

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

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DEFENDANT ORACLE
AMERICA, INC.'S RESPONSES
AND OBJECTIONS TO THIRD
SET OF REQUESTS FOR THE
PRODUCTION OF DOCUMENTS**

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. § 60-30.10 and, as applicable, Federal Civil Procedure Rule 34, Defendant Oracle America, Inc. (“Oracle”) responds to Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor’s (“OFCCP”) Third Set of Requests for Production of Documents (“Requests”) 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 bring to light 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

DEF. ORACLE AMERICA, INC.'S RESPONSES TO THIRD REQUEST FOR PRODUCTION OF DOCUMENTS
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OHSUSA:767405570.5

Exhibit P-249

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

For the reasons set forth in Oracle's Answer and its prior Responses and Objections to OFCCP's first two sets of Requests, Oracle's responses and productions responsive to the document requests related to OFCCP's recruiting and hiring claims are limited to the PT1 job group at Oracle's Redwood Shores, CA, location, and responses and productions responsive to the document requests 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 request 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 request. 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.

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OBJECTIONS TO SPECIFIC DEFINITIONS

DEFINITION NO. 1. “YOU” and “YOUR” mean Oracle America, Inc. and all of its agents, representatives, attorneys, accountants, consultants, successors, subsidiaries, or divisions.

DEFINITION NO. 2. “RELEVANT TIME PERIOD” means January 1, 2013 to the present unless otherwise stated.

DEFINITION NO. 3. “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. 3:

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.

DEFINITION NO. 4. “AND” and “OR” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

DEFINITION NO. 5. “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. 5:

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. 6. “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. 7. “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. 7:

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 that Oracle has any obligation to produce.

DEFINITION NO. 8. “OFCCP” means the Office of Federal Contract Compliance Programs, United States Department of Labor.

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

DEFINITION NO. 10. “RELATING TO” means constituting, memorializing, evidencing, containing, showing, supporting, contradicting, summarizing, pertaining to, or referring to, whether directly or indirectly, the subject of the particular request.

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RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 93:

All DOCUMENTS RELATING TO any 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 Information Technology, Product Development, and Support lines of business, including, but not limited to, all DOCUMENTS relating to action-oriented programs identified in 41 C.F.R. § 60-2.17(c).

RESPONSE TO REQUEST FOR PRODUCTION NO. 93:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to the extent that this request seeks non-relevant information (for example, related to promotions and terminations) as referenced in 41 C.F.R. § 60-2.17(b)(2). Although Oracle recognizes the ALJ overruled a similar objection in its September 11, 2017 Order, so as to avoid any claim that Oracle has waived the objection, Oracle also objects to this request on the ground that it calls for a legal conclusion; specifically, this request, by referring to a regulation, requires a legal analysis of the regulation and its applicability.

Subject to and without waiving these objections, Oracle responds:

Oracle will, after conducting a reasonably diligent search, produce responsive, non-privileged data and documents sufficient to demonstrate and reflect Oracle's actions related to compensation and hiring within the Product Development, Support, and Information Technology lines of business at Oracle's Redwood Shores, CA, location during the relevant period, including data from Oracle's system of record related to compensation and hiring, that reflect the evaluative processes and actions Oracle undertakes to ensure fair and equitable decision-making and the justifications for the aforementioned compensation and hiring decisions, as well as

documents showing its good faith diversity and outreach efforts.

REQUEST FOR PRODUCTION NO. 94:

All DOCUMENTS RELATING TO any actions YOU took during the RELEVANT TIME PERIOD in response to any ANALYSES YOU conducted pursuant to 41 C.F.R. § 60-3.15A for YOUR Information Technology, Product Development and Support lines of business.

RESPONSE TO REQUEST FOR PRODUCTION NO. 94:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Although Oracle recognizes the ALJ overruled a similar objection in its September 11, 2017 Order, so as to avoid any claim that Oracle has waived the objection, Oracle also objects to this request on the ground that it calls for a legal conclusion; specifically, this request, by referring to a regulation, requires a legal analysis of the regulation and its applicability.

Oracle further objects to the false premise embedded in this request that Oracle was required under 41 C.F.R. § 60-3.15A to perform an adverse impact analysis and take action as a result of it. Section 60-3.15A sets forth guidelines for "[u]sers of selection procedures," and, as Oracle has repeatedly noted, including in its letter to ALJ Larsen dated August 8, 2017, OFCCP has not alleged that Oracle used an employee selection device that has an adverse impact, let alone identified *any* employee selection procedure at issue in this litigation.

Subject to this understanding and without waiving its objections, Oracle responds that, after undertaking a reasonably diligent search, Oracle has determined that it does not have responsive documents to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 95:

ALL DOCUMENTS RELATING TO any ANALYSES YOU conducted of the COMPENSATION YOU provided to YOUR employees during the RELEVANT TIME

PERIOD, including but not limited to, compensation audits YOU conducted, statistical ANALYSES YOU conducted, the “salary surveys,” “equity studies,” “Focal review(s),” “ad hoc analyses,” and “off-cycle reviews,” YOU conducted referenced by either Shauna Holman-Harries and / or Lisa Gordon in Lisa Gordon’s January 9, 2015 interview at Bates stamp number (“BSN”) DOL000000584, 587-89; and the different analyses,” “compensation analyses,” “adverse impact analyses,” “internal audits,” and “internal self-audits” that YOU conducted that were referenced by Shauna Holman-Harries in her March 26, 2015, interview at BSN DOL000036769, 36772-73.

RESPONSE TO REQUEST FOR PRODUCTION NO. 95:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Oracle further objects to the extent that this request relies on purported quotes from Shauna Holman-Harries from the interview of Lisa Gordon dated January 9, 2015 (DOL000000575-93), and the interview of Shauna Holman-Harries dated March 26, 2015 (DOL000036766-75). Section 2M00(f) of the Federal Contract Compliance Manual (“FCCM”) expressly requires that, for compliance interviews such as these, the Compliance Officer (“CO”) “must ask each person to read, sign and date the CO’s interview notes” and that “the CO will review the questions asked and the answers given, and obtain confirmation that any direct quotes are accurate and that all paraphrases convey the interviewee’s intended meaning.” As an initial matter, the phrases cited in OFCCP’s request do not appear as quotes in either interview, making it unclear whether Ms. Holman-Harries in fact “referenced” any of the items as OFCCP claims in its request. Moreover, OFCCP’s failure to have Ms. Holman-Harries review and sign either of these interviews to certify the accuracy of their contents as required by the FCCM further compounds the lack of foundation for using these documents as the basis for quotes in OFCCP’s

request.

Subject to and without waiving these objections, Oracle responds:

Oracle will, after conducting a reasonably diligent search, produce responsive, non-privileged data and documents sufficient to demonstrate and reflect Oracle's analyses related to compensation within the Product Development, Support, and Information Technology lines of business at Oracle's Redwood Shores, CA, location during the relevant period, including data from Oracle's system of record related to compensation, that reflect the evaluative processes and actions Oracle undertakes to ensure fair and equitable decision-making.

REQUEST FOR PRODUCTION NO. 96:

All DOCUMENTS RELATING TO any actions YOU took during the RELEVANT TIME PERIOD in response to any ANALYSES conducted pursuant to the previous document production request.

RESPONSE TO REQUEST FOR PRODUCTION NO. 96:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Oracle further objects to the extent that this request relies on purported quotes from Shauna Holman-Harries from the interview of Lisa Gordon dated January 9, 2015 (DOL000000575-93), and the interview of Shauna Holman-Harries dated March 26, 2015 (DOL000036766-75). Section 2M00(f) of the Federal Contract Compliance Manual ("FCCM") expressly requires that, for compliance interviews such as these, the Compliance Officer ("CO") "must ask each person to read, sign and date the CO's interview notes" and that "the CO will review the questions asked and the answers given, and obtain confirmation that any direct quotes are accurate and that all paraphrases convey the interviewee's intended meaning." As an initial matter, the phrases cited in OFCCP's request do not appear as quotes in either interview, making

it unclear whether Ms. Holman-Harries in fact “referenced” any of these items as OFCCP claims in the previous request. Moreover, OFCCP’s failure to have Ms. Holman-Harries review and sign either of these interviews to certify the accuracy of their contents as required by the FCCM further compounds the lack of foundation for using these documents as the basis for quotes in OFCCP’s request.

Subject to and without waiving these objections, Oracle responds:

Oracle will, after conducting a reasonably diligent search, produce responsive, non-privileged data and documents sufficient to demonstrate and reflect Oracle’s actions related to compensation within the Product Development, Support, and Information Technology lines of business at Oracle’s Redwood Shores, CA, location during the relevant period, including data from Oracle’s system of record related to compensation, that reflect the evaluative processes and actions Oracle undertakes to ensure fair and equitable decision-making and the justifications for the aforementioned compensation and hiring decisions, as well as documents showing its good faith diversity and outreach efforts.

REQUEST FOR PRODUCTION NO. 97:

ALL DOCUMENTS RELATING TO “Oracle’s evaluation of its compensation system” that Shauna Holman-Harries referenced in her June 2, 2015, e-mail at BSN DOL000001212 for YOUR Information Technology, Product Development, and Support lines of business during the RELEVANT TIME PERIOD, including but not limited to, all of the evaluations that YOU conducted, the underlying data and information considered in these evaluations, and the COMMUNICATIONS related to these evaluations.

RESPONSE TO REQUEST FOR PRODUCTION NO. 97:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving these objections, Oracle responds:

Oracle will, after conducting a reasonably diligent search, produce responsive, non-privileged data and documents sufficient to demonstrate and reflect Oracle's analyses related to compensation within the Product Development, Support, and Information Technology lines of business at Oracle's Redwood Shores, CA, location during the relevant period, including data from Oracle's system of record related to compensation, that reflect the evaluative processes Oracle undertakes to ensure fair and equitable decision-making.

REQUEST FOR PRODUCTION NO. 98:

All DOCUMENTS RELATING TO any actions YOU took during the RELEVANT TIME PERIOD in response to any evaluation conducted pursuant to the previous document production request.

RESPONSE TO REQUEST FOR PRODUCTION NO. 98:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving these objections, Oracle responds:

Oracle will, after conducting a reasonably diligent search, produce responsive, non-privileged data and documents sufficient to demonstrate and reflect Oracle's actions related to compensation within the Product Development, Support, and Information Technology lines of business at Oracle's Redwood Shores, CA, location during the relevant period, including data from Oracle's system of record related to compensation, that reflect the evaluative processes and actions Oracle undertakes to ensure fair and equitable decision-making and the justifications for the aforementioned compensation decisions, as well as documents showing its good faith diversity and outreach efforts.

REQUEST FOR PRODUCTION NO. 99:

All DOCUMENTS RELATING TO any ANALYSES YOU conducted of the selection procedures YOU used to recruit someone to work for YOU in the Information Technology, Product Development, and Support lines of business during the RELEVANT TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 99:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Oracle further objects to the false premise embedded in this request that Oracle was required to perform an adverse impact analysis and take action as a result of it. Section 60-3.15A sets forth guidelines for "[u]sers of selection procedures," and, as Oracle has repeatedly noted, including in its letter to ALJ Larsen dated August 8, 2017, OFCCP has not alleged that Oracle used an employee selection device that has an adverse impact, let alone identified any employee selection procedure at issue in this litigation.

Subject to this understanding and without waiving its objections, Oracle responds that, after undertaking a reasonably diligent search, Oracle has determined that it does not have responsive documents to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 100:

All DOCUMENTS RELATING TO any actions YOU took during the RELEVANT TIME PERIOD in response to any ANALYSES conducted pursuant to the previous document production request.

RESPONSE TO REQUEST FOR PRODUCTION NO. 100:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Oracle further objects to the false premise embedded in this request that Oracle was required to perform an adverse impact analysis and take action as a result of it. Section 60-3.15A sets forth guidelines for “[u]sers of selection procedures,” and, as Oracle has repeatedly noted, including in its letter to ALJ Larsen dated August 8, 2017, OFCCP has not alleged that Oracle used an employee selection device that has an adverse impact, let alone identified any employee selection procedure at issue in this litigation.

Subject to this understanding and without waiving its objections, Oracle responds that, after undertaking a reasonably diligent search, Oracle has determined that it does not have responsive documents to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 101:

All DOCUMENTS RELATING TO any ANALYSES YOU conducted of the selection procedures YOU used to hire someone to work for YOU in the Information Technology, Product Development and Support lines of business during the RELEVANT TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 101:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Oracle further objects to the false premise embedded in this request that Oracle was required to perform an adverse impact analysis and take action as a result of it. Section 60-3.15A sets forth guidelines for “[u]sers of selection procedures,” and, as Oracle has repeatedly noted, including in its letter to ALJ Larsen dated August 8, 2017, OFCCP has not alleged that Oracle used an employee selection device that has an adverse impact, let alone identified any employee selection procedure at issue in this litigation.

Subject to this understanding and without waiving its objections, Oracle responds that, after undertaking a reasonably diligent search, Oracle has determined that it does not have responsive documents to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 102:

All DOCUMENTS RELATING TO any actions YOU took during the RELEVANT TIME PERIOD in response to any ANALYSES conducted pursuant to the previous document production request.

RESPONSE TO REQUEST FOR PRODUCTION NO. 102:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Oracle further objects to the false premise embedded in this request that Oracle was required to perform an adverse impact analysis and take action as a result of it. Section 60-3.15A sets forth guidelines for "[u]sers of selection procedures," and, as Oracle has repeatedly noted, including in its letter to ALJ Larsen dated August 8, 2017, OFCCP has not alleged that Oracle used an employee selection device that has an adverse impact, let alone identified any employee selection procedure at issue in this litigation.

Subject to this understanding and without waiving its objections, Oracle responds that, after undertaking a reasonably diligent search, Oracle has determined that it does not have responsive documents to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 103:

All DOCUMENTS RELATING TO the data, information, and documents you provided to any person at Orrick, Herrington & Sutcliffe, LLP to conduct any ANALYSES and / or evaluation(s) referenced in document production request nos. 95, 97, 99, and 101 including, but not limited to, the data, information, and documents that YOU provided to Orrick, Herrington &

Sutcliffe, LLP to conduct these ANALYSES and any data, information and documents Orrick, Herrington & Sutcliffe, LLP provided to YOU regarding the ANALYSES it conducted.

RESPONSE TO REQUEST FOR PRODUCTION NO. 103:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

In particular, this request presents an overt attempt to obtain privileged information by seeking communications and documents exchanged between Oracle and its outside counsel for the purposes of obtaining legal advice. As set forth in the responses above, Oracle agrees to produce documents responsive to Request Nos. 95 and 97, and represents that it has no documents responsive to Request Nos. 99 and 101. Thus, Oracle has already agreed to provide OFCCP with the underlying "data, information, and documents," responsive to this request. However, Oracle is not obligated to delineate what among that data, information, and documents was provided to counsel for the purposes of legal advice, as that is privileged information. *See, e.g., Oasis Int'l Waters, Inc. v. United States*, 110 Fed. Cl. 87, 99-100 (2013) ("The fact that a client included a document in a request for legal advice is privileged, however, because it partially reveals the substance of the client's privileged communication to an attorney."); *Hilton-Rorar v. State & Fed. Commc'ns Inc.*, No. 5:09-CV-01004, 2010 WL 1486916, at *7 (N.D. Ohio Apr. 13, 2010) ([T]he very fact that non-privileged information was communicated to an attorney may itself be privileged, even if that underlying information remains unprotected. . . .").

REQUEST FOR PRODUCTION NO. 104:

All DOCUMENTS RELATING TO any actions YOU took during the RELEVANT TIME PERIOD in response to any ANALYSES and / or evaluation(s) conducted by Orrick, Herrington & Sutcliffe, LLP.

RESPONSE TO REQUEST FOR PRODUCTION NO. 104:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Oracle further objects to this request on the grounds that it is overbroad in scope, oppressive, 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 request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Again, this request is an overt attempt to obtain obviously privileged information by seeking to ascertain the substance of any legal advice exchanged between Oracle and its outside counsel. Oracle has already agreed to produce documents responsive to Request Nos. 93, 96, and 98, which relate to actions taken by Oracle in response to analyses and evaluations of compensation. However, Oracle is not required to identify which of those documents are related to actions taken "in response to" communications and analysis from counsel, as such identification would be tantamount to revealing the substance of legal advice from counsel. *See Hilton-Rorar*, 2010 WL 1486916, at *8 ("To the extent these e-mails contain attachments or other e-mail communications that are not otherwise independently privileged, the attorney-client privilege nevertheless applies because to order the disclosure of those e-mails would necessarily reveal the substance of a confidential client communication made seeking legal advice.").

September 26, 2017

GARY R. SINISCALCO
ERIN M. CONNELL



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ORACLE AMERICA, INC.

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 September 26, 2017, I served the interested parties in this action with the following document(s):

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

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)
Ian Eliasoph (eliasoph.ian@dol.gov)
Jeremiah Miller (miller.jeremiah@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 September 26, 2017, at San Francisco, California.

Jacqueline D. Kaddah