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Office of Administrative Law Judges
San Francisco, Ca

Attorneys for OFCCP

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

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

Plaintiff,

v.

ORACLE AMERICA, INC.

Defendant.

Case No. 2017-OFC-00006

OFCCP'S RESPONSES TO ORACLE'S OBJECTIONS TO TRIAL EXHIBITS

Pursuant to the Parties' Exhibit Status Report dated December 2, 2019, the Office of Federal Contract Compliance Programs hereby submits its responses to Oracle's objections to its

trial exhibits. As will be shown in the attached chart, a majority of Oracle's objections are rendered moot because of item three in the parties' December 2, 2019, Status Report and by the Court's December 2, 2019, Motion In Limine Order. While OFCCP did withdrawal exhibit P-60 because Oracle submitted another exhibit in its place at exhibit D-444, the remaining objections should be overruled either because OFCCP negated the objections made or one of OFCCP's witnesses will lay the required foundation.

DATED: December 4, 2019

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/s/ Norman E. Garcia
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CERTIFICATE OF SERVICE

I, Norman E. Garcia, am a citizen of the United States of American and am over 18 years of age. I am not a party to the within action. My business address is 90 7th Street, Suite 3-700, San Francisco, California, 94103.

On December 4, 2019, I served **OFCCP'S RESPONSES TO ORACLE'S OBJECTIONS TO TRIAL EXHIBITS with Certificate of Service**

in this action by **e-mail** to:

Gary R. Siniscalco: grsiniscalco@orrick.com

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I certified under penalty of perjury that the above is true and correct.

Executed: December 4, 2019

/s/ Norman E. Garcia
NORMAN E. GARCIA
Senior Trial Attorney

Office of the Solicitor
United States Department of Labor

OFCCP's Responses to Oracle's Objections to Trial Exhibits

Exh#	Bates#	Date	Document	Objections	Responses
P-3	N/A	10/10/19	Deposition Transcript for Dr. Janice Madden	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-4	N/A	10/11/19	Declaration of Dr. Janice Madden introduced as Ex. 9 of Dr. Ali Saad's Deposition	Hearsay Untimely disclosed opinions. See Oracle MIL No. 1	Moot. <i>See</i> 12/2/19 MIL Order.
P-5	N/A	10/31/19	Declaration of Dr. Janice Madden	Hearsay Untimely disclosed opinions. See Oracle MIL No. 1	Moot. <i>See</i> 12/2/19 MIL Order.
P-6	N/A	11/7/19	Declaration of Dr. Janice F. Madden	Hearsay Untimely disclosed opinions. See Oracle MIL No. 1	Moot. <i>See</i> 12/2/19 MIL Order.
P-7	N/A	10/11/19	Deposition Transcript for Dr. Ali Saad	Oracle objects to the admission of an entire deposition as an exhibit.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-10	N/A	07/03/19	Condensed PMK Deposition Transcript for Tamerlane Baxter	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-11	N/A	05/24/19	Condensed Deposition Transcript for Lynne Carrelli	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-12	N/A	06/11/19	Condensed Deposition Transcript for Madhavi Cheruvu	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-13	N/A	07/18/19	Deposition Errata Sheet for Madhavi	Oracle objects to the admission of	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.

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			Cheruvu's 6/11/19 Deposition	an entire deposition.	
P-14	398926 - 399189	07/26/18	Anje Dodson's Jewett PMK Deposition Transcript	Oracle objects to the admission of an entire deposition.	<i>See No. 3 in Parties 12/2/19 Exhibit Status Report.</i>
P-15	399314 - 399378	10/16/18	Kristina Edwards' Jewett PMK Deposition Transcript	Oracle objects to the admission of an entire deposition.	<i>See No. 3 in Parties 12/2/19 Exhibit Status Report.</i>
P-16	N/A	05/08/19	Condensed Deposition Transcript for Shauna Holman- Harries	Oracle objects to the admission of an entire deposition.	<i>See No. 3 in Parties 12/2/19 Exhibit Status Report.</i>
P-17	N/A	06/10/19	Deposition Errata Sheet for Shauna Holman- Harries's 5/8/19 Deposition	Oracle objects to the admission of an entire deposition.	<i>See No. 3 in Parties 12/2/19 Exhibit Status Report.</i>
P-18	N/A	08/1/19	Condensed PMK Deposition Transcript for Shauna Holman- Harries	Oracle objects to the admission of an entire deposition.	<i>See No. 3 in Parties 12/2/19 Exhibit Status Report.</i>
P-19	N/A	09/03/19	Deposition Errata Sheet for Shauna Holman- Harries's 8/1/19 PMK Deposition	Oracle objects to the admission of an entire deposition.	<i>See No. 3 in Parties 12/2/19 Exhibit Status Report.</i>
P-20	399391- 399454	10/23/18	Chad Kidder's Jewett PMK Deposition Transcript	Oracle objects to the admission of an entire deposition.	<i>See No. 3 in Parties 12/2/19 Exhibit Status Report.</i>
P-21	N/A	06/14/19	Condensed Deposition Transcript for Juan Loaiza	Oracle objects to the admission of an entire deposition.	<i>See No. 3 in Parties 12/2/19 Exhibit Status Report.</i>

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P-22	400584-401021	07/26/18	Kate Waggoner's Jewett PMK Deposition Transcript	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-23	N/A	06/05/19	Deposition Errata Sheet for Kate Waggoner's 5/1/19 Deposition	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-24	N/A	07/19/19	Condensed PMK Deposition Transcript for Kate Waggoner	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-25	N/A	08/26/19	Deposition Errata Sheet for Kate Waggoner's 7/19/19 PMK Deposition	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-26	N/A	05/30/19	Condensed Deposition Transcript for Joyce Westerdahl	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-27	N/A	07/1/19	Deposition Errata Sheet for Joyce Westerdahl's 5/30/19 Deposition	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-57	N/A	01/09/15 – 01/13/15	Depo. Ex. 33 - Lisa Gordon's Revisions to OFCCP's Draft Interview Statement.	Hearsay	The document constitutes a party admission under either Fed. R. Evid. 801(d)(2)(C) or (D). As the first page of document itself indicates, at the time of the creation of the redlined interview notes, Lisa Gordon was the Director of Compensation representing the company in compliance audits with OFCCP. Shauna Holman-Harries provided further foundation for the

OFCCP's Responses to Oracle's Objections to Trial Exhibits

					<p>document at her deposition, where she confirmed that Ms. Gordon told her she had made changes to the document and then Ms. Holman-Harries had forwarded those changes to OFCCP. P-16, SHH 5/8/19 Dep. Tr. 224:22-233:12.</p> <p>The document has other indicia of reliability when considered jointly with the version that includes the e-mail to which it was attached, submitted at P-255, as well as the other versions of this interview statement also in evidence and uncontested at P-43, P-56, and P-67.</p>
P-60	189	N/A	Dep. Ex. 37 - Excerpts from Oracle Created Spreadsheet minus 4th page because of privilege claim	<p>Lacks foundation</p> <p>As Oracle has explained to OFCCP, this is an inadvertently produced document that is not the document provided to OFCCP during the audit. The correct document is identified on Oracle's exhibit list as D-444.</p>	Given that Oracle added a similar document at the end of its exhibit list as D-444, OFCCP withdraws this exhibit.
P-88	DOL 534 - 539	03/24/15 – 03/26/15	Dep. Ex. 72 - OFCCP's Interview Notes of Madhawi Cheruvu	<p>Hearsay</p> <p>Lacks foundation</p>	<p>Moot. <i>See</i> 12/2/19 Order on MILs at 20-21 & n.8.</p> <p>Document can be used to show prior inconsistent statement since Oracle identified Madhawi Cheruvu as a hearing witness.</p> <p>In Oracle's filed response to OFCCP's objections submitted on December 4, 2019, identified that</p>

OFCCP's Responses to Oracle's Objections to Trial Exhibits

					it was proper to submit as an exhibit interview notes of an expected trial witness and only withdrew those notes once the witness was not on the witness list.
P-93	DOL 521 - 524	03/25/15	Dep. Ex. 78- OFCCP's Interview Notes of Juan Loaiza	Hearsay Lacks foundation	Moot. <i>See</i> 12/2/19 Order on MILs at 20-21 & n.8. Document can be used to show prior inconsistent statement since Oracle identified Juan Loaiza as a hearing witness. In Oracle's filed response to OFCCP's objections submitted on December 4, 2019, identified that it was proper to submit as an exhibit interview notes of an expected trial witness and only withdrew those notes once the witness was not on the witness list.
P-99	417060	Copyright 2017	Dep. Ex. 84 - Screenshots from Oracle Created Document: "Workforce Compensation Hints and Tips" Video	Lacks foundation Incomplete document that constitutes "snippets" and "screenshots" from a video	The complete video was submitted into evidence at P-322. That document provides the necessary foundation. Furthermore, this is a summary of a video recording, which is not convenient for the Court nor the parties to display during trial given the limited trial dates available. The original video is in Oracle's possession. Accordingly, this summary of P-322 is admissible under Federal Rule of Evidence 1006.
P-106	41732	Copyright 2017	Dep. Ex. 92 - Oracle - Created Document: Manage Base Pay Using Cloud Self- Service	Lacks foundation Incomplete document as it is a "snippet" from "another video"	This is a summary of a video recording, which is not convenient for the Court nor the parties to display during trial given the limited trial dates available. The original video is in Oracle's possession. Accordingly, this summary of P-322 is admissible under Federal Rule of Evidence 1006.

OFCCP's Responses to Oracle's Objections to Trial Exhibits

					<p>The underlying video was produced by Oracle with bates number ORACLE_HQCA_417312. The excerpt from the video produced by Oracle bears indicia of its identity as a training video for Oracle's managers regarding employees' base pay. For example, Oracle's trademarked logo is prominently featured in the bottom left corner. Oracle's copyright reservation is featured in the bottom center-right of the excerpt, and there is a marker marking the content "Confidential-Oracle Internal." Accordingly, there is sufficient indicia that this excerpt is an actual excerpt from the relevant video produced by Oracle under Federal Rule of Evidence 901(b)(4). Fed. R. Evid. 901(b)(4) (authentication may be satisfied by way of evidence "[t]he appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.").</p>
P-171	N/A	2015	<p>2014 Snapshot (ORACLE_HQCA_000000 3616) Sorted by Three Job Functions (Inftech, Prodev, Supp) by Specialty Area by Systems Job Title by Salary Grade</p>	<p>Lacks foundation. Best evidence. This is not the 2014 Snapshot as produced. OFCCP has removed certain information and made other changes.</p>	<p>OFCCP will provide foundation through witness testimony. This is a summary of a voluminous spreadsheet, which is not convenient for the Court nor the parties to display given its size (7421 rows with 90 columns). The original, complete spreadsheet is submitted into evidence as P-260 and Oracle did not oppose its admissibility on any grounds. Accordingly, this helpful summary of the relevant portions of P-260 are admissible under Federal Rule of Evidence 1006. Federal Rules of Evidence 1001 and 1002 together create what is</p>

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					commonly referred to as the “best evidence rule.” FRE 1002 provides that an original writing is not required if so provided by another Federal Rule of Evidence. Federal Rule of Evidence 1006 is such a rule. <i>See, e.g., Peter Kiewit Sons' Co. v. Summit Const. Co.</i> , 422 F.2d 242, 267 (8th Cir. 1969) (“[S]ummaries of proper business records have been accepted in evidence.... Thus, under certain circumstances neither the business records exception to the hearsay rule, nor the best evidence rule are violated by the presentation of summaries of properly kept business records which if offered into evidence would themselves be admissible.”).
P-192	DOL 44390 - 44393	2010	Email Exchange between an Oracle Job Applicant and an Oracle Recruiter	The document is highly redacted DOL email Hearsay Lacks foundation	This document is not a DOL e-mail. The part of the document being a DOL e-mail is the result of a witness forwarding an e-mail exchange between an Oracle job applicant and an Oracle recruiter wherein this recruiter stated it was mandatory that the applicant give the recruiter the applicant's prior pay information. The document is a party admission of Oracle's mandatory policy of collecting the prior pay of job applicants. Oracle has been in possession of the complete and unredacted document since its creation.
P-255	DOL 39983-40002	02/10/15	Email from Shauna Holman-Harries to Min-Chih Yeh	Hearsay as to email attachment	The email attachment constitutes a party admission under either Fed. R. Evid. 801(d)(2)(C) or (D). As the first page of document itself indicates, at the time of the creation of the redlined interview notes, Lisa Gordon was the Director of Compensation

OFCCP's Responses to Oracle's Objections to Trial Exhibits

					<p>representing the company in compliance audits with OFCCP.</p> <p>Shauna Holman-Harries provided further foundation for the document at her deposition, where she confirmed that Ms. Gordon told her she had made changes to the document and then Ms. Holman-Harries had forwarded those changes to OFCCP. P-16, SHH 5/8/19 Dep. Tr. 224:22-233:12.</p> <p>The document has other indicia of reliability when considered jointly with the other versions of this interview statement also in evidence and uncontested at P-43, P-56, and P-67.</p>
P-263	N/A	05/24/19	“The Highest-Paid CEOs of 2018: A Year So Lucrative, We Had to Redraw Our Chart,” The New York Times	Objections contained in MIL No. 9	Moot. <i>See</i> 12/2/19 MIL Order at pp. 21-23. OFCCP does not intend to introduce this exhibit into evidence.
P-264	N/A	2017	Oracle Schedule 14A Filing Under the Securities Exchange Act of 1934	Objections contained in MIL No. 9	Moot. <i>See</i> 12/2/19 MIL Order at pp. 21-23. To the extent OFCCP intends to use this exhibit, its use will be limited to the scope of inquiry set therein.
P-271	N/A	N/A	Deposition Errata Sheet for Dr. Janice Madden	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-329	N/A	11/12/19	Deposition Errata Sheet for Dr. Ali Saad	Oracle objects to the admission of an entire deposition.	<i>See</i> No. 3 in Parties 12/2/19 Exhibit Status Report.
P-436	N/A	10/11/19	Backup Data For Dr. Janice	Untimely disclosed	Moot. <i>See</i> 12/2/19 MIL Order.

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			Madden's October 11, 2019, Declaration	opinions. <i>See</i> Oracle MILNo.1	
P-450	N/A	2018	Oracle Schedule 14A Filing Under the Securities Exchange Act of 1934	Objections contained in MIL No. 9	Moot. <i>See</i> 12/2/19 MIL Order at pp. 21-23. To the extent OFCCP intends to use this exhibit, its use will be limited to the scope of inquiry set therein.
P-451	N/A	2019	Oracle Schedule 14A Filing Under the Securities Exchange Act of 1934	Objections contained in MIL No. 9	Moot. <i>See</i> 12/2/19 MIL Order at 21-23. To the extent OFCCP intends to use this exhibit, its use will be limited to the scope of inquiry set therein.
P-499	DOL 44530	12/28/11	An Email between Oracle Employees	Lacks Foundation Document produced by OFCCP after discovery cutoff	OFCCP will establish foundation through testimony. Oracle has been in possession of the complete document since its creation and failed to produce it in discovery. Document received from witness after November 1, 2019.
P-500	DOL 44531	6/01/19	Employee's Compensation	Lacks Foundation Incomplete document Document produced by OFCCP after discovery cutoff	OFCCP will establish foundation through testimony Oracle is in possession of complete document. Oracle produced this information to OFCCP in native format. Document received from witness after November 1, 2019.
P-501	DOL 44 532	2017	An Email between Oracle Employees	Lacks Foundation Incomplete document Document produced by OFCCP after discovery cutoff	OFCCP will establish foundation through testimony Oracle has been in possession of the complete document since its creation and failed to produce it in discovery.

OFCCP's Responses to Oracle's Objections to Trial Exhibits

					Document received from witness after November 1, 2019.
P-502	DOL 44533	08/25/11	Email between Oracle Employees	Lacks Foundation Incomplete document Document produced by OFCCP after discovery cutoff	OFCCP will establish foundation through testimony Oracle has been in possession of the complete document since its creation and failed to produce it in discovery. Document received from witness after November 1, 2019.
P-503	DOL 44534	N/A	Email between Oracle Employees	Lacks Foundation Incomplete document Document produced by OFCCP after discovery cutoff	OFCCP will establish foundation through testimony Oracle has been in possession of the complete document since its creation and failed to produce it in discovery. Document received from witness after November 1, 2019.
P-504	DOL 44535	06/01/19	Compensation History	Lacks Foundation Incomplete document Document produced by OFCCP after discovery cutoff	OFCCP will establish foundation through testimony Oracle is in possession of complete document. Oracle produced this information to OFCCP in native format. Document received from witness after November 1, 2019.
P-505	DOL 44536	N/A	Email between Oracle Employees	Lacks Foundation Incomplete document Document produced by OFCCP after discovery cutoff	OFCCP will establish foundation through testimony Oracle has been in possession of the complete document since its creation and failed to produce in discovery. Document received from witness after November 1, 2019.