

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

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

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DECLARATION OF GARY
SINISCALCO IN SUPPORT OF
DEFENDANT ORACLE
AMERICA, INC.'S MOTION FOR
SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, FOR
PARTIAL SUMMARY
JUDGMENT**

I, Gary Siniscalco, declare:

1. I am an attorney duly admitted to practice in the State of California. I am an attorney at the law firm of Orrick, Herrington & Sutcliffe LLP, attorneys of record for Defendant Oracle America, Inc. ("Oracle"). I make this declaration in support of Oracle's Motion for Partial Summary Judgment Re OFCCP's Refusal to Produce Claim. I have personal knowledge of the facts set forth herein, except where stated on information and belief. If sworn as a witness, I could competently testify to the facts set forth below. I am familiar with the proceedings, correspondence, and history of discovery in this case based on my knowledge and experience as Oracle's counsel in this matter.

2. On July 30, 2015 OFCCP sent me a letter via email regarding the compliance evaluation of Oracle's Redwood Shores location. Oracle was not copied on this correspondence and neither I nor Oracle received it until August 26, 2015 because the email was caught in my

DECLARATION OF GARY SINISCALCO ISO ORACLE'S MOTION FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT

4125-5726-6974

- 1 -

CASE NO. 2017-OFC-00006

Exhibit P-273

firm's spam filter. Attached hereto as **Exhibit A** is a true and correct copy of the letter sent to me by OFCCP.

3. Attached hereto as **Exhibit B** is a true and correct copy of a declaration I signed under penalty of perjury, filed in this matter on August 25, 2017 in support of Oracle's Opposition to OFCCP's Motion to Compel. Throughout the course of both the underlying audit and this litigation, Oracle consistently has taken the position that its internal pay equity analyses are privileged and were neither performed (nor required to be performed) in order to comply with 41 C.F.R. § 60-2.17.

4. Attached hereto as **Exhibit C** is a true and correct copy of Hea Jung Atkins' letter to Gary Siniscalco, dated April 21, 2016.

5. On October 11, 2017, Oracle produced to OFCCP in this litigation an enormous amount of compensation data for certain employees who worked at Oracle's headquarters location in Redwood Shores, California ("HQCA"). I understand that this production of compensation data included the 2013 compensation information sought by OFCCP during the underlying HQCA audit, as well as additional data not requested during the audit.

6. Through the course of discovery in this litigation, including but not limited to the October 11, 2017 production referenced above, Oracle has produced documents to demonstrate what it did to comply with 41 C.F.R. § 60-2.17 with respect to its compensation systems at HQCA from January 1, 2013 to January 18, 2019. Additionally, to the extent relevant to OFCCP's remaining claim for compensation discrimination, Oracle has now produced in the litigation, in response to discovery requests from OFCCP, the data regarding job and salary history that OFCCP claims Oracle refused to produce during the audit. Oracle also has produced in the litigation the same documentation of Oracle's 2014 Executive Order 11246 Affirmative Action Program ("AAP") that was provided to OFCCP during the audit.

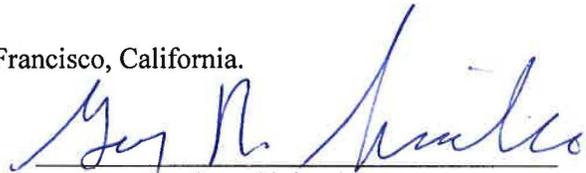
7. I was outside counsel for Oracle for the duration of the HQCA audit. I am familiar with the correspondence between OFCCP and Oracle during the audit. I never refused to produce compensation data with a snapshot date of January 1, 2013 to OFCCP. I also never

DECLARATION OF GARY SINISCALCO ISO ORACLE'S MOTION FOR SUMMARY JUDGMENT OR, IN
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refused to produce to OFCCP data showing personnel actions providing job and history information. Nor did I refuse to produce to OFCCP non-privileged data or documents regarding Oracle's activities to comply with 41 C.F.R. 60-2.17 to evaluate its compensation systems. I also did not refuse to produce to OFCCP any data or documents that are part of Oracle's written AAP for HQCA. To my knowledge, no one else on behalf of Oracle refused to produce the data and documents described in this paragraph, either.

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

Executed on September 20, 2019, at San Francisco, California.


Gary Siniscalco

DECLARATION OF GARY SINISCALCO ISO ORACLE'S MOTION FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT

EXHIBIT A

U.S. Department of Labor

Office of Federal Contract Compliance Programs
Greater San Francisco/Bay District Office
90 7th Street, Suite 11-100
San Francisco, California 94103



VIA EMAIL AND U.S. MAIL

July 30, 2015

Mr. Gary R. Siniscalco
Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105-2669

FILE COPY

RE: Compliance Evaluation of Oracle, Redwood Shores, CA

Dear Mr. Siniscalco:

This letter is in response to your correspondence dated July 9, 2015. As explained in our previous correspondences, we disagree with your continued mischaracterization of this audit. (See OFCCP letters dated April 14, 2015, May 11, 2015, and email to Shauna Holman Harries on July 2, 2015) However, we are encouraged that your client is eager to cooperate with us in completing the evaluation of Oracle Redwood Shores and request that you submit the following outstanding items by August 14, 2015:

1. Internal pay equity analysis conducted during the past three years, as required under 41 C.F.R § 60-2.17. For each analysis, include the date of analysis, dataset used for the analysis, and actions taken, if any, as a result of the analysis. *This item was previously requested on 11/19/14 with follow up requests made on 1/22/15, 2/10/15, 4/27/15, 5/11/15, 5/19/15 and 5/28/2015.*
2. Resubmit compensation database provided on 6/16/15 with 1/1/14 snapshot date, with the following additional information, and any other relevant compensation information and factors affecting pay, added in separate columns:
 - Name of school attended
 - Educational degree earned
 - Prior salary immediately before joining Oracle
 - Performance evaluation rating
 - Rank (by performance)
 - Years of experience before joining Oracle
 - Hiring manager(s)
 - Amount of signing bonus
 - Visa status
 - Type of visa, including but not limited to H1B
 - Date (mm/dd/yyyy) that the visa was initially processed

- Current status of visa
- Date (mm/dd/yyyy) that green card/permanent resident card was processed

Some of this information was initially requested on 11/19/14 and 2/10/15. Most recent status requests were made on 4/27/15, 5/11/15, 5/19/15 and 5/28/15.

3. Employee personnel actions containing job and salary information and history for all employees and student interns. This information should include, but not be limited to, starting wages, wage increases, bonus awards, job title hired into, starting stock level, job title and supervisor changes, stock level changes, promotion history, performance evaluations, ranking information, with dates associated for each action. *The salary history information was originally requested on 2/10/15. Other items were requested on 4/27/15. Status requests were made on 5/11/15, 5/19/15 and 5/28/15.*
4. For all employees who were hired during the period of 1/1/13 – 6/30/14, resubmit the applicant flow log submitted on 2/19/15 to include the following in separate columns:
 - Visa status (yes/no)
 - If they are on visa status, include type of visa

Request for visa status was initially made on 11/19/14. Status requests were made on 4/27/15, 5/11/15, 5/19/15 and 5/28/15.
5. Applicant flow log for all hires during the period of 1/1/12 – 12/31/12. This should include the following:
 - First and Last Name
 - Sex
 - Race/Ethnicity
 - Visa Status (yes/no)
 - If they are on visa status, include type of visa
 - Job Title
 - Job Group
 - Department
 - Vacancy/Requisition Number
 - Disposition Code
 - Date of Hire
 - Date of Application
 - Name and job title of the hiring manager (s) for each vacancy/requisition
6. Please resubmit the Resume Files that were sent on 3/26/15, in an easy to read format. The picture-format resumes pasted on MS Word is not legible. *This information was requested on 4/27/15 with follow-up requests made on 5/11/15, 5/19/15 and 5/28/15.*
7. For all applicants and hires in the Software Developer 1-5 job titles from January 1, 2012 to June 30, 2014, please provide the following:
 - Copies of each requisition, including copies of each job posting and each job description

- Copies of all applications, resumes and any and all supplemental information submitted by each applicant
- Name and job title of the hiring manager(s) for each requisition
- Date of hire for each requisition
- Name and job title of individual hired for each requisition

Some of this information was requested on 4/27/15 with follow-up requests made on 5/11/15, 5/19/15, and 5/28/15/15.

8. Please provide non-redacted personnel files of the following individuals:

- Anne Ephraim
- Anuradha Sri Mantripragada
- Bhagya Yalakshmi Veeraraghavan
- Bhagyalakshmi (Bhagya) Veeraraghavan
- Chandana Rattehalli
- David Cheng-Fang Lin
- Donnalyn Marie Villados
- Guiling Sui
- Huong Thu Nguyen
- Ian Spadow
- James Clark
- John Barron
- Juan Oropeza
- Krishnaraj (Krishna) Nandakumar
- Mandy Troung
- Maryanne Gacusan
- Mitsuko Kashima
- Neha Sethi
- Nikhil Sabharwal
- Oksana Stepaneeva
- Oleg Golubtsov
- Ping Wan
- Praveen Mandya Narayana
- Rajesh Bella
- Sang Hatee
- Sarah S. Moskovitz
- Saxena Vishwadeep
- Shivani Gupta
- Sophia Tsay
- Sungpack Hong
- Sunnia H Lin
- Vaishali Arun Chopde

9. Contact information for all current and former employees during the review period, including home phone, cell phone, and personal email addresses. *This request was initially made on 5/29/15. A follow-up request was made on 7/2/15.*

10. A list of current and former employees who have made internal and external discrimination, harassment or retaliation complaints or otherwise opposed any form of discrimination, harassment or retaliation at Oracle Redwood Shores (HQCA) during the last 3 years by: name, gender, race, national origin, job title, organization, discipline, profession. *This request was originally made on 3/4/15. Subsequent requests were made on 3/24/15, 3/26/15, and 4/15/15.*

Please be advised that any further delays or failure to provide the requested information may lead to the issuance of a Notice to Show Cause. Further, neither this letter, nor prior requests for

information precludes the possibility of future requests as deemed necessary in determining Oracle's compliance with Executive Order 11246, Section 503, and 38 U.S.C. § 4212 and their implementing regulations. If you have any questions regarding this matter, please contact me at (415) 625-7829.

Sincerely,



for

Hea Jung Atkins
District Director

EXHIBIT B

REC'D

AUG 25 2017

Office of Administrative Law Judges
San Francisco, Ca

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

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

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DECLARATION OF GARY R.
SINISCALCO IN SUPPORT OF
DEFENDANT ORACLE
AMERICA, INC.'S OPPOSITION
TO OFCCP'S MOTION TO
COMPEL**

ENTERED
AUG 28 2017
RECORDED

I, GARY R. SINISCALCO, hereby declare as follows:

1. I am Senior Counsel at Orrick, Herrington & Sutcliffe LLP. If called as a witness, I could and would testify competently to the matters set forth herein.

2. I respond to Ms. Suhr's affidavit regarding "extensive correspondence" and "pay equity analyses" in paragraphs 4 and 5, respectively, in her affidavit. Set forth below I offer a more complete description of the underlying facts and context of the discussion in the October 6 conciliation meeting regarding pay. I also address issues related to personnel records and documents referenced in paragraph 7 of Mr. Garcia's declaration.

3. First, I provide some background on my experience with OFCCP, its policies and practices, and matters generally involving pay discrimination and pay analyses.

a. In addition to my practice at Orrick, I have extensively written, lectured and taught courses on discrimination law. I am considered a leading authority and speaker on equal pay law. I have co-authored a law review article on the topic. *"The Pay Gap, the Glass Ceiling, and Pay Bias: Moving Forward Fifty Years After the Equal Pay Act,"* ABA Journal of

Labor & Employment Law, Gary Siniscalco, Lauri Damrell and Clara Moran Nabity, Vol. 29, No. 3, Spring 2014, as well as numerous seminar papers. Just in 2017 to date, I have spoken on the topic of pay at OFCCP industry liaison meetings where OFCCP management were present; in Dublin, IR, at the ABA International Labor & Employment Law Committee mid-winter meeting; chaired a PLI program in New York on OFCCP practice and procedure, including a panel on pay; and am scheduled to speak on a comparative law pay panel, hosted by the English Lawyers Association, in London on October 3, 2017.

b. I am also a frequent speaker on panels with government EEO officials. Over the past several years, and while this compliance review has progressed, I have been on panels with National office officials from OFCCP and the Office of the Solicitor regarding substantive law and OFCCP practice and procedure. These panels include past PLI programs, ABA EEO Committee and ABA EEO Committee Government Liaison Program (annual day and a half conference comprised of senior staff from OFCCP, Solicitor's Office, EEOC, and U.S Dept. of Justice) where we jointly and mutually discuss policy and practice issues of concern to the government officials as well as leading members of employers and plaintiffs EEO bar. In February 2016, for example, I chaired an OFCCP program for PLI which included former OFCCP Director Pat Shiu and current Northeast Regional Director, Diana Sen.

c. I have also been selected by NYU to serve on its faculty for its annual employment law training program for federal judges and magistrates.

4. During my time at Orrick I have led or co-led its EEO & Affirmative Action compliance practice group. Among other things I have been involved in numerous pay discrimination cases and administrative compliance reviews conducted by OFCCP all over the country. For Oracle alone, just since 2013, I have been involved in over 40 OFCCP compliance reviews around the country.

5. Prior to joining Orrick nearly forty years ago (1978), I spent 10 years at the U. S. Equal Employment Opportunity Commission. As a law student in 1967-68, I discussed with EEOC commissioners and wrote early substantive Decisions for the Commission itself, many of

which were deemed precedential at the time and published in CCH FEP cases. Upon graduation from law school, I continued as an EEOC Attorney and supervising attorney before being selected in 1973 as EEOC Regional Counsel for the western region where I served in that capacity and then for a short period as a senior trial attorney until I left the Commission and joined Orrick in 1978.

6. I believe it is fair to say that I am extremely well-versed in Title VII law, the law of pay discrimination, including OFCCP's pay directive 307 issued in 2013, its prior pay discrimination standards and voluntary guidelines for self-evaluations issued in 2006, OFCCP's regulations, OFCCP's Federal Contract Compliance Manual (FCCM), and in OFCCP audit practices and policies throughout the country.

7. Based on my experience with OFCCP compliance reviews throughout the country, and through conversations and in formal panels with numerous officials in its national office, and from several regions, when I describe OFCCP's practices in the Pacific region to other OFCCP officials, they typically react negatively or otherwise disavow this region's actions as not representative of, or consistent with, national policies and practices. This includes for example, the following:

a. Employee interviews. I am not aware of any other region in the country that requests all employee contact information during compliance reviews. In almost all other reviews for Oracle, and for other contractors, OFCCP staff typically provide company compliance personnel with the names of employees they would like to interview on-site; Oracle staff arranges and schedules those interviews in private conference rooms; and the employees then meet privately with OFCCP staff. Per OFCCP's FCCM, section 2M00, that section details the procedures and respective rights of employees and managers regarding representation at interviews. In fact, after objecting to OFCCP's employee contact requests here, that is exactly what OFCCP agreed to during its nine days on-site at Oracle headquarters facility.

b. Access to records. During compliance reviews, OFCCP regularly requests data from a contractor that is available and retrievable in an electronic database. This typically

involves pay data during a desk audit and in supplemental data requests. Contractors regularly provide such data to OFCCP. However, in some instances OFCCP seeks to review information that is not retrievable in such a format and may require reference to, or review of, actual files or records. In such cases a contractor may be able to undertake the retrieval and compilation of such information. But in many cases the effort is not easy, may be extremely burdensome and time-consuming, and may involve voluminous amounts of information that may be in multiple personnel records or files. OFCCP's regulations contemplate this issue and provide expressly that a contractor must provide OFCCP staff “**access to records**” during an onsite visit as provided for in its regulations. *See* 41 CFR 60-1.20(f) and 41 CFR 60-1.43.

In the course of the underlying compliance review, Oracle produced to OFCCP extensive amounts of information, including over 400,000 total data points regarding employee compensation and hiring from Oracle's database and over 30,000 pages of documents such as applications and job requisition information, resumes, complaints, personnel files, labor condition applications, and policies. In OFCCP's motion to compel, OFCCP appears finally to identify information it has claimed Oracle allegedly refused to provide during the compliance review. *See* Norman Garcia declaration, para. 7 where he details precisely the type of information in records that OFCCP could have accessed (“education background, recruiter's notes, compensation history, performance ratings and a myriad of other data points”). Instead, OFCCP complains of a “refusal” to provide requested information despite Ms. Holman- Harries having explained in writing the burdensome nature of OFCCP's requests for information such as employees' education, expertise, prior experience, and performance, etc. None of this data is in an easily retrievable database. In this litigation, Oracle has agreed to undertake the massive effort to compile such information, despite the substantial time, effort and burden of doing so. Nonetheless, these types of base personnel records and documents are precisely what are intended by OFCCP's regulations to allow its compliance staff to access for review during the on-site phase of a compliance review. In fact, OFCCP staff in another region did just that during their recent on-site review.

c. Pay equity. Nowhere in its regulations does OFCCP describe, detail or “require” a contractor to conduct something called a pay equity analysis. In fact, such an analysis is not referenced in any federal pay law or regulation. The regulation OFCCP cites, 41 CFR 2.17 (b)(3) is plain in its words and terms. It refers to evaluation of a “compensation system.” It mentions neither pay equity, nor a pay equity analysis.

d. What is pay equity? There is much written on the concept so I will not attempt to describe it here. Suffice to say it is used in Human Resources’ compensation practices, underlies pay discrimination statutes, and is used in social economics. A manager or HR person, when comparing the roles and positions of persons on a work team, may look at internal “pay equity.”

e. Assessing EEO compliance and nondiscrimination. For many reasons, in addition to Oracle’s own well described non-discrimination policies, assessing compliance and legal risks is good corporate governance and human resource policy. In addition, Oracle like other companies, regularly seeks advice and assistance from legal counsel to analyze employment decisions, policies and practices. Therefore, some of this analysis may be done internally as part of HR/compliance oversight. Other efforts can involve privileged audits that OFCCP has long recognized and encouraged. See, for example, 2006 Voluntary Guidelines for Self-Evaluation of Compensation Practices, 71 Fed. Reg., No. 116, June 16, 2006. Of course, while the 2006 standards and voluntary process were rescinded in 2013, the widely accepted legal right of employers to conduct a privileged audit was never discarded by OFCCP.

8. It is in this context that we look at the declaration of Deputy Regional Director Jane Suhr. First, it is worth noting that Ms. Suhr played no active role in OFCCP’s compliance review, did not conduct the audit, and never attended any of the nine days OFCCP was onsite. Regional Director Wipper was present for the first day of the on-site, otherwise the compliance review was left to OFCCP staff and Oracle’s Diversity & Compliance team. I personally was on-site throughout the nine days but mostly interacted with and advised the Oracle team. After a short entrance conference and facility tour, the onsite consisted mostly of manager-level and

non-manager employee interviews. This included OFCCP interviews of 36 manager level staff and several dozen non-manager employees. OFCCP also had access to records but, OFCCP never asked to review any personnel records. Rather they wanted Oracle to do their work, no matter the burden. When Oracle objected, due to the burden and breadth of information requested, OFCCP did nothing, offered no response, and made no request for further access, nothing!

9. After the NOV was issued, without any prior notice to Oracle of OFCCP's concerns or intended findings, there was "extensive correspondence" as briefly noted in Ms. Suhr's declaration. Most of the extensive correspondence after the NOV involved detailed discussion and description of the inadequacies in OFCCP's compliance review processes; effort by Oracle to learn from OFCCP the facts underlying the NOV, and discussion of OFCCP's failure to apply applicable legal standards and its disregard of Title VII law and its own directives for properly analyzing possible pay discrimination. During the period from the NOV on March 11, 2016 and the October 6, 2016 meeting, I did undertake to analyze the pay issues identified by OFCCP in the NOV.

10. Conciliation meeting. Much of the discussion in the October 6 conciliation meeting centered around the factual and legal concerns raised by Oracle in the prior "extensive correspondence." We discussed Title VII law and standards of proof as embodied in Directive 307 and how OFCCP had failed to follow its own Directive in analyzing pay. See Directive 307 8B (Procedures Applying Case-Specific Investigation Protocols (Dir. 2013-03), issued Feb. 28, 2013. The Directive mandates as follows:

In every case there are three key questions to answer:

- a. Is there a measurable difference in compensation on the basis of sex, race or ethnicity?
- b. Is there difference in compensation between employees who are comparable under the contract's wage or salary system?
- c. Is there a legitimate (*i.e.* non-discriminatory) explanation for the difference?

We discussed the fact that OFCCP had failed completely to follow this protocol. We discussed the need to look at and assess facts and details regarding employees' skill, duties and responsibilities as required by Title VII, Directive 307 and OFCCP's own regulations (see 41 CFR 60-20.4). I explained that in many instances at Oracle there are, at most two, or three employees doing the same work, or with the same skills, or responsibilities. Erin Connell and I explained that for most jobs, employees are not fungible or interchangeable—simply stated—not similarly-situated. The upshot of this discussion caused Janet Wipper, the Regional Director, to remark essentially as follows: “well, if we accept what you say, we could never do any statistical analysis.” I, and Erin Connell, said that's correct, and at minimum, any analysis must be more refined. We talked further about employees' numerous job differences that really required a different type of analysis, called a “cohort analysis.” While some types of statistical analyses may be feasible, I explained how we had undertaken comparison of employees working under a particular supervisor where the work would likely be more similar. In fact, in our prior extensive correspondence we provided detailed examples of cohort comparators. Therefore, I did describe how I would review various employee cohorts to assess whether the employees were or were not similarly situated and if so, whether there were legitimate non-discriminatory explanations for pay differences. This is standard privileged audit practice 101. It is also consistent with what OFCCP should have done pursuant to the three part process noted above in paragraph 8. I never said, nor would I even say, that I conduct any pay equity analyses pursuant to 41 CFR 60-2.17(b)(3), since that regulation does not reference, nor does it require, a pay equity analysis.

11. By letter dated August 16, 2017, a true and correct copy of which is attached hereto as Exhibit A, Oracle provided OFCCP amended and supplemental responses to OFCCP's Document Request Nos. 71, 72, 78, 79, 80, 87, and 88.

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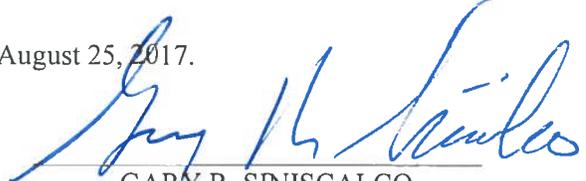
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12. Exhibit B is a true and correct copy of a BNA Bloomberg report “DOL Shuts Down Inquiry Reporting System Amid Possible Breach.”

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

Executed in San Francisco, California on August 25, 2017.



GARY R. SINISCALCO

EXHIBIT A



Orrick, Herrington & Sutcliffe LLP

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August 16, 2017

Via E-Mail

Marc Pilotin
Laura Bremer
Office of Solicitor
90 7th Street, Suite 3-700
San Francisco, CA 94103

Re: OFCCP v. Oracle America, Inc. Redwood Shores, California (OALJ
Case No. 2017-OFC-00006)

Dear Marc and Laura:

As discussed during our meet and confer call yesterday (August 15, 2017), in light of the ALJ's comments during our telephonic conference on August 14, 2017, and in the interest of limiting the issues to be presented to the ALJ for resolution, Oracle hereby amends and supplements its responses and objections to OFCCP's Requests for Production Nos. 71, 72, 78, 79, 80, 87, and 88 as set forth below. As we discussed yesterday, these amended and supplemental responses confirm that notwithstanding Oracle's objections, no responsive documents exist with respect to Request Nos. 71, 72, 78, 79, 87, and 88. They further confirm that notwithstanding Oracle's objections, Oracle will produce responsive documents to Request No. 80 that relate to OFCCP's allegation of recruiting and hiring discrimination in the PT 1 job group, and that relate to OFCCP's allegation of compensation discrimination in the Product Development, Support, and IT lines of business. We believe these amended and supplemental responses negate the need for motion practice as to these particular requests for production. Please confirm if your position is otherwise.

REQUEST FOR PRODUCTION NO. 71:

YOUR internal pay equity analyses conducted pursuant to 41 C.F.R. § 60-2.17 for the RELEVANT TIME PERIOD, including the date of analysis and dataset(s) used for the analysis.

RESPONSE TO REQUEST FOR PRODUCTION NO. 71:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Following its meet and confer conversations with OFCCP, Oracle maintains its objections to this request as 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

OHSUSA:767267585.1

Exhibit A
Page 1 of 7



Marc Pilotin and Laura Bremer
August 16, 2017
Page 2

extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Oracle further objects to this request on the ground that it calls for a legal conclusion; specifically, as Oracle noted in its meet and confer letter dated June 9, 2017, this request, by referring to a regulation, requires Oracle to read, research, and apply the regulation to the request, which inherently requires a legal analysis of the regulation and its applicability. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself.

Oracle further objects to the false premise suggested by this request that Oracle was obligated under 41 C.F.R. § 60-2.17 to perform an “internal pay equity analysis,” a term not found in the regulation itself, or in any authority interpreting the regulation. Subject to and without waiving these 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. 72:

ALL DOCUMENTS RELATING TO actions taken during the RELEVANT TIME PERIOD in response to YOUR internal pay equity analyses conducted pursuant to 41 C.F.R. § 60-2.17.

RESPONSE TO REQUEST FOR PRODUCTION NO. 72:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Following its meet and confer conversations with OFCCP, Oracle maintains its objections to this request as overbroad in scope, unduly burdensome, 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 this request on the ground that it calls for a legal conclusion; specifically, as Oracle noted in its meet and confer letter dated June 9, 2017, this request, by referring to a regulation, requires Oracle to read, research, and apply the regulation to the request, which inherently requires a legal analysis of the regulation and its applicability. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself.

Oracle further objects to the false premise suggested by this request that Oracle was obligated under 41 C.F.R. § 60-2.17 to perform an “internal pay equity analysis,” a term not found in the regulation itself, or in any authority interpreting the regulation. Subject to and without waiving these objections, Oracle responds that, after undertaking a reasonably diligent search, Oracle has



Marc Pilotin and Laura Bremer
August 16, 2017
Page 3

determined that it does not have responsive documents to this request in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 78:

ADVERSE IMPACT ANALYSES, as required by 41 C.F.R. § 60-3.15A, performed by YOU or any other PERSONS acting or purporting to act on YOUR behalf or at YOUR direction for the RELEVANT TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 78:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Following its meet and confer conversations with OFCCP, Oracle maintains its objections to this request as overbroad in scope, unduly burdensome, 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 this request on the ground that it calls for a legal conclusion; specifically, as Oracle noted in its meet and confer letter dated June 9, 2017, this request, by referring to a regulation, requires Oracle to read, research, and apply the regulation to the request, which inherently requires a legal analysis of the regulation and its applicability. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself.

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." Section 60-3.15A sets forth guidelines for "[u]sers of selection procedures," and, as Oracle noted 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 and without waiving these 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. 79:

Evaluations of each step or component of the selection (i.e., HIRING) process, as described in 41 C.F.R. § 60-3.4(C), for positions in the PT1 job group and/or Product Development line of business for the RELEVANT TIME PERIOD.



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RESPONSE TO REQUEST FOR PRODUCTION NO. 79:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Following its meet and confer conversations with OFCCP, Oracle maintains its objections to this request as overbroad in scope, unduly burdensome, 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 this request on the ground that it calls for a legal conclusion; specifically, as Oracle noted in its meet and confer letter dated June 9, 2017, this request, by referring to a regulation, requires Oracle to read, research, and apply the regulation to the request, which inherently requires a legal analysis of the regulation and its applicability. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself.

Oracle further objects to the false premise suggested by this request that Oracle was obligated under 41 C.F.R. § 60-3.4(C) to perform evaluations of each step or component of its hiring process. Section 60-3.4(C) set forth guidelines for "users" of employee selection procedures, and suggests an evaluation of individual components of the hiring process only where "the total selection process for a job has an adverse impact." But as Oracle noted 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 and without waiving these 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. 80:

In-depth analyses of the total employment process, as required in 41 C.F.R. § 60-2.17(b), for positions in the PT1 job group or Product Development, Information Technology, and/or Support lines of business for the RELEVANT TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 80:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. Following its meet and confer conversations with OFCCP, Oracle maintains its objections to this request as overbroad in scope, unduly burdensome, 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



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work product doctrine. Oracle further objects to this request on the ground that it calls for a legal conclusion; specifically, as Oracle noted in its meet and confer letter dated June 9, 2017, this request, by referring to a regulation, requires Oracle to read, research, and apply the regulation to the request, which inherently requires a legal analysis of the regulation and its applicability. Oracle further objects to this request on the ground that it requires Oracle to refer to materials outside the request itself.

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).

During its meet and confer with OFCCP on June 5, 2017, Oracle explained its objections and requested that OFCCP clarify and explain this request. Following OFCCP's explanation, Oracle requested that OFCCP provide a clarified or modified request in writing. Despite OFCCP's failure to provide a clarified or modified request, and subject to and without waiving its objections, Oracle responds that it will, after conducting a reasonably diligent search, produce responsive, non-privileged documents in its possession, custody or control relating to hiring and recruiting for positions in the PT1 job group, and relating to compensation for Product Development, IT, and Support jobs for the ALJ Relevant Period.

REQUEST FOR PRODUCTION NO. 87:

All DOCUMENTS RELATING TO validity studies or evaluations that YOU or someone on YOUR behalf conducted RELATING TO any step or component of the HIRING process for employees in the PT1 job group and Product Development line of business during the RELEVANT TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 87:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. During the meet and confer process, Oracle requested that OFCCP clarify the specific tests or selection procedures relevant to OFCCP's hiring claims on which Oracle would have conducted validity studies. OFCCP declined to specify and instead reiterated that this request is for any validity study that was conducted in relation to the hiring process. Due to OFCCP's lack of limitation or clarification, Oracle maintains its objections to this request on the grounds that it is vague and ambiguous, including but not limited to the phrases "validity studies or evaluations" and "any step or component." Oracle further objects to this request as overbroad in scope, unduly burdensome, oppressive, and encompassing documents not relevant to any party's claim or defense nor



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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 suggested by this request that Oracle was obligated to conduct “validity studies or evaluations” relating to each “step or component” of its hiring process. As with Request Nos. 78 and 79, these requests appear to refer to concepts contained in the Uniform Guidelines on Employee Selection Procedures. But as Oracle noted 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 and without waiving these 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. 88:

All DOCUMENTS RELATING TO validity studies or evaluations that YOU or someone on YOUR behalf conducted RELATING TO any step or component of the COMPENSATION determination process for employees in the Product Development, Information Technology, and Support lines of business during the RELEVANT TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 88:

Oracle incorporates by reference its Objections to Specific Definitions set forth above. During the meet and confer process, Oracle requested that OFCCP clarify the specific tests or selection procedures relevant to OFCCP’s compensation claims on which Oracle would have conducted validity studies. OFCCP declined to specify and instead reiterated that this request is for any validity study that was conducted in relation to the compensation process. Due to OFCCP’s lack of limitation or clarification, Oracle maintains its objections to this request on the grounds that it is vague and ambiguous, including but not limited to the phrases “validity studies or evaluations” and “any step or component.” Oracle further objects to this request as overbroad in scope, unduly burdensome, 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 suggested by this request that Oracle was obligated to conduct “validity studies or evaluations” relating to each “step or component” of its compensation determination process. As with Request Nos. 78 and 79, these requests appear to refer to concepts contained in the Uniform Guidelines on Employee Selection Procedures. But as Oracle noted in its



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

Very truly yours,

A handwritten signature in blue ink that reads "Erin Connell".

Erin M. Connell

cc: Gary Siniscalco
Warrington Parker

EXHIBIT C

U.S. Department of Labor

Office of Federal Contract Compliance Programs
Pacific Regional Office
90 7th Street, Suite 18-300
San Francisco, California 94103



April 21, 2016

Via Electronic and U.S. Certified Mail, Return Receipt Requested

Gary R. Siniscalco
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669

**RE: Compliance Evaluation of Oracle America, Inc.,
Redwood Shores, California; OFCCP No. R00192699**

Dear Mr. Siniscalco:

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) received your April 11, 2016 correspondence. You reject the Agency's request to meet and engage in a good faith and timely conciliation discussion in order to attempt to reach an acceptable resolution of the Notice of Violation. You also erroneously suggest that the Agency has not properly conducted this compliance evaluation, nor substantiated its findings of systemic discrimination against Oracle.

Contrary to your position, OFCCP has provided ample evidence supporting the Agency's findings against Oracle.¹ In the Notice of Violation and accompanying attachment (NOV), OFCCP describes its systemic discrimination findings and supporting analyses of Oracle's employment records and other evidence.² For example, it specifically describes the evidence relied upon in its analyses, including Oracle's *own* applicant and employee databases, written policies and other evidence *not withheld or*

¹ OFCCP has provided additional information responsive to Oracle's 57 questions, attached to its April 11, 2016 correspondence to the Agency, where appropriate, in the enclosed Appendices.

² See, e.g., NOV at p. 2 (OFCCP conducted an "... analysis of ORACLE's applicant data and appropriate workforce availability statistics" [which is later defined as] "... Software Developers, Applications & Systems Software Occupation in the United States is based upon 2006-2010 Census and/or 2013-2014 DOL, Bureau of Labor Statistics' Labor Force Statistics."); and Attachment A at pp. 1-3 ("OFCCP conducted statistical analysis of the employment records Oracle America, Inc. ("Oracle") provided to OFCCP during its equal employment opportunity investigation of Oracle's facility in Redwood Shores, California... Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014.").

created solely in response to this audit by Oracle.³ It further describes the methodology and variables used in the regression analyses, allowing Oracle to replicate them.⁴

The NOV also provides the results of OFCCP's statistical analyses, which are well-above the two standard deviations accepted as evidence of systemic discrimination.⁵ For example, OFCCP's analyses uncovered:

- gross disparities against non-Asian applicants, particularly African American, Hispanic and White applicants, at *-8, -10, and -30 standard deviations*, respectively, in recruiting practices;
- gross disparities against non-Asian applicants, particularly African American, Hispanic and White applicants, at *-4, -3, and -28 standard deviations*, respectively, in hiring practices; and
- gross disparities against African American, Asian American, American and female employees, at *-2, -6.6, -7.1, and -8.4 standard deviations*, respectively, in compensation practices.⁶

Because OFCCP has met its burden, Oracle now bears one. However, in the April 11, 2016 letter to the Agency, Oracle, through its counsel, fails to provide any evidence to rebut the NOV.⁷ Only two

³ Oracle's submission of information created *solely* for the purpose of this audit (e.g., the post hoc "explanation" of its compensation philosophy and practices *not* reflected in written documents nor policies kept in the ordinary course of business, or the newly-created "variables" such as "work flow unit" inserted into its compensation database "for OFCCP only") is not credible evidence.

⁴ See, e.g., Attachment A at pp. 1-3 ("OFCCP analyzed Oracle employees' compensation data by Oracle job function using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' gender, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, and job title.")

⁵ A disparity in treatment that is two standard deviations is acceptable as evidence of discrimination. See, e.g., *Castaneda v. Partida*, 430 U.S. 482, 496-497 n.17 (1977); *Hazelwood School Dist. v. United States*, 433 U.S. 299, 308-309 n.14 (1977); *Segar v. Smith*, 738 F.2d 1249, 1283 (D.C. Cir. 1984) cert.denied, 471 U.S. 1115 (1985).

⁶ Gross statistical disparities alone, like the disparities uncovered here, are compelling proof of systemic discrimination. See, e.g., *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); 29 U.S.C. §§ 621-34 (2012).

⁷ Because Oracle's counsel appears to apply the wrong legal standard in his correspondence responding to the systemic discrimination findings at issue, the applicable law is provided herein. See, e.g., *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Segar v. Smith*, 738 F.2d 1249, 1285-1286 (D.C. Cir. 1984); 29 U.S.C. §§ 621-34 (2012); 3-55 Labor and Employment Law § 55.03, LEXIS, Matthew Bender ("...a different pattern of proof has emerged for class actions and "pattern or practice" suits. When the plaintiff in a ... case is a class of individuals or the [government] ... the four-part prima facie showing called for in *McDonnell Douglas* is not directly apposite. At the liability stage of the proceedings, it is simply too cumbersome and too inefficient to require each class member or each affected employee to individually present the facts required for a *McDonnell Douglas* prima facie case.")

Accordingly, in order to rebut OFCCP's systemic discrimination findings, Oracle cannot respond with questions about individuals. Instead, it must respond with statistical evidence either demonstrating how OFCCP's statistical analysis

paragraphs of the five-page letter address the substantive discrimination violations at issue.⁸ Even then, those two paragraphs only seek information from the Agency. The letter's attachment serves an additional 57 questions on the Agency – seeking predominantly irrelevant,⁹ privileged,¹⁰ or premature¹¹ information – while Oracle continues to withhold any substantive response to the NOV.

Without evidence offered to satisfy Oracle's evidentiary burden, OFCCP's findings remain un rebutted. Should Oracle and its counsel continue to withhold rebuttal evidence to the NOV, the Agency may conclude that none exists.¹²

was flawed, or providing a nondiscriminatory explanation or business necessity for the observed systemic disparities. Failure to provide rebuttal evidence essentially concedes the violations. *See Segar*, 738 F.2d at 1288 (When an employer "...introduced no evidence to support its purported nondiscriminatory explanation, this rebuttal fails as a matter of law.")

⁸ Instead of responding to the substantive violations at issue, most of the letter focuses upon mischaracterizing communications and the compliance evaluation record, while condemning government officials for conducting an audit of Oracle. *See* 41 C.F.R. 60-1.32. Moreover, Oracle counsel's repeated statements about disclosure of findings prior to issuance of a NOV or during an exit conference are a red herring. No such requirements exist. Again, the Agency will continue to attempt to redirect all parties' communications to the substantive issues, rather than unfounded and irrelevant diversions presented by Oracle counsel.

⁹ At this stage, individual comparator information is not the focus, particularly when the employer has not even produced a proper rebuttal to statistical evidence of systemic discrimination. *See, e.g., Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324 (1977) (In the liability phase of a pattern and practice case, "the focus often will not be on individual hiring decisions, but on a pattern of discriminatory decisionmaking." ... The Government is not required to offer evidence "that each person for whom it will ultimately seek relief was a victim of the employer's discriminatory policy.")

¹⁰ Questions seeking information about "other factors considered" or "rejected;" "different models, iterations and computations... run besides the three listed...;" and "the statistical results of all other models and computations conducted" is subject to the deliberative process privilege and other privileges. *See, e.g. DOI v. Klamath Water Users Protective Assn.*, 532 U.S. 1, 8 (2001) ("[D]eliberative process covers documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated."); *Guzman v. City of Chicago*, 2011 U.S. Dist. LEXIS 1730, *11 (N.D.Ill. 2011)(oral communications and discussions covered by deliberative process privilege).

¹¹ *See e.g., Clean Earth Remediation and Construction Services Inc. v. American International Group Inc.*, 245 F.R.D. 137, 141 (S.D.N.Y. 2007)("a number of cases have held that interrogatories seeking identification of all facts supporting a particular allegation are inherently improper.") (citing, *inter alia*, *Grynberg v. Total S.A.*, 2006 WL 1186836, at *6-7 (D. Col. 2006); *Convolve Inc. v. Compaq Computer Corp.*, 223 F.R.D. 162, 173 (S.D.N.Y. 2004) (Francis, M.J.); *Thompson v. United Transp. Union*, 2000 WL 1375293 (D. Kan. 2000)).

¹² *See Segar*, 738 F.2d at 1288 (When an employer "...introduced no evidence to support its purported nondiscriminatory explanation, this rebuttal fails as a matter of law."); *Capaci v. Katz & Besthoff, Inc.*, 711 F.2d 647, 653-654 (5th Cir. 1983), cert denied, 466 U.S. 927(1984) ("defendant must do more than raise theoretical objections to the data or statistical approach taken; instead, the defendant should demonstrate how the errors affect the results"); *EEOC v. Gen. Tel. Co.*, 885 F.2d 575, 579-582 (9th Cir. 1989) cert.denied, 498 U.S. 950 (1990) ("[T]he defendant

OFCCP again requests that Oracle provide a rebuttal to the NOV, through statistical evidence, which explains how OFCCP's statistical analyses are flawed, or why a nondiscriminatory reason or business necessity explains the observed systemic disparities. Please provide such information by May 4, 2016.¹³ In the event Oracle fails to meet its rebuttal burden, OFCCP will initiate proceedings with the appropriate enforcement agency.

Sincerely,



Hea Jung Atkins

cc: Shauna Holman-Harries (*via* email: shauna.holman.harries@oracle.com)
Director Diversity Compliance, Oracle America, Inc.

Juana Schurman (*via* email: juana.schurman@oracle.com)
Vice President and Associate General Counsel, Oracle America, Inc.

Enclosure

cannot rebut an inference of discrimination by merely pointing to flaws in the plaintiff's statistics."); *Bazemore v. Friday*, 478 U.S. 385, 399-400, 403-404 n.14 (1986).

¹³ Please note that arguments of counsel, affirmations of good faith in making individual decisions, cohort comparisons, and critiques absent an alternative analysis that demonstrates a *different outcome in favor of Oracle* are insufficient to rebut OFCCP's statistical evidence of systemic discrimination. See footnote 12.

APPENDIX A

For questions 1-11, please see responses below.

1. *Please state how OFCCP determined that Asian Indians, and Asians generally, were favored in recruiting.*

Please refer to the NOV ("An analysis of ORACLE's applicant data and appropriate workforce availability statistics show that ORACLE favored Asian applicants, particularly Asian Indians, in recruiting at a standard deviation as significant as +85. ORACLE disfavored non-Asian applicants in recruiting, particularly African American, Hispanic and White applicants, at standard deviations as significant as -8, -10, and -80, respectively."... "An analysis of ORACLE's hiring data and appropriate workforce availability statistics show that ORACLE favored Asian applicants, particularly Asian Indians, in hiring at a standard deviation as significant as +30. ORACLE disfavored non-Asian applicants in hiring, particularly African American, Hispanic and White applicants, at standard deviations as significant as -4, -3, and -28, respectively. Evidence gathered during the compliance evaluation demonstrates that ORACLE's discriminatory recruiting and hiring practices skewed the racial composition of the applicant flow data to favor Asians, particularly Asian Indians, and disfavored other racial groups for PT1 roles. In order to further analyze ORACLE's recruitment and hiring practices for PT1 roles, OFCCP made multiple requests to ORACLE for copies of all application materials for all expressions of interest, including but not limited to names of hiring managers, employee referrals, requisition dates, hire dates, and copies of job postings and job requirements. Because ORACLE failed to provide complete and accurate information in response to OFCCP's multiple requests, OFCCP presumes that the information not produced would have been unfavorable to ORACLE.")

2. *Please identify who OFCCP determined were "qualified" African-Americans, Hispanic and White ... applicants" who were discriminated against in recruiting.*

Please refer to applicant data submitted by Oracle on October 28, 2014 as part of Oracle's AAP submission.

3. *For those identified in #2 above, please identify all those OFCCP identified as qualified persons discriminated against in hiring.*

Please refer to applicant data submitted by Oracle on October 28, 2014 as part of Oracle's AAP submission.

4. *Please describe with specificity the recruiting actions that OFCCP determined were discriminatory.*

This question is improper and/or premature while Oracle continues to deny access to relevant information and withhold any substantive response to the NOV.

See, e.g., 41 C.F.R. §§ 60-1.43, 60-300.81, and 60-741.81; Clean Earth Remediation and Construction Services Inc. v. American International Group Inc., 245 F.R.D. 137, 141 (S.D.N.Y. 2007) ("a number of cases have held that interrogatories seeking identification of all facts supporting a particular allegation are inherently improper.").

5. *Please provide the underlying statistical data and actual computations used by OFCCP to determine the standard deviations in violation #1.*

Please refer to applicant data submitted by Oracle on October 28, 2014 as part of Oracle's AAP submission. Statistical results are referenced in the NOV.

6. *Please describe with specificity what facts OFCCP relied upon in finding that Oracle "disfavored non-Asian applicants in hiring."*

Please refer to the response to question 4.

7. *Please describe specifically what facts OFCCP "gathered during compliance evaluation (to demonstrate) that Oracle's discriminatory recruiting and hiring practices showed the racial composition of the applicant flow data to favor Asians, particularly Asian Indians."*

Please refer to the response to question 4.

8. *Please describe with specificity how OFCCP identified any individuals referenced in violation #1 as Asian Indians.*

Applicant surnames, citizenship/visa status, and Labor Condition Applications and supporting information submitted to the U.S. Department of Labor by Oracle were used to determine country of origin.

9. *Please identify the multiple requests made by OFCCP for "copies of all application materials, etc."*

Please refer to the Pending Information Requests provided to Oracle on March 29, 2016, including dates of data requested and missed deadlines.

10. *Please explain why OFCCP compliance staff made no request to review application materials on site.*

OFCCP is not required to review all documents during onsite. *See* 41 CFR 60-1.20(a)(2).

11. *Please identify the non-Asian counterparts who were equally or more qualified for the PT roles filled by Individual Contributors.*

Please refer to the response to question 4.

Questions 12-24, and 28-31 appear to address confidential sources, the deliberative process and other privileged matters. The question also raises concerns about Oracle's engagement in the conciliation process. Most notably, Oracle puts forth questions seeking potentially confidential and privileged information, which go beyond the Agency's disclosure requirements in conciliation, but continues to withhold relevant information, a rebuttal analysis or other written response to the Notice of Violations.

12. *Did OFCCP (or its statistician) look only at the factors referenced in the statistical summary in Attachment A to the NOV?*
13. *Were other factors considered? If so, which ones?*
14. *Were other factors rejected? If so, why?*
15. *How many different models, iterations, and computations did the statistician run besides the three listed in Attachment A?*
16. *What were the statistical results of all the other models and computations conducted by the statistician?*
17. *Oracle was unable to replicate the analysis, methodology and results in Attachment A. Please provide it with all the necessary information, data, descriptions of methodology, etc., sufficient to allow Oracle to replicate the results in Attachment A.*
18. *Please describe with specificity the data used in Attachment A with regard to "work experience at Oracle" and "work experience prior to Oracle." If these simply mean "time at Oracle" and "time working prior to Oracle," please explain the reason for use of these time frames.*
19. *Because of the relatively small groups of employees, did OFCCP or its statistician do any statistical tests to ensure that practical significance was not at play?*
20. *If other factors were considered and rejected by OFCCP, what did the results show using the factors that were rejected? In other words, did OFCCP consider a factor that explained or reduced the disparity and then reject it?*
21. *For just the model used in Attachment A, OFCCP made computations for each role and for each protected group. How many roles and how many analyses were done using the Attachment A model?*
22. *Directive 307 allows OFCCP to use different groupings of jobs, roles, job titles, etc., to develop PAGs. How many different PAGs did OFCCP develop and consider as part of its statistical analysis? What facts were considered to determine if the roles or job titles in the PAGs comprised only comparators?*
23. *Directive 307 states that in every case there are three key questions to answer. Once a measurable difference is found, questions b and c are as follows: b) is the difference in compensation between employees who are comparable under the contractor's wage or salary system and c) Is there a legitimate (i.e. non-discriminatory) explanation for the difference?*
28. *What did OFCCP do to answer questions b and c and what actual facts and information did it obtain? Did OFCCP consider performance in assessing pay differences? If not, why not?*
29. *Did OFCCP consider relevant job experience, business lines (for example, work on PeopleSoft products v. cloud v. fusion), criticality of the role or product to Oracle, or market factors? If not, why not?*
30. *For each finding in the NOV, state whether the finding constitutes unlawful disparate treatment or disparate impact?*

31. *The NOV refers variously, and in summary fashion, to evidence in personnel records, interviews, complaints, anecdotes but is lacking in any details or specific information of any kind. Please identify or explain what facts or information was found that supports each of the alleged violations 2-5.*

For questions 25-27, please see responses below.

25. *If OFCCP did identify comparators, who are they as referenced in the NOV where it states variously that respective protected class members (Females, Blacks, Hispanics non-Americans) were paid less than similarly situated (males, Asians, whites)?*

Please refer to the compensation database that Oracle submitted to OFCCP for the referenced protected class members and comparators.

26. *Why did OFCCP never give Oracle an opportunity to provide legitimate explanations under question c?*

OFCCP provided Oracle with numerous opportunities to provide its position. Please refer to email correspondence that Ms. Holman-Harries sent to OFCCP on 10/28/2014, 12/11/2014, and 03/12/2015. Additionally, the NOV states that OFCCP requests Oracle to engage in conciliation discussions to resolve the violations, which Oracle refused.

27. *What did OFCCP do to answer question c?*

OFCCP did not find any legitimate explanation for the observed systemic disparities. Now Oracle bears the burden to rebut OFCCP's systemic discrimination findings by either demonstrating how OFCCP's statistical analysis was flawed, or providing a nondiscriminatory explanation or business necessity of the observed systemic disparities.

For questions 32-39, please see OFCCP email to Oracle on March 29, 2016.

32. *For alleged violation #6, please describe the "in depth analysis" OFCCP believes is required and how Oracle "failed" to identify problem areas.*

33. *Please identify with specificity the "problem areas in its compensation system" that Oracle failed to identify.*

34. *For alleged violation #7, please describe with specificity the type of pay equity analysis Oracle failed to conduct in accordance with 41CFR 60-2.17(c).*

35. *For alleged violation# 8, please describe with specificity the nature and type of monitoring OFCCP contends (1) was not done and (2) must be done in accordance with 41 CFR 60-2.17(d).*

36. *For alleged violation #9, please identify which records Oracle failed to maintain and collect.*

- 37. For alleged violation #9, please identify the adverse impact analysis not done as required by 41CFR60.1.12(a).*
- 38. For alleged violation #10, please identify with specificity when and how OFCCP requested access to records.*
- 39. For alleged violation #10, please identify with specificity each and every instance in which Oracle denied OFCCP access.*

For questions 40-42, OFCCP is available to provide any technical assistance needed by Oracle. Please contact the Greater San Francisco/Bay District Office if you intend to conciliate the matter.

- 40. For all of the alleged violations 6-10, please specify what technical assistance OFCCP has available to provide to contractors.*
- 41. For all of the alleged violations, please identify the person or persons in the SF region knowledgeable and experienced in providing technical assistance to contractors.*
- 42. Please specify when and what technical assistance, if any, was ever offered to Oracle in connection with 6-10.*

APPENDIX B

For question 1, please see response below.

1. *What facts support OFCCP's determination that Oracle refused OFCCP access to prior year compensation data for all employees for PT1 role during the review period of January 1, 2013 through June 30, 2014?*

Prior year compensation data was requested on 7/30/15; 8/28/15; 9/21/15; 10/1/15; 10/14/15; and 11/2/15. To date, Oracle has yet to produce the data.

For questions 2–10 and 12, please see OFCCP's email to Oracle on March 29, 2016.

2. *What facts support OFCCP's determination that Oracle refused OFCCP access to complete hiring data for PT1 roles during the review period of January 1, 2013 through June 30, 2014?*
3. *What facts support OFCCP's determination that Oracle refused to provide data on April 27, 2015?*
4. *What facts support OFCCP's determination that Oracle refused to provide data on May 11, 2015?*
5. *What facts support OFCCP's determination that Oracle refused to provide data on May 28, 2015?*
6. *What facts support OFCCP's determination that Oracle refused to provide data on July 30, 2015?*
7. *What facts support OFCCP's determination that Oracle refused to provide data on October 1, 2015.*
8. *What facts support OFCCP's determination that Oracle refused to provide data on October 14, 2015?*
9. *What facts support OFCCP's determination that Oracle refused to provide data on November 2, 2015?*
10. *What facts support OFCCP's determination that Oracle refused to provide data on December 15, 2015?*
12. *What facts support OFCCP's determination that Oracle refused to provide complete compensation data for all relevant employees in the Information Technology, Product Development and Support roles for "the full review period" as noted in footnote 4.*

For questions 11-17, OFCCP is not required to review all documents during onsite. See 41 CFR 60-1.20(a)(2).

11. *For each refusal noted above, state all efforts made by OFCCP to arrange to review the documents onsite.*
12. *For each refusal noted above, state all efforts made by OFCCP to arrange to review the documents onsite.*
13. *What, if anything, did OFCCP do to review on-site the items referenced in footnote 4 that Oracle allegedly refused to provide?*

14. *What, if anything, did OFCCP say or do in response to seek access to information on site to the extent such effort is not described in response to questions 1 - 13 above?*
15. *Please identify the legal and regulatory basis for presuming data would be unfavorable (i.e. applying an adverse inference) in the NOV with regard to the refusal referenced in footnote 4.*
16. *What, if anything, did OFCCP do to review on-site the items referenced in footnote 4 that Oracle allegedly refused to provide?*
17. *What, if anything, did OFCCP say or do in response to seek access to information on site to the extent such effort is not described in response to questions 1 - 13 above?*
18. *Please identify the legal and regulatory basis for presuming data would be unfavorable (i.e. applying an adverse inference) in the NOV with regard to the refusal referenced in footnote 4.*

See 41 C.F.R. 60-1.12(e) ("Failure to preserve complete and accurate records as required by paragraphs (a) through (c) of this section constitutes noncompliance with the contractor's obligations under the Executive Order and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: Provided, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from the circumstances that are outside of the contractor's control.")