *same local market value* are grouped into the same local grade level, and have the same salary range." Ex. 13, ORACLE_HQCA_0000056234-30 (emphasis added). Exhibits 8

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	H-J). Citation: ☐ Ex. 16, slide 10 and slide 10 (notes), ORACLE_HQCA0000364272-18, -19 in Vol. 1; ☐ Ex. C to Declaration of Kate Waggoner in Support of Oracle's Motion (Waggoner Oracle Decl.), ORACLE_HQCA_0000364272 at 10. 3) Multiple job codes can be assigned to the same salary grade, and therefore have the same salary range. Citation: ☐ OFCCP SUF: Fact 87; ☐ OEx. 16, Dep. of Lynne Carrelli dated 5/24/19 (Carrelli Dep.) 118:15–20 in Vol. 1; ☐ OEx. 17, Dep. of Kate Waggoner dated 5/1/19 (Waggoner May Dep.) 118:8–20; ☐ Ex. 13, slide 17 (notes), ORACLE_HQCA_0000056234-30 in Vol. 1; ☐ Ex. 16, slide 10 and slide 10 (notes), ORACLE_HQCA0000364272-18, -19 in Vol. 1. 4) A comparison of the systems job titles in the three job functions that are at issue in this litigation identifies the following: a) Salary grade E.09 contained seventeen different job titles and three different job functions. b) Salary grade N.10 contained	and 12 say the exact same thing. Ex. 8, ORACLE_HQCA_0000056391-39; Ex. 12, ORACLE_HQCA_0000042098-35. Moreover, Exhibit 16, on which OFCCP relies for this mistaken "assertion" states that: "jobs that pay similarly in the local labour market are allocated to the same range." Ex. 16, ORACLE_HQCA_0000364272 - 10. 3) OFCCP's assertion is about different job codes having the same salary range. This does not contradict this fact. People with different job codes can work on the same product or service at Oracle. Additionally, salary ranges are incredibly broad (sometimes spanning [redacted] dollars). OFCCP's assertion therefore does not respond to the fact and should be disregarded. Moreover, as explained above, salary ranges at Oracle reflect the local market value of the job, not the internal value to Oracle. *See, e.g.*, Ex. 13, ORACLE_HQCA_0000056234-30 4) OFCCP's assertion is again that different job titles may have the same salary grade. This assertion says nothing about what product or service people in these job titles work on. OFCCP's assertion therefore does not respond to the fact and should be disregarded. Moreover, as explained above, salary ranges at Oracle reflect the local market value of the job, not

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	sixteen different job titles and two different job functions. c) Salary grade E.11 contained fourteen different job titles and three different job functions d) Salary grade E.12 contained twelve different job titles and three different job functions e) Salary grade E.10 contained twelve different job titles and two different job functions. f) Salary grade E.14 contained eight different job titles and three different job functions. g) Salary grade N.12 contained eight different job titles and three different job functions. h) Salary grade E.06 contained seven different job titles. i) Salary grade E.07 contained seven different job titles and three different job functions. j) Salary grade E.08 contained seven different job titles and two different job functions. k) Salary grade N.07 contained seven different job titles and two different job functions. l) Salary grade N.14 contained seven different job titles and three different job functions. Citation: ☐ Ex. 17, Decl. of Hea Jung Atkins in Support of OFCCP's Motion for Summary Judgment, dated 10/16/19 ¶ 6-21 (Atkins MSJ Decl.), and	the internal value to Oracle. *See, e.g.*, Ex. 13, ORACLE_HQCA_0000056234-30 5) OFCCP challenges Oracle's fact, not by addressing the evidence Oracle relied on, but by questioning why Oracle did not rely on testimony from Ms. Waggoner. This is not a proper challenge and it should be disregarded. 6) OFCCP's assertion is that one former employee believes that the products an employee works on does not determine compensation. This does not respond to Oracle's fact, which is about the value of different products and services to Oracle and the differing value of the skills, duties, and responsibilities associated with different products and services. Oracle's fact is not that the product or service "determine[s] compensation." OFCCP's assertion therefore does not respond to the fact and should be disregarded as non-responsive. 7) OFCCP's assertion is that employees sometimes made more than their managers "thereby showing that product is not tied to wages." This does not respond to Oracle's fact, which is about the value of different products and services to Oracle and the differing value of the skills, duties, and responsibilities associated with different products and services. Oracle's fact is not about how or whether product is "tied to wages." OFCCP's assertion

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	Ex. B attached thereto (Table 2). 5) Noticeably, Oracle provides no compensation training reference or any support this fact from Ms. Waggoner, its Senior Director of Global Compensation. This is because not one of Oracle's compensation trainings tie skills, duties, and responsibilities to the product an employee performs work. Instead, Oracle ties skills, duties, and responsibilities to job code and its associated global career levels (e.g., individual contributor (IC) and Manager (M)). Citation: ☐ Ex. 13, slide 4 (notes), ORACLE_HQCA_00000 56234-6 in Vol. 1; ☐ *See also* Ex. 8, slide 13 and slide 13 (notes), ORACLE_HQCA_00000 56391 -24, -25 in Vol. 1; ☐ Ex. 12, slide 12 and slide 12 (notes), ORACLE_HQCA_00000 42098-20 to -21 in Vol. 1; ☐ Ex. 14, slide 29 (notes), ORACLE_HQCA_00003 82580-56 in Vol. 1; ☐ Ex. 17, Atkins MSJ Decl., ¶ 8 & Ex. B, rows 31–47 in Vol. 1. 6) Ms. Kolotouros testified that the products an employee works on does not determine compensation. Citation: ☐ OEx. 7, Kolotouros Decl. ¶ 9.	therefore does not respond to the fact and should be disregarded as non-responsive.

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	7) Managers testified that they had employees under them earning more than them, thereby showing that product is not tied wages. Citation: ☐ OEx. 10, McGregor Decl., ¶ 9; ☐ OEx. 9, A. Sharma Decl., ¶10.	

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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
20. Oracle categorizes the jobs in which its employees work by job functions. **Supporting Evidence:** Waggoner Decl., Ex. D (ORACLE_HQCA_0000364276 at 7); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 100:13-23).	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
21. Job functions describe, at a very high-level, "the general type of work performed" by employees within the function. **Supporting Evidence:** Waggoner Decl., ¶ 17, Ex. D (ORACLE_HQCA_00	**Disputed.** 1) OFCCP disputes this fact because none of the two training presentations Oracle cited as support and none of the trainings that Oracle produced to date in discovery state that job functions are described "at a very high-level." Instead, these documents just state that "[t]he [job] function describes the general type of work the employee performs." Citation:	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP does not respond to Ms. Waggoner's declaration, which directly supports this fact. Ms. Waggoner testified that "Job functions . . . are the *highest-level* classification" and that "Job functions describe, in broad strokes, the general kind of work an employee performs." Waggoner Decl., ¶ 17. Because

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
00364276 at 5), Ex. E (ORACLE_HQCA_00 00056234 at 4); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 88:19-89:7).	☐ Ex. 13, slide 4 (notes), ORACLE_HQCA_00000 56234-6 in Vol. 1; ☐ OEx. 17, Waggoner May Dep. 74:11-15, 80:23–81:5, 30:8-15; ☐ *See also* Ex. 12, slide 12 and slide 12 (notes), ORACLE_HQCA_00000 42098-20 to -21 in Vol. 1; ☐ Decl. of Kate Waggoner, attached to Oracle's MSJ, Ex. D, ORACLE_HQCA_00003 64276 at 5. 2) OFCCP further disputes Oracle's Material Fact 21 because Ms. Waggoner's PMK testimony does not make or support this alleged fact.	OFCCP does not address this testimony which directly supports Oracle's fact, OFCCP's response fails to create material dispute of fact.
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. **Supporting Evidence:** Waggoner Decl., ¶ 17; Connell Decl., Ex. I (ORACLE_HQCA_00 00399991 at 999), Ex. J (ORACLE_HQCA_00	**Disputed.** 1) Other employees in other functions also perform these duties. As such, they are not just limited to Product Development. For example, Mr. Webb identified that even though he and his employees, like his vice presidents (VPs) have an information technology job function, he also identified these employees as performing work akin to product development when he stated that they supply "application and infrastructure services to … Oracle's public cloud customers." Citation: ☐ Webb Decl. ¶¶ 2, 4-6. 2) Oracle employees and managers testified that their skills are interchangeable as proved by the fact that they and/or their reports have	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response is that employees in other job functions perform duties that are "akin to product development." Mr. Webb does not use that phrase, nor is it accurate. Mr. Webb testified that organization provides "application and infrastructure services to Oracle internal employees and also Oracle's public cloud customers." Webb Decl., ¶ 4. However, this fact states that Product Development employees *develop* Oracle's products and services. Moreover, even if the Information Technology job function had duties that were "akin" to product development, this would not rebut Oracle's fact, which says nothing about job

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
00400010 at 010); Robertson Decl., ¶¶ 3, 6-9; Kottaluru Decl., ¶¶ 8, 11; Oden Decl., ¶ 6; Chan Decl., ¶¶ 5-7.	transferred across teams as well as lines of business, and were able to perform their duties without additional trainings. Citation: - OEx. 12, Pandey Decl. ¶¶ 6, 12; - OEx. 7, Kolotouros Decl. ¶ 4; - OEx. 13, Boross Decl. ¶¶ 8, 9, 11; - OEx. 14, Arehart Decl. ¶10; - OEx. 15, Ng Decl. ¶¶ 6, 10, 11.	functions other than Product Development. OFCCP's assertion therefore does not respond to the fact and should be disregarded as non-responsive. 2) OFCCP's response is that some Oracle employees believe their skills are interchangeable across teams and lines of business. This does not rebut Oracle's fact, which says nothing about teams, lines of business, or job functions other the Product Development. OFCCP's assertion therefore does not respond to the fact and should be disregarded as non-responsive.
23. Employees within the IT job function specialize in business implementation and planning, data center services, network services, and risk management. **Supporting Evidence:** Waggoner Decl., ¶ 17; Webb Decl., ¶¶ 5-7; Talluri Decl., ¶¶ 6-8; Galka Decl., ¶¶ 3, 8.	**Disputed.** 1) Mr. Webb identified that even though he and his employees, like his vice presidents (VPs) have an information technology job function (INFTECH), he also identified that they had product development type responsibilities "for supplying application and infrastructure services to … Oracle's public cloud customers." Citation: - Webb Decl. ¶¶ 2, 4-6. 2) Oracle employees and managers testified that their skills are interchangeable as proved by the fact that they and/or their reports have transferred across teams as well as lines of business, and were able to perform their duties without additional trainings. Citation: - OEx. 12, Pandey Decl. ¶¶ 6, 12; - OEx. 7, Kolotouros Decl. ¶ 4; - OEx. 13, Boross Decl. ¶¶	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response is that employees in the Information Technology have "product development type responsibilities." Mr. Webb does not use that phrase. Nor does this rebut the fact, which is a non-exclusive list of some of the work done by the IT job function. OFCCP's assertion therefore does not rebut the fact and should be disregarded as non-responsive. 2) OFCCP's response is that some Oracle employees believe their skills are interchangeable across teams and lines of business. This does not rebut Oracle's fact, which says nothing about teams, lines of business, or job functions other the IT job function. OFCCP's assertion therefore does not respond to the fact and should be disregarded as non-responsive.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	8, 9, 11; ☐ OEx. 14, Arehart Decl. ¶10; ☐ OEx. 15, Ng Decl. ¶¶ 6, 10, 11.	
24. In the Support job function, employees work on everything from legacy on-premise solutions to cloud-based solutions and other emerging technologies. **Supporting Evidence:** Waggoner Decl., ¶ 17; Yakkundi Decl., ¶¶ 10-16; Eckward Decl., ¶¶ 3, 5; Wu Decl., ¶¶ 4, 6; Suri Decl., ¶ 3, 5.	**Disputed.** 1) Oracle employees and managers testified that their skills are interchangeable as proved by the fact that they and/or their reports have transferred across teams as well as lines of business, and were able to perform their duties without additional trainings. Citation: ☐ OEx. 12, Pandey Decl. ¶¶ 6, 12; ☐ OEx. 7, Kolotouros Decl. ¶ 4; ☐ OEx. 13, Boross Decl. ¶¶ 8, 9, 11; ☐ OEx. 14, Arehart Decl. ¶10; ☐ OEx. 15, Ng Decl. ¶¶ 6, 10, 11.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response is that some Oracle employees believe their skills are interchangeable across teams and lines of business. This does not rebut Oracle's fact, which says nothing about teams, lines of business, or job functions other than the Support job function. OFCCP's assertion therefore does not respond to the fact and should be disregarded as non-responsive.
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. **Supporting Evidence:** Waggoner Decl., ¶ 20; Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 100:13-23), Ex. I (ORACLE_HQCA_00 00399991 at 98).	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

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26. System job titles reflect a progression of development within a job family *(e.g.*, Applications Developer 1, Applications Developer 2, and so on). **Supporting Evidence:** Waggoner Decl., ¶ 20; Yakkundi Decl., ¶ 16; Wu Decl., ¶ 8; see Connell Decl., Ex. I (ORACLE_HQCA_00 00399991 at 997-99).	**Disputed.** 1) Oracle defines its "systems job title" "as "a brief description of the job" not a "progression of development within a job family." Furthermore, "job family" is not an element of Oracle's global job table since Oracle's global job table only consists of five core elements: job code, job function, specialty area, job title, and global career level. Citation: - Ex. 13, slide 4 and slide 4 (notes), ORACLE_HQCA_00000 56234-5, -6 in Vol. 1; - Ex. 12, slide 12 and slide 12 (notes), ORACLE_HQCA_00000 42098-20 to -21 in Vol. 1; - Decl. of Erin Connell, attached to Oracle's MSJ (Connell Decl.), Ex. I,ORACLE_HQCA_000 0399998. 2) Oracle defines global career level as the element of its global job table that "indicates increased skill, knowledge, and responsibilities and performance expectations." Citation: - Ex. 13, slide 4 (notes), ORACLE_HQCA_00000 56234-5 in Vol. 1; - *See also* Ex. 12, slide 12 (notes), ORACLE_HQCA_00000 42098-21 in Vol. 1. 3) Additionally, Oracle's Employee Handbook and training materials define a promotion as a move from a job in one Global Career Level to a	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response is that, in some trainings, Oracle "defines" "systems job title" using different language than the language in this fact. First, Oracle's fact is not offering a "definition" of systems job title, but rather an explanation of what the term "reflects" at Oracle. Nor is OFCCP's response supported by the evidence. OFCCP cites to trainings that *describe* "systems job title", but do not purport to *define* the term. Nor does Oracle's description of systems job title as "a brief description of the job" contradict the description in Oracle's fact. OFCCP's response should therefore be disregarded. Additionally, OFCCP responds that "job family" is not an element of Oracle's global job table. This is non-responsive to what "systems job title" reflects at Oracle. 2) OFCCP's response is about how Oracle "defines global career level." Oracle's fact is about system job titles. OFCCP's response is therefore non-responsive and should be disregarded. 3) OFCCP's response is about how Oracle describes promotions in its employee handbook. Oracle's fact is not about promotions and OFCCP's response is therefore non-responsive and should be disregarded.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	job in a higher Global Career Level with greater responsibility and impact on the Company's business. Promotions are not defined as a progression of development within a job family. Citation: - OFCCP SUF: Fact 180; - Ex. 14, slide 34 (notes), ORACLE_HQCA_0000382580-66 in Vol. 1; - Ex. 11, ORACLE_HQCA_0000000507 in Vol. 1; - Ex. 8, slide 27, ORACLE_HQCA_0000056391-51 in Vol. 1; - Ex. 18, "Global Compensation Training: Managing Pay Module," copyright 2011, slide 13, ORACLE_HQCA_0000000407-24 in Vol. 1.	
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. **Supporting Evidence:** 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.	**Disputed.** 1) OFCCP disputes Oracle's characterization that each of these categories "describe the type of work a person performs at a high-level of abstraction." Oracle's supporting cite at ORACLE_HQCA_0000399999 does not address job family let alone identify that it is broad or describes the type of work being performed. Instead it identifies and example of the different elements of Oracle's global job tab. Oracle's description of "Job Functions, specialty areas, … and system titles" below does not attribute to them a "high-level of abstraction." - "The function which describes the general type of work the employee	**OFCCP's evidence fails to create a material dispute of fact.** As an initial matter, OFCCP fails to address or rebut Ms. Waggoner's declaration, which states that: "Job functions describe, in broad strokes, the general kind of work an employee performs" and "job function, specialty area, job family, and system job title-provide[] a high-level description of the work performed by employees with that label." Waggoner Decl., ¶¶ 17, 22. Because OFCCP does not address this testimony, which directly supports Oracle's fact, its responses fail to create a material dispute of fact. 1) OFCCP's response is to point

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
J (ORACLE_HQCA_0000400010 at 010).	performs. This is not the same as LOB."" □ "The specialty area which is a subset of the function and is intended to further identify the work performed.' □ "The job title which is a brief description of the job – known as the 'systems title.'" Citation: □ Ex. 8, slide 12 (notes), ORACLE_HQCA_0000056391-25 in Vol. 1; □ Connell Decl., Ex. I (ORACLE_HQCA_0000399999). Oracle uses some of these elements to compare Oracle's jobs to its competitors, and set salary ranges associated with each system job title. Citation: □ OEx. 2 Waggoner PMK *Jewett* Dep., ORACLE_HQCA_0000400683-85, 100:23-102:4. 2) Additionally, Ex. D to Ms. Waggoner's declaration disputes Oracle's characterization of specialty area as describing work at a "high-level of abstraction." It states "[t]he specialty area is more specific, and it describes the work the employee performs within the defined function." It further states that that "[t]he specialty area assigned to a job <u>helps to pinpoint the responsibilities</u> of that job." Citation: □ Waggoner Dec., Ex. D, ORACLE_HQCA_0000364276 at 8.	out that not all of the trainings Oracle cites use the precise language Oracle uses in its fact. However, the evidence OFCCP cites does not contradict Oracle's fact and therefore fails to create a material dispute of fact. In fact, contrary to OFCCP's assertions, the language it extracts from these trainings *supports* Oracle's fact. For example, OFCCP cites to a training that says that job function "describes the general type of work the employee performs." Additionally, the deposition testimony OFCCP cites from Ms. Waggoner also supports Oracle's fact. Ms. Waggoner says, "the framework [of classifying employees] helps us to put our employees into buckets, *general categories* of what they do." OEx. 2, Waggoner *Jewett* Dep. Tr. 101:1-11 (emphasis added). 2) OFCCP's response is that a training document states that specialty area is "more specific" and "the specialty area assigned to a job helps to pinpoint the responsibilities of that job." But this does not contradict Oracle's fact. In fact, the context of the slide OFCCP relies on (although incorrectly cites), explains that a specialty area, while more specific than job function, is still very general. Waggoner Decl., Ex. D (ORACLE_HQCA_0000364276 at 8). In the example given on the slide, Oracle explains that within the job function of "[redacted]", a specialty area includes, for example "[redacted]" and "[redacted]" and "[redacted]." These are very

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	3) This fact is is unsupported by the bits and pieces from different documents and testimony Oracle cites: A) Ms. Waggoner's PMK testimony did not address job functions, specialty areas or job families in the cited testimony, and cannot provide support for Oracle's statements about those categorizations. Citation: ☐ Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 102:17- 103:23). B) There is a lack of foundation for Ms. Holman-Harries' deposition testimony, as her counsel noted in his objections. Further, Oracle omits additional testimony from Ms. Holman- Harries (SHH PMK 36:18-38:23), revealing her lack of foundation. Further, Ms. Holman-Harries' testimony did not mention the job functions, specialty areas, job families, systems job titles, physical location. Citation: ☐ Connell Decl., Ex. B (8/1/19 Holman-Harries PMK Dep. 35:24-36:16). C) The Ex. I cite does not state that these four items are broad nor does it state that these items are defined at a high-level of abstraction. It also does not address systems job title. It simply identifies some examples for	high-level descriptions and that say nothing about the specific kind of skills, responsibilities, or duties an individual has, for example, within "[redacted]." *Id.* 3) OFCCP's response is that the fact is not supported by the "bits and pieces from different documents and testimony Oracle cites." OFCCP is wrong on each count. OFCCP complains that each cited piece of evidence, looked at independently, does not support the entirety of the Oracle's fact. But Oracle deliberately cited multiple pieces of evidence which, in their totality, support its fact. OFCCP cannot undermine the entire fact by quibbling that one piece of evidence does not support all elements of the fact. A) Ms. Waggoner's testimony is about how Oracle uses broad categories and "general buckets" in its taxonomy of jobs. This supports Oracle's fact. Again, not every piece of evidence must support the fact in its entirety. Rather, Oracle relies on all of the evidence in its totality to support the fact. Therefore, OFCCP's response does not rebut the fact. B) *See* Oracle's Response to OFCCP's Evidentiary Objections. C) OFCCP's response is that the slide in question does not use the language "broad" or define the categories as "a high-level of abstraction." OFCCP quibbles that it "simply identifies some examples for some of the job functions at issue in this litigation." OFCCP

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	some of the job functions at issue in this litigation. Additionally parts of it are not legible. Citation: ☐ Connell Decl., Ex. I (ORACLE_HQCA_0000399991 at 999). D) The Ex. J cite does not address job families or systems job titles. It likewise does not state that job function or specialty areas are broad or highly abstract. Citation: ☐ Connell Decl., Ex. J (ORACLE_HQCA_0000400010 at 010). 4) Fourth, Oracle's factual assertion that "[j]ob 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" is contradicted by its compensation instructions over the years that do not apply "broad" and "a high-level of abstraction" characteristics to these items. Citation: ☐ Ex. 16, slide 8 (notes) ORACLE_HQCA_0000364272-15 in Vol. 1; ☐ *See also* Ex. 12, slide 19 (notes) ORACLE_HQCA_0000042098-35 in Vol. 1; ☐ Ex. 13, slide 17 (notes), ORACLE_HQCA_0000056234-30 in Vol. 1; ☐ Ex. 8, slide 20 (notes), ORACLE_HQCA_0000056391-39 in Vol. 1;	misunderstands, or misconstrues, the significance of this exhibit. This slide gives examples of job function, job specialty, and job families. The examples for each make clear that the titles are broad and highly abstract. For example, some of the examples of job families are "[redacted]" and "[redacted]." Connell Decl., Ex. I (ORACLE_HQCA_0000399991 at 999). Similarly, the specialty examples include "[redacted]" and [redacted]." *Id.* Finally, the job function examples include "[redacted]" and "[redacted]." *Id.* As is obvious from the face of this document, those categories are broad and describe the work at a high-level of abstraction. D) OFCCP's response is that the document in question does not address job families or system job titles. Again, not every piece of evidence must support the fact in its entirety. Rather, Oracle relies on all of the evidence in its totality to support the fact. Therefore, OFCCP's response does not rebut the fact. Additionally, as with the above evidence, the examples of job function and specialty area in this exhibit make clear on their face that the titles are broad and highly abstract. Some examples of job function in this document include "Information Technology" and "Product Development." Connell Decl., Ex. J (ORACLE_HQCA_0000400010 at 010). An example in this document of Specialty Area within IT is "[redacted]" which is

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	☐ Ex. 14, slide 22 (notes) ORACLE_HQCA_00003 82580-42 in Vol. 1.	described as [redacted] " *Id.* On its face, it is clear that this is a very broad and highly abstract category. In a company as large as Oracle, "[redacted]" means countless different things and involves scores of people performing different tasks. Therefore, this document supports Oracle's fact. 4) OFCCP's response is that Oracle's fact is contradicted by "compensation instructions" that do not apply the "broad" and "high-level of abstraction" characteristics. But the evidence OFCCP cites to support this response is about guidelines for setting compensation within a salary range and does not mention job functions, specialty areas, job families, or system job titles. This evidence has nothing to do with the Oracle's fact and therefore should be disregarded.
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. **Supporting Evidence:** Bashyam Decl., ¶¶ 7, 14; Webb Decl., ¶¶ 5-6, 8-11; Sarwal Decl., ¶¶ 4-12; Eckward Decl., ¶¶ 9-10;	**Disputed.** 1) The element in Oracle's global job table that addresses skills, knowledge, responsibilities and performance is global career level. The higher a person's career level, the higher the complexity of the person's duties. Citation: ☐ Ex. 13, slide 4 (notes), ORACLE_HQCA_00000 56234-5 in Vol. 1; ☐ *See also* Ex. 12, slide 12 (notes), ORACLE_HQCA_00000 42098-21 in Vol. 1.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response is that the "element in Oracle's global job title that addresses skills, knowledge, responsibilities, and performance" is global career level. This is not responsive to Oracle's fact. Oracle's fact is that people who share a job function, specialty area, job family or system job title may have very different duties, skills, education, and experience." OFCCP's response therefore does not contradict Oracle's fact and should

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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.	2) Oracle's global career level also takes into account experience. For example, Oracle's "Position Criteria" for IC positions, notes that an IC3, IC4, IC5 and IC6 typically have more than 2.5, 5, 10 and 15 years of experience respectively. Citation: ☐ OEx. 18, "Position Criteria," dated April 2006, ORACLE_HQCA_0000360865. 3) In her *Jewett* PMK deposition, Ms. Waggoner, testified that Oracle's global career level concerns: "Responsibility, complexity, knowledge, skills, and abilities that the person brings to the table, their scope." Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_0000400756, 173:1-6. 4) Oracle employees and managers testified that their skills are interchangeable as proved by the fact that they and/or their reports have transferred across teams as well as lines of business, and were able to perform their duties without additional trainings. Citation: ☐ OEx. 12, Pandey Decl. ¶¶ 6, 12; ☐ OEx. 7, Kolotouros Decl. ¶ 4; ☐ OEx. 13, Boross Decl. ¶¶ 8, 9, 11; ☐ OEx. 14, Arehart Decl.	be disregarded. OFCCP also responds that higher career level reflects higher complexity in a job. This also does not contradict Oracle's fact non-responsive and should be disregarded. 2) OFCCP's response is that "global career level also takes into account experience." Oracle's fact is not about global career level and this response is therefore nonresponsive and should be disregarded. 3) OFCCP cites Ms. Waggoner's testimony about global career level, but Oracle's fact is not about global career level. This response is therefore nonresponsive and should be disregarded. 4) OFCCP's response is about employees and managers who believe that their "skills are interchangeable." This does not respond to Oracle's fact, which is that individuals within the same job function, specialty area, job family or system job title may have very different duties, skills, education, and experience. Whether some skills are relevant to more than one position does not dispute Oracle's fact.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	¶10; ☐ OEx. 15, Ng Decl. ¶¶ 6, 10, 11.	
29. Each system job title associates a given employee with a particular career level. **Supporting Evidence:** Waggoner Decl., ¶ 24; Connell Decl., Ex. B (8/1/19 Holman-Harries PMK Dep. 86:14- 87:18).	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
30. Career levels are broad steps that roughly reflect increased skill, knowledge, responsibility, and performance expectations. **Supporting Evidence:** 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_00 00399991 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., ¶	**Disputed.** 1) Oracle's compensation training did not define global career levels as "roughly reflecting" "skill, knowledge, responsibility, and performance expectations." Instead, they stated that Career Level "indicates skill, knowledge, and responsibilities and performance expectations." Citation: ☐ Ex. 13, slide 4 (notes), ORACLE_HQCA_00000 56234-5 in Vol. 1; ☐ *See also* Ex. 12, slide 12 (notes), ORACLE_HQCA_00000 42098-21 in Vol. 1. 2) Ms. Waggoner's PMK deposition testimony did not use the qualifiers Oracle includes in its "fact." She described a global career level as: "Responsibility, complexity, knowledge, skills, and abilities that the person brings to the table, their scope." Citation: ☐ OEx. 2, Waggoner PMK	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response is to point out that two of Oracle's compensation trainings use the phrase "indicates" instead of "roughly reflect." The difference between these two words is immaterial and OFCCP's response does not contradict Oracle's fact. It should therefore be disregarded. 2) OFCCP misrepresents Ms. Waggoner's testimony. Ms. Waggoner testified that career level is a measure of "responsibility, complexity, skills, and abilities" *and* that "there are a lot of things that go into play for a global career level." OEx. 2, Waggoner PMK *Jewett* Dep. 173:1-8. This *supports* Oracle's fact. 3) OFCCP's response does not create a material dispute of fact because it does not rebut Oracle's fact. 4) OFCCP's response does not create a material dispute of fact

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9; Galka Decl., ¶ 4.	*Jewett* Dep. ORACLE_HQCA_00004 00756, 173:1-8. 3) Ms. Waggoner further identified in her *Jewett* PMK deposition that the global career level is "the level at which someone is performing their job." Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00755, 172:9-12. 4) Ms. Waggoner identified in her *Jewett* PMK deposition that Oracle employees who share the same global career levels share the same level of responsibility and their impacts are similar. Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00810-12, 227:15-229:9. 5) One of the exhibits attached to Ms. Waggoner's declaration identifies the clarity of Oracle's global career level by noting that "if a job in Finance has the same level of responsibilities and complexity as a job in Sales, the career level of the two jobs will be the same." Citation: ☐ Waggoner Decl., Ex. D, ORACLE_HQCA_00003 64276 at 9. 6) The evidence that Oracle cites to support this fact, including the training at ORACLE_HQCA_0000399997, just identifies increased skill, knowledge, responsibility, and performance expectations. It does not identify that	because it does not rebut Oracle's fact. Ms. Waggoner also testified that individuals within the same career level "may not share certain attributes" but the "scope of their role or the impact of their role may share certain attributes. But the individuals- their background could be vastly different." OEx. 2, Waggoner PMK *Jewett* Dep. 229: 1-6. In other words, career level is, as Oracle states, a rough reflection increased skill, knowledge, responsibility, and performance expectations. 5) OFCCP's response does not create a material dispute of fact because it does not rebut Oracle's fact. Whether the approximate level of responsibility at a career level translates across job functions is non-responsive to Oracle's fact. 6) OFCCP's response is to quibble because the word "roughly" does not appear in the cited document. However, this does not contradict Oracle's fact. The document OFCCP challenges squarely supports Oracle's fact; it states that a Global Career Level is a "broad step in job families that indicate increased skill, knowledge, responsibility, & performance expectations." Connell Decl., Ex. I (ORACLE_HQCA_0000399997). The difference between the words "roughly reflect" and "indicate" is immaterial and OFCCP's response does not contradict Oracle's fact. It should therefore be disregarded.

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	a global career level "roughly" indicates these traits. In fact, the cited paragraphs in the declarations identify that Oracle's employees, as their career levels increase, have a higher degree of skills, knowledge, responsibility and experience.	
31. Job functions are not tied to specific LOBs. **Supporting Evidence:** Waggoner Decl., Ex. D (ORACLE_HQCA_0000364276 at 5, 7), Ex. E (ORACLE_HQCA_0000056234 at 6).	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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. **Supporting Evidence:** Waggoner Decl., ¶ 19; Connell Decl., Ex. A (ORACLE_HQCA_0000400584 at 47:20-48:24; 51:9-21; 146:21-147:23).	**Disputed** 7) Job functions have leaders. A) For example, Joyce Westerdahl is the leader of the human resources job function and is the top human resources person at Oracle. Kate Waggoner reports to Phil Jenish and he reports to Ms. Westerdahl. Citation: ☐ OEx. 1, Westerdahl Dep. 12:14 – 13:19, 14:1-18. B) Ms. Waggoner is in the human resources job function and reports to Phil Jenish. Citation: ☐ OEx. 8, Waggoner PMK Dep. 9:5-6; ☐ OEx. 1, Westerdahl Dep. 15:14-15. C) For example, Larry Ellison is the Chief Technology Officer	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response is to cite to misleading and mischaracterized evidence to try to show that job functions have leaders. The evidence OFCCP cites does not support OFCCP's assertion and OFCCP fails to create a material dispute of fact. It also reveals that OFCCP fundamentally misunderstands and/or misconstrues Oracle's corporate structure and organization. A) Ms. Westerdahl testified that she is a "Executive vice president of human resources" and the "top human resources person at Oracle." OEx. 1, Westerdahl Dep. Tr. 12:14-16; 13:11-13. Ms. Westerdahl did *not* testify that she is the leader of the human resources job function. A job function at Oracle is not an

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	and technology functions and leader of Product Development and Information Technology job functions such that he approved the hiring and salary increases of people within those functions from Juan Loaiza's organization within Thomas Kurian's organization. Citation: ☐ OFCCP SUF Facts 40, 41; ☐ OEx. 31, Loaiza Dep. 28:22-29:2, 119:3-120:16; ☐ Ex. 35, "Dimensions of Diversity Newsletter," dated 12/9/15, ORACLE_HQCA_00000 49995 in Vol. 2.	organization with a hierarchical structure, such that it has one leader. There are company leaders who fall within one or another job function, but that does not make them the leader *of that job function*. B) Ms. Waggoner's job function is not relevant. As explained above, a job function at Oracle is not an organization with a hierarchical structure, such that it has one leader. There are company leaders who fall within one or another job function, but that does not make them the leader *of that job function*. C) Oracle incorporates its responses to OFCCP's SUFs 40 and 41. Again, OFCCP's response indicates a fundamental misunderstanding about Oracle's corporate and organizational structure. Larry Ellison is the Chief Technology Officer. His job function does not make him the leader of a job function. A job function at Oracle is not an organization with a hierarchical structure, such that it has one leader. There are company leaders who fall within one or another job function, but that does not make them the leader *of that job function*.

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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
33. An employee's direct manager plays the most significant role in setting that employee's compensation. **Supporting Evidence:** Waggoner Decl., ¶ 28, Ex. C (ORACLE_HQCA_0000364272 at 15), Ex. E (ORACLE_HQCA_0000005234 at 16, 22); Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 111:23-112:3); Chan Decl., ¶ 9.	**Disputed.** 1) An employee's direct manager plays a minimal role, if any, with an Oracle employee's compensation of an Oracle employee because the employee's compensation does not change when he changes supervisor, moves to a different product, or works on a different project. A) Oracle's managerial training provides that there will generally be no change in base salary and job level for U.S. domestic transfers unless Larry Ellison gives his approval. Citation: - OFCCP SUF: Fact 172; - Ex. 58, "Manager Essentials Product Development," dated March 2014, ORACLE_HQCA_0000380891 in Vol. 2. B) Oracle's compensation training states that the starting point for transfers should be lateral (targeting the same base salary compa-ratio in the employee's old and new roles). Citation: - OFCCP SUF: Fact 173; - Ex. 13, slide 31 ORACLE_HQCA_0000056234-57 in Vol. 1. - *See also* Ex. 59, "Global Compensation Guidelines Training North America: US, "dated May 2013, slide 6, ORACLE_HQCA_0000382399-8 in Vol. 1.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response indicates that it either does not understand, or is misconstruing, how compensation decisions are made at Oracle. OFCCP does not directly rebut Oracle's evidence, but instead focuses on the narrow issue of compensation when there is an employee transfer. Oracle managers do not routinely grant salary increases when someone transfers positions within the company. This is to prevent internal poaching and avoid a "toxic" environment among managers. *See* Response to SUF 177; Connell Opp. Decl., Ex. E (7/19/19 Waggoner PMK Dep. 309:18-312:20). OFCCP also mistakenly focuses on only the moment in time when an employee makes the transfer. However, Oracle's documents further confirm the "*starting point* for lateral transfers should be lateral (targeting the same base pay and compa-ratio in old and new roles)," but "(*Ongoing review should be done to be sure that employees are in the correct job family and career level to prevent issues when transferring*)." Garcia Decl., Ex. 59 at ORACLE_QCA_00000382399-8. The guidance goes on to say the following: "The salary for the new role should be fair and appropriate for that role and may require adjustment to the employee's current mix of base and variable pay." *Id.*

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	C) Oracle's instructions for addressing "Internal Transfers" states that transfers should be at "equal career level and salary." Citation: - OFCCP SUF: Fact 174; - Ex. 28, slide 21, ORACLE_HQCA_0000057179-41; - Ex. 51, Untitled Oracle Hiring Presentation, copyright 2014, slide 32, ORACLE_HQCA_0000057093-32. OEx. 8, Waggoner PMK Dep. 327:24-328:12, 267:21-22. D) Oracle's compensation training to managers instructs them that internal transfers should not be used as a means to increase salaries. Citation: - OFCCP SUF: Fact 175; - Ex. 13, slide 31, ORACLE_HQCA_0000056234-57 in Vol. 1; - Ex. 21, slide 19, ORACLE_HQCA_0000380437-37 in Vol. 1; - Ex. 59, slide 6, ORACLE_HQCA_0000382399-8 in Vol. 2. E) When a person moves from one organization to another within the Product Development LOB, there is "very rarely" any change in salary. Citation: - OFCCP SUF: Fact 176; - Ex. 11, Loaiza Dep.	Accordingly, Oracle's guidelines on lateral transfers explicitly acknowledge that salary for lateral transfers should be fair, and appropriate for the new role, and if appropriate, pay obviously can be adjusted after the transfer. And of course, Oracle does not force employees to laterally transfer teams, so if an employee felt he or she was not being paid fairly despite no change in pay, she or she could choose not to transfer. A) Oracle incorporates its response to SUF 172. B) Oracle incorporates its response to SUF 173. C) Oracle incorporates its response to SUF 174. D) Oracle incorporates its response to SUF 175. E) Oracle incorporates its response to SUF 176. F) Oracle incorporates its response to SUF 177. G) Oracle incorporates its response to SUF 178. H) Oracle incorporates its response to SUF 179. 2) Again, OFCCP's response

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	105:10–23; F) Oracle purposely discourages granting pay increases when its employees laterally transfer from one position to another because if employees were given raises with a transfer, the organization would be beset by infighting as managers sought to poach staff from other organizations with promises of increased compensation. Citation: - OFCCP SUF: Fact 177; - OEx. 8, Waggoner 30b6 Dep. 312:10–20, 310:2–24. G) A transfer within Oracle can occur with no increase in salary or other compensation unless an employee's current salary places him or her below the minimum range for the new job. Citation: - OFCCP SUF: Fact 178; - Ex. 11, Handbook, ORACLE_HQCA_00000 00508. H) Appropriate levels of management must approve any compensation adjustment associated with a transfer. Citation: - OFCCP SUF: Fact 178; - Ex. 11, Handbook, ORACLE_HQCA_00000 00508-09. 2) The decisions whether to do corporate wide focal salary increases, bonuses, and stock grants and the	indicates it does not understand, or misconstrues, compensation at Oracle. OFCCP argues that the budget given in focal reviews is more significant in determining employee compensation than employees' direct managers. While it is true that most salary increases happen during a focal review, it is still the direct managers who are making decisions about how much of the allocated focal budget to give to each individual employee. Therefore, while individual managers do not make the decision to give themselves a focal budget, they have discretion over allocation of whatever budget they are given. Therefore, each employee's direct manager plays the most significant role in setting that employee's compensation. I) Oracle incorporates its responses to OFCCP's SUFs 137 and 138. OFCCP's response is that focal reviews are not annual. This has nothing to do with whether direct managers play the most significant role in setting employees' compensation and should be disregarded. J) Again, OFCCP's response is about the frequency of focal reviews. This has nothing to do with whether direct managers play the most significant role in setting employees' compensation, including but not limited to at the time of hire, and should be disregarded.

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	budgets or caps allocated for them are more significant in determining employee compensation than employees' direct managers. I) While, at times, Oracle calls its focal, aka focal reviews "annual focal reviews," they are not truly annual because Oracle did not have any in 2013 and 2018 and has them about every 14-18 months apart. Citation: ☐ OFCCP SUF: Fact 137, 138; ☐ OEx. 8, Waggoner PMK Dep. 248:7–17, 192:19-193:1; ☐ Ex. 34, ORACLE_HQCA_0000434971 in Vol. 2. J) From January 1, 2013, to January 19, 2019, Oracle only gave bonuses in two years: 2014 and 2018. Citation: ☐ Ex. 91, Madden Report at 13 n. 4, 26 n. 15, 38 n. 18 in Vol. 3. K) In Ms. Waggoner PMK testimony, she stated that Oracle has had [redacted] budget years such that there is "[redacted]." She explained the impact of this situation by stating "if we give little to no focal budget, naturally we're not keeping up with the [redacted]" She further testified that Oracle has had a [redacted] budget for "[redacted]."	K) Oracle incorporates its responses to OFCCP's SUFs 110 and 111. OFCCP's response is about the size of the focal budget for any given year. This has nothing to do with the *allocation* of that budget and therefore has nothing to do with whether direct managers play the most significant role in setting employees' compensation and should be disregarded. L) Oracle incorporates its responses to OFCCP's SUFs 110 and 111. OFCCP's response is about the size of the budget for bonuses in any given year. This has nothing to do with the *allocation* of that budget and therefore has nothing to do with whether direct managers play the most significant role in setting employees' compensation and should be disregarded. M) OFCCP's responses is about the percentage of people at Oracle who are eligible for equity grants. But eligibility for equity grants has nothing to do with whether direct managers play the most significant role in setting employees' compensation and should be disregarded. N) OFCCP cites to guidelines for awarding shares to employees in India. This is utterly nonresponsive to this fact and should be disregarded.

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	Citation: ☐ OFCCP SUF: Fact 110, 111; ☐ OEx. 8, Waggoner PMK Dep. 327:24-328:12, 267:21-22. L) Ms. Waggoner also testified as a PMK that "since 2013, this time period started, we've had [redacted] corporate bonus budgets" and "[t]he bonus budgets have been [redacted] when we've had them." Citation: ☐ OFCCP SUF: Fact 110, 111; ☐ OEx. 8, Waggoner PMK Dep. 263:12-14, 276:11-14. M) For equity grants (aka stocks or RSUs), Oracle caps the amount of people who can receive them at 35% such that Ms. Waggoner identified in her PMK testimony that they primarily go to managers and employees with higher global career levels. Citation: ☐ Ex. 84, Email from Stefanie Wittner, dated 5/30/13, ORACLE_HQCA_0000022961 in Vol. 3; ☐ OEx. 8, Waggoner PMK Dep. 272:20-274:19. N) Managers were instructed to issue shares of stock to [redacted] to [redacted] managers and to [redacted] to [redacted] individual	O) Oracle incorporates its responses to OFCCP's SUF 129. Whether someone is compensated at market rate is not relevant to whether their direct manager plays the most significant role in setting compensation. P) OFCCP's response is about Oracle's leaders' compensation. This is not relevant this case and should be disregarded. 3) OFCCP claims that Oracle has a "centralized starting pay process" for its hires. But the evidence it cites in support of this contention does not support the fact. A) OFCCP's response is about Oracle's practices for starting pay with respect to individuals who are hired by Oracle through its college recruiting program. Ms. Waggoner's testimony is plainly about experienced hires at Oracle who do not join Oracle through its college recruiting program. That a subset of Oracle hires (e.g., those who come to Oracle through its college recruiting program) are subject to different practices with respect to starting pay does not dispute Ms. Waggoner's testimony (or this fact generally), particularly because the ranges used for college hires are comparatively very small and are not the basis for OFCCP's claims. The Court should therefore disregard the entirety of OFCCP's response

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	contributors. Citation: ▯ Ex. 84, ORACLE_HQCA_0000022961 in Vol. 3. O) EVP Loaiza testified that [redacted]% of his organization is below the market rate because of the limited budgets. Citation: ▯ OFCCP SUF: Fact 129; ▯ OEx. 11, Loaiza Dep. 283:6–284:22, 305:7–306:3. P) Oracle's lean budget years have not extended to Co-CEOs Safra Catz and Mark Hurd who each have earned 1,205 times more in 2018 than the median employee compensation at Oracle, a ratio that ranks them in the 17 highest paid CEOs vis a vis average employee pay. Citation: ▯ OEx. 19, New York Times, The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart, 5/29/19 at https://www.nytimes.com/interactive/2019/business/highest-paid-ceos-2018.html. 3) Oracle has a centralized starting pay process for its hires. A) One example of an employee's first-line or direct manager not primarily determining the starting pay for new hires is Oracle's	under this heading. B) *See* Oracle response above. The Court should therefore disregard the entirety of OFCCP's response under this heading. *See also* Oracle's Objections to Evidence. C) *See* Oracle response above. The Court should therefore disregard the entirety of OFCCP's response under this heading. D) *See* Oracle response above. The Court should therefore disregard the entirety of OFCCP's response under this heading. E) OFCCP's response does not rebut this fact. OFCCP's response is that Mr. Loaiza looks at "proposed pay" and therefore the first-level manager could not have "already determined the starting pay for a new hire." But Oracle acknowledges that the higher-level managers review compensation recommendations at hire as a sanity check. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3). This does not change the fact that the first-line manager plays "the most significant role" in setting an employee's compensation. F) OFCCP's response does not rebut this fact. Oracle acknowledges that the higher-level managers review compensation recommendations at hire as a

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	hiring of college graduates, because Oracle's College Recruiting Organization determines the person's pay, not the employee's direct hiring manager. Ms. Waggoner admitted that Oracle's College Recruiting Organization sets the compensation package for the new hires hired through its program in her PMK *Jewett* deposition. Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00696-98, 113:13- 115:1. B) EVP Loaiza also identified in his March 2015 audit interview with OFCCP that Oracle's college recruiting organization set salaries for the people Oracle hires from college: "We hire a lot from universities. Those salaries are set by the university recruiting department. We set compensation for those not coming from universities." Citation: ☐ Decl. of Hea Jung Atkins in Opposition to Oracle America, Inc.'s Motion for Summary Judgement (Atkins Opp'n Decl.), ¶ 14, Ex. K, OFCCP's Interview Notes of the Juan Loaiza on March 25, 2015 (Loaiza Interview Notes), DOL 000000522.	sanity check. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3). This does not change the fact that the first-line manager plays "the most significant role" in setting an employee's compensation. G) OFCCP's response does not rebut this fact. Oracle does not claim that front-line managers are operating alone and without input in setting compensation. Rather, Oracle's fact is that they play "the most significant role" in setting an employee's compensation. Input from HR or the compensation team does not change this. H) *See* Oracle's Response to OFCCP's Evidentiary Objections I) OFCCP's response is not supported by the evidence on which it relies. OFCCP claims that HR and recruiters at Oracle "are the ones instructing hiring managers how employees should be paid." This is not remotely supported by OFCCP's evidence. Ms. Powers' declaration explains that the recruiting manager knew the salary range and would communicate that salary range to Ms. Powers. OEx. 20, Powers Decl., ¶ 11. Ms. Powers would then write up a business justification for the hire and suggest an amount of pay. *Id.* In other words, Ms. Powers would make a recommendation for the hiring salary. Similarly, Ms. Snyder's declaration simply states

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	C) Oracle's College Recruiting organization sets narrow pay ranges for college hires and makes starting pay determination for them. Citation: - OEx. 22, Email from Zeira Singn to many people re LJE approved new college compensation package, dated 8/25/16, ORACLE_HQCA_0000380453. - OEx. 23, Email from Chantel Dumont to Milton Liu and Les Cundall re Salary Guidelines, dated 9/11/13 (Dumont 9/11/13 Email), ORACLE_HQCA_0000012587; - OEx. 24, Email from Chantel Dumont to various people re college compensation for FY14, dated 9/24/13, ORACLE_HQCA_0000023717; - OEx. 25, Email from Katie Rider to James Handley re College Hire Starting Salaries, dated 4/16/15, ORACLE_HQCA_0000380671; - OEx. 26, email from Chantel Dumont to Duhong Trinh re intern salary rule, dated 9/14/13, ORACLE_HQCA_0000012204;	that she was given guidance on a strategy for setting compensation for new hires. OEx. 21, Snyder Decl., ¶ 13. It does not state that she was given instructions on how employees should be paid. 4) OFCCP's response is that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers play the "most significant role" in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that "most significant" role is for the direct managers. A) Oracle incorporates its responses to OFCCP's SUF 113. B) Oracle incorporates its responses to OFCCP's SUF 116. 5) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers play the "most significant role" in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that "most significant" role is for the

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	☐ OEx. 27, Email from Les Cundall to Elizabeth Lee re why [redacted], dated 3/14/14, ORACLE_HQCA_00000 11640; ☐ OEx. 28, Email from Chantel Dumont to Satarupa Bhattacharya, dated 5/17/13, ORACLE_HQCA_00000 12173. D) Another example of the direct manager not being the primary decision-maker for the starting pay for new hire is the MAP program wherein the "[t]he offer originates from the CEOs [sic] office and it has all the elements of other offers except a specific job position…. Once the offer is accepted the graduate is temporarily assigned to the CEOs [sic] development staff." Citation: ☐ OEx. 29, Emails between Wendy Lee and [redacted] re Oracle's MAP Program created by Larry Ellison dated 10/25/13, ORACLE_HQCA_00000 36993-94. E) EVP Loaiza, at the M8 global career level, testified in his deposition that when he is reviewing a person during the hiring approval process, he is reviewing "the proposed compensation of the person." He emphasizes this a second time when he	direct managers. Oracle also incorporates its responses to OFCCP's SUF 116. A) Oracle incorporates its responses to OFCCP's SUF 117. B) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers play the "most significant role" in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that "most significant" role is for the direct managers. C) Oracle incorporates its responses to OFCCP's SUF 120. D) Oracle incorporates its responses to OFCCP's SUF 121. E) Oracle incorporates its responses to OFCCP's SUF 122. F) Oracle incorporates its responses to OFCCP's SUF 123. H) Oracle incorporates its responses to OFCCP's SUF 124. I) OFCCP's response is, again, that direct managers only make pay "recommendations" not

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	states: "What I get is not the current compensation. I get the proposed compensation." If he is only looking at the *proposed pay* at his high-level, then the first level manager, many levels below, could not have already determined the starting pay for a new hire. Citation: ☐ OEx. 11, Loaiza Dep. 16:3-16, 17:2-10, 44:16-45:20-18. F) EVP Loaiza testified in his deposition that the hiring approval process which included the compensation proposal went up the management chain of command to the final approver who was Thomas Kurian for a large majority of them. Citation: ☐ OEx. 11, Loaiza Dep. 48:10-49:1. G) Ms. Waggoner testified that determining the pay of hires is a collaboration between the hiring manager and the recruiting organization with, at times, input by human resources or its compensation group. Citation: ☐ OEx. 17, Waggoner May Dep. 91:24-92:6. H) Ms. Waggoner's declaration and deposition testimony lacks foundation because of a lack of personal knowledge since she testified in her July	decisions. But this does not rebut Oracle's fact that direct managers play the "most significant role" in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that the "most significant" role is for the direct managers. J) Oracle incorporates its responses to OFCCP's SUF 119. 6) *See* Oracle's Response to OFCCP's Evidentiary Objections. 7) OFCCP's response is not supported by the evidence on which it relies. OFCCP claims that HR and recruiters at Oracle "are the ones instructing hiring managers how employees should be paid." This is not remotely supported by OFCCP's evidence. Ms. Powers' declaration explains that the recruiting manager knew the salary range and would communicate that salary range to Ms. Powers. OEx. 20, Powers Decl., ¶ 11. Ms. Powers would then write up a business justification for the hire and suggest an amount of pay. *Id*. In other words, Ms. Powers would make a recommendation for the hiring salary. Similarly, Ms. Snyder's declaration simply states that she was given guidance on a strategy for setting compensation for new hires. OEx. 21, Snyder

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	2018 *Jewett* deposition that she had not been involved with the review process for years. Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00688-89, 105:1-106:12. I) Oracle's Human Resources and Recruiters play significant role in determining an employee's compensation at hire, as they are the ones instructing hiring managers how employees should be paid. Citation: ☐ OEx 20, Powers Decl. ¶11; ☐ OEx 21, Decl. of Lynn Snyder (Snyder Decl.) ¶ 13. 4) This fact is also disputed on the grounds that direct managers only make pay *recommendations*, not decisions. These pay *recommendations* are subsequently reviewed up the chain of command until the ultimate approver approves them. At intermediate reviews, the reviewing managers can either give their approvals or reject the recommendation. The final approvers for all hirings have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. A) Oracle's Global Approval Matrices state that approvals for base salary increases, bonuses, and stock or stock	Decl., ¶ 13. It does not state that she was given instructions on how employees should be paid.

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	options grants have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: ☐ OFCCP SUF: Fact 113; ☐ Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_00000 62725-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_00000 62732-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 11/1/14, ORACLE_HQCA_00000 62712-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2 all in Vol. 1. ☐ Fact 4 herein by Oracle for Thomas Kurian's title and position. B) Oracle's compensation instructions for hiring likewise require managers to make pay recommendations that require approvals at the Executive Level (e.g., CEO. CTO) or their offices.	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Citation: ☐ OFCCP SUF: Fact 116; ☐ Ex. 28, "Recruit & Hire at Oracle: Module 6: How to Create an Offer in iRecruitment," copyright 2017, slide 11 (notes), ORACLE_HQCA_0000057179-22 in Vol. 2; ☐ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_0000056234-65 to -66 in Vol. 1. 5) Oracle's compensation instructions for focals and off-cycle salary increases (e.g., promotions, "dive and saves" used to counter an offer from a competitor) likewise require managers to make pay recommendations that require approvals at the Executive Level (e.g., CEO. CTO) or their offices. Citation: ☐ OFCCP SUF: Fact 116; ☐ Ex. 28, slide 11 (notes), ORACLE_HQCA_0000057179-22 in Vol. 2; ☐ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_0000056234-65 to -66 in Vol. 1. A) The approvals for base salary increases goes all the way up through the CEO's office. Citation: ☐ OFCCP SUF: Fact 117; ☐ OEx. 8, Waggoner PMK Dep. 155:7-25. B) Oracle's focal review trainings refer to the	

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	managers role as making "recommendations" and state that "[t]his isn't to say that your recommendations won't be changed by someone further up in your hierarchy, but it is a way to inform your manager of how you would like to allocate increases to your team." Citation: ☐ Ex. 14, at slide 43 (notes), ORACLE_HQCA_00003 82580- 84 in Vol. 1. C) In a 2014 compensation training, managers were instructed: "**Do not communicate** any changes [in compensation] until the 'Last Approval Action' shows 'Larry Ellison.'" Citation: ☐ OFCCP SUF: Fact 120; ☐ Ex. 25, slide 39, ORACLE_HQCA_00000 56242-48 (emphasis in original) in Vol. 1. D) In a 2011 compensation training, managers were instructed: "**You should not communicate any changes until we obtain final approval from LJE**." Citation: ☐ OFCCP SUF: Fact 121; ☐ Ex. 26, slide 49, ORACLE_HQCA_00000 56957-55 (emphasis in original) in Vol. 2. E) LJE stands for Larry J. Ellison. Citation:	

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	☐ OFCCP SUF: Fact 122; ☐ OEx. 17, Waggoner May Dep. 106:25–107:4. F) Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz. Citation: ☐ OFCCP SUF: Fact 123; ☐ OEx. 16, Carrelli Dep. 212:9–213:1, 214:12–14. H) Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process. Citation: ☐ OFCCP SUF: Fact 124; ☐ Ex. 24, slide 39 (notes), ORACLE_HQCA_00003 81306-76 in Vol. 1. I) Even in Oracle's declarations provided to this Court to support its summary judgment motion, managers acknowledge that they only make pay recommendations in focal reviews. E.g., Christina Kite, a VP, stated: "I am responsible for recommending salary increases and bonuses for my team." Citation: ☐ Decl. of Christina Kite, ¶¶ 3, 11. J) President Thomas Kurian gave his required approval to off- cycle dive and save requests. Citation: ☐ OFCCP SUF: Fact 119;	

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	☐ Ex. 30, Dive-and-Save Emails between Oracle Managers, July 2014, ORACLE_HQCA_00004 32004 in Vol. 2. 6) In addition, OFCCP objects to paragraph 28 of Ms. Waggoner's declaration because she lacks personal knowledge of the facts about which she testifies, fails to use the best evidence, and proffers an improper summary. 7) Oracle's Human Resources and Recruiters play significant role in determining an employee's compensation at hire, as they are the ones instructing hiring managers how employees should be paid. Citation: ☐ OEx 20, Powers Decl. ¶11; ☐ OEx 21, Snyder Decl. ¶ 13.	
34. First-line (or direct) managers primarily determine the starting pay for new hires. **Supporting Evidence:** Waggoner Decl., ¶ 28, Ex. E (ORACLE_HQCA_00 00056234 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.	**Disputed.** 1) One example of an employee's first-line or direct manager not primarily determining the starting pay for new hires is Oracle's hiring of college graduates, because Oracle's College Recruiting Organization determines the person's pay, not the employee's direct hiring manager. Ms. Waggoner admitted that Oracle's College Recruiting Organization sets the compensation package for the new hires hired through its program in her PMK *Jewett* deposition. Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00696-98, 113:13- 115:1. 2) EVP Loaiza also identified in his	**OFCCP's evidence fails to create a material dispute of fact.** 1) Oracle's practices for starting pay with respect to individuals who are hired by Oracle through its college recruiting program. Ms. Waggoner's testimony is plainly about experienced hires at Oracle who do not join Oracle through its college recruiting program. That a subset of Oracle hires (e.g., those who come to Oracle through its college recruiting program) are subject to different practices with respect to starting pay does not dispute Ms. Waggoner's testimony (or this fact generally), particularly because the ranges used for college hires are comparatively very small and

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	March 2015 audit interview with OFCCP that Oracle's college recruiting organization set salaries for the people Oracle hires from college: "We hire a lot from universities. Those salaries are set by the university recruiting department. We set compensation for those not coming from universities." Citation: - Atkins, Opp. Decl., ¶ 7, Ex. 14, Loaiza Interview Notes, DOL 000000522. 3) Oracle's College Recruiting organization sets narrow pay ranges for college hires and makes starting pay determination for them. Citation: - OEx. 22, Email from Zeira Singn to many people re LJE approved new college compensation package, ORACLE_HQCA_0000380453. - OEx. 23, Email from Chantel Dumont to Milton Liu and Les Cundall re Salary Guidelines, dated 9/11/13 (Dumont 9/11/13 Email), ORACLE_HQCA_0000012587; - OEx. 24, Email from Chantel Dumont to various people re college compensation for FY14, dated 9/24/13, ORACLE_HQCA_0000023717; - OEx. 25, Email from Katie Rider to James Handley re College Hire	are not the basis for OFCCP's claims. The Court should therefore disregard the entirety of OFCCP's response under this heading. 2) See Oracle's response above. The Court should therefore disregard the entirety of OFCCP's response under this heading. *See also* Oracle's Objections to Evidence. 3) *See* Oracle's response above. The Court should therefore disregard the entirety of OFCCP's response under this heading. 4) *See* Oracle's response above. The Court should therefore disregard the entirety of OFCCP's response under this heading. 5) OFCCP's response does not rebut this fact. OFCCP's response is that Mr. Loaiza looks at "proposed pay" and therefore the first-level manager could not have "already determined the starting pay for a new hire." But Oracle acknowledges that the higher-level managers review compensation recommendations at hire as a sanity check. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3). This does not change the fact that they play the *primary* role in determining starting pay for new hires. 6) OFCCP's response does not rebut this fact. Oracle acknowledges that the higher-level managers review compensation recommendations at hire as a sanity check. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3). This does not change the fact that they play the

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Starting Salaries, dated 4/16/15, ORACLE_HQCA_0000380671; □ OEx. 26, Email from Chantel Dumont to Duhong Trinh re Intern Salary Rule, dated 0/14/13, ORACLE_HQCA_0000012204; □ OEx. 27, Email from Les Cundall to Elizabeth Lee re University Offer Approval Request, dated 3/14/14, ORACLE_HQCA_0000011640; □ OEx. 28, Email from Chantel Dumont to Satarupa Bhattacharya re University Offer Approval Request, dated 5/17/13, ORACLE_HQCA_0000012173. 4) Another example of the direct manager not being the primary decision-maker for the starting pay for new hire is the MAP program wherein the "[t]he offer originates from the CEOs [sic] office and it has all the elements of other offers except a specific job position…. Once the offer is accepted the graduate is temporarily assigned to the CEOs [sic] development staff." Citation: □ OEx. 29, Emails between Wendy Lee and [redacted] regarding Oracle's MAP Program created by Larry Ellison dated 10/25/13,	*primary* role in determining starting pay for new hires. 7) OFCCP's response does not rebut this fact. Oracle does not claim that front-line managers are operating alone and without input in setting compensation. Rather, Oracle's fact is that they play the *primary* role in determining starting pay for new hires. Input from HR or the compensation team does not change this. 8) *See* Oracle's Response to OFCCP's Evidentiary Objections. 9) *See* Oracle's Response to OFCCP's Evidentiary Objections. 10) OFCCP's response is not supported by the evidence on which it relies. OFCCP claims that HR and recruiters at Oracle "are the ones instructing hiring managers how employees should be paid." This is not remotely supported by OFCCP's evidence. Ms. Powers declaration explains that the recruiting manager knew the salary range and would communicate that salary range to Ms. Powers. OEx. 20, Powers Decl., ¶ 11. Ms. Powers would then write up a business justification for the hire and suggest an amount of pay. *Id*. In other words, Ms. Powers would make a recommendation for the hiring salary. Similarly, Ms. Snyder's declaration simply states that she was given guidance on a strategy for setting compensation for new hires. OEx. 21, Snyder Decl., ¶ 13. It does not state that she was given instructions on how employees should be paid.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	ORACLE_HQCA_00000 36993-94. 5) EVP Loaiza, at the M8 global career level, testified in his deposition that when he is reviewing a person during the hiring approval process, he is reviewing "the proposed compensation of the person." He emphasizes this a second time when he states: "What I get is not the current compensation. I get the proposed compensation." If he is only looking at the *proposed pay* at his high-level, then the first level manager, many levels below, could not have already determined the starting pay for a new hire. Citation: OEx. 11, Loaiza Dep. 16:3-16, 17:2-10, 44:16 to 45, 45:20-18. 6) EVP Loaiza testified in his deposition that the hiring approval process which included the compensation proposal went up the management chain of command to the final approver who was Thomas Kurian for a large majority of them. Citation: OEx. 11, Loaiza Dep. 48:10 to 49:1. 7) Ms. Waggoner testified that determining the pay of hires is a collaboration between the hiring manager and the recruiting organization with, at times, input by human resources or its compensation group. Citation: OEx. 17, Waggoner May Dep. 91:24-92:6. 8) Ms. Waggoner's declaration and deposition testimony lacks	11) OFCCP's response is that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers *primarily* determine the starting pay for new hires. Oracle does not deny that higher-level managers perform a sanity check for new hires This does not change the fact that the *primary* role is for the direct managers. A) Oracle incorporates its responses to OFCCP's SUF 113. B) Oracle incorporates its responses to OFCCP's SUF 116. C) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers play the primary role in setting compensation for new hires. Oracle does not deny that higher-level managers perform a sanity check for hires. This does not change the fact that the *primary* role is for the direct managers. Oracle also incorporates its responses to OFCCP's SUF 116.

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	foundation because of a lack of personal knowledge since she testified in her July 2018 *Jewett* deposition that she had not been involved with the review process for years. Citation: ☐ OEx. 2, Waggoner PMK Jewett Dep. ORACLE_HQCA_00004 00688-89, 105:1-106:12. 9) In addition, OFCCP objects to paragraph 28 of Ms. Waggoner's declaration because she fails to use the best evidence, and proffers an improper summary. 10) Oracle's Human Resources and Recruiters play significant role in determining an employee's compensation at hire, as they are the ones instructing hiring managers how employees should be paid. Citation: ☐ OEx. 20, Powers Decl. ¶11; ☐ OEx. 21, Snyder Decl. ¶ 13. 11) This fact is also disputed on the grounds that direct managers only make pay *recommendations*, not decisions. These pay *recommendations* are subsequently reviewed up the chain of command until the ultimate approver approves them. At intermediate reviews, the reviewing managers can either give their approvals or reject the recommendation. The final approvers for all hirings have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian.	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	A) Oracle's Global Approval Matrices state that approvals for base salary increases bonuses, and stock or stock options grants have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: ☐ OFCCP SUF: Fact 113; ☐ Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_00000 62725-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_00000 62732-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 11/1/14, ORACLE_HQCA_00000 62712-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2 all in Vol. 1. ☐ Fact 4 herein by Oracle for Thomas Kurian's title and position. B) Oracle's compensation instructions for hiring likewise require managers to	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	make pay recommendations that require approvals at the Executive Level (e.g., CEO. CTO) or their offices. Citation: □ OFCCP SUF: Fact 116; □ Ex. 28, "Recruit & Hire at Oracle: Module 6: How to Create an Offer in iRecruitment," copyright 2017, slide 11 (notes), ORACLE_HQCA_0000057179-22 in Vol. 2; □ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_0000056234-65 to -66 in Vol. 1. C) EVP Loaiza, at the M8 global career level, testified in his deposition that when he is reviewing a person during the hiring approval process, he is reviewing "the proposed compensation of the person." He emphasizes this a second time when he states: "What I get is not the current compensation. I get the proposed compensation." If he is only looking at the proposed pay at his high-level, then the first level manager, many levels below, could not have already determined the salary increases. Citation: □ OEx. 11, Loaiza Dep. 17:2-10, 44:16-45:1, 45:20-46:18.	
35. Direct managers	**Disputed.**	**OFCCP's evidence fails to**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
also primarily determine salary increases. **Supporting Evidence:** Waggoner Decl., ¶ 27; Fox Decl., ¶ 14; Kite Decl., ¶ 11; Suri Decl., ¶ 16; Chan Decl., ¶ 8.	1) The decisions whether to provide focal salary increases and the budgets or caps allocated for them are more significant in determining employee compensation than the employees' direct managers. A) Oracle did not have focal reviews in 2013 and 2018 and has them about every 14-18 months. Thus, direct managers have no bearing pm when focal reviews and the potential salary increases that flow from them may occur. Citation: ☐ OFCCP SUF: Fact 137, 138; ☐ OEx. 8, Waggoner PMK Dep. 192:19-193:1, 248:7–17. ☐ Ex. 34, ORACLE_HQCA_00004 34971 in Vol. 2. B) Ms. Waggoner's PMK testimony also identified that Oracle has had [redacted] budget years such that there is "[redacted]." She explained the impact of this situation by stating "if we give little to no focal budget, naturally [redacted]" She also identified that Oracle has had a [redacted] budget for "[redacted]." Thus, the ability to give salary increases is severely limited. Citation: ☐ OEx. 8, Waggoner 30b6 Dep. 327:24-328:12,	**create a material dispute of fact.** 1) OFCCP's response indicates it does not understand, or misconstrues, compensation at Oracle. OFCCP argues that the budget given in focal reviews is more significant in determining employee compensation than employees' direct managers. While it is true that most salary increases happen during a focal review, it is still the direct managers who are making decisions about how much of the allocated focal budget to give to each individual employee. Therefore, while individual managers do not make the decision to give themselves a focal budget, they have discretion over allocation of whatever budget they are given. Therefore, each employee's direct manager plays the most significant role in setting that employee's compensation. Oracle also incorporates its responses to OFCCP's SUFs 137 and 138. A) OFCCP's response is about the frequency of focal reviews. This has nothing to do with whether direct managers play the most significant role in setting employees' compensation and should be disregarded. B) OFCCP's response is about the frequency of focal reviews. This has nothing to do with whether direct managers play the most significant role in setting employees' compensation and should be disregarded. C) OFCCP's response is about

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	267:21-22. C) Oracle's lean budget years have not extended to Co-CEOs Safra Catz and Mark Hurd who each have earned 1,205 times more in 2018 than the median employee compensation at Oracle, a ratio that ranks them in the 17 highest paid CEOs vis a vis average employee pay. Citation: ☐ OEx. 19, New York Times, The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart, 5/29/19 at https://www.nytimes.com/interactive/2019/business/highest-paid-ceos-2018.html. D) In her PMK testimony, Ms. Waggoner further testified that while M1 managers have people reporting to them, they do not have "hire/fire, compensation decision type of authority." Citation: ☐ OEx. 8, Waggoner 30b6 Dep. 116:20-117:2. E) Ms. Waggoner testified further still as the PMK that at times, the budget is not even cascaded down to the M2 manager. Citation: ☐ OEx. 8, Waggoner 30b6 Dep. 253:20-254:6. 2) This fact is also disputed on the grounds that when direct managers receive a budget allocation, they only	Oracle's leaders' compensation. This is not relevant to this case and should be disregarded. D) The testimony on which OFCCP relies is about compensation decisions at hiring and is therefore non-responsive to this fact, which is about salary increases. Moreover, OFCCP mischaracterizes Ms. Waggoner's testimony. Ms. Waggoner explained that Oracle does not generally consider managers at the M-1 level to be the first-line managers at the hiring stage. OEx. 8 Waggoner PMK Dep. Tr. 117:3-11 ("Q. (By Mr. Song) All right. M-2s would have the compensation authority . . . A. Yes. That's the first-line manager when they're hiring somebody.") Rather, that responsibility begins at the M-2 level. This does not rebut Oracle's fact, it merely clarifies the terminology. E) OFCCP's response does not rebut Oracle's fact. Ms. Waggoner explained that sometimes the focal budget is not cascaded all the way down to the M-2 manager level. In other words, that specific M-2 manager does not have focal budget to allocate. This says nothing about whether direct managers primarily determine salary increases because not everyone's direct manager is an M-2, and because managers who are allocated budget may look to managers below them to make decisions about how to allocate the budget among their direct reports. Moreover, the amount of budget a

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	make pay *recommendations*, not decisions. These pay *recommendations* are subsequently reviewed up the chain of command until the ultimate approver approves them. At intermediate reviews, the reviewing managers can either give their approvals or reject the compensation recommendation. The final approvers for all salary increase (focal reviews and off-cycle) have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Moreover, to get off-cycle decisions approved, managers are required to submit written justification. A) Oracle's Global Approval Matrices state that approvals for base salary increases bonuses, and stock or stock options grants have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: ☐ OFCCP SUF: Fact 113; ☐ Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_0000062725-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_0000062732-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 11/1/14, ORACLE_HQCA_0000062712-1 to -2; ☐ Ex. 20, Global Approval	manager gets says nothing about who plays the most significant role in allocating that budget. 2) OFCCP's response is that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers play the *primary* role in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that the *primary* role is for the direct managers. A) Oracle incorporates its response to OFCCP's SUF 113. B) Oracle incorporates its response to OFCCP's SUF 114. C) Oracle incorporates its response to OFCCP's SUF 115. 3) OFCCP's response, yet again, is that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers play the *primary* role in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that direct managers play the primary role. Oracle also incorporates its responses to OFCCP's SUF 116. D) Oracle incorporates its responses to OFCCP's SUF 117. E) OFCCP's response, yet again,

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2 all in Vol. 1. ☐ Fact 4 herein for Thomas Kurian's title and position. B) Oracle requires that all pay increases be approved by the top of an employee's management chain of command. Citation: ☐ OFCCP SUF: Fact 114; ☐ OEx. 17, Waggoner May Dep. 106:2–4, in Vol. 1. C) Oracle's instructions for conducting salary reviews (aka focals or focal reviews) and allocating bonuses and stock grants instruct managers on a process by which managers make recommendations that are reviewed by each successive level of management until they are finally approved at the top of the management chain of command or the office of that top executive. Citation: ☐ OFCCP SUF: Fact 115; ☐ Ex. 24, slides 28–39 and associated notes, ORACLE_HQCA_00003	is that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers play the *primary* role in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that direct managers play the primary role. F) Oracle incorporates its responses to OFCCP's SUF 120. G) Oracle incorporates its responses to OFCCP's SUF 121. H) Oracle incorporates its responses to OFCCP's SUF 122. I) Oracle incorporates its responses to OFCCP's SUF 123. J) Oracle incorporates its responses to OFCCP's SUF 124. K) OFCCP's response does not rebut this fact. OFCCP's response is that Mr. Loaiza looks at "proposed pay" and therefore the first-level manager could not have "already determined the starting pay for a new hire." But Oracle acknowledges that the higher-level managers review compensation recommendations at hire as a sanity check. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3). This does not change the fact that the direct manager plays the primary role in determining a salary increase. L) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	81306-52 to -75 in Vol. 1; ☐ Ex. 25, slides 33–39, ORACLE_HQCA_00000 56242-42 to - 48 in Vol. 1; ☐ Ex. 26, slides 3–4, 13, 34–39; ORACLE_HQCA_00000 56957-3, -4, -16, -38 to - 45 in Vol. 2; ☐ OEx. 8, Waggoner PMK Dep. 118:18-23. 3) Oracle's compensation instructions for hiring and for off-cycle salary increases (e.g., "dive and saves" used to counter an offer from a competitor) likewise require managers to make pay recommendations that require approvals at the Executive Level (e.g., CEO. CTO) or their offices. Citation: ☐ OFCCP SUF: Fact 116; ☐ Ex. 28, slide 11 (notes), ORACLE_HQCA_00000 57179-22 in Vol. 2; ☐ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_00000 56234-65 to -66 in Vol. 1. D) The approvals for base salary increases goes all the way up through the CEO's office. Citation: ☐ OFCCP SUF: Fact 117; ☐ OEx. 8, Waggoner PMK Dep. 155:7-25. E) Oracle's focal review trainings refer to the managers role as making "recommendations" and state	Oracle's fact that direct managers play primary role in determining salary increases. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that the direct managers play the primary role in setting salary increases. K) Oracle incorporates its responses to OFCCP's SUF 119. 4) *See* Oracle's Response to OFCCP's Evidentiary Objections. 5) OFCCP's response is to point to two isolated examples of pay recommendations not being followed. But this does not rebut Oracle's fact which is that senior managers *generally* defer to lower-level managers. Oracle does not claim that senior managers always defer. Therefore, two isolated examples of lower-level manager's recommendations not being followed is consistent with Oracle's fact.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	that "[t]his isn't to say that your recommendations won't be changed by someone further up in your hierarchy, but it is a way to inform your manager of how you would like to allocate increases to your team." Citation: ☐ Ex. 14, at slide 43 (notes), ORACLE_HQCA_00003 82580- 84 in Vol. 1. F) In a 2014 compensation training, managers were instructed: "**Do not communicate** any changes [in compensation] until the 'Last Approval Action' shows 'Larry Ellison.'" Citation: ☐ OFCCP SUF: Fact 120; ☐ Ex. 25, slide 39, ORACLE_HQCA_00000 56242-48 (emphasis in original) in Vol. 1. G) In a 2011 compensation training, managers were instructed: "**You should not communicate any changes until we obtain final approval from LJE**." Citation: ☐ OFCCP SUF: Fact 121; ☐ Ex. 26, slide 49, ORACLE_HQCA_00000 56957-55 (emphasis in original) in Vol. 2. H) LJE stands for Larry J. Ellison. Citation: ☐ OFCCP SUF: Fact 122; ☐ OEx. 17, Waggoner May	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Dep. 106:25–107:4. I) Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz. Citation: - OFCCP SUF: Fact 123; - OEx. 16, Carrelli Dep. 212:9–213:1, 214:12–14. J) Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process. Citation: - OFCCP SUF: Fact 124; - Ex. 24, slide 39 (notes), ORACLE_HQCA_00003 81306-76 in Vol. 1. K) EVP Loaiza, at the M8 global career level, testified in his deposition that when he is reviewing a person during the hiring approval process, he is reviewing "the proposed compensation of the person." He emphasizes this a second time when he states: "What I get is not the current compensation. I get the proposed compensation." If he is only looking at the proposed pay at his high-level, then the first level manager, many levels below, could not have already determined the salary increases. Citation: - OEx. 11, Loaiza Dep. 17:2-10, 44:16-45:1, 45:20-46:18.	

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	L) Even in Oracle's declarations provided to this Court to support its summary judgment motion, managers acknowledge that they only make pay recommendations in focal reviews. E.g., Christina Kite, a VP, stated: "I am responsible for recommending salary increases and bonuses for my team." Citation: - Decl. of Christina Kite, attached to Oracle's MSJ (Kite Oracle MSJ Decl.), ¶¶ 3, 11. K) President Thomas Kurian gave his required approval to off- cycle dive and save requests. Citation: - OFCCP SUF: Fact 119; - Ex. 30, Dive-and-Save Emails between Oracle Managers, July 2014, ORACLE_HQCA_0000432004 in Vol. 2. 4) Ms. Waggoner's declaration lacks foundation because of a lack of personal knowledge since she testified in her July 2018 PMK *Jewett* deposition that she has "no idea" how frequently base salary recommendations get rejected below the very top approval level. Citation: - OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_0000400718-20, 135:24-137:1. 5) Managers testified that their pay recommendations were not always	

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	followed. Citation: ☐ OEx. 12, Pandey Decl. ¶14; ☐ OEx. 10, McGregor Decl. ¶13.	
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. **Supporting Evidence:** 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., ¶	**Disputed.** Lower levels managers make compensation recommendations, not compensation decisions. 1) Compensation *recommendations* for hiring and salary increases for promotions are reviewed by a person's management chain until it reaches the final approvers. The final approvers for all salary increases (focal reviews and off-cycle) due to promotions have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Moreover, to get off-cycle decisions approved, *recommending* managers are required to submit written justification. OFCCP is disputing this issue because the lower level managers do not make the compensation decisions, they only make *recommendations*. ☐ Oracle's Global Approval Matrices state that approvals for base salary increases; bonuses and stock or stock options grants; and hiring have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation:	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response does not create a material dispute of fact. Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. OFCCP's "rebuttal" that lower-level managers make "recommendations" does not dispute Oracle's fact. Oracle also incorporates its response to OFCCP's SUF 113. B) Oracle incorporates its responses to OFCCP's SUF 114. C) Oracle incorporates its responses to OFCCP's SUF 115. D) Oracle incorporates its responses to OFCCP's SUF 116. E) Oracle incorporates its responses to OFCCP's SUF 117. F) Oracle incorporates its responses to OFCCP's SUF 120. G) Oracle incorporates its responses to OFCCP's SUF 121. H) Oracle incorporates its responses to OFCCP's SUF 122. I) Oracle incorporates its responses to OFCCP's SUF 123. J) Oracle incorporates its responses to OFCCP's SUF 124.

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11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13; Yakkundi Decl., ¶ 19; Suri Dec., ¶ 22; Chan Decl., ¶ 13; Desmond Decl., ¶ 13.	☐ OFCCP SUF: Fact 113; ☐ Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_00000 62725-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_00000 62732-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 11/1/14, ORACLE_HQCA_00000 62712-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2, in Vol. 1. B) Oracle requires that all pay increases be approved by the top of an employee's management chain of command. Citation: ☐ OFCCP SUF: Fact 114; ☐ OEx. 17, Waggoner May Dep. 106:2–4. C) Oracle's focal reviews instructions require managers to make recommendations that are reviewed by each successive level of management until they are finally approved at the top of the management chain of	K) OFCCP's response does not rebut this fact. OFCCP's response is that Mr. Loaiza looks at "proposed pay" and therefore the first-level manager could not have "already determined the starting pay for a new hire." But Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. L) OFCCP's response is to point to two isolated examples of pay recommendations not being followed. But this does not rebut Oracle's fact which is that senior managers *generally* defer to lower-level managers. Oracle does not claim that senior managers always defer. Therefore, two isolated examples of lower-level manager's recommendations not being followed is consistent with Oracle's fact. 2) OFCCP's response is that senior level managers provide a more substantive review of hiring decisions than checking if they are within budget or not wholly unreasonable. But OFCCP's assertion is not supported by the facts on which it relies, as explained below. A) First, OFCCP's characterization of Mr. Loaiza's review as "extensive" is not supported by the testimony it cites. Nor is this characterization accurate. Mr. Loaiza said nothing

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	command or the office of that top executive. Citation: ☐ OFCCP SUF: Fact 115; ☐ Ex. 24, slides 28–39 and associated notes, ORACLE_HQCA_0000381306-52 to -75 in Vol. 1; ☐ Ex. 25, slides 33–39, ORACLE_HQCA_0000056242-42 to -48a in Vol. 1; ☐ Ex. 26, slides 3–4, 13, 34–39, ORACLE_HQCA_0000056957-3, -4, -16, -38 to -45 in Vol. 2; ☐ OEx. 8, Waggoner PMK Dep. 118:18-23. D) Oracle's compensation instructions for hiring and for off-cycle salary increases (e.g., for promotions) likewise require managers to make pay recommendations that require the approvals all the way up to the Executive Level or their offices. Citation: ☐ OFCCP SUF: Fact 116; ☐ Ex. 28, slide 11 (notes), ORACLE_HQCA_0000057179-22, in Vol. 2; ☐ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_0000056234-65 to -66 in Vol. 1. E) The approvals for base salary increase recommendations go all the way up through the CEO's office wherein the	about the extensiveness of his approval review; rather he explained that, as part of the process of performing a sanity check on a lower-level manager's hiring recommendation, he looks at certain factors. That does not change the fact that "first-level managers . . . are the people who did most of the hiring" and "these hiring managers determined compensation" which Mr. Loaiza then approved. Connell Reply. Decl., Ex. B, Loaiza Dep. Tr. 35:13-36:2. B) OFCCP's misconstrues Ms. Cheruvu's testimony. As with Mr. Loaiza, Ms. Cheruvu's testimony explained certain factors she looks at when performing the high-level sanity check of approving hiring compensation. Moreover, she explained that she doesn't know how hiring is handled on other teams beyond her own. OEx. 4, Cheruvu Dep. Tr. 71:18-21. C) OFCCP relies on the length of its own notes from a conversation with Mr. Loaiza as evidence of his involvement in hiring. This self-serving characterization of OFCCP's own work is meaningless. Moreover, much of the discussion OFCCP refers to was about a claim that has now been settled and is therefore non-responsive. *See also* Oracle's Objections to Evidence. D) OFCCP again relies on its own notes from a conversation with Ms. Cheruvu to support this fact. First, OFCCP does not support its characterization of Ms. Cheruvu's

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	final decision is made. Citation: ☐ OFCCP SUF: Fact 117; ☐ OEx. 8, Waggoner PMK Dep. 155:7-25. F) In a 2014 compensation training, managers were instructed: "**Do not communicate** any changes [in compensation] until the 'Last Approval Action' shows 'Larry Ellison.'" Citation: ☐ OFCCP SUF: Fact 120; ☐ Ex. 25, slide 39, ORACLE_HQCA_0000056242-48 (emphasis in original), in Vol. 1. G) In a 2011 compensation training, managers were instructed: "**You should not communicate any changes until we obtain final approval from LJE**." Citation: ☐ OFCCP SUF: Fact 121; ☐ Ex. 26, slide 49, ORACLE_HQCA_0000056957-55 (emphasis in original) in Vol. 2. H) LJE stands for Larry J. Ellison. Citation: ☐ OFCCP SUF: Fact 122; ☐ OEx. 17, Waggoner May Dep. 106:25–107:4. I) Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz. Citation:	involvement in hiring as "extensive." Additionally, the factors OFCCP says Ms. Cheruvu looks at are the factors she considers when helping front-line managers make recommendations about pay. She was not speaking about her own hiring approvals. This evidence therefore supports Oracle's position. *See also* Oracle's Objections to Evidence. 3) *See* Oracle's Response to OFCCP's Evidentiary Objections. A) *See* Oracle's Response to OFCCP's Evidentiary Objections. B) *See* Oracle's Response to OFCCP's Evidentiary Objections. C) *See* Oracle's Response to OFCCP's Evidentiary Objections. D) *See* Oracle's Response to OFCCP's Evidentiary Objections. E) *See* Oracle's Response to OFCCP's Evidentiary Objections. 4) *See* Oracle's Response to OFCCP's Evidentiary Objections. 5) OFCCP disputes this fact because Oracle did not define the terms used. This clearly did not prevent OFCCP from understanding the fact as it presented 8 pages of responses separated into 24 separate sections.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ OFCCP SUF: Fact 123; ☐ OEx. 16, Carrelli Dep. 212:9–213:1, 214:12–14. J) Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process. Citation: ☐ OFCCP SUF: Fact 124; ☐ Ex. 24, slide 39 (notes), ORACLE_HQCA_00003 81306-76, in Vol. 1. K) EVP Loaiza, at the M8 global career level, testified in his deposition that when he is reviewing a person during the hiring approval process, he is reviewing "the proposed compensation of the person." He emphasizes this a second time when he states: "What I get is not the current compensation. I get the proposed compensation." If he is only looking at the proposed pay at his high-level, then the first level manager, many levels below, could not have already determined the salary increases. Citation: ☐ OEx. 11, Loaiza Dep. 17:2-10, 44:16-45:1, 45:20-46:18. L) Managers testified to specific examples of their pay recommendations not being followed. Citation: ☐ OEx. 12, Pandey Decl. ¶14;	

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	☐ OEx. 10, McGregor Decl. ¶13. 2) Senior levels of management at the VP level and above level do more than just review hiring submissions that contain proposed compensation to see if hiring recommendations are "within budget and/or are not wholly unreasonable." A) EVP Loaiza, at an M8 global career level, gave a detailed explanation of what he reviewed to determine if he should approve or reject a hiring recommendation containing the proposed compensation. He stated that he looked at: the person's proposed compensation; whether Oracle hiring in the area of the person's expertise; a person's education; the person's resume; the interview notes by Oracle personnel; the person's competitive offer by another company, if applicable; and that he would generally review anything in the hiring packet. Thus, contrary to the claim only supported by Ms. Balkenhol's declaration, senior managers like EVP Loaiza do extensive review of offers Citation: ☐ OEx. 11, Loaiza Dep. 44:16-45:19, 46:16-47:2, 47:21-23, 68:19-69:8. B) HR Business Partner and VP Madhavi Cheruvu for seven lines of businesses (LOB)	

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	and Thomas Kurian's Product Development LOB testified that as an approving manager, she looks at a person's experience (years and type), skills, resume, the other companies the person worked, the similarity between where the person worked and at Oracle, the salary range, the person's current compensation, the role the person will play, the criticality of the skills, and the deliverables the person will make. Citation: □ OEx. 4, Cheruvu Dep. 70:12-71:4, 77:3-78:3, 190:25-191:9, 259:12-22 C) EVP Loaiza also gave an interview to OFCCP on March 25, 2015, when he identified that he was a Senior Vice President during OFCCP's audit. In the interview summary for him it noted that EVP Loaiza commented extensively on his involvement in the hiring process to include reviewing the proposed compensation and the person's current compensation such that almost a whole typed page, single space, reflected his comments. Citation: □ Atkins Opp'n Decl. ¶14, Ex. K, Loaiza Interview Notes, DOL0000000522. D) HR Business Partner and VP Madhawi Cheruvu for seven	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	lines of businesses (LOB) and Thomas Kurian's Product Development LOB also gave an interview that OFCCP summarized that described her extensive involvement in hiring and off-cycle compensation decisions. The interview summary identified that she looks at: resumes, current compensation, the job they are performing, the skills they are bring and how important these skills are to Oracle, the salary ranges involved, the immediate need of the person, the level of market demand for the person's skills, the difference between what the applicant is currently making and the proposed salary, compares what is being offered to current employees, examines what competitors are offering. Thus, contrary to the claim only supported by Ms. Balkenhol's declaration, senior managers like HR Business Partner and VP Cheruvu do extensive review of offers or off- cycle pay adjustments. Citation: ☐ Atkins Opp'n Decl. ¶6, Ex. C, OFCCP's Interview Notes of the Madhawi Cheruvu on March 24 & 26, 2015 (Cheruvu Interview Notes), DOL000000535-37.	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	3) This fact is also disputed because it is unsupported because of lack of foundation on several grounds having more detail below: - Waggoner's claims are contradicted by her *Jewett* PMK testimony; - Balkenhol's claims only concern what happens at the very top for the CEOs and CTO. - None of the remaining 11 declarations concern promotion salary increases. - Three declaration concern neither promotion salary increases or starting pay; - Oracle's cherry picking of the eight remaining declarations are insufficient to establish what happened for three job functions over six years when there was 1,516 managers in these three job functions on January 1, 2014, alone. A) Ms. Waggoner's declaration and deposition testimony lack foundation because of a lack of personal knowledge since she testified in her July 2018 PMK *Jewett* deposition that she has "no idea" how frequently base salary recommendations get rejected below the very top approval. Citation: - OEx. 2, Waggoner PMK *Jewett* Dep.	

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	ORACLE_HQCA_00004 00718-20, 135:24-137:1. B) Ms. Waggoner's declaration and deposition testimony lacks foundation because of a lack of personal knowledge since she testified in her July 2018 *Jewett* deposition that she had not been involved with the review process for initial salaries for years. Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00688-89, 105:1-106:12. C) Ms. Balkenhol Decl. is disputed because of a lack of foundation. She only addresses whether rejections occurred at the CEO or CTO level at the apex of the approval levels. She states nothing about any of the approvals at the lower levels. D) This is a lack of foundation for the remaining 11 declarations on several grounds. First, none of them addressed salaries increases for promotions. The one that came the closest only address not having his promotion decision changed. This statement did not address whether a salary increase accompanied this promotion, let alone whether it was approved. This declaration stated nothing about the salary increase that may have accompanied the promotion.	

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	Three of the 11 declarations stated nothing about either starting pay or salary increases for promotions such that this only left eight declarations remaining for perhaps starting pay since one did not address the types of compensation decisions made. The breakdown of these declarations is as follows: ☐ ¶ 15 of the Abushaban Decl. only addresses hiring pay and not salary increases for promotions; ☐ ¶ 11 of the Hsin Decl. also only addressed hiring pay and not salary increases for promotions; ☐ ¶ 16 of the Ousterhout Decl. qualifies rejections to just those that occurred that were within the salary range and she never identified whether her other compensation decisions related to promotions; ☐ ¶ 11 of the Robertson Decl. only references hiring pay, not salary increases for promotion and admits to rejecting starting salary recommendations received from below but does not identify the scope of his rejections; ☐ ¶ 14 of the Shah Decl. only references hiring pay and not salary increases for promotions; ☐ ¶ 14 of the Talluri Decl.	

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	only references hiring pay, not salary increases for promotion; □ ¶ 13 of the Eckard Dec. does not reference the approval process for salary for either hiring or promotions; □ ¶ 19 of the Yakkundi Decl. does not reference the approval process for salary for either hiring or promotions; □ ¶ 22 of the Suri Dec. does not reference the approval process for salary for either hiring or promotions; □ ¶ 13 of the Chan Decl. does not reference the type of compensation decisions she made or reviewed for anyone to evaluate whether she ever had any hiring pay or promotion salary decisions; and □ ¶ 13 of the Desmond Decl. does not address starting salaries or increasing salaries for promotions. E) Additionally, on just January 1, 2014 alone, the number of employees at Oracle having the M management global career level in the three job functions at issue in this litigation was 1,516. Making the false assumption that Oracle never added any other manager between January 1, 2014, to January 19, 2019, means that these eight	

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	declarations represent only 0.53% of Oracle's management work force for these three job functions. Thus, Oracle's claim lacks foundation because the people giving declaration vastly under represent management in these three job functions. Citation: - OFCCP SUF: Fact 118; - Ex. 17, Atkins MSJ Decl., Ex. A (Table 1). 4) OFCCP objects to all of the statements made in all of the declarations Oracle used to support this alleged fact regarding the number of approvals and rejections the declarant made under Rule 1002 Fed. R. Evid. (best evidence). Oracle electronically tracks it approval process as demonstrated in the "Approval History" Section for "Candidate Details." In this Approval History Section, it notes, amongst other things, the order of approvals, the name or organization of the actual approver, the approval status, the date and time down to the second that the action was taken and any comments any person made. Thus, instead of managers relying on their memory and perhaps speculating, Oracle should have provided documentation of the decisions made. To the extent Oracle claims that it was providing a summary, OFCCP objects under Rule 1006 Fed. R. Evid. (improper summary). Citation: - OFCCP SUF: Fact 118; - Ex. 29, iRecruitment	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Candidate Details for Applicant Number 452780, dated 2/17/14, ORACLE_HQCA_00000 01729 in Vol. 2. 5) Lastly, OFCCP disputes this fact because the person making the "individual compensation decisions" was not defined nor was "senior managers" defined.	
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. **Supporting Evidence:** Balkenhol Decl., ¶¶ 6, 9, 12.	**Disputed.** 1) Compensation *recommendations* for hiring and salary off-cycle increases are reviewed by a person's management chain until it reaches the final approvers. The final approvers for all salary increases (focal reviews and off-cycle) due to promotions have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Moreover, to get off-cycle decisions approved, *recommending* managers are required to submit written justification. OFCCP is disputing this issue because the lower level managers do not make the compensation *decisions*, they only make *recommendations*. A) Oracle's Global Approval Matrices state that approvals for base salary increases; bonuses and stock or stock options grants; and hiring have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: □ OFCCP SUF: Fact 113; □ Ex. 20, Global Approval	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response does not create a material dispute of fact. Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. OFCCP's "rebuttal" that lower-level managers make "recommendations" does not dispute Oracle's fact. A) Oracle incorporates its response to OFCCP's SUF 113. B) Oracle incorporates its responses to OFCCP's SUF 114. C) Oracle incorporates its responses to OFCCP's SUF 116. D) Oracle incorporates its responses to OFCCP's SUF 117. E) Oracle incorporates its responses to OFCCP's SUF 120. F) Oracle incorporates its responses to OFCCP's SUF 121. G) Oracle incorporates its responses to OFCCP's SUF 122. H) Oracle incorporates its responses to OFCCP's SUF 123.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Matrix, dated 6/11/12, ORACLE_HQCA_00000 62725-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_00000 62732-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 11/1/14, ORACLE_HQCA_00000 62712-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2, in Vol. 1. B) Oracle requires that all pay increases be approved by the top of an employee's management chain of command. Citation: ☐ OFCCP SUF: Fact 114; ☐ OEx. 17, Waggoner May Dep. 106:2–4. C) Oracle's compensation instructions for hiring and for off-cycle salary increases (e.g., for promotions) likewise require managers to make pay recommendations that require the approvals all the way up to the Executive Level or their offices. Citation:	J) Oracle incorporates its responses to OFCCP's SUF 124. K) OFCCP's response does not rebut this fact. OFCCP's response is that Mr. Loaiza looks at "proposed pay" and therefore the first-level manager could not have "already determined the starting pay for a new hire." But Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. 2) OFCCP's response is that senior level managers provide a more substantive review of hiring decisions than checking if they are within budget or not wholly unreasonable. But OFCCP's assertion is not supported by the facts on which it relies, as explained below. A) First, OFCCP's characterization of Mr. Loaiza's review as "extensive" is not supported by the testimony it cites. Nor is this characterization accurate. Mr. Loaiza said nothing about the extensiveness of his approval review; rather he explained that, as part of the process of performing a sanity check on a lower-level manager's hiring recommendation, he looks at certain factors. That does not change the fact that "first-level managers . . . are the people who did most of the hiring" and "these hiring managers determined

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	☐ OFCCP SUF: Fact 116; ☐ Ex. 28, slide 11 (notes), ORACLE_HQCA_00000 57179-22 in Vol. 2; ☐ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_00000 56234-65 to -66 in Vol. 1. D) The approvals for base salary increase recommendations go all the way up through the CEO's office wherein the final decision is made. Citation: ☐ OFCCP SUF: Fact 117; ☐ OEx. 8, Waggoner PMK Dep. 155:7-25. E) In a 2014 compensation training, managers were instructed: "**Do not communicate** any changes [in compensation] until the 'Last Approval Action' shows 'Larry Ellison.'" Citation: ☐ OFCCP SUF: Fact 120; ☐ Ex. 25, slide 39, ORACLE_HQCA_00000 56242-48 (emphasis in original) in Vol. 1. F) In a 2011 compensation training, managers were instructed: "**You should not communicate any changes until we obtain final approval from LJE**." Citation: ☐ OFCCP SUF: Fact 121; ☐ Ex. 26, slide 49, ORACLE_HQCA_00000 56957-55 (emphasis in original) in Vol. 2.	compensation" which Mr. Loaiza then approved. Connell Reply. Decl. Ex. B, Loaiza Dep. Tr. 35:13-36:2. B) OFCCP's misconstrues Ms. Cheruvu's testimony. As with Mr. Loaiza, Ms. Cheruvu's testimony explained certain factors she looks at when performing the high-level sanity check of approving hiring compensation. Moreover, she explained that she doesn't know how hiring is handled on other teams beyond her own. OEx. 4, Cheruvu Dep. Tr. 71:18-21. C) OFCCP relies on the length of its own notes from a conversation with Mr. Loaiza as evidence of his involvement in hiring. This self-serving characterization of OFCCP's own work is meaningless. Moreover, much of the discussion OFCCP refers to was about a claim that has now been settled and is therefore non-responsive. *See also* Oracle's Objections to Evidence. D) OFCCP again relies on its own notes from a conversation with Ms. Cheruvu to support this fact. First, OFCCP does not support its characterization of Ms. Cheruvu's involvement in hiring as "extensive." Additionally, the factors OFCCP says Ms. Cheruvu looks at are the factors she considers when helping front-line managers make recommendations about pay. She was not speaking about her own hiring approvals. This evidence therefore supports Oracle's position. *See also* Oracle's Objections to Evidence.

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	G) LJE stands for Larry J. Ellison. Citation: - OFCCP SUF: Fact 122; - Ex. 7, Waggoner May Dep. 106:25–107:4. H) Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz. Citation: - OFCCP SUF: Fact 123; - OEx. 16, Carrelli Dep. 212:9–213:1, 214:12–14. J) Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process. Citation: - OFCCP SUF: Fact 124; - Ex. 24, slide 39 (notes), ORACLE_HQCA_00003 81306-76 in Vol. 1. K) EVP Loaiza, at the M8 global career level, testified in his deposition that when he is reviewing a person during the hiring approval process, he is reviewing "the proposed compensation of the person." He emphasizes this a second time when he states: "What I get is not the current compensation. I get the proposed compensation." If he is only looking at the proposed pay at his high-level, then the first level manager, many levels below, could not have already determined the salary	3) *See* Oracle's Response to OFCCP's Evidentiary Objections. 4) *See* Oracle's Response to OFCCP's Evidentiary Objections. 5) *See* Oracle's Response to OFCCP's Evidentiary Objections. 6) *See* Oracle's Response to OFCCP's Evidentiary Objections. 7) OFCCP again relies on its own notes from an interview as evidence to support this fact. Moreover, nothing is this interview is inconsistent with Ms. Balkenhol performing only a high-level sanity check in the context of hiring. In fact, taking the document at face value, she *confirmed* Oracle's fact. She stated "We basically see if the person's experience fits within the right ballpark. Our job is more like a goalie. We're not interviewing or talking to candidates. We're just there to look for outliers and what doesn't seem sensible from a high-level perspective…We don't' get too deeply into details because managers know what particularly they're looking for from their team." Atkins Decl., Ex. B at 2. She also said, "For employees coming from the outside, we just try to do a sanity check" and "we just want to make sure we're not offering someone's nephew a large increase. Our role is basically to do a sanity check." *Id.* *See also* Oracle's Objections to Evidence.

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	increases. Citation: □ OEx. 11, Loaiza Dep. 17:2-10, 44:16-45:1, 45:20-46:18. 2) Oracle's senior management does more than just institute "a high- level 'sanity check,' and not a deep dive into the specifics of any particular decision." A) EVP Loaiza, at an M8 global career level, gave a detailed explanation of what he reviewed to determine if he should approve or reject a hiring recommendation containing the proposed compensation. He stated that he looked at: the person's proposed compensation; whether Oracle hiring in the area of the person's expertise; a person's education; the person's resume; the interview notes by Oracle personnel; the person's competitive offer by another company, if applicable; and that he would generally review anything in the hiring packet. Thus, contrary to the claim only supported by Ms. Balkenhol's declaration, senior managers like EVP Loaiza do extensive review of offers Citation: □ OEx. 11, Loaiza Dep. 44:16-45:19, 46:16-47:2, 47:21-23, 68:19-69:8. B) HR Business Partner and VP Madhawi Cheruvu for seven	

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	lines of businesses (LOB) and Thomas Kurian's Product Development LOB testified that as an approving manager, she looks at a person's experience (years and type), skills, resume, the other companies the person worked, the similarity between where the person worked and at Oracle, the salary range, the person's current compensation, the role the person will play, the criticality of the skills, and the deliverables the person will make. Citation: □ OEx. 4, Cheruvu Dep. 70:12-71:4, 77:3-78:3, 190:25-191:9, 259:12-22 C) EVP Loaiza also gave an interview to OFCCP on March 25, 2015, when he identified that he was a Senior Vice President during OFCCP's audit. In the interview summary for him it noted that EVP Loaiza commented extensively on his involvement in the hiring process to include reviewing the proposed compensation and the person's current compensation such that almost a whole typed page, single space, reflected his comments. Citation: □ Atkins Opp'n Decl. ¶14, Ex. K, Loaiza Interview Notes, DOL0000000522. D) HR Business Partner and VP	

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	Madhawi Cheruvu for seven lines of businesses (LOB) and Thomas Kurian's Product Development LOB also gave an interview that OFCCP summarized that described her extensive involvement in hiring and off-cycle compensation decisions. The interview summary identified that she looks at: resumes, current compensation, the job they are performing, the skills they are bring and how important these skills are to Oracle, the salary ranges involved, the immediate need of the person, the level of market demand for the person's skills, the difference between what the applicant is currently making and the proposed salary, compares what is being offered to current employees, examines what competitors are offering. Citation: ☐ Atkins Opp'n Decl. ¶14, Ex. C, Cheruvu Interview Notes, DOL000000535-37. 3) Ms. Balkenhol's declaration lacks foundation because she has a lack of personal knowledge about what is approved or rejected below her. Ms. Balkenhol only established a foundation for what she reviewed for the CEOs and the CTO. Balkenhol Decl., ¶4. 4) Ms. Balkenhol's declaration in ¶5 is unsupported because she provided	

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	no foundation or personal knowledge demonstrating how she knows what direct managers do and did not define this direct manager term. Furthermore, in Oracle's SUF it defined "direct" in Fact 12 as pertaining to "first-line" manager wherein this Fact uses a different term: "front-line" manager." 5) OFCCP objects to all of Ms. Balkenhol's statements regarding the number of approvals and rejections she made under Rule 1002 Fed. R. Evid. (best evidence). Oracle electronically tracks it approval process as demonstrated in the "Approval History" Section for "Candidate Details." In this Approval History Section, it notes, amongst other things, the order of approvals, the name or organization of the actual approver, the approval status, the date and time down to the second that the action was taken and any comments any person made. Thus, instead of managers relying on their memory and perhaps speculating, Oracle should have provided documentation of the decisions made. To the extent Oracle claims that it was providing a summary, OFCCP objects under Rule 1006 Fed. R. Evid. (improper summary). Citation: □ OFCCP SUF: Fact 118; □ Ex. 29, ORACLE_HQCA_0000001729 in Vol. 2. 6) OFCCP has filed objections to Ms. Balkenhol's declaration on numerous grounds to include lack of personal knowledge and best evidence.	

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	7) Ms. Balkenhol also gave an interview to OFCCP during the audit on March 26, 2015. In OFCCP's interview summary prepared from that audit, OFCCP documented how Ms. Balkenhol did more than a high-level sanity check. This summary noted that Ms. Balkenhol referred to her job as being like a goalie. Ms. Balkenhol described the many items she reviews for hiring and salary increases. For example, she looks at: the global career level (e.g., IC2, IC3); the person's current pay, resume, experience, education, frequency of job changes, the size of the compensation change, transcripts, skills, amount of competitive offers, etc. Citation: ☐ Atkins Opp'n Decl. ¶5, Ex. B, OFCCP's Interview Notes of the Carolyn Balkenhol interview on March 26, 2015 (Balkenhol Interview Notes), DOL000036706-09.	
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. **Supporting**	**Disputed.** 1) Compensation *recommendations* for hiring and salary off-cycle increases are reviewed by a person's management chain until it reaches the final approvers. The final approvers for all salary increases (focal reviews and off-cycle) due to promotions have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Moreover, to get off-cycle decisions approved, *recommending* managers are required to submit written	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response does not create a material dispute of fact. Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. OFCCP's "rebuttal" that lower-level managers make "recommendations" does not

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Evidence: Balkenhol Decl., ¶¶ 7, 12.	justification. OFCCP is disputing this issue because the lower level managers do not make the compensation *decisions*, they only make *recommendations*. A) Oracle's Global Approval Matrices state that approvals for base salary increases; bonuses and stock or stock options grants; and hiring have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: ☐ OFCCP SUF: Fact 113; ☐ Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_00000 62725-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_00000 62732-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 11/1/14, ORACLE_HQCA_00000 62712-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2, in Vol. 1. B) Oracle requires that all pay	dispute Oracle's fact. A) Oracle incorporates its response to OFCCP's SUF 113. B) Oracle incorporates its responses to OFCCP's SUF 114. C) Oracle incorporates its responses to OFCCP's SUF 116. D) Oracle incorporates its responses to OFCCP's SUF 117. E) Oracle incorporates its responses to OFCCP's SUF 120. F) Oracle incorporates its responses to OFCCP's SUF 121. G) Oracle incorporates its responses to OFCCP's SUF 122. H) Oracle incorporates its responses to OFCCP's SUF 123. I) Oracle incorporates its responses to OFCCP's SUF 124. J) OFCCP's response does not rebut this fact. OFCCP's response is that Mr. Loaiza looks at "proposed pay" and therefore the first-level manager could not have "already determined the starting pay for a new hire." But Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. 2) OFCCP's response is that senior level managers provide a more substantive review of hiring decisions than checking if they are within budget or not wholly unreasonable. But OFCCP's assertion is not supported by the facts on which it relies, as

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	increases be approved by the top of an employee's management chain of command. Citation: ☐ OFCCP SUF: Fact 114; ☐ OEx. 17, Waggoner May Dep. 106:2–4. C) Oracle's compensation instructions for hiring and for off-cycle salary increases (e.g., for promotions) likewise require managers to make pay recommendations that require the approvals all the way up to the Executive Level or their offices. Citation: ☐ OFCCP SUF: Fact 116; ☐ Ex. 28, slide 11 (notes), ORACLE_HQCA_00000 57179-22 in Vol. 2; ☐ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_00000 56234-65 to -66 in Vol. 1. D) The approvals for base salary increase recommendations go all the way up through the CEO's office wherein the final decision is made. Citation: ☐ OFCCP SUF: Fact 117; ☐ OEx. 8, Waggoner PMK Dep. 155:7-25. E) In a 2014 compensation training, managers were instructed: "**Do not communicate** any changes [in compensation] until the 'Last Approval Action' shows 'Larry Ellison.'"	explained below. A) First, OFCCP's characterization of Mr. Loaiza's review as "extensive" is not supported by the testimony it cites. Nor is this characterization accurate. Mr. Loaiza said nothing about the extensiveness of his approval review; rather he explained that, as part of the process of performing a sanity check on a lower-level manager's hiring recommendation, he looks at certain factors. That does not change the fact that "first-level managers . . . are the people who did most of the hiring" and "these hiring managers determined compensation" which Mr. Loaiza then approved. Connell Reply. Decl. Ex. B, Loaiza Dep. Tr. 35:13-36:2. B) OFCCP's misconstrues Ms. Cheruvu's testimony. As with Mr. Loaiza, Ms. Cheruvu's testimony explained certain factors she looks at when performing the high-level sanity check of approving hiring compensation. Moreover, she explained that she doesn't know how hiring is handled on other teams beyond her own. OEx. 4, Cheruvu Dep. Tr. 71:18-21. C) OFCCP relies on the length of its own notes from a conversation with Mr. Loaiza as evidence of his involvement in hiring. This self-serving characterization of OFCCP's own work is meaningless. Moreover, much of the discussion OFCCP refers to was about a claim that has now been settled and is therefore non-

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	Citation: ☐ OFCCP SUF: Fact 120; ☐ Ex. 25, slide 39, ORACLE_HQCA_00000 56242-48 (emphasis in original) in Vol. 1. F) In a 2011 compensation training, managers were instructed: "**You should not communicate any changes until we obtain final approval from LJE**." Citation: ☐ OFCCP SUF: Fact 121; ☐ Ex. 26, slide 49, ORACLE_HQCA_00000 56957-55 (emphasis in original) in Vol. 2. G) LJE stands for Larry J. Ellison. Citation: ☐ OFCCP SUF: Fact 122; ☐ OEx. 17, Waggoner May Dep. 106:25–107:4. H) Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz. Citation: ☐ OFCCP SUF: Fact 123; ☐ OEx. 16, Carrelli Dep. 212:9–213:1, 214:12–14. I) Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process. Citation: ☐ OFCCP SUF: Fact 124; ☐ Ex. 24, slide 39 (notes), ORACLE_HQCA_00003	responsive. *See also* Oracle's Objections to Evidence. D) OFCCP again relies on its own notes from a conversation with Ms. Cheruvu to support this fact. First, OFCCP does not support its characterization of Ms. Cheruvu's involvement in hiring as "extensive." Additionally, the factors OFCCP says Ms. Cheruvu looks at are the factors she considers when helping front-line managers make recommendations about pay. She was not speaking about her own hiring approvals. This evidence therefore supports Oracle's position. *See also* Oracle's Objections to Evidence. 3) *See* Oracle's Response to OFCCP's Evidentiary Objections. 4) *See* Oracle's Response to OFCCP's Evidentiary Objections. 5) *See* Oracle's Response to OFCCP's Evidentiary Objections. 5) OFCCP again relies on its own notes from an interview as evidence to support this fact. Moreover, taking the document at face value, nothing is this interview is inconsistent with Ms. Balkenhol performing only a high-level sanity check in the context of hiring. In fact, she *confirmed* Oracle's fact. She stated "We basically see if the person's experience fits within the right ballpark. Our job is more like a goalie. We're not interviewing or talking to candidates. We're just there to look for outliers and what doesn't seem sensible from a high-level perspective…We don't' get too deeply into details because

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	81306-76 in Vol. 1. J) EVP Loaiza, at the M8 global career level, testified in his deposition that when he is reviewing a person during the hiring approval process, he is reviewing "the proposed compensation of the person." He emphasizes this a second time when he states: "What I get is not the current compensation. I get the proposed compensation." If he is only looking at the proposed pay at his high-level, then the first level manager, many levels below, could not have already determined the salary increases. Citation: ☐ OEx. 11, Loaiza Dep. 17:2-10, 44:16-45:1, 45:20-46:18. 2) Oracle's senior management does more than just institute "a high- level sanity check." A) EVP Loaiza, at an M8 global career level, gave a detailed explanation of what he reviewed to determine if he should approve or reject a hiring recommendation containing the proposed compensation. He stated that he looked at: the person's proposed compensation; whether Oracle hiring in the area of the person's expertise; a person's education; the person's resume; the interview notes by Oracle personnel; the	managers know what particularly they're looking for from their team." Atkins Decl., Ex. B at 2. She also said, "For employees coming from the outside, we just try to do a sanity check" and "we just want to make sure we're not offering someone's nephew a large increase. Our role is basically to do a sanity check." *Id.* *See also* Oracle's Objections to Evidence.

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	person's competitive offer by another company, if applicable; and that he would generally review anything in the hiring packet. Thus, contrary to the claim only supported by Ms. Balkenhol's declaration, senior managers like EVP Loaiza do extensive review of offers Citation: □ OEx. 11, Loaiza Dep. 44:16-45:19, 46:16-47:2, 47:21-23, 68:19-69:8. B) HR Business Partner and VP Madhawi Cheruvu for seven lines of businesses (LOB) and Thomas Kurian's Product Development LOB testified that as an approving manager, she looks at a person's experience (years and type), skills, resume, the other companies the person worked, the similarity between where the person worked and at Oracle, the salary range, the person's current compensation, the role the person will play, the criticality of the skills, and the deliverables the person will make. Citation: □ OEx. 4, Cheruvu Dep. 70:12-71:4, 77:3-78:3, 190:25-191:9, 259:12-22. C) EVP Loaiza also gave an interview to OFCCP on March 25, 2015, when he identified that he was a Senior Vice President during	

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	OFCCP's audit. OFCCP's summary of his interview noted that EVP Loaiza commented extensively on his involvement in the hiring process to include reviewing the proposed compensation and the person's current compensation such that almost a whole typed page, single space, reflected his comments. Citation: - Atkins Opp'n Decl. ¶14, Ex. K, Loaiza Interview Notes, DOL0000000522. D) HR Business Partner and VP Madhawi Cheruvu for seven lines of businesses (LOB) and Thomas Kurian's Product Development LOB also gave an interview that OFCCP summarized that described her extensive involvement in hiring and off-cycle compensation decisions. The interview summary identified that she looks at: resumes, current compensation, the job they are performing, the skills they are bring and how important these skills are to Oracle, the salary ranges involved, the immediate need of the person, the level of market demand for the person's skills, the difference between what the applicant is currently making and the proposed salary, compares what is being offered to current employees, examines	

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	what competitors are offering. Thus, contrary to the claim only supported by Ms. Balkenhol's declaration, senior managers like HR Business Partner and VP Cheruvu do extensive review of offers or off- cycle pay adjustments. Citation: - Atkins Opp'n Decl. ¶14, Ex. C, Cheruvu Interview Notes, DOL000000535-37. 3) Ms. Balkenhol's Decl. lacks foundation because of a lack of personal knowledge about what is approved or rejected below her. Ms. Balkenhol only established a foundation for what she reviewed for the CEOs and the CTO. Balkenhol Decl., ¶4. 4) Ms. Balkenhol's testimony in ¶5 is unsupported because she provided no foundation or personal knowledge demonstrating how she knows what direct managers do and did not define this direct manager term. 5) OFCCP has separately filed objections to Ms. Balkenhol's declaration on numerous grounds to include lack of personal knowledge and best evidence. 5) Carolyn Balkenhol also gave an interview to OFCCP during the audit on March 26, 2015. In OFCCP's interview summary prepared from that audit, OFCCP documented how Ms. Balkenhol did more than just a high-level sanity check that is not a deep dive. This interview summary noted that Ms. Balkenhol referred to her job as being like a goalie. Ms.	

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	Balkenhol described the many items she reviews for hiring and salary increases. For example, she looks at: the global career level (e.g., IC2, IC3); the person's current pay, resume, experience, education, frequency of job changes, the size of the compensation change, transcripts, skills, amount of competitive offers, etc. Citation: ☐ Atkins Opp'n Decl. ¶5, Ex. B, Balkenhol Interview Notes, DOL000000511-14.	
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. **Supporting Evidence:** 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).	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
40. During a focal review, LOB heads receive a budget for salary increases, which they can	**Undisputed**	**OFCCP concedes this fact is undisputed and material.**

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allocate in their discretion to lower-level managers within their organizations. **Supporting Evidence:** 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. **Supporting Evidence:** 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.	**Disputed.** 1) This is disputed because lower level managers have to propose to the managers who gave them the budget how the lower level manager recommends to distribute the budget. Moreover, this lower level manager has to obtain feedback from this higher-level manager before the lower level manager can distribute it. Thus, lower level managers within an LOB are not making independent decisions about how the budget will be further distributed. Citation: - OEx. 11, Loaiza Dep. 53:21-55:24. 2) At times, the lower level manager's proposal (e.g., Senior Vice President) has to go above his higher-level manager who allocated him the budget (e.g., Executive Vice President like Andrew Mendelson) to the higher-level manager's manager (e.g. President Thomas Kurian). Citation: - OEx. 11, Loaiza Dep. 53:21-55:24. 56:2-5. 3) OFCCP objects to Ms.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's evidence does not support its assertion. First, in his deposition, Mr. Loaiza was speaking about his own situation and not on behalf of Oracle. Therefore, his testimony cannot be imputed to the entirety of Oracle. Additionally, OFCCP mischaracterizes Mr. Loaiza's testimony. Mr. Loaiza testified that with respect to his own situation, when determining what to do with his budget, he "primarily decide[s]" how it should be allocated. OEx. 11, Loaiza Dep. Tr. 54:7-10. He also explains that there is some discussion between him and the people he manages, but that it "flows in both directions" and that managers can ask for more budget. *Id.*, 55:8-24. This does not dispute Oracle's fact. Oracle does not claim that managers are making decisions in isolation, but rather, as Mr. Loaiza testified, they "primarily decide" how to allocate budget.

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	Waggoner's declaration at paragraph 15 because she lacks personal knowledge, and at 28 because she lacks personal knowledge, fails to use the best evidence, and proffers an improper summary. OFCCP has separately filed objections to Ms. Waggoner's declaration.	2) OFCCP's evidence does not support its assertion. First, in his deposition, Mr. Loaiza was speaking about his own situation and not on behalf of Oracle. Therefore, his testimony cannot be imputed to the entirety of Oracle. Additionally, again, Oracle does not claim that managers are making decisions in isolation, but rather, as Mr. Loaiza testified, they "primarily decide" how to allocate budget. Mr. Loaiza's testimony does not dispute this fact. 3) *See* Oracle's Response to OFCCP's Evidentiary Objections.
42. The manager who is the last recipient of an LOB's allocation distributes that amount in her discretion as raises to individual employees. **Supporting Evidence:** 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.	**Disputed.** 1) The decisions whether to provide focal salary increases and the budgets or caps allocated for them are more significant in determining employee compensation than the employees' direct managers. A) Oracle did not have focal reviews in 2013 and 2018 and has them about every 14-18 months. Thus, direct managers have no bearing pm when focal reviews and the potential salary increases that flow from them may occur. Citation: ☐ OFCCP SUF: Fact 137, 138; ☐ OEx. 8, Waggoner PMK Dep. 192:19-193:1, 248:7–17. ☐ Ex. 34, ORACLE_HQCA_0000434971 in Vol. 2. B) Ms. Waggoner's PMK	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response indicates it does not understand, or misconstrues, compensation at Oracle. OFCCP argues that the budget given in focal reviews is more significant in determining employee compensation than employees' direct managers. While it is true that most salary increases happen during a focal review, it is still the direct managers who are making decisions about how much of the allocated focal budget to give to each individual employee. Therefore, while individual managers do not make the decision to give themselves a focal budget, they have discretion over allocation of whatever budget they are given. A) Oracle incorporates its responses to OFCCP's SUFs 137

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	testimony also identified that Oracle has had [redacted] budget years such that there is "[redacted]." She explained the impact of this situation by stating "if we give little to no focal budget, naturally [redacted]." She also identified that Oracle has had a lean budget for "[redacted]" Thus, the ability to give salary increases is severely limited. Citation: ☐ OEx. 8, Waggoner PMK Dep. 327:24-328:12, 267:21-22. C) Oracle's lean budget years have not extended to Co-CEOs Safra Catz and Mark Hurd who each have earned 1,205 times more in 2018 than the median employee compensation at Oracle, a ratio that ranks them in the 17 highest paid CEOs vis a vis average employee pay. Citation: ☐ OEx. 19, New York Times, The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart, 5/29/19 at https://www.nytimes.com/interactive/2019/business/highest-paid-ceos-2018.html. D) In her PMK testimony, Ms. Waggoner further testified that while M1 managers have	and 138. OFCCP's response is that focal reviews are not annual. This has nothing to do with whether direct managers have discretion as to individual employees' raises. B) Again, OFCCP's response is about the frequency of focal reviews. This has nothing to do with whether direct managers have discretion as to individual employees' raises C) OFCCP's response is about Oracle's leaders' compensation. This is not relevant this case and should be disregarded. D) The testimony on which OFCCP relies is about compensation decisions at hiring and is therefore non-responsive to this fact, which is about salary increases. Moreover, OFCCP mischaracterizes Ms. Waggoner's testimony. Ms. Waggoner explained that Oracle does not generally consider managers at the M-1 level to be the first-line managers at the hiring stage. OEx. 8 Waggoner PMK Dep. Tr. 117:3-11 ("Q. (By Mr. Song) All right. M-2s would have the compensation authority . . . A. Yes. That's the first-line manager when they're hiring somebody.") Rather, that responsibility begins at the M-2 level. This does not rebut Oracle's fact, it merely clarifies the terminology. E) OFCCP's response does not rebut Oracle's fact. Ms. Waggoner

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	people reporting to them, they do not have "hire/fire, compensation decision type of authority." Citation: ☐ OEx. 8, Waggoner PMK Dep. 116:20-117:2. E) Ms. Waggoner testified further still as the PMK that at times, the budget is not even cascaded down to the M2 manager. Citation: ☐ OEx. 8, Waggoner PMK Dep. at 253:20-254:6. 2) This fact is also disputed on the grounds that when direct managers receive a budget allocation, they only make pay *recommendations*, not decisions. These pay *recommendations* are subsequently reviewed up the chain of command until the ultimate approver approves them. At intermediate reviews, the reviewing managers can either give their approvals or reject the compensation recommendation. The final approvers for all salary increase (focal reviews and off-cycle) have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Moreover, to get off-cycle decisions approved, managers are required to submit written justification. A) Oracle's Global Approval Matrices state that approvals for base salary increases bonuses, and stock or stock options grants have to be made at the level of "CEO(s) & Executive Chairman and	explained that sometimes the focal budget is not cascaded all the way down to the M-2 manager level. In other words, that specific M-2 manager does not have focal budget to allocate. This says nothing about whether direct managers primarily determine salary increases because not everyone's direct manager is an M-2. Moreover, the amount of budget a manager gets says nothing about who plays the most significant role in allocating that budget. 2) OFCCP's response does not create a material dispute of fact. Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. OFCCP's "rebuttal" that lower-level managers make "recommendations" does not dispute Oracle's fact. A) Oracle incorporates its response to OFCCP's SUF 113. B) Oracle incorporates its responses to OFCCP's SUF 114. 3) Oracle incorporates its responses to OFCCP's SUF 116. A) Oracle incorporates its responses to OFCCP's SUF 117. B) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers

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	CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: - OFCCP SUF: Fact 113; - Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_00000 62725-1 to -2; - Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_00000 62732-1 to -2; - Ex. 20, Global Approval Matrix, dated 11/1/14, ORACLE_HQCA_00000 62712-1 to -2; - Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; - Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; - Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2 all in Vol. 1. - Fact 4 herein for Thomas Kurian's title and position. B) Oracle requires that all pay increases be approved by the top of an employee's management chain of command. Citation: - OFCCP SUF: Fact 114; - OEx. 17, Waggoner May Dep. 106:2–4. C) Oracle's instructions for	have discretion as to individual employees' raises. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. C) Oracle incorporates its responses to OFCCP's SUF 120. D) Oracle incorporates its responses to OFCCP's SUF 121. E) Oracle incorporates its responses to OFCCP's SUF 122. F) Oracle incorporates its responses to OFCCP's SUF 123. H) Oracle incorporates its responses to OFCCP's SUF 124. I) OFCCP's response does not rebut this fact. OFCCP's response is that Mr. Loaiza looks at "proposed pay" and therefore the first-level manager could not have "already determined the starting pay for a new hire." But Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:7-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. J) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers have discretion as to individual employees' raises. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within

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	conducting salary reviews (aka focals or focal reviews) and allocating bonuses and stock grants instruct managers on a process by which managers make recommendations that are reviewed by each successive level of management until they are finally approved at the top of the management chain of command or the office of that top executive. Citation: ☐ OFCCP SUF: Fact 115; ☐ Ex. 24, slides 28–39 and associated notes, ORACLE_HQCA_00003 81306-52 to -75 in Vol. 1; ☐ Ex. 25, slides 33–39, ORACLE_HQCA_00000 56242-42 to - 48 in Vol. 1; ☐ Ex. 26, slides 3–4, 13, 34–39; ORACLE_HQCA_00000 56957-3, -4, -16, -38 to - 45 in Vol. 2; ☐ OEx. 8, Waggoner PMK Dep. 118:18-23. 3) Oracle's compensation instructions for hiring and for off-cycle salary increases (e.g., "dive and saves" used to counter an offer from a competitor) likewise require managers to make pay recommendations that require approvals at the Executive Level (e.g., CEO. CTO) or their offices. Citation: ☐ OFCCP SUF: Fact 116; ☐ Ex. 28, slide 11 (notes),	budget during focal review. K) Oracle incorporates its responses to OFCCP's SUF 119. 3) OFCCP's evidence does not support its assertion. First, in his deposition, Mr. Loaiza was speaking about his own situation and not on behalf of Oracle. Therefore, his testimony cannot be imputed to the entirety of Oracle. Additionally, OFCCP mischaracterizes Mr. Loaiza's testimony. Mr. Loaiza testified that with respect to his own situation, when determining what to do with his budget, he "primarily decide[s]" how it should be allocated. OEx. 11, Loaiza Dep. Tr. 54:7-10. He also explains that there is some discussion between him and the people he manages, but that it "flows in both directions" and that managers can ask for more budget. *Id.*, 55:8-24. This does not dispute Oracle's fact. Oracle does not claim that managers are making decisions in isolation, but rather, as Mr. Loaiza testified, they "primarily decide" how to allocate budget. 4) OFCCP's evidence does not support its assertion. First, in his deposition, Mr. Loaiza was speaking about his own situation and not on behalf of Oracle. Therefore, his testimony cannot be imputed to the entirety of Oracle. Additionally, again, Oracle does not claim that managers are making decisions in isolation, but rather, as Mr. Loaiza testified, they "primarily decide" how to

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	ORACLE_HQCA_00000 57179-22 in Vol. 2; ☐ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_00000 56234-65 to -66 in Vol. 1. A) The approvals for base salary increases goes all the way up through the CEO's office. Citation: ☐ OFCCP SUF: Fact 117; ☐ OEx. 8, Waggoner PMK Dep. 155:7-25. B) Oracle's focal review trainings refer to the managers role as making "recommendations" and state that "[t]his isn't to say that your recommendations won't be changed by someone further up in your hierarchy, but it is a way to inform your manager of how you would like to allocate increases to your team." Citation: ☐ Ex. 14, at slide 43 (notes), ORACLE_HQCA_00003 82580- 84 in Vol. 1. C) In a 2014 compensation training, managers were instructed: "**Do not communicate** any changes [in compensation] until the 'Last Approval Action' shows 'Larry Ellison.'" Citation: ☐ OFCCP SUF: Fact 120; ☐ Ex. 25, slide 39, ORACLE_HQCA_00000 56242-48 (emphasis in	allocate budget. Mr. Loaiza's testimony does not dispute this fact. 5) *See* Oracle's Response to OFCCP's Evidentiary Objections. 6) *See* Oracle's Response to OFCCP's Evidentiary Objections. 7) *See* Oracle's Response to OFCCP's Evidentiary Objections. 8) OFCCP's response is to point to two isolated examples of pay recommendations not being followed. But this does not rebut Oracle's fact that first-line managers have discretion as to individual employees' raises. The managers have discretion and, as Oracle has explained repeatedly, senior managers *generally* defer to lower-level managers. Oracle does not claim that senior managers always defer. Therefore, two isolated examples of lower-level manager's recommendations not being followed is consistent with Oracle's fact.

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	original) in Vol. 1. D) In a 2011 compensation training, managers were instructed: "**You should not communicate any changes until we obtain final approval from LJE**." Citation: ☐ OFCCP SUF: Fact 121; ☐ Ex. 26, slide 49, ORACLE_HQCA_00000 56957-55 (emphasis in original) in Vol. 2. E) LJE stands for Larry J. Ellison. Citation: ☐ OFCCP SUF: Fact 122; ☐ OEx. 17, Waggoner May Dep. 106:25–107:4. F) Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz. Citation: ☐ OFCCP SUF: Fact 123; ☐ OEx. 16, Carrelli Dep. 212:9–213:1, 214:12–14. H) Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process. Citation: ☐ OFCCP SUF: Fact 124; ☐ Ex. 24, slide 39 (notes), ORACLE_HQCA_00003 81306-76 in Vol. 1. I) EVP Loaiza, at the M8 global career level, testified in his deposition that when he is reviewing a person during the hiring approval	

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	process, he is reviewing "the proposed compensation of the person." He emphasizes this a second time when he states: "What I get is not the current compensation. I get the proposed compensation." If he is only looking at the proposed pay at his high-level, then the first level manager, many levels below, could not have already determined the salary increases. Citation: ☐ OEx. 11, Loaiza Dep. 17:2-10, 44:16-45:1, 45:20-46:18. J) Even in Oracle's declarations provided to this Court to support its summary judgment motion, managers acknowledge that they only make pay recommendations in focal reviews. E.g., Christina Kite, a VP, stated: "I am responsible for recommending salary increases and bonuses for my team." Citation: ☐ Oracle MSJ Decl. of Christina Kite, ¶¶ 3, 11. K) President Thomas Kurian gave his required approval to off- cycle dive and save requests. Citation: ☐ OFCCP SUF: Fact 119; ☐ Ex. 30, ORACLE_HQCA_0000432004, in Vol. 2. 3) This is disputed because lower	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	level managers have to propose to the managers who gave them the budget how the lower level manager recommends to distribute the budget. Moreover, this lower level manager has to obtain feedback from this higher-level manager before the lower level manager can distribute it. Thus, lower level managers within an LOB are not making independent decisions about how the budget will be further distributed. Citation: ☐ OEx. 11, Loaiza Dep. 53:21-55:24. 4) At times, the lower level manager's proposal (e.g., Senior Vice President) can go above his higher-level manager who allocated him the budget (e.g., Executive Vice President like Andrew Mendelson) to the higher-level manager's manager (e.g. President Thomas Kurian). Citation: ☐ OEx. 11, Loaiza Dep. 53:21-55:24, 56:2-5. 5) Ms. Waggoner's declaration provides no foundation for her claims regarding the discretion of managers and the approval process. In fact, Ms. Waggoner's declaration and deposition testimony lacks foundation because of a lack of personal knowledge since she testified in her July 2018 *Jewett* deposition that she had not been involved with the review process for years. Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00688-89, 105:1-106:12.	

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	6) Furthermore, OFCCP objects to paragraph 30 of Ms. Waggoner's declaration because she lacks personal knowledge, fails to use the best evidence, and proffers an improper summary. 7) The declarations by Yakkundi, Eckard, Kite and Suri likewise lack the foundation to support this fact because the information technology job function is not even represented, there is only one person for the product development job function and the lack of scope of these declarations. First, of the four remaining declarations, three are from the support job function (Yakkundi Decl., ¶ 3; Eckard Decl., ¶ 3; Suri Decl., ¶ 3)., one is from the product development job function Kite Decl., ¶ 11; and none are from information technology. Second, their scope is limited because they either have a lower M3 salary grade level (Yakkundi Decl., ¶ 3) or only have a small number of people reporting to them such as 5 (Kite Decl., ¶ 9). Lastly, there were 1,516 managers on January 1, 2014, (Ex. 17, total of managers in Table I at Exhibit A on January 1, 2014) in Oracle and Oracle only provided four declarations. Citation: ☐ Ex. 17, Atkins MSJ Decl. Ex. A (Table 1). 8) Managers testified to specific examples of their pay reccomendations not being followed. Citation: ☐ OEx. 12, Pandey Decl. ¶14; ☐ OEx. 10, McGregor	

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	Decl. ¶13.	
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). **Supporting Evidence:** 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.	**Disputed.** 1) The decisions whether to provide focal salary increases and the budgets or caps allocated for them are more significant in determining employee compensation than the employees' direct managers. A) Oracle did not have focal reviews in 2013 and 2018 and has them about every 14-18 months. Thus, direct managers have no bearing pm when focal reviews and the potential salary increases that flow from them may occur. Citation: - OFCCP SUF: Fact 137, 138; - OEx. 8, Waggoner PMK Dep. 192:19-193:1, 248:7–17. - Ex. 34, ORACLE_HQCA_0000434971 in Vol. 2. B) Ms. Waggoner's PMK testimony also identified that Oracle has had [redacted] budget years such that there is [redacted]." She explained the impact of this situation by stating "if we give little to no focal budget, naturally [redacted]." She also identified that Oracle has had a [redacted] budget for "[redacted]." Thus, the ability to give salary increases is severely limited. Citation:	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response indicates it does not understand, or misconstrues, compensation at Oracle. OFCCP argues that the budget given in focal reviews is more significant in determining employee compensation than employees' direct managers. While it is true that most salary increases happen during a focal review, it is still the direct managers who are making decisions about how much of the allocated focal budget to give to each individual employee. Therefore, while individual managers do not make the decision to give themselves a focal budget, they have discretion over allocation of whatever budget they are given. Accordingly, each employee's direct manager plays the most significant role in setting that employee's compensation. A) Oracle incorporates its responses to OFCCP's SUFs 137 and 138. OFCCP's response is that focal reviews are not annual. This has nothing to do with whether managers exercise their own judgment and consult with other managers and should be disregarded. B) Again, OFCCP's response is about the frequency of focal reviews. This has nothing to do with whether managers exercise their own judgment and consult

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ OEx. 8, Waggoner PMK Dep. 327:24-328:12, 267:21-22. C) Oracle's lean budget years have not extended to Co-CEOs Safra Catz and Mark Hurd who each have earned 1,205 times more in 2018 than the median employee compensation at Oracle, a ratio that ranks them in the 17 highest paid CEOs vis a vis average employee pay. Citation: ☐ OEx. 19, New York Times, The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart, 5/29/19 at https://www.nytimes.com/interactive/2019/business/highest-paid-ceos-2018.html. D) In her PMK testimony, Ms. Waggoner further testified that while M1 managers have people reporting to them, they do not have "hire/fire, compensation decision type of authority." Citation: ☐ OEx. 8, Waggoner PMK Dep. 116:20-117:2. E) Ms. Waggoner testified further still as the PMK that at times, the budget is not even cascaded down to the M2 manager. Citation: ☐ OEx. 8, Waggoner PMK Dep. at 253:20-254:6. 2) This fact is also disputed on the	with other managers and should be disregarded. C) OFCCP's response is about Oracle's leaders' compensation. This is not relevant this case and should be disregarded. D) The testimony on which OFCCP relies is about compensation decisions at hiring and is therefore non-responsive to this fact, which is about salary increases. Moreover, OFCCP mischaracterizes Ms. Waggoner's testimony. Ms. Waggoner explained that Oracle does not generally consider managers at the M-1 level to be the first-line managers at the hiring stage. OEx. 8, Waggoner PMK Dep. Tr. 117:3-11 ("Q. (By Mr. Song) All right. M-2s would have the compensation authority . . . A. Yes. That's the first-line manager when they're hiring somebody.") Rather, that responsibility begins at the M-2 level. This does not rebut Oracle's fact, it merely clarifies the terminology. E) OFCCP's response does not rebut Oracle's fact. Ms. Waggoner explained that sometimes the focal budget is not cascaded all the way down to the M-2 manager level. In other words, that specific M-2 manager does not have focal budget to allocate. This says nothing about whether direct managers primarily determine salary increases because not everyone's direct manager is an

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	grounds that when direct managers receive a budget allocation, they only make pay *recommendations*, not decisions. These pay *recommendations* are subsequently reviewed up the chain of command until the ultimate approver approves them. At intermediate reviews, the reviewing managers can either give their approvals or reject the compensation recommendation. The final approvers for all salary increase (focal reviews and off-cycle) have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Moreover, to get off-cycle decisions approved, managers are required to submit written justification. A) Oracle's Global Approval Matrices state that approvals for base salary increases bonuses, and stock or stock options grants have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: ☐ OFCCP SUF: Fact 113; ☐ Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_0000062725-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_0000062732-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 11/1/14, ORACLE_HQCA_00000	M-2, and because managers who receive budget allocations can still ask managers below them to determine how to allocate the budget among their direct reports. Moreover, the amount of budget a manager gets says nothing about who plays the most significant role in allocating that budget. 2) OFCCP's response does not create a material dispute of fact. Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. Tr. 155:23-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. OFCCP's "rebuttal" that lower-level managers make "recommendations" does not dispute Oracle's fact. A) Oracle incorporates its response to OFCCP's SUF 113. B) Oracle incorporates its responses to OFCCP's SUF 114. C) Oracle incorporates its responses to OFCCP's SUF 115. 3) Oracle incorporates its responses to OFCCP's SUF 116. A) Oracle incorporates its responses to OFCCP's SUF 117. B) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact whether managers exercise their own judgment and consult with other managers in setting compensation. Oracle does

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	62712-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2 all in Vol. 1. ☐ Fact 4 herein for Thomas Kurian's title and position. B) Oracle requires that all pay increases be approved by the top of an employee's management chain of command. Citation: ☐ OFCCP SUF: Fact 114; ☐ OEx. 8, Waggoner May Dep. 106:2–4. C) Oracle's instructions for conducting salary reviews (aka focals or focal reviews) and allocating bonuses and stock grants instruct managers on a process by which managers make recommendations that are reviewed by each successive level of management until they are finally approved at the top of the management chain of command or the office of that top executive. Citation: ☐ OFCCP SUF: Fact 115; ☐ Ex. 24, slides 28–39 and	not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. C) Oracle incorporates its responses to OFCCP's SUF 120. D) Oracle incorporates its responses to OFCCP's SUF 121. E) Oracle incorporates its responses to OFCCP's SUF 122. G) Oracle incorporates its responses to OFCCP's SUF 123. H) Oracle incorporates its responses to OFCCP's SUF 124. I) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers exercise their own judgment and consult with other managers in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. J) Oracle incorporates its responses to OFCCP's SUF 119. 4) OFCCP argues that managers do not exercise their "own" judgment because Mr. Loaiza testified that, in his own situation, he consults with managers and provides feedback. This does not rebut Oracle's fact. A) OFCCP's evidence does not support its assertion. First, in his deposition, Mr. Loaiza was speaking about his own situation and not on behalf of Oracle.

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	associated notes, ORACLE_HQCA_00003 81306-52 to -75 in Vol. 1; □ Ex. 25, slides 33–39, ORACLE_HQCA_00000 56242-42 to - 48 in Vol. 1; □ Ex. 26, slides 3–4, 13, 34–39; ORACLE_HQCA_00000 56957-3, -4, -16, -38 to - 45 in Vol. 2; □ OEx. 8, Waggoner PMK Dep. 118:18-23. 3) Oracle's compensation instructions for off-cycle salary increases (e.g., "dive and saves" used to counter an offer from a competitor) likewise require managers to make pay recommendations that require approvals at the Executive Level (e.g., CEO. CTO) or their offices. Citation: □ OFCCP SUF: Fact 116; □ Ex. 28, slide 11 (notes), ORACLE_HQCA_00000 57179-22 in Vol. 2; □ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_00000 56234-65 to -66 in Vol. 1. A) The approvals for base salary increases goes all the way up through the CEO's office. Citation: □ OFCCP SUF: Fact 117; □ OEx. 8, Waggoner PMK Dep. 155:7-25. B) Oracle's focal review trainings refer to the managers role as making	Therefore, his testimony cannot be imputed to the entirety of Oracle. Additionally, OFCCP mischaracterizes Mr. Loaiza's testimony. Mr. Loaiza testified that with respect to his own situation, when determining what to do with his budget, he "primarily decide[s]" how it should be allocated. OEx. 11, Loaiza Dep. Tr. 54:7-10. He also explains that there is some discussion between him and the people he managers, but that it "flows in both directions" and that managers can ask for more budget. *Id.*, 55:8-24. This does not dispute Oracle's fact. Oracle does not claim that managers are making decisions in isolation, but rather, as Mr. Loaiza testified, they "primarily decide" how to allocate budget. B) OFCCP's evidence does not support its assertion. First, in his deposition, Mr. Loaiza was speaking about his own situation and not on behalf of Oracle. Therefore, his testimony cannot be imputed to the entirety of Oracle. Additionally, again, Oracle does not claim that managers are making decisions in isolation, but rather, as Mr. Loaiza testified, they "primarily decide" how to allocate budget. Mr. Loaiza's testimony does not dispute this fact. 5) OFCCP's response is that "some managers received detailed guidelines as to how their raise pools must be allocated." First, the evidence does not support

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	"recommendations" and state that "[t]his isn't to say that your recommendations won't be changed by someone further up in your hierarchy, but it is a way to inform your manager of how you would like to allocate increases to your team." Citation: ☐ Ex. 14, at slide 43 (notes), ORACLE_HQCA_00003 82580- 84. C) In a 2014 compensation training, managers were instructed: "**Do not communicate** any changes [in compensation] until the 'Last Approval Action' shows 'Larry Ellison.'" Citation: ☐ OFCCP SUF: Fact 120; ☐ Ex. 25, slide 39, ORACLE_HQCA_00000 56242-48 (emphasis in original) in Vol. 1. D) In a 2011 compensation training, managers were instructed: "**You should not communicate any changes until we obtain final approval from LJE**." Citation: ☐ OFCCP SUF: Fact 121; ☐ Ex. 26, slide 49, ORACLE_HQCA_00000 56957-55 (emphasis in original) in Vol. 2. E) LJE stands for Larry J. Ellison. Citation: ☐ OFCCP SUF: Fact 122;	OFCCP' use of the word "detailed;" Mr. Pandey says nothing more than he received "guidelines." OEx. 12, Pandey Decl., ¶ 13. Second, this does not rebut Oracle's fact. First, OFCCP cites nothing more than one person's recollection for this fact. Additionally, guidelines, even if detailed, do not mean that managers are not exercising their own judgment *within* those guidelines. In fact, Mr. Pandey writes that "As a manager I was expected to implement these guidelines for awarding salary raises" and that he could present a case to his manager if he believed deviating from the guidelines was necessary. *Id*.

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	☐ Ex. 7, Waggoner May Dep. 106:25–107:4. G) Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz. Citation: ☐ OFCCP SUF: Fact 123; ☐ OEx. 16, Carrelli Dep. 212:9–213:1, 214:12–14. H) Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process. Citation: ☐ OFCCP SUF: Fact 124; ☐ Ex. 24, slide 39 (notes), ORACLE_HQCA_00003 81306-76 in Vol. 1. I) Even in Oracle's declarations provided to this Court to support its summary judgment motion, managers acknowledge that they only make pay recommendations in focal reviews. E.g., Christina Kite, a VP, stated: "I am responsible for recommending salary increases and bonuses for my team." Citation: ☐ Oracle MSJ Decl. of Christina Kite, ¶¶ 3, 11. J) President Thomas Kurian gave his required approval to off-cycle dive and save requests. Citation: ☐ OFCCP SUF: Fact 119; ☐ Ex. 30,	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	ORACLE_HQCA_00004 32004, in Vol. 2. 4) Second, managers do not exercise their "own" judgment. Instead, they consult with at least one managerial level above them as identified by EVP Loaiza. A) Lower level managers after they get the budget allocated to them from a higher-level manager have to propose to that manager how the lower level manager proposes to distribute the budget and has to obtain feedback from this higher-level managers before the lower level manager can distribute it. Thus, lower level managers within an LOB do not have unfettered discretion for how the budget will be further distributed. Citation: □ OEx. 11, Loaiza Dep. 53:21-55:24. B) At times, the lower level manager's proposal (e.g., Senior Vice President) can go above his higher-level manager who allocated him the budget (e.g., Executive Vice President like Andrew Mendelson) to the higher-level manager's manager (e.g. President Thomas Kurian). Citation: □ OEx 11, Loaiza Dep. 56:2-5. 5) Some managers received detailed guidelines as to how their raise pools must be allocated. Citation:	

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	☐ OEx. 12, Pandey Decl. ¶ 13.	
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. **Supporting Evidence:** Waggoner Decl., ¶ 28.	**Disputed.** 1) The decisions whether to provide focal salary increases and the budgets or caps allocated for them are more significant in determining employee compensation than the employees' direct managers. A) Oracle did not have focal reviews in 2013 and 2018 and has them about every 14-18 months. Thus, direct managers have no bearing pm when focal reviews and the potential salary increases that flow from them may occur. Citation: ☐ OFCCP SUF: Fact 137, 138; ☐ OEx. 8, Waggoner PMK Dep. 192:19-193:1, 248:7–17. ☐ Ex. 34, ORACLE_HQCA_0000434971 in Vol. 2. B) Ms. Waggoner's PMK testimony also identified that Oracle has had [redacted] budget years such that there is "[redacted]." She explained the impact of this situation by stating "if we give little to no focal budget, naturally [redacted]." She also identified that Oracle has had a lean budget for "[redacted]." Thus, the ability to give salary increases is severely limited.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response indicates it does not understand, or misconstrues, compensation at Oracle. OFCCP argues that the budget given in focal reviews is more significant in determining employee compensation than employees' direct managers. While it is true that most salary increases happen during a focal review, it is still the direct managers who are making decisions about how much of the allocated focal budget to give to each individual employee. Therefore, while individual managers do not make the decision to give themselves a focal budget, they have discretion over allocation of whatever budget they are given. Therefore, each employee's direct manager plays the most significant role in setting that employee's compensation. A) Oracle incorporates its responses to OFCCP's SUFs 137 and 138. OFCCP's response is that focal reviews are not annual. This has nothing to do with whether direct managers play the most significant role in setting employees' compensation and should be disregarded. B) Again, OFCCP's response is about the frequency of focal reviews. This has nothing to do with whether direct managers play

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	Citation: □ OEx. 8, Waggoner 30b6 Dep. 327:24-328:12, 267:21-22. C) Oracle's lean budget years have not extended to Co-CEOs Safra Catz and Mark Hurd who each have earned 1,205 times more in 2018 than the median employee compensation at Oracle, a ratio that ranks them in the 17 highest paid CEOs vis a vis average employee pay. Citation: □ OEx. 19, New York Times, The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart, 5/29/19 at https://www.nytimes.com/interactive/2019/business/highest-paid-ceos-2018.html. D) In her PMK testimony, Ms. Waggoner further testified that while M1 managers have people reporting to them, they do not have "hire/fire, compensation decision type of authority." Citation: □ OEx. 8, Waggoner PMK Dep. 116:20-117:2. E) Ms. Waggoner testified further still as the PMK that at times, the budget is not even cascaded down to the M2 manager. Citation: □ OEx. 8, Waggoner PMK Dep. at 253:20-254:6.	the most significant role in setting employees' compensation and should be disregarded. C) OFCCP's response is about Oracle's leaders' compensation. This is not relevant this case and should be disregarded. D) The testimony on which OFCCP relies is about compensation decisions at hiring and is therefore non-responsive to this fact, which is about salary increases. Moreover, OFCCP mischaracterizes Ms. Waggoner's testimony. Ms. Waggoner explained that Oracle does not generally consider managers at the M-1 level to be the first-line managers at the hiring stage. OEx. 8, Waggoner PMK Dep. Tr. 117:3-11 ("Q. (By Mr. Song) All right. M-2s would have the compensation authority . . . A. Yes. That's the first-line manager when they're hiring somebody.") Rather, that responsibility begins at the M-2 level. This does not rebut Oracle's fact, it merely clarifies the terminology. E) OFCCP's response does not rebut Oracle's fact. Ms. Waggoner explained that sometimes the focal budget is not cascaded all the way down to the M-2 manager level. In other words, that a specific M-2 manager does not have focal budget to allocate. This says nothing about whether direct managers primarily determine salary increases because not

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	2) This fact is also disputed on the grounds that when direct managers receive a budget allocation, they only make pay *recommendations*, not decisions. These pay *recommendations* are subsequently reviewed up the chain of command until the ultimate approver approves them. At intermediate reviews, the reviewing managers can either give their approvals or reject the compensation recommendation. The final approvers for all salary increase (focal reviews and off-cycle) have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Moreover, to get off-cycle decisions approved, managers are required to submit written justification. A) Oracle's Global Approval Matrices state that approvals for base salary increases bonuses, and stock or stock options grants have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: ☐ OFCCP SUF: Fact 113; ☐ Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_0000062725-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_0000062732-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 11/1/14,	everyone's direct manager is an M-2. Moreover, the amount of budget a manager gets says nothing about who plays the most significant role in allocating that budget. 2) OFCCP's response does not create a material dispute of fact. Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:23-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. OFCCP's "rebuttal" that lower-level managers make "recommendations" does not dispute Oracle's fact. A) Oracle incorporates its response to OFCCP's SUF 113. B) Oracle incorporates its responses to OFCCP's SUF 114. C) Oracle incorporates its responses to OFCCP's SUF 115. 3) Oracle incorporates its responses to OFCCP's SUF 116. A) Oracle incorporates its responses to OFCCP's SUF 117. B) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers play the most significant role in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within

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	ORACLE_HQCA_00000 62712-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2 all in Vol. 1. ☐ Fact 4 herein for Thomas Kurian's title and position. B) Oracle requires that all pay increases be approved by the top of an employee's management chain of command. Citation: ☐ OFCCP SUF: Fact 114; ☐ OEx. 8, Waggoner May Dep. 106:2–4. C) Oracle's instructions for conducting salary reviews (aka focals or focal reviews) and allocating bonuses and stock grants instruct managers on a process by which managers make recommendations that are reviewed by each successive level of management until they are finally approved at the top of the management chain of command or the office of that top executive. Citation: ☐ OFCCP SUF: Fact 115;	budget during focal review. C) Oracle incorporates its responses to OFCCP's SUF 120. D) Oracle incorporates its responses to OFCCP's SUF 121. E) Oracle incorporates its responses to OFCCP's SUF 122. F) Oracle incorporates its responses to OFCCP's SUF 123. G) Oracle incorporates its responses to OFCCP's SUF 124. H) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers play the most significant role in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. I) Oracle incorporates its responses to OFCCP's SUF 119. 4) OFCCP argues that managers do not exercise their "own" judgment because Mr. Loaiza testified that, in his own situation, he consults with managers and provides feedback. This does not rebut Oracle's fact. A) OFCCP's evidence does not support its assertion. First, in his deposition, Mr. Loaiza was speaking about his own situation and not on behalf of Oracle. Therefore, his testimony cannot be imputed to the entirety of Oracle. Additionally, OFCCP mischaracterizes Mr. Loaiza's testimony. Mr. Loaiza testified

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ Ex. 24, ORACLE_HQCA_0000381306-52 to -75 in Vol. 1; ☐ Ex. 25, slides 33–39, ORACLE_HQCA_0000056242-42 to - 48 in Vol. 1; ☐ Ex. 26, slides 3–4, 13, 34–39; ORACLE_HQCA_0000056957-3, -4, -16, -38 to -45 in Vol. 2; ☐ OEx. 8, Waggoner PMK Dep. 118:18-23. 3) Oracle's compensation instructions for off-cycle salary increases (e.g., "dive and saves" used to counter an offer from a competitor) likewise require managers to make pay recommendations that require approvals at the Executive Level (e.g., CEO. CTO) or their offices. Citation: ☐ OFCCP SUF: Fact 116; ☐ Ex. 28, slide 11 (notes), ORACLE_HQCA_0000057179-22 in Vol. 2; ☐ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_0000056234-65 to -66 in Vol. 1. A) The approvals for base salary increases goes all the way up through the CEO's office. Citation: ☐ OFCCP SUF: Fact 117; ☐ OEx. 8, Waggoner PMK Dep. 155:7-25. B) Oracle's focal review trainings refer to the managers role as making	that with respect to his own situation, when determining what to do with his budget, he "primarily decide[s]" how it should be allocated. OEx. 11, Loaiza Dep. Tr. 54:7-10. He also explains that there is some discussion between him and the people he managers, but that it "flows in both directions" and that managers can ask for more budget. *Id.*, 55:8-24. This does not dispute Oracle's fact. Oracle does not claim that managers are making decisions in isolation, but rather, as Mr. Loaiza testified, they "primarily decide" how to allocate budget. B) OFCCP's evidence does not support its assertion. First, in his deposition, Mr. Loaiza was speaking about his own situation and not on behalf of Oracle. Therefore, his testimony cannot be imputed to the entirety of Oracle. Additionally, again, Oracle does not claim that managers are making decisions in isolation, but rather, as Mr. Loaiza testified, they "primarily decide" how to allocate budget. Mr. Loaiza's testimony does not dispute this fact. 5) OFCCP's response is that "some managers received detailed guidelines as to how their raise pools must be allocated." First, the evidence does not support OFCCP' use of the word "detailed;" Mr. Pandey says nothing more than he received "guidelines." OEx. 12, Pandey Decl., ¶ 13. Second, this does not

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	"recommendations" and state that "[t]his isn't to say that your recommendations won't be changed by someone further up in your hierarchy, but it is a way to inform your manager of how you would like to allocate increases to your team." Citation: ☐ Ex. 14, at slide 43 (notes), ORACLE_HQCA_0000382580- 84. C) In a 2014 compensation training, managers were instructed: "**Do not communicate** any changes [in compensation] until the 'Last Approval Action' shows 'Larry Ellison.'" Citation: ☐ OFCCP SUF: Fact 120; ☐ Ex. 25, slide 39, ORACLE_HQCA_0000056242-48 (emphasis in original) in Vol. 1. D) In a 2011 compensation training, managers were instructed: "**You should not communicate any changes until we obtain final approval from LJE**." Citation: ☐ OFCCP SUF: Fact 121; ☐ Ex. 26, slide 49, ORACLE_HQCA_0000056957-55 (emphasis in original) in Vol. 2. E) LJE stands for Larry J. Ellison. Citation: ☐ OFCCP SUF: Fact 122;	rebut Oracle's fact. First, OFCCP cites nothing more than one person's recollection for this fact. Additionally, guidelines, even if detailed, do not mean that managers are not exercising their own judgment *within* those guidelines. In fact, Mr. Pandey writes that "As a manager I was expected to implement these guidelines for awarding salary raises" and that he could present a case to his manager if he believed deviating from the guidelines was necessary. *Id.* 6) OFCCP relies on its own notes from an interview as evidence to support this fact. Moreover, nothing is this interview is inconsistent with Ms. Balkenhol performing only a high-level sanity check in the context of hiring. In fact, she *confirmed* Oracle's fact. She stated "We basically see if the person's experience fits within the right ballpark. Our job is more like a goalie. We're not interviewing or talking to candidates. We're just there to look for outliers and what doesn't seem sensible from a high-level perspective…. We don't get too deeply into details because managers know what particularly they're looking for from their team." Atkins Decl., Ex. B at 2. She also said, "For employees coming from the outside, we just try to do a sanity check" and "[w]e just want to make sure we're not offering someone's nephew a large increase. Our role is basically to do a sanity check." *Id.* *See also* Oracle's Objections to

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ Ex. 17, Waggoner May Dep. 106:25–107:4. F) Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz. Citation: ☐ OFCCP SUF: Fact 123; ☐ OEx. 16, Carrelli Dep. 212:9–213:1, 214:12–14. G) Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process. Citation: ☐ OFCCP SUF: Fact 124; ☐ Ex. 24, slide 39 (notes), ORACLE_HQCA_00003 81306-76 in Vol. 1. H) Even in Oracle's declarations provided to this Court to support its summary judgment motion, managers acknowledge that they only make pay recommendations in focal reviews. E.g., Christina Kite, a VP, stated: "I am responsible for recommending salary increases and bonuses for my team." Citation: ☐ Oracle MSJ Decl. of Christina Kite, ¶¶ 3, 11. I) President Thomas Kurian gave his required approval to off-cycle dive and save requests. Citation: ☐ OFCCP SUF: Fact 119; ☐ Ex. 30,	Evidence. 7) OFCCP relies on the length of its own notes from a conversation with Mr. Loaiza as evidence of his involvement in hiring. This self-serving characterization of OFCCP's own work is meaningless. Moreover, much of the discussion OFCCP refers to was about a claim that has now been settled and is therefore non-responsive. *See also* Oracle's Objections to Evidence.

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	ORACLE_HQCA_00004 32004, in Vol. 2. 4) Second, managers do not exercise their "own" judgment. Instead, they consult with at least one managerial level above them as identified by EVP Loaiza. A) Lower level managers after they get the budget allocated to them from a higher-level manager have to propose to that manager how the lower level manager proposes to distribute the budget and has to obtain feedback from this higher-level managers before the lower level manager can distribute it. Thus, lower level managers within an LOB do not have unfettered discretion for how the budget will be further distributed. Citation: □ OEx. 11, Loaiza Dep. 53:21-55:24. B) At times, the lower level manager's proposal (e.g., Senior Vice President) can go above his higher-level manager who allocated him the budget (e.g., Executive Vice President like Andrew Mendelson) to the higher-level manager's manager (e.g. President Thomas Kurian). Citation: □ OEx 11, Loaiza Dep. 56:2-5. 5) Some managers received detailed guidelines as to how their raise pools must be allocated. Citation:	

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	☐ OEx. 12, Pandey Decl. ¶ 13. 6) Carolyn Balkenhol also gave an interview to OFCCP during the audit on March 26, 2015. In OFCCP's interview summary prepared from that audit, OFCCP documented how Ms. Balkenhol did more than just a high-level sanity check that is not a deep dive. This interview summary noted that Ms. Balkenhol referred to her job as being like a goalie. Ms. Balkenhol described the many items she reviews for hiring and salary increases. For example, she looks at: the global career level (e.g., IC2, IC3); the person's current pay, resume, experience, education, frequency of job changes, the size of the compensation change, transcripts, skills, amount of competitive offers, etc. Citation: ☐ Atkins Opp'n Decl. ¶5, Ex. B, Balkenhol Interview Notes, DOL000000511-14. 7) EVP Loaiza stated in his March 25, 2015 interview with OFCCP that the process he just stated that he went through to approve a hire is the same process that he went through for focal reviews. In this interview, he identified himself as a Senior Vice President and made extensive comments about all of the different factors that he looked at during his hiring approval process such that they took up t almost a whole typed page, single space, reflected his comments. Citation: ☐ Atkins Opp'n Decl. ¶14, Ex. K, Loaiza Interview	

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	Notes, DOL0000000522-23. 8) This fact is also disputed because Ms. Waggoner's declaration lacks foundation because of a lack of personal knowledge since she testified in her July 2018 PMK *Jewett* deposition that she has "no idea" how frequently base salary recommendations get rejected below the very top approval. Ms. Waggoner also fails to use the best evidence, and provides an improper summary. Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00718-20, 135:24-137:1.	
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. **Supporting Evidence:** 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 Westerdahl Dep. 107:2-19).	**Disputed.** 1) Each LOB does not have bonus budgets. For example, the Corporate Bonus Budget is not distributed to sales organizations. Citation: ☐ OEx. 16, Carrelli Dep. 99: 6-9, 231:5-16 in Vol. 1. 2) OFCCP objects to paragraph 15 of Ms. Waggoner's declaration because she does not have personal knowledge of the facts contained therein. Furthermore, Ms. Waggoner admitted that she has not been involved in the approval process for years in her *Jewett* PMK testimony. This fact further demonstrates that she does not know how the budget process was administered, let along support claims as to how it was done, why it was done for each LOB in the United States when the United States has its own compensation team to which Ms. Waggoner is not a part.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP disputes Oracle's fact because the "Corporate Bonus Budget is not distributed to sales organizations." First, this is non-responsive to Oracle's fact. The sales organization is not at issue in this litigation. Second, OFCCP is reading too much into the word "each" in Oracle's fact. Oracle's fact means that the budgets are allocated to a LOB, not that each LOB necessarily gets a bonus budget. Third, OFCCP cites to testimony in which Ms. Carrelli refers vaguely to "sales" or the "non-sales population." OFCCP does not cite to any clarification for what Ms. Carrelli meant. Therefore, this vague and non-responsive testimony does not dispute Oracle's fact. 2) *See* Oracle's Response to OFCCP's Evidentiary Objections.

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	Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00688-89, 105:1-106:12; ☐ OEx. 16, Carrelli Dep. 88:15–22, 224:22–225:9; ☐ OEx. 17, Waggoner May Dep. 8:1-4. 3) OFCCP also objections to the deposition cited for Ms. Westerdahl. She gave an example for just one LOB that was not her own and did not state that this applied to each LOB at Oracle let alone address different allocations to different teams or the basis for giving them.	3) OFCCP objects to Ms. Waggoner's testimony because she is not speaking globally. However, even if true, Ms. Waggoner's declaration addresses LOBs generally. *See also* Oracle's Response to OFCCP's Evidentiary Objections
46. First- and second-line managers usually play the primary role in making a bonus decision. **Supporting Evidence:** Waggoner Decl., ¶¶ 29-30; Connell Decl., Ex. A (ORACLE_HQCA_00 00400584 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.	**Disputed.** 1) The decisions whether to give bonuses and the budgets allocated for them are more significant in determining employee compensation than employees' direct managers. A) From January 1, 2013, to January 19, 2019, Oracle only gave bonuses in two years: 2014 and 2018. Thus, senior management was the primary decision makers in four of the six years when they decided to give no bonuses. Citation: ☐ Ex. 91, Madden Report at 13 n. 4, 26 n. 15, 38 n. 18 in Vol 3. B) Ms. Waggoner testified as the PMK that "since 2013, this time period started, we've had [redacted] corporate bonus budgets" and "[t]he bonus budgets have been [redacted]	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response indicates it does not understand, or misconstrues, compensation at Oracle. OFCCP argues that the budget given is more significant in determining employee compensation than employees' direct managers. But whether a manager is given a budget for bonuses says nothing about how that budget is allocated nor does it change the fact that the primary decision maker for how to distribute the budget is the employees' direct manager. A) Whether there was budget for bonuses has nothing to do with how budgets are allocated and whether first- and second-line managers play the primary role in making a bonus decision. This response should be disregarded.

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	[redacted] when we've had them." Citation: - OFCCP SUF: Fact 110, 111; - OEx. 8, Waggoner PMK Dep. 263:12-14, 276:11-14. C) Oracle's lean budget years have not extended to Co-CEOs Safra Catz and Mark Hurd who each have earned 1,205 times more in 2018 than the median employee compensation at Oracle, a ratio that ranks them in the 17 highest paid CEOs vis a vis average employee pay. Citation: - OEx. 19, New York Times, The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart, 5/29/19 at https://www.nytimes.com/interactive/2019/business/highest-paid-ceos-2018.html.. 2) This fact is also disputed on the grounds that when direct managers receive a budget allocation, they only make pay *recommendations*, not decisions. These pay *recommendations* are subsequently reviewed up the chain of command until the ultimate approver approves them. At intermediate reviews, the reviewing managers can either give their approvals or reject the compensation recommendation. The final approvers for all salary increase (focal reviews and off-cycle) have to	B) Again, OFCCP's response is about the frequency of bonus budgets. This has nothing to do with whether direct managers play the most significant role in allocating those budgets and should be disregarded. C) OFCCP's response is about Oracle's leaders' compensation. This is not relevant this case and should be disregarded. 2) OFCCP's response does not create a material dispute of fact. Oracle acknowledges that higher-level managers approve compensation recommendations at hire as a sanity check and confirm salary increases are within budget. Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. Tr 155:23-156:3; 196:5-18); Waggoner Decl., ¶¶ 28, 30. OFCCP's "rebuttal" that lower-level managers make "recommendations" does not dispute Oracle's fact. A) Oracle incorporates its response to OFCCP's SUF 113. B) Oracle incorporates its responses to OFCCP's SUF 115. C) The testimony on which OFCCP relies is about compensation decisions at hiring and is therefore non-responsive to this fact, which is about bonuses. Moreover, OFCCP mischaracterizes Ms. Waggoner's testimony. Ms. Waggoner explained that Oracle does not generally consider managers at the

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Moreover, to get off-cycle decisions approved, managers are required to submit written justification. A) Oracle's Global Approval Matrices state that approvals for base salary increases bonuses, and stock or stock options grants have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: ☐ OFCCP SUF: Fact 113; ☐ Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_00000 62725-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_00000 62732-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 11/1/14, ORACLE_HQCA_00000 62712-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2 all in	M-1 level to be the first-line managers at the hiring stage. OEx., 8 Waggoner PMK Dep. Tr. 117:3-11 ("Q. (By Mr. Song) All right. M-2s would have the compensation authority . . . A. Yes. That's the first-line manager when they're hiring somebody.") Rather, that responsibility begins at the M-2 level. This does not rebut Oracle's fact, it merely clarifies the terminology. E) OFCCP's response does not rebut Oracle's fact. Ms. Waggoner explained that sometimes the focal budget is not cascaded all the way down to the M-2 manager level. In other words, that specific M-2 manager does not have focal budget to allocate. This says nothing about whether direct managers primarily determine salary increases because not everyone's direct manager is an M-2. Moreover, the amount of budget a manager gets says nothing about who plays the most significant role in allocating that budget. F) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that direct managers play the most significant role in setting compensation. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that most significant role is for the direct

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Vol. 1. □ Fact 4 herein for Thomas Kurian's title and position. B) Oracle's instructions for allocating bonuses instruct managers on a process by which managers make recommendations that are reviewed by each successive level of management until they are finally approved at the top of the management chain of command or the office of that top executive. Citation: □ OFCCP SUF: Fact 115; □ Ex. 24, slides 28–39 and associated notes, ORACLE_HQCA_0000381306-52 to -75 in Vol. 1; □ Ex. 25, slides 33–39, ORACLE_HQCA_0000056242-42 to - 48 in Vol. 1; □ Ex. 26, slides 3–4, 13, 34–39, ORACLE_HQCA_0000056957-3, -4, -16, -38 to -45 in Vol. 2; □ OEx. 8, Waggoner PMK Dep. 118:18-23. C) In her PMK testimony, Ms. Waggoner testified that while M1 managers have people reporting to them, they do not have "hire/fire, compensation decision type of authority." Citation: □ OEx. 8, Waggoner PMK Dep. 116:20-117:2.	managers. F) Oracle incorporates its responses to OFCCP's SUF 120. G) Oracle incorporates its responses to OFCCP's SUF 121. H) Oracle incorporates its responses to OFCCP's SUF 122. I) Oracle incorporates its responses to OFCCP's SUF 123. J) Oracle incorporates its responses to OFCCP's SUF 124. 3) OFCCP argues that managers do not exercise their "own" judgment because Mr. Loaiza testified that, in his own situation, he consults with managers and provides feedback about how to allocate *focal* budget. This does not rebut Oracle's fact about *bonuses*. A) OFCCP's evidence does not support its assertion. First, in his deposition, Mr. Loaiza was speaking about his own situation and not on behalf of Oracle. Therefore, his testimony cannot be imputed to the entirety of Oracle. Additionally, OFCCP mischaracterizes Mr. Loaiza's testimony. Mr. Loaiza testified that with respect to his own situation, when determining what to do with his budget, he "primarily decide[s]" how it should be allocated. OEx. 11, Loaiza Dep. Tr. 54:7-10. He also explains that there is some discussion between him and the people he manages, but that it "flows in both directions" and that managers can ask for more budget. *Id.*, 55:8-24. This does not dispute Oracle's fact. Oracle does not

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	D) Ms. Waggoner testified further still as the PMK that at times, the budget is not even cascaded down to the M2 manager. Citation: - OEx. 8, Waggoner PMK Dep. at 253:20-254:6. E) Oracle's compensation trainings refer to the managers role as making "recommendations" and state that "[t]his isn't to say that your recommendations won't be changed by someone further up in your hierarchy, but it is a way to inform your manager of how you would like to allocate increases to your team." Citation: - Ex. 14, at slide 43 (notes), ORACLE_HQCA_00003 82580- 84 in Vol. 1. F) In a 2014 compensation training, managers were instructed: "**Do not communicate** any changes [in compensation] until the 'Last Approval Action' shows 'Larry Ellison.'" Citation: - OFCCP SUF: Fact 120; - Ex. 25, slide 39, ORACLE_HQCA_00000 56242-48 (emphasis in original) in Vol. 1. G) In a 2011 compensation training, managers were instructed: "**You should not communicate any changes until we obtain final**	claim that managers are making decisions in isolation, but rather, as Mr. Loaiza testified, they "primarily decide" how to allocate budget. B) OFCCP's evidence does not support its assertion. First, in his deposition, Mr. Loaiza was speaking about his own situation and not on behalf of Oracle. Therefore, his testimony cannot be imputed to the entirety of Oracle. Additionally, again, Oracle does not claim that managers are making decisions in isolation, but rather, as Mr. Loaiza testified, they "primarily decide" how to allocate budget. Mr. Loaiza's testimony does not dispute this fact. 4) *See* Oracle's Response to OFCCP's Evidentiary Objections.

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	approval from LJE." Citation: ☐ OFCCP SUF: Fact 121; ☐ Ex. 26, slide 49, ORACLE_HQCA_00000 56957-55 (emphasis in original) in Vol. 2. H) LJE stands for Larry J. Ellison. Citation: ☐ OFCCP SUF: Fact 122; ☐ OEx. 17, Waggoner May Dep. 106:25–107:4. I) Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz. Citation: ☐ OFCCP SUF: Fact 123; ☐ OEx. 16, Carrelli Dep. 212:9–213:1, 214:12–14. J) Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process. Citation: ☐ OFCCP SUF: Fact 124; ☐ Ex. 24, slide 39 (notes), ORACLE_HQCA_00003 81306-76 in Vol. 1. 3) It is further disputed because, managers do not exercise their own judgment. Instead, they consult with at least one managerial level above them as identified by EVP Loaiza. A) Lower level managers after they get the budget allocated to them from a higher-level manager have to propose to that manager how the lower	

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	level manager proposes to distribute the budget and has to obtain feedback from this higher-level managers before the lower level manager can distribute it. Citation: ☐ OEx. 11, Loaiza Dep. 53:21-55:24. B) At times, the lower level manager's proposal (e.g., Senior Vice President) can go above his higher-level manager who allocated him the budget (e.g., Executive Vice President like Andrew Mendelson) to the higher-level manager's manager (e.g. President Thomas Kurian). Citation: ☐ OEx. 11, Loaiza Dep. 56:2-5. 4) OFCCP objects to paragraph 30 of Ms. Waggoner's declaration because she lacks personal knowledge, fails to use the best evidence, and presents an improper summary.	
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. **Supporting Evidence:** Connell Decl., Ex. K (ORACLE_HQCA_00	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

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00400313 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. **Supporting Evidence:** 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.	**Disputed:** 1) Ms. Waggoner's declaration and deposition testimony lack foundation because she lacks personal knowledge since she testified in her July 2018 *Jewett* deposition that she had not been involved with the review process of compensation programs for years. Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_0000400688-89, 105:1-106:12. 2) FCCP objects to paragraph 30 of Ms. Waggoner's declaration because she lacks personal knowledge, fails to use the best evidence, and presents an improper summary. 3) Oracle cites to no training policy for the contention that compensation, let alone bonuses should be awarded to employees working on products that are "particularly complex or for which the labor market is particularly competitive." Instead, the guidance Oracle provided in both training and in emails is to award performance, especially to top performers. In fact, the first time Ms. Waggoner was deposed by OFCCP, she stated nothing of product, labor market or complexity (e.g., "If you have a limited [bonus] budget and you have five people, the correct way to do things and the way we speak about it as guidelines in training would be that you reward your high performers first.") Citation: ☐ Ex. 8, slide 8 and slide 8 (notes),	**OFCCP's evidence fails to create a material dispute of fact.** 1) *See* Oracle's Response to OFCCP's Evidentiary Objections. 2) *See* Oracle's Response to OFCCP's Evidentiary Objections. 3) OFCCP objects to this fact because Oracle does not rely on compensation training documents, but its declarants. But there is ample evidence that the product an employee works on may affect his or her compensation. *See, e.g.*, Connell Opp. Decl., Ex. I at DOL000041530 (employee acknowledging that "[i]f product is doing well…that could affect pay"); Ex. J at DOL000041697 (manager told employee that "amount of raise is tied to profitability of the specific product line" and recognizing that people in "other, more profitable product lines have received larger raises"). Indeed, even several of the documents upon which OFCCP itself relies confirm that managers take product into account when making compensation decisions. For example, OFCCP relies on an iRecruitment new hire justification that explains that the candidate is an "expert programmer, bringing valuable experience in large-scale Java product development, with a particular focus on solving complex problems." Because of this experience, the candidate had skills that would be "immediately applicable to the IDM Directory Services team" and would be "invaluable to add US coverage

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	ORACLE_HQCA_00000 56391-15-, -16 in Vol. 1.; □ Ex. 12, slide 7 and slide 7 (notes), ORACLE_HQCA_00000 42098-11, -12 in Vol. 1, □ OEx. 11], Loaiza Dep. 147:7-24 (major difference between focal and bonus processes is to focus on accomplishments since last bonus), 130:17-25 (email guidance for focals is to reward top performers.). □ OEx. 17, Waggoner May Dep. 139:11-19. 5) None of the four declarations provided in support state anything about bonuses being given to "to those employees working on products that are particularly complex or for which the labor market is particularly competitive": a) The Gill declaration's only comment for bonuses is that they are part of the compensation package and she does not specifically link bonuses to "those employees working on products that are particularly complex or for which the labor market is particularly competitive." Gill Decl., ¶¶ 5-8. In fact, most of the cited paragraphs for her are about hiring. *Id.* b) The Suri declaration likewise states nothing about bonuses being awarded due to someone "working on products that are particularly	for 2 specific products in this space – OVD and OUD." Ex. 29 at ORACLE_HQCA_0000001731. The hiring manager also explained that the salary recommendation was justified because of the candidates "strong technical skills and proven experience and his ability to make an immediate impact on [the] team." *Id.* at ORACLE_HQCA_0000001732. Even OFCCP's own interview memos of Oracle employees confirm that managers take product into account when setting compensation. *See* Connell Decl., Ex. I (DOL000041530) ("She is happy with pay. Comparisons are difficult because people have different experience and product lines have different performance. If product is doing well, thinks that could affect pay because generating more revenue."). Additionally, Oracle (including in its training documents) repeatedly takes the position that various legitimate, non-discriminatory factors can influence pay, including skills, experience, expertise, *etc.* At Oracle, these skills differ based on the products on which people work. *See* Miranda Decl., ¶¶ 4-9; Bashyam Decl., ¶¶ 7-11, 13; Sarwal Decl., ¶ 14; Yakkundi Decl., ¶ 17; Oden Decl., ¶ 8. Accordingly, references to things like skill, expertise, experience, *etc.* encompasses product.

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	complex or for which the labor market is particularly competitive." Suri Decl., ¶ 21. Instead, she states that she "look[s] to reward a direct report for something critical they performed during a 6-month or 1-year cycle." *Id*. c) The Fox declaration for bonuses simply states that she "participat[s] in allocating compensation increases to my direct reports in the form of focals …, bonuses (one-time merit increase)…." Fox Decl., ¶ 14. She too states nothing about "working on products that are particularly complex or for which the labor market is particularly competitive." *Id*. d) The Chan declaration states that she uses bonuses to "reward the superstars on my team." Chan Decl., ¶ 11. She states nothing about bonuses being given to "to those employees working on products that are particularly complex or for which the labor market is particularly competitive." *Id*. 6) To have no other managers besides Waggoner make this point out of the over 1500 that were managers as of January 1, 2014, and the 28 other declarations that Oracle crafted for its summary judgment motion speaks volumes of the lack of support. Citation:	5) OFCCP responds by arguing that the Gill, Fox, Suri, and Chan declarations do not address bonuses. But the fact is about "compensation," including bonuses, not bonuses exclusively. Moreover, Ms. Waggoner's testimony addresses bonuses. 6) OFCCP takes issue with the fact that Oracle relies on Ms. Waggoner's testimony instead of additional declarants. It is not Oracle's intention to inundate the Court or OFCCP with unnecessary and duplicative declarations, when Oracle's 30(b)(6) witness has already testified on a topic. 7) OFCCP cites to Ms. Kolotouros's declaration for support for the assertion that "the products an employee works on do not determine compensation." OFCCP reads too much into this lone declaration. Ms. Kolotouros merely says that she was never informed that the product an employee worked on determines an employee's compensation. OEx. 7, Kolotouros Decl., ¶ 9. Ms. Kolotouros does not—and indeed cannot—claim to speak for all of Oracle. Moreover, Oracle's position is not that the product an employee works on *determines* compensation. Rather, that it is one of many factors a manager may consider. 8) Again, OFCCP relies too much on one declaration which does not—and cannot—speak for all of

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ Ex. 17, Atkins MSJ Decl. Ex. A (Table 1). 7) Ms. Kolotouros testified that the products an employee works on do not determine compensation. Citation: ☐ OEx 7. Kolotouros Decl. ¶9. 8) Ms. Kolotorous testified that employees may work on different products throughout their careers at Oracle, but doing so will not determine their compensation. Citation: ☐ OEx 7. Kolotouros Decl. ¶9.	Oracle. Moreover, Oracle's position is not that the product an employee works on *determines* compensation. Rather, that it is one of many variables a manager may consider.
49. First-line (or direct) managers primarily determine equity for their reports. **Supporting Evidence:** 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.	**Disputed.** 1) The decisions whether to provide equity and the budgets or caps allocated for them are more significant in determining employee compensation than employees' direct managers. 2) Ms. Waggoner testified in her PMK deposition in this matter that "equity is held at a much higher-level at Oracle. . . . It doesn't go down like, the [redacted] and [redacted]. It's generally more [redacted] and above, probably who make those decisions because it really is about the retention of our higher-level, critical." Citation: ☐ OEx. 8, Waggoner PMK Dep. 272:5-19. 2) Several of the declarations do not support Oracle's assertion that first-line managers determine equity for their direct reports.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response appears to confirm Oracle's fact. OFCCP responds that the "decisions whether to provide equity . . . are more significant in determining employee compensation than employees' direct managers." But that is Oracle's point. The person making the decision whether to grant equity is made by the first-line or direct managers. This therefore confirms Oracle's fact. If OFCCP's point is that not every employee is eligible for equity, this is non-responsive to Oracle's fact. Whether an employee is eligible does not change that the person who primarily determines whether he or she receives equity is the first-line manager. 2) OFCCP's response is non-responsive. Again, whether an employee is eligible does not change that the person who primarily determines whether he

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	Citation: ☐ Yakkundi Decl., ¶ 19 ("I do not participate in bonus or equity distributions."); ☐ Suri Decl., ¶ 21 ("I do not typically decide the amount of equity distributions because [redacted]"); ☐ OEx. 9, Amit Decl., ¶¶8-9. 3) Oracle submitted 29 non-attorney declarations in support of its motion for summary judgment, but only submitted 9 of those declarations in support of this fact, one of which disputed the fact (Suri Decl., ¶ 21). Oracle had 1,516 managers as of January 1, 2014, alone. Citation: ☐ Ex. 17, Atkins MSJ Decl., Ex. A (Table 1). 4) Mr. Sharma testified that he was only permitted to rank his employees for the focal review, he was not permitted to make recommendations, let alone determine, equity for his reports. Citation: ☐ OEx 9. A. Sharma Decl. ¶8.	or she receives equity is the first-line manager. 2) OFCCP's response is again non-responsive. Oracle is not claiming that every manager makes equity awards. But that when equity is awarded, it is primarily determined by the first-line manager. 3) OFCCP yet again complains that Oracle did not submit *more* declarations saying the same thing. Again, it is not Oracle's intention to inundate this Court with declarants saying the same thing over and over. OFCCP's response should be disregarded. 4) OFCCP's characterization of Mr. Sharma's testimony is incorrect. Mr. Sharma's testimony said only that focal review is where "stock grants" are determined. He recounts that he was asked to rank the employees who reported to him, but he says nothing about whether he made recommendations for stock grants. OEx. 9, Sharma Decl., ¶ 8.
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	**Disputed.** 1) Compensation decisions is not defined and can include decisions whether to conduct a company-wide focal, bonus, equity grant and the amount allotted for such company-wide program. It also includes all of the cascading down allocations. A) This fact is disputed on many	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP disputes this fact because "compensation decisions" encompasses multiple different kinds of compensation decisions. Oracle does not dispute this. In fact, this is consistent with Oracle's fact, which is that

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team members. **Supporting Evidence:** 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.	grounds to include Oracle's very senior management making the decisions whether to have a company-wide program and the amounts it decides to allocate to these company-wide programs. B) While, at times, Oracle calls its focal reviews "annual focal reviews," they are not truly annual because Oracle did not have ones in 2013 and 2018 and has them about every 14-18 months apart. Citation: ☐ OFCCP SUF: Facts 137-138; ☐ OEx. 8, Waggoner PMK Dep. 248:7–17, 192:19-193:1; ☐ Ex. 34, ORACLE_HQCA_0000434971 in Vol. 2. C) From January 1, 2013, to January 19, 2019, Oracle only gave bonuses in two years: 2014 and 2018. Citation: ☐ Ex. 91, Madden Report at 13 n. 4, 26 n. 15, 38 n. 18 in Vol. 3. D) Ms. Waggoner testified as Oracle's PMK that the budget that Oracle provides its managers for salary increases are insufficient to keep up with the market rate and that because of budget pressures, only [redacted]% of the employees may get a raise in a year. Citation:	compensation decisions of all varieties are based on a variety of factors, including performance, skills, experience, duties, and pay equity among team members. A) OFCCP's response is unclear. To the extent it is claiming to dispute the fact because senior management decide whether to allocate budget for focal reviews, this does not change the fact that the decision-makers, the front-line managers, make compensation decisions on a case-by-case basis and based on a variety of factors, including performance, skills, experience, duties, and pay equity among team members. B) Oracle incorporates its responses to OFCCP's SUFs 137 and 138. OFCCP's response is that focal reviews are not annual. This has nothing to do with whether compensation decisions are made on a case-by-case basis and based on a variety of factors, including performance, skills, experience, duties, and pay equity among team members. C) OFCCP also responds that Oracle does not give a budget for bonuses every year. This has nothing to do with whether compensation decisions are made on a case-by-case basis and based on a variety of factors, including performance, skills, experience, duties, and pay equity among team members. D) Oracle incorporates its response to OFCCP's SUF 127. E) Oracle incorporates its response to OFCCP's SUFs 40, 129.

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	☐ OFCCP SUF: Fact 127; ☐ OEx. 8, Waggoner PMK Dep. 247:4–13, 308:8–24. E) EVP Loaiza testified that [redacted]% of employees in his organization are paid below the market rate because not enough money is provided for them in the budget. Citation: ☐ OFCCP SUF: Fact 40, 129; ☐ OEx. 11, Loaiza Dep. 16:3-12, 283:6–284:22, 305:7–306:3; F) Ms. Waggoner further testified as the PMK that Oracle has had [redacted] budget years such that there is [redacted]." She explained the impact of this situation by stating "if we give little to no focal budget, naturally [redacted]." She further testified that Oracle has had a lean budget for "[redacted]." Citation: ☐ OFCCP SUF: 110, 111; ☐ OEx. 8, Waggoner PMK Dep. 327:24-328:12, 267:21-22. G) Ms. Waggoner testified further still in her PMK testimony that "since 2013, this time period started, we've had [redacted] corporate bonus budgets" and "[t]he bonus budgets have been [redacted]	F) Oracle incorporates its response to OFCCP's SUFs 110, 111. G) Oracle incorporates its response to OFCCP's SUFs 110, 111. H) OFCCP's response is about Oracle's leaders' compensation. This is not relevant and should be disregarded. I) OFCCP's response is about limited budget for "dive and save" salary requests. This has nothing to do with whether compensation decisions are made on a case-by-case basis and based on a variety of factors, including performance, skills, experience, duties, and pay equity among team members. 2) OFCCPP's response is that the decision whether to do a focal review happens at the senior management level and therefore compensation decisions are not made on a case-by-case basis. As Oracle has repeatedly explained, however, whether there is a budget has nothing to do with whether compensation decisions *using that budget* are made on a case-by-case basis and based on a variety of factors, including performance, skills, experience, duties, and pay equity among team members. 3) OFCCP's response is that two former managers do not recall being asked to consider pay equity. This is non-responsive. Oracle's compensation documents repeatedly and consistently instruct managers to consider pay equity. *See e.g.*, Garcia Decl., Ex. 8 at ORACLE_HQCA_0000056391-

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	[redacted] when we've had them." Citation: ☐ OFCCP SUF: Fact 110, 111; ☐ OEx. 8, Waggoner PMK Dep. at 263:12-14, 276:11-14. H) Oracle's lean budget years have not extended to Co-CEOs Safra Catz and Mark Hurd who each have earned 1,205 times more in 2018 than the median employee compensation at Oracle, a ratio that ranks them in the 17 highest paid CEOs vis a vis average employee pay. Citation: ☐ OEx. 19, New York Times, The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart, 5/29/19. I) In Oracle's "dive and save" salary requests, senior managers identify that they are unable to comply because they face significant "salary compression" for their employees because of a limited budget and face a "rob Peter to pay Paul" situation. Citation: ☐ OEx. 11, Loaiza Dep. 282:15-285:11 (discussing salary compression and robbing Peter to pay Paul); ☐ *Id.* at 290:3-12; ☐ Ex. 33,	43-44; Ex. 12 at ORACLE_HQCA_0000042098-35; Ex. 13 at ORACLE_HQCA_0000056234-30; Ex. 14 at ORACLE_HQCA_0000382580-46. That two managers do not remember the instructions is meaningless. Additionally, OFCCP relies on a paragraph of Mr. Pandey's declaration that does not even discuss pay equity.

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	ORACLE_HQCA_00004 37696–701 in Vol. 2; ☐ Ex. 34, ORACLE_HQCA_00004 34971–72 in Vol. 2. 2) This fact is also disputed on the grounds that the compensation decisions to conduct company-wide programs such as focal reviews, bonuses and equity grants are not based upon such as "a variety of factors, including performance, skills, experience, duties, and pay equity among team members. Instead, Oracle's "CEOs" make the decisions to have them based upon "business conditions and what [it] can afford at the time." The amounts to be distributed under these programs are developed by using country budgets and a [redacted]. Citation: ☐ OEx. 8, Waggoner PMK Dep. 192:19-194:5. 3) Managers testified that they were not asked to consider pay equity. Citation: ☐ OEx. 9, A. Sharma Decl. ¶ 8; ☐ OEx. 12, Pandey Decl. ¶13.	

B. <u>Oracle Managers Make Compensation Decisions Based on Employees' Individual Skills and Contributions</u>

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51. Oracle faces substantial and continuous competition for highly-skilled and talented employees. **Supporting**	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Evidence: 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.e.*, equity grants). **Supporting Evidence:** Gill Decl., ¶ 6; Balkenhol Decl., ¶¶ 5, 10-11; Waggoner Decl., ¶ 31; Fox Decl., ¶ 16; Chan Decl., ¶ 12.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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. **Supporting Evidence:** Gill Decl., ¶ 5; Yakkundi Decl., ¶ 17; Sarwal Decl., ¶ 14; Fox Decl., ¶ 16.	**Disputed.** 1) This fact is disputed because it is unsupported. A) Oracle only provides four declarations to support this alleged fact. Two are from the support job function (Sarwal and Yakkundi, ¶ 3), one from product development (Fox, ¶ 3) and one from human resources (Gill,) B) Ms. Fox's ¶ 16 just talks in general about her compensation decisions. She states nothing in this paragraph about "projects at Oracle often require highly	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP responds that this fact is unsupported. OFCCP is mistaken. A) OFCCP yet again complains that Oracle does not submit multiple redundant declarations saying the same thing. Yet again, it is not Oracle's intention to inundate the Court with needlessly-duplicative testimony. B) OFCCP again complains that the exact words of Oracle's fact are not in Ms. Fox's declaration. However, she states that she considers employee retention in making equity distributions, which

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	specialized, rare, and valuable technical skills, and to stay competitive Oracle must actively recruit and retain employees with those specialized skills" C) The closest statement in Mr. Yakkundi's declaration for the cited paragraph to the alleged fact is "I look for candidates with experience with access management products like OAM and will offer a pay premium if needed to hire a candidate with that specific background." Yakkundi Decl., ¶ 17. Paying a premium for someone's background does not state anything about a person's skills, let alone highly-specialized, rare and valuable technical skills." D) The statements in Mr. Sarwal's declaration for the cited paragraph at least bare some resemblance to the alleged fact. However, his technical analyst claims fall apart and are thus disputed when Oracle's compensation structure is examined. An examination of OFCCP's chart that examines the three job functions at issue by Specialty Area and then by job title identifies that all of the technical analyst positions in the support job function have an N salary grade. Ms. Waggoner noted E salary grades mean exempt	supports Oracle's fact. C) OFCCP is mistaken that its selected phrase is the only support in Mr. Yakkundi's declaration. To the contrary. Mr. Yakkundi testified that, in making hiring decisions, he considers the products a candidate has worked on, and "[t]he specifics of a candidate's prior experience and work are thus critical in my hiring decisions." Yakkundi Decl., ¶ 17. This directly supports Oracle's fact. D) OFCCP's response is non-responsive and insulting. OFCCP's argument is that because an employee is classified as a non-exempt employee, he or she cannot be "highly skilled." OFCCP's evidence does not support this belittling conclusion and the Court should disregard it. E) OFCCP's response is inaccurate. Ms. Gill states "Oracle faces substantial and continuous competition from both established and emerging companies for highly-skilled product development and technical personnel. Particular teams or projects at Oracle often require highly specialized technical skills, and Oracle actively seeks to recruit and retain employees who have those specialized skills." Gill Decl., ¶ 5. This squarely supports Oracle's fact, which is about particular teams, not "all" teams. Ms. Waggoner's testimony, which recognizes that some teams work on legacy products and some teams work on cutting-edge

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	under the "FLSA" and Ms. Atkins found that the N salary grades corresponded to the non- exempt classification in Oracle's 2014 snapshot. As such, Sarwal's technical analysts are not rare and highly skilled employees who command six-figure plus salaries, these are employees who get paid by the hour. Citation: ☐ Ex. 17, Atkins MSJ Decl. Exhibit A (Table 1), rows 125- 129 for titles in column C having N salary grades in column E, in Vol 1. ☐ OEx. 8, Waggoner PMK Dep. 110:4-25 ☐ Atkins Opp'n Decl. ¶ 24. E) Ms. Gill's declaration does not state that "[p]articular teams or projects at Oracle often require highly specialized, rare, and valuable technical skills. Gill Decl., ¶ 5. Instead, she states that Oracle faces competition in every segment of its business which means that Oracle faces competition for people working on old legacy products. Contrary to Ms. Gill's claim, Ms. Waggoner claimed that people working in the old legacy products like those from J.D. Edwards and PeopleSoft were not competitive because there were more people who were	products, also supports Oracle's fact. 7) OFCCP yet again complains that Oracle does not file duplicative and redundant declarations. OFCCP's assertion that Oracle does not have someone from the Product Development job function who can support this fact is false. For example, Mr. Oden wrote that "the knowledge and expertise required for Technical Writers working on Cloud Applications differs depending on the pillar because the pillars are made up of different products and software. This means that Technical Writers working in different pillars are dealing with different sets of capabilities…. The pillars also have varying levels of complexity depending on the knowledge they require." Oden Decl., ¶ 8. 2) This is non-responsive. Whether employees transferred and worked on different products says nothing about whether some skills are in demand at a particular moment in time. As Mr. Miranda explained, some skills that are in demand at one point are no longer in demand as technology changes. Miranda Decl., ¶ 11. 3) OFCCP's response is non-responsive. Again, Oracle is not claiming that every team is working on products for which they need to recruit highly sought-after skills. Therefore, whether one manager was able to hire internally and the person they hired already had skills relevant to

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	able to do that work. Citation: - OEx. 8, Waggoner May Dep. 90:25-91:15. 7) Lastly, the people who should know best about particular teams or projects at Oracle that often require highly specialized, rare, and valuable technical skills are the developers or people in product development. But the sole declaration that Oracle provided from product development from more than 30 declarations did not discuss. If this alleged fact was actually true, then surely Oracle should have been able to obtain a declaration stating such from the 1500 plus managers who worked at Oracle on 1/1/14. Citation: - Ex. 17, Atkins MSJ Decl. Ex. A (Table 1) in Vol. 1. 2) Employees and Managers testified that they transferred teams and worked on various products throughout their careers at Oracle. Citation: - OEx. 7, Kolotouros Decl. ¶¶ 2-5,9; - OEx. 20, Powers Decl. ¶12; - OEx. 30, Decl. of Bhavana Sharma (B. Sharma Decl.) ¶¶5-7; - OEx. 12, Pandey Decl. ¶¶6, 12. 3) Mr. Pandey testified that he obtained new members through internal transfers and these transfers	the job does not dispute this fact. 4) This fails to dispute Oracle's fact. Whether employees transferred and worked on different products says nothing about whether some skills are in demand at a particular moment in time. As Mr. Miranda explained, some skills that are in demand at one point are no longer in demand as technology changes. Miranda Decl., ¶ 11. 5) This fails to dispute Oracle's fact. Whether employees transferred and worked on different products says nothing about whether some skills are in demand at a particular moment in time. As Mr. Miranda explained, some skills that are in demand at one point are no longer in demand as technology changes. Miranda Decl., ¶ 11.

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	could come from different lines of business. As one example, Mr. Pandey identified [redacted] who came from the [redacted] group to his team [redacted] and performed a new role in [redacted] without any additional training. Citation: ☐ OEx. 12, Pandey Decl. ¶ 12. 4) Ms. Ng testified that she worked on different products throughout her career without a change in her pay. Citation: ☐ OEx. 15, Ng Decl. ¶¶6-7. 5) Ms. Kolotourous testified that employees may work on different products throughout their careers at Oracle, but doing so will not determine their compensation. Citation: ☐ OEx. 7, Kolotouros Decl. ¶9.	
54. Oracle's compensation philosophy reflects its business need to recognize individual skills and contributions. **Supporting Evidence:** Waggoner Decl., ¶¶ 27, Ex. B (ORACLE_HQCA_0000364183 at 5), Ex. C (ORACLE_HQCA_0000364272 at 15), Ex. E (ORACLE_HQCA_00	**Disputed.** 1) Oracle's "compensation philosophy" is located in its compensation training . Citation: ☐ OFCCP SUF: Fact 110; ☐ OEx. 8, Waggoner PMK Dep. 7:12-15, 79:2-20, 81:19-82:4; ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_0000400584, 660-62) 7:14-15, 77:3-78:5; ☐ Ex. 8, slide 5 and slide 5 (notes), ORACLE_HQCA_0000056391-9, -10 in Vol. 1; ☐ Ex. 12, slide 4 and slide 4 (notes),	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's fact is not supported by the evidence it cites. Ms. Waggoner testifies that the compensation trainings are "guidelines" not that they are the exclusive source of compensation philosophy. Nor do the trainings themselves claim to be the sole repository for Oracle's compensation philosophy. 2) Again, Oracle's compensation trainings do not claim to be the sole source its compensation philosophy. They are "guidelines." Additionally, Oracle's Employee

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00056234 at 17, 37).	ORACLE_HQCA_0000042098-6, -7 in Vol. 1; - Ex. 85, Email from J. Riddel to C. Song in Vol 3. 2) The "compensation philosophy" that Oracle provided to its managers is different from the compensation philosophy that it makes available to its workers via the employee handbook. Citation: - *Compare* Ex. 8, slide 5 and slide 5 (notes), ORACLE_HQCA_0000056391-9, -10 in Vol. 1, - *with* Ex. 12, slide 4 and slide 4 (notes), ORACLE_HQCA_0000042098-6, -7 in Vol. 1 to Ex.. 11, DOL000000502 in Vol. 1. 3) Oracle does not identify its "compensation philosophy" on its intranet side nor in its "Compensation Guidelines." Citation: - Ex. 9, "Oracle Compensation Guidelines," no date (Ex. 27 at Holman-Harries May Dep.), ORACLE_HQCA_0000380594-96 in Vol. 1; - Ex. 10, "Global Compensation," www.my.oracle.com, dated 12/18/17 (Ex. 4 to the Waggoner May Dep.), ORACLE_HQCA_0000364301–03 in Vol. 1. 4) Oracle managers are not required to perform formal performance	Handbook does not even use the words "compensation philosophy," instead discussing Oracle's approach to compensation. Finally, there is no contradiction between the two explanations of Oracle's approach to compensation, nor does OFCCP allege that there is one. 3) OFCCP's response is non-responsive. Where Oracle articulates a compensation philosophy says nothing about what that philosophy is. 4) Oracle incorporates its response to OFCCP's SUF 142. 5) Oracle incorporates its response to OFCCP's SUFs 143, 144. 6) Oracle incorporates its response to OFCCP's SUF 149. 7) Oracle incorporates its response to OFCCP's SUF 133, 134, 136. This response is non-responsive and does not rebut Oracle's fact. First, it is not clear what OFCCP means by "recognize the individual skills and contributions of its employees." Additionally, whether there is budget available for salary increases or bonuses says nothing about how managers recognize individual contributions and skills in making decisions about how to allocate that budget. Nor does the absence of a budget for increases say anything about Oracle's compensation philosophy. 8) Oracle incorporates its response to OFCCP's SUF 181. This is non-responsive. 9) Oracle incorporates its response to OFCCP's SUF 182.

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	evaluations. Citation: - OFCCP SUF: Fact 142; - OEx 1, Westerdahl Dep. 155:14–18, 158:9–15; - OEx. 8, Waggoner PMK Dep. 226:16-21, 228:6–9. 5) Entire organizations at Oracle do not do performance reviews. Citation: - OFCCP SUF: Fact 143, 144; - OEx. 11, Loaiza Dep. 114:19–115:3, 17:17–20; - OEx. 8, Waggoner PMK Dep. 226:16-21. 6) Oracle managers are not required to take an employee's performance into account during focal reviews. Citation: - OFCCP SUF: Fact 149; - OEx. 8, Waggoner May Dep. 118:17–24. 7) With the limited budgets that Oracle provides for focal reviews, it is not able to recognize the individual skills and contributions of its employees. Citation: - OFCCP SUF: Fact 133, 134, 136; - Ex. 33, ORACLE_HQCA_0000437696–701, in Vol. 2; - Ex. 34, ORACLE_HQCA_0000434971–72, in Vol. 2; - Ex. 30, ORACLE_HQCA_0000432004–06, in Vol. 2. 8) Promotions at Oracle may be made without a salary increase.	10) Oracle incorporates its response to OFCCP's SUF 183. 11) Oracle incorporates its response to OFCCP's SUF 184. 12) Oracle incorporates its response to OFCCP's SUF 185. 13) Oracle incorporates its response to OFCCP's SUF 186.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Citation: ☐ OFCCP SUF: Fact 181; ☐ Ex. 12, slide 26 (notes), ORACLE_HQCA_0000042098-48, in Vol. 1; ☐ Ex. 13, slide 26 (notes), ORACLE_HQCA_0000056234-48, in Vol. 1; ☐ Ex. 8, slide 27 (notes), ORACLE_HQCA_0000056391-52, in Vol. 1; ☐ Ex. 18, slide 13, 0000000407-24, in Vol. 1; ☐ Ex. 21, "Managing Compensation," dated April 2016, slide 16 (notes), ORACLE_HQCA0000380437-32 in Vol. 1. 9) In or around 2011, Oracle recognized that because a promotion without a salary increase can cause internal equity issues, it strongly recommended that promotions without salary increases do not take place unless the individual's pay is appropriately positioned in the new range and peer group. Citation: ☐ OFCCP SUF: 182 ☐ Ex. 18, slide 13 (notes), ORACLE_HQCA_0000000407-25 in Vol. 1. 10) In the Product Development LOB, it was "very rare" to get a salary increase as part of a promotion prior to 2018. Before 2018, it was a "policy" *not* to give salary increases with promotions. Citation: ☐ OFCCP SUF: 183 ☐ OEx. 11, Loaiza Dep.	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	217:19–219:9. 11) An Oracle training instructed managers that a promotion does not necessarily require a simultaneous salary increase, and that the salary increase would normally be taken care of during the salary increase process. Citation: - OFCCP SUF: 184 - Ex. 18, slide 5, ORACLE_HQCA_0000000407-8 in Vol. 1. 12) In the Product Development LOB, there are situations where off-cycle promotions did not include raises and managers told employees that they would get them a raise on the next focal cycle. Citation: - OFCCP SUF: 185 - OEx. 8, Waggoner PMK Dep. 256:13–17. 13) Oracle's training materials state that if an employee is positioned very low in their current salary range, or has a salary that is not in line with the peer group in the new role, a promotion without a salary increase could cause internal equity issues, and may even cause the employee to fall below the minimum of the new salary range. Citation: - OFCCP SUF: 186 - OEx. 11, Loaiza Dep. 217:19–219:9.	
55. Oracle's compensation framework strives for equitable pay within teams while recognizing each	**Disputed.** This fact is disputed on many grounds that show that Oracle's actions belie its words and that it does not strive for equitable pay	**OFCCP's evidence fails to create a material dispute of fact.** 1) Whether Oracle managers are required to take trainings says nothing about the goals of Oracle's compensation

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employee's unique knowledge, skills, abilities, performance, experience, and contributions. **Supporting Evidence:** 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.	through its actions. 1) Oracle's managers are not required to take its compensation training to learn of Oracle's compensation framework. Citation: - OFCCP SUF: Fact 110; - OEx. 8, Waggoner PMK Dep. 7:12-15, 79:2-20, 81:19-82:4; - OEx. 2, Waggoner PMK *Jewett* Dep. (ORACLE_HQCA_0000400584, 660-62) 7:14-15, 77:3- 78:5; - Ex. 85, Email from J. Riddel to C. Song in Vol 3. 2) Most of Oracle's compensation training is not made available to its employees. Instead, they are just for human resources personnel and managers. Citation: - OEx. 17, Waggoner May Dep. 140:24-141:24. 3) Some of Oracle's compensation training is not even made available to managers even if they wanted to take it. Citation: - OEx. 17, Waggoner May Dep. 141:25-142:15. 4) Oracle's compensation framework itself recognizes that managers will be unable to follow the instructions therein because of an insufficient budget. - Oracle warns managers that, during focal reviews, they most likely will not be able to address all compensation	framework. Additionally, Ms. Waggoner testified that managers are instructed about the compensation guidelines by HR business partners. OEx. 8, Waggoner PMK Dep. Tr. 79:6-20. 2) OFCCP misrepresents Ms. Waggoner's testimony. Ms. Waggoner was not testifying about "most compensation training," she was referring specifically to the exhibits that had been presented to her in deposition. OEx. 17, Waggoner PMK Dep. Tr. 141:7-24. Additionally, as Ms. Waggoner testified, managers are instructed about the compensation guidelines by HR business partners. OEx. 8, Waggoner PMK Dep. Tr. 79:6-20. Additionally, whether managers have access to all trainings says nothing about what is Oracle's compensation framework. 3) OFCCP's response does not dispute Oracle's fact. Ms. Waggoner was testifying about one particular document that she explained is an "equity guidelines" that contained "specific numbers and ranges." OEx. 17, Waggoner PMK Dep. Tr. 141:7-12; 142:5-15. However, whether one document is or is not available to managers says nothing about what is Oracle's compensation framework. 4) OFCCP's response is incorrect. Oracle does not instruct managers they will be "unable to follow" the guidelines. Rather, it acknowledges that a manager will often have to prioritize and will

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	problem areas in their organization, so they will have to prioritize. Citation: ☐ OFCCP SUF: Fact 106; ☐ Ex. 14, slide 43, ORACLE_HQCA_0000382580-84 in Vol. 1; ☐ Ex. 22, "Global Compensation Training: Compensation Processes," dated 2011, slide 4 (notes), ORACLE_HQCA_0000364274-7 in Vol. 1. 5) Oracle warns managers that, during the focal review process in particular, the business climate and focal budgets play the biggest role in how managers are able to position employees within their salary range. Citation: ☐ OFCCP SUF: Fact 105; ☐ Ex. 16, slide 11 (notes), ORACLE_HQCA_0000364272-21 in Vol. 1. 6) Oracle repeatedly advised managers that they might not be afforded the budget "to perfectly place all [of their] employees" where they should be in their salary range. Citation: ☐ OFCCP SUF: Fact 104; ☐ Ex. 8, slide 20 (notes), ORACLE_HQCA_0000056391-39 in Vol. 1; ☐ Ex. 13, slide 17 (notes), ORACLE_HQCA_0000056234-30 in Vol. 1; ☐ Ex. 21, slide 9 (notes), ORACLE_HQCA_0000380437-18 in Vol. 1. ☐ *See also* Ex. 12, slide 19	not be in a position of awarding endless budget. But this has nothing to do with what is Oracle's compensation framework. Additionally, Oracle incorporates its response to OFCCP's SUF 106. 5) Oracle incorporates its response to OFCCP's SUF 105. 6) Oracle incorporates its response to OFCCP's SUF 104. 7) Oracle incorporates its response to OFCCP's SUFs 137 and 138. 8) OFCCP's response is nonresponsive. Whether there was a budget in a particular year for corporate bonuses says nothing about what is Oracle's compensation framework or whether it strives for equitable pay. What matters is the allocation of the budget, not the timing. 9) OFCCP's response does not dispute Oracle's fact. Whether there was a budget in a particular year for salary increases says nothing about Oracle's compensation framework or whether it strives for equitable pay. What matters is the allocation of the budget, not the timing. 10) OFCCP's response is non-responsive. Whether there was a budget in a particular year for salary increases says nothing about Oracle's compensation framework or whether it strives for equitable pay. What matters is the allocation of the budget, not the timing.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	(notes), ORACLE_HQCA_0000042098-35 in Vol. 1. 7) Oracle did not offer an opportunity for a focal review base salary increase in 2013 and 2018. Citation: - OFCCP SUF: Fact 138; - Ex. 34, ORACLE_HQCA_0000434971; - OFCCP SUF: Fact 137; - OEx. 8, Waggoner PMK Dep. 248:7–17, 192:19–193:1. 8) Oracle did not offer an opportunity for bonuses in 2013, 2015, 2016, and 2017. This disputes Oracle's claim that its "compensation framework strives for equitable pay." Citation: - Ex. 91, Madden Report at 13 n. 4, 26 n. 15, 38 n. 18 in Vol. 3. 9) Ms. Waggoner's PMK testimony also identified that Oracle has had [redacted] budget years such that there is "[redacted]." She explained the impact of this situation by stating "if we give little to no focal budget, naturally [redacted]." She also identified that Oracle has had a lean budget for "[redacted]." Thus, the ability to give salary increases is severely limited. This disputes Oracle's claim that its "compensation framework strives for equitable pay." Citation: - OEx. 8, Waggoner PMK Dep. 327:24-328:12, 267:21-22.	11) Oracle incorporates its response to OFCCP's SUF 40, 129. 12) OFCCP's assertion is false and non-responsive. OFCCP takes one phrase out of context. In total, the paragraph states: "If an employee is positioned very low in his or her current range, or has a salary that is not in line with the peer group in the new role, a promotion without a salary increase could cause internal equity issues, and may even cause the employee to fall below the minimum of the new range. Therefore, it is strongly recommended that promotions without salary increases do not take place unless the individual's pay is appropriately positioned in the new range and peer group." Moreover, OFCCP is mistaken that this was a "policy." As Oracle has repeatedly explained, other than a post-2017 policy not to consider prior pay in making hiring decision, Oracle does not have compensation policies. 13) OFCCP's response is not a fact, but an unsupported and unsupportable argument. It should therefore be disregarded. A) Oracle incorporates its response to OFCCP's SUF 133. B) Oracle incorporates its response to OFCCP's SUF 134.

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	10) Ms. Waggoner further testified in her PMK testimony that "since 2013, this time period started, we've had [redacted] corporate bonus budgets" and "[t]he bonus budgets have been [redacted] when we've had them." Citation: - OFCCP SUF: Fact 110, 111; - OEx. 8, Waggoner PMK Dep. at 263:12-14, 276:11-14. 11) Oracle's EVP Loaiza testified that [redacted]% of the employees in his organization are paid below the market rate because not enough money is provided for them in the budget. This disputes Oracle's claim that its "compensation framework strives for equitable pay." Citation: - OFCCP SUF: Fact 40, 129; - OEx. 11, Loaiza Dep. 16:3-12, 283:6–284:22, 305:7–306:3. 12) Oracle had a policy before 2018 not to provide salary increases when it promoted employees even though it recognized at the same time that a promotion without a salary increase "can cause internal equity issues." This disputes Oracle's claim that its "compensation framework strives for equitable pay." Citation: - OFCCP SUF: Fact 182, 183; - Ex. 18, slide 13 (notes), ORACLE_HQCA_00000 00407-25; - OEx. 11, Loaiza Dep.	C) Oracle incorporates its response to OFCCP's SUF 136. 14) OFCCP's response is about Oracle's leaders' compensation. This is not relevant and should be disregarded.

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	217:19–219:9. 13) Oracle implemented significant off-cycle salary compensation increases when, amongst other things, it feared losing employees because its managers previously were not ensuring pay equity for its employees. A) In or around May 2014, Oracle justified a [redacted]% off-cycle "dive and save" increase of $[redacted] to prevent someone from going to a competitor when their salary was $[redacted] dollar amount of the salary range and her direct reports were earning [redacted]% to [redacted]% more than she was. Citation: ☐ OFCCP SUF: Fact 133; ☐ Ex. 33, ORACLE_HQCA_00004 37696–701 in Vol. 2. B) In or around 2015, Oracle justified a [redacted]% off-cycle base salary increase of $[redacted] for a Vice President who was $[redacted] below the minimum dollar amount of the salary range because this vice president did not receive a salary increase when promoted and his managers were unable to rectify this problem over four years of focal reviews. His manager stated that he had tried to pull the employee's salary up to within the band, but that this is difficult to do with such significant salary	

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	compression. He said that he faced a "rob Peter to reward Paul for a promotion" situation and noted that he has additional employees who also face significant salary compression. Citation: ☐ OFCCP SUF: Fact 134; ☐ Ex. 34, Out of Cycle Salary Adjustment Proposal, dated 6/15/15, ORACLE_HQCA_00004 34971–72 in Vol. 2. C) In or around July 2014, Oracle justified a [redacted]% off-cycle "dive and save" increase of $[redacted] to prevent an employee from going to a competitor who was in the [redacted] quartile of the salary range even though he received outstanding performance evaluations at Oracle for the last five years. As justification, the requesting email stated that, in summary, the employee had been on their radar for correction for the past few years; the employee had been very dedicated, professional and real team player and has been patiently waiting for a meaningful correction to get him close to the market rate. Citation: ☐ OFCCP SUF: Fact 136; ☐ Ex. 30, ORACLE_HQCA_00004 32004–06. 14) Oracle's lean budget years have not extended to Co-CEOs Safra Catz	

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	and Mark Hurd who each have earned 1,205 times more in 2018 than the median employee compensation at Oracle, a ratio that ranks them in the 17 highest paid CEOs vis a vis average employee pay. Citation: ☐ OEx. 19, New York Times, The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart, 5/29/19 at https://www.nytimes.com/interactive/2019/business/highest-paid-ceos-2018.html. 15) OFCCP objects to paragraph 26 of Ms. Waggoner's declaration because she lacks personal knowledge of the facts contained therein.	
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. **Supporting Evidence:** Waggoner Decl., ¶ 28, Ex. B (ORACLE_HQCA_0000364183 at 21); Abushaban Decl., ¶ 16; Chan Decl., ¶¶ 9-12.	**Disputed.** 1) The decisions whether to do corporate wide focal salary increases, bonuses, and stock grants and the budgets or caps allocated for them are more significant in determining employee compensation than employees' direct managers. A) While, at times, Oracle calls its focal, aka focal reviews "annual focal reviews," they are not truly annual because Oracle did not have any in 2013 and 2018 and has them about every 14-18 months apart. Citation: ☐ OFCCP SUF: Fact 137, 138; ☐ OEx. 8, Waggoner PMK Dep. 248:7–17, 192:19-	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response indicates it does not understand, or misconstrues, compensation at Oracle. OFCCP argues that the budget given in focal reviews is more significant in determining employee compensation than employees' direct managers. This is entirely mistaken. The amount of budget says nothing about how that budget is allocated, nor does it rebut Oracle's fact. A) Oracle incorporates its responses to OFCCP's SUFs 137 and 138. OFCCP's response is that focal reviews are not annual. This has nothing to do with whether Oracle empowers managers to

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	193:1; ☐ Ex. 34, ORACLE_HQCA_0000434971 in Vol. 2. B) From January 1, 2013, to January 19, 2019, Oracle only gave bonuses in two years: 2014 and 2018. Citation: ☐ Ex. 91, Madden Report at 13 n. 4, 26 n. 15, 38 n. 18 in Vol. 3. C) In Ms. Waggoner PMK testimony, she stated that Oracle has had [redacted] budget years such that there is [redacted]." She explained the impact of this situation by stating "if we give little to no focal budget, naturally [redacted]." She further testified that Oracle has had a lean budget for "[redacted]." Citation: ☐ OFCCP SUF: Fact 110, 111; ☐ OEx. 8, Waggoner PMK Dep. 327:24-328:12, 267:21-22. D) Ms. Waggoner also testified as a PMK that "since 2013, this time period started, we've had [redacted] corporate bonus budgets" and "[t]he bonus budgets have been [redacted] when we've had them." Citation: ☐ OFCCP SUF: Fact 110, 111;	drive compensation decision-making. B) Again, OFCCP's response is about the frequency of bonuses. This has nothing to do with whether Oracle empowers managers to drive compensation decision-making. C) Oracle incorporates its responses to OFCCP's SUFs 110 and 111. OFCCP's response is about the size of the focal budget for any given year. This has nothing to do with the *allocation* of that budget and therefore has nothing to do with whether Oracle empowers managers to drive compensation decision-making. D) Oracle incorporates its responses to OFCCP's SUFs 110 and 111. OFCCP's response is about the size of the budget for bonuses in any given year. This has nothing to do with the *allocation* of that budget and therefore has nothing to do with whether Oracle empowers managers to drive compensation decision-making. E) OFCCP's response is about the percentage of people at Oracle who are eligible for equity grants. But eligibility for equity grants has nothing to do with whether Oracle empowers managers to drive compensation decision-making. F) OFCCP cites to guidelines for

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ OEx. 8, Waggoner PMK Dep. 263:12-14, 276:11-14. E) For equity grants (aka stocks or RSUs), Oracle caps the amount of people who can receive them at 35% such that Ms. Waggoner identified in her PMK testimony that they primarily go to managers and employees with higher global career levels. Citation: ☐ Ex. 84, Email from Stefanie Wittner, dated 5/30/13, ORACLE_HQCA_0000022961 in Vol. 3; ☐ OEx. 8, Waggoner PMK Dep. 272:20-274:19. F) Managers were instructed to issue shares of stock to [redacted] to [redacted] managers and to [redacted] to [redacted] individual contributors. Citation: ☐ Ex. 84, ORACLE_HQCA_0000022961 in Vol. 3. G) EVP Loaiza testified that [redacted]% of his organization is below the market rate because of the limited budgets. Citation: ☐ OFCCP SUF: Fact 129; ☐ OEx. 11, Loaiza Dep. 283:6–284:22, 305:7–306:3. H) Oracle's lean budget years have not extended to Co-CEOs Safra Catz and Mark	awarding shares to employees in India. This is utterly irrelevant to this case and should be disregarded. G) Oracle incorporates its responses to OFCCP's SUF 129. Whether someone is compensated at market rate is not relevant to whether Oracle empowers managers to drive compensation decision-making. H) OFCCP's response is about Oracle's leaders' compensation. This is not relevant this case and should be disregarded. 2) Oracle's practices for starting pay with respect to individuals who are hired by Oracle through its college recruiting program. Ms. Waggoner's testimony is plainly about experienced hires at Oracle who do not join Oracle through its college recruiting program. That a subset of Oracle hires (e.g., those who come to Oracle through its college recruiting program) are subject to different practices with respect to starting pay does not dispute Ms. Waggoner's testimony (or this fact generally), particularly because the ranges used for college hires are comparatively very small and are not the basis for OFCCP's claims. A) *See* Oracle's response above. The Court should therefore disregard the entirety of OFCCP's

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	Hurd who each have earned 1,205 times more in 2018 than the median employee compensation at Oracle, a ratio that ranks them in the 17 highest paid CEOs vis a vis average employee pay. Citation: ☐ OEx. 19, New York Times, The Highest-Paid C.E.O.s of 2018: A Year So Lucrative, We Had to Redraw Our Chart, 5/29/19 at https://www.nytimes.com/interactive/2019/business/highest-paid-ceos-2018.html. 2) Oracle has a centralizd starting pay process for its hires. A) One example of an employee's first-line or direct manager not primarily determining the starting pay for new hires is Oracle's hiring of college graduates, because Oracle's College Recruiting Organization determines the person's pay, not the employee's direct hiring manager. Ms. Waggoner admitted that Oracle's College Recruiting Organization sets the compensation package for the new hires hired through its program in her PMK *Jewett* deposition. Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00696-98, 113:13- 115:1.	response under this heading. B) *See* Oracle's response above. The Court should therefore disregard the entirety of OFCCP's response under this heading. *See also* Oracle's Objections to Evidence. C) *See* Oracle's response above. The Court should therefore disregard the entirety of OFCCP's response under this heading. D) *See* Oracle's response above. The Court should therefore disregard the entirety of OFCCP's response under this heading. E) OFCCP's response does not rebut this fact. OFCCP's response is that Mr. Loaiza looks at "proposed pay" and therefore the first-level manager could not have "already determined the starting pay for a new hire." But Oracle acknowledges that the higher-level managers review compensation recommendations at hire as a sanity check. Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. Tr. 155:23-156:3). This has nothing to do with whether Oracle empowers managers to drive compensation decision-making. F) OFCCP's response does not rebut this fact. Oracle acknowledges that the higher-level managers review compensation recommendations at hire as a sanity check. Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. Tr. 155:23-156:3). This has nothing to do with whether Oracle empowers managers to drive compensation decision-making.

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	B) EVP Loaiza also identified in his March 2015 audit interview with OFCCP that Oracle's college recruiting organization set salaries for the people Oracle hires from college: "We hire a lot from universities. Those salaries are set by the university recruiting department. We set compensation for those not coming from universities." Citation: - Decl. of Hea Jung Atkins in Oppostion to Oracle America, Inc.s' Motion for Summary Judgement (Atkins Opp'n Decl.) ¶14, Ex. K, OFCCP's Interview Notes of the Juan Loaiza on March 25, 2015 (Loaiza Interview Notes), DOL 000000522. C) Oracle's College Recruiting organization sets narrow pay ranges for college hires and makes starting pay determination for them. Citation: - OEx. 22, Email from Zeira Singn to many people re LJE approved new college compensation package, ORACLE_HQCA_0000380453; - OEx. 23, Email from Chantel Dumont to Milton Liu and Les Cundall re Salary Guidelines, dated 9/11/13	G) OFCCP's response does not rebut this fact. Oracle does not claim that front-line managers are operating alone and without input in setting compensation. Whether Oracle encourages front-line managers to consult with HR does not change the fact that Oracle empowers managers to drive compensation decision-making. H) *See* Oracle's Response to OFCCP's Evidentiary Objections I) OFCCP's response is not supported by the evidence on which it relies. OFCCP claims that HR and recruiters at Oracle "are the ones instructing hiring managers how employees should be paid." This is not remotely supported by OFCCP's evidence. Ms. Powers' declaration explains that the recruiting manager knew the salary range and would communicate that salary range to Ms. Powers. OEx. 20, Powers Decl., ¶ 11. Ms. Powers would then write up a business justification for the hire and suggest an amount of pay. *Id*. In other words, Ms. Powers would make a recommendation for the hiring salary. Similarly, Ms. Snyder's declaration simply states that she was given guidance on a strategy for setting compensation for new hires. OEx. 21, Snyder Decl., ¶ 13. It does not state that she was given instructions on how employees should be paid. 3) OFCCP's response is that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	(Dumont 9/11/13 Email), ORACLE_HQCA_00000 12587; □ OEx. 24, Email from Chantel Dumont to various people re college compensation for FY14, dated 9/24/13, ORACLE_HQCA_00000 23717; □ OEx. 25, Email from Katie Rider to James Handley re College Hire Starting Salaries, dated 4/16/15, ORACLE_HQCA_ 0000380671; □ OEx. 26, Email from Chantel Dumont to Duhong Trinh Trinh re Intern Salary Rule, dated 0/14/13, ORACLE_HQCA_00000 12204; □ OEx. 27, Email from Les Cundall to Elizabeth Lee re University Offer Approval Request, dated 3/14/14, ORACLE_HQCA_00000 11640; □ OEx. 28, Email from Chantel Dumont to Satarupa Bhattacharya, dated 5/17/13 re University Offer Approval Request, ORACLE_HQCA_00000 12173. D) Another example of the direct manager not being the primary decision-maker for the starting pay for new hire is the MAP program wherein	fact that Oracle empowers managers to drive compensation decision-making. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that Oracle empowers managers to drive compensation decision-making. A) Oracle incorporates its responses to OFCCP's SUF 113. B) Oracle incorporates its responses to OFCCP's SUF 116. 4) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that Oracle empowers managers to drive compensation decision-making. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. This does not change the fact that "Oracle empowers managers to drive compensation decision-making. Oracle also incorporates its responses to OFCCP's SUF 116. A) Oracle incorporates its responses to OFCCP's SUF 117. B) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle empowers managers to drive compensation decision-making. Oracle does not deny that

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	the "[t]he offer originates from the CEOs [sic] office and it has all the elements of other offers except a specific job position…. Once the offer is accepted the graduate is temporarily assigned to the CEOs [sic] development staff." Citation: □ OEx. 29, Emails between Wendy Lee and [redacted] regarding Oracle's MAP Program created by Larry Ellison dated 10/25/13, ORACLE_HQCA_00000 36993-94. E) EVP Loaiza, at the M8 global career level, testified in his deposition that when he is reviewing a person during the hiring approval process, he is reviewing "the proposed compensation of the person." He emphasizes this a second time when he states: "What I get is not the current compensation. I get the proposed compensation." If he is only looking at the *proposed pay* at his high-level, then the first level manager, many levels below, could not have already determined the starting pay for a new hire. Citation: □ OEx. 11, Loaiza Dep. 16:3-16, 17:2-10, 44:16-45:20. F) EVP Loaiza testified in his deposition that the hiring approval process which	higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. C) Oracle incorporates its responses to OFCCP's SUF 120. D) Oracle incorporates its responses to OFCCP's SUF 121. E) Oracle incorporates its responses to OFCCP's SUF 122. F) Oracle incorporates its responses to OFCCP's SUF 123. H) Oracle incorporates its responses to OFCCP's SUF 124. I) OFCCP's response is, again, that direct managers only make pay "recommendations" not decisions. But this does not rebut Oracle's fact that Oracle empowers managers to drive compensation decision-making. Oracle does not deny that higher-level managers perform a sanity check for hires and confirm that pay recommendations are within budget during focal review. J) Oracle incorporates its responses to OFCCP's SUF 119. 5) OFCCP's response is that one manager received guidelines from HR and/or high-level managers that contained instruction as to what percentage of his team could get a raise, as well as the percentage raise that could be issued. This does not rebut Oracle's fact. First, OFCCP cites nothing more than one person's recollection for this fact. Additionally, guidelines do not mean that Oracle is not empowering managers to drive compensation decision-making. In

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	included the compensation proposal went up the management chain of command to the final approver who was Thomas Kurian for a large majority of them. Citation: ☐ OEx. 11, Loaiza Dep. 48:10-49:1. G) Ms. Waggoner testified that determining the pay of hires is a collaboration between the hiring manager and the recruiting organization with, at times, input by human resources or its compensation group. Citation: ☐ OEx. 17, Waggoner May Dep. 91:24-92:6. H) Ms. Waggoner's declaration and deposition testimony lacks foundation because of a lack of personal knowledge since she testified in her July 2018 *Jewett* deposition that she had not been involved with the review process for years. Citation: ☐ OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00688-89, 105:1-106:12. I) Oracle's Human Resources and Recruiters play significant role in determing an employee's compensation at hire, as they are the ones instructing hiring managers how employees should be paid.	fact, Mr. Pandey writes that "As a manager, I was expected to implement these guidelines for awarding salary raises" and that he could present a case to his manager if he believed deviating from the guidelines was necessary. OEx. 12, Pandey Decl., ¶ 13. 6) *See* Oracle's Response to OFCCP's Evidentiary Objections.

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	Citation: - OEx 20, Powers Decl. ¶11; - OEx 21, Snyder Decl. ¶ 13. 3) This fact is also disputed on the grounds that direct managers only make pay *recommendations*, not decisions. These pay *recommendations* are subsequently reviewed up the chain of command until the ultimate approver approves them. At intermediate reviews, the reviewing managers can either give their approvals or reject the recommendation. The final approvers for all hirings have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. A) Oracle's Global Approval Matrices state that approvals for base salary increases bonuses, and stock or stock options grants have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: - OFCCP SUF: Fact 113; - Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_0000062725-1 to -2; - Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_0000062732-1 to -2; - Ex. 20, Global Approval Matrix, dated 11/1/14,	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	ORACLE_HQCA_00000 62712-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; ☐ Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2 all in Vol. 1. ☐ Fact 4 herein by Oracle for Thomas Kurian's title and position. B) Oracle's compensation instructions for hiring likewise require managers to make pay recommendations that require approvals at the Executive Level (e.g., CEO. CTO) or their offices. Citation: ☐ OFCCP SUF: Fact 116; ☐ Ex. 28, "Recruit & Hire at Oracle: Module 6: How to Create an Offer in iRecruitment," copyright 2017, slide 11 (notes), ORACLE_HQCA_00000 57179-22 in Vol. 2; ☐ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_00000 56234-65 to -66 in Vol. 1. 4) Oracle's compensation instructions for focals and off-cycle salary increases (e.g., promotions,	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	"dive and saves" used to counter an offer from a competitor) likewise require managers to make pay recommendations that require approvals at the Executive Level (e.g., CEO. CTO) or their offices. Citation: □ OFCCP SUF: Fact 116; □ Ex. 28, slide 11 (notes), ORACLE_HQCA_00000 57179-22 in Vol. 2; □ Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_00000 56234-65 to -66 in Vol. 1. A) The approvals for base salary increases goes all the way up through the CEO's office. Citation: □ OFCCP SUF: Fact 117; □ OEx. 8, Waggoner PMK Dep. 155:7-25. B) Oracle's focal review trainings refer to the managers role as making "recommendations" and state that "[t]his isn't to say that your recommendations won't be changed by someone further up in your hierarchy, but it is a way to inform your manager of how you would like to allocate increases to your team." Citation: □ Ex. 14, at slide 43 (notes), ORACLE_HQCA_00003 82580- 84 in Vol. 1. C) In a 2014 compensation training, managers were instructed: "**Do not**	

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	communicate any changes [in compensation] until the 'Last Approval Action' shows 'Larry Ellison.'" Citation: ☐ OFCCP SUF: Fact 120; ☐ Ex. 25, slide 39, ORACLE_HQCA_00000 56242-48 (emphasis in original) in Vol. 1. D) In a 2011 compensation training, managers were instructed: "**You should not communicate any changes until we obtain final approval from LJE**." Citation: ☐ OFCCP SUF: Fact 121; ☐ Ex. 26, slide 49, ORACLE_HQCA_00000 56957-55 (emphasis in original) in Vol. 2. E) LJE stands for Larry J. Ellison. Citation: ☐ OFCCP SUF: Fact 122; ☐ OEx. 17, Waggoner May Dep. 106:25–107:4. F) Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz. Citation: ☐ OFCCP SUF: Fact 123; ☐ OEx. 16, Carrelli Dep. 212:9–213:1, 214:12–14. H) Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process.	

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	Citation: ☐ OFCCP SUF: Fact 124; ☐ Ex. 24, slide 39 (notes), ORACLE_HQCA_00003 81306-76 in Vol. 1. I) Even in Oracle's declarations provided to this Court to support its summary judgment motion, managers acknowledge that they only make pay recommendations in focal reviews. E.g., Christina Kite, a VP, stated: "I am responsible for recommending salary increases and bonuses for my team." Citation: ☐ Oracle MSJ Decl. of Christina Kite, ¶¶ 3, 11. J) President Thomas Kurian gave his required approval to off- cycle dive and save requests. Citation: ☐ OFCCP SUF: Fact 119; ☐ Ex. 30, Dive-and-Save Emails between Oracle Managers, July 2014, ORACLE_HQCA_00004 32004 in Vol. 2. 5) Mr. Pandey testified to receiving guidelines from HR an/or high-level managers that contained instruction as to what percentage of his team could get a raise, as well as the percentage range for raises that could be issued. Citation: ☐ OEx. 12. Pandey Decl. ¶13. 6) OFCCP objects to paragraph 28 of Ms. Waggoner's declaration	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	because she lacks personal knowledge, fails to use the best evidence, and proffers an improper summary.	

VI. OFCCP FAILED TO MEET ITS MANDATORY PRESUIT OBLIGATIONS

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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Oracle incorporates herein Uncontested Facts 20-32; 96-125.		
57. On September 24, 2014, OFCCP initiated the audit of Oracle's Redwood Shores headquarters that led to this litigation. **Supporting Evidence:** Holman-Harries Decl., ¶ 2.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
58. OFCCP issued a Notice of Violation ("NOV") on March 11, 2016, without first issuing a Predetermination Notice. **Supporting Evidence:** Holman-Harries Decl., ¶ 3, Ex. B (NOV).	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
59. The NOV was based solely on the results of OFCCP's statistical analyses and other evidence that OFCCP never disclosed to Oracle. **Supporting**	**Disputed.** 1) OFCCP contests Oracle's Material Fact 59 because OFCCP communicated to Oracle the evidence that was the basis for the NOV, and most of the evidence came from Oracle. A) In the NOV, OFCCP	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response and evidence do not rebut this fact. OFCCP provides no evidence to support its assertion that it communicated to Oracle the evidence that was the basis for the

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Evidence: Holman-Harries Decl., ¶ 3, Ex. B (NOV).	communicated to Oracle that the findings of compensation discrimination in the NOV were "[b]ased on the evidence gathered during the compliance review," which included "employment policies, practices, and records"; interviews with "management, human resources, and non-management employees"; "employee complaints"; "individual employee compensation data and other evidence"; and "an onsite inspection of the worksite." Citation: ☐ OFCCP SUF Fact 11; ☐ Ex. 61, NOV at 3, DOL000000945 in Vol. 2; ☐ *See also id*. at 4–6, DOL000000946–48 in Vol. 2. B) The results of OFCCP's regression analysis on compensation were attached to the NOV at attachment A. Citation: ☐ Ex. 61, NOV, Ex. A, DOL000000952–54 in Vol. 2. C) The NOV provided Oracle with a list of the variables that had been included in the regression analysis. Citation: ☐ OFCCP SUF Fact 23; ☐ Ex. 61, NOV at 10-12, DOL000000952–53 (noting that the analysis "accounted for differences in employees' national	NOV. A) Oracle incorporates its response to OFCCP SUF 11. OFCCP essentially states that everything it received during the audit is evidence which supports the NOV. B) OFCCP's response concedes that the NOV was based on the results of its statistical analysis. C) Oracle incorporates its response to OFCCP SUF 23. D) OFCCP does not establish this fact with respect to all the data fields identified in the NOV, which include "work experience at Oracle" and "work experience prior to Oracle." Neither of these are the title of data fields in the data Oracle provided to OFCCP as part of the 2014 snapshot. *See*, headings included in Ex. 68 (excerpt of 2014 compensation snapshot). E) Oracle incorporates its response to OFCCP SUFs 50-52. Moreover, the NOV does not specifically identify any of these documents. F) OFCCP's response does not prove that it ever informed Oracle that any of the information contained in these inaccurate interview notes was among the evidence relied upon to issue the NOV. *See also* Oracle's Objections to Evidence. G) Oracle incorporates it response to OFCCP SUFs 52 and 195-206. H) Oracle incorporates its response to OFCCP SUFs 16, 24 and 25.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	origin, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, visa status, and job title"), in Vol. 2. D) Oracle knew which data fields, from Oracle's data, that OFCCP had used in its standard regression model. Citation: □ Ex. 70, Oracle America Inc.'s 5/25/16 email and attached Position Statement in response to OFCCP's 3/11/16 Letter, 15 n.17-18 (In discussing the statistical model OFCCP had described in the NOV, Mr. Siniscalco stated, "we presume 'work experience at Oracle' means simply length of time at Oracle since hire or acquisition" and "we presume 'work experience prior to Oracle' calculates some amount of time worked elsewhere before joining Oracle."), in Vol. 2; □ 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	I) Oracle incorporates its response to OFCCP SUFs 26, 27, and 31. J) OFCCP's response regurgitates violations 6 through 9 of the NOV without identifying any evidence OFCCP relied upon in issuing those alleged violations.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	NOV--annual salary, gender, race, fulltime/part time status, exempt status, global career level, job specialty and job title); □ 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; E) The employment policies and practices referenced in the NOV included the specific documents that Oracle had itself provided to OFCCP during the compliance review: Oracle's employee handbook; "Oracle's Global Compensation Training, Managing Pay Module"; Oracle's "Compensation Guidelines"; and a compensation document that Oracle created for OFCCP audits, entitled "Compensation Review and Oversight"; and "Affirmative Action Plan for Oracle America." Citation: □ OFCCP SUF Facts 50-52; □ Ex. 9, ORACLE_HQCA_0000380594-97 in Vol. 1; □ Ex. 11, ORACLE_HQCA_0000000468 in Vol. 1; □ Ex. 18,	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	ORACLE_HQCA_00000 00407 in Vol. 1; □ Ex. 63, "Affirmative Action Plan for Oracle America," dated January 2014, ORACLE_HQCA_00000 04999–5015 in Vol. 2; □ Ex. 73, "Compensation Review & Oversight," not dated, (Ex. 26 to the Holman-Harries May Dep.), ORACLE_HQCA_00003 82618 in Vol. 2; □ Ex. 74, Email from Shauna Holman-Harries to OFCCP sending Oracle's Handbook, dated 2/9/15, ORACLE_HQCA_00000 00443 in Vol. 2; □ Ex. 75, Email from Shauna Holman-Harries to OFCCP, dated 2/26/15, sending Oracle's Global Compensation Training in Vol. 2, ORACLE_HQCA_00000 00405, in Vol. 2; □ OEx. 5, Holman-Harries May Dep. 171:12–172:20, 183:16–184:7, 198:10–24. F) Oracle representatives and/or attorneys were present at all of the manager interviews that OFCCP conducted during the compliance review, and Oracle received copies of each of the interview notes documents that OFCCP created from those interviews. Citation:	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ Atkins Opp'n Decl. ¶11, Ex. H, OFCCP's Interview Notes of the Thomas Kurian interview on March 24, 2015 (Kurian Interview Notes) (noting presence of Liza Snyder, VP Human Resources as "contractor representative"), DOL000000629–637. ☐ Atkins Opp'n Decl. ¶14, Ex. K, Loaiza Interview Notes (noting presence of Oracle representative Shauna Holman- Harries), Ex. K, DOL000000521-24; ☐ OEx. 33, OFCCP's Interview Notes of the John McGinnis interview on March 24, 2015 (noting presence of Oracle representative Neil Bourque), DOL000000525-29; ☐ OEx. 34, Interview notes from the March 26, 2015 Interview of Marianna Gurovich (noting presence of Oracle representative Ms. Holman-Harries), DOL000000554-558; ☐ Atkins Opp'n. Decl. ¶6, Ex. C, Cheruvu Interview Notes (noting presence of Oracle representatives Neil Borque and Liz Snyder), DOL000000535-37; ☐ Atkins Opp'n Decl. ¶16, Ex. M, OFCCP's Interview Notes of the Peggy (Margaret) Rolly	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	interview on March 26, 2015 (Rolly Interview Notes), DOL000005458-60; □ Atkins Opp'n Decl. ¶18, Ex. O, OFCCP's Interview Notes of the Vicki Thrasher interview on March 25, 2015 (Thrasher Interview Notes) (noting presence of Oracle representative Elizabeth Snyder), DOL000038520-24; □ Atkins Opp'n Decl. ¶5, Ex. B, Balkenhol Interview Notes, (noting presence of Oracle representative Neil Borque), DOL000000511-14; □ Atkins Opp'n Decl. ¶4, Ex. A, Email from Hoan Luong to Oracle dated 1/4/16, asking Oracle to return signed copies of the interview notes and Ms. Holman-Harries' return Email on 1/8/15 returning the interview notes unsigned, ORACLE_HQCA_00000 00270. G) OFCCP also based its NOV in part on material it compiled, and which Oracle had either provided or received, associated with the compliance evaluation of Oracle's Pleasanton site, including the sworn statement of Oracle's Director of Compensation, Lisa Gordon.	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Citation: □ OFCCP SUF Facts 52, 195-206; □ Ex. 41, Holman-Harries *Jewett* Decl., Ex. A, sworn statement of Lisa Gordon, Oracle Director of Compensation dated 2/11/15, (Lisa Gordon Sworn Statement) in Vol. 2; □ Ex. 42, Email dated 2/10/15, from Shauna Holman-Harries to OFCCP regarding revisions to Lisa Gordon's statement, DOL000039963–40002 in Vol. 2; □ OEx. 5, Holman-Harries May Dep. 226:14–227:10, 227:23–24, 228:2–5, 232:16–233:12, 234:9–12 in Vol. 2; □ Ex. 44, OFCCP interview statement containing Lisa Gordon's revisions that Shauna Holman-Harries sent to OFCCP that was marked as Ex. 33 to Holman-Harries May Dep.; □ Ex. 45, Email dated 2/10/15, from Shauna Holman-Harries to OFCCP with Lisa Gordon's sworn statement, DOL000040003–22 in Vol. 2; H) OFCCP provided Oracle with additional information about the findings of violation in correspondence between the	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	issuance of the NOV in March 2016 and the issuance of the complaint in January 2017. Citation: □ OFCCP SUF Facts 16, 24 and 25; □ Ex. 69, OFCCP's 3/29/16 email Response to Oracle America, Inc.'s 3/18/16 email (Ex. 5 (Suhr) at Holman- Harries 30b6 Dep. re: conciliation), ORACLE_HQCA_00000 00275–78 in Vol. 2; □ Ex. 67, OFCCP's 4/21/16 Response to Oracle America Inc.'s 4/11/16 Letter (OFCCP 4/21/16 Response) (Ex. 7 (Suhr) at Holman-Harries 30b6 Dep. re: conciliation), ORACLE_HQCA_2067–78 in Vol. 2; □ OEx. 31, Holman-Harries 30b6 Dep. 182:13-183:22. I) At an approximately 3-hour conciliation meeting on October 6, 2016, Janette Wipper, OFCCP's Regional Director at the time, described the variables used in OFCCP's compensation analysis, and additional information about the violations. Citation: □ OFCCP SUF Facts 26, 27, 31; □ OEx. 31, Holman-Harries 30b6 Dep. 205:22–208:01, 209:18–25, 222:17–223:19, 214:2–11;	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ Ex. 71, Consolidated Notes of Oracle employees Charles Nyakundi and Shauna Holman-Harries (Consolidated Notes) (Ex. 131 at Holman-Harries 30b6 Dep. re: conciliation), ORACLE_HQCA_00006 07319–25 in Vol. 2. J) OFCCP also based its NOV in part on Oracle's failure to produce documents showing its compliance with its Affirmative Action plan and related regulations, and its failure to provide access to documents including prior year compensation data. Citation: ☐ Ex. 61, NOV, at 6–9, DOL000000948–51 in Vol. 2.	
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. **Supporting Evidence:** Holman-Harries Decl., ¶ 3, Ex. B (NOV); Waggoner Decl., ¶¶	**Disputed.** 1) OFCCP contests Oracle's Material Fact 60 because it is a legal contention and not a statement of undisputed fact. A) In any case, the NOV provided Oracle with a list of the variables that had been included in the ` analysis, in addition to job title. Citation: ☐ OFCCP SUF Fact 23; ☐ Ex. 61, NOV at 10-12, DOL000000952–53 (noting that the analysis "accounted for differences in employees' national origin, work experience at Oracle, work experience prior to Oracle, full-	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response and evidence effectively concede that the NOV's statistical analysis did not compare employees who perform similar work. A) Oracle incorporates its response to OFCCP SUF 23. Further, these variables support Oracle's fact. B) Oracle incorporates its response to OFCCP SUFs 25, 30, and 35. 2) *See* Oracle's Response to OFCCP's Evidentiary Objections.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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.	time/part-time status, exempt status, global career level, job specialty, visa status, and job title") , in Vol. 2. B) In addition, 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. Citation: ☐ OFCCP SUF Fact 25, 30, 35; ☐ OEx. 31, Holman-Harries 30b6 Dep. 185:14–24, 195:1–6 in Vol. 1; ☐ Declaration of Jane Suhr in Support of OFCCP's Opposition to Oracle America, Inc's Motion for Summary Judgment or, in the alternative, for partial summary judgment dated 10/31/19 (Suhr Opp'n Decl.) ¶18 & Ex. K, Letter from Gary Siniscalco to OFCCP, dated 5/25/16, at 3 ("OFCCP's statistical model is defective and no counter-statistical model is warranted. . . . In many cases no two employees at HQCA have the same or similar job, and thus they no or possibly just one or	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	two comparators."), ORACLE_HQCA_00000 02094–2115; Ex. 66, Show Cause Notice at 2 (noting that "ORACLE has not provided a substantive rebuttal analysis, based upon statistical evidence, to the violations of the Notice"); Suhr Opp'n Decl. ¶21 & Ex. N, Letter from Hea Jung Atkins to Oracle, dated 9/9/16 (Atkins 9/9/16 Letter), at 2 (noting that "simply attacking OFCCP's statistical findings, without indicating how the purported errors affect the results, is insufficient"), DOL000039039; 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 4 (noting that at the conciliation meeting, Oracle's counsel continued to advocate for comparisons of "cohorts," stating that Oracle's workforce "defies statistical analysis."), ORACLE_HQCA_00006 07319–25, in Vol. 2; Suhr Opp'n Decl. ¶31, Ex. T, Letter from Erin Connell to OFCCP, dated	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	10/31/16, at 6-12 (stating that "generalized statistics that might be probative in assessing employers with large numbers of . . . similar positions are not meaningful here" and not providing any possible variable to account for purported differences in skills or duties); □ Suhr Opp'n Decl. ¶32, Ex. U, Letter from Janette Wipper to Oracle, dated 12/9/16, at 1 (stating that "Oracle has not asubmitted additional data, competing statistics, or other evidence explaining the significant statistical disparities in . . . compensation"). 2) In addition, OFCCP objects to Oracle's reliance on Ms. Waggoner's declaration at paragraph 22 because she submits improper lay opinion.	
61. OFCCP's Regional Director during the 2013-2014 audit period was Janette Wipper. **Supporting Evidence:** 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).	**Disputed.** 1) Janette Wipper was not the Regional Director of OFCCP during the entire 2013-2014 period. Citation: □ Suhr Opp'n Decl. ¶ 4.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP concedes Janette Wipper was the Regional Director of OFCCP during the audit—i.e., between September 24, 2014 and January 17, 2016.
62. Ms. Wipper provided Dr. Shirong "Andy" Leu, OFCCP's statistician	**Disputed.** 1) OFCCP contests Oracle's Material Fact 62 to the extent that it implies the data Dr. Shirong Andy Leu (Dr. Leu)	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP quibbles over a term ("created") that is not used in this

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
who prepared the statistical analyses in the NOV, the data for Oracle's employees and the factors to use for the analyses. **Supporting Evidence:** 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).	used for the analyses was created by Ms. Wipper. The data Dr. Leu used for the statistical analyses was data in the 2014 compensation snapshot that Oracle provided to OFCCP. Citation: ☐ OEx. 32, Dep. of Dr. Shirong Andy Leu, dated 7/1/19 (Leu Dep.) 100:01-101:01, 107:06-16.	fact. As such, OFCCP has failed to rebut this fact.
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). **Supporting Evidence:** 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	**Disputed.** 1) The NOV lists the factors included in the regression analysis. Citation: ☐ OFCCP SUF Fact 23; ☐ Ex. 61, NOV, Ex. A, DOL000000952–53 (noting that the analysis "accounted for differences in employees' [gender/race/national origin], work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, visa status, and job title") in Vol. 2. 2) The evidence that Oracle cites here does not support its conclusion that job title "includes" employees' exempt status, global career level, and job specialty.	**OFCCP's evidence fails to create a material dispute of fact.** 1) Oracle incorporates its response to OFCCP SUF 23. Further, OFCCP's response and evidence do not rebut this fact. 2) OFCCP concedes these factors were included in the regression model underlying the NOV.
64. Dr. Leu estimated he spent only five to ten hours in total	**Disputed.** 1) OFCCP contests Oracle's Material Fact 64 because Dr. Leu testified that	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response does not

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
preparing the regression models in the NOV. **Supporting Evidence:** Connell Decl., Ex. F (7/1/19 Leu Dep. 154:1-20).	he did not recall how long he spent preparing the regression models. Dr. Leu estimated that he spent at least five hours on the models, but he did not have a clear enough recollection to estimate the timeframe. Citation: - OEx. 32, Leu Dep. 154:24-156:14 ("[Dr. Leu:] To be honest with you, I don't have very clear -- very clear, you know, the numbers in my brain, you know. [] Q. But you did say you thought it was at least five hours, right? A. Yeah. I think it's five hours, yeah, but ten, 20, I don't know, I really don't. Five – five should be reasonable -- you know, at least to five.").	render this fact in dispute. OFCCP concedes that Dr. Leu estimated the amount of time he spent preparing the regression models in the NOV and this fact does not assert that he specified his time spent on the regression model with precision.
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. **Supporting Evidence:** Connell Decl., Ex. F (7/1/19 Leu Dep. 141:25-143:11).	**Disputed.** 1) OFCCP contests Oracle's Material Fact 65 to the extent that it implies that Dr. Leu should have personally analyzed the evidence in the case. Dr. Leu repeatedly testified that it was not his function in the Oracle matter to analyze the evidence or determine the factors in the OFCCP's regression analysis, and that instead he was simply tasked with creating a regression analysis using the Oracle's data and the specific variables within that data as provided to him by Regional Director Wipper. Citation: - OEx. 32, Leu Dep. 141:25-143:11, 210:2-211:22.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response concedes this fact and concedes Oracle's SUF 62, despite its attempt to dispute that fact.
66. OFCCP issued the Show Cause Notice,	**Disputed.** 1) OFCCP issued the Show Cause	**OFCCP's evidence fails to create a material dispute of fact.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
which was based on the same statistical analyses as was the NOV, on June 8, 2016. **Supporting Evidence:** Holman-Harries Decl., Ex. Y (SCN).	Notice on June 8, 2016. However, OFCCP disputes this fact to the extent it suggests that the NOV and SCN were based only on the underlying statistical analyses. A) As noted above in Disputed Fact 59, the NOV was also based on the material gathered and interviews conducted by OFCCP during the compliance review. B) In addition, both the NOV and the SCN were based on Oracle's failure to conduct in-depth analyses of its total employment process; failure to implement internal audit and reporting systems; and denial of access to records, including prior year compensation data. Citation: ☐ Ex. 61, NOV, at 6–9, DOL000000948–51, in Vol. 2; ☐ Ex. 66, Show Cause Notice, at 3 (stating that OFCCP's findings remain unrebutted and enclosing the NOV to reference the "violations at issue") in Vol. 2.	1) OFCCP's response does not rebut this fact. A) Oracle incorporates its response to Oracle's SUF 59. B) OFCCP's response is unrelated to this fact and does not render this fact in dispute.

B. <u>OFCCP Did Not Engage in Reasonable Conciliation Efforts</u>

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
67. OFCCP understood that Oracle was requesting additional information in order to respond substantively to the	**Disputed.** 1) OFCCP did not believe that Oracle was requesting additional info to respond substantively to the NOV. Citation: ☐ Connell Decl., Ex. D	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP's response and evidence fail to rebut this fact. Further, Ms. Suhr's Opposition Declaration contradicts her 30(b)(6) testimony

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
NOV. **Supporting Evidence:** Connell Decl., Ex. D (6/26/19 Suhr PMK Dep. 41:20-42:6).	(6/26/19 Suhr PMK Dep. 41:17-19); - Suhr Opp'n Decl. ¶¶11, 13, 15. 2) Oracle declined OFCCP's offer to meet in person to discuss the NOV until October 6, 2016. Citation: - Suhr Opp'n Decl. ¶12 & Ex. E, Email from OFCCP to Oracle, dated 3/29/16, ("Please let us know whether an Oracle representative with decision-making authority and an Oracle representative with the requisite knowledge noted above will be available to meet during the week of April 18, 2016 to conciliate this matter"); - Suhr Opp'n Decl., ¶13, Ex. F, Letter dated 4/11/16 from Gary Siniscalco, at 5 ("[W]e believe the invitation for a face- to-face meeting at this stage would likely be premature."), ORACLE_HQCA_0000002057-2066; - Suhr Opp'n Decl., ¶20, Ex. M, Letter dated 6/29/16 from Gary Siniscalco to OFCCP, at 2 ("OFCCP asked to meet in person; in response, we explained why we believed such a meeting would be	on behalf of OFCCP and should be disregarded as a self-serving sham declaration. 1) OFCCP's response relates to its subjective belief; however, this fact relates to whether OFCCP understood that Oracle was requesting additional information in order to substantively respond to the NOV, which Oracle's evidence demonstrates. Further, OFCCP cannot create a material dispute of fact by contradicting prior 30(b)(6) testimony. 2) OFCCP's response and evidence is non-responsive to this fact. Further, OFCCP cannot create a material dispute of fact by contradicting prior 30(b)(6) testimony. 3) OFCCP's response and evidence is non-responsive to this fact. Further, OFCCP cannot create a material dispute of fact by contradicting prior 30(b)(6) testimony. 4) OFCCP's response and evidence is non-responsive to this fact. Further, OFCCP cannot create a material dispute of fact by contradicting prior 30(b)(6) testimony. 5) OFCCP's response and evidence is non-responsive to this fact. Further, OFCCP cannot create a material dispute of fact by contradicting prior 30(b)(6) testimony. 6) OFCCP's response is contrary to the sworn testimony of its 30(b)(6) witness and OFCCP cannot create a material dispute of fact by now contradicting prior

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	premature and inappropriate.") & attached email exchange. 3) Starting in the compliance review, Oracle took actions that appeared designed to cause delay, and were uncooperative. Citation: ☐ OEx. 31, Holman-Harries 30b6 Dep. 71:14-73:13 (Oracle was waiting for OFCCP to provide a basis for requesting the 2013 compensation snapshot before providing it); ☐ Oracle's Mot. 25 ("Oracle asked why information was being sought"); ☐ Suhr Opp'n Decl. ¶¶7, 9, 11, 13, 17. 4) Oracle continued this tactic, when it responded to the NOV by asking 57 detailed questions, many of which were not directed to understanding the violations stated in the NOV, but instead invaded the Agency's deliberative process and other privileges, or sought premature, broad discovery. Citation: ☐ OEx. 31, Holman-Harries 30b6 Dep. 176:24-177:6, 179:11-180:23; ☐ Suhr Opp'n Decl. ¶13, Ex. F, Letter dated 4/11/16 from Gary Siniscalco to OFCCP, at Appendix A & B (Oracle asked, at Q. 15, how	30(b)(6) testimony through a sham declaration.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	many different models, iterations and computations had the statistician run besides the three listed in Attachment A?, at Q 30, whether OFCCP would pursue a disparate treatment or disparate impact theory, and at Q 31, for facts supporting each of the alleged violations.), ORACLE_HQCA_00000 02057-2066; ☐ Ex. 67, Letter from Hea Jung Atkins to Gary Siniscalco, dated 4/21/16 (Atkins 4/21/16 Letter), at 3-4 in Vol. 2 & Appendices A & B (responding to Oracle's 57 questions). 5) Oracle's correspondence focused on procedural objections. Citation: ☐ Suhr Decl. ¶13, Ex. F, Letter dated 4/11/16 from Gary Siniscalco to OFCCP, ORACLE_HQCA_00000 02057-2066 at 1-2; ☐ Suhr Decl. ¶18, Ex. K, Letter dated 5/25/16 from Gary Siniscalco to OFCCP, attached Position Statement at 1-7ORACLE_HQCA_0000 002057-2066; ☐ Suhr Decl. ¶20, Ex. M, Letter dated 6/29/16 from Gary Siniscalco to	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	OFCCP, at 1-3; 6) OFCCP understood Oracle's requests for additional information (particularly the 57 questions in its April 11, 2016 letter) to be designed to delay conciliation. Citation: ☐ Suhr Decl. ¶15 & Ex. H, Letter from OFCCP to Oracle, dated 4/21/16, at 3 n.8 in Vol. 2 ("Instead of responding to the substantive violations at issue, most of the letter focuses upon mischaracterizing communications and the compliance evaluation record, while condemning government officials for conducting an audit of Oracle."); ☐ Suhr Decl. ¶21 & Ex. N at 1 ("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. ¶23 & Ex. P, Letter from Hea Jung	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Atkins to Oracle, dated 9/21/16 (Atkins 9/21/16 Letter) at 1 n.1 (expressing concern about "attempts to manufacture procedural deficiencies where none exist"); ☐ Suhr Decl. ¶¶7, 9, 11, 13, 17.	
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. **Supporting Evidence:** Connell Decl., Ex. D (6/26/19 Suhr PMK Dep. 41:20-42:6); Siniscalco Decl., Ex. C (4/21/16 Atkins Letter).	**Disputed.** In addition to providing substantial detail in the NOV itself, OFCCP provided significant information about the violations in the NOV in three subsequent communications on March 29, April 21, and September 9, 2019, and then held a three-hour in-person conciliation meeting on October 6 where the parties discussed the violations in depth. 1) The NOV contained sufficient detail regarding the regression analyses that OFCCP had conducted including: the job functions at issue, the specific data fields from Oracle's 2014 compensation data that OFCCP included in its standard regression analysis, the classes of employees who were victims, and the results of the regression model. The NOV explained that the regression analyses "analyzed Oracle employees' compensation data by Oracle job function by using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' [gender/race], work experience at Oracle, work experience prior to Oracle, full-time/part- time status, exempt status, global career level, job specialty, visa	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP's response and evidence fail to rebut this fact. Further, Ms. Suhr's Opposition Declaration contradicts her 30(b)(6) testimony on behalf of OFCCP and should be disregarded as a self-serving sham declaration. 1) Oracle incorporates its response to OFCCP SUF 23. 2) OFCCP's response concedes that information related to its compensation claims was not provided to Oracle. 3) Citations to legal authority for OFCCP's positions in the NOV is not providing Oracle with the necessary information to substantively respond to the results of the regression analyses included in the NOV. 4) OFCCP's response concedes that information related to its compensation claims was not provided to Oracle. 5) OFCCP's response and evidence does not rebut this fact. This letter contains no information that would assist with Oracle's assessment of the claims in the NOV. Instead, this letter simply demands that Oracle provide a

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	status, and job title." Citation: - OFCCP SUF Fact 23 (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") - Holman-Harries 30(b)(6) Dep. 76:20-24, 80:17-97:11 - Ex. 61, NOV at 10-12, DOL000000952–53, in Vol. 2 - Suhr Opp'n Decl. ¶18, Ex. K, p. 15 n. 17-18 2) In an email dated March 9, 2016, OFFCP provided Oracle with a specific accounting of the past due requests for information underlying the Affirmative Act, Recordkeeping, and Access violations in the NOV. Citation: - Ex. 69, Email dated 3/9/16, from Robert Doles to Shauna Holman-Harries and attachment titled "Pending Information Requests," ORACLE_HQCA_00000 0275-278, in Vol. 2. 3) In a letter dated April 21, 2016, OFFCP provided Oracle with significant information regarding the agency's legal framework for finding the violation, including that "[a]	rebuttal statistical analysis or concede the violations. 6) Oracle incorporates its response to OFCCP SUFs 26-32. 7) OFCCP's response and evidence do not rebut this fact.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	disparity in treatment that is two standard deviations is acceptable as evidence of discrimination" and specific case citations of the precedential cases on which the agency was relying for its finding of a prima facie case of discrimination. Citation: ☐ Ex. 67, Atkins 4/21/16 Letter at 2-3 n.5-7, 9 in Vol. 2; ORACLE_HQCA_00000 0275-278 ☐ OEx. 31, Holman-Harries 30b6 Dep. 182:13-183:22. 4) In a letter dated September 9, 2016, OFFCP provided Oracle with a list of information that Oracle had still not provided (and which provided bases for the recordkeeping and access violations), including "resumes, applications, requisitions, job postings, and hiring manager information for any positions other than Software Developers 1-5 and student interns, 2013 compensation data and LCAs, as well as starting salary, prior salary, and salary history for 2013 or 2014." Citation: ☐ Suhr Opp'n Decl. ¶21, Ex. N, Atkins 9/9/16 Letter at 2, DOL000039039; 5) 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	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	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." Citation: ☐ Suhr Opp'n Decl. ¶24, Ex. Q, Letter from Hea Jung Atkins to Oracle, dated 9/23/16 (Atkins 9/23/16 Letter) at 2 (providing additional case citations to support the Agency's belief that such evidence was necessary), DOL000039028; 6) When Oracle finally agreed to meet in person with OFCCP to discuss conciliation, OFCCP provided additional information to Oracle about the violations during an approximately 3-hour conciliation meeting on October 6, 2016. The parties discussed Oracle's assertion that the products employees worked on impacted their compensation, and the lack of any data maintained by Oracle showing such product assignments. Citations: ☐ OFCCP SUF 26-32; ☐ Ex. 71, Consolidated Notes of Oracle employees Charles Nyakundi and Shauna Holman-Harries	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	(Consolidated Notes) (Ex. 131 at Holman-Harries 30b6 Dep. re: conciliation), ORACLE_HQCA_00006 07319–25, in Vol. 2. 7) Following the October 6, 2019 meeting, Mr. Siniscalco wrote to Ms. Wipper that "We all feel the conciliation meeting was very productive, and moved both sides in a positive direction." Citation: ☐ Suhr Opp'n Decl. ¶30, Ex. S Email exchange between Gary Siniscalco and Janette Wipper, dated 10/7/16.	
69. OFCCP never provided Oracle with a proposed conciliation agreement. **Supporting Evidence:** Connell Decl., Ex. D (6/26/19 Suhr PMK Dep. 35:14-21; 50:5-22; 65:7-66:8).	**Undisputed.** 1) However, 41 C.F.R. § 60–1.33 requires a conciliation agreement "if the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies." Oracle never indicated that it was willing to correct the violations; instead it maintained the position that no violations or deficiencies existed.	**OFCCP concedes this fact is undisputed and material.** OFCCP's additional commentary should be disregarded as it has not provided any evidence to support the statement that "Oracle never indicated that it was willing to correct the violations; instead it maintained the position that no violations or deficiencies existed," which mischaracterizes Oracle's position during its attempt to conciliate with OFCCP.
70. OFCCP never explained what non-monetary actions Oracle could take to resolve the alleged violations. **Supporting Evidence:** Connell Decl., Ex. D (6/26/19 Suhr PMK	**Disputed.** 1) In addition to make-whole relief, OFCCP's NOV stated that Oracle had to agree to take steps to ensure its compensation is nondiscrimintatory, including, specifically addressing "salary at the time of placement into roles," and "annual salary adjustments and incentive compensation." It also required Oracle to agree to provide training to	**OFCCP's evidence fails to create a material dispute of fact.** 1) The remedies sought in the NOV do not constitute conciliation discussions about actions Oracle could take to resolve the alleged violations. 2) Oracle incorporates its response to OFCCP's SUF 32.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Dep. 65:21-66:8).	employees involved in setting and increasing compensation to ensure that the violation does not recur. Citation: ☐ Ex. 61, NOV at 4-5, DOL000000952–53, in Vol. 2 2) At the October 6, 2016 meeting Wipper described policy changes that OFCCP wanted as part of the settlement, including salary adjustments (to assure relief would be prospective as well a retrospective), training for Oracle management in how to do pay equity analysis, pay transparency rules for Oracle's workers (i.e. no prohibitions on sharing salary information), and clear documentation going forward of justifications for for pay discrepancies. Citation: ☐ OFCCP SUF Fact: 32; ☐ Ex. 71, Oracle's Consolidated Notes of the 10/6/16 Conciliation Meeting, ORACLE_HQCA_00006 07324, in Vol. 2; ☐ Atkins Opp'n Decl., Hea Jung Atkins Notes of the 10/6/16 Conciliation Meeting (Atkins 10/6/16 Notes), ¶26, Ex. T, DOL000044163; ☐ Ex. 31, Holman-Harries 30b6 Dep. 205:22–208:01, 209:18–25, 222:17–223:19, 231:6–233:16, 235:9–236:19.	
71. OFCCP gave Oracle rough estimates of alleged monetary	**Undisputed.** 1) However, at the October 6, 2016 conciliation meeting, OFCCP	**OFCCP concedes this fact is undisputed and material.** 1) Oracle incorporates its response

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
damages, but not any backup or supporting facts explaining how the estimates were derived. **Supporting Evidence:** Connell Decl., Ex. D (6/26/19 Suhr PMK Dep. 68:23-69:13).	provided a breakdown of the $22 million / year damages estimate, including $7.7 million for women in Product Development; $670,000 for woman in IT; $487,000 for women in Support; $250,000 for African-American employees, and $13-14 million for Asian employees. OFCCP provided the exact number of employees who would be eligible for relief. Citation: ☐ OFCCP SUF Fact: 32; ☐ Ex. 71, ORACLE_HQCA_00006 07324, in Vol. 2. 2) At the October 6, 2016 conciliation meeting OFCCP explained that the methodology for coming up with the estimates was formula relief, and OFCCP noted that this methodology is explained in the agency directive on remedies. ☐ Suhr Opp'n Decl. ¶ 26, Ex. T, Atkins 10/6/16 Notes, DOL000044162-63; ☐ Ex. 71, (Consolidated Notes), ORACLE_HQCA_00006 07324-25, in Vol. 2. 3) OFCCP offered to provide even more detail on the methodology by which the estimates were reached if the parties could get through disagreements on liability. Citation: ☐ Ex. 71, ORACLE_HQCA_00006 07324-25, in Vol. 2. 4) Oracle never provided OFCCP with any settlement offer in response. Citation:	to OFCCP's SUF 32 2) OFCCP failed to authenticate Exhibit 71 and Exhibit T to the Atkins Decl. is hearsay. In any event, neither exhibit supports OFFCP's assertion that its methodology was explained at the 10/6/16 meeting. Instead, those notes only indicate that OFCCP is seeking formula relief as described in the agency directives on OFCCP's website. However, the directives and the website only generically describe what "formula relief" is. *See* https://www.dol.gov/ofccp/regs/compliance/directives/dir310.htm (noting under the averaging method that "[t]he formula should be designed to address the particular violation that was found"). 3) OFCCP failed to authenticate Exhibit 71; however, OFCCP's response concedes that it refused to provide Oracle with the "detail on the methodology" needed to fully assess OFCCP's findings. 4) Whether Oracle provided OFCCP with a settlement offer is irrelevant and does not render this fact in dispute. Indeed, OFCCP concedes that it refused to engage in meaningful conciliation efforts with Oracle by demanding Oracle both admit liability and provide a settlement offer before it would give Oracle the information necessary to assess OFCCP's alleged findings. .

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	☐ 5/23/19 Order Den. Summ. J. at 3.	

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

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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Oracle incorporates herein Uncontested Facts 1-56.		
72. OFCCP is not accusing any managers in Oracle's Product Development, IT or Support job functions of intentional discrimination or bias. **Supporting Evidence:** OFCCP's August 22, 2019 Position Statement at 8.	**Disputed.** 1) OFCCP disputes Oracle's Fact 72, unless it is interpreted to mean that OFCCP is not bringing an action against any lower-level Oracle managers. 2) As the cited portion of OFCCP's Position Statement makes clear, the focus of OFCCP's allegations of wrongdoing by Oracle is "at the top of its management structure, not the bottom." The statement further states that "[a]llegations of individual discriminatory acts are relevant here only as they shed light on how Oracle's top leadership responded on a systemic basis[.]"	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's position statement speaks for itself. On its face, it is not limited to "lower-level Oracle managers." OFCCP admits it is not alleging misconduct on the part of *any* manager within the Product Development, IT and Support job functions, including the highest-level executives within these job functions. Further, this contention has already been flatly rejected by this Court. *See* Order Directing OFCCP to State Position re Oracle Managers, August 8, 2019, 5 ("Context confirms that when OFCCP said 'accuse of wrongdoing' it meant 'accuse of wrongdoing' and was not speaking in code. If 'accuse of wrongdoing' were actually code for 'name as a defendant' then the statement had no place in the letter."). 2) OFCCP's position statement makes clear that its allegations are premised upon alleged intentional discrimination by "Oracle's top management

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
		[defined as Larry Ellison, Safra Catz, Mark Hurd, and Thomas Kurian] and Human Resources managers." As OFCCP's position statement admits, the four top executives identified by OFCCP are in the Business Practices job function and HR managers are in the HR job function. As such, OFCCP has failed to rebut this fact. *See* 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. **Supporting Evidence:** 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).	**Disputed.** 1) The Supporting Evidence does not support the asserted fact, particularly that OFCCP's counsel "developed" "the primary statistical models in the Second Amended Complaint." The asserted fact notes that the the employee groupings and factors used in the regression model in the SAC were the same as in the NOV. The Supporting Evidence does not establish who "developed" those groupings or factors used in the NOV. Furthermore, as Dr. Madden stated in her deposition, the "the standard regression analysis, multiple regression analysis, as it is applied in this case, and every other case that I've ever been involved in by both experts and in the research literature," is "not my model." Nor is it a model "developed" by OFCCP's counsel. Citation: • Ex. 80, Madden Dep. 79:3-12 in Vol. 3.	**OFCCP's evidence fails to create a material dispute of fact.** 1) Dr. Madden lacks personal knowledge of what OFCCP did or did not do during the audit, as such her testimony cannot refute this fact. Nor is her generic testimony about regression models relevant to this fact. Further, OFCCP's quibbling over the term "developed" misses the mark. "Developed" in this context means choosing which variables to control for in the model, which the evidence abundantly affirms that OFCCP's model was "developed" by its counsel, Mr. Jeremiah Miller, as he declared under oath was the case. *See, e.g.*, Connell Decl. Ex. T, ¶ 5.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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. **Supporting Evidence:** Connell Decl., Ex. M (Saad Report, ¶¶ 23, 94-97).	**Disputed.** 1) OFCCP contests Material Fact 74 because the application of statistical models used for the NOV, if it occurred to other job functions at Oracle's headquarters is protected by the deliberative process privilege, and OFCCP makes no "reports" regarding matters considered in its privileged deliberations. Moreover, Oracle failed to provide data requested by OFCCP regarding all job functions covered in OFCCP's audits, rendering any deliberative analyses prepared by OFCCP incomplete and not supportive of findings or conclusions that statistically significant gender and pay differences did *not* exist. A) Oracle's violations nine and ten in the NOV are recordkeeping and access violations of federal regulations 41 C.F.R. 60-l.12(a) and Part 60-3; 41 C.F.R. 60-1.12; 60-1.20; 60-1.43; 60-2.32 and 60-3.4. Citation: Ex. 61, Notice of Violation, DOL000000950; Atkins Opp'n Decl. ¶ 23; Suhr Opp'n Decl. ¶¶ 7-10. OEx. 36, Letter from Erin Connell to Marc Poltin and Laura Bremer re Oracle's discovery production, dated 10/11/17. OEx. 40, Letter from Laura Bremer to Erin Connell dated 2/15/19, re data requests. B) The data Oracle provided to	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's attempt at misdirection does not render this fact in dispute. As set forth in Oracle's motion, it did not refuse to produce any data or information to OFCCP. In any event, even if OFCCP's allegations were true, which they are not, OFCCP cannot deny that when its NOV model is run on the data for Oracle's other job functions at HQCA, they do not result in any significant disparities in 13 of 16 job functions. *See* Connell Decl. (Saad Report), ¶¶ 23, 94-97. A) The NOV's alleged violation number nine does not identify any specific compensation data Oracle failed to maintain and violation 10 alleges Oracle failed to provide "prior year compensation data for all employees," not just employees in other job functions. Ex. 61 at 8; *see also* Atkins Opp'n Decl. ¶ 23 (same); Suhr Opp'n Decl. ¶ 7. Lastly, exhibits OEx 36 and OEx 40 have no relevance to this "fact," and certainly do not render this fact in dispute. B) OFCCP's attempt to blame Oracle for the fact that its own NOV model does not yield statistically significant results in 13 out of 16 job functions at HQCA does not dispute this fact. In any event, OFCCP can hardly be heard to complain that the data it had from Oracle during the

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	OFCCP for its NOV analysis did not have W-2 pay data, only included snapshot data of January 1, 2014, failed to include the January 1, 2013, snapshot data requested by OFCCP, and did not include transaction data with employee histories for PRODEV, INFTECH and SUPP. Additionally, the data provided to OFCCP for the NOV analysis included differences in reported race for some of the employees. Had Oracle complied with the regulations it was required to as a federal contractor and provided OFCCP with the same transaction data for the other job functions, OFCCP may have identified additional disparities during the NOV analysis but it never had the opportunity because Oracle failed to provide the transaction data for the other job functions that it was legally required to provide to OFCCP. Citation: Ex. 61, Notice of Violation, DOL000000950; Atkins Opp'n Decl. ¶ 23; Suhr Opp'n Decl. ¶¶ 7-10. OEx. 36, Letter from Erin Connell to Marc Poltin and Laura Bremer re Oracle's discovery production, dated 10/11/17. OEx. 40, Letter from Laura	audit somehow rendered the model used in its NOV inadequate while still maintaining that with respect to the three job functions at issue in this litigation, OFCCP has good cause to issue the SCN and initiate this litigation in the first place based on the analysis described in the NOV.

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	Bremer to Erin Connell dated 2/15/19, re data requests.	
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. **Supporting Evidence:** Connell Decl., Ex. P (Madden Rebuttal Report, 10-11), Ex. U (10/10/19 Madden Dep. 14:18- 15:6; 43:4-18).	**Disputed.** 1) OFCCP disputes Material Fact 75 because Dr. Madden not only "aims" to compare the pay of employees who perform similar work, she extensively compares the pay of similarly qualified employees to whom Oracle assigned similar work, as she studied extensively the pay of employees assigned to perform similar work assigned by Oracle to emloyees in the same job title and she studied the pay of employees to whom Oracle assigned the same global career level (if that assignment is considered as reflective of "similar work" assignments, a point which is disputed by employee witness testimony) as a mechanism for the pay discrimination she found against women, Asians, and African Americans. A) Curiously, Oracle fails to cite Dr. Madden's Report because it extensively compares the pay of employees who perform similar work. For example, at column 6 of Tables 1-3, she controls for job as measured by job descriptor (taken from Oracle's job titles), and her findings in Column 6 compare pay for employees who perform similar work, work classified by Oracle into the same job title. Citation: Ex. 91, Madden Report pp.	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP's response to Oracle's fact is argument, and it is not supported by Dr. Madden's reports or deposition testimony, which speak for themselves. As Oracle has explained multiple times, and as case law confirms, "similarly situated" is the comparator standard required by Title VII for purposes of a compensation discrimination claim. Accordingly, setting aside whether she was successful in her endeavor (and she was not), OFCCP ***concedes*** Oracle's fact by arguing that Madden used a comparator standard of "similarly qualified," and not "similarly situated." Along these same lines, neither Madden nor OFCCP has proven Oracle "assigns" work, jobs or career levels to employees. To the contrary, the evidence confirms – and Madden does not dispute – that over 75% of the employees at issue joined Oracle by applying to posted requisitions for specific positions at specific career levels; that different groups apply at different rates to postings at different levels; and that the majority of employees join Oracle at the career level to which they applied. Saad Rpt. ¶¶ 27, 147-56. In any event, whether or not

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	16-17, Tables 1(a)-3(a). Ex. 92, Madden Rebuttal Report pp. 6-7. B) Dr. Madden also finds that employees who enter Oracle with equivalent qualifications, including the studies Dr. Madden performed regarding the requisition data utilized by Dr. Saad in his report, are channeled into different global career levels, meaning that these employees are doing similar work but are simply assigned by Oracle into different job codes due to being assigned by Oracle different global career levels. In addition to finding that women and Asians are more likely to be assigned into lower global career levels than that specified in the requisition (for the limited database utilized by Dr. Saad) than men or Whites and less likely to be placed in higher global career levels than men or Whites for higher paid job titles, Dr. Madden finds that gender and race differentials in compensation by year in column 8 (which reports her findings for her regression analysis which controlled for global career levels) are significantly lower than those in column 6. These results show that Oracle's gender and racial differences in the assignment of global career levels are associated	Oracle discriminatorily assigns employees to higher or lower paying jobs does not dispute this fact. 1) Oracle's cited evidence clearly supports this fact which OFCCP fails to rebut. Dr. Madden unequivocally did not aim to compare employees who perform similar work. Instead, she assumed employees "are similarly situated when they come to Oracle with equivalent education and work experience." Connell Decl. Ex. P (Madden Rebuttal Report, 11). A) OFCCP conceded that neither Dr. Madden's original report nor her Rebuttal Report are relevant when it chose to not rely upon either report in its Motion for Summary Judgment. *See, generally*, evidence cited in OFCCP's Statement of Uncontested Facts in Support of OFCCP's Motion for Summary Judgment. B) As Oracle's expert confirms, most employees are hired into the job level for which they applied, and there is no evidence that this practice was applied in a discriminatory manner. *See* Connell Decl., Ex. M (Saad Report, ¶¶ 150-156); Ex. O (Saad Rebuttal Report, ¶¶ 65-66). C) Dr. Madden did not rely upon any declarations to reach her erroneous conclusions, so this evidence fails to rebut this fact. Further, OFCCP's mischaracterization of the evidence does not render this fact

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	with a significant part, but far from all, of the gender and racial pay differentials. Citation: Ex. 91, Madden Report pp. 50-51, Tables 1(a)-3(a) and 5-7. Ex. 92, Madden Rebuttal Report pp. 30-35. C) Oracle employees, including managers, report being assigned work similar to that of colleagues in higher global career levels than to those which they have been assigned by Oracle. Citation: OEx. 30, Declaration of Bhavana Sharma, ¶¶ 6-8; OEx. 15, Declaration of Donna Kit Yee Ng, ¶¶ 7, 12; OEx. 38, Declaration of Donna Rosburg, ¶ 6; OEx. 13, Declaration of Donna Boross, ¶ 6; OEx. 7, Declaration of Christina Kolotouros, ¶ 5; OEx.12, Declaration of Avinash Pandey, ¶ 8. D) Dr. Madden demonstrates variables that are under the control of Oracle (ie Job Title, Global Career level, specialty, job code) are endogenous and therefore should not be included in a regression model which seeks to identify gender or racial pay differentials. Nevertheless, she developed models that control for job	in dispute. In fact, these declarations support Oracle's position that front-line managers were responsible for rewarding employees who demonstrate advanced skills and experience with promotions consistent with each employee's proregression. D) Dr. Madden did not compare the pay of employees who perform similar work. Connell Decl., Ex. P (Madden Rebuttal Report 10-12), Ex. U (10/10/19 Madden Dep. 14:18-15:6; 43:4-18). Nor did Dr. Madden consider employee's actual skills, duties or responsibilities. Connell Decl., Ex. P (Madden Rebuttal Report, 9-12); Ex. U (10/10/19 Madden Dep. 43:4-18; 91:15-24). Further, Dr. Madden only looked to the level of degree attained, not the actual degree attained, and coded as "unknown" the education level of almost 60% of the employees she analyzed. Connell Decl., Ex. N (Madden Report, 14-15); Ex. O (Saad Rebuttal Report, ¶ 19; n. 21). *See also* Oracle's Objections to Evidence.

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	descriptor, management control and global career level and found that there are still statistically significant differences in pay. Dr. Madden states in her Rebuttal: "Although some of my analyses control for Oracle's endogenous job assignments, I perform them only to parse out the specific sources or practices that yield differential compensation by gender or race, such as compensation differences within-job versus compensation differences arising from promotion versus compensation differences arising from the initial job assignment." Citation: Ex. 92, Dr. Janice Madden's Expert Report, dated 8/16/19 (Madden Rebuttal) at 11, Table 1(a)-3(a).	
76. The report and opinions of OFCCP's expert Dr. Madden do not consider employees' actual skills, duties or responsibilities. **Supporting Evidence:** Connell Decl., Ex. P (Madden Rebuttal Report, 9-11); Ex. U (10/10/19 Madden Dep. 43:4- 18; 91:15-24).	**Disputed.** 1) OFCCP disputes Material Fact 76 because Dr. Madden considers employees' actual skills, duties or responsibilities. A) Dr. Madden designed her models to take account of education, experience, time at Oracle, and Job Function, which controls for the skills, duties and responsibilities associated with Oracle's job titles. Data which reflects Oracle's assignments of duties to similarly qualified	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's mischaracterization of Dr. Madden's report does not render this fact in dispute. Dr. Madden did not 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). Nor did Dr. Madden consider employee's actual skills, duties or responsibilities. Connell Decl.,

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	employees are not appropriately included in an analysis of gender and racial pay differentials and discrimination. Citation: Ex. 91, Madden Report pp. 8, 16-17, Tables 1(a)-3(a).	Ex. P (Madden Rebuttal Report, 9-11); Ex. U (10/10/19 Madden Dep. 43:4-18; 91:15-24). Further, Dr. Madden only looked to the level of degree attained, not the actual degree attained, and coded as "unknown" the education level of over 50% of the employees she analyzed. Connell Decl., Ex. N (Madden Report, 14-15); Ex. O (Saad Rebuttal Report, ¶ 19 n. 21). *See also* Oracle's Objections to Evidence.
77. Dr. Madden's analyses treat all prior work experience equivalently. **Supporting Evidence:** Connell Decl., Ex. N (Madden Report, 14).	**Disputed.** 1) Dr. Madden's analyses do not treat all prior work experience equivalently as she has two different prior work experience controls and her analyses are dependent on the data Oracle maintained and provided. A) Dr. Madden controls for two types of "prior" work experience, a control for work experience prior to hire by Oracle and a control for prior work experience at Oracle. Dr. Madden's "treatment" of work experience was dictated by the data Oracle maintained regarding experience. Oracle did not maintain, or at least produce to OFCCP, data for each employee which identified variety in work experience of employees either prior to hire at Oracle or even prior work experience at Oracle, as Oracle admits it maintains no data as to specific work assignments, including	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's mischaracterization of Dr. Madden's report does not render this fact in dispute. The crude proxies she used for prior experience – on their face – do not differentiate the type of prior experience. Additionally, her untimely declaration and attachments are inadmissible both procedurally and substantively. *See* Oracle's Objections to Evidence.

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	product assignments, for employees. Citation: Ex. 91, Madden Report pp. 14-16, Tables 1(a)-3(a); Declaration of Janice F. Madden dated 10/31/19 (Madden Decl.) at ¶8 (filed in OFCCP *Daubert* Opp., Exh. A).	
78. Dr. Madden's analyses measure prior work experience by treating age as a proxy for experience. **Supporting Evidence:** Connell Decl., Ex. N (Madden Report, 14).	**Disputed.** Dr. Madden's analyses do not treat all prior work experience equivalently as she has two different prior work experience controls and her analyses are dependent on the data Oracle maintained and provided. A) Dr. Madden's controls for two types of "prior" work experience, a control for work experience prior to hire by Oracle and a control for prior work experience at Oracle. For work experience prior to hire at Oracle, Dr. Madden applied a formula which relied upon age as a proxy for experience. Dr. Madden's "treatment" of work experience was dictated by the data Oracle maintained regarding experience. Oracle did not maintain, or at least produce to OFCCP, data for each employee which identified variety in work experience of employees either prior to hire at Oracle or even prior work experience at Oracle, as Oracle admits it maintains no data as to specific work assignments, including	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's regurgitation of its response to Fact No. 77 fails to address this fact. OFCCP's failure to address this specific fact renders it undisputed. A) OFCCP's evidence fails to address or rebut the fact. Dr. Madden's Report clearly states that age is used as "an index of prior work experience." Connell Decl., Ex. N (Madden Report, 14). That Dr. Madden later controlled for tenure at Oracle separate and apart from her prior work experience variable does not render this fact in dispute. Further, paragraph 8 of Dr. Madden's declaration filed in opposition to Oracle's Daubert motion is non-responsive to this fact. *See also* Oracle's Objections to Evidence.

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	product assignments, for employees. Citation: Ex. 91, Madden Report pp. 14-16, Tables 1(a)-3(a); Madden Decl. at ¶8 (filed in OFCCP *Daubert* Opp., Exh. A).	
79. Dr. Madden analyzes education by using the level of educational degree attained – college, Masters, or Ph.D. **Supporting Evidence:** Connell Decl., Ex. N (Madden Report, 15).	**Disputed.** 1) OFCCP contests Material Facts 79 because Dr. Madden analyzed education utilizing the highest degree earned, major, and job descriptor. A) In her Report, Dr. Madden included educational degree and job descriptors which she used to identify people likely to have similar majors and similar types of experiences in her regression analysis. Citation: Ex. 92, Madden Rebuttal p. 11 n. 3 in Vol. 3; Ex. 91, Madden Report pp. 15-16 in Vol. 3; Ex. 80, Madden Dep. 175:2-176:18 in Vol. 3; Ex. 89, Saad Dep. Ex. 9, Madden Decl. (October 11, 2019) ¶¶ 4-5, tables A-1 to A-5 in Vol. 3. B) Dr. Madden also provided testimony analyzing education data which included majors in response to a critique raised by Dr. Saad for the first time in his Rebuttal Report. Citation: *Id.* ¶¶ 3-5;	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP fails to rebut this fact. Dr. Madden did not analyze any employee's actual major. Instead she assumed employees within her fictional job descriptor variable were likely to have the same major. A) OFCCP's evidence fails to rebut the fact that Dr. Madden analyzed education level by using the level of degree attained. B) Dr. Madden's "testimony" in response to Dr. Saad's rebuttal report is in the form of an inadmissible declaration that OFCCP marked as an exhibit, but never used, at Dr. Saad's deposition. Not only does Dr. Saad lack any personal knowledge with which to authenticate Dr. Madden's hearsay declaration, but Ex. 89 is further inadmissible as untimely. This exhibit contains "new" analyses by Dr. Madden that were generated weeks after the deadline for expert reports set forth in the Court's scheduling order and must be rejected on that basis alone. In any event, Dr. Madden's untimely, inadmissible

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	Saad Rebuttal Report ¶¶ 48-57.	declaration fails to dispute this fact substantively for the reasons explained in Oracle's Objections to Evidence.
80. Dr. Madden coded as "unknown" the education level of over 50% of the employees she analyzed. **Supporting Evidence:** Connell Decl., Ex. O (Saad Rebuttal, ¶ 19; n.21).	**Disputed.** 1) OFCCP disputes Material Fact 80 because it specifically requested educational data from Oracle, yet Oracle only provided educational data (highest degree earned) for approximately 40% of the employees in the three job functions at issue, in violation of federal requirements, and Oracle fails to acknowledge that Dr. Madden collected additional information by scraping resumes from resumes and she specifically tested whether the percentage of educational data she utilized affected her findings and found it did not. A) Oracle provided educational data in an electronic format for approximately 40% of the employees being considered. Dr. Madden's staff obtained educational data for approximately an additional 10% of the employees being considered by manually obtaining degree information from resumes. Citation: Madden Decl., ¶10 (filed in OFCCP *Daubert* Opp., Exh. A); Ex. 91, Madden Report at 59-60. B) For the employees for whom Dr. Madden did not have educational data, she entered "unknown" as the value for	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's cited evidence confirms this fact and OFCCP fails to provide any authority for its contention that Oracle violated federal requirements. Attempting to blame Oracle for the fact that Madden coded as "unknown" the educational level of over 50% of the employees she analyzed does not dispute this fact – it confirms it. 1) OFCCP's cited evidence confirms that Dr. Madden's analysis included education level for less than 50% of the employees she analyzed. *See also* Oracle's Objections to Evidence.

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	the highest degree earned as a proxy and ran a regression which yielded the results in Tables 1(a) and 2(a) of her report. Knowing that she did not have complete educational data for Oracle's employees, Dr. Madden ran the same regression for employees she had degree data. Those analyses are Tables 1(b)-2(b) of her report. What Tables 1(b) and 2(b) show is that limiting the data to those employees Dr. Madden had educational data for made virtually no difference in her results. Citation: Madden Decl. (October 31, 2019) ¶ 10; Madden Initial Report at 15, 17-20, 30-31, Tables 1(a)-(c); 2(a)-(c).	
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. **Supporting Evidence:** Connell Decl., Ex. N (Madden Report, 15-16 & Appx. A), Ex. U (10/10/19 Madden Dep. 47:3- 11, 174:1-15).	**Disputed.** 1) OFCCP contests this fact because Dr. Madden's "job descriptor" was based upon, and harvested from, Oracle's "job title." A) Dr. Madden's job descriptor is based and harvested from Oracle's job title. Citation: OFCCP SUF: Facts 236-237, 243; Ex. 91, Madden Report at 16-17; Ex. 92, Madden Rebuttal at 11-13; Ex. 90, Madden Depo. 47:22-48:9.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP does not dispute that Dr. Madden's "job descriptor" variable is not found in Oracle's records. A) Oracle incorporates its response to OFCCP SUFs 236-237. 2) OFCCP's response is non-responsive to Dr. Madden's fabrication of her "job descriptor" variable and does not render this fact in dispute. A) OFCCP's evidence does not rebut the fact that she fabricated the "job descriptor" variable by

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	2) OFCCP further contests this fact because Dr. Madden ran a regression analysis which controls for global career level even though she believes career level is an endogenous variable that should only be utilized to identify the mechanism, not the existence of, discrimination. A) Dr. Madden ran regression analyses which controls for global career level, to identify whether global career level operates as a mechanism for pay discrimination. She finds that career level is an endogenous variable that is not properly included in an analysis seeking to detect gender or racial pay disparities. Citation: *See*, e.g., Ex. 91, Madden Report pp. 8, 51-52, Tables 1(a)-3(a) and 1(d)-2(d), and Appendix B; Ex. 92, Madden Rebuttal at 13, 31; Ex. 90, Madden Dep. 180. B) Dr. Madden also ran regression analyses studying the impact of Oracle's assignment of global career level at hire and over time. Citation: Ex. 91, Madden Report at 51, Table 5; Ex. 92, Madden Rebuttal at 31, 36-37, 38, 41, Table R9..	aggregating jobs within a particular type or category of job, regardless of career level. B) The cited analyses are non-responsive to this fact. Furthermore, Dr. Madden's referenced analyses is circular in that it assumes its own conclusion---i.e, that Oracle assigned women, Asians, and African Americans into lesser paying jobs. *See also* Oracle's Objections to Evidence.
82. The basis for Dr.	**Disputed.**	**OFCCP's evidence fails to**

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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. **Supporting Evidence:** Connell Decl., Ex. U (10/10/19 Madden Dep. 43:19-45:17).	1) OFCCP contests this fact because Dr. Madden has extensively explained the comparisons reflected in the last columns of the tables in her initial report and she has neither in her reports or her deposition given an opinion that the last columns of the tables in her initial report compare employees doing similar work. A) Dr. Madden has repeatedly opined that the variables relating to the work assigned by Oracle to similarly qualified employees at time of hire and over time by Oracle, are endogenous variables which are not properly considered in an study of gender and racial pay disparities. The regression analyses she ran, the findings of which are reported in the final columns of the tables in her initial report, are meant to explore and identify whether these variables (assignment of global career level and managerial designation) operate as mechanisms for pay discrimination. Oracle misconstrues Dr. Madden's deposition testimony. Citation: Madden Report at 8; 13-18, 26-29, 41-45, Tables 1-3; Madden Rebuttal Report at 13.	**create a material dispute of fact.** 1) Apart from confirming that Dr. Madden has never claimed to actually compare employees doing similar work, OFCCP's response does not refute this fact. A) OFCCP's evidence does not refute this fact. Dr. Madden clearly testified that the last columns of Tables 1-3 of her initial report are "taking Oracle's definition of what is similar work," which is based on "Oracle's job codes." Connell Decl., Ex. U (10/10/19 Madden Dep. 43:19-45:17). In any event, as OFCCP appears to confirm in its response to this fact, the cited testimony by Madden directly contradicts statements both she and OFCCP have made elsewhere, including (for example) OFCCP's response above to Oracle's Fact No 75. That Madden contradicts herself does not, however, create a material dispute for trial.

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

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83. Dr. Madden's initial report does not analyze whether Oracle employees were hired into the career level to which they applied. **Supporting Evidence:** Connell Decl., Ex. O (Saad Rebuttal, ¶¶ 65-66).	**Disputed.** 1) OFCCP contests this fact because Dr. Madden's initial report comprehensively analyzes Oracle's assignment of career level at hire, as a mechanism of pay discrimination. A) Dr. Madden analyzed Oracle's compensation data and specifically Oracle's assignments of career levels and found that, at hire, women and Asians were more likely to be placed in lower global career levels than similarly qualified men or Whites. Citation: Ex. 91, Madden Report at 50-51, Tables 1(a)-(3)(a), 4-7. 2) OFCCP further disputes this fact because career levels are frequently not fixed or set at the time an employees applies at Oracle because managers create new requisitions. A) Oracle hiring managers create new requisitions with new career levels when they believe an applicant is better suited to a different career level than the original requisition and career level they applied to. Citation: OFCCP SUF: Fact 156; OEx. 8, Waggoner PMK Dep. 279:24–280:22; OEx. 17, Waggoner May Dep. 81:24–82:3;	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response and evidence fails to rebut this fact. A plain read of Dr. Madden's report confirms it contains no such "comprehensive" analysis. This demonstrably false assertion by OFCCP also is belied by the undisputed evidence confirming that over 75% of the employees at issue joined Oracle by applying to posted requisitions for specific positions at specific career levels; that different groups apply at different rates to postings at different levels; and that the majority of employees join Oracle at the career level to which they applied. Saad Rpt. ¶¶ 27, 147-56. A) OFCCP continues to mischaracterize new hires as being "assigned" by Oracle into various career levels based on race and gender. Indeed, OFCCP provides no evidentiary support for the statement that Oracle is assigning people into career levels. Nor can they, because Dr. Madden failed to analyze the position to which employees applied. As Oracle has explained throughout this litigation, employees apply for specific jobs through individual job requisitions for which a job code already has been determined. Oracle does not "assign" employees to jobs or job codes after they have been hired. Although Oracle managers have discretion to change the level at

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	Ex. 93, Dr. Saad's Expert Report, p. 112, ¶148. 3) OFCCP further disputes this fact because it assumes that employees apply to specific jobs but Oracle uses recruiters to identify and recruit potential employees, who match employees with requisitions rather than employees choosing requisitions. A) Oracle instructs recruiters to search internet, identify and recruit potential employees, and initiate contact, and match employees with requisitions. Citation: OFCCP SUF: Facts 151, 152, 153; Ex. 39, "Oracle Recruiting Program Manager (RPM) Training Manual," no date but has 2013 examples, ORACLE_HQCA_00000 56908; Ex. 40, "Oracle College Recruiting," dated 7/14/14, ORACLE_HQCA_00000 20131, 33–39, 43–60; Ex. 64, "Welcome to New Recruiter On-boarding!," copyright 2014, slide 4 (notes) and slide 5, ORACLE_HQCA_00000 56566-7 to -8; Ex. 60, "NA Talent Advisory," copyright 2016, slides 1–4 and slide 4 (notes), ORACLE_HQCA_00000	which a job has been posted up or down one level based on the skills, duties, and experience of the individual selected, changing the job's level is the exception and not the rule and Dr. Saad's analyses confirm that the majority of applicants are hired into the jobs for which they applied, and that there is no statistically meaningful pattern of differences in "up-levelling" or "down-levelling" between men, women, Asians, or African-Americans. *See* Connell Decl., Ex. M (Saad Report, ¶¶ 147-56), Ex. O (Saad Rebuttal Report, ¶¶ 57, 65-66). 2) OFCCP's response and evidence fail to rebut this fact because, even if true, OFCCP provides no evidence that managers did so in a consistent or discriminatory manner. A) Oracle incorporates its response to OFCCP's SUF 156. 3) OFCCP's response and evidence fail to rebut this fact. Applicants who are contacted by Oracle recruiters are not forced to apply to any specific requisition. A) Oracle incorporates its response to OFCCP's SUFs 151, 152, and 153. 4) OFCCP provides no evidence to support its contention that applicants applying through the Employee Referral Program do not have to apply through open requisitions. As such, this blatant mischaracterization of the evidence does not rebut this fact. A) Oracle incorporates its response to OFCCP's SUFs 154

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	56772-2 to -8; Ex. 57, "Recruit & Hire at Oracle; Module 1: Introduction to Recruiting & Hiring," slide 3 (notes), ORACLE_HQCA_00000 57181-6. 4) OFCCP further disputes this fact because some employees do not enter Oracle through applying to specific requisitons, but through Oracle's Employee Referral Program. A) Oracle instructs recruiters to search for, identify, and recruit potential employees and makes 30% of its placements through its Employee Referral Program. Citation: OFCCP SUF: Facts 154, 155; Ex. 64, slide 12 (notes), ORACLE_HQCA_00000 56566-21; Ex. 60, slide 12 and slide 12 (notes), ORACLE_HQCA_00000 56772-23 to -24. 5) OFCCP further contests this fact because employees could not know the career level they are "choosing" when applying for a job. A) At hire, employees report not having information regarding the global career level for the job to which they have applied or been hired. Employees report not learning about the global career level assigned, if ever, until long after hire. Further,	and 155. 5) OFCCP's response and evidence do not render this fact in dispute. A) OFCCP's purported evidence ignores that this information is in the iRecruitment posting. *See, e.g.*, Ex. 53 ("Job Title: 10540.SoftwareDevleoper4.PROD DEV.SWENG.IC4") In any event, it is undisputed that applicants choose to apply to specific job postings and their subjective knowledge of the career level to which they are applying is irrelevant to OFCCP's contention that Oracle then surreptitiously assigns women, Asians, and African Americans into lower paying career levels. *See also* Oracle's Objections to Evidence.

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	employees who are hired by Oracle due to acquisition do not apply for or choose their career level. Citation: Ex. 8, Waggoner PMK Dep., 361:1-5; Ex. 15, Declaration of Donna Kit Yee Ng, ¶ 5; Ex. 20, Declaration of Rachel Powers, ¶ 9; Ex. 38, Declaration of Donna Rosburg, ¶ 8; Ex. 42, Declaration of Dalia Sen, ¶ 5.	
84. The majority of applicants are hired into jobs associated with the career level for which they applied. **Supporting Evidence:** Connell Decl., Ex. M (Saad Report, ¶¶ 150-156).	**Disputed.** 1) OFCCP contests this fact because Oracle has not provided data regarding the jobs or career levels for all applicants and OFCCP does not know what Oracle or Dr. Saad means when it referring to "jobs associated with" a particular career level. A) The largest data set of requisitions studied by Dr. Saad only included 1,497 job requisitions, a small subset of the requisitions for the relevant time period, meaning that Dr. Saad had no basis for making any findings about the majority of applicants. Citation: Ex. 94, Saad Rebuttal ¶¶ 78-79; Ex. 92, Madden Rebuttal pp. 32-41, Tables R1-R2, R8-R9. 2) OFCCP contests this fact because: Oracle permits managers to set global career levels up one level	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's mischaracterization of Oracle's production and inability to understand Dr. Saad's findings (even though OFCCP deposed him and could have asked him to explain his findings) does not render this fact in dispute. A) OFCCP's response mischaracterizes the evidence. Dr. Saad's reference to 1,487 job requisitions relates to his assessment as to whether applicants are steered into an organization other than the organization to which they applied. His report makes clear that there were 1,497 requisitions that also included organization. This analysis is separate and unrelated to the analysis in his original report regarding whether applicants are steered into different career levels. Connell Decl., Ex. O (Saad Rebuttal Report, ¶¶ 78-79). Indeed, OFCCP's own expert confirms

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	or down one level from the global career level, if any, identified in the requisition, based at least partially on prior pay, causing women and Asians to be more likely to be placed in lower global career levels than men or Whites. A) Oracle's compensation trainings for managers advise managers that they can set global career level at hire one level up or down from the global career level identified on the requisition, and that pay at hire must be approved by Oracle's senior executives and the approval form until late 2017 required managers to collect and consider prior pay in setting pay at hire. Citation: OEx. 8, Waggoner PMK Dep. 279:24-280:22; OEx. 17, Waggoner May Dep. 81:24-82:3; Ex. 93, Saad Report ¶148. B) Dr. Madden analyzed and showed that women and Asians were more likely to be placed in a lower level compared to the level identified in the requisition and less likely than men or Whites to be placed in a global career level higher than that identified in the requisition. Citation: Ex. 91, Madden Report, pp. 50-51, Tables 5-7; Ex. 92, Madden Rebuttal, pp. 32-41, Tables R8-9;	that Dr. Saad's analysis included 1,659 of the 2,819 employees hired at HQCA between 2013-2018. Connell Decl., Ex. P (Madden Rebuttal Report, Table R8). Indeed, Dr. Saad's analysis was focused on the experienced hires who applied through requisitions, not the seven acquired employees or college hires. *See* Connell Decl., Ex. M (Saad Report, ¶¶ 145-156). 2) OFCCP's response and evidence fails to rebut this fact. A) As Oracle's expert confirms, most employees are hired into the job level for which they applied, and there is no evidence that this practice was applied in a discriminatory manner. *See* Connell Decl., Ex. M (Saad Report ¶¶ 150-156); Ex. O (Saad Rebuttal, ¶¶ 65-66). 3) OFCCP's response and evidence fail to rebut this fact because, even if true, OFCCP provides no evidence that managers did so in a consistent or discriminatory manner. A) Oracle incorporates its response to OFCCP's SUF 156. 4) OFCCP's response and evidence fail to rebut this fact. Applicants who are contacted by Oracle recruiters are not forced to apply to any specific requisition. A) Oracle incorporates its response to OFCCP's SUFs 151, 152, and 153. 5) OFCCP provides no evidence to support its contention that applicants applying through the Employee Referral Program do

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Id., Charts R1-R2; Ex. 89, Saad Dep. Ex. 9 (Madden Decl, Para 6, Chart 3) OFCCP further disputes this fact because career levels are frequently not fixed or set at the time an employees applies at Oracle because managers create new requisitions. A) Oracle hiring managers create new requisitions with new career levels when they believe an applicant is better suited to a different career level than the original requisition and career level they applied to. Citation: OFCCP SUF: Fact 156; OEx. 8, Waggoner PMK Dep. 279:24–280:22; OEx. 17, Waggoner May Dep. 81:24–82:3; Ex. 93, Dr. Saad's Expert Report, p. 112, ¶148. 4) OFCCP further disputes this fact because it assumes that employees apply to specific jobs but Oracle uses recruiters to identify and recruit potential employees, who match employees with requisitions rather than employees choosing requisitions. A) Oracle instructs recruiters to search internet, identify and recruit potential employees, and initiate contact, and match employees with requisitions. Citation: OFCCP SUF: Facts 151, 152,	not have to apply through open requisitions. As such, this blatant mischaracterization of the evidence does not rebut this fact. A) Oracle incorporates its response to OFCCP's SUFs 154 and 155. 6) OFCCP's response and evidence do not render this fact in dispute. A) OFCCP's purported evidence ignores that this information is in the iRecruitment posting. *See, e.g.*, Ex. 53 ("Job Title: 10540.SoftwareDevleoper4.PROD DEV.SWENG.IC4") In any event, it is undisputed that applicants choose to apply to specific job postings and their subjective knowledge of the career level to which they are applying is irrelevant to OFCCP's contention that Oracle then surreptitiously assigns women, Asians, and African Americans into lower paying career levels. *See also* Oracle's Objections to Evidence.

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	153; Ex. 39, "Oracle Recruiting Program Manager (RPM) Training Manual," no date but has 2013 examples, ORACLE_HQCA_00000 56908; Ex. 40, "Oracle College Recruiting," dated 7/14/14, ORACLE_HQCA_00000 20131, 33–39, 43–60; Ex. 64, "Welcome to New Recruiter On-boarding!," copyright 2014, slide 4 (notes) and slide 5, ORACLE_HQCA_00000 56566-7 to -8; Ex. 60, "NA Talent Advisory," copyright 2016, slides 1–4 and slide 4 (notes), ORACLE_HQCA_00000 56772-2 to -8; Ex. 57, "Recruit & Hire at Oracle; Module 1: Introduction to Recruiting & Hiring," slide 3 (notes), ORACLE_HQCA_00000 57181-6. 5) OFCCP further disputes this fact because some employees do not enter Oracle through applying to specific requisitons, but through Oracle's Employee Referral Program. A) Oracle instructs recruiters to search for, identify, and recruit potential employees and makes 30% of its placements through its	

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	Employee Referral Program. Citation: OFCCP SUF: Facts 154, 155; Ex. 64, slide 12 (notes), ORACLE_HQCA_0000056566-21; Ex. 60, slide 12 and slide 12 (notes), ORACLE_HQCA_0000056772-23 to -24. 6) OFCCP further contests this fact because employees could not know the career level they are "choosing" when applying for a job. A) At hire, employees report not having information regarding the global career level for the job to which they have applied or been hired. Employees report not learning about the global career level assigned, if ever, until long after hire. Further, employees who are hired by Oracle due to acquisition do not apply for or choose their career level. Citation: Ex. 8, Waggoner PMK Dep., 361:1-5; Ex. 15, Declaration of Donna Kit Yee Ng, ¶ 5; Ex. 20, Declaration of Rachel Powers, ¶ 9; Ex. 38, Declaration of Donna Rosburg, ¶ 8; Ex. 42, Declaration of Dalia Sen ¶ 5.	

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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. **Supporting Evidence:** Connell Decl., Ex. M (Saad Report, ¶¶ 150-156), Ex. O (Saad Rebuttal, ¶¶ 65-66).	**Disputed.** 1) OFCCP disputes this fact because Dr. Saad did not analyze all new hires from 2013 to 2018 in the IC and M career levels, and he did not apply proper controls to identify race or gender differences. A) "Dr. Saad analyzes fewer than two thirds of these assignments." Dr. Saad did not apply proper controls (including a control for the global career level identified in the requisition) necessary to identify race or gender differences. Dr. Madden applied the appropriate controls to Dr. Saad's analyses and found the new hire data supporting her findings of gender and race differentials in setting of career level at hire. Citation: Ex. 92, Madden Rebuttal pp. 32-41, Charts R1-2, R8-9. 2) OFCCP further disputes this fact because Dr. Saad did not consider that managers create new requisitions for applicants rather than applicants applying for a pre-existing requisition. A) Oracle hiring managers create new requisitions with new career levels when they believe an applicant is better suited to a different career level than the original requisition and career level they applied to. Citation:	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP and Dr. Madden conflate and mischaracterize the evidence and, therefore, it is undisputed that there was no difference by gender or race between the job experienced applicants were hired into relative to what they applied to. A) Dr. Madden admits Dr. Saad analyzed at least 58.9% of the new hires at HQCA from 2013 to 2018. Connell Decl., Ex. O (Madden Rebuttal Report, Chart R8). Indeed, Dr. Saad's analysis was focused on experienced hires who applied through requisitions, not the seven acquired employees or college hires—who were hired through a different pipeline that did not require them to apply to specific requisitions. Connell Decl., Ex. M (Saad Report, ¶¶ 145-156). The rest of the cited material is argument. 2) OFCCP's response and evidence fail to rebut this fact because, even if true, OFCCP provides no evidence that managers did so in a consistent or discriminatory manner. In any event, OFCCP blatantly mischaracterizes the evidence it purports to cite, none of which support its contention. A) Oracle incorporates its response to OFCCP's SUF 156. Further, OFCCP failed to include pages 279-280 of the Waggoner PMK Dep. in OEx. 8, nor did OFCCP include page 82 of the Waggoner May Dep. in OEx. 17.

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	OFCCP SUF: Fact 156; OEx. 8, Waggoner PMK Dep. 279:24–280:22; OEx. 17, Waggoner May Dep. 81:24–82:3; Ex. 93, Dr. Saad's Expert Report, p. 112, ¶148. 3) OFCCP further disputes this fact because Dr. Saad did not consider the Oracle's use of recruiters to identify and recruit potential employees, and match applicants with requisitions rather than applicants choosing to apply to specific requisitions. A) Oracle instructs recruiters to search internet, identify and recruit potential employees, and initiate contact and match applicants with requisitions and direct applicants to apply for those requisitions. Citation: OFCCP SUF: Facts 151, 152, and 153; Ex. 39, "Oracle Recruiting Program Manager (RPM) Training Manual," no date but has 2013 examples, ORACLE_HQCA_0000056908; Ex. 40, "Oracle College Recruiting," dated 7/14/14, ORACLE_HQCA_0000020131, 33–39, 43–60; Ex. 64, "Welcome to New Recruiter On-boarding!," copyright 2014, slide 4 (notes) and slide 5, ORACLE_HQCA_00000	Even if OFCCP properly included these pages in their exhibits, neither citation supports OFCCP's blatant mischaracterization of Ms. Waggoner's testimony. 3) OFCCP's response and evidence fail to rebut this fact. Applicants who are contacted by Oracle recruiters are not forced to apply to any specific requisition. A) Oracle incorporates its response to OFCCP's SUFs 151, 152, and 153 4) OFCCP provides no evidence to support its contention that applicants applying through the Employee Referral Program do not have to apply through open requisitions. As such, this blatant mischaracterization of the evidence does not rebut this fact. A) Oracle incorporates its response to OFCCP's SUFs 154 and 155. 5) OFCCP's response and evidence do not render this fact in dispute. A) OFCCP's purported evidence ignores that this information is in the iRecruitment posting. *See, e.g.*, Ex. 53 ("Job Title: 10540.SoftwareDevleoper4.PRODDEV.SWENG.IC4"). In any event, it is undisputed that applicants choose to apply to specific job postings and their subjective knowledge of the career level to which they are applying is irrelevant to OFCCP's contention that Oracle then surreptitiously assigns women, Asians, and African Americans into lower paying career levels.

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	56566-7 to -8; Ex. 60, "NA Talent Advisory," copyright 2016, slides 1–4 and slide 4 (notes), ORACLE_HQCA_00000 56772-2 to -8; Ex. 57, "Recruit & Hire at Oracle; Module 1: Introduction to Recruiting & Hiring," slide 3 (notes), ORACLE_HQCA_00000 57181-6. 4) OFCCP further disputes this fact because Dr. Saad did not consider Oracle's Employee Referral Program. A) Oracle instructs recruiters to search for, identify, and recruit potential employees and makes 30% of its placements through its Employee Referral Program, which provides a hiring process outside that of applications submitted by applicants or recruiters in regard to requisitions. Citation: OFCCP SUF: Facts 154, 155; Ex. 64, slide 12 (notes), ORACLE_HQCA_00 00056566-21; Ex. 60, slide 12 and slide 12 (notes), ORACLE_HQCA_00 00056772-23 to -24. 5) OFCCP further contests this fact because employees could not know the career level they are "choosing"	*See also* Oracle's Objections to Evidence.

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	when applying for a job. A) At hire, employees report not having information regarding the global career level for the job to which they have applied or been hired. Employees report not learning about the global career level assigned, if ever, until long after hire. Further, employees who are hired by Oracle due to acquisition do not apply for or choose their career level. Citation: OEx. 8, Waggoner PMK Dep., 361:1-5; OEx. 15, Declaration of Donna Kit Yee Ng, ¶ 5; OEx. 20, Declaration of Rachel Powers, ¶ 9; OEx. 38, Declaration of Donna Rosburg, ¶ 8; OEx. 42, Declaration of Dalia Sen ¶ 5.	
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. **Supporting Evidence:** Connell Decl., Ex. P (Madden Rebuttal, ¶	**Disputed.** 1) OFCCP disputes this fact because Dr. Madden's Rebuttal Report discusses an array of studies conducted by Dr. Madden, both in her Initial Report and in support of her Rebuttal Report, regarding diffences as to assignment of global career levels at hire (which is how OFCCP understands Oracle's reference to differences in "up-levelling" or "down-levelling" at hire), and her studies and findings span the three job functions at issue, not the narrow categories asserted in this fact. As to the specific part of the Dr. Madden's Rebuttal Report referenced by Oracle in this fact, Dr.	**OFCCP's evidence fails to create a material dispute of fact.** 1) This fact is limited to findings made in Madden's rebuttal report, as such OFCCP's reliance on analyses in her original report are unavailing and do not render this fact in dispute. A) OFCCP does not dispute that Madden's rebuttal report supports this fact. *See* Connell Decl., Ex. P (Madden Rebuttal Report, 35-36, Charts R1 and R2). B) Dr. Madden's initial report is irrelevant to this fact. And the rebuttal report confirms this fact. *See also* Oracle's Objections to

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36, Charts R1, R2); Waggoner Decl., ¶ 24.	Madden was providing in these section a response to Dr. Saad's opinions and thus confined her response to the scope of the study and data he selected. A) Dr. Madden's rebuttal report was responding to Dr. Saad's tests and only used the subset of data he used. Citation: Ex. 92, Madden Rebuttal at 35-36, Charts R1 and R2. B) Dr. Madden's Rebuttal Report discusses an array of studies conducted by Dr. Madden, both in her Initial Report and in support of her Rebuttal Report, regarding diffences as to assignment of global career levels at hire, spanning all three job functions at issue. Citation: Ex. 91, Madden Report at 17, 29, 41, 49-52, Tables 1(a)-3(a)(comparing Columns 6 and 8), 4-7; Ex. 92, Madden Rebutal at 35-37, Charts R1-R2, Table R9.	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. **Supporting Evidence:**	**Disputed.** 1) OFCCP disputes this fact because Oracle did not provide data for all applicants hired by Oracle and the applicant data provided did not identify the organization for which all applicants applied, and far less than 80 percent of applicants are hired into the organizations for which they applied, even according to the limited data and the methodology used by Dr. Saad.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response fails to rebut this fact. The fact obviously is limited to the employee populations at issue in this case because that is the data that has been produced in this case, and was analyzed by Dr. Saad. A) During the relevant time period, college hires did not apply for specific openings through

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Connell Decl., Ex. O (Saad Rebuttal Report, ¶¶ 78-79).	A) Dr. Saad's calculations are only for experienced hires and he does not include the "more than 25%" that were new college hires in his percentage calculation. Thus, if the number of applicants is increased by "more than 25%," the percentage calculated would necessarily be far lower than over 80%. However, the specific change in percentage cannot be calculated because Dr. Saad fails to provide the exact number of new college hires and experienced hires. Citation: Ex. 94, Saad Rebuttal ¶ 79. 2) OFCCP further objects to this fact because Dr. Saad does not explain his methodology. A) Dr. Saad unscientifically fails to explain his methodology or the exact numbers of the data he used to calculate his percentages. Citation: Ex. 94, Saad Rebuttal ¶¶ 78-79. 3) OFCCP further contests this fact because of the small sample sizes he used. A) Dr. Saad's data set only included 1,497 job requisitions in the data produced in the case that listed organization. Citation: Ex. 94, Saad Rebuttal ¶¶ 78-79.	requisitions. Instead, they were placed through a different hiring program in which they were allowed to choose the organizations they interviewed with and joined. *See, e.g.*, Ex. 39 (ORACLE_HQCA_0000056911, [interview schedule based on candidate's preferences], ORACLE_HQCA_0000056912 [Candidate ranks teams and is matched with highest team extending an offer]). As such, OFCCP has no evidentiary support for its erroneous conclusion that including college hires would lower Dr. Saad's percentage. In fact, since college hires choose their organization, Dr. Saad's findings would only increase if college hires were added to his analysis. 2) OFCCP's response fails to rebut this fact. A) Dr. Saad explained his methodology in that he compared organization listed in the requisition to organization associated with the applicant's initial job at Oracle. Connell Decl., Ex. O (Saad Rebuttal Report, ¶ 79). 3) OFCCP's response fails to rebut this fact. A) Dr. Saad used all available data for requisitions that included organization. *See* Connell Decl., Ex. O (Saad Rebuttal Report, ¶¶ 78-79). Notably, this was a greater sample size than Dr. Madden used when she analyzed base salary at hire. *See* Ex. 91, Madden Report at 49 n. 20 (using

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	4) OFCCP further disputes this fact because Dr. Saad misleadingly states there are no statistically significant differences when he did not conduct a regression analysis and did not calculate standard deviations. A) Dr. Saad incorrectly describes his findings as lacking statistical significance. Citation: Ex. 94, Saad Rebuttal ¶¶ 78-79. 5) OFCCP further contests this fact because Dr. Saad misstates that experienced hires were hired through a process that involved responding to requisitions that were publicly posted A) Oracle hiring managers create new requisitions with new career levels when they believe an applicant is better suited to a different career level than the original requisition and career level they applied to. Citation: OFCCP SUF: Fact 156; OEx. 8, Waggoner 30b6 Dep. 279:24–280:22; OEx. 17, Waggoner May Dep. 81:24–82:3; Ex. 93, Dr. Saad's Expert Report, p. 112, ¶148. B) Oracle instructs recruiters to search internet, identify and recruit potential employees, and initiate contact. Citation: OFCCP SUF: Facts 151, 152,	only 1,258 employees in her regression analysis of prior salary). 4) OFCCP's response is argumentative and fails to rebut this fact. A) OFCCP's response is argument, not fact. 5) OFCCP's response and evidence fail to rebut this fact because, even if true, OFCCP provides no evidence that managers did so in a consistent or discriminatory manner. A) Oracle incorporates its response to OFCCP's SUF 156. B) Applicants who are contacted by Oracle recruiters are not forced to apply to any specific requisition. Additionally, Oracle incorporates its response to OFCCP's SUFs 151, 152, and 153. C) OFCCP provides no evidence to support its contention that applicants applying through the Employee Referral Program do not have to apply through open requisitions. As such, this blatant mischaracterization of the evidence does not rebut this fact. Additionally, Oracle incorporates its response to OFCCP's SUFs 154 and 155. *See also* Oracle's Objections to Evidence.

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	153; Ex. 39, "Oracle Recruiting Program Manager (RPM) Training Manual," no date but has 2013 examples, ORACLE_HQCA_00000 56908 Ex. 40, "Oracle College Recruiting," dated 7/14/14, ORACLE_HQCA_00000 20131, 33–39, 43–60; Ex. 64, "Welcome to New Recruiter On-boarding!," copyright 2014, slide 4 (notes) and slide 5, ORACLE_HQCA_00000 56566-7 to -8; Ex. 60, "NA Talent Advisory," copyright 2016, slides 1–4 and slide 4 (notes), ORACLE_HQCA_00000 56772-2 to -8. Ex. 57, "Recruit & Hire at Oracle; Module 1: Introduction to Recruiting & Hiring," slide 3 (notes), ORACLE_HQCA_00000 57181-6. C) Oracle instructs recruiters to search for, identify, and recruit potential employees and makes 30% of its placements through its Employee Referral Program. Citation: OFCCP SUF: Facts 154, 155; Ex. 64, slide 12 (notes),	

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	ORACLE_HQCA_00000 56566-21; Ex. 60, slide 12 and slide 12 (notes), ORACLE_HQCA_00000 56772-23 to -24	
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. **Supporting Evidence:** Gill Decl., ¶ 10; Bashyam Decl., ¶ 15; Webb Decl., ¶ 14; Sarwal Decl., ¶ 15; Hsin Decl., ¶ 10; Talluri Decl., ¶ 15.	**Disputed.** 1) Compensation *recommendations* for hiring are reviewed by a person's management chain until it reaches the final approvers. The final approvers for all salary increases (focal reviews and off-cycle) due to promotions have to be approved by "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Moreover, to get off-cycle decisions approved, *recommending* managers are required to submit written justification. OFCCP is disputing this issue because the lower level managers do not make the compensation *decisions*, they only make *recommendations*. A) Oracle's Global Approval Matrices state that approvals for hiring have to be made at the level of "CEO(s) & Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian. Citation: OFCCP SUF: Fact 113; Ex. 20, Global Approval Matrix, dated 6/11/12, ORACLE_HQCA_00000 62725-1 to -2; Ex. 20, Global Approval Matrix, dated 2/1/13, ORACLE_HQCA_00000 62732-1 to -2;	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response does not rebut this fact or render it in dispute. The Global Approval Matrices do not refute this fact. Indeed, nowhere in the matrices is it ever suggested that the highest-level approval authority is "the primary decision-maker 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." OFCCP's quibbling over use of the word recommendations does not dispute that front-line managers are still the primary decision makers, even if their decisions are subject to higher-level approval as a sanity check. A) Oracle incorporates its response to OFCCP SUF 113. B) Oracle incorporates its response to OFCCP SUF 116. C) OFCCP's response is incomplete and a mischaracterization of Mr. Loaiza's testimony. In the cited testimony, OFCCP read a statement that was purportedly attributed to Mr. Loaiza related to hiring decision and he corrected the statement as follows: Q So I'm going to read you another statement from the document of

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	Ex. 20, Global Approval Matrix, dated 11/1/14, ORACLE_HQCA_00000 62712-1 to -2; Ex. 20, Global Approval Matrix, dated 6/1/15, ORACLE_HQCA_00000 62710-1 to -2; Ex. 20, Global Approval Matrix, dated 6/1/16, ORACLE_HQCA_00000 62711-1 to -2; Ex. 20, Global Approval Matrix, dated 3/30/17, ORACLE_HQCA_00000 62720-1 and -2, in Vol. 1. B) Oracle's compensation instructions for hiring likewise require managers to make pay recommendations that require the approvals all the way up to the Executive Level or their offices. Citation: OFCCP SUF: Fact 116; Ex. 28, slide 11 (notes), ORACLE_HQCA_00000 57179-22 in Vol. 2; Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_00000 56234-65 to -66 in Vol. 1. C) EVP Loaiza, at the M8 global career level, testified in his deposition that when he is reviewing a person during the hiring approval process, he is reviewing "the proposed compensation of the person." He emphasizes	Exhibit 78 which is purported to be their interview of you. So when it says "I," it would be implicating you? So it says, quote: "The market is the primary factor in these things. What is the market to get this person? When I review the candidate, I get documents that show the resume, interview notes and current compensation. I'll look at what the manager is offering and either approve or reject." End quote. Is that a true statement? MR. SHWARTS: Objection. Lack of foundation. Just focus on the substance of his question - THE WITNESS: Yeah. MR. SHWARTS: -- and answer whether or not this statement that was made was accurate at the time. THE WITNESS: I do not believe that's accurate. So what I get is not the current compensation. I get the proposed compensation. OEx. 11, Loaiza Dep. 45:20-46:18. Nothing in this testimony relates to salary increases. Instead, it is acknowledging the approval process that is set forth in the Global Approval Matrices. But this testimony does not undermine the fact that front line managers are the primary decision

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	this a second time when he states: "What I get is not the current compensation. I get the proposed compensation." If he is only looking at the proposed pay at his high-level, then the first level manager, many levels below, could not have already determined the salary increases. Citation: OEx. 11, Loaiza Dep. 17:2-10, 44:16-45:1, 45:20-46:18. 2) Oracle's senior management is involved to a significant degree in the hiring of new employees A) EVP Loaiza, at an M8 global career level, gave a detailed explanation of what he reviewed to determine if he should approve or reject a hiring recommendation containing the proposed compensation. He stated that he looked at: the person's proposed compensation; whether Oracle hiring in the area of the person's expertise; a person's education; the person's resume; the interview notes by Oracle personnel; the person's competitive offer by another company, if applicable; and that he would generally review anything in the hiring packet. Thus, contrary to the claim only supported by Ms. Balkenhol's declaration,	makers for selecting an applicant and placing them in the appropriate career level. If anything, it affirms that Mr. Loaiza is far removed from those decisions and has not met with any of the applicants. 2) OFCCP's response and evidence fails to rebut this fact. A) OFCCP's evidence implicitly affirms that Mr. Loaiza does not interview applicants, does not select which applicant to extend an offer to, does not decide which career level an applicant should fill, or determine what the applicant's starting salary should be. Instead, Mr. Loaiza affirmed he reviews materials he is provided related to the applicant to assess whether to approve or reject the offer. In doing so, OFCCP fails to acknowledge that in order to conduct sanity checks on new hires, Oracle's management team must be provided with some information from which it can assess the decision made by the front-line manager. Moreover, Mr. Loaiza only testified that he reviews the materials he is provided. He said nothing about conducting an extensive review of applicant materials. B) Ms. Cheruvu's testimony does not dispute this fact. It does not prove extensive involvement by high-level managers in the hiring process (Ms. Cheruvu works in HR). Consistent with the Global Approval Matrices, this testimony simply confirms that Ms. Cheruvu reviews materials provided in

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	senior managers like EVP Loaiza do extensive review of offers Citation: OEx. 11, Loaiza Dep. 44:16-45:19, 46:16-47:2, 47:21-23, 68:19-69:8. B) HR Business Partner and VP Madhawi Cheruvu for seven lines of businesses (LOB) and Thomas Kurian's Product Development LOB testified that as an approving manager, she looks at a person's experience (years and type), skills, resume, the other companies the person worked, the similarity between where the person worked and at Oracle, the salary range, the person's current compensation, the role the person will play, the criticality of the skills, and the deliverables the person will make. Citation: OEx. 4, Cheruvu Dep. 70:12-71:4, 77:3-78:3, 190:25-191:9, 259:12-22 C) EVP Loaiza also gave an interview to OFCCP on March 25, 2015, when he identified that he was a Senior Vice President during OFCCP's audit. In the interview summary for him it noted that EVP Loaiza commented extensively on his involvement in the hiring process to include reviewing the proposed compensation	order to sanity check offers for applicants to her team. C) The interview summary is not a dictation of questions and answers. It is instead a compilation of notes, which Mr. Loaiza's deposition testimony confirmed was not accurate. OEx. 11, Loaiza Dep. 45:20-46:18. And Mr. Loaiza never signed this summary. *See* Atkins Opp'n Decl. ¶14, Ex. K, Loaiza Interview Notes, DOL0000000522. *See also* Oracle's Objections to Evidence. D) The interview summary is not a dictation of questions and answers. It is instead a compilation of notes, which Ms. Cheruvu's deposition testimony confirmed was not accurate. *See* OEx. 4, Cheruvu Dep. 70:12-71:4, 77:3-78:3, 190:25-191:9, 259:12-22. And Ms. Cheruvu never signed this summary. *See* Atkins Opp'n Decl. ¶14, Ex. C, Cheruvu Interview Notes, DOL000000535-37. *See also* Oracle's Objections to Evidence.

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	and the person's current compensation such that almost a whole typed page, single space, reflected his comments. Citation: Atkins Opp'n Decl. ¶14, Ex. K, Loaiza Interview Notes, DOL0000000522. D) HR Business Partner and VP Madhawi Cheruvu for seven lines of businesses (LOB) and Thomas Kurian's Product Development LOB also gave an interview that OFCCP summarized that described her extensive involvement in hiring and off-cycle compensation decisions. The interview summary identified that she looks at: resumes, current compensation, the job they are performing, the skills they are bring and how important these skills are to Oracle, the salary ranges involved, the immediate need of the person, the level of market demand for the person's skills, the difference between what the applicant is currently making and the proposed salary, compares what is being offered to current employees, examines what competitors are offering. Citation: Atkins Opp'n Decl. ¶14, Ex. C, Cheruvu Interview Notes, DOL000000535-	

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	37.	
89. Over half of the allegedly discriminatory initial job "assignments" occurred before January 1, 2013. **Supporting Evidence:** Connell Decl., Ex. M (Saad Report, ¶¶ 159-160; Attachment C1). Oracle's Statement of Uncontested Facts states at footnote 1 that Attachment 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."	**Disputed.** 1) OFCCP disputes Material Fact 89 because the evidence cited by Oracle does not support this statement. Oracle misrepresents paragraphs 159-160 and Attachment C1 of Saad's Report which do not demonstrate that over half of the discriminatory initial job "assignments" occurred before January 1, 2013. A) Paragraph 159 of Saad's Report does not discuss initial job assignments but discusses experienced hires: 159. Among experienced hires, the largest group of new hires, there are no statistically significant pay difference for women in any of the three job functions. Average starting pay for Asian experienced hires and White experienced hires are not statistically significantly different. The difference in starting pay for African-Americans compared to Whites in PRODEV is also not statistically significant. Taken together, I do not see evidence of a pattern of adverse results for any of the protected groups. Citation: Ex. 93, Saad Report ¶ 159. B) Paragraph 160 also does not discuss initial job assignments but discusses college hires in PRODEV: 160. There are too few	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response does not rebut this fact. Combined, the Tables in Paragraphs 159 and 160 show at most 2,564 females, Asians, and African-Americans hired from 2013-2018 in the relevant job functions at HQCA (this number includes duplicates in PRODEV, and further reducing to unique hires would be even less). Connell Decl., Ex. M (Saad Report, ¶¶ 159-160). 2,564 is less than half of the 6,035 affected persons identified in Attachment C1—which means that more than half of the "affected persons" covered by OFCCP's claims were hired by Oracle (and thus started in their initial job title and global career level) prior to January 1, 2013. A) OFCCP misleadingly omitted Dr. Saad's Table from its purported quote of Paragraph 159. The Table in Paragraph 159 shows 57 women hired into INFTECH, 7 women hired into SUPP, and up to 1,683 women, Asians, and African Americans hired into PRODEV through experienced recruiting at HQCA from 2013-2018—which assumes that every female is not Asian or African American. Connell Decl., Ex. M (Saad Report, ¶ 159). This sums to, at most, 1,747 hires. B) OFCCP misleadingly omitted Dr. Saad's Table from its purported quote of Paragraph 160. The Table in Paragraph 160 shows

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	college hires in INFTECH and SUPPORT to analyze separately, but it is possible in PRODEV. Entry level hires from colleges are not hired into specific positions. The regression model thus controls for experience and career level to take differences in degrees earned into account (about 5% are over age 30), and their hire year, but does not control for job title or organization. There are no statistically significant results for any of the protected groups, and in fact, the results are positive for women. Citation: *Id.* ¶ 160. C) Dr. Saad's Attachment C1 is a chart that shows employee counts for 2013-2018 at Oracle HQCA. Citation: *Id.* Attachment C1.	up to 817 women, Asians, and African Americans hired into PRODEV through college recruiting at HQCA from 2013-2018—which assumes that every female is not Asian or African American. Connell Decl., Ex. M (Saad Report, ¶ 160). C) Attachment C1 indicates there were 6,035 women, Asians, or African-American employees implicated by OFCCP's claims. Connell Decl., Ex. M (Saad Report, Attachment C1).

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

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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	**Disputed.** 1) The SAC did reference and imply an assignment claim of putting females and Asians in lower lower-paid positions relative to other employees at the lower end of the pay range relative to other employees in the same positions.	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP concedes that neither the NOV nor the SCN, nor the Complaint, nor the FAC reference or imply a disparate impact claim, or identify a facially-neutral policy or practice that had a disparate

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or practice that had a disparate impact on women, Asians, or African-Americans. **Supporting Evidence:** Holman-Harries Decl., ¶ 3, Ex. B (NOV), Ex. Y (SCN); Complaint; FAC; SAC.	Citation: SAC ¶25. 2) The SAC also referenced that Oracle caused females and Asians to remain in lower-paid positions relative to others. Citation: SAC ¶29. 3) The SAC further referenced that Oracle caused females and Asians to be paid lower than their male and White counterparts because of Oracle's reliance on prior pay in setting compensation upon hire. Citation: SAC ¶32.	impact on women, Asians, or African-Americans. OFCCP further concedes that the SAC makes no disparate impact claim as to African American employees. 1) OFCCP's response relates to its claim of intentional discrimination, not a disparate impact claim. 2) OFCCP's response relates to its claim of intentional discrimination, not a disparate impact claim. 3) OFCCP's response relates to its claim of intentional discrimination, not a disparate impact claim. Further, the evidence demonstrates that Oracle never had a policy or practice of basing starting pay on prior pay. *See* Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16.
91. OFCCP has not identified a specific policy or practice causing the statistical disparities it alleges. **Supporting Evidence:** 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	**Disputed.** 1) OFCCP disputes this contention. OFCCP objects that this statement is not a factual contention but a legal contention. To contest this contention fully, OFCCP would need to restate almost all of the evidence at issue in this case, which is beyond the scope of the purpose of these Statements. A) As set forth in OFCCP Opposition brief, OFCCP disputes that it has a burden at this stage in these proceedings to identify specific policy or practices causing the statistical	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's deflection of a direct response to this fact is telling and affirms that OFCCP has not and cannot identify a specific policy or practice causing the alleged statistical disparities. A) OFCCP's response does not render this fact in dispute. "At this stage of the proceedings," we are less than a month from trial and are drafting summary judgment reply briefs. The time to identify the specific policy or practice OFCCP contends causes

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Interrogatories, No. 50).	disparities it alleges. In OFCCP's Motion for Summary Judgment, OFCCP has cited copious facts related to Oracle's policies and practices related to departing from its own compensation policies based on "budget." Citation: *See* OFCCP's MSJ 9-11 and supporting SUF citations (SUF 104-106, 127-131, 134-136, 142-149, 157-170, 163, 167, 181, 183-185). B) OFCCP also disputes this fact on the grounds that OFCCP has identified specific practice of not studying and redressing pay disparities. Citation: *See* OFCCP's MSJ at 11-12, and supporting SUF citations (SUF 104-106, 207, 211, 212). *See also* Oracle's Position Statement on 2.17 at 9-11. C) OFCCP further disputes this contention on the basis that OFCCP has proffered material statistical evidence and factual evidence showing that Oracle departs from its own compensation policies by considering prior pay and this has an adverse impact on the class. Citation:	the statistical disparities it alleges is long past. B) OFCCP's response and evidence is argumentative and immaterial as OFCCP has made no attempt to show the alleged practices actually caused any statistical disparities. C) Oracle incorporates its prior response to OFCCP SUFs 157-170. D) Oracle incorporates its prior response to OFCCP SUF 156

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	SUF 157-170; Ex. 91, Madden Rpt. at 49-50, Table 4 D) OFCCP further disputes this contention on the basis that OFCCP has proffered statistical evidence and material factual evidence showing that Oracle departs from its own compensation policies through discriminatory placement and retention in career level. Dr. Madden analyzed Oracle's compensation data and specifically Oracle's assignments of career levels and found that, at hire and over time, women and Asians were more likely to be placed in lower global career levels than similarly qualified men or Whites. Citation: SUF 156; OFCCP MSJ; Ex. 91, Madden Report at 50-51, Tables 1(a)-(3)(a), 4-7; Ex. 92, Madden Rebuttal Report pp. 30-41, Charts R1-R2; Tables R7-8.	
92. Oracle never had a policy or practice of basing starting pay on prior pay. **Supporting Evidence:** Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep. 203:20-204:7); Yakkundi	**Disputed.** 1) Contrary to Oracle's claim, it did have a policy or practice of basing starting pay on prior pay because it sought prior pay from applicants and prior pay was one of the factors it considered when determining a person's starting salary. A) Prior to October 2017, Oracle considered an	**OFCCP's evidence fails to create a material dispute of fact.** 1) The evidence demonstrates that Oracle never had a policy or practice of basing starting pay on prior pay. *See* Connell Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14;

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Decl., ¶ 17; Shah Decl., ¶ 13; Gill Decl., ¶ 9; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16.	employee's salary in his or her previous employment in setting initial pay at Oracle. Citation: OFCCP SUF: Fact 157; Ex. 41, Holman-Harries *Jewett* Decl., Ex. A, (Lisa Gordon Sworn Statement) at 8, question 11b in Vol. 2; OEx.4, Cheruvu Dep. 84:22–85:6 in Vol. 1; Declaration of Cindy Hsin in support of Oracle's Motion for Summary Judgment (Hsin Decl.), ¶11. B) In a document titled "HR Learning Session US Pay Equity Laws and Salary History Bans" under a sub-heading of "What is changing" Oracle stated that the change is not to ask candidates about current or prior salary. Citation: OFCCP SUF: Fact 158; Ex. 46, "HR Learning Session US Pay Equity Laws and Salary History Bans," dated 10/18-19/17, ORACLE_HQCA_0000381126 in Vol. 2. C) In a document titled "HR Learning Session US Pay Equity Laws and Salary History Bans" under a sub-heading of "What is changing" Oracle stated that	Abushaban Decl., ¶ 16. A) Oracle incorporates its response to OFCCP SUF 157. B) Oracle incorporates its response to OFCCP SUF 158. C) Oracle incorporates its response to OFCCP SUF 159. D) Oracle incorporates its response to OFCCP SUF 160. E) Oracle incorporates its response to OFCCP SUF 161. F) Oracle incorporates its response to OFCCP SUF 162. G) Oracle incorporates its response to OFCCP SUF 163. H) Oracle incorporates its response to OFCCP SUF 164. I) Oracle incorporates its response to OFCCP SUF 165. J) Oracle incorporates its response to OFCCP SUF 166. K) Oracle incorporates its response to OFCCP SUF 167. L) Oracle incorporates its response to OFCCP SUF 168. M) Oracle incorporates its response to OFCCP SUF 169. N) Oracle incorporates its response to OFCCP SUF 170. *See also* Oracle's Objections to Evidence.

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	it is removing the "current salary field" from the offer form in iRecruitment. Citation: OFCCP SUF: Fact 159; Ex. 46, ORACLE_HQCA_00003 81126 in Vol. 2. D) In a document titled "HR Learning Session US Pay Equity Laws and Salary History Bans" under a sub-heading of "what we used to say" Oracle identified that it asked about a person's current salary and annual earnings if the person was in sales. Citation: OFCCP SUF: Fact 160; Ex. 46, ORACLE_HQCA_00003 81127 in Vol. 2. E) In response to a question about whether Oracle's employees can ask a candidate about current or prior salary history, Oracle answered by affirming that its employees can "no longer" ask a candidate about his/her current or prior salary. Citation: OFCCP SUF: Fact 161; Ex. 47, "US PAY EQUITY FAQ FOR MANAGERS AND HR" dated 1/1/18, ORACLE_HQCA_00003 81077, in Vol. 2. F) Prior to October 2017, a	

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	candidate's compensation information at his or her previous employer was a "**Mandatory**" field in Oracle's "Candidate Offer Information" document. Citation: OFCCP SUF: Fact 162; Ex. 48, "Candidate Offer Information" for [redacted], dated 12/22/08, ORACLE_HQCA_0000472274 in Vol. 2; Ex. 49, "Candidate Offer Information" for [redacted], dated 1/6/15, ORACLE_HQCA_0000464341–44 in Vol. 2. G) An Oracle recruiter asked a job candidate for this person's current salary because it was a mandatory field for the offer process. Citation: OFCCP SUF: Fact 163; Ex. 50, Emails between a job applicant and an Oracle recruiter regarding the prior salary, dated 2010, DOL000044390–93 in Vol. 2. H) Prior to October 2017, Oracle's iRecruitment "Offer Template" had a field for "Candidate's Current Salary/ATV" and Oracle's instructions for using this field in this template was to enter numerals only. Citation: OFCCP SUF: Fact 164;	

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	Ex. 28, slide 12, ORACLE_HQCA_00000 57179-23 in Vol. 2; Ex. 51, Untitled Oracle Hiring Presentation, copyright 2014, slide 12, ORACLE_HQCA_00000 56633-22, has just the template, in Vol. 2. I) In or around February 2014, Oracle put an employee's current compensation information (e.g., $[redacted] plus an annual bonus of [redacted]%) in the "Comments" column for line 1 of the "Approval History" section of its iRecruitment "Candidate Details" form, such that subsequent reviewers like Thomas Kurian and Lawrence Ellison could review the prior compensation information before approving. Citation: OFCCP SUF: Fact 165; Ex. 29, ORACLE_HQCA_00000 01729-32, in Vol. 2. J) In or around March 2013, Oracle listed a candidate's compensation (e.g., "[redacted] base salary + stock options" and "$[redacted] plus bonus") in the "Current Compensation" field in its "Candidate Profile Summary." Citation: OFCCP SUF: Fact 166; Ex. 52, Two Candidate	

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	Profile Summaries, from 2013, ORACLE_HQCA_0000029001 & 0000033810, in Vol. 2. K) Prior to 2017, Oracle notified potential candidates through its iRecruitment requisitions that they would be required to complete a pre-employment screening process that included a salary verification prior to an offer being made. Citation: OFCCP SUF: Fact 167; Ex. 53, iRecruitment requisition for "Senior Software Developer – Fusion Lifecycle Management," dated 3/28/12, ORACLE_HQCA_0000027412-2 in Vol. 2; Ex. 54, Email exchange between Oracle's Senior Recruiter Todd Gorman and [redacted], May 2014, ORACLE_HQCA_0000034108 in Vol. 2; Ex. 55, Job Announcement for "Solution Architect," from Oracle Senior Recruiter Stephanie Nguyen, no date, ORACLE_HQCA_0000033894 in Vol. 2. L) Oracle instituted a new policy in October 2017 that Oracle employees may no	

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	longer request salary history details from external candidates who are interviewing for work in a US location. Citation: OFCCP SUF: FACT 168; OEX. 8, Waggoner PMK Dep. 40:10–41:15. M) In an email dated October 25, 2017, Oracle announced that managers and others acting as agents of Oracle during the hiring process can no longer request salary history details from external candidates who are interviewing for work in a US location. Citation: OFCCP SUF: Fact 169; Ex. 56, Emails regarding "Changes to US Hiring Process Effective October 31, 2017," dated October 2017, ORACLE_HQCA_0000381115 in Vol. 2. N) In December 2017, Oracle told an employee who asked about possible pay discrimination that there were several business factors contributing to the level of the employee's salary, including the employee's starting salary at Oracle. Citation: OFCCP SUF: Fact 170; Ex. 32, "Memorandum: Investigation Results,"	

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	dated 12/7/17, ORACLE_HQCA_00004 16837, in Vol. 2.	
93. Since October 2017, Oracle has prohibited managers or recruiters from inquiring about, or relying on, prior pay in setting starting pay. **Supporting Evidence:** 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.	**Disputed.** 1) Prohibiting managers or recruiters from inquiring about or relying on, prior pay in setting starting pay would be a compensation policy and Ms. Waggoner testified in her PMK *Jewett* deposition on July 26, 2018, that "we don't have policies" in response to a question of: "So this is as close as Oracle comes to having compensation policies - - these compensation guidelines. Citation: OEx. 2, Waggoner PMK *Jewett* Dep. ORACLE_HQCA_00004 00663) 80:4-9.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response and evidence does not render this fact in dispute. The line of questioning OFCCP cites relates to Oracle's Compensation 101 training modules that were developed in 2011. In any event, this fact is not dependent upon whether the prohibition on asking about prior pay is a policy. Although, the testimony in this case makes clear that this prohibition on inquiring about prior pay is Oracle's only "compensation policy." *See* Ex. 27, Waggoner 30b6 Dep. 40:10–41:15.
94. Oracle's compensation guidelines and practices are job-related and consistent with business necessity. **Supporting Evidence:** 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.	**Disputed** 1) It is a business necessity for Oracle to comply with OFCCP's regulations and the governing order or otherwise Oracle would put itself at risk of losing "lucrative government contracts." Citation: Ex. 77, "Affirmative Action Training at Oracle" dated October 2015. Slide 5, ORACLE_HQCA_00004 16488-9. 2) Oracle's current compensation policies of not training managers on the compensation requirements of the Executive Order's implementing regulations at 41 C.F.R. Part 60, not conducting in depth compensation analyses, waiting until OFCCP	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's pithy response and "evidence" does not render this fact in dispute. It amounts to argument and should be disregarded. 2) OFCCP's response is argument. It also demonstrably mischaracterizes the evidence it purports to cite and fails to raise a legitimate dispute to this fact. As such, OFCCP's entire response should be disregarded.

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	enforcement to start having mandatory training for managers and human resources personel, human resources personnel still not knowing their affirmative action responsibililities as of 2019, only training managers on hiring affirmative action and not compensation affirmative action, taking no corrective action in response to any pay analysis conducted, are contrary to business necessity and are not related. Citation: Ex. 77, "Affirmative Action Training at Oracle" dated October 2015. Slides 3 and 4, and slide 3 and 4 notes, ORACLE_HQCA_0000416488-9; OEx. 3, ORACLE-HQCA_417320-58; Ex. 63, AAP, ORACLE_HQCA_0000005000; Oracle's 10/13/19 Position Statement, p. 8; Oracle's 10/3/19 Position Statement, p. 9; Ex. 41, Ex. A, sworn statement of Lisa Gordon, Oracle Director of Compensation dated 2/11/15, p. 17, question 29.	
95. OFCCP has not identified an equally effective alternative policy or practice without an adverse effect that would serve Oracle's business	**Disputed.** 1) OFCCP objects to this contention on the grounds that it is a legal contention. As set forth in response to Oracle's contention in #91 above, OFCCP does not have the burden to establish this at this time. Oracle has	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP's response concedes that it has not identified an equally effective alternative policy or practice without an adverse effect that would serve Oracle's business

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needs. **Supporting Evidence:** 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).	failed to assert any purported neutral factor as a defense to the gross disparities in compensation at issue in this case. 2) OFCCP claims do not take issue for purposes of this case with Oracle's basic compensation framework, which, if appropriately implemented, would set compensation based on an employee's skills, education, and experience. The problems identified by OFCCP is that Oracle fails to accord with its own policies by prioritizing budget. When budget is prioritized over compensating similarly situated employees at the same rate, Oracle maintains no corrective mechanism to ensure pay equity. The effective alternative here would be for Oracle to comply with its own policies, its affirmative action obligations, and to compensate employees based on their skills, education, and experience.	needs because it does not think it has to do so at this time (notwithstanding we are less than a month from trial and are in the process of drafting summary judgment reply briefs). 2) OFCCP's response concedes this fact. Further, OFCCP concedes that the only problem OFCCP has with Oracle's compensation framework is that it allegedly prioritizes budgets that do not allow for employees to be compensated based on their skills, education, and experience. In doing so, OFCCP also concedes it does not have a disparate impact claim because it is not the appropriate application of a facially neutral policy that OFCCP contends is causing harm, but, instead, is the alleged intentional disregard of Oracle's own compensation guidelines. OFCCP fails to dispute this fact, and for the reasons set forth in Oracle's motion for summary judgment and reply brief, to the extent OFCCP ever properly asserted a disparate impact claim in the first place, its cavalier dismissal of any obligation to articulate the basis for such a claim even now – months after discovery has closed and in the midst of summary judgement briefing – confirms any such claim must be dismissed.

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

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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?" **Supporting Evidence:** Holman-Harries Decl., ¶ 20, Ex. Q.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
97. On August 28, 2015, OFCCP added a request that the 1/1/2013 compensation snapshot include 16 additional fields. **Supporting Evidence:** Holman-Harries Decl., ¶ 20, Ex. Q.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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. **Supporting**	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Evidence: 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. **Supporting Evidence:** Holman-Harries Decl., ¶ 21, Ex. R.	**Undisputed.** However, in addition, the October 29, 2015 email from Ms. Holman-Harries also stated that certain information was too burdensome to compile and referred to communications about other information that invoked privileges to refuse to produce it.	**OFCCP concedes this fact is undisputed and material.** OFFCP's additional commentary does not render this fact in dispute.
100. On November 2, 2015, OFCCP's Acting District Director Robert Doles identified data and documents that OFCCP claimed were not provided. **Supporting Evidence:** Holman-Harries Decl., ¶ 22, Ex. S.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Supporting Evidence: 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. **Supporting Evidence:** Holman-Harries Decl., ¶ 23, Ex. T.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
103. On November 2, 2015, OFCCP responded stating that Oracle's October 29 production was not complete. **Supporting Evidence:** Holman-Harries Decl., ¶ 23, Ex. T.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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." **Supporting Evidence:** Holman-Harries Decl., ¶ 24, Ex. U.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
105. OFCCP did not respond to Ms. Holman-Harries' November 6, 2015 email before issuing the NOV. **Supporting Evidence:** Holman-Harries Decl., ¶ 25, Ex. V.	**Disputed.** 1) OFCCP disputes Oracle's Fact 105 to the extent it suggests that OFCCP did not follow up with Oracle at all between the November 6, 2015 email and the NOV. That is not the case. A) On December 16, 2015, OFCCP wrote to Oracle to thank them for submitting a portion of the hiring data that was still outstanding in Oracle's October 29, 2015 email, and requested similar information for another subset of Oracle employees. Oracle responded stating that it "would need to understand better the rationale and basis for this request before committing to such an effort." On December 23, 2015, after OFCCP followed up with an explanation, Oracle responded that the additional information would take 6 to 12 months to complete. Citation: Holman-Harries Decl., Ex. V, at DOL000001029-30. B) On January 4, 2016, OFCCP wrote to Oracle and provided copies of the interview statements made by managers during the on-site interviews, requesting their signatures. On January 8, Oracle responded refusing to either provide corrections to or sign the statements. Citation:	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP concedes that it did not respond to the substance of Ms. Holman-Harries November 6, 2015 email. A) OFCCP's evidence is not a response to Ms. Holman-Harries November 6, 2015 email B) OFCCP's evidence is not a response to Ms. Holman-Harries November 6, 2015 email.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Suhr Opp'n Decl. ¶ 8, Ex. B, Email from Hoan Luong to Oracle dated 1/4/16, asking Oracle to return signed copies of the statements, and 1/8/16 response refusing, ORACLE_HQCA_00000 00270.	
106. At no point did Oracle refuse to produce to OFCCP a compensation "snapshot" for 2013 containing the fields of data requested by OFCCP. **Supporting Evidence:** Holman-Harries Decl., ¶ 29; Siniscalco Decl., ¶ 7.	**Disputed.** 1) OFCCP disputes Oracle's Material Fact 106 because OFCCP requested the 2013 snapshot in August of 2015, and Oracle did not produce the snapshot until after litigation commenced in 2017— and, even then, did not produce all of the fields OFCCP had requested. To the extent Oracle argues that it did not "refuse" to the produce the snapshot even while it admittedly did not produce it, OFCCP disagrees. OFCCP does not interpret the term "refuse" to require an express statement "I refuse." *See* "Refuse," Merriam Webster, def. 2 ("[T]o *show* or express unwillingness to do or comply with. Ex. Refused to answer the question.") (emphasis added). Oracle did not provide the 2013 snapshot despite having six and a half months between the time OFCCP requested it on August 26, 2015, and the issuance of the NOV on March 11, 2016. Citation: Oracle Material Fact 96 Holman-Harries Decl., Ex. Q, Emails from OFCCP to Oracle dated 8/26/15	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response and evidence fails to rebut that Oracle was still gathering information in response to OFCCP's requests at the time the NOV was issued. In any event, OFCCP concedes it never responded to Oracle providing any justification for requesting data that preceded the audit period. 2) OFCCP's response is non-responsive to this fact. OFCCP routinely conflates burden with ability to eventually produce. In OFCCP's mind, if data can eventually be produced then there is no burden. That is not so. Further, OFCCP conflates the burden associated with Ms. Holman-Harries's team personally responding to OFCCP's inordinate data requests on numerous simultaneous audits (23) with Oracle's outside counsel's ability to coordinate data collection during active litigation, which was still extremely burdensome. Oracle also incorporates its response to AUFs 32, 36, 37-42 and its response to OFCCPs SUF 162. 3) As Mr. Giansello's 3/15/19

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	and 8/28/15, ORACLE_HQCA_00000 5408-09 Holman-Harries Decl., Ex. S, Letter dated 11/2/15 from Robert Doles to OFCCP, DOL000001054. Holman-Harries Decl., Ex. X, Email from Robert Doles to Oracle dated 3/29/16, listing requested documents still not produced by Oracle, ORACLE_HQCA_00000 00278. Connell Decl., Ex. E, Ratliff PMK Dep. 77:6- 78:14; At her deposition, Ms. Holman-Harries testified that she did not provide the requested 2013 compensation snapshot during the compliance review. She added, as an explanation, that "we asked . . . for the basis for that because that was out of the review period." Ms. Holman-Harries made a consistent response in her 30(b)(6) deposition on topic of Oracle's failure to supply documents to OFCCP during the compliance review. Even though she met with her attorneys five additional times, over the course of 20-25 hours, to prepare for her 30(b)(6) deposition, Ms. Holman-Harries later "corrected" her testimony in her 30(b)(6) deposition	letter (OEx. 39) makes clear, the audit was much broader in scope than the claims OFCCP brought in this litigation. So just because certain data was included for convenience in the 2014 snapshot spreadsheet during the audit, does not mean that data pertains to compensation. By its own terms, SAC ¶ 44(a) is limited to "compensation data for 2013." Given that OFCCP's only quibble with this fact is that Oracle has not produced data in this litigation that is unrelated to OFCCP's allegation that Oracle refused to produce "compensation data for 2013" during the audit, OFCCP has failed to rebut this fact. Additionally, OFCCP's unsupported, mean-spirted attacks on Ms. Holman Harries, including that her confusion between this audit and one of the other 20+ audits she was responding to at that time is not to be believed (as she explains in the errata to her deposition transcript), as well as the assertion that she made "material misrepresentations" to OFCCP during the audit, should be disregarded entirely. They are not helpful, particularly at this late stage of the litigation. They are both untrue, and unsupported by the evidence.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	to remove her testimony that Oracle was awaiting OFCCP's response. In any event, OFCCP's reasons for seeking 2013 compensation data should have been obvious. Citation: OEx 5, Holman-Harries May Dep. 288:14-289:14.; Holman-Harries 30(b)(6) Dep. 15:4-19, 71:11-73:13; errata Suhr Opp'n Decl. ¶ 7 *See also, infra*, DF 107. Oracle did not provide the 2013 snapshot in the following ten months between the issuance of the NOV on March 11, 2016 and the filing of the complaint on January 17, 2017. Citation: Complaint, filed 1/17/17, ¶12 Atkins Opp'n Decl. ¶23; Bremer Decl. ¶3. 2) OFCCP also disputes this Material Fact because Oracle made material misreprentations about its ability to produce educational data and data related to employees' prior pay, which were fields in the requested 2013 snapshot. During the compliance review, Oracle stated that it could not producing educational data and prior pay data would be extraordinarily burdensome because it Oracle did not maintain	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	the information in any of its databases. Oracle gave not indication in the email that it would attempt to compile this information. Citation: Holman-Harries Decl., Ex. R, Email from Shauna Holman-Harries to Hoan Long dated 10/29/15, question 2 and response, ORACLE_HQCA_00000 2235. AUF 32; Although Oracle had previously stated twice that they did not maintain education data in their database, Ms. Holman-Harries testified in her August 1, 2019 PMK deposition that in fact at least "some of the education" data was in Oracle's databases. Citation: AUF 36 OEx. 31, Holman-Harries PMK Dep. 38:25-39:20. During litigation, Oracle later produced some educational data in database form. Citation AUF 37 OEx. 36, Letter from Erin Connell to Marc Poltin and Laura Bremer re Oracle's discovery production, dated 10/11/17. OEx. 40, Letter from Laura	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Bremer to Erin Connell dated 2/15/19, re data requests. Bremer Decl. ¶ 43. Although Oracle had previously stated twice that they did not maintain employees' prior salary information in their database, Oracle later produced some prior salary data in database form during litigation. Citation: AUF 38-43; SUF 162 Madden Rep. 49-52, Table 4 Ex. 48, "Candidate Offer Information" for [redacted], dated 12/22/08, in Vol. 2, ORACLE_HQCA_0000472274 Ex. 49, "Candidate Offer Information" for [redacted], dated 1/6/15, in Vol. 2, ORACLE_HQCA_0000464341–44. 3) Oracle still, to date, has not provided the all of the data that would have been encompassed in the 2013 compensation snapshot that had been requested. Citation: OEx. 37, Email from Laura Bremer to Erin Connell re visa data, dated 10/11/17 OEx. 39, Letter from John Giansello to Norman Garcia, dated 3/14/19 at	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	4-5; Bremer Decl. ¶ 42.	
107. At the time when OFCCP issued the NOV, Oracle was still working on collecting data and documents responsive to OFCCP's requests. **Supporting Evidence:** Holman-Harries Decl., ¶ 3.	**Disputed.** 1) OFCCP contests Oracle's Material Fact 107 on the basis of Ms. Holman-Harries' extensive testimony in a PMK capacity about the status of OFCCP's document requests during the compliance review. She testified, for example, that she couldn't remember whether certain performance review information had been provided, stating that "I know we were working on I, if – if it hadn't been provided." And she stated that she would have to see the last spreadsheet submitted to be able to answer that question. Given that she could have used the spreadsheet to answer that question with specificity in her declaration, the unspecific and unsupported assertion—that Oracle was still working on compiling data and documents when the NOV issued—lacks credibility. Citation: OEx. 31, Holman-Harries PMK Dep. 66:8-67:5. 2) The only other documents that Ms. Holman-Harries discussed possibly still compiling is the 2013 snapshot. But the weight of her testimony instead suggests that Oracle had essentially completed compiling the snapshot and was simply refusing to provide it. At her PMK deposition, Ms. Holman-Harries was asked whether Oracle "compil[ed] all of the data fields for the 2013 compensation snapshot[?]" She responded: "We compiled it. We pulled the data, but we were waiting	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response and evidence do not render this fact in dispute. It is of no moment that Ms. Holman-Harries could not remember every document she produced to OFCCP during an audit in 2014-2015 that was occurring simultaneously with over 20 other audits. In any event, her recollection of specific documents which were produced is not analogous to her knowledge that her team was still working on collecting data for OFCCP's requests when the NOV was issued. 2) OFCCP's evidence unequivocally confirms that Ms. Holman-Harries team was still working on adding information to the 2014 snapshot at the time the NOV issued. 3) OFCCP's cited evidence does not support this statement. The quoted portions of OFCCP's responses do not appear in OEx. 35. 4) OFCCP's response is a red herring. Ms. Holman-Harries testified both as a 30(b)(6) witness and in her individual capacity. That her testimony as a 30(b)(6) on behalf of Oracle required errata for accuracy is not surprising given the volume of audit related document requests Oracle was facing at the time of the HQCA audit. 5) OFCCP's response does not

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	for OFCCP to provide the justification that we asked for in our correspondence with them." Citation: OEx. 31, Holman-Harries PMK Dep. 66:8-67:5; 3) Oracle made changes to Ms. Holman-Harries' August 1, 2019 PMK deposition transcript and removed her testimony that "we were waiting [to provide the snapshots] for OFCCP to provide the justification that we asked for in our correspondence with them." And Oracle inserted new testimony that "[w]e were in the process of compiling the data at the time OFCCP issued its NOV." Oracle claimed this was a correction for accuracy because Ms. Holman-Harries was confusing her answer with another audit. Citation: OEx. 35, Holman-Harries PMK Dep. Errata Sheet, at 1-2 for 5/1/19 deposition dated 6/12/19. 4) Oracle's claim of correction is not credible considering Ms. Holman-Harries had been prepared by counsel for 20 to 25 hours for her PMK deposition, and because Oracle did not make these same corrections to Ms. Holman-Harries' similar testimony during her prior May 8, 2019 deposition Citation: OEx. 31, Holman-Harries PMK Dep. 15:8-15:19; OEx. 5, Holman-Harries May Dep. 288:14-289:14;	render this fact in dispute. 6) OFCCP's response does not render this fact in dispute. 7) OFCCP's response does not render this fact in dispute.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	OEx 35, Holman-Harries Errata Sheet for May Dep. 5) Oracle was not continuing to work on OFCCP's requests for pay equity analysis because Oracle was claiming that all pay equity analyses were privileged. Oracle's response in Ms. Holman- Harries's October 29, 2015 email to Question 1 regarding internal pay equity analyses gives no indication that there is any ongoing work to produce any such analyses. Instead, it refers to the Lisa Gordon interview, in which Ms. Holman-Harries, who was present, stated that self-audits of compensation were conducted "under attorney-client privilege." Oracle's email on October 29, 2015 also refers to a later email Oracle sent to Hea Jung Atkins on June 2, 2015, which refers back to the same interview of Lisa Gordon and also states that pay audits are carried out by outside counsel. Citation: Holman-Harries Decl., Ex. R, Email from Shauna Holman-Harries to Hoan Long dated 10/29/15, question 1 and response, ORACLE_HQCA_00000 2235; Holman-Harries Decl., Ex. M, Email from Shauna Holman-Harries to Hea Jung Atkins, dated 6/2/15; DOL000001212; Ex. 41, sworn statement of Lisa Gordon, Oracle Director of Compensation dated	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	2/11/15, at 13; OFCCP SUF 211. 6) Oracle was not continuing to work on OFCCP's request for educational data, resumes, and prior salary because it had claimed that such information was not already in its databases and therefore was too burdensome to recover. Oracle's response in Ms. Holman- Harries's October 29, 2015 email to Question 2 responds to OFCCP's request for data on "Names of school attended" and "Education degree earned" for the 2014 snapshot. Oracle responded "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." Oracle gave not indication in the email that it would attempt to compile this information. Citation: Holman-Harries Decl., Ex. R, Email from Shauna Holman-Harries to Hoan Long dated 10/29/15, question 2 and response, ORACLE_HQCA_00000 2235. 7) Oracle was not continuing to work on OFCCP's request for employee personnel actions containing job and salary history information for all employees because it claimed it was extremely burdensome. Citation: Oracle Material Fact 110; Holman-Harries Decl., Ex. R,	

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	Email from Shauna Holman-Harries to Hoan Long dated 10/29/15, question 4 and response, ORACLE_HQCA_00000 2235.	

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**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
108. OFCCP sent Oracle a request for data showing personnel actions providing job and salary information on or around February 11, 2015. **Supporting Evidence:** Holman-Harries Decl., ¶ 10, Ex. I.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
109. Subsequent requests from OFCCP, including on April 27, 2015, also sought data showing personnel actions providing job and salary information. **Supporting Evidence:** Holman-Harries Decl., ¶¶ 11, 13, Exs. J, K.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
110. On June 16, 2015, Oracle produced a compensation spreadsheet containing	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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. **Supporting Evidence:** 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." **Supporting Evidence:** Holman-Harries Decl., ¶ 21, Ex. R.	**Undisputed** However, OFCCP disputes that the request was "extremely burdensome." As the request number 4 states, all of the information OFCCP requested here had been initially requested at least six months previously in April 27, 2015. Had Oracle timely begun gathering the information it would not have been burdensome to produce in October 2015. Citation: Holman-Harries Decl., Ex. R, Email from Shauna Holman-Harries to Hoan Long dated 10/29/15, question 4, ORACLE_HQCA_00000 2236. Holman-Harries Decl., Ex. I, Email from Brian Mickel to Shauna Holman-Harries, dated 2/10/15, ORACLE_HQCA_00000 00597-599; Holman-Harries Decl., Ex. K, Letter from Brian Mickel to Shauna Holman-Harries, dated 4/27/15,	**OFCCP concedes this fact is undisputed and material.** OFCCP concedes this fact; however, Oracle notes that OFCCP's additional response does not render this fact in dispute. OFCCP's response conflates Oracle's burden and OFCCP's arbitrary deadlines for demanding Oracle gather and produce mountains of information that OFCCP chose not to review while onsite. Said differently, even if Ms. Holman-Harries' team could have produced the requested information by October 2015, that does not change the fact that gathering such information was "extremely burdensome and time consuming" for her team.

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
	ORACLE_HQCA_00000 00597-599.	
112. OFCCP did not respond to the question posed by Oracle on October 29, 2015. **Supporting Evidence:** Holman-Harries Decl., ¶ 21.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
113. At no point did Oracle refuse to produce to OFCCP data showing personnel actions providing job and history information. **Supporting Evidence:** Holman-Harries Decl., ¶ 29; Siniscalco Decl., ¶ 7.	**Disputed.** 1) OFCCP disputes Oracle's Material Fact 113 because OFCCP requested the data showing personnel actions in February 2015, and Oracle did not produce data providing job history and salary history during the compliance review [cite SHH PMK 109:07-116:14]. To the extent Oracle argues that it did not "refuse" to the produce the job history and salary history data even while it admittedly did not produce it, OFCCP disagrees. OFCCP does not interpret the term "refuse" to require an express statement "I refuse." *See* "Refuse," Merriam Webster, def. 2 ("[T]o *show* or express unwillingness to do or comply with. Ex. Refused to answer the question.") (emphasis added). Citation: OEx. 31, Holman-Harries PMK Dep. 109:07-116:14.	**OFCCP's evidence fails to create a material dispute of fact.** 1) Neither OFCCP's response nor its evidence rebut this fact. The cited testimony confirms Oracle requested OFCCP's basis for the request to which OFCCP did not respond.
114. At the time when OFCCP issued the NOV, Oracle was still working on collecting data responsive to OFCCP's requests.	**Disputed.** 1) OFCCP disputes Oracle's Material Fact 114 because Ms. Holman-Harries testified in her deposition on August 1, 2019 that Oracle was waiting to give OFCCP job history and salary history data	**OFCCP's evidence fails to create a material dispute of fact.** 1) Neither OFCCP's response nor its evidence rebut this fact. In the cited testimony, OFCCP never asked if Oracle was working on collecting data responsive to

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Supporting Evidence: Holman-Harries Decl., ¶ 3.	until OFCCP allegedly responded to certain questions regarding relevancy. Citation: OEx. 31, Holman-Harries PMK Dep. 109:07-116:14.	OFCCP's requests in spite of Oracle's request that OFCCP explain its basis for requesting the additional compensation information.

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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
115. On November 19, 2014, OFCCP requested from Oracle "[a]ll self- audits/pay equity studies." **Supporting Evidence:** Holman-Harries Decl., ¶ 5, Ex. D.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
116. Oracle did not respond to OFCCP's November 19, 2014 request because it deems its internal pay equity analyses to be privileged. **Supporting Evidence:** Siniscalco Decl., ¶ 4, Ex. B (August 25, 2017 Siniscalco Declaration, ¶¶ 7(e), 10-11, and Ex. A); Waggoner Decl., ¶ 37.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
117. On April 27, 2015, OFCCP asked Oracle to provide the "[d]ates of any internal pay equity analysis conducted	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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." **Supporting Evidence:** 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 [sic] process, and an integral part of Oracle's evaluation of its compensation systems." **Supporting Evidence:** Holman-Harries Decl., ¶ 15, Ex. M.	**Disputed.** 1) OFCCP disputes Oracle's Material Fact 118 because Oracle did not explain to OFCCP what it does to comply with 41 C.F.R. § 60- 2.17 to evaluate its compensation systems in its vaguely worded June 2, 2015 email. Ms. Holman-Harries' email references a separate interview with Lisa Gordon and describes Oracle's position regarding how it allegedly sets employee compensation. Citation: Holman-Harries Decl. ¶ 15, Ex. M.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response does not render this fact in dispute. Whether OFCCP agrees that Oracle complied with 41 C.F.R. § 60-2.17 or found the explanation by Ms. Holman-Harries "vague" is immaterial, and does not refute that Ms. Holman-Harries explained to OFCCP what Oracle does to comply with 60-2.17.
119. On June 2, 2015, Ms. Holman-Harries also explained to OFCCP that "[w]ith regard to pay audits to assess legal compliance with	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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." **Supporting Evidence:** 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. **Supporting Evidence:** Siniscalco Decl., ¶ 3, Ex. B; Connell Decl., Ex. E (6/26/19 Ratliff PMK Dep. 69:11-73:25, Ex. 14).	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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. **Supporting Evidence:** Holman-Harries Decl.,	**Disputed.** 1) OFCCP disputes Oracle's Material Fact 121 because during the compliance review Oracle did refuse to produce non-privileged data or documents regarding its activities to comply with 41 C.F.R. § 60-2.17. 2) For example, in an April 27, 2015 letter OFCCP sent to Ms. Holman-Harries, it requested "dates of any internal pay equity analysis conducted during the past three years,	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's conclusory response does not render this fact in dispute and is not supported by evidence. 2) OFCCP's response and evidence does not render this fact in dispute. 41 C.F.R. § 60-2.17 does not require "pay equity analyses" and Oracle has repeatedly informed OFCCP that the privileged analyses it did

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
¶ 29; Siniscalco Decl., ¶ 7.	as required under 60-2.17 [and] [f]or each analysis, include [] data set used for the analysis." Ms. Holman-Harries' did not produce this requested data and in response she referred OFCCP to an interviews with Lisa Gordon. Citation: OEx. 5 Holman-Harries May Dep. 204:216-205:01, 208:14-208:25, 270:19-272:21 OEx. 5 Holman-Harries May Dep. 279:17-281:-4; Holman-Harries Decl., ¶ 21, Ex. R, Email from Shauna Holman Harries to Hoan Long, dated October 29, 2015, ORACLE_HQCA_00000 00695.	conduct were not conducted pursuant to the regulation. *See, e.g.*, Oracle's Opp'n to OFCCP's Mot. Compel re Compensation Analyses.

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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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")." **Supporting Evidence:** Holman-Harries Decl., ¶ 2, Ex. A.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
123. Ms. Holman-Harries sent OFCCP	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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. **Supporting Evidence:** 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. **Supporting Evidence:** Holman-Harries Decl., ¶ 29; Siniscalco Decl., ¶ 7.	**Disputed.** 1) OFCCP disputes Oracle's Material Fact 124 because Oracle has refused to produce to OFCCP data or documents as part of its AAP. Citation: OEx. 41, Letter from John Giansello to Charles Song re AAP production, dated 05/21/2019, at 5 (noting in response to RFP 80 that Oracle does not intend to produce any further AAP documents to OFCCP). OEx. 47, Email from OFCCP to Erin Connell re production of AAPs for HQCA, dated 03/11/19 (Oracle refused to produce AAPs for HQCA, responded with boilerplate objections and denying that 41 C.F.R. §§ 60- 2.10(b) & (c) require Oracle to maintain AAPs.)	**OFCCP's evidence fails to create a material dispute of fact.** 1) This fact is related to OFCCP's allegation that Oracle refused to produce such materials during the audit, but OFCCP's evidence only illustrates that during this litigation Oracle did not produce AAP materials related to hiring because the hiring claims were resolved.
125. OFCCP admits that it has no documents indicating there were any further	**Disputed.** 1) First, as discussed above, OFCCP requested Oracle's AAP	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP concedes this fact by

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
requests during the compliance evaluation period to Oracle for AAP documentation. **Supporting Evidence:** 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.	documentation as part of its initial document request at the start of its compliance review. 2) Second, regarding additional written requests for AAP documentation, the evidence Oracle relies on does not support Oracle's allegations that the OFCCP has admitted to not making further requests in writing. In the deposition testimony cited, OFCCP District Director Sean Ratliff states that he could not recall seeing a written request. District Director Ratliff never stated any admissions that the OFCCP never asked for written documents. His testimony clearly states that one of the OFCCP investigators working on the case could have issued a written request for further AAP documentation, but that he had not discussed this with them or personally seen a written request. Citation: Ex E to Siniscalco Decl., Ratliff PMK Dep., 21:14-25:9; 45:9-47:1.	not presenting any documentary evidence to prove there were any further requests during the compliance evaluation period to Oracle for AAP documentation. Additionally, Mr. Ratliff was OFCCP's chosen 30(b)(6) witnesses testifying "as OFCCP" on this issue, and OFCCP's attempt to distance itself from his testimony fails to create a material dispute.

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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
an onsite or offsite review, the CO must issue an SCN or proceed directly to an enforcement recommendation." **Supporting Evidence:** OFCCP Federal Contract Compliance Manual, § 8B02(a) ("Denial of Access").		
127. OFCCP never brought a right of access case against Oracle before filing the present enforcement action. **Supporting Evidence:** Holman-Harries Decl., ¶ 30.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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. **Supporting Evidence:** SAC, ¶¶ 43-51.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
129. OFCCP and	**Undisputed.**	**OFCCP concedes this fact is**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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. **Supporting Evidence:** April 30, 2019 Order Adopting Consent Findings Regarding College Recruiting Program Allegations.		**undisputed and material.**

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

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
Oracle incorporates herein Uncontested Fact 125.		
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. **Supporting Evidence:** Siniscalco Decl., ¶ 5.	**Disputed.** Oracle still, to date, has not provided the all of the data that would have been encompassed in the 2013 compensation snapshot that had been requested. 1) Citation: OEx. 37, Email from Laura Bremer to Erin Connell re visa data, dated 10/11/17 OEx. 39, Letter from John Giansello to Norman Garcia, dated 3/14/19 at 4-5; Bremer Decl. ¶ 42.	**OFCCP's evidence fails to create a material dispute of fact.** 1) As Mr. Giansello's 3/15/19 letter (OEx. 39) makes clear, the audit was much broader in scope than the claims OFCCP brought in this litigation. So just because certain data was included for convenience in the 2014 snapshot spreadsheet during the audit, does not mean that data pertains to compensation. By its own terms, SAC ¶ 44(a) is limited to "compensation data for 2013." Given that OFCCP's only quibble with this fact is that Oracle has not produced data in this litigation that

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
		is unrelated to OFCCP's allegation that Oracle refused to produce "compensation data for 2013" during the audit, OFCCP has failed to rebut this fact. Additionally, to the extent OFCCP is complaining Oracle did not produce 2013 compensation data in litigation for job functions outside the three at issue in the litigation, OFCCP is not entitled to that information because it is not relevant to the legal claims OFCCP has asserted, so OFCCP can hardly be heard to argue it is somehow entitled to that information or has been harmed by not receiving it.
131. OFCCP admits that the compensation data referenced in SAC ¶ 44(a) were produced in this litigation. **Supporting Evidence:** Siniscalco Decl., ¶ 3, Ex. B; Connell Decl., Ex. E (6/26/19 Ratliff PMK Dep., 77:6-15, Ex. 14).	**Disputed.** 1) Oracle still, to date, has not provided the all of the data that would have been encompassed in the 2013 compensation snapshot that had been requested. Citation: OEx. 37, Email from Laura Bremer to Erin Connell re visa data, dated 10/11/17 OEx. 39, Letter from John Giansello to Norman Garcia, dated 3/14/19 at 4-5; OEx. 31, Holman-Harries 30b6 Dep. 74:8-76:24 (discussing visa data as part of compensation report, Exhibit 126) Bremer Decl. ¶ 42.	**OFCCP's evidence fails to create a material dispute of fact.** 1) As Mr. Giansello's 3/15/19 letter (OEx. 39) makes clear, the audit was much broader in scope than the claims OFCCP brought in this litigation. So just because certain data was included for convenience in the 2014 snapshot spreadsheet during the audit, does not mean that data pertains to compensation. By its own terms, SAC ¶ 44(a) is limited to "compensation data for 2013." Given that OFCCP's only quibble with this fact is that Oracle has not produced data in this litigation that is unrelated to OFCCP's allegation that Oracle refused to produce "compensation data for 2013" during the audit, OFCCP has failed to rebut this fact. Additionally, to the extent OFCCP is complaining Oracle did not produce 2013 compensation data

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
		in litigation for job functions outside the three at issue in the litigation, OFCCP is not entitled to that information because it is not relevant to the legal claims OFCCP has asserted, so OFCCP can hardly be heard to argue it is somehow entitled to that information or has been harmed by not receiving it.
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. **Supporting Evidence:** Siniscalco Decl., ¶ 6.	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**
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. **Supporting Evidence:** Holman-Harries Decl., ¶ 15, Ex. M; Siniscalco Decl., ¶¶ 3, Ex. B (August 25, 2017 Siniscalco Decl., ¶¶	**Undisputed.**	**OFCCP concedes this fact is undisputed and material.**

Oracle's Uncontested Material Facts	OFCCP's Response	Oracle's Reply
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. **Supporting Evidence:** Siniscalco Decl., ¶ 6.	**Disputed.** 1) OFCCP disputes Oracle's Material Fact 134 because Oracle did not provide to OFCCP any pay equity analyses conducted pursuant to 41 C.F.R. § 60-2.17 during the compliance review. Citation: OEx. 5, Holman-Harries May Dep. 279:17-281:4; Holman-Harries Decl., ¶ 21, Ex. R, Email from Shauna Holman Harries to Hoan Long, dated October 29, 2015, ORACLE_HQCA_00000 00695. 2) OFCCP also disputes that Oracle complied with 41 C.F.R. § 60- 2.17. Citation: OEx. 5 Holman Harries May Dep. 243:9-244:3, 249:11-18, 252:5-252:8, 255:2-269:6.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP's response does not render this fact in dispute. 41 C.F.R. § 60-2.17 does not require "pay equity analyses" and Oracle has repeatedly informed OFCCP that the privileged analyses it did conduct were not conducted pursuant to the regulation. *See, e.g.*, Oracle's Opp'n to OFCCP's Mot. Compel re Compensation Analyses. More importantly, this fact as stated has nothing to do with what Oracle produced during the audit. It relates to what Oracle produced in litigation, and therefore OFCCP's attempt to dispute it fails. 2) OFCCP's opinion as to Oracle's compliance with 41 C.F.R. § 60-2.17 is to whether Oracle produced documents to demonstrate what it did to comply with 41 C.F.R. § 60-2.17.
135. Oracle has produced in this litigation the same AAP documents it provided to OFCCP during the underlying HQCA audit. **Supporting Evidence:** Siniscalco Decl., ¶ 6.	**Disputed.** 1) OFCCP disputes Oracle's Material Fact 135 because Mr. Siniscalco's declaration does not support Fact 135 as stated—it supports only the fact that Oracle produced the same AAP documents from year 2014. Citation: Siniscalco Decl., ¶ 6.	**OFCCP's evidence fails to create a material dispute of fact.** 1) OFCCP mischaracterizes the Siniscalco Declaration which clearly states, "Oracle also has produced in this litigation the same documentation of Oracle's 2014 Executive Order 11246 Affirmative Action Program ("AAP") ***that was provided to OFCCP during the audit***." Siniscalco Decl., ¶ 6. In any event, OFCCP's quibbling over this fact does not create a material dispute for trial.

November 8, 2019

Respectfully submitted,

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EXHIBIT B

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

Pursuant to 41 C.F.R. § 60-30.23 and Federal Rule of Civil Procedure 56, Defendant Oracle America, Inc. ("Oracle") hereby responds to OFCCP's Statement of Additional Uncontested Facts in Opposition to Oracle's Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment ("Oracle's Motion").

As the content of Oracle's responses below confirm, these additional uncontested material facts cited by OFCCP are either immaterial or are demonstrably not supported by the evidence to which OFCCP cites. None of OFCCP's additional 57 facts create a material dispute of fact. Between the below additional facts and the 200-plus pages of responses to Oracle's material facts—to which Oracle responds separately—OFCCP has made *many* attempts at conjuring a material dispute of fact. It fails in each instance and Oracle's Motion should be granted.

EVIDENCE IN SUPPORT OF ORACLE'S STATEMENT OF DISPUTED FACTS

The following individuals provided testimony on which Oracle relies in support of its Motion for Summary Judgment and whose declarations also are cited in support of Oracle's Statement of Disputed Facts:

- **Farouk Abushaban**. Mr. Abushaban is a Program Manager 5 in the Product Development job function. ("Abushaban Decl.").
- **Erin Connell**. Ms. Connell is one of Oracle's lawyers and has attached to her declaration in support of Oracle's motion for summary judgment, or, in the alternative partial summary judgment certain exhibits cited in this Response. ("Connell MSJ Decl."). Ms. Connell also submits a declaration concurrently with this response that attaches certain exhibits cited in this Response ("Connell Reply MSJ Decl.").
- **Shauna Holman-Harries**. Ms. Holman-Harries is Senior Director Diversity Compliance and has attached to her declaration certain exhibits cited in this Response. ("Holman-Harries Decl.").

- **Rita Ousterhout**. Ms. Ousterhout is a Software Development Senior Director in the Product Development job function. ("Ousterhout Decl.")
- **Gary Siniscalco**. Mr. Siniscalco is one of Oracle's lawyers and has attached to his declaration in support of Oracle's motion for summary judgment or, in the alternative partial summary judgement certain exhibits cited in this Response. ("Siniscalco Decl.")
- **Sachin Shah**. Mr. Shah is a Technical Account Manager Sr. Director in the Support job function. ("Shah Decl.").
- **Nachiketa Yakkundi**. Mr. Yakkundi is a Product Support Senior Manager in the Support job function. ("Yakkundi Decl.")

A. Additional Undisputed Facts Regarding Oracle's Compensation Policies

Fact #	**OFCCP's Undisputed Material Facts**	**Supporting Evidence**	**Oracle's Response**
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.	**Undisputed.**
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	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.	**Undisputed, but argumentative.** OFCCP does not provide evidence to support this assertion to the extent it suggests that the "internal audit requirement" at 41 C.F.R. § 60-2.17(d) requires "centralized compensation audits." The text of the

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	requirement of 41 CFR § 60-2.17.		regulation does not support this implication. Nor does the text of 41 C.F.R § 60-2.17(b)(3) support such a requirement. As the Court already recognized with respect to § 2.17(b)(3), "the regulation is not precise as to what form the evaluation of compensation must take." 9/19/2019 Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Oracle's Compensation Analyses at 13. Additionally, much of the evidence on which OFCCP relies for this assertion does not support it. The evidence OFCCP cites at 279:17-281:4 is about whether Ms. Holman-Harries recognized an unrelated letter that OFCCP introduced as an exhibit subsequent to the other testimony on which it relies for this assertion. The evidence OFCCP cites at 252:5-252:8 also does not support this assertion. There, Ms. Holman-Harries testified that her group does not provide training to managers on pay decisions. Moreover, this "fact" is argumentative as phrased. OFCCP cites only to Ms. Holman-Harries' deposition testimony for this assertion. But Ms. Holman-Harries was not speaking as a

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			representative for Oracle in this deposition. Therefore, OFCCP cannot user her testimony to support its assertion that "Oracle admits" anything. In any event, this "fact" ultimately is not material, as OFCCP has not brought a claim alleging Oracle failed to substantively comply with § 2.17.
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.	**OFCCP has failed to establish this fact based on the evidence and argumentative.** As written, this is not a "fact" but an argument. Nor does the evidence OFCCP cites support the assertion. First, OFCCP cites only to Ms. Holman-Harries' deposition testimony for this assertion. But Ms. Holman-Harries was not speaking as a representative for Oracle in this deposition. Therefore, OFCCP cannot user her testimony to support its assertion that "Oracle admits" anything. Additionally, Ms. Holman-Harries' testimony was not about what Oracle "allegedly" does, but what it actually does. The evidence OFCCP cites at 279:17-281:4 is about whether Ms. Holman-Harries recognized an unrelated letter

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			that OFCCP introduced as an exhibit subsequent to the other testimony on which it relies. OFCCP also fails to cite to the portion of that back and forth that includes Ms. Holman-Harries's answer. The evidence OFCCP cites at 252:5-252:8 also does not support this assertion. There, Ms. Holman-Harries testified that her group does not provide training to managers on pay decisions. Additionally, OFCCP does not define "Affirmative Action internal audit requirement" and it is not clear to what it is referring. The testimony cited at 243:9-244:3 and at 249:11-18 are both specific to Oracle's compliance with 41 C.F.R § 60-2.17(b)(3). This section of the regulation, however, does not explicitly state that it requires an audit and, as the Court already recognized, "the regulation is not precise as to what form the evaluation of compensation must take." 9/19/2019 Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Oracle's Compensation Analyses at 13. Finally, the evidence OFCCP cites at 255:2-269:9, Ex. 29 does not support this fact. There, Ms. Holman-Harries testified that Oracle complies

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			with § 2.17(b)(3) by having managers conduct analyses when they make "pay decisions" generally, not when they make "salary increase recommendations." 255:2-8. In any event, this "fact" ultimately is not material, as OFCCP has not brought a claim alleging Oracle failed to substantively comply with § 2.17.

B. Additional Undisputed Facts Regarding the Issuance of the NOV

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
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.	**Undisputed.** The NOV speaks for itself; however, it does not constitute evidence of OFCCP's underlying analyses – only its purported high level results.
5.	Neither prior to the issuance of the NOV, nor later, during the parties' conciliation efforts, did Oracle ever suggest any	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	**Undisputed.** Oracle does not dispute this fact. Indeed, this fact supports Oracle's position that the flaw in OFCCP's analyses was not simply that it was missing a variable or two. This is not a "missing variable" case; rather

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	alternative variable to better account for "all the skills, duties, or experience associated with a particular position" in a regression analysis.	from Gary Siniscalco to OFCCP, dated May 25, 2016, at p. 3. ORACLE_HQCA_0000002094 –2115 Ex. 66, Show Cause Notice at 2, attached to Garcia Decl. in Vol. 2 Suhr Decl. ¶21, Ex. N, Letter from Hea Jung Atkins to Oracle, dated September 9, 2016, at p. 2; 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; Suhr Decl. ¶31, Ex. T, Letter from Erin Connell to OFCCP, dated October 31, 2016, at pp. 6-12. Suhr Decl. ¶32, Ex. U, Letter from Janette Wipper to Oracle, dated December 9, 2016.	the flaw is that OFCCP's analyses in the NOV failed to compare similarly situated employees.
6.	OFCCP identified the data fields it included in its model by using the same titles Oracle used for the data fields in	Ex. 61, NOV, Ex. A, DOL000000952–53 in Vol. 2 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	**Undisputed that OFCCP identified data fields it purported to use in the NOV model by using the same title as Oracle data fields, but immaterial.**

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	the 2014 snapshot.	fields in 2014 compensation snapshot, which included the other variables listed in the NOV--annual salary, gender, race, fulltime/part time status, exempt status, global career level, job specialty and job title); 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.	**OFCCP has failed to establish the NOV informed Oracle of the method in which these factors were applied in the "regression and other analysis" OFCCP allegedly conducted in reaching the results summarized in the NOV.** Oracle does not dispute that OFCCP used data fields in its NOV model with the same title as the data fields Oracle provided to OFCCP. However, OFCCP does not establish this fact with respect to ***all*** the data fields identified in the NOV, which include "work experience at Oracle" and "work experience prior to Oracle." Neither of these are the title of data fields in the data Oracle provided to OFCCP as part of the 2014 snapshot. *See*, headings included in Ex. 68 (excerpt of 2014 compensation snapshot). Moreover, on its face the NOV does not provide Oracle enough information to replicate the model OFCCP used, nor understand the rationale for choosing to structure it the way OFCCP did.
7.	Oracle did not supply OFCCP with 2013 compensation data during the compliance	Ex. 61, NOV at 3, n. 3; *id*. at Attachment A, n.1, in Vol. 2.	**OFCCP has failed to establish this fact based on the evidence and argumentative.**

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	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.		First, as written, this is not a fact, but is argument. Additionally, OFCCP cites no evidence to supports its characterization of the 2014 compensation data as "limited." In fact, in discussing the 2014 compensation snapshot data with Ms. Holman-Harries, Ms. Bremer characterized the Excel spreadsheet Oracle provided as "voluminous" and containing a "large number of columns." OEx. 80, Holman-Harries 30(b)(6) Dep. Tr. 80:19-24. Nor does the evidence OFCCP cites establish that it considered "Oracle's compensation policies, and the evidence OFCCP uncovered in its interviews with Oracle's management, Human Resources, and non-management employees." Instead, the footnotes OFCCP cites in the NOV simply establish that Oracle only provided 2014 data. They are silent with respect to the other documents on which OFCCP relied. Finally, OFCCP offers no evidence to support the characterization that because Oracle did not provide 2013 data, "OFCCP continued with its compliance review." Moreover, it is belied by the fact that the spreadsheet provided to OFCCP included

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			2013 bonus and performance ratings. *See* Ex. 68 at 15-19. Again, this is argument, not a fact.
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; *id*. at Attachment A, in Vol. 2.	**Undisputed that the NOV alleges finding significant compensation disparities for women in Product Development, Information Technology, and Support Roles, and for Asians and African-Americans in Product Development roles, but immaterial.** **OFCCP has failed to establish that the "regression and other analysis" allegedly performed by OFCCP was meaningful, however, including by comparing similarly situated employees.** The NOV speaks for itself; however, it does not constitute evidence of OFCCP's underlying analyses – only its purported high level results. Indeed, that the NOV, with its generic conclusions, is the only evidence OFCCP can provide to show how it explained its "regression and other analysis" to Oracle during the conciliation process is evidence it failed to engage in meaningful conciliation efforts.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
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.	**Undisputed that the NOV alleges these findings, but immaterial.** **OFCCP has failed to establish that the "regression and other analysis" allegedly performed by OFFCP was meaningful, however, including by comparing similarly situated employees.** The NOV speaks for itself; however, it does not constitute evidence of OFCCP's underlying analyses – only its purported high level results. Indeed, that the NOV, with its generic conclusions, is the only evidence OFCCP can provide to show how it explained its "regression and other analysis" to Oracle during the conciliation process is evidence it failed to engage in meaningful conciliation efforts.
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	Ex. 61, NOV, in Vol. 2.	**Undisputed that OFCCP identified *some* factors from the NOV model used the same title as Oracle data fields, but immaterial.** Oracle does not dispute that OFCCP used factors in its NOV model with the same title as the data fields Oracle provided to OFCCP. However, OFCCP does not establish this fact with respect to all the factors identified in the NOV, which include "work experience at

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	(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.		Oracle" and "work experience prior to Oracle." Neither of these are the title of data fields in the data Oracle provided to OFCCP as part of the 2014 snapshot. *See*, headings included in Ex. 68 (excerpt of 2014 compensation snapshot). The NOV speaks for itself; however, it does not constitute evidence of OFCCP's underlying analyses – only its purported high level results. Indeed, that the NOV, with its generic conclusions, is the only evidence OFCCP can provide to show how it explained its "regression and other analysis" to Oracle during the conciliation process is evidence it failed to engage in meaningful conciliation efforts.
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 included the time periods during which it occurred, the job functions involved, and that OFCCP's	Ex. 61, NOV, in Vol. 2; 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.	**Undisputed that the Order to Show Cause stated that OFCCP concluded Oracle engaged in systemic discrimination in recruiting, hiring and compensation and attached the NOV, but immaterial.** The Order to Show Cause does not support the assertion that "OFCCP's findings were supported by statistical as well as other evidence." In any event, the Order to Show Cause and the NOV speak for themselves and do not

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	findings were supported by statistical as well as other evidence.		constitute evidence of OFCCP's analysis. Indeed, that the NOV, with its generic conclusions, is the only evidence OFCCP can provide to show how it explained its "regression and other analysis" to Oracle during the conciliation process is evidence it failed to engage in meaningful conciliation efforts.
12.	The NOV considered the compensation of employees in "similar roles."	Ex. 61, NOV at 3-6, in Vol. 2.	**Undisputed that the NOV alleges OFCCP found pay disparities among employees in "similar roles," but immaterial.** **OFCCP has failed to establish that the "regression and other analysis" OFCCP refers to in the NOV actually compared similarly situated employees.** The NOV speaks for itself; however, it does not constitute evidence of OFCCP's underlying analyses – only its purported high level results.
13.	Oracle's compliance attorney represents that he is "extremely well-versed" in "OFCCP's regulations" and	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.	**Undisputed, but incomplete.** Paragraph 6 states "I believe it is fair to say that I am extremely well-versed in Title VII law, the law of pay discrimination, including OFCCP's pay directive 307 issued in 2013, its prior pay discrimination standards and

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	"OFCCP's audit practices."		voluntary guidelines for self-evaluations issued in 2006, OFCCP's regulations, OFCCP's Federal Contract Compliance Manual (FCCM), and in OFCCP audit practices and polices throughout the country."
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 nn.17-18 in Vol. 2	**OFCCP has failed to establish this fact based on the evidence and argumentative.** The cited evidence only confirms that Oracle understood the NOV alleges OFCCP considered certain factors in its "regression and other analysis," some of which were not data fields within documents provided by Oracle during the audit. The NOV speaks for itself; however, it does not constitute evidence of OFCCP's underlying analyses – only its purported high level results. Indeed, that the NOV, with its generic conclusions, is the only evidence OFCCP can provide to show how it explained its "regression and other analysis" to Oracle during the conciliation process is evidence it failed to engage in meaningful conciliation efforts.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
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.	**OFCCP has failed to establish this fact based on the evidence and argumentative.** None of the evidence cited by OFCCP supports this "fact."

C. Undisputed Facts Regarding Conciliation

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
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; Suhr Decl. ¶21 & Ex. N; Suhr Decl. ¶22 & Ex. O.	**Undisputed but incomplete.** OFCCP's assertion is incomplete. In 2016, Oracle repeatedly explained to OFCCP that, while Oracle was prepared to engage in meaningful and good faith conciliation, it believed a "face-to-face meeting at this stage would likely be *premature*" because OFCCP refused to answer Oracle's questions or provide information that would allow Oracle to understand the statistical analyses in the NOV. *See* Suhr Decl., Ex. F at 1, 2, 5 (emphasis added); *see also* Suhr Decl., Ex. I (repeating that a face-to-face meeting would be premature).

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
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.	**Undisputed.** OFCCP's March 29, 2019 communication also contained a false recitation of Oracle and OFCCP's communications to date. To offer just one example, OFCCP wrote that there was an "exit conference" between OFCP and Neil Bourque. Suhr Decl., Ex. E at 1. However, there was no exit conference. *See* Suhr Decl., Ex. F at 2; *see also*, Holman-Harries Decl., Ex. O.
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;	**Undisputed that Oracle sent OFCCP a letter on April 11, 2016.** **OFCCP fails to establish that "OFCCP believed that the questions were irrelevant and sought privileged information and were an attempt to delay conciliation."** On April 11, 2016, Oracle sent OFCCP a letter explaining that while Oracle was prepared to engage in meaningful and good faith conciliation, it believed a "face-to-face meeting at this stage would likely be *premature*" because OFCCP refused to answer Oracle's questions or provide information that would allow

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			Oracle to understand the statistical analyses in the NOV. *See* Suhr Decl., Ex. F at 1, 2, 5 (emphasis added). Oracle also appended to that letter the questions it had about OFCCP's processes, analyses, and determinations. Oracle explained that it posed these questions to "be better able to understand [OFCCP's] allegations and findings." *Id.*, at 4. OFCCP offers no evidence to support the second sentence of this assertion and therefore fails to establish it as a fact.
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.	**Undisputed that OFCCP sent Oracle a letter on April 21, 2016.** **OFCCP fails to establish that the letter "respond[ed] to [Oracle's] 57 questions," that "OFCCP attempted to answer questions it believed to be relevant to conciliation," or that "OFCCP's response also provided information to Oracle about the relevant legal framework."** Oracle does not dispute that OFCCP sent Oracle a letter on April 21, 2016. That letter included non-substantive responses to some of the questions, either pointing Oracle back to the NOV, to the data Oracle provided, or to

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			OFCCP's earlier letters. Suhr Decl., Ex. H at App'x A, pgs. 1-7. OFCCP flatly refused to respond to many of Oracle's questions. *Id.*, at 3 (refusing to respond to questions 12-24, 28-31). Therefore, OFCCP has failed to establish that its April 21 letter responded to Oracle's 57 questions. Additionally, although Jane Suhr wrote in her declaration that "OFCCP attempted to answer questions it believed to be relevant to conciliation," this is contradicted by the April 21 letter, which states that OFCCP would not answer questions it believed sought "privileged, or premature information." Additionally, although Ms. Suhr declares that "OFCCP's response also provided information to Oracle about the relevant legal framework," this is inaccurate. As exemplified by the back-and-forth between the parties, OFCCP's April 21 letter presents no more than what it *believes* to be the relevant legal framework. OFCCP therefore fails to establish this as a fact.
20.	On September 9, 2016, OFCCP sent a letter to Oracle. In that letter, OFCCP wrote: "While Oracle declares	Suhr Dec. ¶21 & Ex. N at p. 1.	**Undisputed.** The letter on which OFCCP relies speaks for itself.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	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."		
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	Suhr ¶24 & Ex. Q.	**Undisputed that OFCCP sent a letter dated September 23, 2016 and this letter states "you did not provide any evidence demonstrating whether any factor in the 'range of factors' would actually change the statistical results in favor of Oracle."** **OFCCP fails to establish the remainder of this "fact", which is merely argument.** This "fact" is replete with unsupported and argumentative characterizations and

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	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."		representations about OFCCP's state of mind. Therefore, with the exception of the sentence included in the September 23 letter that "you did not provide any evidence demonstrating whether any factor in the 'range of factors' would actually change the statistical results in favor of Oracle," OFCCP has failed to establish its assertions and arguments as fact.
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	Ex. 71, Consolidated Notes of Oracle employees Charles Nyakundi and Shauna Holman-Harries (Consolidated Notes), at p. 5, ORACLE_HQCA_0000607323 in Vol. 2.	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP's "fact" is nothing more than an argument based on its characterization of the document. The notes speak for themselves and OFCCP has failed to establish this as a "fact." In any event, it is immaterial.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	was driven by steering employees into lower-paying job assignments.		
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. *See also* 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.	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP appears to be relying on Ms. Suhr's three-year old recollections as reflected in her declaration. However, her declaration does not state that Oracle's counsel "continued to advocate for comparisons of 'cohorts.'" Instead, it merely says "Ms. Wipper told Oracle that OFCCP would not accept a cohort analysis in response to its statistical findings." Suhr Decl., ¶ 25. Ms. Suhr's three-year old recollection of what Ms. Wipper said does not establish what Oracle's counsel "advocate[d] for." Additionally, to the extent OFCCP is relying on Exhibit 71, the document speaks for itself and OFCCP's characterization is incomplete. The only time, as reflected in Exhibit 71, that Oracle's counsel uses the word "cohorts" is on page 4, where Mr. Siniscalco stated "We are saying that a different [statistical analysis] needs to be done and we need to be able to look at cohorts and can't draw systemic conclusions because

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			he jobs are different . . . . Your analysis does not show the differences between jobs. Asking about jobs was NEVER DONE IN THE INVESTIGATION. You never asked us to explain the differences. If you asked why there are differences then we should be having a different conversation." Ex. 71 at 4 (emphasis in original). Finally, OFCCP relies on Ms. Atkins's transcription of her hand-written notes for the proposition that Oracle's counsel indicated that "Oracle's workforce 'defies statistical analysis.'" But the notes on which OFCCP relies merely state "Defies statistical analysis. Got to be cohort based." *See* Atkins Decl., Ex. T at DOL000044161. The notes do not indicate if this Ms. Atkins's own musings or reflections or if this is a quote, let alone to whom the quote could be ascribed. Therefore, OFCCP has failed to establish that Oracle's counsel made this statement.
24.	On October 7, 2016, Mr. Siniscalco wrote to Ms. Wipper: "We all feel the conciliation meeting was very productive, and moved both sides	Suhr Decl. ¶30 & Ex. S.	**Undisputed but incomplete.** In his October 7, 2016 email, Mr. Siniscalco also wrote that "While we do believe that Oracle has been prejudiced in numerous ways as we have described over time, Ian's observations about putting aside

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	in a positive direction."		and moving beyond the contentious history were well-taken." He also wrote that "We're hopeful that we can continue to move forward positively and cooperatively."
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.	**Undisputed but incomplete.** Oracle does not dispute that it sent a letter on October 31, 2016. However, OFCCP's characterization of the contents of the letter is woefully incomplete. The letter laid out in detail Oracle's recruiting efforts, which were relevant to claims at issue at the time. It also gave a thorough explanation of why OFCCP's NOV analyses were not consistent with Title VII case law. To illustrate the ways in which OFCCP's analyses did not compare "similarly situated" employees and were therefore deficient, Oracle provided examples of individuals who hold the same job title but had materially different duties, responsibilities, and skill sets. Oracle also attached multiple performance reviews to demonstrate the variety in duties and responsibilities. These examples underscored the ways in which OFCCP's analyses were not appropriate or consistent with Oracle's business structure and job taxonomy.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
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.	**Undisputed but incomplete.** While OFCCP's December 9, 2016 letter included Title VII case law, OFCCP's letter also demonstrated OFCCP's repeatedly-used tactic in this litigation: deliberately mischaracterizing Oracle's position and then responding only to the mischaracterization and dismissing it. For example, OFCCP argues in the December 9, 2016 letter that "Title VII does not require, as Oracle suggests, a near identical set of duties among those employees being compared." Suhr Decl., Ex. U at 6. Oracle never made this argument. In fact, a review of Oracle's communications prior to the December 9, 2016 letter demonstrates that Oracle's position was that "Directive 307 underscores an expectation that OFCCP will conduct a rigorous investigation into the actual job duties, responsibility levels, and skills and qualifications" associated with the jobs being compared. *See*, Suhr Decl., Ex. T at 7. In its October 31, 2016 letter, Oracle explained why employees who hold the same job title "often have significantly different duties, responsibilities, and skill sets." *Id*., at 8.
27.	The parties engaged in 16 months of active	Decl. of Laura Bremer in support of OFCCP's opposition to Oracle's Mot. for Summ. J,	**Undisputed that the case was stayed from October 30, 2017**

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	mediation after OFCCP filed the complaint in this case.	dated 11/1/19 (Bremer Decl.) ¶2.	**to January 23, 2019 to facilitate mediation.** Oracle does not dispute that the case was stayed on October 30, 2017 to "facilitate" mediation. October 30, 2017 Order Staying Proceeding. The stay was lifted on January 23, 2019. January 11, 2019 Order Denying Defendant's Motions to Reconsider, to Dismiss, or to Hold in Abeyance. However, OFCCP's characterization of the mediation was "active" for the duration of sixteen months is argumentative and should be disregarded.

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

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
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	**Undisputed, but immaterial.** This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce educational data. Second Amended Complaint ("SAC") at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
29.	In an email dated December 11, 2014, Oracle told	Holman-Harries Dec., Ex. E, ORACLE_HQCA_0000000296	**Undisputed, but immaterial** Ms. Holman-Harries also explained that "Any collection

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	OFCCP that "we do not maintain education or work experience in our database."		of data of that type [i.e., education or work experience] would take months for us to acquire through research." Holman-Harries Decl., Ex. E, ORACLE_HQCA_0000000296. This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce educational data. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
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.	**Undisputed, but immaterial.** This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce educational data. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
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 Sinsicalco, dated 7/30/15, question 2, DOL000001128.	**Undisputed that OFCCP sent a letter in which it requested "Name of school attended" and "Educational degree earned" on July 30, 2015, but immaterial.** **OFCCP fails to establish that it requested this "same**

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			educational data on May 11, May 19, May 28." Oracle does not dispute that, in its July 30, 2015 letter, OFCCP listed "Name of school attended" and "Educational degree earned" in its requests. However, this letter does not establish that OFCCP had previously asked for this information on May 11, May 19 or May 28. The list in which these two requests appears is followed by a note that says "*Some* of this information was initially requested on 11/19/14 and 2/10/15. Most recent status requests were made on 4/27/15, 5/11/15, 5/19/15, and 5/28/15." Siniscalco Decl., Ex. A at 2 (emphasis added). But that note refers to a list of over a dozen requests and it does not specify which were part of the "some of this information" OFCCP previously requested. Therefore, OFCCP has failed to establish as a fact that OFCCP requested this "same educational data on May 11, May 19, May 28." This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce educational data. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
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.	**Undisputed, but immaterial.** This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce educational data. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
33.	In a November 2, 2015 letter from Robert Doles to Gary Siniscalco, OFCCP one	Holman-Harries Decl., Ex. K, DOL000001053	**Undisputed that Robert Doles sent a November 2, 2015 letter to Shauna Holman-Harries requesting "Name of school attended" and "Educational**

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	again requested this educational information.		**degree earned," but immaterial.** Although OFCCP's fact is incorrect about the recipient of November 2, 2015 letter, Oracle does not dispute that Robert Doles sent a November 2, 2015 letter to Shauna Holman-Harries requesting "Name of school attended" and "Educational degree earned." Holman-Harries Decl., Ex. S, DOL000001053. This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce educational data. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
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	**Undisputed but incomplete and immaterial.** Ms. Holman-Harries also testified with respect to OFCCP's requests for educational data that "We told the OFCCP that it would be burdensome, it would take time to provide it, and we did not get a response back with regard to that." OEx. 31, Holman-Harries PMK Dep. Tr. 46:2-5. This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce educational

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			data. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
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.	**Undisputed, but immaterial.** This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce educational data. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
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 deposition that in fact at least "some of the education" data was in Oracle's databases.	OEx. 31, Holman-Harries PMK Dep. 38:25-39:20. See supra AUF 29, 32.	**Undisputed but incomplete and mischaracterizes the testimony**. OFCCP's recounting of Ms. Holman-Harries's testimony is incomplete and mischaracterized. Ms. Holman-Harries explained at her deposition that "there are a few instances where there is education in the database from the personnel files" but "it's not in any one database." OEx. 31, Holman-Harries PMK Dep. Tr. 39:5-9. She also explained that "education may or may not be in the [electronic personnel] file. There maybe some of it recorded, but it was not recorded in any one particular

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			location at the time of the audit. Where I could typically look would be in the personnel file." *Id*., 46:10-47:4. Consistent with Oracle's representation that it does not maintain educational data in any one database, Ms. Holman-Harries also explained the burden on Oracle of finding educational information: "if a person has a IRC number, we would go – an in order to try and find [the data], we would go into the personnel file and see if there's a resume there. Or if the person was hired or brought on board with an IRC number and not part of an acquisition or not a long-term employee before they were used, we would have to find the IRC number that they were hired on and then go into the system and try and pull it from there." *Id*., 50:25-51:9. Ms. Holman-Harries also recognized during the deposition that OFCCP had misunderstood her testimony. OFCCP asked the question "So with response – with regard to education degree earned, Oracle was telling OFCCP that Oracle did not have that data in any of its databases?" Ms. Holman-Harries responded "Yes. And what we meant by that is – and I can see what your confusion is, but – is that we didn't have it in its entirety in all those databases

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			as I told you earlier." *Id.*, 145:23-146:11. This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce educational data. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
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.	**Undisputed, but immaterial.** Oracle does not dispute that, after the commencement of litigation, it produced some educational data. However, consistent with Ms. Holman-Harries' explanations during the audit period, it was burdensome and difficult for Oracle to gather this data. Additionally, to the extent OFCCP includes this fact in an attempt to discredit Oracle or imply its failure to produce "educational data in database form" during the audit demonstrates a refusal to produce by Oracle during the audit, it fails. OFCCP's pre-litigation requests are subject to a different standard than its litigation requests. As OFCCP knows, pre-litigation requests must meet a Fourth Amendment "reasonableness" requirement. *OFCCP v. Google, Inc.*, Case No. 2017-OFC-00004, July 14,

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			2017 at *21. In an OFCCP compliance evaluation, "reasonableness requires that the data OFCCP seeks is 'sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.'" *Id*. (citing *United Space Alliance, LLC v. Solis*, 824 F. Supp. 2d 68, 93 (D.D.C. 2011). When a request is of dubious or unsupported relevance and imposes a significant burden, it is not reasonable. *Id.*, at 33-39. (refusing OFCCP's request for data that was of "dubious" relevance and the collection of which imposed considerable burden on Google because Google "store[d] the information in different electronic locations, not all together"). Here, as Oracle has explained to OFCCP many times, OFCCP's pre-litigation requests were extremely burdensome. Oracle does not maintain much of the information OFCCP sought to obtain in one database. For example, Ms. Holman-Harries testified that while "there are a few instances where there is education [data] in the database from the personnel files," "it's not in any one database." OEx. 31, Holman-Harries PMK Dep. Tr. 39:5-9. Moreover, Oracle was fielding requests related to

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			multiple audits at the same time. At one point during the time in question, Ms. Holman-Harries explained to OFFCP that Oracle was responding to "23 open audits with numerous requests for information." *See*, Holman-Harries Decl., Ex. E at ORACLE_HQCA_0000000297. OFCCP also repeatedly ignored Oracle's requests for explanation as to the relevance of its burdensome requests. Particularly because OFCCP's pre-litigation requests were not "reasonable," Oracle repeatedly responded it was working on the requests, Oracle's requests for explanations as to how to reasonably narrow/make easier the requests went unanswered, and because Oracle consistently explained to OFCCP why it was *unreasonable* for OFCCP to expect a prompt response to multiple overlapping data requests that spanned databases (and/or requested data not in a database) and involved several audits around the country, OFCCP has failed to create a material dispute for trial on OFCCP's refusal to produce claim. Additionally, this fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce educational data. SAC at ¶ 44. Even if it had, OFCCP

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			fails to establish that Oracle "refused" to produce it.
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.	**Undisputed.**
39.	In a November 2, 2015 letter from Robert Doles to Gary Siniscalco,	Holman-Harries Decl., Ex. K, DOL000001053.	**Undisputed that Robert Doles sent a November 2, 2015 letter to Shauna Holman-Harries requesting "Prior salary**

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	OFCCP once again requested this "prior salary" information.		**immediately before joining Oracle."** Although OFCCP's fact is incorrect about the recipient of November 2, 2015 letter, Oracle does not dispute that Robert Doles sent a November 2, 2015 letter to Shauna Holman-Harries requesting "Prior salary immediately before joining Oracle." Holman-Harries Decl., Ex. S, 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	**OFCCP's evidence fails to create a material dispute of fact.** The deposition testimony OFCCP cites to support this "fact" is about OFCCP's request for "educational data" not "prior salary information." Therefore, OFCCP has failed to establish this "fact." In any event, it is immaterial.
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.	**Undisputed, but immaterial.**

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
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.	**OFCCP's evidence fails to create a material dispute of fact.** The two documents upon which OFCCP relies do not support this fact as stated. They simply indicate that on these two completed forms, there was a field labeled "Candidate's previous employer and compensation," and the word "mandatory" is included. In fact, however, OFCCP's own Ex 49 confirms that, in fact, this field was not "mandatory" as the candidate's previous employer and compensation is not included. *See* Ex. 49 (listing "College Hire" in the field titled "Candidate's previous employer and compensation information (Mandatory)"). In any event, even if OFCCP did have evidence to support this "fact," the inclusion of a field for prior pay on a new hire justification form does not mean that managers relied on prior pay to set starting pay, nor that Oracle had any policy or practice requiring managers to do so. Indeed, the evidence confirms that no such policy or practice ever existed at Oracle. *See* Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.)

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16. This purported "fact" also does not demonstrate that Oracle "refused to produce" anything during the audit.
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.	**Undisputed.**
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.	**Undisputed, but immaterial.** This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce a list of employees who made discrimination, harassment, or retaliation complaints. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
45.	On March 19, 2015, OFCCP requested from Oracle all information related to internal	OEx. 44, Email dated 3/19/15 from Brian Mickel of OFCCP to Shauna Holman-Harries, p. 1	**Undisputed, but immaterial.** This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce a list of

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	complaints of workplace discrimination.		employees who made discrimination, harassment, or retaliation complaints. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
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.	**Undisputed, but immaterial.** This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce a list of employees who made discrimination, harassment, or retaliation complaints. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
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	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.	**Undisputed, but immaterial.** This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce a list of employees who made discrimination, harassment, or retaliation complaints. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	candor about the existence of the complaints.		
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.	**Undisputed, but immaterial.** This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce a list of employees who made discrimination, harassment, or retaliation complaints. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
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.	**Undisputed, but immaterial.** This fact is immaterial because OFCCP did not bring a claim based on Oracle's alleged failure to produce a list of employees who made discrimination, harassment, or retaliation complaints. SAC at ¶ 44. Even if it had, OFCCP fails to establish that Oracle "refused" to produce it.
50.	In her PMK Deposition, Shauna Holman-Harries testified that Oracle was waiting for OFCCP to provide a basis for requesting the 2013 compensation	OEx. 31, Holman-Harries PMK Dep. 71:14-73:13	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP relies on testimony that Oracle corrected with an errata because, in answer OFCCP's questions about the 2013 compensation snapshot, Ms. Holman-Harries confused the HQCA audit with another audit.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	snapshot before Oracle would provide it.		At the time, Oracle (and Ms. Holman-Harries in particular) was responding to requests related to multiple audits at the same time. At one point during the time in question, Ms. Holman-Harries explained to OFFCP that Oracle was responding to "23 open audits with numerous requests for information." *See*, Holman-Harries Decl., Ex. E at ORACLE_HQCA_0000000297. In her corrected testimony, Ms. Holman-Harries explained that Oracle was "working to compile the information" for the 2013 compensation snapshot, was "in the process of collecting information similar to the '14 data" and was "in the process of compiling the data at the time OFCCP issued its NOV." The documentation (*i.e.*, emails from Ms. Holman-Harries to OFCCP during *this* audit) also confirm Oracle was "working to compile" the 2013 compensation snapshot. Connell Decl. ISO Reply MSJ, Ex. A.
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.;	**Undisputed.**

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
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.	**OFCCP's evidence fails to create a material dispute of fact.** First, OFCCP's "fact" is not a fact, but is argument. Moreover, Ms. Bremer's declaration relates to the complaint not the NOV. As Ms. Bremer's declaration recounts, OFCCP requested compensation data for *all employees*—because OFCCP's expert "had requested such data"—regardless of whether they were in a job function that was identified in OFCCP's complaint. As Ms. Bremer also acknowledges, Oracle produced compensation data for employees in the three job functions at issue. At no point during this litigation did Oracle have an obligation to produce compensation data outside the relevant scope of the complaint. OFCCP's expert's desires do not make irrelevant data relevant.

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

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
53.	Dr. Madden's expert report relies on a multiple regression	Ex. 91, Dr. Madden's 7/19/19 Report, pp. 9-11.	**Undisputed.**

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	statistical analysis.		
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.	**OFCCP's evidence fails to create a material dispute of fact.** This is not a fact, but argument. Nor does Dr. Madden "show that Oracle perpetuated gender and race based compensation disparities." In fact, as Dr. Saad explained in his rebuttal report, Dr. Madden's results are also consistent with Oracle setting pay based on the specific relevant skills, abilities and job experience an applicant brings to the position. Ex. 94, Saad Rebuttal Report at 72. As Dr. Saad points out in his rebuttal, Dr. Madden's approach is flawed because she fails to distinguish between *correlation* and *causation*. *Id.*, at 71-72. He also points out that prior pay is difficult to study because it is difficult to disentangle how much of the correlation is due to a pay practice at Oracle and how much is due to the fact that pay depends on a person's skills, experience, and how in demand those attributes are. *Id*., at 72. Dr. Saad confirmed that the results of a National Longitudinal Survey on prior pay and starting pay showed a correlation of 0.75 across *all individuals in the study*, meaning that it is a factor

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			economy-wide and not just at Oracle. *Id.*, at 72. Dr. Saad also explained that Dr. Madden's starting pay analysis is empirically flawed because it includes persons hired outside the three job functions at issue for women, persons hired prior to the class period, and persons hired outside of HQCA. *Id.* She also drops rehires and aggregates across job functions for women as well as across hire type. *Id.* When Dr. Saad corrected these problems, he determined that there was no pattern of starting pay decisions adverse to protected groups, with the exception of experienced female hires in Product Development, which appears to be based on the missing education variable. *Id.*, at 72-73.
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	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP offers no support for its characterization of the discussion of prior pay in Dr. Saad's rebuttal report as "extensive." Additionally, OFCCP's characterization is inaccurate because Dr. Saad's "discussion" of prior pay in regression analyses is a critique of Dr. Madden's flawed approach. As Dr. Saad points out, Dr.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			Madden fails to distinguish between *correlation* and *causation*. Ex. 94, Saad Rebuttal Report at 71-72. He also points out that prior pay is difficult to study because it is difficult to disentangle how much of the correlation is due to a pay practice at Oracle and how much is due to the fact that pay depends on a person's skills, experience, and how in demand those attributes are. *Id*., at 72. Dr. Saad confirmed that the results of a National Longitudinal Survey on prior pay and starting pay showed a correlation of 0.75 across *all individuals in the study*, meaning that it is a factor economy-wide and not just at Oracle. *Id*., at 72. Dr. Saad also explained that Dr. Madden's starting pay analysis is empirically flawed because it includes persons hired outside the three job functions at issue for women, persons hired prior to the class period, and persons hired outside of HQCA. *Id.* She also drops rehires and aggregates across job functions for women as well as across hire type. *Id.* When Dr. Saad corrected these problems, he determined that there was no pattern of starting pay decisions adverse to protected groups, with the exception of experienced female hires in Product Development, which

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
			appears to be based on the missing education variable. *Id.*, at 72-73.
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.	**OFCCP's evidence fails to create a material dispute of fact.** As an initial matter, OFCCP's characterization of education as "an important variable under the human capital theory of labor economics" is not a fact, but argument. Additionally, Dr. Madden's analyses Madden's method of measuring education is deeply flawed. For education, Dr. Madden's initial report simply looked at the degree of education attained (*e.g.*, college, Masters, or Ph.D.), without considering the school attended, the subject matter of the degree, or the job that the employee is applying for or holds. Ex. 91, Madden Report at 15; Ex. 92, Madden Rebuttal Report at Table R1. Further diluting the significance of her results, Madden coded as "unknown" the education level of over 50% of the employees she analyzed. Ex. 94, Saad Rebuttal, ¶¶ 19, 28 n.21.
57.	Dr. Saad's Rebuttal Report contains an extensive discussion of the use of education	Ex. 94, Saad Rebuttal, pp. 13-15, 43-48.	**OFCCP's evidence fails to create a material dispute of fact.** OFCCP offers no support for its characterization of the

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response
	in regression analyses.		discussion of prior pay in Dr. Saad's rebuttal report as "extensive." Additionally, OFCCP's characterization is inaccurate because Dr. Saad's "discussion" of education in regression analyses is critique of Dr. Madden's flawed approach. Dr. Saad points out that Dr. Madden uses only the crude proxy of educational level, not major or specialization, in her model. Ex. 94, Saad Rebuttal Report at 14. Additionally, Dr. Madden is missing education for over 50% of employees. *Id.*, at 15.

November 8, 2019

Respectfully submitted,
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EXHIBIT C

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 ORACLE AMERICA, INC.'S RESPONSES TO PLAINTIFF'S OBJECTIONS TO EVIDENCE IN SUPPORT OF ORACLE'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Defendant Oracle America, Inc. ("Oracle") respectfully submits the following response to the Office of Federal Contract Compliance Programs ("OFCCP's") Objections to Evidence filed in opposition to Oracle's Motion for Summary Judgment ("Motion").[1] Based on the following responses, Oracle respectfully requests that the Court overrule all of Plaintiff's objections to Oracle's evidence in support of its Motion for Summary Judgment.

II. ORACLE'S RESPONSE TO OFCCP'S OBJECTIONS TO EVIDENCE

A. Declaration of Carolyn Balkenhol

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 5 Based on my years of experience reviewing Human Resources transactions at Oracle, with few exceptions mentioned below, direct managers are the individuals primarily responsible for making hiring and compensation-related decisions for their teams, including starting pay decisions. Specifically with respect to new experienced hires, once a candidate is selected and the manager has determined the amount of starting pay to offer, the manager is responsible for entering the starting salary and corresponding justification into Oracle's workflow system for review. Oracle maintains an approval matrix specifying which human resources transactions (including	FRE 602: Lack of Personal Knowledge[2] FRE 1002: Best Evidence Rule	First, the declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, OFCCP appears to suggest that Ms. Balkenhol did not have personal knowledge ***regarding her own practices***. Ms. Balkenhol explicitly states that her statements are "based on my years of experience reviewing Human Resources transactions at Oracle." Further, Ms. Balkenhol clarifies that it is the responsibility of her and her team "for reviewing, summarizing, and, in most cases, approving these transactions on behalf of the CEOs and Executive Chairman." Surely Ms. Balkenhol has personal knowledge regarding

[1] OFCCP did not submit its objections to evidence in support of Oracle's Motion for Summary Judgment in a single document. Rather, OFCCP's objections are scattered amongst three separate documents: (1) Objections to the Declaration of Kate Waggoner, (2) Objections to the Declaration of Carolyn Balkenhol, and (3) Statement of Genuine Disputes of Material Fact. For greater ease for the Court, Oracle responds to each of OFCCP's objections in this document.

[2] In asserting each of its objections, OFCCP inappropriately cites to the Federal Rules of Evidence. The Federal Rules are not controlling here. *See* April 11, 2017 Notice of Hearing and Pre-Hearing Order ("[G]eneral rules of practice and procedure for adjudicatory proceedings before administrative law judges are contained in 29 C.F.R. Part 18.")

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
offers for new experienced hires, off-cycle salary increases, promotions, transfers, and equity grants) require approval by one of the CEOs or the Executive Chairman. My team and I are responsible for reviewing, summarizing, and, in most cases, approving these transactions on behalf of the CEOs and Executive Chairman.		her own practices. Second, the declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding of Oracle managers' responsibility for making hiring and compensation-related decisions for their teams. The declarant's testimony is the best evidence of her opinions and her understanding.
Paragraph 6 The purpose of my team's review when determining whether to approve a transaction is 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. Only rarely do we fail to approve a decision	FRE 1002: Best Evidence Rule FRE 1006: Improper Summary	First, the declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding the purpose of her team's review when approving a transaction. The declarant's testimony is the best evidence of her opinions and her understanding. Second, there is nothing improper about Ms. Balkenhol's testimony regarding the purpose of her team's review when approving transactions. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.
Paragraph 7 My team and I almost always defer to the hiring manager's decisions regarding the salary offer at hire. Our role is to look for potential errors or outliers that do not seem sensible from a high-level perspective.	FRE 1002: Best Evidence Rule FRE 1006: Improper Summary	First, the declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding her team's involvement in a hiring manager's salary offer decisions at

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
		hire. The declarant's testimony is the best evidence of her opinions and her understanding. Second, there is nothing improper about Ms. Balkenhol's testimony regarding her team's deferment of salary offers to hiring managers. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.
Paragraph 8 My team and I have quick turnarounds when reviewing offers for potential hires, including their starting salary and sign-on bonuses. Because we do not want to cause a delay in a competitive job market, we generally process workflow items within 24 hours.	FRE 1002: Best Evidence FRE 1006: Improper Summary	First, the paragraph cited pertains to the declarant's opinions and understanding regarding her team's reviews of offers for potential hires. The declarant's testimony is the best evidence of her opinions and her understanding. Second, there is nothing improper about Ms. Balkenhol's testimony regarding her team's review of potential hires. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.
Paragraph 9 We also have responsibility for signing off on certain off-cycle decisions to increase employees' base salaries. This includes some promotions, transfers, and other off-cycle compensation changes. My team and I generally defer to managers to award promotions and other off-cycle salary increases based on the unique skills and roles they need and value in their respective organizations. My	FRE 1002: Best Evidence Rule FRE 1006: Improper Summary	First, the declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding her team's responsibility for signing off on off-cycle decisions. The declarant's testimony is the best evidence of her opinions and her understanding. Second, there is nothing improper

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
team and I review the decisions to ensure that the amount of a salary increase is not out of alignment with the applicable salary range for the position.		about Ms. Balkenhol's testimony regarding her team's responsibility for signing off on off-cycle decisions. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.
Paragraph 10 Equity grants require approval from one of the CEOs or Executive Chairman, unless otherwise noted in the approval matrix. In other words, my team and l do not have authority to approve equity awards. In the case of equity award decisions related to new hires and other mid-year equity award requests, I summarize the terms of the requests and send a daily email to the CEOs and Executive Chairman, and they respond with questions and/or approval or rejection. These equity grants are rarely rejected.	FRE 602: Lack of Personal Knowledge FRE 1002: Best Evidence	First, the declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, OFCCP appears to suggest that Ms. Balkenhol did not have personal knowledge ***regarding her own practices***. Ms. Balkenhol explicitly states that her statements are "based on my years of experience reviewing Human Resources transactions at Oracle." Further, Ms. Balkenhol clarifies that it is the responsibility of her and her team "for reviewing, summarizing, and, in most cases, approving these transactions on behalf of the CEOs and Executive Chairman." Surely Ms. Balkenhol has personal knowledge regarding her own practices. Second, the declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding her team's authority to approve equity awards. The declarant's testimony is the best evidence of her opinions and her understanding.
Paragraph 11 On rare occasions, my team and I will	FRE 1002: Best Evidence	The declarant's statement does not seek to establish the content of a

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
ask a manager a question about his or her compensation decision or ask corporate compensation to review and confirm or suggest a change. The purpose of these questions is to gather additional information to assist in our limited review process. There may be mitigating circumstances or reasonable explanations that we were not aware of during our initial reviews. Ultimately, we expect that the direct managers have the best, comprehensive knowledge about their teams, particular jobs, candidates, and the market. Our role is simply to gather additional information to aid in the review process.		writing. The paragraph cited pertains to the declarant's opinions and understanding regarding the frequency and purpose for which her and her team ask a manager questions about his or her compensation decisions or ask corporate compensation to review changes to compensation. The declarant's testimony is the best evidence of her opinions and her understanding.
Paragraph 12 My team and I defer to managers to ensure their employees are paid fairly and hired into the proper career levels for their skills and experience. Accordingly, we rarely reject compensation and hiring decisions proposed by a front-line manager. In my estimation, my team and I have overturned very few compensation decisions in the approximately nine years I have held this position. A decision would need to be particularly egregious and lacking any kind of reasonable justification to merit a rejection.	FRE 602: Lack of Personal Knowledge FRE 1002: Best Evidence	First, the declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, OFCCP appears to suggest that Ms. Balkenhol did not have personal knowledge ***regarding her own practices***. Ms. Balkenhol explicitly states that her statements are "based on my years of experience reviewing Human Resources transactions at Oracle." Further, this paragraph is specific to the declarant and the declarant's team's actions to ensure employees are paid fairly and hired into the proper career levels. Surely Ms. Balkenhol has personal knowledge regarding her and her team's own practices. Second, the declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
		understanding regarding her team's deferment to managers to ensure their employees are paid fairly and hired into the proper career levels. The declarant's testimony is the best evidence of her opinions and her understanding.

B. <u>Declaration of Kate Waggoner</u>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 6 Oracle is a leading global technology company that provides cutting-edge software and hardware products and related services to customers worldwide. Oracle's more than 800 products and services are designed for customers of any size, from small business to large global corporations.	FRE 602: Lack of Personal Knowledge FRE 1002: Best Evidence Rule	First, the declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, Ms. Waggoner has personal knowledge regarding Oracle's background as a technology company, as well as general knowledge regarding Oracle's products and services.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
		Second, the declarant's statement does not seek to establish the content of a writing. Rather, it expresses her general opinions and understanding regarding Oracle's background as a technology company. Consequently, Ms. Waggoner's testimony is the best evidence for her opinions and understanding.
Paragraph 9 One of the primary ways Oracle has grown its uniquely diverse business is by acquisition. Acquisitions enable Oracle to innovate faster and provide an unparalleled breadth and depth of technology products and services.	FRE 602: Lack of Personal Knowledge. FRE 701: Lay Opinion.	First, the declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, Ms. Waggoner has personal knowledge of Oracle's growth as a diverse business through acquisitions. Second, the testimony is also proper lay opinion as within Ms. Waggoner's perception given her position and duties.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 10 Oracle has acquired top companies like PeopleSoft, Sun Microsystems, NetSuite, and others that focus on specialized technologies and services, many of which differ in important ways from Oracle's legacy product offerings. Together these acquisitions have added hundreds of new products to Oracle's portfolio.	FRE 602: Lack of Personal Knowledge. FRE 701: Lay Opinion.	First, the declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, Ms. Waggoner has personal knowledge of Oracle's growth through acquisitions of top companies. Second, the testimony is also proper lay opinion as within Ms. Waggoner's perception given her position and duties.
Paragraph 11 I have reviewed extracts from Oracle's centralized data systems which are kept in Oracle's regular course of business and contain our system of record regarding the employment records of Oracle employees. Those extracts reflect that, as of January 1, 2019, Oracle employed more than 48,000 employees nationwide. As of that date more than 11,000 employees	FRE 1002: Best Evidence FRE 1006: Improper Summary	First, the declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding her review of Oracle's centralized data system. The declarant's testimony is the best evidence of her opinions and her understanding. Second, there is nothing improper

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
worked at its headquarters location in Redwood Shores, California.		about Ms. Waggoner's testimony regarding her review of Oracle's centralized data system. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.
Paragraph 12 Oracle is organized functionally into lines of business ("LOBs"), each of which is generally focused on a distinct part of Oracle's business or operations. Although others at Oracle may use the term "LOB" in different ways, from the perspective of the Compensation team, each of these LOBs is defined by its particular leader or head, who in turn reports directly to one of Oracle's CEOs (Safra Catz or Mark Hurd) or its CTO (Larry Ellison).	FRE 602: Lack of Personal Knowledge	The declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, Ms. Waggoner has personal knowledge regarding Oracle's organization into LOBs, as well as her compensation team's perspective regarding how the LOBs are defined.
Paragraph 13 At the highest levels, LOBs encompass entire segments of Oracles' business or operations. Additional layers divide employees	FRE 602: Lack of Personal Knowledge	The declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
into narrower sub-organizations and teams that reflect increasingly specialized areas of the company. These specialized teams differ in terms of their import to the company and their role in the company's strategic vision.		Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, Ms. Waggoner has personal knowledge of Oracle's organization into LOBs and generally how these LOBs subdivide into narrower sub-organizations that reflect increased specialization.
Paragraph 14 Managers within these LOBs fan out through a reporting hierarchy that ultimately ends with "first-level" (or "direct") managers who supervise individual contributors. This managerial hierarchy is in a near-constant state of flux, to reflect Oracle's evolving technologies and portfolio structures	FRE 602: Lack of Personal Knowledge	The declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
		acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, Ms. Waggoner has personal knowledge of Oracle's organization into LOBs and generally the hierarchical reporting structure of these LOBs.
Paragraph 15 Budgeting decisions and allocations for bonuses and/or salary raises are made within the framework of this LOB hierarchical structure, 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. Accordingly, the particular team an employee works within, and where that team is situated within Oracle's LOB structure, may impact individual compensation. The budget allocated to a particular LOB (or subset thereof) may also be impacted by the composition of that LOB in terms of the country or countries where employees in that LOB work, as different per-country weights are applied when determining how much budget to allocate to account for differences in market conditions, among other factors.	FRE 602: Lack of Personal Knowledge	The declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, in her role as a Senior Director of Global Compensation, Ms. Waggoner has personal knowledge regarding budgeting decisions and allocations for bonuses and/or salary raises that are made within the framework of the LOB hierarchical structure.
Paragraph 18 I have reviewed copies of data files produced to the government in this	FRE 1002: Best Evidence FRE 1006:	First, the declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
case, which I understand contain extracts from Oracle's centralized data systems which contain data recorded and maintained in the regular course of business by Oracle. That data shows that approximately 7,521 individuals were employed in the Product Development job function at Oracle's headquarters at some point from January 1, 2013 forward (which is the time period that I understand to be at issue in this case), approximately 1,044 individuals were employed in the IT job function during that time period at Oracle's headquarters, and Approximately 349 individuals were employed in the Support job function at Oracle's headquarters during that time period.	Improper Summary	declarant's opinions and understanding regarding her review of Oracle data files. The declarant's testimony is the best evidence of her opinions and her understanding. Second, there is nothing improper about Ms. Waggoner's testimony regarding her review of Oracle's centralized data system. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.
Paragraph 22 Each level of grouping within the job table that my team maintains and updates—job function, specialty area, job family, and system job title—provides a high-level description of the work performed by employees with that label. Even the most granular label in this taxonomy—system job title—does not account for differences in individual job duties among the employees with that label, and there are indeed many differences. Employees with the same system job title may work on different tools and use different programming languages. Their jobs may require them to work different numbers of hours or attend a different number or type of training. Some employees spend much more time in meetings than others with the same system job title, whereas others do much more coding. Some work on	FRE 701: Lay Opinion	The testimony is also proper lay opinion as within Ms. Waggoner's perception given her position and duties.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
more complex products than others. Some work on many components or sub-areas within the product at a given time (or over the course of time), whereas others work on only one or two.		
Paragraph 23 Because I am responsible for overseeing the maintenance of and updates to Oracle's global job table, I also am familiar with the salary ranges that accompany Oracle's system job titles. Each system job title at Oracle is associated with a broad salary range. There is a set of salary ranges that apply to employees who work in zip codes we define for this purpose to encompass the San Francisco Bay Area (sometimes referred to on the Compensation team as the "HQ Salary Range"). My colleague, Kris Edwards—Senior Director, Compensation at Oracle—and her team reviews each set of ranges for each system job title each year and recommends range adjustments if and as we deem appropriate based on, among other things, market research of compensation benchmarks in use at other technology companies with whom Oracle competes for talent. These salary ranges generally span [redacted] of dollars. For example, in FY2018, the salary range for an Applications Developer 3 at HQ spanned nearly $[redacted] – from $[redacted] to $[redacted].	FRE 1002: Best Evidence	The declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding global job tables at Oracle, which she is responsible for overseeing and maintaining. The declarant's testimony is the best evidence of her opinions and her understanding.
Paragraph 25 To my knowledge and understanding, the majority of employees are hired into the job and career level for which	FRE 601: Lack of Personal Knowledge	The declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
they applied. On occasion, however, an employee may be hired at one career level above or below the level listed in the job posting, depending upon the individual's specific experience and expertise and consistent with Oracle's business needs. On such occasions, individual front-line managers are the primary decision-makers regarding adjustments to level at hire. For example, the job requisition may be for a Software Developer 3, but the best qualified candidate's skills and expertise are a bit more advanced, such that the candidate is qualified to be a Software Developer 4. In such an instance, the hiring manager may determine that the candidate should be brought in at a higher level and will explain this on the justification form to HR listing the candidate's qualifications that warrant the job at a higher level.		lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, in her role as a Senior Director of Global Compensation, Ms. Waggoner has personal knowledge regarding placing new hires into the job and career level for which they applied.
Paragraph 26 Some employees (but not all) have a discretionary job title as well as a system job title, which in many cases is more descriptive and specific than the system job title. As with system job title, the details of the work performed by two individuals with the same discretionary job title may vary significantly. Among many other factors, such individuals may work on different products; supervise or serve as a lead for a different number of employees; and work a different number of hours.	FRE 602: Lack of Personal Knowledge	The declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
		activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, in her role as a Senior Director of Global Compensation, Ms. Waggoner has personal knowledge regarding discretionary job titles as well as a system job titles.
Paragraph 28 Oracle's compensation system is highly decentralized in order to further its business need to recognize individual skills and contributions. An employee's direct manager—who knows individual employees' work and how their work compares to that of others—typically plays the most significant role in setting that employee's compensation. First-line managers, for example, determine the starting compensation to offer to new hires. Similarly, most salary increases occur during the annual focal review process (in years when there is a focal review process). Although these individual salary increases ultimately are subject to an approval process by more senior management to ensure alignment with budget, senior managers generally defer to and rarely change the decisions of the lower-level managers.	FRE 602: Lack of Personal Knowledge FRE 1002: Best Evidence Rule FRE 1006: Improper Summary	First, the declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, in her role as a Senior Director of Global Compensation, Ms. Waggoner has personal knowledge regarding Oracle's compensation system. Second, the declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
		understanding Oracle's compensation system. The declarant's testimony is the best evidence of her opinions and her understanding. Third, there is nothing improper about Ms. Waggoner's testimony regarding Oracle's compensation system. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.
Paragraph 30 Whatever manager is the last recipient of budget allocation determines how to distribute the budget in the form of compensation awards to individual employees. The managers responsible for recording those decisions in the compensation tool may exercise their own judgment or consult other managers (for example, if they do not directly supervise the employees at issue) for their views. Usually, first- or second-line managers play a primary role in the allocation decision. From there, in the vast majority of cases, the approval process simply acts as a check to review whether managers stay within allotted budgets.	FRE 602: Lack of Personal Knowledge FRE 1002: Best Evidence FRE 1006: Improper Summary	First, the declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, in her role as a Senior Director of Global Compensation, Ms. Waggoner has personal knowledge regarding budget allocations and compensation awards, as well as managers' responsibilities for

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
		recording these compensation decisions. Second, the declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding managers' roles in the budget allocation process. The declarant's testimony is the best evidence of her opinions and her understanding. Third, there is nothing improper about Ms. Waggoner's testimony regarding Oracle's compensation system. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.
Paragraph 31 In the training that members of the Compensation team prepare and provide to managers, managers are advised to take a comprehensive view in making compensation recommendations. For instance, managers may award greater compensation—particularly bonuses or incentive stock awards—to those employees who work on more complex products. Likewise, managers may provide additional compensation as incentive to employees who work on products that require skills for which the labor market is particularly competitive.	FRE 1002: Best Evidence Note: objection based on assumption that there are written training materials other than those provided in the attachments. If that is not correct, then do not object.	The declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding the compensation team that she leads and the training that they provide to managers regarding compensation recommendations. The declarant's testimony is the best evidence of her opinions and her understanding.
Paragraph 32 Through trainings provided by the	FRE 1002: Best Evidence	The declarant's statement does not seek to establish the content of a

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Compensation team, individual managers are encouraged to consider the relative pay among employees on their particular teams when making compensation decisions, including awarding bonuses and salary increases through the focal review process, and to strive for pay equity while accounting for all relevant factors. Managers are expressly instructed to make compensation decisions without regard to employees' gender or any other protected characteristic.		writing. The paragraph cited pertains to the declarant's opinions and understanding regarding the compensation team that she leads and the training that they provide to managers. The declarant's testimony is the best evidence of her opinions and her understanding.
Paragraph 37 Oracle engages legal counsel to direct privileged pay analyses, including a review and evaluation of Oracle's pay systems, pay decisions, and pay data as warranted, for the purpose of providing legal advice regarding Oracle's compliance with applicable state and federal non-discrimination requirements and to assess legal risk.	FRE 602: Lack of Personal Knowledge	The declarant does not lack personal knowledge. OFCCP fails to provide any support to what personal knowledge she allegedly lacks. Rather, Ms. Waggoner explained that she has worked for Oracle since 2005, and as of today is Oracle's Senior Director of Global Compensation. Waggoner Decl., ¶ 3. In this role, she is responsible for Oracle's global compensation programs, the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs. *Id.*, ¶ 4. Further, she oversees maintenance of Oracle's global job table and supervises M&A activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. *Id.* Consequently, in her role as a Senior Director of Global Compensation, Ms. Waggoner has personal knowledge regarding Oracle engaging legal counsel to direct privileged pay analyses.

C. Declaration of Farouk Abushaban

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 15 I participated in hiring for my team in my managerial role, and in doing so I worked with my HR Business Partners to determine the appropriate salary range and career level for the candidate. Typically, I looked for expertise in Oracle products and experience in networking and systems administration (namely, with operating systems such as Linux and Solaris, and how they operate in the cloud). The closer a candidate's experience aligned with my team's daily work, the more likely that candidate became a finalist. My starting salary decisions have never been overturned, and I have never recommended a candidate outside the salary range for his or her position.	FRE 1002: Best Evidence Rule	The declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding his participation in hiring for his team and what he looks for in an applicant during the hiring process. The declarant's testimony is the best evidence of his opinions and his understanding.

D. Declaration of Jon Tyler Eckard

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 13 In my experience as a manager, my salary increase (focal) decisions have never been changed by upper management. I have not received any pushback from my managers, though I have sometimes been asked questions about the basis for my decisions. On those rare occasions, I have an open conversation with my manager and reach agreement before moving forward. I have never taken race or	FRE 1002: Best Evidence Rule	The declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding his participation and experiences in salary increase decisions. The declarant's testimony is the best evidence of his opinions and his understanding.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
gender into account in my compensation decisions.		

E. <u>Declaration of Cindy Hsin</u>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 11 In some cases, but not all, and before October 2017, when Oracle implemented a policy prohibiting us from asking about prior salary, my team's recruiter asked about prior salary as well as the candidate's salary expectations. However, the factors I used to determine what starting salary is appropriate to offer a candidate are among the same factors I use to make hiring decisions. If the candidate had offers from major competitors and we wanted to offer a salary higher than the normal bracket to compete, we would include the prior salary information in the justification form to HR as an explanation for the higher offer. However, we typically did not need to include prior salary information in the justification. I have never had my hiring decision or starting pay proposal overruled, though on rare occasions we may be unable to move forward with a hire because we do not have sufficient available budget.	FRE 1002: Best Evidence Rule	The declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding her participation and experiences in hiring decisions for her team. The declarant's testimony is the best evidence of her opinions and her understanding.

F. Declaration of Rita Ousterhout

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 16 I do not believe that Oracle's compensation determination process disadvantages women, Asians, or African Americans. The primary factors I consider in determining starting salary for my direct reports are experience, skills, and expertise. I never solely considered prior pay in making an offer to a candidate. Before October of 2017 – when I understand that Oracle enabled a policy prohibiting the consideration of prior pay – I occasionally used prior pay information only to gauge the candidate's salary expectations. However, I still determined the starting salary according to the salary bands for the position and the candidate's knowledge, experience, and skills. I will usually make compensation decisions in consultation with my manager, after which HR reviews for anomalies. Sometimes, but not always, we will collaborate with HR to come up with a compensation package that includes salary, bonus, and stock options – such as when we would like to compensate someone on the higher end due to their skills and expertise. My compensation decisions are rarely changed when they are within the salary ranges. One time, HR changed my compensation decision because I used a salary range for the wrong geographic location, which was an inadvertent error on my part. Race or gender have never played a role in my compensation determinations.	FRE 1002: Best Evidence Rule	The declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding her participation and experiences in determining starting salary for her direct reports. The declarant's testimony is the best evidence of her opinions and her understanding.

G. Declaration of Leslie Robertson

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 11 I am involved in the hiring process for my team. I and other hiring managers on my team consider the candidate's skill, expertise, and education when deciding on a starting salary. Gender, race, and ethnicity are never factors in my decisions about who to hire or what starting salary is appropriate. Following the change in California law in 2017, I never inquired about prior pay when making hiring or starting salary decisions. I received guidance and training regarding inquiring about prior pay from Oracle's recruiting department in 2017. Once the hiring manager decides on a starting salary, the offer must receive sign-off from HR and upper management before the hire can take effect. Our assigned HR Business Partner helps in the crafting of offers. I have never had a starting salary decision overturned. The only times I have pushed back on my direct reports' salary decisions have been if they neglected to confirm with HR that the offer was within the applicable salary range.	FRE 1002: Best Evidence Rule	The declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding her participation and experiences in hiring decisions and setting starting salary for her team. The declarant's testimony is the best evidence of her opinions and her understanding.

H. Declaration of Sachin Shah

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 14 My salary recommendation has never been questioned or changed. I work closely with the HR Business Partner assigned to my ACS team and ensure	FRE 1002: Best Evidence Rule	The declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding her participation and experiences in

that the candidate's proposed salary matches Oracle's salary ranges and the candidate's qualifications. Race and gender have never factored into my hiring process or starting salary decisions.		hiring decisions and setting starting salary for her team. The declarant's testimony is the best evidence of her opinions and her understanding.

I. Declaration of Chandna Talluri

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 14 As a manager, I am involved in hiring. Typically, my team aims to hire at the IC3 career level, but on rare occasions we may hire an IC2 or IC4, depending on the candidate's particular experience. I work closely with Oracle's recruiting agent, who advertises the position and conducts the initial screening based on my needs for the position. Then, candidates go through a formal interview process, with approximately four interviews per candidate. I discuss the finalists with my manager and we evaluate the candidate's potential contribution and our team's overall needs. Once I select a candidate, I work with an HR Business Partner dedicated to OAL to determine the market rate for the position based on the candidate's background. I determine starting salary mainly by looking at prior experience. I have never relied on prior pay as part of the decision-making process – I focus exclusively on a candidate's merits. I also have never considered race or gender in my hiring or compensation decisions. My hiring decisions and starting pay determinations have never been overturned.	FRE 1002: Best Evidence Rule	The declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding her participation and experiences in hiring decisions and setting starting salary for her team. The declarant's testimony is the best evidence of her opinions and her understanding.

J. Declaration of Nachiketa Yakkundi

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 19 As a manager, I also determine compensation increases for my team in the form of focal increases (salary raises that occur periodically, generally annually, if and when there is a budget allocated to me by my manager). My process for determining focal increases involves looking to the performance ratings of each of my direct reports, on a scale from one to five (five being reserved only for superstar performers). I rank my direct reports according to the effort they have contributed in the past year, which I measure by evaluating whether they went above and beyond expectations, put in extra hours and worked in earnest to make sure that problems were resolved for our customers, and efficiently managed their case load. I also try to reward individuals who have not received a salary increase in a long time but have been consistent and improved their work and widened or deepened their expertise and product knowledge. My compensation increase decisions have always been respected by my managers and I am not aware of any instance where a more senior manager overturned any of my decisions. Sometimes, my manager has asked me to explain the thinking behind my decision, but in those instances we have always had a discussion and come to an agreement before moving forward. I do not participate in bonus or equity distribution.	FRE 1002: Best Evidence Rule	The declarant's statement does not seek to establish the content of a writing. The paragraph cited pertains to the declarant's opinions and understanding regarding her participation and experiences in making compensation decisions for her team. The declarant's testimony is the best evidence of her opinions and her understanding.

K. Declaration of Harmohan Suri

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 22 I submit my compensation recommendations to my supervisor and she works with HR to ensure that there is consistency in the distribution of compensation increases for her direct reports. My compensation decisions have never been overruled, but my manager checks for outliers and on occasion has asked me to justify my reasoning. For example, if I gave someone on my team an unusually high increase, she may ask me to explain why that person deserves a raise that is higher than the norm. I have never considered race or gender for any compensation decisions and I have not seen such discriminatory bias from my superiors.	FRE 1006: Improper Summary	There is nothing improper about Ms. Suri's testimony regarding how she submits her compensation recommendations. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.

L. Declaration of Janet Chan

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 13 My compensation decisions have never been overturned. Meeten and I have open discussions about my decisions and we always come to an agreement. I apply a similar approach in reviewing the compensation decisions of my direct reports. I give them a budget and they allocate it to their direct reports as they see fit. I try to ensure consistency in ratings for individuals at the same career level with similar roles and responsibilities, so if I have a question or concern about an inconsistency or a rating, I	FRE 1006: Improper Summary	There is nothing improper about Ms. Chan's testimony regarding how she applies and reviews compensation decisions. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
will initiate a discussion about it and offer my opinion. To the extent I have questions about my direct reports' compensation decisions, we have a conversation and come to a mutual agreement.		

M. <u>Declaration of Kristen Desmond</u>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Paragraph 13 During the annual performance review process, I rate employees on each of the core competencies on a 1-5 scale. Usually, I only conduct performance reviews for my direct report. On occasions where I have worked extensively with other employees on a special project, however, I have been requested to provide feedback and a performance appraisal for an employee outside of my reporting structure. When considering an employee for promotion, I look for advanced skills for an extended period of time, typically one to two cycles, before promoting an employee. In addition, I generally follow the rule of thumb that an employee's recent performance reviews should include at least half of the competencies rated at a 5 and the other half rated at least a 4. I have never had a promotion decision rejected by upper management. Gender, race, and ethnicity are never factors in my promotion decisions.	FRE 1006: Improper Summary	There is nothing improper about Ms. Desmond's testimony regarding how she participates in the annual performance review process. OFCCP cites to nothing to support its assertion that this is an improper summary, let alone that the statement is a summary of anything at all.

N. PMK Deposition of Shauna Holman-Harries

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Holman-Harries PMK Dep. 36:18-38:23 Q And how did you find that out? MR. PARKER: Outside the scope. Asked and answered. THE WITNESS: Through my research as just described to you for the other audit. BY MS. BREMER: Q Okay. What -- what research, though, led you to find out or determine that there were a few employees or jobs at any local location where there were multiple employees doing the same or similar work with the same skill and experience? MR. PARKER: Outside the scope. Asked and answered. THE WITNESS: The research – the research discussing -- I -- I talked to human resources reps and also some supervisors, and – so it was actually a -- a self-discovery process to where I found out how different jobs really are at Oracle. BY MS. BREMER: Q And which human resources reps did you talk to? MR. PARKER: Outside the scope. THE WITNESS: I can't recall the names because it was over six years ago. But I – I remember talking to them about -- about this, trying to -- to find out what the jobs were about and writing documentation on the differences of the jobs and finding out just how varied the jobs are. I was also told that by the person that reported to me that had -- at that time had been at	FRE 1002: Best Evidence Rule	The deponent's testimony does not seek to establish the content of a writing. Rather, Ms. Holman-Harries expresses her opinions and understanding "through [her] experience as just described [] for the other audit." Consequently, Ms. Holman-Harries' opinions and understanding is the best evidence of her opinions and her understanding.

Oracle for a while that I didn't, you know, take that as the final answer. I did the research myself and found out, just, they really are varied. BY MS. BREMER: Q And what was your understanding of what "same or similar work with the same skill/experience" means? MR. PARKER: Outside the scope. THE WITNESS: Well, at that point, and some of the jobs from this first research, people actually had different levels of certifications within the same job title to where some of them could service and take care of more products or customers, yet they still -- and some of the certifications were quite different from each other, but yet they still had the same job title and in quite a few instances were at the same career level. BY MS. BREMER: Q And what certifications are you talking about? A I can't remember -- MR. PARKER: Outside the scope. THE WITNESS: I can't remember off the top of my head, but I would say they -- they were like IT-related certifications.		

O. <u>PMK Deposition of Kate Waggoner</u>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
Waggoner PMK Dep. 113:14-114:24 Q. Well, let's start with new hires. If it's -- if it differs between new hires and current or existing employees, et cetera -- well, let's start with new hires. A. Okay. Q. So --	FRE 1002: Best Evidence Rule	The deponent's statement does not seek to establish the content of a writing. The deposition excerpt cited pertains to the declarant's opinions and understanding regarding how managers determine salaries for new hires. The deponent's testimony is the best evidence of her opinions and

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	ORACLE'S RESPONSE
A. So the salary range -- or the salary that's determined by a manager in -- for a new hire -- Q. Uh-huh. A. -- the employee -- the candidates generally come to us with -- I mean, they have their -- their resume they've reviewed, the manager		her understanding.
Waggoner PMK Dep. 117:12-121:18 Q. (By Mr. Song) Okay. If an M- -- so let's say an M-2 makes a compensation decision. How many levels of a review -- review, sorry, does it go up? MS. CONNELL: Objection. Calls for speculation. Incomplete hypothetical. A. The -- anything regarding pay -- Q. (By Mr. Song) Uh-huh. A. -- really would -- prior to -- we had the accelerated hiring experience. I don't know if you're familiar with that. That is one of the exhibits that are here. But in 2013, when this started up, until fairly recently with the accelerated hiring experience, it would go up every level. It would first go to an HR representative, and then it would go to a compensation person, and it would go up the whole chain, up to the very top. But once you reach, you know, the – once it goes through, like, HR and comp and then maybe one level of manager, it's really -- it goes to the – the sanity check piece: Like, does this pass the sniff test? They're not doing any real deep diving into anything. It really is what that first-line manager has submitted -- Q. Okay. A. -- just continues on up the road. Q. Okay. A. With accelerated hiring, it skips,	FRE 1002: Best Evidence Rule	The deponent's statement does not seek to establish the content of a writing. The deposition excerpt cited pertains to the declarant's opinions and understanding regarding how compensation decisions are reviewed at Oracle. The deponent's testimony is the best evidence of her opinions and her understanding.

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now, compensation and tends to go all the way up so that the process happens as -- as it indicates, accelerated hiring, everything moves much quicker. Q. Uh-huh. A. And so it goes up, but again, to the -- to the CEO office. But again, it's really that sanity check of making sure -- we've had -- we've had situations, for example, where the CEO office realizes they missed a comma, and then the salary they offered was, like, $2,000 instead of 200,000 -- like, just things that -- Q. Yeah. A. -- if they look too quickly – Q. Yeah, dotting your T's? A. -- they miss it. Q. Yeah, dotting -- yeah. A. So it's -- it's the -- in the end, does this look fine? They're not going into any specific detail. Q. And when did accelerated hiring start? A. I believe it was 2018 sometime. Q. Okay. But prior -- so prior to then, HR, comp, and maybe one manager would have more of a substantive review rather than just a sanity check? A. In most cases, I would say -- Q. In most cases? A. -- yes. Yeah. Q. Okay. And so what -- what would that entail? MS. CONNELL: Objection. Calls for speculation. A. That would entail, you know, maybe looking at -- looking at a resume to see what kind of experience they bring, making sure -- you know,		

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looking at -- glancing at the peer group to say: Does this make – you know, what does -- what compa-ratio does it give this person? Where does it place them in the range? Does it make sense for what they bring to the table? And, you know, if we've identified these are the seven peers, does it fall nicely in there? It's just kind of a review to make sure that that -- that that makes sense. Q. (By Mr. Song) Okay. So HR, comp, and the manager directly -- A. First-line manager. Q. -- above that manager -- First-level manager? A. Yeah. Q. Would do this kind of a review? MS. CONNELL: Objection. Incomplete hyp- -- Q. (By Mr. Song) Or maybe they should do one? MS. CONNELL: Incomplete hypothetical and calls for speculation. A. I would -- so the -- the manager the next level up maybe wouldn't go into that -- that's more -- first-line manager, HR, and compensation would either review it individually or maybe over the phone to say: This -- you know, this is where we think this person should fall based on the resume and -- and their location and what they bring to the table. And then when the manager submits the Workflow, they would probably put in the justification, you know: This -- we positioned it here for this reason. And then the next-level manager might look a little bit closer. Q. Okay.		

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A. But if it's not -- I mean, if it's over the range, yes, they're going to dig into it a little bit more. If it seems kind of out of line, really, it -- it -- even that next-line manager, it's likely that the hiring manager probably already had a conversation with his or her direct manager to say, "This is my opening and this is the window of what I'd like to offer." And so there's probably already been, before they even get to that point. So I would say when it reaches that next-level manager, they likely aren't digging in quite as much as HR and comp would have with the manager in that initial setting.		
Waggoner PMK Dep. 155:7-156:10 Q. Okay. And are approvals required for compensation decisions? A. Well, yes. MS. CONNELL: Objection. Compound, but . . . A. It -- so on here, the -- when it comes to, like, the assignment, one of -- about halfway down the page, the assignment when it comes to some -- like job change, I think in -- in my capacity here, the job codes and the job changes would be part of compensation-ish, and, you can see, it's one level up and then an HR is required. But when it comes to any changes in pay, there's the -- when it -- dollars at the bottom of the page. Q. (By Mr. Song) Uh-huh. A. All of this -- you'll see some of them -- so base salary increase goes all the way up through the CEO office. But again, that's a cursory, a sanity check -- Q. Sanity check?	FRE 1002: Best Evidence Rule	The deponent's statement does not seek to establish the content of a writing. The deposition excerpt cited pertains to the declarant's opinions and understanding regarding how compensation decisions are approved at Oracle. The deponent's testimony is the best evidence of her opinions and her understanding.

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A. -- they're not doing anything real . . . And then, like, the addition of annual target variable for the first time, that also goes up to the very top level. Relocation. So yeah, there's -- there's things that are compensation related that -- that go up and it -- this documents what level of final approval is required in order for it to get processed.		
Waggoner PMK Dep. 161:10-162:13 Q. Okay. And the -- the final-level sanity check, is that Mr. Ellison or the board? A. No. That is -- we have a team of three who are considered the CEO office of approvers, and they are lower-level individual contributors that, again, do that sanity check to say, "Does this -- is this – does this look okay?" But they're handling thousands every month because they do it globally, and it's really just that cursory review to say, "Does this -- does everything look up to . . ." Q. Okay. And that's Mr. Ellison, Ms. Catz, and is it -- A. Oh, no. They have nothing to do with it. There is a team of three low-level individual contributors who represent the office of the CEO to make -- to -- to do that final checkbox that it's approved after their sanity check. Q. Who are the three team members? A. Carolyn Balkenhol; she's mentioned in this document, in fact, in the notes on page 10. It says Carolyn Balkenhol is in there. Carolyn Balkenhol, and then the other two women are Lynn -- I forgot Lynn's last name -- and Yvonne Sieber. I forget --	FRE 1002: Best Evidence Rule	The deponent's statement does not seek to establish the content of a writing. The deposition excerpt cited pertains to the declarant's opinions and understanding regarding how compensation decisions are approved at Oracle. The deponent's testimony is the best evidence of her opinions and her understanding.

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I forget Lynn's last name, though. But it's three women who monitor that in-box that's considered the CEO office of approvers. But the -- the CEO and executive, that -- they're proxies for them. They -- those guys don't actually see these.		
Waggoner PMK Dep. 164:10-165:1 Q. At what level can changes still be made to the salary decision? All the way to the CEO office? MS. CONNELL: Objection. Vague and ambiguous. Incomplete hypothetical. A. I would say -- I mean, technically speaking, a request for a change could happen at any level. It's pretty rare. I -- it's very rare that stuff gets changed. Because there's so much done by the front-line manager, with HR and with comp and coming -- like, they don't -- they don't have any interest in delaying this process. They are not interested in putting something up for -- for the levels of approval, only to have it shot down and come back to them. So the -- the thorough review at the beginning is intended to make its way and pass all the way through. So it's very rare that anything would change after the manager.	FRE 1002: Best Evidence Rule	The deponent's statement does not seek to establish the content of a writing. The deposition excerpt cited pertains to the declarant's opinions and understanding regarding how salary decisions are reviewed at Oracle. The deponent's testimony is the best evidence of her opinions and her understanding.
Waggoner PMK Dep. 167:22-169:8 Q. (By Mr. Song) Ms. Waggoner, regarding sanity checks -- A. Uh-huh. Q. -- for the top-level reviews, how do you know that they're only sanity checks at the top? A. I have had numerous conversations. I know Carolyn fairly well. I've had numerous conversations about -- about	FRE 1002: Best Evidence Rule	The deponent's statement does not seek to establish the content of a writing. The deposition excerpt cited pertains to the declarant's opinions and understanding regarding how compensation decisions are reviewed at Oracle. The deponent's testimony is the best evidence of her opinions and her understanding.

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her and kind of what they're – what they're looking at, what they're looking for. I also know that because there's only three of them and they handle this responsibility globally -- Q. Uh-huh. A. -- there are thousands that come through. So they don't -- there would be no possible way for three of them to do any deep digging into what's going on. Q. Okay. And so did anybody tell you that they're just sanity checks? A. Oh, yes. My -- I mean, Carolyn, when we've talked about what it is she's looking at and what it is she's going -- she's going through, she and I have talked about, before, how this is just making sure nothing crazy is going on. Q. Uh-huh. Okay. And what about at the EVP level, those are sanity checks as well? A. Yes, I believe so. Q. Okay. All right. And how do you know they're only sanity checks there? A. Also because at this level, people are pretty far removed from the individuals themselves and the -- the data, the actual data. Q. Uh-huh. A. And because they have a lot -- a lot of volume that will come through to them as well and – they simply don't get into that kind of detail when it come -- they have much bigger strategic and visionary work to do than get into the minutiae of an offer.		
Waggoner PMK Dep. 170:10-23 Q. All right. What about SVP, senior	FRE 1002: Best Evidence Rule	The deponent's statement does not seek to establish the content of a writing. The deposition excerpt

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vice president? MS. CONNELL: Objection. Vague. A. What about them? Q. (By Mr. Song) What -- do -- they do sanity checks, correct? A. I would -- yes, I would say that theirs is a sanity check, unless the hire is for someone right below them. I mean, it really -- it depends on how far down -- if they're the first level after the submission, then they -- Q. Okay. A. -- might look at it a little more closely, but --		cited pertains to the declarant's opinions and understanding regarding a senior vice president's involvement in the compensation review process. The deponent's testimony is the best evidence of her opinions and her understanding.
Waggoner PMK Dep. 171:4-20 A. If I could add to that. The other reason I know is because it's -- they're almost never changed. Like, it -- it almost never gets rejected or – or changed or anything. So it really is -- if this passes the sniff test, if this passes sanity, it's good. Q. Yeah. In your experience, how many have been changed at those levels? A. At that level? Q. Yeah. A. I couldn't even begin to guess, but - Q. Okay. A. -- very small. Q. Okay. Like less than five? A. Over the span of many, many years? I couldn't say a number. I would say well less than 5 percent over the span of many years.	FRE 1002: Best Evidence Rule	The deponent's statement does not seek to establish the content of a writing. The deposition excerpt cited pertains to the declarant's opinions and understanding regarding how compensation decisions are reviewed at Oracle. The deponent's testimony is the best evidence of her opinions and her understanding.
Waggoner PMK Dep. 195:16-198:13 Q. And that's when those reviews that go up the chain of command -- we talked about earlier -- happen, right?	FRE 1002: Best Evidence Rule	The deponent's statement does not seek to establish the content of a writing. The deposition excerpt cited pertains to the declarant's

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A. This -- in this particular -- in – for focal, so the up-the-chain-of-command thing, that's for -- more for new hires, for individual Workflows. For this particular process, it -- it can go up the chain of command. Q. Uh-huh. A. And, like, a third- or fourth-level manager can see everything that's been entered for their lower-level managers, but it does not require that every single level click "Approve, Approve, Approve, Approve." It doesn't -- it doesn't really work quite the same way. Q. Okay. And -- but there's still the sanity checks at the top for -- for these focal review approvals? A. At the very top, the -- it's more, it -- the -- they confirm that everybody stayed within the budget they were given. So at the end of a program, I present a summary to our CEOs and CT- -- executive vice – or executive chairman and CTO that shows: This was their eligible head count, this is who -- this is how many got a raise, this was their budget, and this was their spend. And as long as everybody stayed within the budget they were given, we get the green light to post, to process them. Q. Okay. For new hires, you -- you mentioned that there were -- there was the next-level manager, the compensation -- the compensation consultant, and the HR business manager who would do a little bit more of a substantive review of the pay decision. Is that -- is that true here as well for the focal review process? A. For the -- so I believe -- I believe		opinions and understanding regarding how compensation decisions are reviewed at Oracle. The deponent's testimony is the best evidence of her opinions and her understanding.

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more -- what I testified to that was that the – the managers might consult with their business partners, and they would have a conversation about what makes sense for that new hire offer. And if necessary, HR might engage comp if they would like some help. Comp was -- compensation consultant was not always involved with those decisions. With a -- when we have a focal program open, the manager may or may not engage with HR. HR may or may not engage with comp. But they -- but HR and compensation do look at the worksheets and run downloads of the worksheets to do some sanity checks to make sure, you know, we -- we might have a case where somebody accidentally -- actually, what happen -- what tends to happen, and I mentioned it here, there is a currency switcher. And so sometimes managers think they're entering all their recommendations in as -- as U.S. dollars, but then when HR goes in to run kind of a – to run a -- just a spot-check of what's going on and what's been entered and how much progress has been made -- Q. Uh-huh. A. -- HR discovers that they put in – say they put in for 10,000 and their intention was $10,000, but it actually was only -- they were on the local currency page, so 10- -- it was 10,000 rupees, which comes to like a dollar. And so just those kinds of -- they go in and check to make sure that what they're -- what is being inputted is -- and they'll follow up then with the manager to say, "I don't think you meant to do this." So they'll do a little bit of spot checks on it, but it's not -- I		

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wouldn't say there are real in-depth analyses on things, but they are available to consult with the manager, should the manager need to have some conversation around . . .		

Respectfully submitted,

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