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**

REDACTED PURSUANT TO COURT ORDER

Exhibit P-449

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

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			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

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	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

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			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.

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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

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	(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

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	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

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	"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.

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15.	Oracle admits that they carried out pay equity audits to assess their compliance with nondiscriminatio n 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).

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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

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			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

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			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.

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	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

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	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.

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	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

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			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.

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Respectfully submitted,
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