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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'S MOTION IN LIMINE TO EXCLUDE TRIAL EVIDENCE AND TESTIMONY RELATED TO SUBJECTS IN WHICH ORACLE REFUSED TO PROVIDE DISCOVERY BASED ON PRIVILEGE OR RELEVANCE

INTRODUCTION

During discovery, Oracle expressly refused to respond to discovery or produce documents responsive for relevant categories to OFCCP's claims based on claims of privilege (e.g., internal compensation analyses; internal communications regarding EEO compliance; internal investigations) based on its unilateral declaration that broad areas of inquiry are not relevant (e.g., compensation of persons outside Product Development, Support, Information Technology) or claims that it would be too burdensome to produce information. Now, on the eve of trial, it appears from Oracle's summary judgment briefing and exhibit lists, Oracle seeks to affirmatively exploit the lack of evidence on the very categories of information that Oracle withheld information. This tactic is not proper. This Court should preclude Defendants from offering any evidence, testimony, or argument regarding subject matters in which Defendant failed entirely to respond to Plaintiffs' legitimate discovery requests or which Defendant failed to provide responsive information about relying on broad assertions of privilege.[1]

I. FACUAL BACKGROUND

During this litigation, Oracle took aggressive positions in response to OFCCP's discovery requests, refusing to produce vast swaths of information that OFCCP contended were relevant to this case. Flipping the intent of discovery on its head, Oracle's providing responsive information proved to be the exception, rather than the rule. OFCCP received almost no production of documents outside the scope of the information exchanged pre-filing from Oracle until after it filed a Motion to Compel[2] and Judge Larsen issued an Order on September 11, 2017, compelling Oracle to produce required documents. In this Order, Judge Larsen repeatedly overruled Oracle's objections to OFCCP's Requests for Production, noting that Oracle's objections were "troubling", redefined words inconsistent with commonly understood definitions[3], and relied on implicit arguments that were not credible.[4]

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[1] The parties met and conferred over the issues in this motion on November 11, 2019.
[2] *See* OFCCP's Motion to Compel, filed August 18, 2019, at *2 and supporting evidence.
[3] *Id.* at *10.
[4] *Id.* at *5.

When discovery resumed in earnest in 2019 following an extended mediation, Oracle quickly demonstrated that it was undeterred in asserting the broadest possible objections and responding to the least amount of information possible. For example, other than making long lists of objections, Oracle failed to respond to 15 out of 19 of OFCCP's first and second set of interrogatories.[5] As such, Oracle deprived OFCCP even the most basic information about what its defenses would be.

For example, OFCCP's first interrogatory simply requested:

> Identify all POLICIES, PRACTICES, and / or PROCEDURES, including their implementing criteria, maintained or applied by YOU that YOU contend have or had any impact RELATING TO the COMPENSATION of any PERSON in the COMPENSATION RELEVANT JOB GROUP during the RELEVANT TIME PERIOD.[6]

In Response, Oracle filed a full page and half of objections, and provided no answer whatsoever.[7] OFCCP's Interrogatory 2, which essentially asked Oracle to detail analyses Oracle performed that considered potential differences in compensation met the same fate.[8] Interrogatory 4 asked Oracle to identify who it contended was similarly situated for purposes of compensation—which, as Oracle's summary judgment briefs demonstrate—is one of the most central issues in this case. Again, Oracle flatly refused to provide an answer.[9]

Starting with the data, which Oracle only produced after OFCCP filed a motion to compel, most of the information that OFCCP obtained in these proceedings was only produced as the result of motion practice or under the threat thereof. Specifically, OFCCP filed Motions to Compel to require Oracle to produce historic data which was granted in part.[10] OFCCP also had to obtain an Order by this Court merely to secure Oracle's appearance for 30(b)(6) deposition

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[5] Declaration of Laura C. Bremer, Exs. A and B; *see also* Ex. 22 of OFCCP's Motion to Compel Compensation Analyses (filed June 19, 2019), and incorporated herein with specific citations to Exhibits and page numbers in accordance with the Court's Order.
[6] Bremer Declaration, Ex. A p. 8-9.
[7] *Id.*
[8] *Id.* at 10-13.
[9] *Id.* at 16-17.
[10] *See* Order Granting in Part OFCCP's Motion to Compel Historical Data (May 16, 2019).

testimony on plainly relevant topics surrounding Oracle's compensation practices.[11] OFCCP also filed a motion to compel to secure Oracle internal, self-critical analyses regarding its equal employment opportunity (EEO) compensation compliance.[12] This Motion was denied in part based on Oracle's claim of privilege over more than 2,400 documents responsive to OFCCP's requests.

In short, Oracle narrowly limited the discovery in this matter. As set forth below, a consequence of this behavior is that Oracle also sharply limited its own ability to assert defenses, evidence, and arguments on the numerous topics for which it refused to provide responsive information.

II. ARGUMENT

Defendant should be precluded from offering any evidence, testimony, or argument regarding subject matters in which Defendant failed entirely to respond to Plaintiffs' legitimate discovery requests designed to elicit relevant information on the topics. 29 C.F.R. § 18.57(c); Fed. R. Civ. P. 37(c)(l). As set forth above, Defendant aggressively limited the scope of discovery in this matter. Having done so, Oracle cannot seek to exploit an advantage by proffering its own evidence on subjects where OFCCP was denied full discovery or seeking an inference regarding evidence OFCCP does not present at trial. OFCCP requests that this Court issue an Order prohibiting Oracle from proffering evidence, testimony, or argument regarding the subject that OFCCP was unable to secure discover on. This includes, *but is not limited to*, offering evidence, testimony, or argument that is intended to demonstrate or indicate that:

(1) Defendant took actions to ensure their compliance with their equal employment opportunity obligations or that these obligations were taken seriously by top official tasked with ensuring Affirmative Action Program compliance ("**Category 1**");

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[11] Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Deposition of Oracle America, Inc. Pursuant to 41 C.F.R. § 60-30.11 and Federal Rule of Civil Procedure 30(b)(6) (June 19, 2019).

[12] Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Oracle's Compensation Analyses (September 19, 2019).

(2) Defendant made corrections to its compensation practices as a result of self-critical, privileged analyses (**"Category 2"**);

(3) Defendant investigates internal equity complaints or problems and takes corrective action based on its process and findings; (**"Category 3"**) and

(4) Defendant was cleared of discrimination, or has not discriminated, against employees in compensation outside of Product Development, Support, or Information Technology (**"Category 4"**).

Oracle refused to produce any documents responsive to Plaintiffs' requests for discovery with regard to each of these topics, or asserted privilege over all or almost all responsive information. Allowing Defendant to offer any evidence, testimony, or argument "at trial, at a hearing, or on any motion" relating to these topics would thus be highly prejudicial to Plaintiffs, and would allow Defendant to skirt the applicable discovery rules. Fed. R. Civ. P. 37(c)(l).

A. Oracle is Precluded From Attempting to Show Good Faith Compliance with it Equal Employment Opportunities Obligations (Categories 1-3) or From Using It's Assertions of Privileges On Any Other Issue as a Sword.

The case law is clear that the assertion of privileges "may not be used both as a sword and a shield." *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. 1992). Moreover, "[w]here a party raises a claim which in fairness requires disclosure of the protected communication, the privilege may be implicitly waived." *Id.* Because Oracle has already indicated a willingness to attempt to use its assertions of privileges as a sword, this Court should issue an Order prohibiting this practice. If Oracle does so, the privilege must be deemed waived. In addition, based on Oracle's broad assertions of privilege protecting its self-analyses, applicable case law establishes that Oracle may not be permitted to proffer evidence that it took its non-discrimination obligations seriously and was active about ensuring compliance.

As this Court is aware, OFCCP filed a Motion to Compel after Oracle's blanket refusal to provide responsive documents on relevance grounds and based on assertions of privilege.[13] As

[13] *See* OFCCP's Motion To Compel Compensation Analyses *11-19 (filed June 19, 2019).

set forth in that Motion and supporting evidence, Oracle refused to supply OFCCP with any of its compensation analyses conducted between 2013 and 2015, the datasets used in the analyses, actions taken as result of the analyses, or even the dates these analyses were conducted.[14] In considering OFCCP's motion, this Court found that "[t]he relevance of the documents in question is not seriously at issue."[15] The Court ultimately did not compel the production of the documents based on Oracle's privilege log and an attorney affidavit by Gary Siniscalco. Mr. Siniscalco averred that "[n]one of the pay equity analyses that OFCCP seeks were conducted for the purpose of complying with 41 C.F.R. § 60-2.17" and explained that the communications and work product in question was conducted for "Oracle's own non-discrimination policies, assessing compliance and legal risks is good corporate governance and human resource policy."[16] Based on Oracle's combined privilege logs, Oracle withheld 2,436 internal documents related to its internal compensation practices and self-critical analyses.[17] All of these communications occurred within a three-year period.[18] As a result, despite seeking discovery on Oracle's approach to affirmative action and equal employment opportunity compliance, OFCCP received virtually no internal correspondence by relevant Oracle staff related to its compliance strategies and decisions based on its broad claims of privilege.

Oracle has indicated in its summary judgment filings that it intends to proactively argue that, despite producing no evidence on the subject, it *may* have taken corrective action that neither OFCCP or this Court may ever be aware of.[19] OFCCP did not cite to Oracle's assertions of privilege in proffering evidence to support the proposition that Oracle "took no corrective actions in response to any pay analysis conducted."[20] Rather, OFCCP cited to admissions by

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[14] *See id.* at *3.
[15] Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Oracle's Compensation Analyses at *5 (September 19, 2019) ("the analyses themselves are quite relevant to claims of compensation discrimination, which very much are at issue in this case.").
[16] *See id.* at 12.
[17] *Id.* at 6.
[18] *Id.*
[19] *See* Oracle's Response to OFCCP's Statement of Uncontested Facts, No. 212.
[20] *Id.*

Oracle's own high ranking officials that this was so.[21] Nonetheless, Oracle went on the offensive in its Opposition suggesting that OFCCP cannot possibly know for sure if no corrective action was taken because communications regarding that corrective action would be privilege. As such, Oracle attempts to rebut the testimony of its own managers by suggesting there might be other evidence that OFCCP and this Court has no access to.

This type of argument either must result in waiver of the privilege or exclusion of the evidence. As the Ninth Circuit held in an analogous context in which an employer withheld information under the self-critical analysis privilege, "when an employer *voluntarily* uses evidence of its equal opportunity efforts to prove nondiscrimination, it 'opens the door' and waives whatever qualified privilege may have existed." *E.E.O.C. v. Gen. Tel. Co. of Nw.*, 885 F.2d 575, 578 (9th Cir. 1989) (emphasis in original).

In addition to attempting to confuse the evidence in this case by affirmatively suggesting that something exculpatory might exist behind the vail of privilege, Oracle also appears to want to portray itself as an employer that affirmatively takes its equal employment obligations seriously and is proactive about compliance. Oracle's preliminary exhibit list contains numerous documents that appear intended to create an impression that Oracle is committed to diversity.[22] Given the curtain of privilege over its internal communications on its EEO compensation practices, Oracle may not proffer this type of evidence.

Quoting *Coates v. Johnson & Johnson*, 756 F.2d 524, 551 (7th Cir.1985), the Ninth Circuit in *Gen Tel.* explained:

> [A]n employer should not be able to offer its affirmative action policy before the trier of fact as a manifestation of nondiscrimination and at the same time be able to hide self-critical evaluations that may undercut the employer's portrayal of its efforts. Fairness requires that the qualified privilege not be allowed to mask discrimination when the overall policy behind the privilege is directed toward eliminating it.

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[21] *Id.*

[22] The parties have not finalized exhibit lists. However, Oracle's preliminary lists include at least 18 documents that it describes as demonstrating its good faith efforts to promote diversity. Bremer Decl. ¶6.

885 F.2d at 578. This type of evidence must be excluded (or the privilege pierced) because "[f]acilitating one-sided presentation of a defense prevents the factfinder from getting 'the full picture' of a defendant's conduct by precluding the plaintiff from enjoying a fair opportunity to challenge the evidence and the defendant's theory in offering it." 885 F.2d at 578 (concluding that trial court erred in allowing defendant's "equal opportunity evidence" because "the district court exempted from discovery relevant self-critical materials thus leaving the EEOC ill-equipped to effectively cross-examine those of GenTel's witnesses who testified concerning the implementation and efficacy of GenTel's equal opportunity efforts.").

This Court has accepted Oracle's attorney declaration averring that all of the thousands of communications about self-critical assessments were not conducted in accordance with its regulatory obligations, but were instead conducted allegedly in regards to Oracle's "non-discrimination policies" and to "assess[] compliance and legal risks." A consequence of this ruling, under case law, is that having successfully shielded its self-critical analyses and internal communications related to equal opportunity (EEO) compliance, Oracle cannot proffer evidence that it takes its EEO obligations seriously.

Similarly, Oracle refused to produce information related to its internal investigations on the basis of privilege. During discovery, OFCCP sought information about Oracle's internal complaint investigations related to compensation discrimination.[23] For example, OFCCP specifically requested Oracle's policy, practices and/or procedures for its employees making internal complaints for unfair treatment (and other acts) and how a complaint is investigated.[24] When OFCCP asked Oracle what type of actions it has taken as a result of its internal investigation on compensation discrimination, Oracle refused to answer based on attorney-client privilege because "whatever we do in any given investigation is at the direction of counsel."[25] Oracle produced documents that state they found no evidence of compensation discrimination in one internal investigation, but would not let the witness testify whether the witness was aware of

[23] OFCCP's Motion To Compel Compensation Analyses (filed June 19, 2019) Ex. 17 p. 48-52.
[24] *Id.*
[25] Bremer Decl. ¶ 4, Ex. C p. 112:5-113:9.

an investigation that did find compensation discrimination because *that* is allegedly "attorney-client privilege."[26]

Having used privileges in this area as a shield, Oracle should be precluded from affirmatively proffering evidence that its internal complaint process addresses the discrimination claims at issue in this case. *See, e.g.*, *Cicel (Beijing) Sci. & Tech. Co. v. Misonix, Inc.*, 331 F.R.D. 218, 238 (E.D.N.Y. 2019) (holding that privileges will be waived with respect to an internal investigation if holder of privilege "use[s] a specific communication relating to the Internal Investigation in support of its defense").

In sum, case law is clear that Oracle may not attempt to secure a litigation advantage from its assertion of privileges. As Oracle has already demonstrated an intent to do so, this Court should issue an Order preventing Oracle from proffering this type of evidence or argument.

B. Oracle is Precluded Under Rule 37(c) From Proffering Evidence on Subject Matters it Refused to Produce Information on in Discovery (including, but limited to, Category 4).

Fed. R. Civ. P. 37(c)(l) establishes a self-executing sanction for failing to respond to valid discovery requests. *See Zhang v. Am. Gem Seafoods. Inc.*, 339 F.3d 1020, 1028 (9th Cir. 2003) (strictly following Rule 37 to exclude document when it was produced after discovery cut-off date; and after deposition for which document was to be used; and no "substantial justification" given for failure to produce); Fed. R. Civ. P. 37(c)(l) advisory committee notes (1993) ("The revision provides a self-executing sanction for failure to make a disclosure required by Rule 26(a)...."); *compare* 29 C.F.R. § 18.57(c) (providing parallel language to Fed. R. Civ. P. 37(c)(l)).

The Federal Rules of Civil Procedure's discovery rules are intended to bring clarity to the issues, allow the parties to ascertain relevant facts and information, and, ultimately, aid the court to reach its decision. *Cf. Hickman v. Taylor.* 329 U.S. 495, 500 (1947). Rule 37(c)(l) "gives teeth" to these discovery rules "by forbidding the use at trial of any information required to be disclosed by Rule 26(a) [and (e)] that is not properly disclosed." *Yeti by Mollv Ltd, v. Deckers*

[26] Bremer Dec. ¶ 4, Ex. C p. 215:20-216:15 and 217:13-21.

Outdoor Corp.. 259 F.3d 110, 1106 (9th Cir. 2001); *see* Fed. R. Civ. P. 37(c)(l) advisory committee's note (1993) ("This automatic sanction provides a strong inducement for disclosure of material that the disclosing party would expect to use as evidence ...."); *Markos v. Sears, Roebuck and Co.*, No. CV 05-3051 CBM (JWJx), 2007 WL 5162457, at *3 (C.D. Cal. Mar. 19, 2007) (A party's "failure to provide such information during discovery renders any such effort to do so at trial subject to the exclusionary sanctions of Rule 37.").

Rule 37(c)(l) does not require the movant to show "willfulness, fault, or bad faith" unless moving to dismiss the action as the Rule 37 sanction. *Id.* at 1106. Once the movant demonstrates that Rule 26(a), 26(e)(l), or 26(e)(2) has been violated, the sanction is automatic unless the respondent demonstrates a "substantial justification" for its failure, or shows that the failure was harmless. *Id.* 1106-07. Failure is harmless only where no prejudice results or prejudice may be cured by production sufficiently in advance of trial. *See Pfingston v. Ronan Eng'r Co.*. 284 F.3d 999, 1005 (9th Cir. 2002) (finding no prejudice when unproduced information was used in defendant's summary judgment motion and summary judgment would have been granted even without the unproduced evidence; recommending that evidence could have been excluded only for summary judgment motion since the information was then disclosed to plaintiff and available for later use).

As explained above, Oracle took aggressive stances in discovery, effectively refusing to answer most of OFCCP's interrogatories. Having done so, Oracle cannot now proffer evidence on topics that it contested were not relevant in discovery.

For example, Oracle refused to produce any information related to the compensation case that related to employees outside the three job functions identified in OFCCP's complaint: Product Development, Support, and Information Technology. Yet, in its Motion for Summary Judgment, Oracle attempts to affirmatively argue that OFCCP "did not find evidence of discrimination" with respect to other job functions.[27] For the reasons stated in OFCCP's Opposition brief, this argument is entirely baseless.[28] Failure to cite a violation does not indicate

[27] *See* Oracle's Memorandum of Points and Authorities in Support of Summary Judgment at *19, n. 7.
[28] *See* OFCCP's Opposition to Oracle's Motion For Summary Judgment at *14-15, n. 20.

one way or the other whether a violation exists. As OFCCP explained above, Oracle refused to provide OFCCP with significant amount of relevant evidence during the compliance review. *See Beachy v. Boise Cascade Corp.*, 191 F.3d 1010, 1015 (9th Cir. 1999) (explaining that "an agency's determination that insufficient facts exist to continue an investigation is not per se admissible in the same manner as an agency's determination of probable cause [that discrimination occurred]"); *Dindinger v. Allsteel, Inc.*, 853 F.3d 414, 427 (8th Cir. 2017) (affirming verdict that female employees had been subjected to discrimination in case where employer had been audited by OFCCP and the agency did not cite violations). Moreover, as explained in a declaration accompanying OFCCP's Opposition, the Functions at issue here combined represented two-thirds of the employees at headquarters.

As noted in OFCCP's Opposition, it is also critical to note that during discovery OFCCP sought information on persons in job functions outside of the class and Oracle explicitly refused.[29] Oracle acknowledges in its Response to OFCCP Statement of Additional Facts, submitted with Oracle's Reply Brief to the Motion for Summary Judgment ("ORAUF"), it continues to contend that "[a]t no point during the litigation did Oracle have an obligation to produce compensation data outside the relevant scope of the complaint."[30] Whether or not this is accurate, the relevant point here is that Oracle has by its own admission acknowledged that the treatment of employees outside of the scope of OFCCP's complaint is outside these proceedings. Under this Court's rules and the Federal Rules of Civil Procedure, Oracle cannot not claim an implicit victory with respect to OFCCP's purportedly failure to prove discrimination with regard to classes of individuals that Oracle has steadfastly refused to provide information about.

To ensure procedural fairness, OFCCP requests a broad order prohibiting Oracle from engaging in this type of tactic. Oracle should be prohibited from proffering any evidence or argument on topics in which it refused to provide information in discovery.

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[29] *See* Declaration of Laura C. Bremer, filed with OFCCP's Opposition to Oracle's Motion for Summary Judgment, ¶ 39.
[30] ORAUF ¶ 52.

III. CONCLUSION.

For the reasons described herein, OFCCP requests that this Court order that Oracle be precluded from offering exhibits, testimony or argument that affirmatively use its prior assertions of privilege as a sword. The consequence for Oracle in doing so should be automatic waiver of privileges. OFCCP further requests that this Court issue an order precluding Oracle from offering evidence related to its purported promotion of diversity and its strategies for securing equal employment opportunities. Oracle should be similarly precluded from offering evidence that suggests it has a complaint compliance regime that effectively addresses EEO problems. Oracle should also be broadly precluded from introducing lines of argument that relate to subject matters that Oracle claimed were irrelevant during discovery, of for which Oracle produced no responsive evidence or information.

November 19, 2019

Respectfully submitted,

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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.	Case No. 2017-OFC-00006

DECLARATION OF LAURA C. BREMER IN SUPPORT OF OFCCP'S MOTION IN LIMINE TO EXCLUDE TRIAL EVIDENCE AND TESTIMONY RELATED TO SUBJECTS IN WHICH ORACLE REFUSED TO PROVIDE DISCOVERY BASED ON PRIVILEGE OR RELEVANCE

I, Laura Bremer, state and declare as follows.

1. I am Acting Civil Rights Counsel for the U.S. Department of Labor, Office of the Solicitor, and counsel of record for Plaintiff in this action. I submit this declaration in support of OFCCP's Motion in Limine to Exclude Trial Evidence and Testimony Related to Subjects in which Oracle Refused to Provide Discovery Based on Privilege or Relevance. I have personal knowledge of the matters set forth in this declaration, and I could and would competently testify thereto if called upon to do so.

2. Attached as Exhibit A is a true and correct copy of Oracle's Objections to First Set of Interrogatories, dated January 28, 2019.

3. Attached as Exhibit B is a true and correct copy of Oracle's Objections to Second Set of Interrogatories, dated May 13, 2019.

4. Attached as Exhibit C is a true and correct except of copy of the deposition of Tamerlane Baxter, Oracle's 30(b)(6) witness for internal complaints at HQCA, taken by OFCCP on July 3, 2019.

5. As I described in more detail in my declaration filed with OFCCP's Opposition to Oracle's Motion for Summary Judgment (¶ 39), OFCCP sought compensation data during discovery regarding employees in all job functions and Oracle's counsel refused this request.

6. The parties have not finalized exhibit lists. However, Oracle's preliminary lists include at least 18 documents that it describes as demonstrating its good faith efforts to promote diversity.

7. Prior to filing this motion, OFCCP reviewed all proposed submissions with this motion to ascertain whether material is subject to a motion to seal or can be submitted in redacted form under governing law. None of submissions with this motion should be sealed.

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

Executed on November 15, 2019 in San Francisco, California.

LAURA C. BREMER

Exhibit A

these responses as a result of good faith oversight, error, or mistake.

For the reasons set forth in Oracle's initial Answer and its Responses and Objections to OFCCP's four sets of Document Requests, Oracle's responses to interrogatories related to OFCCP's recruiting and hiring claims are limited to the PT1 job group at Oracle's Redwood Shores, CA, location, and its responses to interrogatories related to OFCCP's compensation claims are limited to positions in the Product Development, Support, and Information Technology job functions at Oracle's Redwood Shores, CA, location.

These responses are made solely for purposes of this action, and are subject to all objections as to competence, authenticity, relevance, materiality, propriety, admissibility, and any and all other objections and grounds that would or could require or permit the exclusion of any document or statement therein from evidence, all of which objections and grounds are reserved and may be interposed at the time of trial.

No incidental or implied admissions are intended by these responses. The fact that Oracle has responded or objected to any interrogatory or part thereof shall not be deemed an admission that Oracle accepts or admits the existence of any facts set forth or assumed by such interrogatory. Nor shall Oracle's responses or objections be deemed an admission that any statement or characterization in any request is accurate or complete, or that any particular document exists, is relevant, or is admissible in evidence.

Oracle further objects that, as detailed below, many of OFCCP's interrogatories improperly contain numerous "subpart" interrogatories posing discrete questions calling for dissimilar groups of information. Oracle therefore objects to the extent OFCCP has exceeded the interrogatory limit set forth in Fed. R. Civ. Pro. Rule 33(a)(l).

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the commonly understood meaning, such a broad definition includes and encompasses analyses that are not relevant to any party's claim or defense nor proportional to the needs of the case.

DEFINITION NO. 5. "ANSWER" means the answer to the AMENDED COMPLAINT filed by YOU in this action on February 8, 2017.

DEFINITION NO. 6. "AND" and "OR" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

DEFINITION NO. 7. "COMMUNICATIONS" means all transactions or transfers of information of any kind, whether orally, in writing, or in any other manner, at any time or place, under any circumstances whatsoever.

OBJECTION TO DEFINITION NO. 7:

Oracle objects to this definition as including the phrase "all transactions or transfers" and the term "orally," which render the definition vague, ambiguous, and overbroad, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case.

DEFINITION NO. 8. "COMPENSATION" means any payments made to, or on behalf of, an employee as remuneration for employment, including but not limited to, salary, wages, overtime pay, shift differentials, commissions, bonuses, merit pay or pay related to performance, vacation and holiday pay, retirement and other benefits, stock options and awards, and profit sharing.

DEFINITION NO. 9. "COMPENSATION RELEVANT JOB GROUP" means any PERSON YOU employed in the Product Development, Information Technology or Support lines of business or job functions at YOUR headquarters at Redwood Shores, California during the RELEVANT TIME PERIOD.

OBJECTION TO DEFINITION NO. 9:

Oracle objects to this definition to the extent it seeks to establish or imply that certain PERSONs are relevant to OFCCP's claims. Oracle objects to this definition as vague, ambiguous, overbroad, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case.

OBJECTION TO DEFINITION NO. 12:

Oracle objects to this definition as including the phrase "or known by YOU to exist," which, to the extent such documents are not in Oracle's possession, custody, or control, encompasses documents beyond those for which Oracle has any obligation to identify, describe, and/or produce.

DEFINITION NO. 13. "HIRING" "HIRE," OR "HIRED" mean receiving expressions of interest, soliciting, recruiting, communicating with, screening, interviewing, evaluating, determining starting salary and other COMPENSATION for, and/or extending offers to, PERSONS who express interest in a position with YOU or requisition posted by YOU.

OBJECTION TO DEFINITION NO. 13:

Oracle objects to this definition as unintelligible in its entirety. Oracle further objects to this definition as including the term "PERSON" and the phrases "expressions of interest," "communicating with," and "express interest," which render the definition vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle interprets this definition using the commonly understood use of the word "hiring," "hire," or "hired."

DEFINITION NO. 14. "HIRING RELEVANT JOB GROUP" means any PERSON YOU HIRED to work in the Professional Technical 1, Individual Contributor job group and/or Product Development line of business or job function at YOUR headquarters at Redwood Shores, California during the RELEVANT TIME PERIOD.

OBJECTION TO DEFINITION NO. 14:

Oracle objects to this definition to the extent it seeks to establish or imply that certain PERSONs are relevant to OFCCP's claims. Oracle further objects to this definition as vague, ambiguous, overbroad, and encompassing documents not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition as inconsistent with OFCCP's stated position on the meet and confer call between the parties on August 2, 2017, on which it acknowledged that its claims related to hiring and recruiting were limited to the

documents not relevant to any party's claim or defense nor proportional to the needs of the case. Furthermore, the definition is contrary to the ordinarily understood meaning of the word, which does not mean sustained or utilized.

DEFINITION NO. 19. "WHOSE COUNTRY OF NATIONAL ORIGIN IS INDIA" means any PERSON who was born in India and / or whose ancestors came to the United States from India.

OBJECTION TO DEFINITION NO. 19:

Oracle objects to this definition as unintelligible insofar as the phrase "WHOSE COUNTRY OF NATIONAL ORIGIN IS INDIA" is defined to mean a person. Furthermore, the term "ancestors," which is overbroad because it would encompass ancestors dating back multiple generations without limit, renders the definition not only vague and ambiguous, but also unduly burdensome and oppressive, and relating to persons not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition as over-inclusive, as a person could happen to be born in India, but not be of Indian descent. Likewise, it is objectionable insofar as it wrongly assumes or implies such information is known to Oracle. Furthermore, the definition is objectionable as it covers a topic that has no bearing on this litigation.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify all POLICIES, PRACTICES, and / or PROCEDURES, including their implementing criteria, maintained or applied by YOU that YOU contend have or had any impact RELATING TO the COMPENSATION of any PERSON in the COMPENSATION RELEVANT JOB GROUP during the RELEVANT TIME PERIOD.

RESPONSE TO INTERROGATORY NO. 1:

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

Oracle objects to this Interrogatory on the ground that it was initially propounded and founded upon various rulings made by Judge Larsen that affect the scope of the litigation and matters relevant and at issue for purposes of discovery. Judge Larsen, on October 15, 2018, indicated he should have granted Oracle's motion to disqualify him. Furthermore, on January

whether the term "impact" is intended to connote a particular degree or type of influence on compensation, such as only a material effect or only a negative effect. Likewise, it is unclear what an impact "relating to" compensation means or how it differs from an impact "on" compensation. To the extent this Interrogatory seeks information about an "impact" that merely "relates to" compensation, Oracle objects that it is overbroad and seeks information not relevant to any party's claim or defense nor proportional to the needs of the case.

Oracle also objects to the phrase "have or had any" as overbroad to the extent it seeks information on policies, practices, or procedures outside of the relevant time period. Oracle also objects to the phrase "have or had any" as vague and ambiguous, as it is unclear whether OFCCP is seeking only current policies, practices, and procedures, or also discontinued or modified policies, practices, and procedures.

INTERROGATORY NO. 2: DESCRIBE IN DETAIL all ANALYSES YOU performed during the RELEVANT TIME PERIOD wherein YOU CONSIDERED issues related to actual or potential differences in COMPENSATION between PEOPLE of different sexes, races, or national origins involving any PERSON in the COMPENSATION RELEVANT JOB GROUP. For each of these ANALYSES, the description should include, but not be limited to, the beginning and end date of the ANALYSIS; the full names and job titles of all PEOPLE conducting the ANALYSIS; the methodology, to include identification of the material facts, data and variables, used; the full names, job titles; full names of supervisors and the lines of business of the PERSONS that were the subject of the ANALYSIS; all findings and conclusions of the ANALYSIS; and all actions YOU took in response to the ANALYSIS.

RESPONSE TO INTERROGATORY NO. 2:

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

Oracle objects to this Interrogatory on the ground that it was initially propounded and founded upon various rulings made by Judge Larsen that affect the scope of the litigation and matters relevant and at issue for purposes of discovery. Judge Larsen, on October 15, 2018, indicated he should have granted Oracle's motion to disqualify him. Furthermore, on January

especially to the extent it purports to require Oracle to recreate any analyses in the form of an interrogatory response.

Oracle further objects to the phrase "the full names, job titles; full names of supervisors and the lines of business of the PERSONS that were the subject of the ANALYSIS" as overbroad and unduly burdensome in that it appears to request the identity of every person who was embraced by a particular analysis, in addition to their supervisors.

Oracle further objects to the term "national origin" as not relevant to any party's claim or defense nor proportional to the needs of the case. The "national origin" of a person is not relevant for the purposes of OFCCP's compensation claims, which allege compensation differences based on race.

Oracle further objects to the term "conducting" as vague and ambiguous. It is unclear what it means to "conduct" an analysis in this context. For example, it is unclear (1) whether Oracle is expected to disclose and identify individuals who are ultimately responsible for analyzing the results of an analysis as well as the individuals who actually performed it; (2) whether the response should include only Oracle personnel or outside consultants as well; or (3) what level of input or authority relating to the methodology of an analysis would be sufficient to rise to the level of "conducting" it.

Oracle further objects to the term "performed" as vague and ambiguous because it is not clear whether that term encompasses analyses that already are completed or analyses that are still in progress.

Oracle further objects to the phrase "all findings and conclusions" as vague, ambiguous, overbroad, and not relevant to any party's claim or defense nor proportional to the needs of the case. Specifically, Oracle objects to the extent this Interrogatory purports to require Oracle to affirmatively draw findings or conclusions from analyses where it has not done so previously. It is also unclear what constitutes a "finding" or "conclusion" of an analysis, such as whether those terms include only data and statistics, or whether they also encompass subjective, written narratives describing the results of an analysis. Similarly, it is unclear whether mere theories or

matters relevant and at issue for purposes of discovery. Judge Larsen, on October 15, 2018, indicated he should have granted Oracle's motion to disqualify him. Furthermore, on January 22, 2019, OFCCP filed a motion seeking leave to file a Second Amended Complaint. In light of the foregoing, the scope of litigation and matters relevant for purposes of discovery are in a state of flux. This previously-propounded Interrogatory is not the proper subject of discovery at this time.

Oracle further objects to the extent this Interrogatory seeks information protected by the attorney-client privilege, the work-product doctrine, or other applicable privileges or immunities. In addition to implementing and applying its own well-established nondiscrimination policies, Oracle regularly assesses its compliance and legal risks as part of its good corporate governance and human resource policies. Oracle, like other companies, seeks advice and assistance from legal counsel to analyze employment decisions, policies and practices. Accordingly, many "analyses" are done internally as part of HR/compliance oversight. Indeed, Oracle's analysis efforts can involve privileged audits that OFCCP has long recognized and encouraged. *See, e.g.*, 2006 Voluntary Guidelines for Self-Evaluation of Compensation Practices, 71 Fed. Reg., No. 116, June 16, 2006. While the 2006 standards and voluntary process were rescinded in 2013, and were specifically written to address compensation practices, the widely-accepted legal right of employers to conduct a privileged audit was never discarded by OFCCP in the context of compensation practices and remains equally applicable to hiring practices. Oracle objects to the extent this Interrogatory calls for information regarding any privileged audits.

Oracle further objects to the phrase "issues related to actual or potential differences" as vague, ambiguous, and overbroad. It is unclear what a "potential difference" in hiring is, or how Oracle is expected to identify it. Likewise, this Interrogatory is overbroad in that it seeks analyses of issues "related to" differences in hiring rather than merely analyses of differences in hiring.

Oracle further objects to the phrase "the methodology, to include identification of the material facts, data and variables, used" as vague, ambiguous, and unduly burdensome,

Oracle further objects to the phrase "all actions YOU took in response" as vague, ambiguous, overbroad, and not relevant to any party's claim or defense nor proportional to the needs of the case. The results of one particular analysis may have been a factor but not the sole cause of a particular action taken by Oracle. Similarly, Oracle may have taken actions in response to a particular analysis that are unrelated to OFCCP's claims in this action. It is also unclear whether this Interrogatory calls for actions that Oracle may have considered or contemplated in response to an analysis, but not actually executed.

Oracle also objects that this Interrogatory improperly contains subparts in that it poses at least five separate interrogatories. It seeks: (1) a description of each analysis, including its methodology; (2) the names and job titles of each person "conducting" the analysis; (3) the names, supervisors, and lines of business that were the subject of the analysis; (4) all findings and conclusions of each analysis; and (5) all actions taken in response to an analysis.

INTERROGATORY NO. 4: For each employee YOU employed in the COMPENSATION RELEVANT JOB GROUP during the RELEVANT TIME PERIOD, identify all other PERSONS that YOU contend are similarly situated for purposes of COMPENSATION setting forth all material facts that YOU rely upon in making such determinations to include the full name, job title, full name of supervisor, and line of business of each employee YOU initially CONSIDERED and the full name, job title, full name of supervisor, and line of business of each PERSON YOU CONSIDERED to be similarly situated.

RESPONSE TO INTERROGATORY NO. 4:

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

Oracle objects to this Interrogatory on the ground that it was initially propounded and founded upon various rulings made by Judge Larsen that affect the scope of the litigation and matters relevant and at issue for purposes of discovery. Judge Larsen, on October 15, 2018, indicated he should have granted Oracle's motion to disqualify him. Furthermore, on January 22, 2019, OFCCP filed a motion seeking leave to file a Second Amended Complaint. In light of the foregoing, the scope of litigation and matters relevant for purposes of discovery are in a state

INTERROGATORY NO. 5: Identify all of the PEOPLE YOU employed in the COMPENSATION RELEVANT JOB GROUP during the RELEVANT TIME PERIOD WHOSE COUNTRY OF NATIONAL ORIGIN IS INDIA by identifying their full names, job titles, full names of supervisors, lines of business and dates of employment.

RESPONSE TO INTERROGATORY NO. 5:

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

Oracle objects to this Interrogatory on the ground that it was initially propounded and founded upon various rulings made by Judge Larsen that affect the scope of the litigation and matters relevant and at issue for purposes of discovery. Judge Larsen, on October 15, 2018, indicated he should have granted Oracle's motion to disqualify him. Furthermore, on January 22, 2019, OFCCP filed a motion seeking leave to file a Second Amended Complaint. In light of the foregoing, the scope of litigation and matters relevant for purposes of discovery are in a state of flux. This previously-propounded Interrogatory is not the proper subject of discovery at this time.

Oracle further objects to this Interrogatory on the grounds that it is vague, ambiguous, overbroad, and not relevant to any party's claim or defense nor proportional to the needs of the case. The "national origin" of an employee is not relevant to OFCCP's compensation claim, which alleges that it found compensation disparities with respect to women, Asians, and African Americans. Accordingly, whether the "national origin" for employees in the COMPENSATION RELEVANT JOB GROUP is India is wholly irrelevant. Likewise, the supervisors of employees whose "national origin is India" are not relevant to OFCCP's compensation claim, nor proportional to the needs of the case.

Oracle further objects that this Interrogatory is unduly burdensome insofar as it purports to require Oracle to identify the "national origins" of all of its employees in the COMPENSATION RELEVANT JOB GROUP (something that Oracle does not already systematically track for its employees), and then identify numerous facts relating to those employees, such as their job title(s), supervisors and dates of employment at various, unspecified

actions, directives, it is unclear whether OFCCP is seeking, for example, (1) a list of Oracle's official policies, practices and procedures with respect to its hiring, (2) a list of the factors and criteria that are considered in executing and applying each policy, practice, or procedure, or (3) a list of every conceivable factor that could possibly affect the hiring of an Oracle employee in the relevant job group. Accordingly, as drafted this Interrogatory is both vague and overbroad.

Oracle also objects that this Interrogatory is unintelligible insofar as it improperly seeks not only *identification* of policies, but as part of its policy identification response provide non-policy information, including identification of individuals, vendors and description of roles, responsibilities and services provided. Not only is the Interrogatory unintelligible, it also contains subparts by posing at least five separate interrogatories, rendering it unduly burdensome. It seeks: (1) a list of all policies, practices, and procedures relating to hiring; (2) a list of the "implementing criteria" for each policy, practice, or procedure; (3) a list, including name, job title, supervisor, and role of any employee involved in recruitment; (4) a list of all outside vendors, companies, recruiters, or other persons relied upon in recruitment; and (5) a list of the specific services they provided.

Oracle further objects to the term "used" as vague and ambiguous. It is unclear whether announcing, maintaining, discussing, or implementing a policy, practice, or procedure is synonymous with "using" it. It also unclear whether this Interrogatory seeks information about policies, practices, and procedures used by non-Oracle employees (e.g., vendors) that resulted in an individual being hired at Oracle in the relevant job groups.

Oracle further objects to the term "recruitment" as vague, ambiguous, and overbroad. It is unclear whether this Interrogatory seeks information about new college hires, hiring employees from other companies, or internal promotions.

Oracle further objects to the phrase "specific services they provided" as vague, ambiguous, overbroad, and not relevant to any party's claim or defense nor proportional to the needs of the case. It is unclear whether "they" is referring to Oracle employees, outside vendors, companies, recruiters, other persons, or some combination of the foregoing. This Interrogatory

obligations.

Oracle further objects to this Interrogatory on the grounds that the Court has already ruled that the parties should be aware of what documents were demanded by OFCCP and how Oracle responded. Specifically, in the Court's September 11, 2017 order on Oracle's motion to compel, the Court sustained OFCCP's objection to Oracle's interrogatory seeking information about OFCCP's allegations in Paragraphs 12 and 13 of its Amended Complaint that Oracle allegedly refused to produce certain documents, ruling that "The court sustains Plaintiff's objection to this Interrogatory as not proportional to the needs of the case. Defendant presumably already knows what Plaintiff did, or did not, demand of Defendant, and also knows how it responded. Plaintiff need not provide a further response to this interrogatory." Accordingly, based on that ruling Oracle objects to this Interrogatory on the grounds that the information already is in OFCCP's possession and asking Oracle to catalogue it in an Interrogatory is harassing and not proportional to the needs of the case, and that OFCCP should be aware of what it demanded from Oracle and how Oracle responded, including OFCCP's knowledge that Oracle never "refused" to produce documents.

INTERROGATORY NO. 8

DESCRIBE IN DETAIL all anecdotal evidence YOU contend SUPPORTS any statement YOU made in YOUR ANSWER to OFCCP's Amended Complaint.

RESPONSE TO INTERROGATORY NO. 8:

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

Oracle objects to this Interrogatory on the ground that it was initially propounded and founded upon various rulings made by Judge Larsen that affect the scope of the litigation and matters relevant and at issue for purposes of discovery. Judge Larsen, on October 15, 2018, indicated he should have granted Oracle's motion to disqualify him. Furthermore, on January 22, 2019, OFCCP filed a motion seeking leave to file a Second Amended Complaint. In light of the foregoing, the scope of litigation and matters relevant for purposes of discovery are in a state of flux. This previously-propounded Interrogatory is not the proper subject of discovery at this

INTERROGATORY NO. 9: State all material facts that SUPPORT YOUR sixth Affirmative Defense in YOUR ANSWER to OFCCP's AMENDED COMPLAINT.

RESPONSE TO INTERROGATORY NO. 9:

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

Oracle objects to this Interrogatory on the ground that it was initially propounded and founded upon various rulings made by Judge Larsen that affect the scope of the litigation and matters relevant and at issue for purposes of discovery. Judge Larsen, on October 15, 2018, indicated he should have granted Oracle's motion to disqualify him. Furthermore, on January 22, 2019, OFCCP filed a motion seeking leave to file a Second Amended Complaint. In light of the foregoing, the scope of litigation and matters relevant for purposes of discovery are in a state of flux. This previously-propounded Interrogatory is not the proper subject of discovery at this time. Oracle further objects that this Interrogatory is premature and improper in light of OFCCP's pending motion to file a Second Amended Complaint. If successful, OFCCP's motion would necessarily result in an entirely different Complaint and response from Oracle, which potentially includes an Answer and Affirmative Defenses that differ from those cited and referenced in this Interrogatory.

Oracle further objects to the extent this Interrogatory seeks information protected by the attorney-client privilege, the work-product doctrine, or other applicable privileges or immunities.

Oracle further objects that this Interrogatory is premature and that discovery is ongoing. Oracle has not completed its factual investigation and is still identifying and analyzing evidence that may support its defenses.

Oracle further objects that this Interrogatory is duplicative and seeks information that Oracle has already provided to OFCCP, including in connection with Oracle's motion for summary judgment on the basis that OFCCP did not engage in reasonable conciliation efforts. In addition, OFCCP is obviously aware of what conciliation efforts it made and therefore it already has all information responsive to this Interrogatory.

///

Antitrust Litig., No. C 07-1882 JF (RS), 2008 WL 5212170, at *2 (N.D. Cal. Dec. 11, 2008) (denying motion to compel responses to interrogatories where "answers likely would be materially incomplete" and "the tentative nature of any responses generated at this stage would be of questionable value to the goal of efficiently advancing the litigation.").

Oracle objects to this interrogatory as purporting to elicit a response setting forth the reason for each and every compensation and hiring decision at issue for a period of approximately six years, and such an interrogatory is purely designed to burden and harass Oracle.

INTERROGATORY NO. 11: DESCRIBE IN DETAIL all criteria YOU used during the RELEVANT TIME PERIOD to set the starting COMPENSATION of any PERSON HIRED into the HIRING RELEVANT JOB GROUP, including, but not limited to, the criteria used to determine what forms of COMPENSATION (stock, relocation, starting bonus, base salary, benefits, vacation, etc.) a PERSON should be awarded and the criteria for determining how much COMPENSATION (stock, relocation, starting bonus, base salary, benefits, vacation, etc.) should be awarded.

RESPONSE TO INTERROGATORY NO. 11:

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

Oracle objects to this Interrogatory on the ground that it was initially propounded and founded upon various rulings made by Judge Larsen that affect the scope of the litigation and matters relevant and at issue for purposes of discovery. Judge Larsen, on October 15, 2018, indicated he should have granted Oracle's motion to disqualify him. Furthermore, on January 22, 2019, OFCCP filed a motion seeking leave to file a Second Amended Complaint. In light of the foregoing, the scope of litigation and matters relevant for purposes of discovery are in a state of flux. This previously-propounded Interrogatory is not the proper subject of discovery at this time.

Oracle further objects to the extent this Interrogatory seeks information protected by the attorney-client privilege, the work-product doctrine, or other applicable privileges or immunities.

stock and / or bonus, and the criteria for determining how much of a pay raise, stock and / or bonus the PERSON should be awarded.

RESPONSE TO INTERROGATORY NO. 12:

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

Oracle objects to this Interrogatory on the ground that it was initially propounded and founded upon various rulings made by Judge Larsen that affect the scope of the litigation and matters relevant and at issue for purposes of discovery. Judge Larsen, on October 15, 2018, indicated he should have granted Oracle's motion to disqualify him. Furthermore, on January 22, 2019, OFCCP filed a motion seeking leave to file a Second Amended Complaint. In light of the foregoing, the scope of litigation and matters relevant for purposes of discovery are in a state of flux. This previously-propounded Interrogatory is not the proper subject of discovery at this time.

Oracle further objects to the extent this Interrogatory seeks information protected by the attorney-client privilege, the work-product doctrine, or other applicable privileges or immunities.

Oracle further objects to the term "all criteria" as vague, ambiguous, overbroad, and unduly burdensome. It is unclear whether this Interrogatory is seeking the specific criteria actually used for each employee hired, or the general criteria that are considered. As drafted, this Interrogatory appears to call for every possible factor that was used to determine increases in compensation for every hire for in the relevant job groups during the relevant time period. Oracle objects to this interrogatory as eliciting a response setting forth the reason for each and every compensation and hiring decision at issue for a period of approximately six years, and such an interrogatory is purely designed to burden and harass Oracle.

Oracle also objects to the term "should be awarded" as vague and ambiguous. It is unclear whether this Interrogatory seeks information about criteria used to determine what raises, bonuses, stock were actually paid, or information about what "should" have been paid.

Oracle further objects that this Interrogatory improperly contains subparts in that it poses at least three separate interrogatories. It seeks: (1) all criteria used to determine increases in

PROOF OF SERVICE BY ELECTRONIC MAIL

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

On January 28, 2019, I served the interested parties in this action with the following document(s):

DEFENDANT ORACLE AMERICA, INC.'S OBJECTIONS TO FOURTH SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS

DEFENDANT ORACLE AMERICA, INC.'S OBJECTIONS TO FIRST SET OF INTERROGATORIES

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

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

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

Executed on January 28, 2019, at San Francisco, California.

_____
Jacqueline D. Kaddah

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 OBJECTIONS TO SECOND SET OF INTERROGATORIES**

PROPOUNDING PARTY: Plaintiff OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

RESPONDING PARTY: Defendant ORACLE AMERICA, INC.

Pursuant to 41 C.F.R. § 60-30.9(a) and, as applicable, Rule 33 of the Federal Rules of Civil Procedure, Defendant Oracle America, Inc. ("Oracle") responds to Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor's ("OFCCP") Second Set of Interrogatories as follows:

PRELIMINARY STATEMENT

Oracle has not completed its investigation of the facts related to this case and therefore its responses are of a preliminary nature. Further discovery, investigation, and research may produce additional relevant facts that may lead to changes in the responses set forth below. Although these responses are complete to the best of Oracle's knowledge at this time, these responses are given without prejudice to Oracle's right to amend its objections and responses or to produce additional relevant evidence that may come to light regarding the issues raised in this lawsuit. Nothing contained in these responses shall in any way limit Oracle's ability to make all uses at trial or otherwise of the information or documents referenced herein or of any subsequently discovered information or documents or of information or documents omitted from

these responses as a result of good faith oversight, error, or mistake.

These responses are made solely for purposes of this action, and are subject to all objections as to competence, authenticity, relevance, materiality, propriety, admissibility, and any and all other objections and grounds that would or could require or permit the exclusion of any document or statement therein from evidence, all of which objections and grounds are reserved and may be interposed at the time of trial.

No incidental or implied admissions are intended by these responses. The fact that Oracle has responded or objected to any interrogatory or part thereof shall not be deemed an admission that Oracle accepts or admits the existence of any facts set forth or assumed by such interrogatory. Nor shall Oracle's responses or objections be deemed an admission that any statement or characterization in any interrogatory is accurate or complete, or that any particular document exists, is relevant, or is admissible in evidence.

Oracle further objects that, as detailed below, many of OFCCP's interrogatories improperly contain numerous "subpart" interrogatories posing discrete questions calling for dissimilar groups of information. Oracle therefore objects to the extent OFCCP has exceeded the interrogatory limit set forth in Fed. R. Civ. Pro. Rule 33(a)(l).

GENERAL OBJECTION

The following general objections apply to each of the Interrogatories:

1. Oracle objects to each Interrogatory and definition to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work-product doctrine, the common interest doctrine and/or any other applicable privileges, doctrines and immunities. To the extent Oracle inadvertently reveals any information falling within any applicable privilege, Oracle does not waive the applicable privilege/objection. To the extent Oracle provides any information falling within any privilege and it is later held that Oracle waived the applicable privilege/objection, Oracle waives the applicable privilege/objection only to the extent of the information provided.

2. Oracle objects to each Interrogatory and definition to the extent that Plaintiffs seek

information that is protected from disclosure by the right to privacy guaranteed by the United States Constitution and laws.

3. Oracle objects to each Interrogatory and definition to the extent Plaintiffs seek proprietary information, trade secrets or other confidential information. To the extent that a Interrogatory seeks such proprietary, trade secret or other confidential information, Oracle will provide only that information that is essential to Plaintiffs' case and will provide such information only pursuant to the May 26, 2017, Protective Order, as modified by Judge Clark's March 22, 2019, Order Addressing Protective Order and Order Modifying Pre-Hearing Order.

4. Oracle objects to each Interrogatory and definition to the extent it is vague, ambiguous, overbroad in scope, uncertain as to time, unduly burdensome, oppressive or seeks information that is not relevant to the subject matter of this litigation or not reasonably calculated to lead to the discovery of admissible evidence. In particular, Oracle objects to each Interrogatory to the extent it relates to OFCCP's hiring claims. Pursuant to the ALJ's April 30, 2019 Order Adopting Consent Findings, there are no longer any claims relating to hiring at issue in this case. As a result, to the extent any interrogatory seeks information relating to OFCCP's resolved hiring claims, it is irrelevant, unduly burdensome, and not reasonable calculated to lead to the discovery of admissible evidence.

5. Oracle further objects to these Interrogatories and definitions on the ground that they confuse and conflate the relevant population of employees relating to each of OFCCP's claims. Specifically, Interrogatories 13 through 18 state that they relate to Oracle's "PT1 Job Group, including those employees in the Information Technology, Product Development, and Support Job Functions," (Interrogatory 19 states the same, using slightly modified language). This description unnecessarily and confusingly combines the relevant population for OFCCP's compensation claims (the IT, PD, and SUPP Job Functions) with the relevant population for OFCCP's now-resolved hiring claims (the PT1 Job Group). Because OFCCP's hiring claims have been resolved, and in order to avoid confusion, Oracle reads the Interrogatories to relate only to the Product Development, Support, and Information Technology job functions at

Oracle's Redwood Shores, CA, location.

6. Oracle objects to these Interrogatories and definitions on the ground that they are propounded and founded upon various rulings made by Judge Larsen that affect the scope of the litigation and matters relevant and at issue for purposes of discovery. Judge Larsen, on October 15, 2018, indicated he should have granted Oracle's motion to disqualify him. Furthermore, the operative pleading in this case remained in a state of uncertainty until March 13, 2019, when Judge Clark issued his Order Filing OFCCP's Revised Second Amended Complaint. Hence, Oracle objects that the burden of responding to these Interrogatories, and their proportionality to the needs of this case, must also be evaluated in light of the protracted state of flux affecting the issues actually in dispute, the late date of the propounding of these Interrogatories, and the limited time left for determining the appropriate responses to them and retrieving and producing responsive documents that have not already been produced.

7. Oracle generally objects to these Interrogatories and definitions to the extent that they purport to require it to do anything by way of response beyond what is required by the Code of Federal Regulations, Federal Rules of Civil Procedure, or applicable Court Rules.

8. Oracle expressly reserves the right to object to further discovery into the matters inquired into by the Interrogatories and to the scope of the Interrogatories. Oracle also retains the right to object to the introduction into evidence of information developed in response to the Interrogatories on the grounds that the information is not relevant, or any other legitimate basis.

9. These General Objections shall be deemed to be incorporated in full into the responses set forth below.

OBJECTIONS TO SPECIFIC DEFINITIONS

DEFINITION NO. 1. "IDENTIFY," "IDENTITY," or "IDENTIFICATION," when used in reference to an individual PERSON, means to state each PERSON's:

a. full name;

b. present or last known complete home address and phone number;

c. race or ethnicity;

d. gender;

e. present or last known position, business affiliation, job title, job description; and

f. position on the date specified in each interrogatory including job title and job description.

OBJECTION TO DEFINITION NO. 1.

Oracle objects to this definition as burdensome, oppressive, and not proportional to the needs of the case, insofar as it purports to request information that Oracle has already produced to OFCCP, is already within OFCCP's possession, or is available to OFCCP through less burdensome means, as well as to the extent it requests information that is not relevant to the case. Oracle further objects to this definition as vague, ambiguous, and uncertain with respect to its use of the term "business affiliation," which is unclear and not defined. Oracle further objects that the definition is vague, ambiguous, and uncertain as a result of its reference to the "date specified" in each interrogatory, as the Interrogatories do not refer to a specific date. Oracle further objects to this definition to the extent it includes information protected by the attorney-client privilege, the attorney work product doctrine, or other applicable privileges.

DEFINITION NO. 2. "IDENTIFY," "IDENTITY," or "IDENTIFICATION," when used in reference to a DOCUMENT, means to:

a. state the DOCUMENT's date and identify its author or authors;

b. state the type of DOCUMENT (e.g., letter, memorandum, report, chart, etc.);

c. state the title of the DOCUMENT;

d. describe the subject matter of the DOCUMENT;

e. if a drawing, map, or blueprint, state its number, revision number, revision date, and number of sheets; and

f. identify the DOCUMENT's present location and custodian, and each PERSON who presently and at all relevant times had custody, control, or possession of the DOCUMENT.

OBJECTION TO DEFINITION NO. 2.

Oracle objects to this definition as burdensome, oppressive, and not proportional to the needs of the case, insofar as it purports to request information that Oracle has already produced to OFCCP, is already within OFCCP's possession, or is available to OFCCP through less burdensome means, as well as to the extent it requests information that is not relevant to the case. Oracle further objects to this definition as vague, ambiguous, and uncertain with respect to its use of the terms "type of document," and "subject matter," which are unclear and not defined. Oracle further objects that the definitions references to a document's "present location," "custodian," and "custody, control, or possession" are vague and ambiguous insofar as documents stored electronically may not have a physical location and/or a singular custodian. Oracle further objects that the definition's use of the phrase "relevant times" is vague and ambiguous in that it is unclear how the term "relevant times" relates to OFCCP's definition of "relevant time period." Oracle further objects to this definition to the extent it includes information protected by the attorney-client privilege, the attorney work product doctrine, or other applicable privileges.

DEFINITION NO. 3. "DESCRIBE IN DETAIL" means to describe fully by reference to underlying facts rather than by ultimate facts or conclusions of fact or law; and particularized as to time, place, manner and identity of PERSONS involved. If asked to state the date upon which a specific event occurred, provide the month, date and year, if known. If such information is not known, identify the date by relating it to some established time.

OBJECTION TO DEFINITION NO. 3.

Oracle objects to this definition on the grounds that it is vague, ambiguous, and uncertain with respect to its use of the terms "fully," "underlying facts," "ultimate facts," "particularized as to time, place, manner and identify of persons involved," and "established time," which are unclear and not defined. Oracle further objects to this definition as burdensome, oppressive, and not proportional to the needs of the case, insofar as it purports to request information that Oracle has already produced to OFCCP, is already within OFCCP's possession, or is available to

OFCCP through less burdensome means, as well as to the extent it requests information that is not relevant to the case. Oracle further objects to this definition to the extent it includes information protected by the attorney-client privilege, the attorney work product doctrine, or other applicable privileges.

DEFINITION NO. 4. "YOU" and "YOUR" mean Oracle America, Inc. and all of its agents, representatives, attorneys, consultants, successors, subsidiaries, or divisions.

OBJECTION TO DEFINITION NO. 4.

Oracle objects to these definitions of "YOU" and "YOUR" as vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing information not relevant to any party's claim or defense nor proportional to the needs of the case, particularly to the extent that these terms expansively include Oracle's agents, representatives, attorneys, accountants, consultants, successors, subsidiaries or divisions. Oracle further objects to this definition to the extent it includes information protected by the attorney-client privilege, the attorney work product doctrine, or calls for a legal conclusion as to the relationship between Oracle and other entities, including agents. Oracle further objects to this definition to the extent it seeks information that is not relevant to the discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, California location. Oracle's responses and objections are limited to information related to and focused only upon Oracle America, Inc., and limited to its headquarters and to employment located at Redwood Shores, California.

DEFINITION NO. 5. "RELEVANT TIME PERIOD" means January 1, 2013 to the present unless otherwise stated.

OBJECTION TO DEFINITION NO. 5.

Oracle objects to this definition as including the term "present", which renders the phrase vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing information not relevant to any party's claim or defense nor proportionate to the needs of this case. Oracle maintains its objections that its responses, objections and productions should be limited to the relevant period of January 1, 2013, through December 31, 2014, for discovery

requests related to OFCCP's compensation claims, which are the only claims remaining in this case. Nevertheless, while preserving and maintaining its objections, and subject thereto, Oracle will act in compliance with outstanding rulings on the relevant period and with agreement with OFCCP on the outer ongoing boundary of that period. Oracle further objects to this definition as extending to the "present" insofar as it is used in these Interrogatories to request information beyond the parties' mutually agreed upon cut-off date for data and document discovery.

DEFINITION NO. 6. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

DEFINITION NO. 7. "COMMUNICATIONS" means all transactions or transfers of information of any kind, whether orally, in writing, or in any other manner, at any time or place, under any circumstances whatsoever.

OBJECTION TO DEFINITION NO. 7.

Oracle objects to this definition as including the phrase "all transactions or transfers" and the term "orally," which render the definition vague, ambiguous, uncertain, and overbroad, and encompassing information not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition on the grounds that, by its terms, together with the definition of YOU and YOUR, it would include documents protected from discovery by the attorney-client privilege and the attorney work-product doctrine. Oracle further objects to this definition to the extent it would include documents or information beyond existing written or electronically stored information in the custody, control and possession of Oracle America, Inc., and related to employment at its Redwood Shores, California headquarters.

DEFINITION NO. 8. "DOCUMENT" means all writings of any kind, including any written, printed, typed, electronically stored, or other graphic matter of any kind or nature and all mechanical or electronic sound recordings or transcripts thereof, in YOUR possession and/or control or known by YOU to exist, and also means all copies of documents by whatever means made, including, but not limited to: papers, letters, correspondence, emails, text messages, presentations, manuals, computerized files, computerized spreadsheets, telegrams, interoffice

communications, memoranda, notes, notations, notebooks, reports, records, accounting books or records, schedules, tables, charts, transcripts, publications, scrapbooks, diaries, and any drafts, revisions, or amendments of the above, and all other materials enumerated in the definition provided in Rule 34 of the Federal Rules of Civil Procedure.

OBJECTION TO DEFINITION NO. 8.

Oracle objects to this definition on the grounds that it is internally redundant and cumulative and as such would include duplicative information and documents regardless of relevance and, as such, its application would be unduly burdensome and not reasonably proportionate to the needs of this case. Oracle further objects to this definition as including the phrase "OR known by YOU to exist," which, to the extent such documents are not in Oracle's possession, custody, or control, encompasses documents beyond those that Oracle has any obligation to produce. Oracle further objects to this definition on the grounds that, by its terms, together with the definition of YOU and YOUR, it would include any and all documents protected from discovery by the attorney-client privilege and the attorney work-product doctrine.

DEFINITION NO. 9. "PERSON" means without limitation individuals, firms, associations, partnerships, corporations, governmental agencies or offices and employees, and any other entity.

OBJECTION TO DEFINITION NO. 9.

Oracle objects to this definition as vague, ambiguous, overbroad, unduly burdensome and oppressive, and encompassing information not relevant to any party's claim or defense nor proportional to the needs of the case, particularly to the extent that these terms expansively include all "individuals, firms, associations, partnerships, corporations, governmental agencies or offices and employees, and any other entity" regardless of such "person's" relevance or connection to the case. Oracle further objects that the definition is vague and ambiguous to the extent that it refers to "governmental agencies or offices and employees" insofar as it is unclear whether the definition intends to include only the employees of governmental agencies. Oracle further objects to this definition to the extent it seeks information that is not relevant to the

discriminatory conduct allegedly engaged in at Oracle's Redwood Shores, California location. For the purposes of Oracle's responses and objections to these Interrogatories, Oracle interprets "PERSON" to refer to current or former employees of Oracle that were employed in Oracle's Redwood Shores, California location in the Information Technology, Product Development, or Support Job Functions.

DEFINITION NO. 10. "ANALYSES" means any AND all draft AND final narratives, summaries, chronologies, determination memorandums, statistical summaries, charts, matrices, spreadsheets, audits, evaluations, studies, methodologies, models, actual computations, AND regression AND other statistical analysis.

OBJECTION TO DEFINITION NO. 10.

Oracle objects to this definition as vague, ambiguous, and overbroad because it includes documents that would rarely if ever be considered analyses. For example, narratives, summaries, chronologies, memoranda, and spreadsheets may or may not include any actual analysis, and as a result cannot categorically be deemed to be analyses within the commonly understood definition of the word. Furthermore, to the extent a document is an analysis within the commonly understood meaning, such a broad definition includes and encompasses analyses that are not relevant to any party's claim or defense nor proportional to the needs of the case. Oracle further objects to this definition on the grounds that, by its terms, together with the definition of YOU and YOUR, it would include documents protected from discovery by the attorney-client privilege and the attorney work-product doctrine.

OFCCP'S INSTRUCTIONS

1. Each interrogatory is to be answered separately and as completely as possible. The fact that discovery is not complete may not be used as a basis for failure to answer each interrogatory based on the knowledge YOU currently have.

2. In answering these interrogatories, furnish all responsive information available to YOU, not merely the information within YOUR own direct or personal knowledge. This means YOU are to furnish all information known to your present and former agents, representatives,

attorneys, accountants, or any and all persons acting on YOUR behalf or at YOUR direction, whether obtained through firsthand knowledge or by inquiry of others.

3. If YOU maintain that any DOCUMENT or record which refers or relates to anything about which these interrogatories ask has been lost or destroyed, set forth the subject matter of such DOCUMENT, the locations and identities of the present custodians of all copies of such DOCUMENT, the dates of destruction, and the identities of the PERSONS authorizing such destruction, if any.

4. Whenever any objection is made to any numbered or lettered paragraph of any interrogatory, or portion thereof, an answer must be furnished to any other numbered or lettered paragraph of such interrogatory, or portion thereof, as to which there is no objection.

5. With respect to the application of privileges: If YOU decline to answer all or part of an interrogatory, to identify a DOCUMENT, or to otherwise provide information on the basis of a claim of privilege, so state in response to the interrogatory. Furnish a complete log of any information withheld on the basis of privilege, describing each piece of such information in a manner that will enable OFCCP to assess the applicability of the privilege being asserted. This includes, without limitation, the date(s) the information was transmitted or communicated, to and from whom the information was transmitted or communicated, the privilege(s) claimed, and the factual basis for the claim of privilege.

6. Under 41 C.F.R. § 60-30.1 and Rule 26(e) of the Federal Rules of Civil Procedure, these requests for production are continuing in nature and, to the extent that the responses may be enlarged, diminished, or otherwise modified by information acquired by YOU or YOUR attorneys after filing this response, YOU and YOUR attorneys are required to promptly serve and file supplemental DOCUMENTS reflecting the changes.

7. The parties responding to these requests are charged with knowledge of what they know, what their agents, employees, servants, representatives, and attorneys know, what is in records available to them, and what others have told them on which they intend to rely in their defense.

OBJECTIONS TO INSTRUCTIONS

Oracle generally objects to these instructions to the extent that they purport to require it to do anything by way of response beyond what is required by the Code of Federal Regulations, Federal Rules of Civil Procedure, or applicable Court Rules.

Oracle further objects to these instructions to the extent they erroneously refer to "requests for production." Oracle interprets such references to mean "interrogatories."

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 13: For each PERSON in YOUR PT1 Job Group, including those in the Information Technology, Product Development, and Support Job Functions, during the RELEVANT TIME PERIOD, IDENTIFY their educational background, including all universities and colleges attended, degrees obtained, certifications obtained, training completed, grade point averages (GPA's), academic honors, and languages spoken.

RESPONSE TO INTERROGATORY NO. 13:

Oracle incorporates by reference its General Objections and its Objections to Specific Definitions set forth above. Oracle further objects to this Interrogatory on the grounds that it improperly conflates the relevant population for OFCCP's compensation claims (the Information Technology, Product Development, and Support Job Functions) with the relevant population for OFCCP's now-resolved hiring claims (the PT1 Job Group); because OFCCP's hiring claims have been resolved, Oracle reads this Interrogatory to refer only to employees in the Information Technology, Product Development, and Support Job Functions. Oracle further objects to this Interrogatory on the grounds that it is burdensome, oppressive, and not proportional to the needs of the case, including, without limitation, because it is redundant of discovery requests to which Oracle has already responded or is in the process of responding. Oracle further objects to this Interrogatory on the grounds that it is vague, ambiguous, and uncertain due to its use of the terms "educational background," "certifications obtained," "training completed," and "academic honors," which are unclear and not defined.

Without waiver of the foregoing objections, and subject thereto, Oracle responds as

follows: As part of its responses to OFCCP's requests for production of documents, Oracle has engaged in a reasonable and diligent search and has produced, or is in the process of producing, data and documents containing education information for Oracle employees working at Oracle's HQCA location in the Information Technology, Product Development, or Support Job Functions during the relevant time period up to January 18, 2019, as agreed by the parties.

INTERROGATORY NO. 14: For each PERSON in YOUR PT1 Job Group, including those in the Information Technology, Product Development, and Support Job Functions, during the RELEVANT TIME PERIOD, IDENTIFY their Job Function or Job Function interest.

RESPONSE TO INTERROGATORY NO. 14:

Oracle incorporates by reference its General Objections and its Objections to Specific Definitions set forth above. Oracle further objects to this Interrogatory on the grounds that it improperly conflates the relevant population for OFCCP's compensation claims (the Information Technology, Product Development, and Support Job Functions) with the relevant population for OFCCP's now-resolved hiring claims (the PT1 Job Group); because OFCCP's hiring claims have been resolved, Oracle reads this Interrogatory to refer only to employees in the Information Technology, Product Development, and Support Job Functions. Oracle further objects to this Interrogatory on the grounds that it is burdensome, oppressive, and not proportional to the needs of the case, including, without limitation, because it is redundant of discovery requests to which Oracle has already responded or is in the process of responding. Oracle further objects to this Interrogatory on the grounds that its use of the term "Job Function interest" renders it vague, ambiguous, and unintelligible, as that term is unclear and not defined.

Without waiver of the foregoing objections, and subject thereto, Oracle responds as follows: As part of its responses to OFCCP's requests for production of documents, Oracle has engaged in a reasonable and diligent search and has produced, or is in the process of producing, data and documents sufficient to show the job function of Oracle employees working at Oracle's HQCA location in the Information Technology, Product Development, or Support Job Functions during the relevant time period up to January 18, 2019, as agreed by the parties.

INTERROGATORY NO. 15: DESCRIBE IN DETAIL all ANALYSES YOU conducted pursuant to 41 C.F.R. § 60-2.17(b) during the RELEVANT TIME PERIOD for YOUR PT1 Job Group, including those employees in the Information Technology, Product Development, and Support Job Functions, including but not limited to all actions YOU took related to action-oriented programs identified in 41 C.F.R. § 60-2.17(c).

RESPONSE TO INTERROGATORY NO. 15:

Oracle incorporates by reference its General Objections and its Objections to Specific Definitions set forth above. Oracle further objects to this Interrogatory on the grounds that it improperly conflates the relevant population for OFCCP's compensation claims (the Information Technology, Product Development, and Support Job Functions) with the relevant population for OFCCP's now-resolved hiring claims (the PT1 Job Group); because OFCCP's hiring claims have been resolved, Oracle reads this Interrogatory to refer only to employees in the Information Technology, Product Development, and Support Job Functions. Oracle further objects to this Interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this Interrogatory on the grounds that it is burdensome, oppressive, and not proportional to the needs of the case, particularly in that it requests that Oracle "describe in detail" every "analysis" that took place over a six-year period, which is both impractical and beyond the proper scope of an interrogatory. Oracle further objects to this Interrogatory to the extent it calls for information relating to portions of 41 C.F.R. § 60-2.17(b) or (c) beyond those relevant to employee compensation. In light of the April 30, 2019 Order Adopting Consent Findings, there are no longer any claims relating to hiring at issue in this case. Oracle therefore reads this Interrogatory to be limited to information relevant to OFCCP's compensation claims. Oracle further objects to this Interrogatory to the extent that it's reference to 41 C.F.R. § 60-2.17(c) assumes the existence or identification of any "problem areas" requiring "action-oriented programs." Oracle further objects to this Interrogatory to the extent it seeks to expand OFCCP's claims beyond the limitations imposed by Judge Clark's March 13, 2019 Order, which expressly bounded OFCCP's

claims as they relate to Oracle's Affirmative Action Program ("AAP") and precluded any "deficiency" claim. OFCCP's AAP-oriented claims are therefore limited to whether Oracle maintained and made available to OFCCP certain documentation of its AAP, and any inquiry into whether Oracle's AAP met substantive legal standards or requirements is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiver of the foregoing objections, and subject thereto, Oracle responds as follows: Oracle utilizes a decentralized compensation system in which employees' managers are the primary decisionmakers, with assistance from HR and/or Oracle's compensation team if requested. Individual managers making compensation decisions take a comprehensive view, and are encouraged to consider (and do consider) the relative pay among employees on their particular teams in order to account for pay equity and fairness, while still accounting for other relevant factors influencing pay. Oracle's compensation guidelines and training expressly instruct managers that differences in pay need to be based on fair, justifiable and non-discriminatory criteria, and Oracle further trains and instructs managers to make all employment decisions, including compensation decisions, without regard to employees' gender, race or any other protected characteristic. Managers also are periodically allocated pay increase budgets they can use, among other reasons, to better align employee pay on their teams and to address any perceived pay equity problems they encounter. Managers may also make off-cycle pay increases for the same or similar reasons. Thus, when individual managers consider pay equity as part of their evaluation and compensation decisions, and/or make pay changes to better align within their teams and/or address any perceived pay equity problems, such consideration and actions occur in real-time and, in many cases, may not be documented. Nevertheless, Oracle has produced substantial data, documents, and information – in response to other discovery requests – that captures manager compensation decisions and the rationale for those decisions, including but not limited to manager workflow justifications and off-cycle pay increase justifications.

INTERROGATORY NO. 16: DESCRIBE IN DETAIL all actions YOU took during the RELEVANT TIME PERIOD in response to any ANALYSES YOU conducted pursuant to 41 C.F.R.

§ 60-2.17(b) for YOUR PT1 Job Group, including those employees in the Information Technology, Product Development, and Support Job Functions, including but not limited to all actions YOU took related to action-oriented programs identified in 41 C.F.R. § 60-2.17(c).

RESPONSE TO INTERROGATORY NO. 16:

Oracle incorporates by reference its General Objections and its Objections to Specific Definitions set forth above. Oracle further objects to this Interrogatory on the grounds that it improperly conflates the relevant population for OFCCP's compensation claims (the Information Technology, Product Development, and Support Job Functions) with the relevant population for OFCCP's now-resolved hiring claims (the PT1 Job Group); because OFCCP's hiring claims have been resolved, Oracle reads this Interrogatory to refer only to employees in the Information Technology, Product Development, and Support Job Functions. Oracle further objects to this Interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this Interrogatory on the grounds that it is burdensome, oppressive, and not proportional to the needs of the case, particularly in that it requests that Oracle "describe in detail" every "analysis" that took place over a six-year period, which is both impractical and beyond the proper scope of an interrogatory Oracle further objects to this Interrogatory to the extent it calls for information relating to portions of 41 C.F.R. § 60-2.17(b) or (c) beyond those relevant to employee compensation. In light of the April 30, 2019 Order Adopting Consent Findings, there are no longer any claims relating to hiring at issue in this case. Oracle therefore reads this Interrogatory to be limited to information relevant to OFCCP's compensation claims. Oracle further objects to this Interrogatory to the extent that it's reference to 41 C.F.R. § 60-2.17(c) assumes the existence or identification of any "problem areas" requiring "action-oriented programs." Oracle further objects to this Interrogatory to the extent it seeks to expand OFCCP's claims beyond the limitations imposed by Judge Clark's March 13, 2019 Order, which expressly bounded OFCCP's claims as they relate to Oracle's Affirmative Action Program ("AAP") and precluded any "deficiency" claim. OFCCP's AAP-oriented claims are therefore limited to whether Oracle

maintained and made available to OFCCP certain documentation of its AAP, and any inquiry into whether Oracle's AAP met substantive legal standards or requirements is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiver of the foregoing objections, and subject thereto, Oracle responds as follows: Oracle utilizes a decentralized compensation system in which employees' managers are the primary decisionmakers, with assistance from HR and/or Oracle's compensation team if requested. Individual managers making compensation decisions take a comprehensive view, and are encouraged to consider (and do consider) the relative pay among employees on their particular teams in order to account for pay equity and fairness, while still accounting for other relevant factors influencing pay. Oracle's compensation guidelines and training expressly instruct managers that differences in pay need to be based on fair, justifiable and non-discriminatory criteria, and Oracle further trains and instructs managers to make all employment decisions, including compensation decisions, without regard to employees' gender, race or any other protected characteristic. Managers also are periodically allocated pay increase budgets they can use, among other reasons, to better align employee pay on their teams and to address any perceived pay equity problems they encounter. Managers may also make off-cycle pay increases for the same or similar reasons. Thus, when individual managers consider pay equity as part of their evaluation and compensation decisions, and/or make pay changes to better align within their teams and/or address any perceived pay equity problems, such consideration and actions occur in real-time and, in many cases, may not be documented. Nevertheless, Oracle has produced substantial data, documents, and information – in response to other discovery requests – that captures manager compensation decisions and the rationale for those decisions, including but not limited to manager workflow justifications and off-cycle pay increase justifications.

INTERROGATORY NO. 17: DESCRIBE IN DETAIL all ANALYSES YOU conducted pursuant to 41 C.F.R. § 60-3.15(A [sic] during the RELEVANT TIME PERIOD for YOUR PT1 Job Group, including those employees in the Information Technology, Product Development, and Support Job Functions.

RESPONSE TO INTERROGATORY NO. 17:

Oracle incorporates by reference its General Objections and its Objections to Specific Definitions set forth above. Oracle further objects to this Interrogatory on the grounds that it improperly conflates the relevant population for OFCCP's compensation claims (the Information Technology, Product Development, and Support Job Functions) with the relevant population for OFCCP's now-resolved hiring claims (the PT1 Job Group); because OFCCP's hiring claims have been resolved, Oracle reads this Interrogatory to refer only to employees in the Information Technology, Product Development, and Support Job Functions. Oracle further objects to this Interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this Interrogatory on the grounds that it is burdensome, oppressive, and not proportional to the needs of the case. Oracle further objects to this Interrogatory on the grounds that 41 C.F.R. § 60-3.15(A) relates to "selection procedures" and other information regarding hiring decisions, and, in light of the April 30, 2019 Order Adopting Consent Findings, there are no longer any claims relating to hiring at issue in this case. As a result, this Interrogatory relates to matters that are now irrelevant and is thus not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 18: DESCRIBE IN DETAIL all actions YOU took during the RELEVANT TIME PERIOD in response to any ANALYSES YOU conducted pursuant to 41 C.F.R. § 60-3.15(A) for YOUR PT1 Job Group, including those employees in the Information Technology, Product Development, and Support Job Functions.

RESPONSE TO INTERROGATORY NO. 18:

Oracle incorporates by reference its General Objections and its Objections to Specific Definitions set forth above. Oracle further objects to this Interrogatory on the grounds that it improperly conflates the relevant population for OFCCP's compensation claims (the Information Technology, Product Development, and Support Job Functions) with the relevant population for OFCCP's now-resolved hiring claims (the PT1 Job Group); because OFCCP's hiring claims have been resolved, Oracle reads this Interrogatory to refer only to employees in the Information

Technology, Product Development, and Support Job Functions. Oracle further objects to this Interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this Interrogatory on the grounds that it is burdensome, oppressive, and not proportional to the needs of the case. Oracle further objects to this Interrogatory on the grounds that 41 C.F.R. § 60-3.15(A) relates to "selection procedures" and other information regarding hiring decisions, and, in light of the April 30, 2019 Order Adopting Consent Findings, there are no longer any claims relating to hiring at issue in this case. As a result, this Interrogatory relates to matters that are now irrelevant and is thus not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 19: DESCRIBE IN DETAIL the qualifications that YOU consider in hiring employees for YOUR PT1 Job Group (Information Technology, Product Development, and Support Job Functions), including whether each of those qualifications is required or preferred and the reasons why YOU require or prefer each of those qualifications.

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RESPONSE TO INTERROGATORY NO. 19:

Oracle incorporates by reference its General Objections and its Objections to Specific Definitions set forth above. Oracle further objects to this Interrogatory on the grounds that it is burdensome, oppressive, and not proportional to the needs of the case in that it requests that Oracle "describe in detail" every single factor that may have been considered in numerous hiring decisions across multiple years. Oracle further objects to this Interrogatory on the grounds that, in light of the April 30, 2019 Order Adopting Consent Findings, there are no longer any claims relating to hiring at issue in this case. As a result, this Interrogatory relates to matters that are now irrelevant and is thus not reasonably calculated to lead to the discovery of admissible evidence.

May 13, 2019

GARY R. SINISCALCO
ERIN M. CONNELL
WARRINGTON S. PARKER

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Attorneys for Defendant
ORACLE AMERICA, INC.

VERIFICATION

I, Rich Allison, declare I am the Senior Vice President, Global Practices and Risk Management, for Oracle America, Inc., and am authorized to make this verification on its behalf. I have read the following:

DEFENDANT ORACLE AMERICA, INC.'S OBJECTIONS TO SECOND SET OF INTERROGATORIES

and know its contents. I am informed and believe that the matters stated therein are true and on that ground declare under penalty of perjury under the laws of the United States of America that the same are true and correct and that this verification was executed on May 10, 2019 in Redwood City, California.

Rich Allison

Exhibit C

1 UNITED STATES DEPARTMENT OF LABOR

2 OFFICE OF ADMINISTRATIVE LAW JUDGES

3 ---oOo---

4

5 OFFICE OF FEDERAL CONTRACT)
COMPLIANCE PROGRAMS, UNITED)
6 STATES DEPARTMENT OF LABOR,)
)
7 Plaintiff,) OALJ Case
) No. 2017-OFC-00006
8)
vs.) OFCCP
9) No. R001926999
ORACLE AMERICA, INC.,)
10)
Defendant.)
11 _____)

12

13

14 VIDEOTAPED DEPOSITION OF TAMERLANE BAXTER

15 July 3, 2019

16 San Francisco, California

17

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19

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22

23

Stenographically Reported by:
24 GINA V. CARBONE, CSR, RPR, RMR, CRR, CCRR
California State Lic. No. 8249
25 Job No. 190703GCB

1 UNITED STATES DEPARTMENT OF LABOR

2 OFFICE OF ADMINISTRATIVE LAW JUDGES

3 ---oOo---

4

5 OFFICE OF FEDERAL CONTRACT)
COMPLIANCE PROGRAMS, UNITED)
6 STATES DEPARTMENT OF LABOR,)
)
7 Plaintiff,) OALJ Case
) No. 2017-OFC-0006
8)
vs.) OFCCP
9) No. R001926999
ORACLE AMERICA, INC.,)
10)
Defendant.)
11 _____)

12

13 VIDEOTAPED DEPOSITION of TAMERLANE BAXTER,
14 taken on behalf of Plaintiff, at San Francisco
15 Federal Building, 90 7th Street, Suite B-140,
16 San Francisco, California, beginning at 8:57 a.m.
17 and ending at 5:17 p.m. on Wednesday, July 3, 2019,
18 before GINA V. CARBONE, a Certified Shorthand
19 Reporter, State License No. 8249.

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21

22

23

24

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1 A P P E A R A N C E S

2

3 For the Plaintiff:

4 UNITED STATES DEPARTMENT OF LABOR
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10 For the Defendant:

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15

16

17 ALSO PRESENT: FRANK QUIRARTE, videographer

18

19 --oOo--

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24

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1 Q. Okay. What about specifically claims of
2 compensation discrimination?
3 A. What we do in any investigation depends
4 specifically on that case.
5 Q. The second bullet point says, "Individually
6 or with management (depending on the matter)
7 communicate results of the investigation to the
8 accused individual."
9 If someone specifically has been accused of
10 compensation discrimination, would you convey that
11 to that person?
12 A. I don't know.
13 Q. If a manager has been accused of
14 compensation discrimination, are you aware of any
15 investigation that was conducted that did not convey
16 the result -- or let me ask that again.
17 A. Yeah, you kind of lost me there.
18 Q. Where your team conducts an investigation
19 of compensation discrimination and determines
20 whether or not there has been compensation
21 discrimination, can you think of a situation where
22 you have not conveyed the findings to a person
23 that's been accused of compensation discrimination?
24 A. Off the top of my head, no.
25 Q. The next bullet point says you "Work with

1 LOB" -- does that mean "line of business"?
2 A. I would assume it does, yes.
3 Q. -- "management to implement actions
4 resulting from the investigation."
5 Can you list for me the types of actions
6 that have resulted from investigations of
7 compensation discrimination?
8 MR. PARKER: Instruct not to answer.
9 Attorney-client privilege.
10 THE WITNESS: I can't answer that question.
11 BY MS. BREMER:
12 Q. You can't answer because of your attorney
13 instructing you not to answer?
14 A. I can't answer because whatever we do in
15 any given investigation is at the direction of
16 counsel.
17 Q. And so you're not answering for that
18 reason?
19 A. I just answered.
20 Q. Well, that's not an answer to my question,
21 but --
22 MR. PARKER: That is the reason she's not
23 answering.
24 BY MS. BREMER:
25 Q. Okay. I just want -- when you say things

1 were done at the instruction of or at the direction
2 of counsel, you're saying you're not going to answer
3 further because you're claiming attorney-client
4 privilege; is that right?
5 MR. PARKER: She is not. I am. And I'm
6 instructing her not to answer.
7 And you'll follow my instructions, correct?
8 THE WITNESS: That's correct.
9 MR. PARKER: All right. Now we're clear.
10 BY MS. BREMER:
11 Q. Have you conducted any other training on
12 how to conduct investigations of complaints?
13 A. Are you asking if I personally have
14 conducted training on --
15 Q. Why don't I ask, does Oracle provide any
16 other training on how to conduct investigations of
17 complaints?
18 A. I don't know.
19 Q. Have you conducted any training on how to
20 conduct investigations of complaints?
21 A. The training -- the only training that I
22 conduct is the training that we've already
23 discussed.
24 MR. PARKER: May I ask a question, just so
25 we're clear on something?

1 evidence gathered, the investigation revealed that
2 you are paid comparably to the majority of your
3 peers who perform substantially similar work. We
4 found no evidence that gender or any other protected
5 characteristic was a factor in the determination of
6 your compensation or that of others."
7 Are you aware of any other information
8 provided to [redacted] as a result of her
9 complaint in the investigation?
10 A. I am not aware.
11 Q. Are you aware of any investigation by
12 Oracle that resulted in a finding that there was
13 compensation discrimination?
14 MR. PARKER: Sorry. Hold on.
15 BY MS. BREMER:
16 Q. Are you aware of any investigation by
17 Oracle that resulted in a finding that there was --
18 MR. PARKER: I see it. I think it's vague.
19 BY MS. BREMER:
20 Q. Okay. Are you aware of any investigation
21 by your group --
22 MR. PARKER: Oh, I'm sorry, your question
23 is divorced of Exhibit 115?
24 MS. BREMER: It's not completely divorced.
25 I -- this Exhibit 115 says, "We found no

1 evidence that gender or any other protected
2 characteristic was a factor in the determination of
3 your compensation or that of others."
4 I'm wondering if she's aware of any
5 investigation by her group that did find gender
6 discrimination in compensation.
7 MR. PARKER: Okay. As framed, it calls for
8 attorney-client privilege.
9 MS. BREMER: No, I'm asking about the
10 results of the investigation.
11 MR. PARKER: But you didn't say that. And
12 are you saying something that was communicated to an
13 employee? Because if you don't have that, then it
14 would definitely be protected by attorney-client
15 privilege.
16 BY MS. BREMER:
17 Q. Okay. Are you aware of any results of an
18 HR investigation that communicated to an employee
19 that found compensation discrimination?
20 MR. PARKER: Is this for HQ and HCA?
21 MS. BREMER: Yes.
22 (Reporter clarification.)
23 MR. PARKER: This is for HQ and HCA.
24 Do you have the question in mind?
25 THE WITNESS: Okay. So you ask -- do I

1 understand your question to be, am I aware of any
2 results being communicated to an employee that we
3 found discrimination -- pay discrimination --
4 discrimination in pay?
5 BY MS. BREMER:
6 Q. Yes.
7 A. I am not aware.
8 Q. Are you aware of any investigation results
9 by the HR business partners that found pay
10 discrimination and were communicated to the
11 employee?
12 A. I can't answer that question as stated.
13 Q. Are you aware of any results of an
14 investigation by the HR business partners concerning
15 an employee at headquarters that found
16 discrimination, pay discrimination?
17 A. I'm --
18 MR. PARKER: As phrased --
19 THE WITNESS: I can't answer that question.
20 MR. PARKER: -- that would call for
21 attorney-client privilege.
22 And I don't understand why -- I don't
23 understand why she's saying she can't answer the
24 question. So do you mind if I take a break? I
25 don't care what the answer is.

1

2 DECLARATION UNDER PENALTY OF PERJURY

3

4 I, the undersigned, declare under the

5 penalty of perjury that I have read the entire

6 foregoing transcript of my deposition or the same

7 has been read to me, and the same is true and

8 accurate, save and except for changes, corrections,

9 additions or deletions indicated by me on the

10 DEPOSITION ERRATA SHEET hereof, with the

11 understanding that I offer these changes as if still

12 under oath.

13 _____ I have made corrections to my deposition.

14 _____ I have NOT made any changes to my deposition.

15

16 Signed on the _____day of _____,

17 20___, at _____, _____.

18 (City) (State)

19

20

21 _____

22 TAMERLANE BAXTER

23

24

25

1

2 REPORTER'S CERTIFICATE

3

4 I, GINA V. CARBONE, CSR No. 8249, RPR, RMR,
5 CRR, CCRR, certify: that the foregoing proceedings
6 were taken before me at the time and place herein
7 set forth; at which time the witness was duly sworn;
8 and that the transcript is a true record of the
9 testimony so given.
10 The dismantling or unbinding of the original
11 transcript will render the reporter's certificate null
12 and void.
13 I further certify that I am not financially
14 interested in the action, and I am not a relative or
15 employee of any attorney of the parties, nor of any of
16 the parties.
17 Dated this 17th day of July, 2019.
18
19 GINA V. CARBONE
20 CSR #8249, STATE OF CALIFORNIA
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