UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. ORACLE AMERICA, INC., Defendant.	OALJ Case No. 2017-OFC-00006 OFCCP No. R00192699 **DEFENDANT ORACLE AMERICA, INC.'S RESPONSE TO PLAINTIFF OFCCP'S STATEMENT OF UNCONTESTED FACTS IN SUPPORT OF OFCCP'S MOTION FOR SUMMARY JUDGMENT**

Exhibit P-267

Pursuant to 41 C.F.R. § 60-30.23 and Federal Rule of Civil Procedure 56, Defendant Oracle America, Inc. ("Oracle") hereby responds to OFCCP's Statement of Uncontested Facts in Support of OFCCP's Motion for Summary Judgment with the following Statement of Disputed Facts in Opposition to OFCCP's Motion for Summary Judgment.

As the content of Oracle's responses below confirm, most of the 264 purportedly uncontested material facts cited by OFCCP are either immaterial to the legal issues the Court must resolve in ruling upon OFCCP's present motion, or are demonstrably not supported by the evidence to which OFCCP cites. In some cases the evidence cited is wholly unrelated to the purported "fact" asserted by OFCCP. In other cases, OFCCP has failed to include the cited evidence in the record. More often, however, OFCCP mischaracterizes the evidence to which the "fact" cites. As for facts that are material and undisputed, they do not support OFCCP's motion. If anything, they demonstrate it must be denied (and/or support Oracle's Motion for Summary Judgment, or in the alternative, for Partial Summary Judgment).

For "facts" not supported by the evidence to which OFCCP cites – meaning the "fact" is a mischaracterization of the evidence, is unsupported by the evidence provided, or has no supporting evidence – Oracle disputes these "facts" with the following response: "This 'fact' is not supported by the evidence to which it cites, and therefore should be disregarded." In these instances, however, as Oracle's responses make clear, it is OFCCP's characterization of the evidence that Oracle disputes, given OFCCP has not established the purported "fact" in the first place, as required by 29 C.F.R. § 18.72(c)(1)(i) and (e).

EVIDENCE IN SUPPORT OF ORACLE'S STATEMENT OF DISPUTED FACTS

The following individuals provided testimony on which Oracle relies in support of its Motion for Summary Judgment and whose declarations also are cited in support of Oracle's Statement of Disputed Facts:

- **Farouk Abushaban**. Mr. Abushaban is a Program Manager 5 in the Product Development job function. ("Abushaban Decl.")

- **Carolyn Balkenhol**. Ms. Balkenhol is a Business Planning Director. ("Balkenhol Decl.")
- **Balaji Bashyam**. Mr. Bashyam is Senior Vice President, Global Customer Support, Cloud Services. ("Bashyam Decl.")
- **Suratna Budalakoti**. Mr. Budalakoti is a Software Developer 4 in the Product Development job function. ("Budalakoti Decl.")
- **Janet Chan**. Ms. Chan is a Program Mgmt Sr Director-Prod Dev in the Product Development job function. ("Chan Decl.")
- **Leor Chechik**. Ms. Chechik is a Software Developer 4 in the Product Development job function. ("Chechik Decl.")
- **Erin Connell**. Ms. Connell is one of Oracle's lawyers and has attached to her declaration in support of Oracle's motion for summary judgment, or, in the alternative partial summary judgment certain exhibits cited in this Response. ("Connell MSJ Decl."). Ms. Connell also submits a declaration concurrently with this response that attaches certain exhibits cited in this Responses ("Connell Opp. Decl.").
- **Kristin Desmond**. Ms. Desmond is a Software Development Director in the Product Development job function. ("Desmond Decl.")
- **Jon Tyler Eckard**. Mr. Eckard is a Technical Account Manager Director in the Support job function. ("Eckard Decl.")
- **Barbara Fox**. Ms. Fox is a Product Mgmt/Strategy Snr Director-ProdDev in the Product Development job function. ("Fox Decl.")
- **Suzette Galka**. Ms. Galka is an IT Director in the Information Technology job function. ("Galka Decl.")
- **Amanda Gill**. Ms. Gill is Vice President – Talent Advisory, North America. ("Gill Decl.")

- **Cindy Hsin**. Ms. Hsin is a Software Development Senior Director in the Product Development job function. ("Hsin Decl.")
- **Christina Kite**. Ms. Kite is a Product Management and Strategy Vice President in the Product Development job function. ("Kite Decl.")
- **Chandrasekhar Kottaluru**. Mr. Kottaluru is an Applications Developer 3 in the Product Development job function. ("Kottaluru Decl.")
- **Steven Miranda**. Mr. Miranda is Executive Vice President of Oracle Applications Product Development and has attached to his declaration in support of Oracle's motion for summary judgment, or, in the alternative partial summary judgment certain exhibits cited in this Response. ("Miranda Decl.")
- **Brian Oden**. Mr. Oden is a Technical Writer Director in the Product Development job function. ("Oden Decl.")
- **Rita Ousterhout**. Ms. Ousterhout is a Software Development Senior Director in the Product Development job function. ("Ousterhout Decl.")
- **Leslie Robertson**. Ms. Robertson is a Software Development Vice President in the Product Development job function. ("Robertson Decl.")
- **Richard Sarwal**. Mr. Sarwal is the Senior Vice President and General Manager for software and hardware support within Oracle's Customer Services organization. ("Sarwal Decl.")
- **Gary Siniscalco**. Mr. Siniscalco is one of Oracle's lawyers and has attached to his declaration in support of Oracle's motion for summary judgment or, in the alternative partial summary judgement certain exhibits cited in this Response. ("Siniscalco Decl.")
- **Sachin Shah**. Mr. Shah is a Technical Account Manager Sr. Director in the Support job function. ("Shah Decl.")
- **Harmohan Suri**. Mr. Suri is a Product Support Senior Director in the Support job function. ("Suri Decl.")

- **Chandna Talluri**. Ms. Talluri is an IT Director in the Information Technology job function. ("Talluri Decl.")
- **Kate Waggoner**. Ms. Waggoner is Senior Director, Global Compensation and has attached to her declaration in support of Oracle's motion for summary judgment or, in the alternative partial summary judgment certain exhibits cited in this Response. ("Waggoner Decl.")
- **Campbell Webb**. Mr. Webb is Senior Vice President of Product Engineering and Operations. ("Webb Decl.")
- **Athena Wu**. Ms. Wu is a Technical Analyst 4 – Support in the Support job function. ("Wu Decl.")
- **Nachiketa Yakkundi**. Mr. Yakkundi is a Product Support Senior Manager in the Support job function. ("Yakkundi Decl.")

A. Undisputed Facts Related to Jurisdiction

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
1	Oracle America, Inc. (Oracle) is headquartered (Oracle HQCA) at Redwood Shores, California.	Answer to Second Amended Complaint (SAC), filed 4/2/19[1], ¶2.	**Undisputed**.
2	Oracle has been a federal contractor	Ex. 1[2], Letter from Erin Connell to Marc Pilotin, dated 8/7/2017 (Connell Letter), at 2.	**Undisputed but immaterial.**

[1] Where a document has been filed with the Court, it is identified here by the date filed and is not included among OFCCP's exhibits in support of this motion. *See* Order Granting in Part & Den. in Part Def. Oracle Am. Inc.'s Second Mot. to Compel Pl. OFCCP to Produc. Docs. & Further Resp. to Interrogs., issued June 10, 2019, at 23 n.17.

[2] All exhibits referenced are attached to the Declaration of Norman E. Garcia (Garcia Decl.) in Support of OFCCP's motion for Summary Judgement. Exhibits 1 – 104 are in four bounded volumes attached by rubber band and exhibits 105-106 are stapled the declaration.

	covered by the Executive Order 11246 for over 20 years.		For Executive Order 11246 to apply, Oracle need have only one government contract of $50,000 or more. The length of time Oracle has been a covered government contractor is immaterial. *See also* Oracle's Objections to Evidence.
3	The total amount of Oracle's government contracts has exceeded $100 million each year since 2013.	Ex. 1, Connell Letter, at 2.	**Undisputed but immaterial**. For Executive Order 11246 to apply, Oracle need have only one government contract of $50,000 or more. The value of Oracle's government contracts beyond that threshold is immaterial. *See also* Oracle's Objections to Evidence.
4	Oracle HQCA has had 50 or more employees from at least 2013 to the present.	Answer to SAC, ¶3; Ex. 2, Def. Oracle America, Inc.'s Responses and Objections to Second Set of Requests for Admission, resp. to RFA #3.	**Undisputed.**
5	In 2014, Oracle employed more than 45,000 full-time employees in the United States.	Answer to SAC, ¶3.	**Undisputed.**
6	Since at least 2013, Oracle has had multiple contracts with the federal government totaling millions of dollars a year.	Answer to SAC, ¶4.	**Undisputed but immaterial.** For Executive Order 11246 to apply, Oracle need have only one government contract of $50,000 or more. The number and value of Oracle's government contracts beyond that threshold is immaterial.
7	From at least 2013, Oracle has been a contractor	Answer to SAC, ¶5.	**Undisputed.**

	within the meaning of the Executive Order.		
8	On or about September 24, 2014, OFCCP initiated a compliance review under the Executive Order of Oracle's headquarters in Redwood Shores, California (Redwood Shores Compliance Review)	Answer to SAC, ¶6.	**Undisputed.**
9	The Oracle Redwood Shores Compliance Review was scheduled in accordance with OFCCP's neutral selection plan.	Ex. 3, Federal Contractor Selection System (FCSS) Scheduling Report, DOL000038371–76; Ex. 4, Dep. of Hea Jung Atkins dated 6/10/19 (Atkins Dep.) 40:3–12.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** OFCCP cites to Exhibit 3 in support of the fact that Oracle Redwood Shores Compliance Review was scheduled in accordance with OFCCP's neutral selection plan. Nowhere in the document, however, is it stated that the compliance review was scheduled in accordance with OFCCP's neutral selection plan. Additionally, OFCCP cites to the deposition excerpt in Exhibit 4 to assert that the Oracle Redwood Shores Compliance Review was scheduled in accordance with OFCCP's neutral selection plan. Nowhere in the cited deposition excerpt does Ms. Atkins ever say,

			however, that Oracle's Redwood Shores location was selected for a compliance review in accordance with OFCCP's neutral selection plan. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the evidence did support this "fact," OFCCP's selection process for identifying the recipients of an audit notice is **not material** to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions at HQCA. *See also* Oracle's Objections to Evidence.
10	During the Redwood Shores Compliance Review, OFCCP came on site twice for approximately eight days to conduct interviews with at least 35 managers and human resources employees.	Oracle Opp'n to Mot. for Partial Summ. J. (Opp'n to Partial MSJ), filed 5/1/19, at 3.	**Undisputed**.

11	On March 11, 2016, OFCCP issued a Notice of Violation (NOV) pertaining to the Redwood Shores Compliance Review.	Answer to SAC, ¶7; Ex. 5, Dep. of Shauna Holman-Harries under Rule 30(b)(6) dated 8/1/19 (Holman-Harries 30b6 Dep.) 200:12–14; Ex. 61, OFCCP's Notice of Violation of EO 11246 to Oracle America, Inc. (Notice of Violation) dated 3/11/16 (Ex. 129 at the Holman-Harries 30b6 Dep. re: conciliation), DOL000000943–54.	**Undisputed.** OFCCP cites to 200:12–14 in the deposition excerpt in Exhibit 5 to assert that it issued a Notice of Violation (NOV) pertaining to the Redwood Shores Compliance Review. A Notice of Violation, however, is never mentioned in this deposition excerpt. *See also* Oracle's Objections to Evidence.
12	On June 8, 2016, OFCCP issued a Notice to Show Cause (SCN) why enforcement proceedings should not be initiated.	Answer to SAC, ¶8. Ex. 66, Show Cause Notice dated 6/8/16 (Ex. 130 at the Holman-Harries 30b6 Dep. re: conciliation).	**Undisputed.**
13	OFCCP and Oracle met in person and by letter regarding the allegations in the NOV and the SCN.	Answer to SAC, ¶9	**Undisputed but immaterial.** The form of OFCCP and Oracle's pre-litigation communication, i.e., whether it was in person or by letter, is immaterial, particularly because OFCCP's motion does not address conciliation.
14	Oracle responded on April 11, 2016, stating that it preferred written communication at that time and attaching 57 questions for OFCCP about its findings.	Order Den. Partial MSJ, issued 5/23/19 (5/23/19 Order) at 3.	**Undisputed but immaterial.** The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue.

			See also Oracle's Objections to Evidence.
15	OFCCP emailed Oracle on March 29, 2016, proposing a meeting during April 2016.	5/23/19 Order at 3.	**Undisputed but immaterial.** The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.
16	OFCCP replied on April 21, 2016, responding to 40 of Oracle's questions, but refusing to answer the others.	5/23/19 Order at 3.	**Undisputed but immaterial.** The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.
17	OFCCP asserted that the questions it was not answering in its April 21, 2016, correspondence invaded the Agency's deliberative process and other privileges.	Declaration of Gary Siniscalco, filed 4/21/17, Ex. J at 5–11.	**Undisputed but immaterial and incomplete.** OFCCP's "fact" is incomplete because not all of the questions OFCCP refused to answer were on the basis deliberative process or other privileges. For example, it refused to answer one of Oracle's questions because it was "improper and/or premature." See 4/21/2017 Siniscalco Decl., Ex. J. at 5.

			The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue.
18	Oracle submitted a position statement on May 25, 2016.	5/23/19 Order at 3. Ex. 70, Oracle America Inc.'s 5/25/16 email and attached Position Statement in response to OFCCP's 3/11/16 Letter (Ex. 9 (Suhr) at Holman-Harries 30b6 Dep. re: conciliation), p. 15, ORACLE_HQCA_0000002112	**Undisputed but immaterial.** The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.
19	In response, on June 8, 2016, OFCCP issued a Show Cause Notice.	5/23/19 Order at 3; Ex. 5, Holman-Harries Rule 30b6 Dep. 200:12–17. Ex. 66, Show Cause Notice dated 6/8/16 (Ex. 130 at the Holman-Harries 30b6 Dep. re: conciliation).	**Undisputed that OFCCP issued a Show Cause Notice on June 8, 2016.** **The evidence does not support the notion, however, that the Show Cause Notice was issued "in response" to something, and therefore this portion of the fact should be disregarded.** Although Oracle does not dispute that OFCCP issued a Show Cause Notice on June 8, 2016, OFCCP's "fact" is incorrect to the extent it asserts that OFCCP issued a Show Cause Notice "in response" to anything. Therefore, OFCCP has failed to meet its burden of

			supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Nor is this "fact" material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Additionally, the parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.
20	Oracle objected to this notice on June 29, 2016, arguing, in part, that the parties had not yet conciliated.	5/23/19 Order at 3.	**Undisputed but immaterial.** The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.

21	OFCCP responded to this letter on September 9, 2016. In that response, OFCCP offered to meet to conciliate the violations.	5/23/19 Order at 3; Ex. 5, Holman-Harries 30b6 Dep. 200:18–25.	**Undisputed but immaterial.** The deposition testimony cited by OFCCP does not support this "fact." To the contrary, the testimony from Ms. Holman-Harries is that "*Oracle* requested an in-person meeting – a conciliation meeting with OFCCP." Holman-Harries Dep. Tr. 200:18-22 (emphasis added). The testimony does not address any letter from OFCCP to Oracle, nor any offer from OFCCP to conciliate. Even if the evidence did support this "fact," the parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.
22	Further communications were exchanged, culminating in a September 23, 2016, letter from OFCCP explaining why it found Oracle's responses and objections insufficient.	5/23/19 Order at 3.	**Undisputed but immaterial.** The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.

23	The NOV described the data fields (from the compensation data Oracle provided to OFCCP during the compliance review) that OFCCP included in its compensation analysis.	Ex. 5, Holman-Harries 30b6 Dep. 193:12–199:2, 76:20–24, 80:17–97:11, 182:13–183:22, 208:9–211:3; Ex. 61, Notice of Violation (Ex. 129 at Holman-Harries 30b6 Dep. re: conciliation) at 10–11, DOL000000952–53; Ex. 67, OFCCP's 4/21/16 Response to Oracle America Inc.'s 4/11/16 Letter (OFCCP 4/21/16 Response) (Ex. 7 (Suhr) at Holman-Harries 30b6 Dep. re: conciliation), ORACLE_HQCA_2069, n.4; Ex. 68, Attachment to Oracle America Inc.'s 10/29/15 email, "HQCA Compensation Report no Vlookup with extra visa data 10-22-15," (Ex. 126 at Holman-Harries 30b6 Dep. re: conciliation); Ex. 70, Oracle America Inc.'s 5/25/16 email and attached Position Statement in response to OFCCP's 3/11/16 Letter (Ex. 9 (Suhr) at Holman-Harries 30b6 Dep. re: conciliation), p. 15, ORACLE_HQCA_0000002112	**Undisputed but immaterial.** OFCCP cites 193:12–199:2, 76:20–24, 80:17–97:11, 182:13–183:22, and 208:9-211:3 in Exhibit 5 for the proposition that "The NOV described the data fields (from the compensation data Oracle provided to OFCCP during the compliance review) that OFCCP included in its compensation analysis." Nowhere in the excerpt, however, does it state that OFCCP relied on Oracle compensation data that OFCCP included in its compensation analysis. The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. **In any event, the NOV speaks for itself.** *See also* Oracle's Objections to Evidence.
24	Between March 11, 2016, and January 17, 2017, OFCCP took the position that it was conducting a statistical analysis, comparing groups of	Ex. 5, Holman-Harries 30b6 Dep. 173:11–23, 176:18–23, 200:8–25; Ex. 69, OFCCP's 3/29/16 email Response to Oracle America, Inc.'s 3/18/16 email (Ex. 5 (Suhr) at Holman-Harries 30b6 Dep. re: conciliation), ORACLE_HQCA_0000000275–78.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** None of the evidence OFCCP cites supports the date range of March 11, 2016 through January 17, 2017 that OFCCP asserts.

	employees, not comparing individuals.		Nor does the bulk of the evidence OFCCP cites support this "fact," regardless of the date range. OFCCP cites to a March 29, 2016 email from Robert Doles to Shauna Holman-Harries, which simply states that "cohort comparisons are insufficient to rebut statistical evidence of systemic discrimination." Similarly, the deposition testimony of Shauna Holman-Harries at 173:11-23 is simply OFCCP reading that statement into a question, with no positive answer from Ms. Holman-Harries about the significance of that statement. Neither on its face nor pursuant to the deposition testimony cited does the statement say anything about OFCCP's position on what kind of analysis it was conducting. It is a statement about what OFCCP believed could be competent rebuttal evidence. Finally, the deposition of Shauna Holman-Harries at 200:8-25 is about the Show Cause Notice and therefore has no bearing on this "fact." Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the evidence did support this "fact," it is immaterial. The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit

			obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.
25	Between March 11, 2016, and January 17, 2017, Oracle advocated conducting a "cohort analysis," comparing individuals doing the same work.	Ex. 5, Holman-Harries 30b6 Dep. 175:3–176:10, 186:12–17, 193:3–194:23; Ex. 70, Oracle America Inc.'s 5/25/16 email and attached Position Statement in response to OFCCP's 3/11/6 Letter (Ex. 9 (Suhr) at Holman-Harries 30b6 Dep. re: conciliation).	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** None of the evidence OFCCP cites supports the date range of March 11, 2016 through January 17, 2017 that OFCCP asserts in this "fact." Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the evidence did support this "fact," the parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. Nor is this fact material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product

			Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
26	The parties met in person on October 6, 2016.	5/23/19 Order at 3; Ex. 5, Holman-Harries 30b6 Dep. 200:8–25.	**Undisputed but immaterial.** The deposition testimony OFCCP cites does not support this "fact." OFCCP cites Shauna Holman-Harries's deposition, in which she agreed that "Oracle and OFCCP agreed to meet on October 6th, 2016." Holman-Harries Dep. Tr. 200:23-25. The cited evidence says nothing about whether the parties did, in fact, meet on October 6, 2016. In any event, the parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.
27	At the October 6, 2016, meeting, Janette Wipper, OFCCP's Regional Director at the time, described the variables used in OFCCP's compensation analysis.	Ex. 5, Holman-Harries 30b6 Dep. 205:22–208:01, 209:18–25, 222:17–223:19, 214:2–11; Ex. 71, Consolidated Notes of Oracle employees Charles Nyakundi and Shauna Holman-Harries (Consolidated Notes) (Ex. 131 at Holman-Harries 30b6 Dep. re: conciliation), ORACLE_HQCA_0000607319–25.	**Undisputed but immaterial.** Much of the evidence OFCCP cites for this "fact" does not support it. Exhibit 71, which OFCCP describes as the "consolidated Notes of Oracle employees Charles Nyakundi and Shauna Holman-Harries," does not support that Janette Wipper "described the variables used in OFCCP's compensation analysis." In fact, according to

			the notes, the only description Ms. Wipper offered, is that OFCCP "used all the variables in the data." This is not a description of the variables. Nor does Ms. Holman-Harries's deposition testimony at 209:18–25 support this fact. This testimony is about the unrelated statement, "With respect to compensation with regard to gender and race, shows ranges from three standard deviations," ascribed to Ms. Wipper. Additionally, the parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.
28	At the October 6, 2016, meeting, Oracle took the position that OFCCP should be looking at individuals or cohorts.	Ex. 5, Holman-Harries 30b6 Dep. 205:22–208:01, 209:18–25, 212:23–213:2, 218:17–19, 222:17–223:19, 223:20–225:22; Ex. 71, (Consolidated Notes) (Ex. 131 at Holman-Harries 30b6 Dep. re: conciliation).	**Undisputed but immaterial.** The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. Additionally, the deposition testimony OFCCP cites from Shauna Holman-Harries at 209:18–25 does not support this fact. This testimony is about the

			unrelated statement, "With respect to compensation with regard to gender and race, shows ranges from three standard deviations[,]" ascribed to Ms. Wipper. *See also* Oracle's Objections to Evidence.
29	At the October 6, 2016, meeting, Janette Wipper told Oracle that it was not going to engage in a cohort analysis.	Ex. 5, Holman-Harries 30b6 Dep. 205:22–208:01, 209:18–25, 222:17–223:19, 213:3–10; Ex. 71, (Consolidated Notes) (Ex. 131 at Holman-Harries 30b6 Dep. re: conciliation).	**Undisputed but immaterial.** The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. Additionally, the deposition testimony OFCCP cites from Shauna Holman-Harries at 209:18–25 does not support this fact. This testimony is about the unrelated statement, "With respect to compensation with regard to gender and race, shows ranges from three standard deviations[,]" ascribed to Ms. Wipper. *See also* Oracle's Objections to Evidence.
30	At the October 6, 2016, meeting, OFCCP and Oracle discussed the fact that Oracle did not have data showing the products its	Ex. 5, Holman-Harries 30b6 Dep. 205:22–208:01, 209:18–25, 222:17–223:19, 228:20–229:12; Ex. 71, (Consolidated Notes) (Ex. 131 at Holman-Harries 30b6 Dep. re: conciliation).	**Undisputed but immaterial**. The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already

	employees worked on.		lost summary judgment on that issue. Additionally, the deposition testimony OFCCP cites from Shauna Holman-Harries at 209:18–25 does not support this fact. This testimony is about the unrelated statement, "With respect to compensation with regard to gender and race, shows ranges from three standard deviations[,]" ascribed to Ms. Wipper. *See also* Oracle's Objections to Evidence.
31	At the October 6, 2016, meeting, Janette Wipper indicated to Oracle that steering women into lower paying jobs could be tainting Oracle's compensation system.	Ex. 5, Holman-Harries 30b6 Dep. 205:22–208:01, 209:18–25, 222:17–223:19, 229:25–230:22; Ex. 71, (Consolidated Notes) (Ex. 131 at Holman-Harries 30b6 Dep. re: conciliation).	**Undisputed but immaterial**. The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. Additionally, the deposition testimony OFCCP cites from Shauna Holman-Harries at 209:18–25 does not support this fact. This testimony is about the unrelated statement, "With respect to compensation with regard to gender and race, shows ranges from three standard deviations[,]" ascribed to Ms. Wipper. *See also* Oracle's Objections to Evidence.
32	At the October 6, 2016, Janette	Ex. 5, Holman-Harries 30b6 Dep. 205:22–208:01, 209:18–25,	**This "fact" is not supported by the evidence to which it cites,**

	Wipper described remedies for the compensation violations.	222:17–223:19, 231:6–233:16, 235:9–236:19; Ex. 71, (Consolidated Notes) (Ex. 131 at Holman-Harries 30b6 Dep. re: conciliation).	**and should therefore be disregarded.** The evidence does not support this "fact." Exhibit 71 does not support the assertion that Ms. Wipper "described remedies for the compensation violations." Instead, Exhibit 71 shows only that Ms. Wipper stated large numbers (e.g., "22 million for all violations," "7.7 million for women in product, African Americans 250 thousand; Asians 13 to 14 million, info tech 670 thousand for females and 487 thousand for females in support. 3,561 employees," "[t]hree years: 66 million"), without any factual or mathematical support. Ex. 71, ORACLE_HQCA_0000607324. According to Exhibit 71, Mr. Siniscalco asked "Are you going to give us information on how you determined these number?" and Ms. Wipper responded "Yes in the event we are engaged in conciliation." *Id*. OFCCP refused to provide any more information about the numbers, except that they were "not hard numbers" and the "[f]ormula for this calculation is described in the agency directive under remedies on the Agency's website." *Id*. According to Exhibit 71, at no point did OFCCP "describe remedies" in any more detail than these large, cocktail napkin-math sums. Nor does Ms. Holman-Harries testimony support this "fact." Ms. Holman-Harries knew no more than what was written in

			the notes and commented that "all I can say is, you know, what – what's written there" in Exhibit 71. Ex. 5, Holman-Harries Dep. Tr. 236:9-13. Similarly, when asked if she knew how OFCCP had come up with the 66 million number, Ms. Holman-Harries said she only knew "[j]ust from looking at this", i.e., Exhibit 71, and that "it looks like they multiplied 22 million times three." *Id*. 232:8-13. Ms. Holman-Harries also testified that she did not remember if Ms. Wipper explained the basis for the 66 million number. *Id*., 232:14-16. Finally, the deposition testimony OFCCP cites from Shauna Holman-Harries at 209:18–25 does not support this "fact." This testimony is about the unrelated statement, "With respect to compensation with regard to gender and race, shows ranges from three standard deviations[,]" ascribed to Ms. Wipper. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, the parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue.

			See also Oracle's Objections to Evidence.
33	In a letter following the October 6, 2016, meeting, Oracle continued to take the position that OFCCP should analyze the compensation of Oracle's workforce using a cohort analysis.	Ex. 5, Holman-Harries 30b6 Dep. 239:19–242:10; Ex. 105, Letter from Erin Connell, dated 10/31/16, at 6–8.	**Undisputed but incomplete and immaterial**. OFCCP's "fact" is incomplete. In Exhibit 105, a letter Oracle sent at OFCCP's request at the October 6 meeting that "Oracle has to decide to respond meaningfully and relatively quickly[,]" (*see* OFCCP Ex. 71, ORACLE_HQCA_0000607325), Oracle did not limit itself to advocating for a specific approach. Instead, and as OFCCP ignores in this "fact", Oracle also explained that OFCCP's compensation findings were flawed because they did not compare "similarly situated" individuals. Ex. 105, at 6. Oracle explained that it is a highly diverse technology company that develops, supports and sells a wide range of products to a wide range of companies worldwide, and it is highly diverse in terms of people, skills, products, and customers. Oracle explained that OFCCP's approach of relying on "job title" to determine who is similarly situated was not sufficient because job title at Oracle does not capture the factors that Directive 307 requires, including an analysis of the "tasks performed, skills, effort, level of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors." *Id*., at 7. Analyzing these factors, Oracle explained, is also consistent with

			the requirements set forth in Title VII case law, which specifically recognizes that job title alone is not determinative of whether employees are similarly situated. *Id.*, at 8 (collecting cases). Oracle explained that conducting a proper analysis instead of relying on job title would demonstrate to OFCCP that "employees holding the same job title in IT, Product Development, and Support roles (*i.e.*, jobs within the PT1 job group) often have significantly different duties, responsibilities, and skill sets." *Id.*, at 8. Oracle also illustrated the flaws in OFCCP's approach by providing a number of detailed examples of individuals who have the same job title, but perform very different tasks, having different levels of experience and responsibility, and more. *Id.*, at 9. Even if this "fact" were complete it is immaterial. The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.
34	In a letter following the October 6, 2016, meeting,	Ex. 5, Holman-Harries 30b6 Dep. 239:19–240:8, 242:11–14;	**Undisputed but immaterial**. The parties' pre-litigation communications are not material

	Oracle did not make any monetary offer to resolve violations OFCCP asserted in the NOV.	Ex. 105, Letter from Erin Connell, dated 10/31/16.	to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.
35	Between March 11, 2016, and January 2017, Oracle never offered any variable that OFCCP should consider in its statistical model that would explain the compensation disparities described in the NOV.	Ex. 5, Holman-Harries 30b6 Dep. 185:14–24, 195:1–6.	**Undisputed but immaterial and incomplete.** It is undisputed that Oracle did "not offer any factor that OFCCP should consider that would explain the disparities described in the NOV[.]" Ex. 5, Holman-Harries Dep. Tr. 185:14-17. As Ms. Holman-Harries testified, however, Oracle told OFCCP that OFCCP's analysis was flawed because "each job is so different at Oracle" and therefore OFCCP's groupings of employees was not comparing "apples to apples" or similarly situated employees. *Id*., 185:14-24. Regardless, the parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. Additionally, the deposition testimony cited does not support the asserted date range of March 11, 2016 to January 2017.

			OFCCP did not limit its questions to a certain date range, nor did Ms. Holman-Harries offer a date range. Additionally, the testimony from Ms. Holman-Harries at 195:1-6 does not support this "fact." Ms. Holman-Harries testified that Oracle did not suggest a factor to address the "specific types of work performed by individual employees[.]" Ex. 5, Holman-Harries Dep. Tr. 195:3-4. The question was not about disparities described in the NOV, nor did Ms. Holman-Harries offer testimony about disparities described in the NOV. *See also* Oracle's Objections to Evidence.
36	Between March 11, 2016, and January 2017, Oracle never presented any competing statistical model to OFCCP.	Ex. 5, Holman-Harries 30b6 Dep. 191:3–8.	**Undisputed but immaterial.** The parties' pre-litigation communications are not material to this motion because OFCCP did not move on the issue of whether it met its pre-suit obligation of making reasonable efforts to resolve this matter through conciliation – it already lost summary judgment on that issue. *See also* Oracle's Objections to Evidence.

B. Undisputed Facts Regarding Key Decision Makers at Oracle

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
37	Larry Ellison was the CEO during part of the litigation	Ex. 35, "Dimensions of Diversity Newsletter," dated 12/9/15, ORACLE_HQCA_0000049995	**Undisputed but immaterial.** Larry Ellison's position at Oracle is not material to the legal

	period and the Executive Chairman and CTO (Chief Technology Officer) of Oracle during the litigation period.	Ex. 5, Holman-Harries 30(b)(6) Dep. re docs. provided during compliance review 76:20-77:9, 80:17-82:11; Ex. 68 (Ex. 126 at Holman-Harries 30b6 Dep.), p. 2, row 3; Ex. 37, Dep. of Joyce Westerdahl dated 5/30/19 (Westerdahl Dep.) 13:20–22.	issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. OFCCP cites 76:20-77:9 and 80:17-82:11 in Exhibit 5 to assert that Larry Ellison was the CEO during part of the litigation period and Executive Chairman and CTO. These excerpts, however, does not reference Larry Ellison in any way. *See also* Oracle's Objections to Evidence.
38	Safra Catz and Mark Hurd were co-CEOs of Oracle during the litigation period.	Ex. 36, Speaker Biographies for Safra Catz and Mark Hurd dated 9/19/16, ORACLE_HQCA_0000042275 Ex. 37, Westerdahl Dep. 13:14–19.	**Undisputed that Safra Catz and Mark Hurd were Co-CEOs on September 19, 2016, but immaterial.** The evidence does not establish, however, that Safra Catz and Mark Hurd were Co-CEOs "during the litigation period," nor does OFCCP define "during the litigation period." Safra Catz and Mark Hurd's positions at Oracle is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination

			against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
39	Thomas Kurian was the president of Oracle's "Product Development" Line of Business (LOB) until at least December 2016. He left Oracle in September 2018.	Ex. 6, Dep. of Lynne Carrelli dated 5/24/19 (Carrelli Dep.) 91:14–18; Ex. 23, "Dimensions of Diversity Newsletter" dated 12/13/16, at ORACLE_HQCA_0000053643 Ex. 19, Dep. of Madhavi Cheruvu dated 6/11/19 (Cheruvu Dep.) 104:11–14.	**Undisputed**.
40	Juan Loaiza is an Executive Vice President at Oracle of mission critical databases and worked for Thomas Kurian in the Product Development LOB.	Ex. 31, Dep. of Juan Loaiza dated 6/14/19 ("Loaiza Dep.") 16:3–12, 17:17–20, 28:22–29:2.	**Undisputed**.
41	Larry Ellison is in Juan Loaiza's chain of command and was a final approver in Juan Loaiza's focal reviews.[3]	Ex. 31, Loaiza Dep. 119:3–120:16.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The evidence OFCCP cites for this "fact" does not support it. The deposition testimony on which OFCCP relies discusses an "approval process" generally. The testimony discusses Larry

[3] "Focal reviews" also known as "focal review process," "salary review process," and "on-cycle salary increase process" is a periodic review process at Oracle wherein Oracle management reviews all eligible employees' salaries at one point in time. *See infra*, Fact 98.

			Ellison approving something, but at no point does the testimony specify what approval process it refers to. Nor is there any statement to support the assertion that Larry Ellison was "a final approver" of anything. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
42	Joyce Westerdahl is Oracle's Executive Vice President for Human Resources	Ex. 37, Westerdahl Dep. 12:14–16.	**Undisputed.**
43	Shauna Holman-Harries is the Senior Director of Diversity Compliance for Oracle. She started at Oracle as a Director of Diversity Compliance in 2011.	Ex. 43, Dep. of Shauna Holman-Harries dated 5/8/19 (Holman-Harries May Dep.) 17:23–18:11	**Undisputed.**
44	Lisa Gordon was the Compensation Director at Oracle in and around 2015.	Declaration of Shauna Holman-Harries, filed in *Jewett v. Oracle Corp. Inc.*, Case No. 17-cv-02669 (Sup. Ct. San Mateo), dated 10/2/18, (Holman-Harries *Jewett* Decl.) ¶4.	**Undisputed that Lisa Gordon was *a* Compensation Director at Oracle in and around 2015.** Lisa Gordon's position at Oracle not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or

			African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA.
45	Lynne Carrelli, a Compensation Analyst, worked for Lisa Gordon in Oracle's "Corporate Compensation" for approximately three years.	Ex. 6, Carrelli Dep. 20:4–21:1, 27:22–28:1, 89:3–5;	**Undisputed.**
46	Kate Waggoner is currently a Senior Director of Global Compensation for Oracle.	Ex. 7, Dep. of Kate Waggoner dated 5/1/19 ("Waggoner May Dep.") 8:1–7.	**Undisputed.**
47	Kate Waggoner worked with Lisa Gordon in "Corporate Compensation" before she assumed leadership of Oracle's "Global Compensation" team.	Ex. 6, Carrelli Dep. 88:23–89:2.	**Undisputed.**
48	Madhavi Cheruvu is a Vice President of Human Resources and works as a Human Resources business partner who supports seven lines of business at Oracle.	Ex. 19, Cheruvu Dep. 11:8–17, 23:2–6.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The deposition testimony does not support the assertion that Ms. Cheruvu works as a "Human Resources business partner." To the contrary, she testifies only that she is a Vice President of HR and that she "provide[s] HR support to a -

			seven lines of business[].” Cheruvu Dep. Tr. 23:4-6. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle’s Objections to Evidence.
49	In 2015, Madhavi Cheruvu was Oracle’s Human Resource Partner for President Thomas Kurian’s Product Development LOB.	Ex. 19, Cheruvu Dep. 60:12–19, 276:3–14.	**This “fact” is not supported by the evidence to which it cites, and should therefore be disregarded.** The deposition testimony does not support the assertion that Ms. Cheruvu was a “Human Resources Business Partner for President Thomas Kurian’s Product Development LOB.” To the contrary, she testifies that, in March 2015, she “was supporting the – what – what is called ‘the development organization’” Cheruvu Dep. Tr. 60:14-16. Nowhere in this testimony does she does refer to herself as a “Human Resources Partner.” Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, Madhavi Cheruvu’s role at Oracle in 2015 is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product

			Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.

C. Undisputed Facts Regarding Oracle's Compensation Setting Procedures.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
50	During the underlying investigation, Oracle provided OFCCP with copies of documents that Oracle referred to as "compensation policies and training materials."	Oracle America, Inc.'s Position Statement Regarding 41 CFR § 60-2.17(b)(3), filed 10/3/19 (Oracle's 10/3/19 Position Statement), p. 9, ¶3. Decl. of Erin Connell in support of Oracle's Position Statement, filed 10/3/19, & Ex. A to that Decl. (6/2/15 S. Holman-Harries email to H. Atkins).	**Undisputed that the June 2, 2015 email from Ms. Holman-Harries refers to documents provided by Oracle as "compensation policies and training materials."** Notwithstanding Ms. Holman-Harries's use of this phrase in one email during the audit, however, it does not transform the documents at issue into something they are not. Whether a training document is called a policy or a practice or a guideline does not change the nature of the document. A plain read of the documents themselves confirms Oracle does not have rigid formulas or hard and fast rules for compensation. OFCCP's attempt to assign the characterization of "policy" to any particular document is meaningless. This line of argument by OFCCP is yet another example of OFCCP attempting to create a fictionalized version of Oracle's compensation system (here, one governed by centralized

			compensation "policies" that dictate how compensation decisions at Oracle are made) so it can then attack that version, rather than address the actual evidence in this case, which undisputedly confirms OFCCP cannot meet its burden of establishing Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians and African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
51	In 2015, in the course of OFCCP's audit, Oracle provided OFCCP with Oracle's employee handbook, which gives an overview of Oracle's compensation policies, and three sets of compensation documents: "Oracle's Global Compensation Training, Managing Pay Module"; Oracle's "Compensation Guidelines"; and a compensation document that	Ex. 9, "Oracle Compensation Guidelines," no date (Ex. 27 at Holman-Harries May Dep.), ORACLE_HQCA_0000380594-97; Ex. 11, "U.S. Employee Handbook," latest revision date February 2014 (Handbook) (Ex. 25 at Holman-Harries May Dep.), at ORACLE_HQCA_0000000468 Ex. 18, "Global Compensation Training: Managing Pay Module," copyright 2011, ORACLE_HQCA_0000000407 Ex. 73, "Compensation Review & Oversight," not dated, (Ex. 26 to the Holman-Harries May Dep.), ORACLE_HQCA_0000382618 Ex. 74, E-mail from Shauna Holman-Harries to OFCCP sending Oracle's Handbook,	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The evidence cited does not support this "fact." OFCCP has provided no evidence that the documents it attaches as Exhibits 9, 11, 18 and 73 were produced in 2015. The exhibits themselves do not state when they were produced. OFCCP offers as Exhibits 74 and 75 two emails from Shauna Holman-Harries, both sent in 2015. However, those emails are not accompanied by any attachments and it is impossible from the face of the email to determine which documents were attached as originally sent. OFCCP cites to deposition testimony, the pages of which are missing from Exhibit 43. In short, OFCCP has offered no evidence whatsoever to support OFCCP's assertions

	Oracle created for OFCCP audits, entitled "Compensation Review and Oversight."	dated 2/9/15, ORACLE_HQCA_0000000443 Ex. 75, E-mail from Shauna Holman-Harries to OFCCP, dated 2/26/15, sending Oracle's Global Compensation Training, ORACLE_HQCA_0000000405 Ex. 43, Holman-Harries May Dep. 171:12–172:20, 183:16–184:7, 198:10–24.	that these documents were produced by Oracle in 2015. Additionally, OFCCP's gratuitous characterization of Oracle's employee handbook as giving an "overview of Oracle's compensation policies" is not supported by the evidence. As explained above, because OFCCP does not provide any evidence to support its contention that any of the exhibits it cites were produced by Oracle "in the course of OFCCP's audit," it is impossible for Oracle to determine whether the exhibit OFCCP cites as a "U.S. Employee Handbook" is the handbook OFCCP refers to in this "fact." Regardless, Exhibit 11 nowhere refers to "compensation policies" and OFCCP's characterization is therefore wholly unsupported by the evidence. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
52	In or around February 2015, Oracle's Compensation Director, Lisa Gordon[4], stated that three of these documents	Ex. 41, Holman-Harries *Jewett* Decl., Ex. A, sworn statement of Lisa Gordon, Oracle Director of Compensation dated 2/11/15, (Lisa Gordon Sworn Statement) p. 3, question 5.[5]	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** This "fact" is not supported by the evidence to the extent it attempts to identify the three

[4] Lisa Gordon was the Compensation Director at Oracle in and around 2015. *See supra* Fact 44.

[5] *See also infra* Facts 191, 194.

	(Oracle's Compensation Guidelines, Global Compensation Training, and the Compensation Review & Oversight) "look[ed] like a complete list of Oracle's compensation guidelines and policies."		documents referred to by anything other than the names of the documents in Exhibit 41. OFCCP has submitted no evidence about what the documents mentioned in Exhibit 41 are. Ms. Gordon's explanations of Oracle's compensation processes *in this same document* also contradict this "fact" to the extent it refers to any "policies." Even assuming that the contents of the interview summary with Ms. Gordon are accurate, she explains that Oracle has "No formula" for factoring an individual's experience, knowledge, skills, and performance into his or her compensation and that it "depends on the job." Ex. 41, Ex. A at 16. Similarly, Ms. Gordon explains that when someone is promoted, their compensation "Depends on what the job is" and "What they are being promoted to." *Id*. Ms. Gordon repeated that there is "No defined formula" and "Everyone is going to be looked at differently." *Id*. In any event, the documents speak for themselves and OFCCP's strained attempt to characterize them as something they are not simply because OFCCP claims Ms. Gordon referred to them as "policies" during an interview in connection with the underlying audit does not transform the documents into something they are not. The Court can review

			the documents themselves for what they are – it really does not matter what OFCCP wants to call them. Additionally, OFCCP's characterization of Exhibit 41 as a sworn statement is inaccurate and misleading. Although she confirmed the accuracy of the contents of the document "to the best of [her] knowledge and recollection," this does nor transform the document into a sworn statement or verbatim transcript of each and every word used during the interview at issue, and Ms. Gordon has made no affirmation of the contents of the document under penalty of perjury. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
53	During her deposition, Oracle's Senior Director of Global Compensation, Kate Waggoner, testified that "we don't really have policies" about compensation.	Ex. 7, Waggoner May Dep. 25:23–26:1.	**Undisputed.**
54	In the course of discovery, Oracle provided OFCCP with thousands of	Ex. 8, "Q4FY15 HR Webinar Oracle Compensation" dated March 2015, ORACLE_HQCA_0000056391	**Undisputed but immaterial.**

	additional pages documenting Oracle's compensation procedures and practices.	Ex. 9, "Oracle Compensation Guidelines," no date ORACLE_HQCA_0000380594 Ex. 10, "Global Compensation," www.my.oracle.com, dated 12/18/17 (Ex. 4 to the Waggoner May Dep.), ORACLE_HQCA_0000364301–03; Ex. 12, Untitled, Compensation-related presentation, copyright 2012 (Ex. 3 to the Waggoner May Dep.), ORACLE_HQCA_0000042098 Ex. 13, "Managing Compensation," July 2016 (Ex. 7 to the Waggoner May Dep.), ORACLE_HQCA_0000056234 Ex. 14, "Managing Compensation at Oracle," no date, ORACLE_HQCA_0000382580 Ex. 16, "Global Compensation Training: Salary Ranges at Oracle," copyright 2011, (Ex. 1 to the Waggoner May Dep.), ORACLE_HQCA_0000364272 Ex. 21, "Managing Compensation," dated April 2016, ORACLE_HQCA_0000380437 Ex. 22, "Global Compensation Training: Compensation Processes," dated 2011, ORACLE_HQCA_0000364274 Ex. 24, "Annual Bonus Program and Workforce Compensation Manager Training," copyright	

		2018 (Ex. 11 to the Waggoner May Dep.), ORACLE_HQCA_0000381306 Ex. 25, "Manager Training: Compensation Process for Global Corporate Bonus & Fusion Workforce Compensation," dated June 2014, ORACLE_HQCA_0000056242 Ex. 26, "New Manager Training: Compensation Processes/Compensation Workbench," May 2011, ORACLE_HQCA_0000056957 Ex. 28, "Recruit & Hire at Oracle: Module 6: How to Create an Offer in iRecruitment," copyright 2017, ORACLE_HQCA_0000057179 Ex. 59, "Global Compensation Guidelines Training North America: US," dated May 2013, ORACLE_HQCA_0000382399 Garcia Decl. at ¶ 109.	
55	Oracle reorganized its Corporate Compensation Team into a Global Compensation Team headed by Kate Waggoner and various regional compensation teams, such as the U.S. Compensation	Ex. 6, Carrelli Dep. 88:15–22, 224:22–225:9; Ex. 7, Waggoner May Dep. 8:1–4.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The evidence OFCCP cites does not support this "fact." OFCCP offers no evidence of a reorganization from a "Corporate Compensation Team into a Global Compensation Team." Rather, the testimony from Lynne Carrelli supports only that "Corporate compensation" is an "old term" and that it was replaced with the

	Team, in and around 2016.		term "U.S. Compensation, global compensation." Carrelli Dep. Tr. 225:3-9. This says nothing about a reorganization. OFCCP offers no evidence whatsoever about "various regional compensation teams." Nor does the cited evidence support the time frame of "in and around 2016." Rather, Ms. Carrelli agreed simply that the "global compensation team" was formed "like, two or three years ago." Carrelli Dep. Tr. At 88:15-22. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, the timing of any restructuring or reorganization at Oracle is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
56	Oracle's Global Compensation Team provides the instructions and training for how to administer Oracle's compensation	Ex. 7, Waggoner May Dep. 8:1–4, 9:5-12, 13:9–14:4, 16:17–17:13, 25:14-22, 35:22–36:10; Ex. 7, Waggoner May Dep. 13:15–19, 9:5–21, 13:9–15:17, 16:17–17:13, 25:14–22.	**Undisputed.**

	programs, which includes focal reviews, corporate bonus plans and equity (stock and options). Oracle's Global Compensation Team also ensures that the software is in place to implement these compensation programs.		
57	The U.S. Compensation Team uses the instructions and training that the Global Compensation Team provided and trains its human resources business partner teams and responds to their questions about them.	Ex. 6, Carrelli Dep. 30:23–32:7, 70:17–77:17.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The evidence cited does not support the assertion that the U.S. Compensation Team "trains its human resources business partner teams and responds to their questions about them." Ms. Carrelli testified that the U.S. Compensation Team will "[a]nswer questions that may come up." Carrelli Dep. Tr. 31:2-4. Ms. Carrelli did not specify that these questions are from human resources business partner teams or that they relate to anything in particular. The evidence therefore does not support the fact. Additionally, OFCCP relies on a page of testimony, page 71, that is not included in Exhibit 6. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e).

			However, as Ms. Waggoner testified, the Compensation team prepares trainings on compensation for HR business partners at Oracle and is a resource for the HR business partners when they have questions. Waggoner Decl., ¶ 16, Ex. A (ORACLE_HQCA_0000380438 at 11) (a training prepared for HR by the Compensation team that states: for "Questions through out the [Annual Focal Program] process[,]" "contact your compensation consultant"). *See also* Oracle's Objections to Evidence.
58	Oracle's Global Compensation Team also establishes uniform written compensation practices and trainings that Oracle implements globally, conducts market salary surveys for all job codes, sets salary ranges for all job codes, and administers and maintains Oracle's global job table.	Ex. 6, Carrelli Dep. 31:10–32:7, 70:17–23, 78:23–79:6; Ex. 7, Waggoner May Dep. 13:15–19, 9:5–21; 13:9 –15:17, 16:17–17:13, 25:14–22, 86:14–88:21.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The evidence does not support the asserted "fact." Nowhere in the testimony does either Ms. Carrelli or Ms. Waggoner attest that the Global Compensation Team "establishes uniform written compensation practices and trainings that Oracle implements globally." Ms. Waggoner states that her team will "develop the training for the managers and the HR business partners" related to the workforce compensation software. Waggoner Dep. Tr. 13:15-22. She also testified that she develops trainings regarding how to use Oracle's compensation software by "taking screenshots and providing step-by-step

			instructions on how to use our system when we're open for focal or equity or corporate bonus plan." Waggoner Dep. Tr. 25:14-22. Ms. Waggoner says nothing about "uniform written compensation practices and trainings that Oracle implements globally." The cited testimony from Ms. Carrelli is silent on this point. OFCCP therefore has failed to support this fact. The cited evidence also does not support the assertion that the Global Compensation Team "conducts market salary surveys for all jobs." First, Ms. Carrelli's cited testimony is silent on this topic. Ms. Waggoner testifies only that Oracle will "rely" on two surveys, Radford and Mercer. Waggoner Dep. Tr. 86:14-21. She says nothing about "conduct[ing] market surveys" or about using market surveys for "all jobs." The testimony therefore does not support this assertion. The cited evidence also does not support the assertion that the Global Compensation Team sets salary ranges "for all job codes." Ms. Waggoner testified that Oracle uses the Radford and Mercer surveys in setting salary ranges (Waggoner Dep. Tr. 86:14-87:4), but she said nothing about her team setting salary ranges "for all job codes." The cited evidence also does not support the assertion that the Global Compensation Team "administers and maintains

			Oracle's global job table." Ms. Waggoner testified that her team "is responsible" for the global job tables, but she did not clarify what "responsible" means or whether it includes "administer[ing] and maintain[ing]." Waggoner Dep. Tr. 9:17-19. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Once again, OFCCP is attempting to have the Court rule on its pending motion based on OFCCP's inaccurate and unsupported characterizations of the evidence, and not the evidence itself, which confirms OFCCP cannot sustain its burden of proving the systemic compensation claims it has brought against Oracle. *See also* Oracle's Objections to Evidence.
59	The activities that Kate Waggoner performs with the Global Compensation Team are similar to those that she performed with the Corporate Compensation Team when she was a senior manager, except that she and her then co-worker, Lisa Gordon,	Ex. 7, Waggoner May Dep. 11:18–12:19, 25:14–22, 27:12–28:12.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The evidence cited does not support this "fact." OFCCP's characterization of Ms. Waggoner's activities as part of the Global Compensation Team as "similar" to those she performed while a senior manager with the Corporate Compensation Team is unsupported by the evidence. Ms. Waggoner does not use that term, nor does the testimony

	split the administration of those programs and consulting for them and she was more personally involved in creating the training as a senior manager.		present any comparison of her responsibilities in the two roles. The testimony does not even establish that Ms. Waggoner was ever a "senior manager" with the "Corporate Compensation Team." Ms. Waggoner testifies that she was a "senior manager" but she never testifies as to the name of the team she was on when she served in that role. Waggoner Dep. Tr. 11:18-20. The testimony also does not establish for which programs Ms. Waggoner and Ms. Gordon split administration and consulting. In her testimony, Ms. Waggoner says that she and Ms. Gordon split "compensation programs, like focal bonus, equity" and they "each had a little bit of the consultative responsibility." Waggoner Dep. Tr. 12:5-6. Because OFCCP refers to Ms. Waggoner and Ms. Gordon splitting "those programs" without specification, the evidence does not support the fact. Finally, the evidence does not support the fact that Ms. Waggoner "was more personally involved in creating the training as a senior manager." Ms. Waggoner testifies that when she was "involved in developing training on these guidelines" she had "leadership over that development" and she would work with peers to "come up with the topics that we would need to cover, how we would break them up and then the materials that would be part of

			each of those segments of training." Waggoner Dep. Tr. 27:23-28:7. Ms. Waggoner does not describe herself as being "more personally" involved, nor is this supported by the evidence. Indeed, Ms. Waggoner does not contrast her experience developing the trainings to any other level of involvement, so a comparison is not supported by the evidence. Nor does Ms. Waggoner specify when in her career she developed the trainings, so there is no evidence to support the assertion that this was when she was a senior manager. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the evidence did support this "fact," the responsibilities of specific individuals employed by Oracle (other than those whose compensation is being analyzed) are not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.

D. Undisputed Facts Regarding How Oracle Explains Its Compensation Setting Policies and Practices to its Managers inings.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
60	Oracle has three well-defined components to its compensation: (1) cash, (2) stock, and (3) benefits.	Ex. 8, "Q4FY15 HR Webinar Oracle Compensation" dated March 2015, slide 7, ORACLE_HQCA_0000056391-13[6] Ex. 9, "Oracle Compensation Guidelines," no date, ORACLE_HQCA_0000380594 Ex. 10, "Global Compensation," dated 12/18/17, ORACLE_HQCA_0000364301 Ex. 11, Handbook, ORACLE_HQCA_0000000502	**Undisputed that the documents to which OFCCP cites contains most of this language. OFCCP's characterization of the components as "well-defined," is not supported by the evidence, but this is immaterial.** In none of the documents cited by OFCCP does Oracle use the term "well-defined." This gratuitous characterization is not supported by the evidence. This characterization, however, is immaterial. Moreover, simply lifting words out of Oracle documents without having an appropriate Oracle witness confirm the statements within the document are true is insufficient from an evidentiary standpoint. Nevertheless, it is true that Oracle uses these components of compensation even though OFCCP hasn't established as much through the document on which it purports to rely.

[6] Exhibit 8, like many of the compensation trainings Oracle produced to OFCCP, was produced as a native file PowerPoint document with a single bates number identifying the entire document. For the court's review of these documents, OFCCP has converted them to Adobe PDF format and assigned subsidiary bates numbers, using hyphens to indicate pages of the PDF document. Where a specific portion of a training is referred to, OFCCP has used pin cites that cite both the number of the slide being specifically referenced and the hyphenated bates number of the page of the PDF on which that slide appears as produced in hard copy to the Court.

			See also Oracle's Objections to Evidence.
61	Oracle's cash component consists of two parts: base salary and short term incentives like commissions and bonuses.	Ex. 8, slide 7, ORACLE_HQCA_0000056391-13. Ex. 9, ORACLE_HQCA_0000380594 Ex. 10, ORACLE_HQCA_0000364301 Ex. 11, ORACLE_HQCA_0000000502	**Undisputed that the documents cited contain this language, but incomplete.** OFCCP relies on Exhibit 11, which states that "Your total cash compensation is comprised of your base salary and performance related bonuses or commissions *and other incentives*." Exhibit 11, ORACLE_HQCA_0000000502 (emphasis added). Therefore, this fact is incomplete because Oracle's cash compensation includes a catch-all for "other incentives." Moreover, simply lifting words out of an Oracle document without having an appropriate Oracle witness confirm the statements within the document are true is insufficient from an evidentiary standpoint.
62	Oracle advises managers that base salary should be "[l]inked to [an] employee's skills and competencies in [the] current role, as well as the sustained performance and the local market."	Ex. 8, slide 8, ORACLE_HQCA_0000056391-15; Ex. 12, untitled, copyright 2012, slide 7, ORACLE_HQCA_0000042098-11; *See also* Ex. 13, "Managing Compensation" dated July 2016, slide 17 (notes), ORACLE_HQCA_0000056234-30; Ex. 14, "Managing Compensation at Oracle," no date, slide 8,	**Undisputed that the documents cited contain this language, but incomplete.** The very documents to which OFCCP cites confirm Oracle provides its managers far more training and guidance on how to determine base salary than the excepts cited here by OFCCP.

		ORACLE_HQCA_0000382580-13.	
63	Oracle advises employees that to determine your salary and total cash compensation package, we take into account market research, your Career Level and your individual performance.	Ex. 11, Handbook, ORACLE_HQCA_0000000502	**Undisputed that the document cited contains this language, but incomplete.** To the extent OFCCP is implying that Oracle market research, Career Level and individual performance are the *only* factors considered in determining compensation, this document fails to establish such an inference.
64	Oracle advises managers that when determining the employee's total compensation package, the following factors may be taken into account: • the job's salary range which is based on the external market value for the job. • the employ ee's Global Career Level.	Ex. 9 ORACLE_HQCA_0000380594 Ex. 10 ORACLE_HQCA_0000364301	**Undisputed that the documents cited contain this language, except incomplete.** It is not clear from the face of the documents and OFCCP presents no evidence supporting the assertion that Oracle "advises managers" of this fact. Rather, Exhibits 9 and 10, which both include statements such as "Your eligibility to receive each component of total compensation will vary depending on the country in which you are employed and your function here at Oracle," appear to be directed at all employees. In any event, this document – and the other documents cited by OFCCP herein – speak for themselves. This document obviously is not providing managers with a delineated list of "factors" that are the only "factors" Oracle managers must rely upon in some sort of formulaic way. OFCCP's

	• the salaries of other Oracle employees in the same job and location. • and the individual employee's performance.		attempt to characterize it in that way does not make it so. Indeed, it appears OFCCP is making such strained attempts to mischaracterize Oracle's compensation related documents in this way because the ALJ in *OFCCP v Analogic* found that OFCCP's expert used "factors" in his statistical analyses he thought were important, but were not the "factors" used by Analogic in making compensation decisions, and on that basis the ALJ found OFCCP's expert analyses unreliable and ruled that OFCCP had failed to sustain its claims for systemic compensation discrimination against Analogic. So here, it appears OFCCP is trying *very hard* to convince this court that the universe of permissible "factors" to consider is limited to those contained in this document, even though that is not what the document says, and even though such an argument runs contrary to the vast amount of evidence produced in this case, including both documents and testimony from Oracle managers and employees, both in deposition and in their declarations, which articulates the various factors upon which they rely. As Oracle has explained time and time again, Oracle has "No formula" for compensation decisions. Ex. 41, Ex. A at 16. Managers making compensation decisions are reminded that "Managing pay is an art, not a science, and there are various factors to consider." Ex. 12,

			ORACLE_HQCA_0000042098-40. Among other things, managers are instructed to, a) consider how an employee's compensation compares to her peers; b) account for each employee's relevant knowledge, skills, abilities, and experience; c) balance external and internal equity considerations; d) differentiate rewards by performance; and e) consider the employee's importance to the company. *See*, Ex. 8, ORACLE_HQCA_0000056391-39, -43, -44, -46; Ex. 12, ORACLE_HQCA_0000042098-11, -28, -29, -35, -39, -40, -41, -42, -61, -62, -65, -66; Ex. 13, ORACLE_HQCA_0000056234-27, -30, -39, -40, -43, -44, -69, -70; Ex. 14, ORACLE_HQCA_0000382580-9, -10, -13, -14, -35, -36, -46, -51, -52, -53, -54, -81, -82; Ex. 16, ORACLE_HQCA_0000364272-21, -28, -29; Ex. 18, ORACLE_HQCA_0000000407-08, -09, -10, -11, -32, -33, -40, -41; Ex. 21, ORACLE_HQCA_0000380437-18, -25, -26, -49, -50; Connell Opp. Decl., Ex. I; Ex. J at DOL000041697 (manager told employee that "amount of raise is tied to profitability of the specific product line" and recognizing that people in "other, more profitable product lines have received larger raises"). Indeed, even OFCCP's own declarants and interview notes

			confirm that managers rely on numerous and varied factors when making compensation decisions, including the skills, experience, expertise, performance, and contributions to Oracle's strategic and business goals. *See, e.g.*, Ex. 98, Decl. of Rachel Powers (Oct. 21, 2019) ¶ 10 (OFCCP's own declarant attesting that, as a manager at Oracle, she looked at an employee's "skills, abilities, and work experience.").
65	Jobs at Oracle are grouped into a "global job table" administered by Oracle's compensation teams, which is a table made up of unique job codes that are the specific combination of the four other elements of the global job table: job function (such as Product Development), specialty area (such as Software Engineer), systems job title (such as software developer 3), and a Global Career Level (such as	Ex. 6, Carrelli Dep. 117:22–120:6; Ex. 12, slide 12 and notes, ORACLE_HQCA_0000042098-20 to -21; Ex. 13, "Managing Compensation" dated July 2016, slide 4 and notes, ORACLE_HQCA_0000056234-5 to -6.	**Undisputed, except the evidence does not support the assertion that the "global job table" is "administered by Oracle's compensation teams."** OFCCP's cited evidence does not support the assertion that the "global job table" is "administered by Oracle's compensation teams." Nevertheless, which team at Oracle has responsibility for the global job table is immaterial. And in any event, Kate Waggoner has testified repeatedly that her team is responsible for overseeing and updating the Global Job Table, confirming that Ms. Waggoner is a far more reliable source on what the Global job table is (and what it is not) than OFCCP. Waggoner Decl., ¶ 20; Ex. 7, Waggoner Dep. Tr. 9:17-18. Ms. Waggoner confirms that the specific job codes contained in it represent "a very general bucket of overarching responsibilities" and the corresponding job descriptions give only a very high level description of the

	individual contributor 3).		skills, duties, and responsibilities the jobs entail. Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep. 102:17-25). She further confirms that the salary ranges that accompany job codes are intentionally broad to allow managers to set compensation within them based on things such as the varying experience, skills, competencies, and performance of their employees, and further confirms that simply sharing a job code at Oracle absolutely does not mean that the employees perform similar work. *Id*. 88:19-89:7; 102:15-25; 179:3-5; 180:23-181:6. To the contrary, employees at Oracle who share a job code often perform very different work and job codes sweep in employees with a wide array of skills, duties, and responsibilities, mirroring the tremendous diversity of products and services that Oracle offers. Miranda Decl., ¶¶ 5-7; Waggoner Decl., ¶¶ 17, 22; Webb Decl., ¶¶ 5-9, 11; Abushaban Decl., ¶¶ 10-12; Adjei Decl., ¶¶ 8-9; Bashyam Decl., ¶¶ 7-9; Chan Decl., ¶ 8; Desmond Decl., ¶ 9; Eckard Decl., ¶¶ 9-10; Fox Decl., ¶¶ 6-8, 12-13; Hsin Decl., ¶ 8; Kite Decl., ¶ 10; Kottaluru Decl., ¶ 13; Oden Decl., ¶ 11; Ousterhout Decl., ¶¶ 11-13; Robertson Decl., ¶ 9; Sarwal Decl., ¶¶ 5-12, 14; Shah Decl., ¶¶ 9-10.; Suri Decl., ¶¶ 10-15; Talluri Decl., ¶¶ 10-12; Yakkundi Decl., ¶¶ 14-15.

			See also Oracle's Objections to Evidence.
66	Once a job code is selected, all the other elements of the global job table have been identified for that job code. This means there will not be a job code that has more than one job title or function or specialty area or Career Level.	Ex. 14, "Managing Compensation at Oracle," slide 15 (notes), ORACLE_HQCA_0000382580-28	**Undisputed that the document cited contains this language.** Setting aside the evidentiary problem of simply citing words in a document as truth without a sponsoring witness to confirm them, this fact confirms Oracle's point that "controlling" for things like job function, job level and job specialty in a regression model that already controls for job code does nothing since job code already accounts for those higher level categories.
67	Oracle's global job table organizes salary ranges by job code through the linkage of job codes to salary grades that have salary ranges.	Ex. 6, Carrelli Dep. 117:22–120:6; Ex. 13, slide 16, and slide 16 notes ORACLE_HQCA_0000056234 -27, -28.	**Undisputed, except the evidence does not support the assertion that Oracle's global job table "organizes" salary ranges.** *Again, however, OFCCP's characterizations of documents are immaterial.* Nothing in the cited evidence supports the assertion that the global job table "organizes salary ranges by job code." Instead, the evidence supports only that "Each job code in the global table is assigned to a salary grade that refers to a salary range." Ex. 13, ORACLE_HQCA_0000056234 -28. Ms. Carrelli's agreed that "job code has a salary and grade assigned to it." Ex. 6, Carrelli Dep. Tr. 118:12-24. *See also* Oracle's Objections to Evidence.
68	Every employee with the same Job Code will	Ex. 8, slide 13 and slide 13 (notes),	**Undisputed.**

	have the same Global Job Title, Function, Specialty Area and Global Career Level.	ORACLE_HQCA_0000056391-24 to -25; Ex. 12, slide 12 and slide 12 (notes), ORACLE_HQCA_0000042098-20 to -21; Ex. 13, slide 4, ORACLE_HQCA_0000056234-5; Ex. 14, slide 15 and slide 15 (notes), ORACLE_HQCA_0000382580-27 to -28.	
69	"Job Code" refers to the unique identifier for the job, and as of 2016 there are about 1300 Job Codes included in the global job table.	Ex. 13, slide 4 (notes), ORACLE_HQCA_0000056234-6; Ex. 12, slide 12 and slide 12 (notes), ORACLE_HQCA_0000042098-20 to -21.	**Undisputed.**
70	Oracle uses the term "System job title" interchangeably with "Global Job Title." This job title is effectively an internal HR code that is distinct from other titles Oracle's employees can use called "discretionary titles." Oracle's training materials explain that in	Ex. 13, slide 4 (notes), ORACLE_HQCA_0000056234-6 Ex. 7, Waggoner May Dep. 74:11-15, 80:23–81:5, 30:8-15.	**Undisputed, except the evidence does not support the assertion that job title is "effectively an internal HR code."** *Again, however, OFCCP's characterizations of documents are immaterial.* The evidence cited by OFCCP does not support the assertion that job title is "effectively an internal HR code." Neither Exhibit 13, ORACLE_HQCA_0000056234-6, nor Ms. Waggoner use that phrase. *See also* Oracle's Objections to Evidence.

	general the global job title is not the title the employee might use to describe his job to colleagues or clients or use for business cards.		
71	"Function," as used in the context of Oracle's Job Codes, describes the general type of work the employee performs.	Ex. 13, slide 4 (notes), ORACLE_HQCA_0000056234-6	**Undisputed, but incomplete.** Ms. Waggoner gives further testimony on Oracle's job functions, and further clarifies that "job function" is only a very high-level description of the very general type of work an employee does. Job function does not, for example, get granular enough to describe the skills, duties and responsibilities that any particular job entails. Waggoner Decl., ¶ 17, Ex. D (ORACLE_HQCA_0000364276 at 5), Ex. E (ORACLE_HQCA_0000056234 at 4); Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 88:19-89:7.
72	"Specialty Area," as used in the context of Oracle's Job Codes, is a "subset of the function and is intended to further identify the work performed."	Ex. 13, slide 4 (notes), ORACLE_HQCA_0000056234-6	**Undisputed, but incomplete.** Ms. Waggoner gives further testimony on specialty areas at Oracle and explains that they are only a little more specific than job functions, which are very high level. Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 100:19-20. Specialty area is still a high-level description of the work performed by an individual and does not account

			for differences in individual job duties. Waggoner Decl., ¶ 22.
73	"Career Level" or "Global Career Level" is a "broad category that indicates increased skill, knowledge, and responsibilities and performance expectations. The higher the career level, the higher the complexity of the job duties."	Ex. 13, slide 4 (notes), ORACLE_HQCA_0000056234-6 *See also* Ex. 12, slide 12 and slide 12 (notes), ORACLE_HQCA_0000042098-20 to -21; Ex.7, Waggoner May Dep. 75:15–25 Ex. 14, slide 29 (notes), ORACLE_HQCA_0000382580-56 Ex. 8, slide 13 and slide 13 (notes) at ORACLE_HQCA_0000056391-24, -25.	**Undisputed.** Multiple witnesses from Oracle have offered testimony on career levels at Oracle and have explained that career levels are broad steps that roughly reflect increased skill, knowledge, responsibility, and performance expectations. *See*, Connell MSJ Decl., Ex. B (8/1/19 Holman-Harries PMK Dep.) 86:14-88:13; Ex. C (7/19/19 Waggoner PMK Dep.) 100:24-102:8; Bashyam Decl., ¶¶ 7, 14; Webb Decl., ¶ 12; Sarwal Decl., ¶ 13; Wu Decl., ¶ 8; Fox Decl., ¶ 11; Kite Decl., ¶¶ 9-10; Chechik Decl., ¶ 13; Desmond Decl., ¶¶ 5-6; Ousterhout Decl., ¶ 10; Miranda Decl., ¶ 9; Galka Decl., ¶ 4.
74	Responsibilities, contribution and job complexity should increase from one job level to the next in the Career Level hierarchy.	Ex. 13, slide 4 (notes), slide 5, and slide 5 (notes), ORACLE_HQCA_0000056234-6 to -8; Ex. 8, slide 13 and slide 13 (notes), ORACLE_HQCA_0000056391-24, -25; Ex. 12, slide 12 and slide 12 (notes), ORACLE_HQCA_0000042098-20 to -21; Ex. 14, slide 27 and slide 27 (notes), ORACLE_HQCA_0000382580-27, -28.	**Undisputed.**
75	There are two Career Level paths:	Ex. 13, slide 5 and slide 5 (notes),	**Undisputed.**

	Management (M1-M10) and Individual Contributor (IC0 to IC6). There is no direct mapping between M-levels and IC-levels.	ORACLE_HQCA_0000056234-7, -8.	
76	The Career Level for a job in one organization with the same level of responsibilities and complexity as a job in another organization will be the same Career Level. This means that if a job in Finance has the same level of responsibilities and complexity as a job in Sales, the Career Level of these two jobs will be the same.	Ex. 12, slide 13 (notes), ORACLE_HQCA_0000042098-23; Ex. 13, slide 5 (notes), ORACLE_HQCA_0000056234-8.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** Although the documents to which OFCCP cites contain this language, describing how Career Levels are intended to work from a high-level, theoretical perspective does not somehow establish this as an undisputed fact with respect to all of the jobs at issue in this litigation. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
77	Various IC and M levels have discretionary titles that are used to describe them.	Ex. 13, slides 6 & 7, ORACLE_HQCA_0000056234-9, -10. *See also* facts 70, 78, and 79, discussing and listing discretionary titles.	**Undisputed that the document cited contains this language, but incomplete.** Further evidence confirms that often employees create their own discretionary titles because Oracle's system job titles are so broad they fail to adequately describe the jobs performed by Oracle employees, many of

			whom therefore choose to use a discretionary job title instead. Waggoner Decl., ¶ 26 ("Some employees (but not all) have a discretionary job title as well as a system job title, which in many cases is more descriptive and specific than the system job title.); Ex. 7, Waggoner Dep. Tr. 80:23-81:2 ("discretionary titles are just what they say, they're at the discretion of – we've had people with Queen of Sheba for their discretionary titles. Like we don't control for discretionary titles.").
78	An employee with a system job title of Software Developer 1 has a Career Level of IC-1 and a discretionary title of "Associate Member of Technical Staff" with responsibilities consistent with the employee having little to no experience and gaining competence in own area with direct guidance from management.[7]	Ex. 13, slide 6, ORACLE_HQCA_0000056234-9.	**Although the document cited contains this language, the document does not establish these statements are in fact true of all Oracle employees who hold the job titles and career levels described. Accordingly, the evidence does not support this fact as stated, and it should be disregarded.** This "fact" is copied from an Oracle training presentation entitled "Managing Compensation." The slide in question appears in the context of a training segment about Global Career Levels. The examples on this slide are merely possible illustrative examples of the progression of skills, duties, and responsibilities associated with increasing career levels. For example, the discretionary titles reflected on

[7] The discretionary titles listed in this fact, the next fact and the slides from which they are gleaned are just examples only and do not reflect the entire universe of discretionary titles for all three job functions (e.g., information technology, product development, and support) at issue in this litigation.

	An employee with a system job title of Software Developer 2 has a Career Level of IC-2 and a discretionary title of "Member of Technical Staff" with responsibilities including understanding the employee's own role and performing moderately complex problem solving with guidance from management. An employee with a system job title of Software Developer 3 has a Career Level of IC-3 and a discretionary title of "Senior Member of Technical Staff" with responsibilities consistent with being fully competent in the employee's own area and possibly having a project lead role.		this slide could not be fixed because discretionary titles are left to the discretion of the employee concerned. Kate Waggoner testified that "discretionary titles are just what they say, they're at the discretion of – we've had people with Queen of Sheba for their discretionary titles. Like we don't control for discretionary titles." Ex. 7, Waggoner Dep. Tr. 80:23-81:2. Employees create their own discretionary titles because Oracle's system job titles are so broad they often fail to adequately describe the jobs performed by Oracle employees, many of whom therefore choose to use a discretionary job title instead. Waggoner Decl., ¶ 26 ("Some employees (but not all) have a discretionary job title as well as a system job title, which in many cases is more descriptive and specific than the system job title."). Similarly, Oracle does not have set criteria for determining global career levels. Career levels are broad steps that roughly reflect increased skill, knowledge, responsibility, and performance expectations. Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 100:24-102:8; *see also*, Ex. 14 at ORACLE_HQCA_0000382580-27 (stating that Career Level is a "broad hierarchical category related to the level at which a job is performed"). To the extent this "fact" implies a rigid or firm set of criteria, or

	An employee with a system job title of Software Developer 4 has a Career Level of IC-4 and a discretionary title of "Principal Member of Technical Staff" with responsibilities consistent with being a leading contributor individually and as a team member and providing direction and mentoring to others. An employee with a system job title of Software Developer 5 has a Career Level of IC-5 and a discretionary title of "Senior Principal Member of Technical Staff" with responsibilities consistent with providing leadership and expertise in development of new or changes		suggests this document is controlling with respect to the individual job duties and responsibilities of individual Oracle employees, it is misleading and not supported by the evidence. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.

	to products, services, or processes. An employee with a system job title of Software Developer 6 has a Career Level of IC-6 and a discretionary title of "Architect" with responsibilities consistent with being an acknowledged expert within the company and/or industry and providing strategic leadership in development & direction of products, services, or processes.		
79	An employee with a system job title of Software Development Manager has a Career Level of M-1 or M-2, and a discretionary title of "Manager, Software Development" with	Ex. 13, slide 7, ORACLE_HQCA_0000056234-10.	**Although the document cited contains this language, the document does not establish these statements are in fact true of all Oracle employees who hold the job titles and career levels described. Accordingly, the evidence does not support this fact as stated, and it should be disregarded.** This "fact" is copied from an Oracle training presentation entitled "Managing Compensation." The slide in

	responsibilities consistent with leading a development team of individual contributors, but with minimal people management experience. An employee with a system job title of Software Development Senior Manager has a Career Level of M-3, and a discretionary title of "Senior Manager, Software Development" with responsibilities consistent with leading a development team of individual contributors, and generally with 2 or more years of people management experience. An employee with a system job title of Software Development Director has a		question appears in the context of a training segment about Global Career Levels. The examples on this slide are merely possible illustrative examples of the progression of skills, duties, and responsibilities associated with increasing career levels. For example, the discretionary titles reflected on this slide could not be fixed because discretionary titles are left to the discretion of the employee concerned. Kate Waggoner testified that "discretionary titles are just what they say, they're at the discretion of – we've had people with Queen of Sheba for their discretionary titles. Like we don't control for discretionary titles." Ex. 7, Waggoner Dep. Tr. 80:23-81:2. Employees create their own discretionary titles because Oracle's system job titles are so broad they often fail to adequately describe the jobs performed by Oracle employees, many of whom therefore choose to use a discretionary job title instead. Waggoner Decl., ¶ 26 ("Some employees (but not all) have a discretionary job title as well as a system job title, which in many cases is more descriptive and specific than the system job title."). Similarly, Oracle does not have set criteria for determining global career levels. Career levels are broad steps that roughly reflect increased skill, knowledge, responsibility, and performance expectations. Connell MSJ Decl., Ex. C

	Career Level of M-4, and a discretionary title of "Senior Manager, Software Development" with responsibilities consistent with strategic leadership across functional areas through a team of individual contributors and managers. An employee with a system job title of Software Development Senior Director has a Career Level of M-5, and a discretionary title of "Senior Director, Software Development" with responsibilities consistent with strategic leadership across functional areas through a team of individual contributors and managers and broad functional experience		(7/19/19 Waggoner PMK Dep.) 100:24-102:8; *see also*, Ex. 14 at ORACLE_HQCA_0000382580-27 (stating that Career Level is a "broad hierarchical category related to the level at which a job is performed"). To the extent this "fact" implies a rigid or firm set of criteria, or suggests this document is controlling with respect to the individual job duties and responsibilities of individual Oracle employees, it is misleading and not supported by the evidence. This fact is also not supported by the evidence to the extent it states, in the third paragraph, that an employee with a job title of "Software Development Director" and a "Career Level of M-4" might have a discretionary title of [redacted] In fact, the evidence states that such an employee might have a discretionary title of [redacted] Ex. 13, ORACLE_HQCA_0000056234-10. This illustrative example of one possible combination of a job title and discretionary title is not material. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.

	enabling management of PM, QA, Dev, etc. An employee with a system job title of Software Development Vice President has a Career Level of M-6, and a discretionary title of "Vice President, Development" with responsibilities consistent with strategic leadership across functional areas through a team of directors and high conceptual complexity, significant intangible or external factors. An employee with a system job title of Senior VP, Executive VP, or President has a Career Level of M-7 through M10, and a discretionary title of "Senior VP," "Executive		

	VP," "President," "CTO" or "Chairman" with responsibilities consistent with Senior Executive Staff.		
80	If an employee's Global Career Level changes, then the employee's job code necessarily changes because each unique job code is tied to a specific Global Career Level.	Ex. 14, slide 15 (notes), ORACLE_HQCA_0000382580-28; Ex. 15, Untitled Global Job Table for Product Development, Information Technology, and Support Job Functions, ORACLE_HQCA_0000022905	**Undisputed, but this "fact" is not supported by the evidence to which OFCCP cites.** OFCCP offers no evidence in either Exhibits 14 or 15 about the effect on a job code of changing an employee's Global Career Level. *See also* Oracle's Objections to Evidence.
81	If an employee's Global Career Level changes from one IC level to another IC level or from one M level to another M level within the same specialty area within the three job functions at issue in this litigation, then it changes the job code that in turn changes the salary grade that thus changes the salary range.	Ex. 14, slide 15 (notes), ORACLE_HQCA_0000382580-28. Ex. 13, slide 16 (notes), ORACLE_HQCA_0000056234-28 Ex. 15, ORACLE_HQCA_0000022905 Ex. 17, Declaration of Hea Jung Atkins in Support of OFCCP's Motion for Summary Judgment, dated 10/16/19, and Ex. B attached thereto (Table 2).	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The evidence on which OFCCP relies says nothing about the effects of changing an employee's Global Career Levels. OFCCP also has not established that every change in job code necessarily means there is a change in salary grade. Some jobs share salary grades, as OFCCP readily acknowledges in the very next "fact" listed below. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e).

			See also Oracle's Objections to Evidence, which specifically address Ex. 17 (the Atkins declaration).
82	In the three job functions at issue in this litigation, the same salary grade, [redacted] is assigned to the following job titles: <u>Job Function: Information Technology</u> • [redacted] <u>Job Function: Product Development</u> • [redacted]	Ex. 17, Decl. of Hea Jung Atkins, ¶8 & Ex. B, rows 31–47.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** As Oracle has explained to OFCCP time and time again, individual managers have discretion to set compensation, both starting pay and salary increases, for individual employees on their team. Waggoner Decl., ¶¶ 28-30. Oracle offers salary ranges as a "tool to assist managers in making decisions about pay," but the ranges are intentionally "broad" to "allow managers to account for differences in experience, skills, competencies and performances of candidates and incumbents." Ex. 13 at ORACLE_HQCA_0000056234 -27. Therefore, an employee's salary grade or an employee's salary range is not determinative of that employee's compensation, nor is it intended to be. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Whether employees with different job titles have the same salary grade is immaterial to what is fair, justified, and non-discriminatory compensation for that individual based on that individual's skills, duties,

	[redacted] Job Function: Support • [redacted]		responsibilities, experience, and knowledge. This "fact" is therefore not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence, which specifically address Ex. 17 (the Atkins declaration).

	• [redacted]		
83	Oracle advises its managers that an employee should be placed in a job code that most closely reflects the role they will have in the organization.	Ex. 8, slide 15 and slide 15 (notes) ORACLE_HQCA_0000056391-28 to -29; Ex. 12, slide 14 and slide 14 (notes), ORACLE_HQCA_0000042098-24 to -25; Ex. 13, slide 9, ORACLE_HQCA_0000056234-13.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The document cited does not say anything about placing "employees" in job codes. It refers to the exercise of determining the correct job code for a job before it is posted. Accordingly, OFCCP is misrepresenting the document. OFCCP presumably offers this "fact" to support its allegation that Oracle assigns women, Asians and African-Americans into lower paying jobs. But the evidence on which this "fact" is purportedly based doesn't support that argument. Read in context and in conjunction with the other evidence in this case, it is clear this guidance relates to the job code that a manager chooses for a job requisition *before* it is posted. *See, e.g.*, Ex. 8, ORACLE_HQCA_0000056391-29 (explaining that an "incorrect job code could impact an offer letter or employment terms"); Ex. 12, ORACLE_HQCA_0000042098-25 (same); Ex. 13, ORACLE_HQCA_0000056234-14 (same). Moreover, the instruction to which OFCCP refers in this "fact" is not an

			about an individual employee, but about the *role*, i.e., the position into which the manger is hiring. The evidence on which OFCCP relies does not say that "an employee should be placed", it says that "The Job code selected should be the job that most closely reflects *the role* in the organization." Ex. 8, ORACLE_HQCA_0000056391-28 (emphasis added); Ex. 12, ORACLE_HQCA_0000042098-24 (same); Ex. 13, ORACLE_HQCA_0000056234-13 (same). As Oracle has explained throughout this litigation, employees apply for specific jobs through individual job requisitions for which a job code already has been determined. Oracle does not "assign" employees to jobs or job codes after they have been hired. Although Oracle managers have discretion to change the level at which a job has been posted up or down one level based on the skills, duties, and experience of the individual selected, changing the job's level is the exception and not the rule and Dr. Saad's analyses confirm that the majority of applicants are hired into the jobs for which they applied, and that there is no statistically meaningful pattern of differences in "up-levelling" or "down-levelling" between men, women, Asians, or African-Americans. *See* Connell MSJ Decl., Ex. M (Saad Rpt.) ¶¶ 147-56, Ex. O (Saad Rebuttal) ¶¶ 57, 65-66.

			Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
84	If an employee is assigned an incorrect job code, it could impact the employee's compensation, including their salary range, bonus eligibility, overtime eligibility and compensation plan eligibility.	Ex. 8, slide 12 (notes), slide 15, and slide 15 (notes) ORACLE_HQCA_0000056391-23, -28, -29; Ex. 12, slide 14 and slide 14 (notes), ORACLE_HQCA_0000042098-24 to -25; Ex. 13, slide 9 (notes), ORACLE_HQCA_0000056234-14 Ex. 14, slide 14 (notes), slide 16 (notes) ORACLE_HQCA_0000382580-26, -30.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The document does not say anything about assigning employees to job codes. As explained above, when read in context and in conjunction with the rest of the evidence in this case, this guidance refers to assigning the incorrect job code to a job before it is posted and into which an employee is hired. The instruction to which OFCCP refers in this "fact" is not an about an individual employee, but about the *role*, i.e., the position into which the manger is hiring. The evidence on which OFCCP relies is not about an employee being assigned to a job code, it's about the job code that the manager selects for the role: Ex. 8, ORACLE_HQCA_0000056391-28 ("If the job code is incorrect, there could be an impact the employee's compensation…"); Ex. 12, ORACLE_HQCA_0000042098-24 (same); Ex. 13, ORACLE_HQCA_0000056234-14 (same). Managers do not make discretionary determinations about which job code to "assign" an employee

			after they are hired. Waggoner Decl., ¶ 25. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
85	Each job code in the global table is assigned to a salary grade that refers to a salary range.	Ex. 13, slide 16 (notes), ORACLE_HQCA_0000056234-28; Ex. 7, Waggoner May Dep. 118:8–20.	**Undisputed.** The cited testimony from Exhibit 7 does not support this assertion, but it is true that job codes have salary grades and salary ranges. *See also* Oracle's Objections to Evidence.
86	Oracle's human resources staff provides training that states that salary ranges define the "value" of a position to Oracle: "All jobs that are considered equal in value to Oracle are grouped into the same local grade level, and have the same salary range."	Ex. 16, "Global Compensation Training: Salary Ranges at Oracle," copyright 2011, slide 8 (notes) ORACLE_HQCA_0000364272-15; *See also* Ex. 12, slide 19 (notes) ORACLE_HQCA_0000042098-35; Ex. 13, slide 17 (notes), ORACLE_HQCA_0000056234-30; Ex. 8, slide 20 (notes), ORACLE_HQCA_0000056391-39; Ex. 14, slide 22 (notes) ORACLE_HQCA_0000382580-42.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** First, OFCCP offers no evidence whatsoever to support its assertion that "Oracle's human resources staff provides training" on the alleged fact. This completely unsupported assertion therefore fails. Additionally, the evidence cited does not support the assertion that "salary ranges define the 'value' of a position to Oracle." In fact, the evidence, which OFCCP misconstrues and takes out of context, is that salary ranges, rather than defining some kind of inherent value to Oracle, merely reflects external *market value of a job*. Exhibit 13 makes this clear, stating that "Jobs that have the *same local*

			market value are grouped into the same local grade level, and have the same salary range." Ex. 13, ORACLE_HQCA_0000056234-30 (emphasis added). Exhibits 8 and 12 say the exact same thing. Ex. 8, ORACLE_HQCA_0000056391-39; Ex. 12, ORACLE_HQCA_0000042098-35. OFCCP's Exhibit 16 says the same thing: "jobs that pay similarly in the local labour market are allocated to the same range." Ex. 16, ORACLE_HQCA_0000364272-10. The context of the statement OFCCP quotes in this "fact" also makes clear that salary ranges are about market value and are "the link between internal and external equity." *See, e.g.*, Ex. 13, ORACLE_HQCA_0000056234-30, *see also* SUF 91. External equity is equity between Oracle employees as compared to Oracle competitors. Similarly, the "note" on which OFCCP relies in Exhibit 16 is to a slide that states "Salary Ranges are driven by market conditions." Ex. 16, ORACLE_HQCA_0000364272-14. This context is consistent with Kate Waggoner's testimony that Oracle develops salary ranges by consulting market surveys to understand "what the market rate is" for a general job and level. Ex. 7, Waggoner Dep. Tr. 86:22-87:4.

			Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Finally, the evidence on which OFCCP relies also makes clear that a manger's job is not done once he or she determines the appropriate salary range. Instead, to determine the "correct placement of an employee in their salary range" involves a consideration of, among other things, factors such as "skills, knowledge, and experience," "perhaps education," and "performance." Ex. 13, ORACLE_HQCA_0000056234-30. Therefore, as explained before, an employee's salary range is not determinative of compensation. *See also* Oracle's Objections to Evidence.
87	Multiple job codes can be assigned to the same salary grade, and therefore have the same salary range.	Ex. 6, Carrelli Dep. 118:15–20; Ex. 7, Waggoner May Dep. 118:8–20; Ex. 13, slide 17 (notes), ORACLE_HQCA_0000056234-30; Ex. 16, slide 10 and slide 10 (notes), ORACLE_HQCA0000364272-18, -19.	**Undisputed.**
88	Oracle uses external third-party market surveys to assist it in setting salary ranges.	Oracle's 10/3/19 Position Statement, p. 7	**Undisputed but the evidence cited is not competent to establish this fact.** Oracle's "Position Statement" is not itself evidence. Nevertheless, the fact is true,

			even if OFCCP hasn't competently established it. *See also* Oracle's Objections to Evidence.
89	Oracle uses market surveys to establish the midpoint of the salary ranges.	Ex. 16, slides 6–9, ORACLE_HQCA_0000364272-10 to -16; Ex. 7, Waggoner May Dep. 86:17–87:21; Ex. 12, slides 17–19 at ORACLE_HQCA_0000042098-30 to -34; Ex. 13, slide 16 and slide 16 notes, ORACLE_HQCA_0000056234-27 to -28.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** Once again, OFCCP is characterizing the evidence in an imprecise way, but OFCCP's characterizations of evidence are immaterial. The evidence OFCCP cites for this "fact" does not support it. Exhibit 13 is silent with respect to this "fact" and therefore provides no support. Ms. Waggoner made clear that Oracle's use of market ranges is not a hard and fast rule, but rather guidance. Ms. Waggoner testified that "Our general philosophy is that the market 50th percentile would represent Oracle's midpoint of the range for a specific location." Ex. 7, Waggoner Dep. Tr. 87:9-11. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
90	From this marketplace-driven midpoint, Oracle establishes a salary range width,	Ex. 7, Waggoner May Dep. 87:5–89:11.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The evidence OFCCP cites for this "fact" does not support it. First, OFCCP cites no evidence

	depending on Global Career Level, that is equal distance from the midpoint, to establish the minimum and maximum points of the salary ranges.		to support that assertion that the midpoint of a salary range is "marketplace-driven." In this testimony, Ms. Waggoner agrees that the Radford and Mercer surveys are "used to set the midpoint," but she does not state that the surveys determine or in any other way *drive* the midpoint. Ex. 7, Waggoner Dep. Tr. 18:21. Nor does Ms. Waggoner testify that the "salary range width" depends on Global Career Level. She recognizes instead that the maximum and minimum of a salary range "can vary from country to country, from level to level generally, and this is all kind of compensation theoretical." *Id.*, 87:24-88:1. Ms. Waggoner also explains that the width of a salary range does not "depend on Global Career Level" as OFCCP puts it, but on the variety of "different knowledge, skills, abilities, education, all those kinds of things" within a level. *Id.*, 88:1-9. She recognizes that the variety increases "as you get higher in your career levels," but is clear that the range of skills determines the width, not the number of the career level. *Id.*, 88:1-9. Finally, OFCCP offers no support for the proposition that the salary range width reflects maximum and minimums that are "equal distance from the midpoint."

			As explained above, the salary ranges are intentionally broad to allow individual managers to locate individual employees at the appropriate place after considering factors such as, among others, skill, experience, and knowledge. The salary ranges therefore do not determine compensation in some formulaic way. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
91	Oracle states the salary range is "the link between internal and external equity."	Ex. 16, slide 8 (notes), ORACLE_HQCA_0000364272-15; Ex. 14, slide 22 (notes), ORACLE_HQCA_0000382580-42; Ex. 8, slide 20 (notes), ORACLE_HQCA_0000056391-39; Ex. 13, slide 17 (notes), ORACLE_HQCA_0000056234-30.	**Undisputed that the documents to which OFCCP cites contain this language.** Again, OFCCP is attempting to use snip-its from documents as if they are sweeping admissions by Oracle generally. That the cited documents contain the language cited is immaterial to legal issues the Court must decide, and in no way limits or contradicts the extensive other evidence in this case confirming what salary ranges are (and are not), and how Oracle managers use them in determining the pay for individual Oracle employees.
92	Managers are instructed to consider how an employee's compensation compares to the employee's peers balancing	Oracle's 10/3/19 Position Statement, p. 7.	**Undisputed but based on incompetent evidence and incomplete.** Oracle's Position Statement is not "evidence," even though this statement is true. This "fact" also is incomplete because Oracle instructs its managers to

	external and internal equity.		consider a set of general principles, only one of which is balancing external and internal equity considerations, as Oracle's Position Statement (and the underlying evidence) confirm. *See also* Oracle's Objections to Evidence.
93	In determining where a specific employee is to fall within an assigned salary range, Oracle instructs its managers to consider the employee's "skills, knowledge, and experience and perhaps education (if a requirement for the job)" should be considered.	Ex. 13, slide 17 (notes), slide 22, and slide 22 notes, ORACLE_HQCA_0000056234-30, -39, -40; *See also* Ex. 8, slide 20 (notes), slide 23, and slide 23 notes, ORACLE_HQCA_0000056391-39, -43, -44. Ex. 13, slide 22 and slide 22 notes, ORACLE_HQCA_0000056234-39, -40; Ex. 16, slide 11 (notes) ORACLE_HQCA_0000364272-21.	**Undisputed but incomplete.** The quote OFCCP presents in this "fact" is only found in Exhibit 13 at ORACLE_HQCA_0000056234-30. In addition to skills, knowledge, and experience, the other evidence on which OFCCP relies specifically lists "abilities" as an additional factor. Ex. 13, ORACLE_HQCA_0000056234-39, -40; Ex. 8, ORACLE_HQCA_0000056391-43, -44.
94	Oracle's compensation framework considers an employee's particular knowledge, skills, abilities, performance, experience, and contributions.	Oracle's 10/3/19 Position Statement, pp. 5 and 7.	**Undisputed but based on incompetent evidence.** Oracle's "Position Statement" is not evidence, even though this statement from it is a true statement. *See also* Oracle's Objections to Evidence.
95	Oracle instructs its managers that new employees still learning their role or employees	Ex. 13, slide 17 and slide 17 (notes), ORACLE_HQCA_0000056234-29, -30;	**Undisputed that the documents to which OFCCP cites contain this language, but incomplete and misleading.** A plain read of the documents confirms that they are speaking

	whose contribution are below the required standard should generally be given a salary that is within the first quartile of the salary range.	*See also* Ex. 8, slide 20, ORACLE_HQCA_0000056391-38; Ex. 12, slide 19 and slide 19 notes, ORACLE_HQCA_0000042098-34, -35; Ex. 14, slide 23, ORACLE_HQCA_0000382580-45; Ex. 16, slide 11, ORACLE_HQCA_0000364272-20.	in general, theoretical terms, and are not saying that new employees' pay will *always* be within the first quartile of the salary range, nor that managers are required to follow this general guideline.
96	Employees at the midpoint of the salary range should be experienced, fully competent and solid performing, and those in the 3rd and 4th quartiles of the salary range should include only top performers.	Ex. 12, slide 19 and slide 19 notes, ORACLE_HQCA_0000042098-34, -35; Ex. 13, slide 17 and slide 17 notes, ORACLE_HQCA_0000056234 -29, -30; Ex. 16, slide 11, ORACLE_HQCA_0000364272-20; Ex. 18, "Global Compensation Training Managing Pay Module," copyright 2011, slide 8, ORACLE_HQCA_0000000407-14; Ex. 14, slide 23, ORACLE_HQCA_0000382580-45; Ex. 8, slide 20, ORACLE_HQCA_0000056391-38.	**Undisputed that the documents to which OFCCP cites contain this language, but incomplete and misleading.** As explained above, simply lifting words out of an Oracle training document that on its face is simply explaining concepts and principles in theory and at a high level does not establish that the guidance articulating how things generally "should" work is how things actually do work in practice at Oracle for each and every employee and/or compensation decision made. Indeed, the overwhelming evidence establishes that many factors, including but not limited to an employee's skills, expertise, experience, and performance, also are important in determining where an employee's pay falls within a given salary range. Managers consider, among other things, a) how an employee's

			compensation compares to her peers; b) each employee's relevant knowledge, skills, abilities, and experience; c) external and internal equity considerations; d) performance; and e) the employee's importance to the company. *See*, Ex. 8, ORACLE_HQCA_0000056391-39, -43, -44, -46; Ex. 12, ORACLE_HQCA_0000042098-11, -28, -29, -35, -39, -40, -41, -42, -61, -62, -65, -66; Ex. 13, ORACLE_HQCA_0000056234-27, -30, -39, -40, -43, -44, -69, -70; Ex. 14, ORACLE_HQCA_0000382580-9, -10, -13, -14, -35, -36, -46, -51, -52, -53, -54, -81, -82; Ex. 16, ORACLE_HQCA_0000364272-21, -28, -29; Ex. 18, ORACLE_HQCA_0000000407-08, -09, -10, -11, -32, -33, -40, -41; Ex. 21, ORACLE_HQCA_0000380437-18, -25, -26, -49, -50; Abushaban Decl., ¶ 17; Budalakoti Decl., ¶ 13; Chan Decl., ¶ 10; Eckard Decl., ¶ 12; Fox Decl., ¶ 15; Hsin Decl., ¶ 12; Oden Decl., ¶ 14; Ousterhout Decl., ¶ 17; Suri Decl., ¶¶ 17-20; Talluri Decl., ¶ 16; Yakkundi Decl., ¶ 19; Connell Opp. Decl., Ex. Il Ex. J at DOL000041697 (manager told employee that "amount of raise is tied to profitability of the specific product line" and recognizing that people in "other, more profitable product lines have received larger raises").

			Moreover, OFCCP's assertion that the 3rd and 4th quartiles of the salary range "should include only top performers" is incomplete. To the contrary, the evidence OFCCP cites confirms that the 3rd and 4th quartiles should include, in addition to "top performers," employees whose "contribution is high," who are "ready for promotion," or who "have a hot skill." *See* Ex. 12, ORACLE_HQCA_0000042098-34, -35; Ex. 13, ORACLE_HQCA_0000056234-29, -30; Ex. 16, ORACLE_HQCA_0000364272-20; Ex. 14, ORACLE_HQCA_0000382580-45; Ex. 8, ORACLE_HQCA_0000056391-38. *See also* Oracle's Objections to Evidence.
97	At Oracle, an employee's salary should take into account comparisons with others in the employee's group (peers or internal equity) and the employee's relevant knowledge, skills, abilities, and experience.	Ex. 18, slide 5, ORACLE_HQCA_000000407-8.	**Undisputed.** As noted above, however, simply citing words in a training document is insufficient from an evidentiary standpoint to establish this fact as true in practice at Oracle.
98	The "focal review process" also known as "focal reviews,"	Ex. 9, ORACLE_HQCA_0000380594	**Undisputed, except that the phrase "on-cycle salary increase process" is not supported by the evidence, nor**

	"salary review process," and "on-cycle salary increase process" is a periodic review process at Oracle wherein Oracle management reviews all eligible employees' salaries at one point in time.	Ex. 10, ORACLE_HQCA_0000364301 Ex. 18, slide 17 (notes), ORACLE_HQCA_0000000407-33; Oracle's 10/3/19 Position Statement, p. 6.	**is the characterization that "Oracle management" undertakes this review (as opposed to individual Oracle managers).** OFCCP's mischaracterizations of the documents are (once again) self-serving and imprecise. The documents do not use these characterizations, however, and speak for themselves. OFCCP's mischaracterizations also are not evidence. Oracle's "Position Statement" is not itself evidence. *See also* Oracle's Objections to Evidence.
99	An "off-cycle" salary increase is one that is done outside of Oracle's focal reviews. An off-cycle increase may be necessary, for example, to counter an offer from a competitor (known as a "dive and save").	Ex. 13, slide 35 and slide 35 (notes), ORACLE_HQCA_0000056234-65 to -66;	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The evidence refers to "off-cycle salary increases" but does not define them. Dive and saves are also only one example of a type of off-cycle salary increase. *See also* Oracle's Objections to Evidence.
100	Madhavi Cheruvu, Vice President of Human Resources at Oracle,	Ex. 19, Dep. of Madhavi Cheruvu dated 6/11/19 (Cheruvu Dep.) 267:16–268:8.[8]	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.**

[8] Madhavi Cheruvu is a Vice President of Human Resources. *See supra* Fact 48.

	identified that salary adjustments are done outside of the focal review process when Oracle believes it is at risk of losing an employee.		Ms. Cheruvu is not Vice Present of Human Resources for all of Oracle. Moreover, her testimony was limited to the Product Development line of business that she supports. She also testified that an "off-cycle request for a raise" *may* occur if the group "felt they were at risk of losing somebody." Ex. 19, Cheruvu Dep. 267: 22-268:6. Accordingly, Ms. Cheruvu was giving one example, but was not speaking in absolutes. Nor did she testify about "salary adjustments" at Oracle as a whole. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.

E. Undisputed Facts re the Review of Compensation Decisions and the Role of Budget in Compensation Decisions

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
101	Oracle instructs managers that the on-cycle salary review process (also known as focal review) should be used to close potentially discriminatory salary differences.	Ex. 18, slide 17 (notes), ORACLE_HQCA_0000000407-33;	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** Oracle does not dispute that the document to which OFCCP cites states the following: "You should also use the salary increase process to address issues where differences in salary are not justified on the grounds of knowledge, skills, experience or some other

			measurable, non-discriminatory factor." Ex. 18, ORACLE_HQCA_0000000407-33. But the document plainly does not say what OFCCP claims in this purported fact, as if the document is some time of admission by Oracle that discrimination is taking place. This sort of gamesmanship and the continued misrepresentation of the evidence is disappointing at this late stage, and underscores (yet again) how desperate OFCCP is to save its baseless claims, which plainly are not supported the actual evidence in the record. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
102	During the salary review process, also known as the focal review process, each Oracle Line of Business (LOB) has a focal salary increase budget. The LOB Heads and Executive Management have complete discretion when further allocating budgets and awarding salary increases to	Ex. 8, slide 39, slide 39 (notes), slide 40, and slide 40 (notes), ORACLE_HQCA_0000056391-76, -77, -78, -79; Ex. 9, ORACLE_HQCA_0000380594 Ex. 10, ORACLE_HQCA_0000364301 Ex. 24, slide 6, slide 6 (notes), slide 13, and slide 13 (notes) ORACLE_HQCA_0000381306-9, -10, -23, -24; Ex. 25, slide 4, slide 4 (notes), slide 11, and slide 11 notes,	**Generally undisputed, except with respect to the notion that every LOB always gets a focal budget, and with respect to the suggestion that LOB Heads and Executive management are the decision makers regarding salary increases to all individuals within their organizations.** Once again, OFCCP is playing fast and loose with the evidence, which does not support the manner in which OFCCP mischaracterizes it. The documents speak for themselves, however, and do not

	individuals within their organization.	ORACLE_HQCA_0000056242 -6, -7, -18, -19.	support OFCCP's pending motion. They also fail to create a material dispute that warrants denying Oracle's pending motion, which seems to be OFCCP's misguided yet primary goal by submitting more than 250 facts in its separate statement**.** *See also* Oracle's Objections to Evidence.
103	During focal reviews, managers within an LOB make decision about how to "cascade" budget down through the organization.	Oracle's 10/3/19 Position Statement, p. 6.	**Undisputed but based on incompetent evidence.** Oracle's Position Statement is not "evidence," even though this statement is true. *See also* Oracle's Objections to Evidence.
104	Oracle repeatedly advised managers that they might not be afforded the budget "to perfectly place all [of their] employees" where they should be in their salary range.	Ex. 8, slide 20 (notes), ORACLE_HQCA_0000056391-39, last ¶; Ex. 13, slide 17 (notes), ORACLE_HQCA_0000056234-30, last ¶; Ex. 21, "Managing Compensation," dated April 2016, slide 9 (notes), ORACLE_HQCA_0000380437-18, last ¶. *See also* Ex. 12, slide 19 (notes), ORACLE_HQCA_0000042098-35, last ¶.	**Undisputed that the documents to which OFCCP cites state the following: "As a manager, you may not always have the budget to perfectly place all your employees."** **The phrase "where they should be in their salary range," is not contained nor suggested by the documents, however, and should therefore be disregarded.** Oracle does not dispute that it advises managers that "As a manager, you may not always have the budget to perfectly place all your employees." Ex. 8, ORACLE_HQCA_0000056391 -39; Ex. 13, ORACLE_HQCA_0000056234 -30; Ex. 21, ORACLE_HQCA_0000380437

			-18; Ex. 12, ORACLE_HQCA_0000042098-35. OFCCP insertion of the language "where they should be in their salary range" is not accurate. It also suggests there is place within the salary range that employees "should" fall, which is further unsubstantiated and misleading. Therefore, with respect to this phrase, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
105	Oracle warns managers that, during the focal review process in particular, the business climate and focal budgets play the biggest role in how managers are able to position employees within their salary range.	Ex. 16, slide 11 (notes), ORACLE_HQCA_0000364272-21; Ex. 14, slide 24 (notes), ORACLE_HQCA_0000382580-46.	**Undisputed that the documents to which OFCCP cites contain this language "the business climate and focal budgets play the biggest role in how managers are able to position employees within their salary range," but incomplete and these documents do not support the notion that these statements are necessarily true in practice.** Once again, OFCCP takes snip-its of quotes from documents and cites them as if they establish some overarching truth at Oracle, which they do not. OFCCP could have questioned Oracle's witnesses on these documents if it wanted to confirm the truth of the statements contained in them, but chose not to do so. In any event, evidentiary problems

			aside, this purported "fact" does not support OFCCP's pending motion, and does not create a material dispute that warrants denying Oracle's pending motion. Instead, the overwhelming undisputed evidence confirms that individual managers are the primary decision makers when it comes to compensation decisions for their employees. OFCCP had admitted it is not accusing these managers of bias or discrimination (and has no such evidence in any event). Accordingly, the facts and evidence demonstrate OFCCP cannot sustain its high burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Additionally, the evidence OFCCP cites does not support the context of "during the focal review process in particular" that OFCCP asserts. Moreover, further underscoring that OFCCP is misrepresenting the facts by isolating and decontextualizing specific phrases, the slides on which OFCCP relies state that "Besides the business climate, a number of factors need to be considered when determining where to position an employee within the salary range. These factors include: the employees

			[*sic*] skills, knowledge and experience. Internal equity to others in the organization who have similar skill sets for the same role. Performance. Previous compa-ratio. Tenure in current position – in general, employees who have remained in their current role tend to be paid higher in their salary range." Ex. 16, ORACLE_HQCA_0000364272-21; *see also* Ex. 14, ORACLE_HQCA_0000382580-46 (same). *See also* Oracle's Objections to Evidence.
106	Oracle warns managers that, during focal reviews, they most likely will not be able to address all compensation problem areas in their organization, so they will have to prioritize.	Ex. 14, slide 43, ORACLE_HQCA_0000382580-84; Ex. 22, "Global Compensation Training Compensation Processes," dated 2011, slide 4 (notes), ORACLE_HQCA_0000364274-7.	**Undisputed that the documents to which OFCCP cites contain this language, but immaterial.**
107	Oracle awards bonuses to employees on a discretionary basis through a Global Corporate Bonus that Kate Waggoner's Global Compensation Team provides the instructions and training for	Ex. 8, slide 8 (notes) ORACLE_HQCA_0000056391-16; Ex. 24, ORACLE_HQCA_0000381306 is an example of training for the implementation of Oracle's Global Corporate Bonus; Ex. 25, ORACLE_HQCA_0000056242 is an example of training for the	**Undisputed, but immaterial as to which team provides instructions and training on the bonus program.**

	how to administer.[9]	implementation of Oracle's Global Corporate Bonus.	
108	Each Oracle Line of Business (LOB) receives an annual corporate bonus budget. The LOB Heads and Executive Management have complete discretion when further allocating budgets and awarding bonuses to individuals within their organization.	Ex. 8, slide 39, slide 39 (notes), slide 40, and slide 40 (notes), ORACLE_HQCA_0000056391 -76, -77, -78, -79; Ex. 24, slide 6, slide 6 (notes), slide 13, and slide 13 (notes) ORACLE_HQCA_0000381306 -9, -10, -23, -24; Ex. 25, slide 4, slide 4 (notes), slide 11, and slide 11 notes, ORACLE_HQCA_0000056242 -6, -7, -18, -19.	**Generally undisputed, except with respect to the notion that every LOB always gets a bonus budget, and with respect to the suggestion that LOB Heads and Executive management are the decision makers regarding bonus allocations to all individuals within their organizations.** Once again, OFCCP is playing fast and loose with the evidence, which does not support the manner in which OFCCP mischaracterizes it. The documents speak for themselves, however, and do not support OFCCP's pending motion. They also fail to create a material dispute that warrants denying Oracle's pending motion, which seems to be OFCCP's misguided yet primary goal by submitting more than 250 facts in its separate statement. *See also* Oracle's Objections to Evidence.
109	Oracle warns managers that while rewards should be differentiated by performance, this can be a challenge when managing within a manager's budget.	Ex. 12, slide 23 (notes) ORACLE_HQCA_0000042098-42; Ex. 13, slide 22 (notes), ORACLE_HQCA_0000056234-40; Ex. 8, slide 24 (notes), ORACLE_HQCA_0000056391-46;	**Undisputed that the documents to which OFCCP cites contain this language, but immaterial.**

[9] *See infra* Fact 56 for Kate Waggoner's Global Compensation Team providing the instructions and training for how to administer Oracle's Global Performance Bonus Plan.

		Ex. 18, slide 6, ORACLE_HQCA_0000000407-10; Ex. 21, slide 13 (notes), ORACLE_HQCA_0000380437-26.	
110	Since 2013, Oracle has had lean corporate bonus budgets.	Ex. 27, Dep. of Kate Waggoner under Rule30(b)(6) dated 7/19/19 (Waggoner 30(b)(6) Dep.) 263:12-14.	**Undisputed, but immaterial.** OFCCP did not bother, however, to ask Ms. Waggoner what she meant by "lean."
111	Budgets for salary increases during the focal review processes between 2013 and 2019 have been "fairly lean."	Ex. 27, Waggoner 30(b)(6) Dep. 275:16-276:11.	**Undisputed, but immaterial.** OFCCP did not bother, however, to ask Ms. Waggoner what she meant by "fairly lean."
112	Oracle has Global Approval Matrices that identify the management approvals required for various human resource functions like hiring, assignment, changes in base salary, awarding of bonuses and allocation of equity (aka stock).	Ex. 20, Global Approval Matrix dated June 11, 2012, at ORACLE_HQCA_0000062725-1 to -2; Ex. 20, Global Approval Matrix dated Feb. 1, 2013, ORACLE_HQCA_0000062732-1 to -2; Ex. 20, Global Approval Matrix dated Nov. 1, 2014, ORACLE_HQCA_0000062712-1 to -2; Ex. 20, Global Approval Matrix dated June 1, 2015, ORACLE_HQCA_0000062710-1 to -2; Ex. 20, Global Approval Matrix dated June 1, 2016, ORACLE_HQCA_0000062711-1 to -2;	**Generally undisputed, although the global approval matrices themselves don't support the characterization OFCCP has given them in this fact.** This evidence cited in support of this "fact" does not help OFCCP. Rather, the evidence confirms that for the vast majority of compensation decisions, the senior management approval acts only as a check on whether managers stayed within allotted budgets or to ensure that the decisions are not wholly unreasonable. Waggoner Decl., ¶ 28; Balkenhol Decl., ¶¶ 6-9; Abushaban Decl., ¶ 15; Hsin Decl., ¶ 11; Ousterhout Decl., ¶ 16; Robertson Decl., ¶ 11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13; Yakkundi

		Ex. 20, Global Approval Matrix dated Mar. 30, 2017, ORACLE_HQCA_0000062720-1 and -2.	Decl., ¶ 19; Suri Dec., ¶ 22; Chan Decl., ¶ 13; Desmond Decl., ¶ 13. As Ms. Waggoner explained about the top-level review, "again, that's a cursory, a sanity check. . . . they're not doing anything real." Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 155:25-156:3. Ms. Waggoner also testified that, with respect to base salary increases, "At the very top, . . . they confirm that everybody stayed within the budget they were given." Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 196:5-10. Generally, the senior managers defer to the decisions of the lower-level managers and only rarely are decisions not approved. Waggoner Decl., ¶ 28; Balkenhol Decl., ¶¶ 6-9; Abushaban Decl., ¶ 15; Hsin Decl., ¶ 11; Ousterhout Decl., ¶ 16; Robertson Decl., ¶ 11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13; Yakkundi Decl., ¶ 19; Suri Dec., ¶ 22; Chan Decl., ¶ 13; Desmond Decl., ¶ 13. *See also* Oracle's Objections to Evidence.
113	Oracle's Global Approval Matrices state that approvals for base salary increases, bonuses, and stock or stock options allocations have to be made at the level of "CEO(s)	Ex. 20, Global Approval Matrix dated June 11, 2012, at ORACLE_HQCA_0000062725-1 to -2; Ex. 20, Global Approval Matrix dated Feb. 1, 2013, ORACLE_HQCA_0000062732-1 to -2; Ex. 20, Global Approval Matrix dated Nov. 1, 2014,	**Generally undisputed, although the global approval matrices themselves don't support the characterization OFCCP has given them in this fact.** The evidence cited in support of this "fact" does not help OFCCP. Rather, the evidence confirms that for the vast majority of compensation

	& Executive Chairman and CTO," "Office of the CEO," the Board of Directors, or Thomas Kurian.[10]	ORACLE_HQCA_0000062712-1 to -2; Ex. 20, Global Approval Matrix dated June 1, 2015, ORACLE_HQCA_0000062710-1 to -2; Ex. 20, Global Approval Matrix dated June 1, 2016, ORACLE_HQCA_0000062711-1 to -2; Ex. 20, Global Approval Matrix dated Mar. 30, 2017, ORACLE_HQCA_0000062720-1 and -2.	decisions, the senior management or executive approval acts only to check whether managers stayed within allotted budgets or to ensure that the decisions are not wholly unreasonable. Waggoner Decl., ¶ 28; Balkenhol Decl., ¶¶ 6-9; Abushaban Decl., ¶ 15; Hsin Decl., ¶ 11; Ousterhout Decl., ¶ 16; Robertson Decl., ¶ 11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13; Yakkundi Decl., ¶ 19; Suri Dec., ¶ 22; Chan Decl., ¶ 13; Desmond Decl., ¶ 13. As Ms. Waggoner explained about the top-level review, "again, that's a cursory, a sanity check. . . . they're not doing anything real." Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 155:25-156:3. Ms. Waggoner also testified that, with respect to base salary increases, "At the very top, . . . they confirm that everybody stayed within the budget they were given." Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 196:5-10. Generally, the senior managers or executives defer to the decisions of the lower-level managers and only rarely are decisions not approved. Waggoner Decl., ¶ 28; Hsin Decl., ¶ 12; Talluri Decl., ¶ 16; Eckard Dec., ¶ 13; Yakkundi Decl., ¶ 19; Suri Dec., ¶ 22; Chan Decl., ¶ 13; Desmond Decl., ¶ 13.

[10] Thomas Kurian was the president of Oracle's "Product Development" Line of Business. *See supra* Fact 39.

			See also Oracle's Objections to Evidence.
114	All increases in pay need to be approved all the way to the top of an employee's management chain of command.	Ex. 7, Waggoner May Dep. 106:2–4.	**Generally undisputed, but incomplete and mischaracterizes testimony.** Ms. Waggoner's full testimony is that "an increase, it would work its way up all these other levels and the last, quote-unquote, approver is at the that level, but at that level, they're not really digging into the details. It's more about a sanity check of what's going on." Ex. 7, Waggoner Dep. Tr. 106:2-7. By omitting the second part of Ms. Waggoner's testimony, where she explains that the top-level reviewer is not doing a substantive, meaningful review but rather a "sanity check," OFCCP mischaracterizes Ms. Waggoner's testimony. Accordingly, when read in context and for completeness, this testimony from Ms. Waggoner supports Oracle's pending motion, not OFCCP's. It also fails to create a material dispute that warrants denying Oracle's pending motion. *See also* Oracle's Objections to Evidence.
115	Oracle's instructions for conducting salary reviews (focal reviews) and allocating bonuses and stock grants instruct managers	Ex. 24, "Annual Bonus Program and Workforce Compensation Manager Training," copyright 2018, slides 28–39 and associated notes, ORACLE_HQCA_0000381306-52 to -75;	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** The evidence OFCCP relies on says nothing about decisions being reviewed by "each successive level of management

	on a process by which managers make recommendations that are reviewed by each successive level of management until they are finally approved at the top of the management chain of command or the office of that top executive.	Ex. 25, "Manager Training: Compensation Process for Global Corporate Bonus & Fusion Workforce Compensation," dated June 2014, slides 33–39, ORACLE_HQCA_0000056242-42 to -48; Ex. 26, "New Manager Training: Compensation Processes/Compensation Workbench," dated May 2011, slides 3–4, 13, 34–39, ORACLE_HQCA_0000056957-3, -4, -16, -38 to -45; Ex. 27, Dep. of Kate Waggoner under Rule 30(b)(6) dated 7/19/19 (Waggoner 30b6 Dep.) 118:18-23.	until they are finally approved at the top of the management chain of command or the office of that top executive." The training decks on which OFCCP relies are silent with respect to the chain of approval. Nor does Ms. Waggoner's testimony support this "fact." In the discussion on which OFCCP relies in Exhibit 27, Ms. Waggoner testifies that the compensation decision associated with hiring (rather than focal reviews, as OFCCP suggests) will go up to the CEO office but, "it's really that sanity check of making sure – we've had situations, for example, where the CEO office realizes that they missed a comma, and then the salary they offered was, like, $2,000 instead of 200,000." Ex. 27, Waggoner 30(b)(6) Dep. Tr. 118:19-23. Earlier in the same discussion, Ms. Waggoner explains that once a compensation decision "goes through, like, HR and comp and then maybe one level of manager, it's really – it goes to the – the sanity check piece: Like, does this pass the sniff test? They're not doing any real deep diving into anything. It really is what the first-line manager has submitted…just continues up the road." *Id*., 118:4-11. Moreover, with respect to base salary increases, Ms. Waggoner that, "At the very top, . . . they confirm that everybody stayed within the budget they were

			given." Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 196:5-10. Because, as Ms. Waggoner testifies, the top-level approver is not doing a meaningful, substantive review of the compensation decisions, their sign off on decisions does not support the inference of centralized decision making that OFCCP appears to suggest. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
116	Oracle's compensation instructions for hiring and for off-cycle salary increases (e.g., "dive and saves" to counter an offer from a competitor)[11] likewise require managers to make pay recommendations that require the approvals all the way up to the Executive Level or their offices.	Ex. 28, "Recruit & Hire at Oracle: Module 6: How to Create an Offer in iRecruitment," dated 2017, slide 11 (notes), ORACLE_HQCA_0000057179-22; Ex. 13, slide 35 and slide 35 (notes) ORACLE_HQCA_0000056234-65 to -66.	**This fact is not supported by the evidence to which OFCCP cites, and should be disregarded.** The evidence OFCCP cites is silent with respect to any approval process for "off-cycle salary increases." Exhibit 13 discusses off-cycle salary increases, but says nothing about approvals. Exhibit 28 is a training document dedicated to making recruitment offers. It is silent with respect to off-cycle salary increases. OFCCP's "fact" therefore is not supported by evidence to the extent it discusses off-cycle salary increases.

[11] An "off-cycle" salary increase is one that is done outside of Oracle's periodic focal reviews. *See supra* Fact 99.

			With respect to hiring decisions, Exhibit 13 states that "all offers get approved by the Oracle executive office." It says nothing about "approvals all the way up" and it says nothing about the degree of review. As Ms. Waggoner explained about the top-level review, "again, that's a cursory, a sanity check. . . . they're not doing anything real." Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 155:25-156:3. In other words, the top-level approvers are, for the vast majority of compensation decisions, acting only to check whether managers stayed within allotted budgets or to ensure that the decisions are not wholly unreasonable; generally, the senior managers or executives defer to the decisions of the lower-level managers and only rarely are decisions not approved. Waggoner Decl., ¶ 28; Balkenhol Decl., ¶¶ 6-9; Abushaban Decl., ¶ 15; Hsin Decl., ¶ 11; Ousterhout Decl., ¶ 16; Robertson Decl., ¶ 11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13; Yakkundi Decl., ¶ 19; Suri Dec., ¶ 22; Chan Decl., ¶ 13; Desmond Decl., ¶ 13. Also, the suggestion that "dive and saves" are the only or primary form of off-cycle salary increases is not supported by the evidence, and such a suggestion by OFCCP should be disregarded.

			Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
117	The approvals for base salary increases goes all the way up through the CEO's office.	Ex. 27, Waggoner 30(b)(6) Dep. 155:7-25.	**Generally undisputed, but incomplete and mischaracterizes testimony.** The testimony on which OFCCP relies is incomplete. Ms. Waggoner testified that "base salary increase goes all the way up through the CEO office…" Ex. 27, Waggoner 30(b)(6) Dep. Tr. 155:23-25. What OFCCP omits is the language immediately following, where Ms. Waggoner states that "again, that's a cursory, a sanity check. . . . they're not doing anything real." Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 155:25-156:3. As Ms. Waggoner testified, "senior managers generally defer to and rarely change the decisions of the lower-level managers." Waggoner Decl., ¶ 28. Ms. Waggoner also testified that, with respect to base salary increases, "At the very top, . . . they confirm that everyone stayed within the budget they were given." Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 196:5-10. The top-level approvers are, for the vast majority of compensation decisions, acting only to check whether managers stayed within allotted budgets or to ensure that the decisions are not wholly

			unreasonable. Waggoner Decl., ¶ 28; Balkenhol Decl., ¶¶ 6-9; Abushaban Decl., ¶ 15; Hsin Decl., ¶ 11; Ousterhout Decl., ¶ 16; Robertson Decl., ¶ 11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13; Yakkundi Decl., ¶ 19; Suri Dec., ¶ 22; Chan Decl., ¶ 13; Desmond Decl., ¶ 13. *See also* Oracle's Objections to Evidence.
118	High-ranking executives like Larry Ellison and Thomas Kurian give their required approvals in a chain of approvals when Oracle hires new employees.[12]	Ex. 29, iRecruitment Candidate Details for Applicant Number 452780, dated 2/17/14, at ORACLE_HQCA_0000001729	**This fact is not supported by the evidence to which it cites, and should be disregarded.** The evidence OFCCP cites does not support this "fact." First, Exhibit 29 is a recruitment summary for one candidate. This one candidate's hiring process says nothing about other candidates or Oracle's general practices. Therefore, OFCCP cannot rely on this evidence to support its assertion about Oracle's practices "when Oracle hires new employees." Nor does the substance of this exhibit support the assertion. Within this summary is an "Approval History," which includes both Larry Ellison and Thomas Kurian. However, nowhere in this summary is there any indication that Thomas Kurian, Larry Ellison or any other approver is "required." Therefore, the

[12] Larry Ellison is the Executive Chairman and CTO (Chief Technology Officer) of Oracle, and Thomas Kurian was the president of Oracle's "Product Development" Line of Business. *See supra* Facts 37 and 39.

			evidence does not support this "fact." Additionally, even if OFCCP offered evidence to support this "fact," as explained to OFCCP repeatedly, top-level approvers are only performing the "sanity check piece: Like, does this pass the sniff test? They're not doing any real deep diving into anything. It really is what the first-line manager has submitted…just continues up the road." Ex. 27, Waggoner 30(b)(6) Dep. Tr., 118:4-11. In other words, the top-level approvers are, for the vast majority of compensation decisions, acting only to check whether managers stayed within allotted budgets or to ensure that the decisions are not wholly unreasonable; generally, the senior managers or executives defer to the decisions of the lower-level managers and only rarely are decisions not approved. Waggoner Decl., ¶ 28; Balkenhol Decl., ¶¶ 6-9; Abushaban Decl., ¶ 15; Hsin Decl., ¶ 11; Ousterhout Decl., ¶ 16; Robertson Decl., ¶ 11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13; Yakkundi Decl., ¶ 19; Suri Dec., ¶ 22; Chan Decl., ¶ 13; Desmond Decl., ¶ 13. Moreover, as Ms. Balkenhol explains in her declaration (and as common sense confirms), Larry Ellison is not personally reviewing and approving the starting pay decisions of all employees Oracle hires.

			Balkenhol Decl., ¶¶ 4-5; Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 161:10-162:13. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
119	President Thomas Kurian gave his required approval to off-cycle dive and save requests.	Ex. 30, Dive-and-Save E-mails between Oracle Managers, July 2014, ORACLE_HQCA_0000432004	**This fact is not supported by the evidence to which it cites, and should be disregarded.** The evidence OFCCP cites does not support this "fact." First, Exhibit 30 is an email chain about one employee's competing offer. The emails about this one candidate's compensation say nothing about other candidates or Oracle's general practices. Therefore, OFCCP cannot rely on this evidence to support its assertion about Oracle's practices with respect to "dive and save requests." Nor does the substance of this exhibit support the assertion. Nowhere does this exhibit indicate that Thomas Kurian's approval is "required." Therefore, this exhibit cannot support OFCCP's "fact." Additionally, even if OFCCP offered evidence to support this "fact," as explained to OFCCP repeatedly, the kind of review of compensation decisions that is conducted by top-level reviewers is the "sanity check

			piece: Like, does this pass the sniff test? They're not doing any real deep diving into anything. It really is what the first-line manager has submitted…just continues up the road." Ex. 27, Waggoner 30(b)(6) Dep. Tr., 118:4-11. In other words, the top-level reviewers are, for the vast majority of compensation decisions, acting only as a check to review whether managers stayed within allotted budgets or to ensure that the decisions are not wholly unreasonable; generally, the senior managers or executives defer to the decisions of the lower-level managers and only rarely are decisions not approved. Waggoner Decl., ¶ 28; Balkenhol Decl., ¶¶ 6-9; Abushaban Decl., ¶ 15; Hsin Decl., ¶ 11; Ousterhout Decl., ¶ 16; Robertson Decl., ¶ 11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13; Yakkundi Decl., ¶ 19; Suri Dec., ¶ 22; Chan Decl., ¶ 13; Desmond Decl., ¶ 13. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
120	In a 2014 compensation training, managers were instructed: "**Do not communicate** any changes [in	Ex. 25, slide 39, ORACLE_HQCA_0000056242-48 (emphasis in original).	**Undisputed but immaterial.** This "fact" is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern

	compensation] until the 'Last Approval Action' shows 'Larry Ellison.'"		or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. The quote referenced in this "fact" is discussing the approval process for annual compensation programs. As Ms. Waggoner has explained in deposition, individual managers determine how to allocate their budgets among their individual employees, with assistance from HR and Oracle's compensation team as needed. Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 195:16-196:18, 197:9-11. Allocations (referred to in the document as "recommendations") are not final, however, until all managers have entered their allocations and the final approver can confirm that everyone stayed within their allocated budgets. *Id.*, 195:16-196:18. Accordingly, the top level review is only for budgetary purposes. *Id.* If, for example, as an organization, managers allocated more than the budget allowed, changes would need to be made before everything can be deemed final. *Id.* 196:5-18; Waggoner Decl., ¶ 28, 30.
121	In a 2011 compensation training, managers were instructed: "**You**	Ex. 26, slide 49, ORACLE_HQCA_0000056957-55 (emphasis in original).	**Undisputed but immaterial.** This "fact" is not material to the legal issues the Court must decide in this motion, including

	should not communicate any changes until we obtain final approval from LJE."		primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. The quote referenced in this "fact" is discussing the approval process for Oracle's focal compensation program. As Ms. Waggoner has explained in deposition, individual managers determine how to allocate their budgets among their individual employees, with assistance from HR and Oracle's compensation team as needed. Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.). 195:16-196:18, 197:9-11. Allocations (referred to in the document as "recommendations") are not final, however, until all managers have entered their allocations and the final approver can confirm that everyone stayed within their allocated budgets. *Id*. 195:16-196:18. Accordingly, the top level review is only for budgetary purposes. *Id.* If, for example, as an organization managers allocated more than the budget allowed, changes would need to be made before everything can be deemed final. *Id.* 196:5-18; Waggoner Decl., ¶ 28, 30.

122	LJE stands for Larry J. Ellison.[13]	Ex. 7, Waggoner May Dep. 106:25–107:4.	**This fact is not supported by the evidence to which it cites, and should be disregarded.** The deposition testimony on which OFCCP relies is a question and answer about the global approval matrix. It does not mention Larry Ellison. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
123	Subsequent to these 2011 and 2014 trainings, Oracle expanded this approval beyond Larry Ellison to include Safra Catz.[14]	Ex. 6, Carrelli Dep. 212:9–213:1, 214:12–14.	**This fact is not supported by the evidence to which it cites, and should be disregarded.** The evidence OFCCP relies on does not support this "fact." In her testimony, Ms. Carrelli testified only that "Safra's the top-level approval for the groups that I handle" and that "technically" Safra Catz is the "final approval" for Ms. Carrelli's organization (which notably is not the subject of this litigation). Ex. 6, Carrelli Dep. Tr. 212: 25-213:1; 214: 12-14; 21:12-13. Ms. Carrelli says nothing about Oracle "expanding" the reviewers, nor about the date or time frame as of which Ms. Catz was the top-level approver for her organization. Therefore there is no evidence to support

[13] Larry Ellison is the Executive Chairman and CTO (Chief Technology Officer) of Oracle. *See Supra* Fact 37.

[14] Safra Catz and Mark Hurd were Co-CEOs of Oracle during the litigation period. *See Supra* Fact 38.

			OFCCP's assertion that "Oracle expanded this approval" "subsequent to these 2011 and 2014 trainings." Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
124	Oracle's managers cannot communicate any pay changes earlier because changes can happen during the approval process.	Ex. 24, slide 39 (notes), ORACLE_HQCA_0000381306-76.	**This fact is not supported by the evidence to which it cites, and should be disregarded.** Once again, simply citing words in a document does not establish they are true generally in practice throughout Oracle. Moreover, the evidence on which OFCCP relies for this "fact" states simply: "Please remember: do not communicate any recommendations until you receive notification from Corporate Compensation through your manager or HR manager." Ex. 24, ORACLE_HQCA_0000381306-76. And, later on the same page, "Adjustments can sometimes happen during the approval process." *Id.* As explained above, however, the reason managers are instructed not to communicate changes to compensation before the entire compensation program is complete is because the top-level approver needs to ensure that as a whole, managers did not exceed the budget for the program in

			making their allocations. Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 195:16-196:18. If that happens, changes would need to be made to ensure the top-line figure is within budget. *Id*., 195:5-18; Waggoner Decl., ¶ 28, 30. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
125	Part of Oracle's senior management review of compensation recommendations during the salary review process is "to confirm that everything was within budget."	Ex. 7, Waggoner May Dep. 108:23–109:24.	**Undisputed that senior management checks "to confirm that everything was within budget," but the evidence does not support the notion that senior management is "reviewing" compensation recommendations.** OFCCP's "fact" is not supported by the evidence to the extent it asserts that Oracle senior management is conducting any "review" of compensation recommendations. In the evidence on which OFCCP relies, Ms. Waggoner makes clear that "It isn't a review or deep dive into what's been recommended, it is just we have stayed within budget…" Ex. 7, Waggoner Dep. Tr. 109:21-23. Therefore, to the extent OFCCP asserts that the senior management is conducting a "review," this

			assertion is unsupported by the evidence. *See also* Oracle's Objections to Evidence.
126	During focal reviews, managers are not required to rank employees they supervise when making pay increase proposals.	Ex. 7, Waggoner May Dep. 125:6–11, 125:22–126:2.	**Undisputed but immaterial.** That Oracle does not dictate how individual managers allocate the pay increase budgets simply confirms Oracle's position that its compensation system is decentralized, and individual compensation decisions are made by front-line managers. Managers are given guidelines and instructed to, among other things, a) consider how an employee's compensation compares to her peers; b) account for each employee's relevant knowledge, skills, abilities, and experience; c) balance external and internal equity considerations; d) differentiate rewards by performance; and e) consider the employee's importance to the company. Ex. 8, ORACLE_HQCA_0000056391 -39, -43, -44, -46; Ex. 12, ORACLE_HQCA_0000042098 -11, -28, -29, -35, -39, -40, -41, -42, -61, -62, -65, -66; Ex. 13, ORACLE_HQCA_0000056234 -27, -30, -39, -40, -43, -44, -69, -70; Ex. 14, ORACLE_HQCA_0000382580 -9, -10, -13, -14, -35, -36, -46, -51, -52, -53, -54, -81, -82; Ex. 16, ORACLE_HQCA_0000364272 -21, -28, -29; Ex. 18, ORACLE_HQCA_0000000407

			-08, -09, -10, -11, -32, -33, -40, -41; Ex. 21, ORACLE_HQCA_0000380437 -18, -25, -26, -49, -50; Connell Opp. Decl., Ex. I; Ex. J at DOL000041697 (manager told employee that "amount of raise is tied to profitability of the specific product line" and recognizing that people in "other, more profitable product lines have received larger raises"). Oracle does not prescribe a rigid set of rules or formulas and instead recognizes that individual managers are in the best position the individualized assessments about employees' skills, responsibilities, duties, performance, etc. that underlie compensation decisions. Because Oracle does not prescribe a rigid formula for compensation, what managers are *not* required to do is immaterial.
127	Because of budget pressures, only [redacted] of the employees may get a raise in a year.	Ex. 27, Waggoner 30b6 Dep. 247:4–13, 308:8–24.	**This fact is not supported by the evidence to which it cites, and should be disregarded.** OFCCP's "fact" mischaracterizes Ms. Waggoner's testimony and is incomplete. First, Ms. Waggoner's testimony was about raises pursuant to focal reviews, not raises generally. Therefore, OFCCP broader assertion about the percentage of employees that may "get a raise in a year" is unsupported by the evidence. Additionally, OFCCP's "fact" omits half of Ms. Waggoner's testimony and

			is therefore incomplete. Ms. Waggoner testified that the percentage of the Oracle employee population that gets a raise through focal reviews ranges significantly from year to year and "it might be [redacted] percent of our population; other years, it might get up to [redacted] percent of the population. It can vary quite drastically." Ex. 27, Waggoner Dep. Tr. 247:9-13; 308:22-23 ("[redacted] to [redacted] over the course of how many years."). Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if this "fact" were supported by the evidence, it is immaterial. The percentage of employees who receive an increase says nothing about whether those increases are distributed in a discriminatory manner and therefore is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.

128	The budget that Oracle makes available for giving base salary increases is not sufficient to keep its employees' salaries at the market rate.	Ex. 27, Waggoner 30b6 Dep. 328:5–16.	**This fact is not supported by the evidence to which it cites, and should be disregarded.** OFCCP mischaracterizes Ms. Waggoner's testimony. Ms. Waggoner was asked specifically about the effect on compensation of "lean years," which Ms. Waggoner explained is "little to no focal budget." Ex. 27, Waggoner Dep. Tr. 328:5-12. Ms. Waggoner testimony is therefore only about "lean years" and not, as OFCCP's "fact" asserts "the budget the Oracle makes available for giving base salary increases." OFCCP twists Ms. Waggoner's testimony to imply that she was talking about all years, which is plainly not supported by the evidence. Moreover, OFCCP twists the meaning of Ms. Waggoner's words. Ms. Waggoner testified that, when there is a smaller or no focal budget, naturally Oracle is not keeping up with "the way the market has grown." *Id*. 328:14-16. However, she does not say that the "way the market has grown" translates to pay that is below "market rate" for any individual employee, nor does OFCCP define "market rate." Rather, her statement is about a more general reflection on the growth in the market, rather than a particular number or metric that is meaningful with respect to the pay of individual employees.

			Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if this "fact" were supported by the evidence, it is immaterial. OFCCP's allegation is not that Oracle pays employees as a whole more or less than the market rate. Therefore, comparison to market rates is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
129	Approximately 40-50% of employees in Juan Loaiza's database organization are paid below the market rate because not enough money is provided for them in the budget.[15]	Ex. 31, Loaiza Dep. 283:6–284:22, 305:7–306:3.	**This fact is not supported by the evidence to which it cites, and should be disregarded.** This "fact" is not supported by the evidence because OFCCP mischaracterizes Mr. Loaiza's testimony. Mr. Loaiza testified that, if "we had all the budget in the world, we would pay everyone at least what we consider the market rate is" and that budget is a "limiting factor" in paying market rate. Ex. 31,

[15] Juan Loaiza is an Executive Vice President at Oracle of mission critical databases and worked for Thomas Kurian in the Product Development LOB. *See supra* Fact 40.

			Loaiza Dep. Tr. 283:23-284:22. However, Mr. Loaiza's approximate "ball park figure" of how many people in his organization he was "waiting to make a correction to move them to the market rate" was only an approximation "*at this point in time as you just did the focal review*." *Id*. 305:7-306:3. OFCCP's assertion with no limitation on date or time is therefore unsupported by the evidence. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if this "fact" were supported by the evidence, it is immaterial. OFCCP's allegation is not that Oracle generally pays employees more or less than the market rate. Therefore, comparison to market rates is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.

130	Oracle identified in or around 2011 that there may be some potential for equal pay claims if it has to pay a salary higher than average to attract an external recruit who will be then earning more than longer tenured employees on the same team.	Ex. 18, slide 9 and slide 9 (notes), ORACLE_HQCA_0000000407-16 to -17.	**This fact is not supported by the evidence to which it cites, and should be disregarded.** OFCCP mischaracterizes the evidence on which it relies for this "fact." The slide in question is part of a training program for managers and covers a tricky compensation scenario with competing considerations. In the scenario discussed, the training imagines that a [redacted] premium is required to "lure a candidate away from his current job," which may lead to that candidate being paid more than the "peer average just to get the candidate to join Oracle." Ex. 18, ORACLE_HQCA_0000000407-17. In such a situation, the training warns that the remaining team members may be "disgruntled because the new hire has a higher salary." *Id.* Therefore, this slide warns of some of the consequences of having disgruntled employees: "equal pay claims, employee relations issues and attrition among the peers." *Id*. This slide, which is part of a training deck, is not making a legal assessment of any kind. Rather, it identifies some of the actions a "disgruntled" employee make take. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if this "fact" were supported by the evidence, it is

			immaterial. OFCCP's allegation is that Oracle paid certain women, Asians, or African-Americans less than similarly situated men or white employees because of their sex or race. Its allegation is not that Oracle new hires more or less than existing employees. Therefore, comparison to market rates is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
131	Oracle told an employee who asked about possible pay discrimination that there were several business factors contributing to the level of this employee's salary, including budgetary constraints that impacted the ability to give annual adjustments to make larger	Ex. 32, "Memorandum: Investigation Results," dated 12/7/17, ORACLE_HQCA_0000416837	**Undisputed but immaterial.** This fact is immaterial. What Oracle told one individual about her individual compensation is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA.

	adjustments to the employee's salary during focal processes.		Moreover, in the letter to which OFCCP cites, Oracle explained that it had taken into account the individual's particular situation and that this employee's compensation was in part based on "job changes over the course of your tenure at the company." Ex. 32, ORACLE_HQCA_0000416837. This kind of individualized assessment of the individual's circumstances is an appropriate part of determining whether there are non-discriminatory factors that explain why she is paid at the level she was. In other words, Oracle took into account the individual's particular situation when assessing whether there was a problem with her pay and determined that there was "no evidence that [the employee's] gender (or any in appropriated factors) played a role in decisions regarding your salary or the level of your salary, generally." *Id.* *See also* Oracle's Objections to Evidence.
132	Kate Waggoner, Oracle's Senior Director of Global Compensation, testified at a deposition that a "[redacted] percent [raise] for a focal [process raise for	Ex. 27, Waggoner 30b6 Dep. 307:13–308:7.	**Undisputed, but immaterial.** This is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job

	an employee] is huge."[16]		function, and against women in its IT and Support job functions, at HQCA. The amount by which any individual employees' compensation increases during a focal review is immaterial to whether Oracle has engaged in systemic compensation discrimination against the groups of employees at issue.
133	In or around May 2014, Oracle justified a [redacted]% off-cycle "dive and save" increase of $[redacted] to prevent someone from going to a competitor when their salary was [redacted] dollar amount of the salary range and her direct reports were earning [redacted] to [redacted] more than she was.	Ex. 33, "Request for Dive-and-Save Salary Adjustment," dated 5/7/14, ORACLE_HQCA_0000437696–701.	**Undisputed but immaterial**. This fact is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. If anything, this fact supports Oracle's position that non-discriminatory factors – such as increasing pay to prevent an employee (a female) from leaving for a competitor – explain why employees are paid the amounts they are. Additionally, the text of the salary adjustment request on which OFCCP relies for this assertion confirms that the employee's role was changing and growing. Part of the justification for the request was

[16] Kate Waggoner is the Senior Director of Global Compensation at Oracle. *See Supra* Fact 46.

			that the employee would "lead [the] charge" to "expand and grow the team quickly." Ex. 33, ORACLE_HQCA_0000437696. Similarly, she was poised to "take on projects" and "scale her operations." *Id.*, ORACLE_HQCA_0000437697. Accordingly, other non-discriminatory factors offered additional justifications for giving this individual a pay increase.
134	In or around 2015, Oracle justified a [redacted]% off-cycle base salary increase of $[redacted] for a Vice President who was $[redacted] below the minimum dollar amount of the salary range because this vice president did not receive a salary increase when promoted and his managers were unable to rectify this problem over four years of focal reviews. His manager stated that he had tried to pull the employee's salary [redacted] the band, but that this is difficult to do with such significant salary compression. He	Ex. 34, Out of Cycle Salary Adjustment Proposal, dated 6/15/15, ORACLE_HQCA_0000434971 –72.	**Undisputed, but immaterial.** This is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. In the salary adjustment proposal on which OFCCP relies for this fact, the manager compares two VPs reporting to him, [redacted]. Ex. 34, ORACLE_HQCA_0000434971. The manager explains why [redacted] merits the raise over [redacted] "[redacted] team, more than [redacted] has fewer people and broader scope." *Id.* This is exactly the kind of individualized assessment of whether two people with the same title are "similarly situated" and whether non-

	said that he faced a "rob Peter to reward Paul for a promotion" situation and noted that he has additional employees who also face significant salary compression.		discriminatory factors explain differences in pay (here, between two men). In this context, it appears that the individual manager performed an objective analysis of two employees' relative contributions and performance and sought to compensate the higher performer. Additionally, the level of budget available to any manager during focal reviews is not material to OFCCP's case. OFCCP's allegation is that Oracle paid women, Asians, or African-Americans less than similarly situated men or white employees. That any individual manager was faced with a difficult decision of allocating less budget than he or she would like to have is immaterial to whether that budget was allocated in a discriminatory or non-discriminatory manner.
135	Salary Compression at Oracle means that an employee is underpaid relative to the market.	Ex. 31, Loaiza Dep. 283:6–17.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** OFCCP mischaracterizes Mr. Loaiza's testimony. Mr. Loaiza, who was not authorized to speak on behalf of Oracle nor was deposed in any representative capacity, merely testified about his "understanding" of the term salary compression. His response is not attributable to all of Oracle. Therefore, OFCCP has failed to meet its burden of supporting its

			factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the evidence supported this "fact," it is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Whether individuals were paid more or less than the market rate is immaterial to whether they were paid more or less than other similarly situated employees based on their race or gender. *See also* Oracle's Objections to Evidence.
136	In or around July 2014, Oracle justified a [redacted]% off-cycle "dive and save" increase of $[redacted] to prevent an employee from going to a competitor who was in the [redacted] quartile of the salary range even though he received outstanding performance evaluations at	Ex. 30, ORACLE_HQCA_0000432004–06.	**Undisputed, but immaterial.** This "fact" is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. In the email chain on which OFCCP relies for this fact, the

	Oracle for the last five years. As justification, the requesting e-mail stated that, in summary, the employee had been on their radar for correction for the past few years; the employee had been very dedicated, professional and real team player and has been patiently waiting for a meaningful correction to get him close to the market rate.		manager explains that the employee in question is a strong performer. The manager says *nothing* about other members of his team and how the manager made decisions about how to allocate budget or compensate other people. One individual's experience in isolation and without comparison to the experience of similarly situated individuals is immaterial to OFCCP's claim that Oracle paid women, Asians, or African-Americans less than similarly situated men or white employees. If anything, this "fact" supports Oracle's position that to the extent employees at Oracle believe they are underpaid, it is not because of race or gender. Neither this fact nor the underlying email contain any evidence of bias. This situation also confirms that as with the "facts" immediately above, there are non-discriminatory factors that explain why Oracle employees are paid the amounts they are.
137	In some years, Oracle does not conduct any focal reviews and thus does not give any focal based salary increases. For example, Oracle conducted a focal review in late 2017 and again in 2019, but not in 2018 such that	Ex. 27, Waggoner 30b6 Dep. 248:7–17, 192:19–193:1.	**Undisputed, but immaterial.** When Oracle does or does not do a focal review is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job

	base salary increases for 2017 and 2019 occurred on January 1, 2018, and June 1, 2019, respectively.		function, and against women in its IT and Support job functions, at HQCA.
138	Oracle did not conduct a focal review in 2013.	Ex. 34, ORACLE_HQCA_0000434971	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** *In any event, it is immaterial.* Exhibit 34, which is a "Out of Cycle Salary Adjustment Proposal" states that a specific employee received salary increases [redacted] Ex. 34, ORACLE_HQCA_0000434971. This says nothing about whether Oracle conducted a focal review in 2013. When Oracle conducts a focal review, LOB heads receive a budget for salary increases, which they can allocate in their discretion to lower-level managers within their organizations. Waggoner Decl., ¶ 28; Connell MSJ Decl., Ex. C (7/19/2019 Waggoner PMK Dep.) at 252:15-253:19; Oden Decl., ¶ 13; Ousterhout Decl., ¶ 17. Lower-level managers within an LOB make further decisions about if and how to "cascade" budget down through the organization. Waggoner Decl., ¶ 29. In other words, some managers during a focal review will not receive any budget for salary increases. Therefore, the manager's statement in Exhibit 34 that

			was a year means nothing more than that specific manager was not given a budget for raises or bonuses. It means nothing about whether Oracle as a whole conducted a focal review. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the "fact" were supported by the evidence, whether Oracle did a focal review in 2013 is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
139	The majority of salary increases at Oracle occur during focal reviews. Off-cycle salary increases are not common.	Oracle's 10/3/19 Position Statement, p. 6; Ex. 14, slide 38, ORACLE_HQCA_0000382580-74 Ex. 13, slide 35 (notes), ORACLE_HQCA_0000056234-66;	**Undisputed, but immaterial.** The timing of salary increases at Oracle is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or

		Ex. 18, slide 18 (notes), ORACLE_HQCA_0000000407-35; Ex. 21, slide 23 (notes), ORACLE_HQCA_0000380437-46.	African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA.
140	Oracle does not make any cost of living adjustments that are separate from focal raises and off-cycle, non-focal, raises that it makes for some promotions, "dive and saves," and variable pay changes when a person moves to and from a sales organization.	Ex. 13, slide 35 (notes), ORACLE_HQCA_0000056234-66; Ex. 18, at slide 18 (notes), ORACLE_HQCA_0000000407-35. Ex. 21, slide 23 (notes), ORACLE_HQCA_0000380437-46.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** The evidence on which OFCCP relies for this "fact" does not support it. None of the evidence relied on discusses in any capacity "cost of living adjustments." The evidence identifies possible reasons for an off-cycle raise, including "a promotion with a significant increase in responsibility, to counter an offer from a competitor, or to fill a gap that may be left if an employee job change involves a change in variable earnings." Ex. 18, ORACLE_HQCA_0000000407-35, *see also* Ex. 13, ORACLE_HQCA_0000056234-66; and Ex. Ex. 21, ORACLE_HQCA_0000380437-46. Not one of these slides states or even implies that the enumerated examples of reasons for an off-cycle increase is a finite list or that there cannot be other reasons for an off-cycle increase. Additionally, not one of these slides even mentions "focal raises" and therefore the evidence does not support this "fact" to the extent it discusses focal raises.

			Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the evidence did support this "fact," it is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Whether Oracle gives raises for cost of living adjustments says nothing about whether Oracle engages in systemic compensation discrimination on the basis of race or sex. *See also* Oracle's Objections to Evidence.
141	During focal reviews, Oracle does not spread salary increases to all employees.	Ex. 27, Waggoner 30b6 Dep. 246:6-14.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** The evidence on which OFCCP relies does not support this "fact." Here, Ms. Waggoner testified that not everyone gets the "same or similar raise" and that managers "have to prioritize." Ex. 27, Waggoner 30(b)(6) Dep. Tr. 246:6-14. She says nothing about Oracle not spreading salary increases to all employees.

			Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the evidence supported this "fact," it is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Whether an individual employee got a raise one year says nothing about whether his or her compensation was discriminatory, nor about how other "similarly situated" employees are compensated. *See also* Oracle's Objections to Evidence.

F. Undisputed Facts Regarding Performance Evaluations at Oracle.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
142	Oracle managers are not required to perform formal performance evaluations.	Ex. 37, Dep. of Joyce Westerdahl dated 5/30/19 (Westerdahl Dep.) 155:14–18, 158:9–15; Ex. 27, Waggoner 30b6 Dep. 226:16-21, 228:6–9;	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Ms. Westerdahl and Ms. Waggoner testified that leaders of lines of business, or even sub-organizations within a line of business, determine whether

			performance evaluations are required. *See* Ex. 37, Westerdahl Dep. 155:12-18, 158:9–15; Ex. 27, Waggoner 30b6 Dep. 228:10-19. Accordingly, whether a manager is required to complete formal performance evaluations is subject to the discretion of that manager's reporting chain. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the evidence supported this "fact," it is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
143	Some organizations at Oracle do performance reviews and some don't.	Ex. 27, Waggoner 30b6 Dep. 226:16–21.	**Undisputed but immaterial.** This fact is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job

			function, and against women in its IT and Support job functions, at HQCA. If anything, this "fact" supports Oracle's position that employees in different organizations are subject to different practices that may impact their pay, underscoring why OFCCP's "one-size-fits-nobody" approach to analyzing pay are Oracle makes no sense.
144	In the Product Development organization that Juan Loaiza was in, entire organizations did not do formal performance evaluations.	Ex. 31, Loaiza Dep. 114:19–115:3, 17:17–20.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** The evidence cited by OFCCP provides no factual support for "entire organizations" within Product Development not conducting performance evaluations. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the evidence supported this "fact," it is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA.

			If anything, this "fact" supports Oracle's position that employees in different organizations are subject to different practices that may impact their pay, underscoring why OFCCP's "one-size-fits-nobody" approach to analyzing pay are Oracle makes no sense. *See also* Oracle's Objections to Evidence.
145	Madhavi Cheruvu, a human resources Vice President,[17] could not remember in June 2019 when she last did an employee performance evaluations, but knows that she did not do any in the last two years.	Ex. 19, Cheruvu Dep. 235:5–14.	**Undisputed but immaterial**. The frequency with which Ms. Cheruvu completes performance evaluations for her HR subordinates is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA.
146	Oracle has no goals about the number of performance evaluations that have to be given and no goals about whether the performance evaluations have to be written.	Ex. 37, Westerdahl Dep. 105:12–17.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** The evidence cited by OFCCP provides no factual support for the assertion that Oracle has no goals related to performance evaluations. The cited Westerdahl testimony only confirms that any such goals depend on the Line of Business.

[17] Madhavi Cheruvu is a human resources Vice President. *See supra* Fact 48.

			Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Further, Exhibit 38 shows that 78% of the company is using the performance appraisal process and that substantial resources have been dedicated to increasing training and support for the performance appraisal process. *See, generally*, Ex. 38 (notes) at ORACLE_HQCA_0000380158-3, -28, -34. Even if the evidence supported this "fact," it is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.

147	For fiscal year 2015, Larry Ellison's organization, that included the Product Development LOB[18], only completed performance reviews for 35% of its 35,455 employees.	Ex. 38, "Performance Appraisals FY15," dated September 2015, slide 3, ORACLE_HQCA_0000380158-5.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** OFCCP mischaracterizes Exhibit 38, which shows metrics as of the date of the presentation, not total metrics for the year. Exhibit 38 further shows that 64% of Ellison's Line of Business had started reviews as of the date of the presentation. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if the evidence supported this "fact," it is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
148	Oracle's performance review system is separate from its compensation programs.	Ex. 7, Waggoner May Dep. 118:17–24.	**Undisputed but immaterial**. Whether Oracle's performance review system is separate from its compensation programs is not material to the legal issues

[18] Larry Ellison's organization included the Product Development Line of Business. *See supra* Facts 40, 41.

			the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
149	Oracle managers are not required to take an employee's performance into account during focal reviews.	Ex. 7, Waggoner May Dep. 120:2–22.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** In the cited evidence, Ms. Waggoner testified that it is an element of the focal review for some lines of business, but not for others, and that it could even be different within a line of business. Further, she later clarified "It's part of our – it's part of our recommendations and our training and our guidelines to say these are the things that you might consider, but we don't have a tracking mechanism for -- within our tool. We don't require that there be a rating or a ranking entered." Connell Opp. Decl., Ex. D (5/1/19 Waggoner Dep.) 125:6-126:13. Accordingly, whether a manager is required to perform formal performance evaluations is subject to the discretion of that manager's reporting chain.

			Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.

G. Undisputed Facts Regarding Flexibility in Making Initial Assignments, Setting Initial Pay and the Use of Prior Pay.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
150	All employment offers are approved by the Oracle executive office.	Ex. 28, slide 11 (notes), ORACLE_HQCA_0000057179-22.	**Undisputed but immaterial**. As Ms. Waggoner testified, top-level approvers are performing the "sanity check piece: Like, does this pass the sniff test? They're not doing any real deep diving into anything. It really is what the first-line manager has submitted…just continues up the road." Connell MSJ Decl., Ex. C (Waggoner 7/19 PMK Dep.) 117:12-118:11. In other words, the top-level approvers are, for the vast majority of compensation decisions, acting only to check whether managers stayed within allotted budgets or to ensure that the decisions are not wholly unreasonable. Waggoner Decl., ¶ 28; Balkenhol Decl., ¶¶ 5-8; Abushaban Decl., ¶ 15; Hsin Decl., ¶ 11; Ousterhout Decl., ¶ 16; Robertson Decl., ¶ 11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13. As Ms. Waggoner explained about the top-level review, "again, that's a cursory, a sanity check. . . . they're not doing anything real." Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.)

			155:7-156:10. Generally, the senior managers or executives defer to the decisions of the lower-level managers and only rarely are decisions not approved. Waggoner Decl., ¶ 28; Balkenhol Decl., ¶¶ 5-8; Abushaban Decl., ¶ 15; Hsin Decl., ¶ 11; Ousterhout Decl., ¶ 16; Robertson Decl., ¶ 11; Shah Decl., ¶ 14; Talluri Decl., ¶ 14; Eckard Dec., ¶ 13.
151	Oracle uses recruiters to identify and recruit potential employees.	Ex. 39, "Oracle Recruiting Program Manager (RPM) Training Manual," no date but has 2013 examples, ORACLE_HQCA_0000056908 Ex. 40, "Oracle College Recruiting," dated 7/14/14, ORACLE_HQCA_0000020131, 33–39, 43–60; Ex. 64, "Welcome to New Recruiter On-boarding!," copyright 2014, slide 4 (notes) and slide 5, ORACLE_HQCA_0000056566-7 to -8; Ex. 60, "NA Talent Advisory," copyright 2016, slides 1–4, ORACLE_HQCA_0000056772-2 to -8.	**Undisputed but immaterial**.
152	Oracle's recruitment training materials instruct the recruiters to initiate initial contact with potential candidates.	Ex. 57, "Recruit & Hire at Oracle; Module 1: Introduction to Recruiting & Hiring," slide 3 (notes), ORACLE_HQCA_0000057181-6; Ex. 39, ORACLE_HQCA_0000056908	**Undisputed but immaterial**.

		Ex. 64, slide 3 (notes), 5 ORACLE_HQCA_000005656 6-9; Ex. 60, slide 4 (notes), ORACLE_HQCA_000005677 2-8.	
153	Oracle's recruitment training materials also instruct the recruiters to search the internet, resume books, LinkedIn, Facebook, Twitter, Google, social networking sites, to contact alumni, etc., for leads to determine who they should initiate contact with for job opportunities at Oracle.	Ex. 40, ORACLE_HQCA_000002013 1, 33–39, 43–60; Ex. 64, slide 3 (notes), 5 ORACLE_HQCA_000005656 6-9; Ex. 60, slide 4 (notes), ORACLE_HQCA_000005677 2-8.	**Undisputed but immaterial.**
154	Oracle makes 30% of its placements through its Employee Referral Program.	Ex. 64, slide 12 (notes), ORACLE_HQCA_000005656 6-21; Ex. 60, slide 12 and slide 12 (notes), ORACLE_HQCA_000005677 2-23 to -24.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** The sources OFCCP cites do not support the assertion that 30% of placements year over year come from the Employee Referral Program. Exhibit 60 identifies 30% as the "aim" and Exhibit 64 states that 30% were placed through the Employee Referral Program in the prior year. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e).

			Whether 30% of Oracle's placements each year are through the Employee Referral Program decisions is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. *See also* Oracle's Objections to Evidence.
155	Oracle instructs managers to actively encourage their team-members to recommend people they know for hire through the Employee Referral Program.	Ex. 60, slide 12 (notes), ORACLE_HQCA_0000056772-24.	**Undisputed but immaterial.**
156	Oracle's instructions permit placing an employee in a Global Career Level that is one level above or one level below the job for which the job candidate is being considered, placing the employee in a	Ex. 27, Waggoner 30b6 Dep. 279:24–280:22; Ex. 7, Waggoner May Dep. 81:24–82:3; Ex. 93, Dr. Saad's Expert Report, p. 112, ¶148.	**Undisputed**. As Oracle's expert confirms, however, most employees are hired into the job level for which they applied, and there is no evidence that this practice was applied in a discriminatory manner. *See* Connell MSJ Decl., Ex. M (Saad Report ¶¶ 150-156); Ex. O (Saad Rebuttal, ¶¶ 65-66).

	different salary range.[19]		
157	Prior to October 2017, Oracle considered an employee's salary in his or her previous employment in setting initial pay at Oracle.	Ex. 41, Holman-Harries *Jewett* Decl., Ex. A, (Lisa Gordon Sworn Statement) p. 8, question 11b; Ex. 19, Cheruvu Dep. 84:22–85:6.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Neither Exhibit 41 nor Exhibit 19 contain evidence that prior pay was always (or even consistently) used, or had to be considered, when setting starting pay at Oracle. Indeed, the evidence demonstrates that Oracle never had a policy or practice of basing starting pay on prior pay. *See* Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
158	In a document titled "HR Learning Session US Pay Equity Laws and Salary History Bans" under a sub-heading of "What is changing" Oracle stated that the change is not to ask candidate about current or prior salary.	Ex. 46, "HR Learning Session US Pay Equity Laws and Salary History Bans," dated 10/18-19/17, ORACLE_HQCA_0000381126	**Undisputed but immaterial**. The fact that Oracle rolled out training to ensure it was compliant with new laws prohibiting inquiries into prior pay is hardly remarkable, and is not the same thing as an admission by Oracle that managers previously were asking about prior pay. Even if some managers previously did ask for prior pay, this does not mean that Oracle had in place any policy or

[19] If an employee's Global Career Level changes, then the job code also changes, which in turn changes the salary grade that thus the salary range. *See supra* Facts 80 and 81.

			practice requiring managers to base starting pay on prior pay. Indeed, the evidence confirms that no such policy or practice ever existed at Oracle. *See* Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16. *See also* Oracle's Objections to Evidence.
159	In a document titled "HR Learning Session US Pay Equity Laws and Salary History Bans" under a sub-heading of "What is changing" Oracle stated that it is removing the "current salary field" from the offer form in iRecruitment.	Ex. 46, ORACLE_HQCA_0000381126	**Undisputed but immaterial**. The fact that Oracle communicated to its managers that the "current salary field" from the offer form in iRecruitment was removed as a way to better ensure managers complied with new laws prohibiting inquires into prior pay is hardly remarkable, and is not the same thing as an admission by Oracle that managers previously were asking about prior pay. Even if some managers previously did ask for prior pay, this does not mean that Oracle had in place any policy or practice requiring managers to base starting pay on prior pay. Indeed, the evidence confirms that no such policy or practice ever existed at Oracle. *See* Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16. *See also* Oracle's Objections to Evidence.

160	In a document titled "HR Learning Session US Pay Equity Laws and Salary History Bans" under a sub-heading of "what we used to say" Oracle identified that it asked about a person's current salary and annual earnings if the person was in sales.	Ex. 46, ORACLE_HQCA_0000381127	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** OFCCP is plainly mispresenting this training document in an attempt to manufacture – and misrepresent – evidence. A plain read of the document confirms it does not constitute an admission by Oracle that Oracle used to ask about current salary (or annual earnings for sales employees, whose pay obviously isn't at issue here). Rather, the training slide offers illustrative examples of the types of questions that are now permissible (including "What are your expectations regarding salary?") in lieu of questions managers might previously have asked (before laws prohibiting salary history inquiries took effect). The document does not dictate that managers must ask the questions listed that are still permissible, nor does it confirm that "Oracle" previously asked the questions that the new laws prohibit. Even if some managers previously did ask for prior pay, this does not mean that Oracle had in place any policy or practice requiring managers to base starting pay on prior pay. Indeed, the evidence confirms that no such policy or practice ever existed at Oracle. *See* Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout

			Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
161	In response to a question about whether Oracle's employees can ask a candidate about current or prior salary history, Oracle answered by affirming that its employees can "no longer" ask a candidate about his/her current or prior salary.	Ex. 47, "US PAY EQUITY FAQ FOR MANAGERS AND HR" dated 1/1/18, ORACLE_HQCA_0000381077	**Undisputed but immaterial**. Instructing managers they may "no longer" ask about current or prior pay due to new laws prohibiting such inquires is hardly remarkable, as before the new laws took effect, there was no prohibition on asking about current or prior pay if an individual manager chose to do so. Even if some managers previously did ask for prior pay, this does not mean that Oracle had in place any policy or practice requiring managers to base starting pay on prior pay. Indeed, the evidence confirms that no such policy or practice ever existed at Oracle. *See* Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16. *See also* Oracle's Objections to Evidence.
162	Prior to October 2017, a candidate's compensation information at his	Ex. 48, "Candidate Offer Information" for Daniel Chan, dated 12/22/08, ORACLE_HQCA_0000472274	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.**

	or her previous employer was a "**Mandatory**" field in Oracle's "Candidate Offer Information" document.	Ex. 49, "Candidate Offer Information" for Akhil Mehendale, dated 1/6/15, ORACLE_HQCA_000046434 1–44.	The two documents upon which OFCCP relies do not support this fact as stated. They simply indicate that on these two completed forms, there was a field labeled "Candidate's previous employer and compensation," and the word "mandatory" is included. In fact, however, OFCCP's own Ex 49 confirms that, in fact, this field was not "mandatory" as the candidate's previous employer and compensation is not included. *See* Ex. 49 (listing "College Hire" in the field titled "Candidate's previous employer and compensation information (Mandatory)"). In any event, even if OFCCP did have evidence to support this "fact," the inclusion of a field for prior pay on a new hire justification form does not mean that managers relied on prior pay to set starting pay, nor that Oracle had any policy or practice requiring managers to do so. Indeed, the evidence confirms that no such policy or practice ever existed at Oracle. *See* Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.

163	An Oracle recruiter asked a job candidate for this person's current salary because it was a mandatory field for the offer process.	Ex. 50, E-mails between a job applicant and an Oracle recruiter regarding the prior salary, dated 2010, DOL000044390–93.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** This document was not produced until 6pm on Friday October 18, 2019 (when summary judgment motions were due the following Monday), after the close of discovery, despite OFCCP's receipt of the email chain on June 7, 2019. Further, the "fact" merely illustrates the actions of one Oracle recruiter back in 2010 – it does not establish a policy or practice at Oracle generally. It also does not demonstrate that any Oracle hiring manager used this candidate's prior pay to determine her starting pay amount. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Additionally, to the extent this evidence is intended to prove that inputting "current salary" into an iRecruitment field was "mandatory," the evidence contradicts that inference. While heavily redacted, this evidence appears to prove that Oracle accepted a previous higher salary for use in the "mandatory" field rather than the candidate's current salary. *See also* Oracle's Objections to Evidence.
164	Prior to October 2017, Oracle's iRecruitment "Offer Template" had a field for	Ex. 28, slide 12, ORACLE_HQCA_000005717 9-23, has template and instructions.	**Undisputed but immaterial**. The existence of a data field in Oracle's iRecruitment "Offer Template" does not mean that

	"Candidate's Current Salary/ATV" and Oracle's instructions for using this field in this template was to enter numerals only.	Ex. 51, Untitled Oracle Hiring Presentation, copyright 2014, slide 12, ORACLE_HQCA_0000056633-22, has just the template.	managers relied on prior pay to set starting pay, nor that Oracle had any policy or practice requiring managers to do so. Indeed, the evidence confirms that no such policy or practice ever existed at Oracle. *See* Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16. *See also* Oracle's Objections to Evidence.
165	In or around February 2014, Oracle put an employee's current compensation information (e.g., $[redacted] plus an annual bonus of [redacted]%) in the "Comments" column for line 1 of the "Approval History" section of its iRecruitment "Candidate Details" form, such that subsequent reviewers like Thomas Kurian and Lawrence Ellison could review the prior compensation information before approving.	Ex. 29, iRecruitment Candidate Details for Applicant Number 452780, printed 2/17/14, ORACLE_HQCA_0000001729-32.	**Undisputed, but immaterial and incomplete.** The fact that this particular candidate's current compensation information is included in the "comments" section is irrelevant. Indeed, a plain read of the "comments" section confirms that the justification for hiring this individual (including his starting pay amount) is based on the specific skills, abilities and expertise he brings to Oracle, with a particular emphasis on the specific **products** on which his skills and expertise would allow him to work. The "comments" explicitly state, "Given [redacted] significant years of experience as a deep and broad expert in Java development, we would like to propose a base salary of $[redacted]." Ex. 29, ORACLE_HQCA_0000001731. Accordingly, the document *confirms* his starting pay was not based on his prior pay, but on the specific skills and expertise he brings to Oracle. The

			"comments" also go on to acknowledge that his current pay is $[redacted], so this particular manager obviously did *not* base starting pay or prior pay – he offered a $[redacted] increase. *Id.* The justification goes on to acknowledge the starting pay offer is justified given the candidate's "combination of strong technical skills and proven experience and his ability to make an immediate impact in our team." *Id.* at ORACLE_HQCA_0000001732. Indeed, this document strongly supports Oracle's positions in this case – not the fictionalized version of Oracle that OFCCP tries to paint. It illustrates the specific skills, expertise, and experience that matters for this particular job, and *repeatedly* emphasizes the importance of the candidate's experience in "relevant technologies" and how this will enable him to work on "2 specific products in this space," even though OFCCP repeatedly attempts to assert the silly notion that product doesn't matter when it comes to jobs and pay at Oracle. *Id.* at ORACLE_HQCA_0000001731.
166	In or around March 2013, Oracle listed a candidate's compensation (e.g., "[redacted] base salary + stock options" and "$[redacted] plus bonus") in the	Ex. 52, Two Candidate Profile Summaries, from 2013, ORACLE_HQCA_0000029001 & 0000033810.	**Undisputed but immaterial**. The fact that these two candidate forms contain the individual's current salary is not material to the legal issues the Court must decide in ruling upon OFCCP's pending motion. Moreover, the two candidate profiles in Ex. 52 constitute good examples of the

	"Current Compensation" field in its "Candidate Profile Summary."		product- and technology-specific experience and expertise that matters to Oracle when seeking to hire individuals on particular Oracle teams.
167	Prior to 2017, Oracle notified potential candidates through its iRecruitment requisitions that they would be required to complete a pre-employment screening process that included a salary verification prior to an offer being made.	Ex. 53, iRecruitment requisition for "Senior Software Developer – Fusion Lifecycle Management," dated 3/28/12, ORACLE_HQCA_0000027412-2; Ex. 54, E-mail exchange between Oracle's Senior Recruiter Todd Gorman and [redacted], May 2014, ORACLE_HQCA_0000034108 Ex. 55, Job Announcement for "Solution Architect," from Oracle Senior Recruiter Stephanie Nguyen, no date, at ORACLE_HQCA_0000033894	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** These three documents are insufficient to prove that Oracle had a company-wide practice of informing applicants they would be subject to a pre-employment screening process that included a salary verification. Indeed, OFCCP presents no testimonial evidence in support of this "fact" because it is not true. The notice OFCCP points to was added by some recruiters, but was not a standard practice, nor was it included in most of the requisitions produced in this case. *See, e.g.*, Connell Opp. Decl., Ex. I, ORACLE_HQCA_0000014741; Ex. J., ORACLE_HQCA_0000014797; Ex. K, ORACLE_HQCA_0000014819. Indeed, of the 4,966 job requisitions Oracle produced in this case, only 24 of them have this language. Connell Opp. Decl., ¶ 2. *See also* Oracle's Objections to Evidence.
168	Oracle instituted a new policy in October 2017 that Oracle employees	Ex. 27, Waggoner 30b6 Dep. 40:10–41:15.	**Undisputed but immaterial**. Instructing managers they may "no longer" ask about current or

	may no longer request salary history details from external candidates who are interviewing for work in a US location.		prior pay due to new laws prohibiting such inquires is hardly remarkable, as before the new laws took effect, there was no prohibition on asking about current or prior pay if an individual manager chose to do so. Even if some managers previously did ask for prior pay, this does not mean that Oracle had in place any policy or practice requiring managers to base starting pay on prior pay. Indeed, the evidence confirms that no such policy or practice ever existed at Oracle. *See* Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16.
169	In an e-mail dated October 25, 2017, Oracle announced that managers and others acting as agents of Oracle during the hiring process can no longer request salary history details from external candidates who are interviewing for work in a US location.	Ex. 56, e-mails regarding "Changes to US Hiring Process Effective October 31, 2017," dated October 2017, ORACLE_HQCA_0000381115	**Undisputed but immaterial**. Instructing managers they may "no longer" ask about current or prior pay due to new laws prohibiting such inquires is hardly remarkable, as before the new laws took effect, there was no prohibition on asking about current or prior pay if an individual manager chose to do so. Even if some managers previously did ask for prior pay, this does not mean that Oracle had in place any policy or practice requiring managers to base starting pay on prior pay. Indeed, the evidence confirms that no such policy or practice

			ever existed at Oracle. *See* Connell MSJ Decl., Ex. C (7/19/19 Waggoner PMK Dep.) 203:20-204:7; Yakkundi Decl., ¶ 17; Shah Decl., ¶ 13; Ousterhout Decl., ¶ 16; Talluri Decl., ¶ 14; Abushaban Decl., ¶ 16.
170	In December 2017, Oracle told an employee who asked about possible pay discrimination that there were several business factors contributing to the level of the employee's salary, including the employee's starting salary at Oracle.	Ex. 32, "Memorandum: Investigation Results," dated 12/7/17, at ORACLE_HQCA_0000416837	**Undisputed but immaterial**. OFCCP makes no attempt to show whether this employee was paid less than any comparators, either at the time of initial hire or at the time of the complaint. As such, this "fact" is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Further, the investigation noted that this employee's managers were aware of her salary and had provided above average increases over the last two years. Accordingly, Exhibit 32 evidences actions taken in response to the analysis performed by managers that OFCCP attempts to suggest did not happen in SUF Nos. 212 and 224.
171	In manager trainings, Oracle instructs managers to	Ex. 18, slide 8 (notes), ORACLE_HQCA_0000000407-15.	**Undisputed that this single training document contains the words recited in this "fact," but immaterial.**

	beware of recruiting at an artificially low salary, particularly where a candidate comes from a lower paid sector, as this may give rise to equity issues in the future.		The training document speaks for itself, and contains far more than this one out-of-context quote by OFCCP.

H. Undisputed Facts re How Transferring Impacts Compensation.

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
172	Oracle's managerial training provides that there will generally be no change in base salary and job level for U.S. domestic transfers unless Larry Ellison gives his approval.	Ex. 58, "Manager Essentials Product Development," dated March 2014, ORACLE_HQCA_0000380891	**Undisputed but immaterial**. Oracle's processes and guidelines for transfers is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Moreover, simply lifting words out of an Oracle document without having an appropriate Oracle witness confirm the statements within the document are true is insufficient from an evidentiary standpoint. Further, to the extent OFCCP includes this fact to prove that employees who share job titles but work on different teams are similarly situated, it fails to do so,

			and does not excuse OFCCP of its obligation to prove the employees it compares in its expert's statistical models are similarly situated. Moreover, Ms. Waggoner explained that Oracle has a legitimate business reason for not accompanying a transfer with a salary increase—*i.e.*, to prevent internal poaching and avoid a "toxic" environment among managers. *See* Response to SUF 177; Connell Opp. Decl., Ex. E (7/19/19 Waggoner PMK Dep. 309:18-312:20). Further, Oracle's documents further confirm the "*starting point* for lateral transfers should be lateral (targeting the same base pay and compa-ratio in old and new roles)," but "(*Ongoing review should be done to be sure that employees are in the correct job family and career level to prevent issues when transferring*)." Garcia Decl., Ex. 59 at ORACLE_HQCA_00000382399-8. The guidance goes on to say the following: The salary for the new role should be fair and appropriate for that role and may require adjustment to the employee's current mix of base and variable pay. *Id.* Accordingly, Oracle's guidelines on lateral transfers explicitly acknowledge that salary for lateral transfers should be fair, and appropriate for the new role, and if appropriate, pay obviously can be adjusted after the transfer.

			And of course, Oracle does not force employees to laterally transfer teams, so if an employee felt he or she was not being paid fairly despite no change in pay, she or she could choose not transfer. *See also* Oracle's Objections to Evidence.
173	Oracle's compensation training states that the starting point for transfers should be lateral (targeting the same base salary compa-ratio in the employee's old and new roles).	Ex. 13, slide 31 ORACLE_HQCA_0000056234-57. *See also* Ex. 59, "Global Compensation Guidelines Training North America: US," dated May 2013, slide 6, ORACLE_HQCA_0000382399-8.	**Undisputed but immaterial**. Oracle's processes and guidelines for transfers is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Moreover, simply lifting words out of an Oracle document without having an appropriate Oracle witness confirm the statements within the document are true is insufficient from an evidentiary standpoint. Further, to the extent OFCCP intends this fact to prove that job titles of employees that transfer are similarly situated on the basis that there is generally no salary change, that fact is not supported by the evidence. Indeed, Oracle has a legitimate business need for not accompanying a transfer with a salary increase. *See also* Response to SUF 172.

174	Oracle's instructions for addressing "Internal Transfers" states that transfer should be at "equal career level and salary."	Ex. 28, slide 21, ORACLE_HQCA_0000057179-41; Ex. 51, Untitled Oracle Hiring Presentation, copyright 2014, slide 32, ORACLE_HQCA_0000057093-32.	**Undisputed but immaterial**. Oracle's processes and guidelines for transfers is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Moreover, simply lifting words out of an Oracle document without having an appropriate Oracle witness confirm the statements within the document are true is insufficient from an evidentiary standpoint. Further, to the extent OFCCP intends this fact to prove that job titles of employees that transfer are similarly situated on the basis that there is generally no salary change, that fact is not supported by the evidence. Indeed, Oracle has a legitimate business need for not accompanying a transfer with a salary increase. *See also* Response to SUF 172.
175	Oracle's compensation training to managers instructs them that internal transfers should not be used as a	Ex. 13, slide 31, ORACLE_HQCA_0000056234-57; Ex. 21, slide 19, ORACLE_HQCA_0000380437-37;	**Undisputed but incomplete and immaterial**. Oracle's processes and guidelines for transfers is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has

	means to increase salaries.	Ex. 59, slide 6, ORACLE_HQCA_0000382399-8.	met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Moreover, simply lifting words out of an Oracle document without having an appropriate Oracle witness confirm the statements within the document are true is insufficient from an evidentiary standpoint. Further, to the extent OFCCP intends this fact to prove that job titles of employees that transfer are similarly situated on the basis that there is generally no salary change, that fact is not supported by the evidence. Indeed, Oracle has a legitimate business need for not accompanying a transfer with a salary increase. *See also* Response to SUF 172.
176	When a person moves from one organization to another within the Product Development LOB, there is "very rarely" any change in salary.	Ex. 31, Loaiza Dep. 105:10–23.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded but immaterial.** Loaiza was not produced as a 30b6 witness and lacks personal knowledge for any transfers outside of his group. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Oracle's processes and guidelines for transfers is not material to the

			legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Further, to the extent OFCCP intends this fact to prove that job titles of employees that transfer are similarly situated on the basis that there is generally no salary change, that fact is not supported by the evidence. Indeed, Oracle has a legitimate business need for not accompanying a transfer with a salary increase. *See also* Response to SUF 172. *See also* Oracle's Objections to Evidence.
177	Oracle purposely discourages granting pay increases when its employees laterally transfer from one position to another because if employees were given raises with a transfer, the organization would be beset by infighting as managers sought to poach	Ex. 27, Waggoner 30b6 Dep. 312:10–20, 310:2–24.	**Undisputed, but immaterial.** Setting aside the problem that once again, OFFCP failed to include the cited pages in the record, it is true that Ms. Waggoner testified that raises generally are not given for lateral transfers at the time of transfer because Oracle does not want a toxic environment of infighting and poaching. Oracle training documents also discourage using lateral transfers as a means to give employees salary increases As explained above, this is immaterial to OFCCP's claims and does not excuse OFCCP from proving that the employees it

	staff from other organizations with promises of increased compensation.		compares in its expert's statistical models are, in fact, similarly situated. *See also* Response to SUF 172. *See also* Oracle's Objections to Evidence.
178	A transfer within Oracle can occur with no increase in salary or other compensation unless an employee's current salary places him or her below the minimum range for the new job.	Ex. 11, Handbook, ORACLE_HQCA_0000000508	**Undisputed but immaterial and misleading**. This specific excerpt from the section on lateral transfers in Oracle's employee handbook is specifically discussing situations where an employee changes within the same career level, but not with the same job, and therefore is addressing a different scenario than the lateral transfers in the facts immediately above. *See also* Responses to SUFs 172-177. In any event, as explained in response to the facts above, whether Oracle changes the base pay for employees who transfer laterally at the time of transfer is immaterial and does not relieve OFCCP of its obligation to prove that the employees who pay it is comparing for purposes of the litigation are similarly situated.
179	Appropriate levels of management must approve any compensation adjustment associated with a transfer.	Ex. 11, Handbook, ORACLE_HQCA_0000000508–09.	**Undisputed but immaterial**. *See* Response to SUF 178.

I. Undisputed Facts re How Promotions Impact Compensation

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
180	Oracle's Employee Handbook and training materials define a promotion as a move from a job in one Career Level to a job in a higher Career Level with greater responsibility and impact on the Company's business.	Ex. 14, slide 34 (notes), ORACLE_HQCA_0000382580-66; Ex. 11, Handbook, ORACLE_HQCA_0000000507 Ex. 8, slide 27, ORACLE_HQCA_0000056391-51; Ex. 18, slide 13, ORACLE_HQCA_0000000407-24.	**Undisputed but immaterial**.
181	Promotions at Oracle may be made without a salary increase.	Ex. 12, slide 26 (notes), ORACLE_HQCA_0000042098-48; Ex. 13, slide 26 (notes), ORACLE_HQCA_0000056234-48; Ex. 8, slide 27 (notes), ORACLE_HQCA_0000056391-52; Ex. 18, slide 13, 0000000407-24; Ex. 21, slide 16 (notes), ORACLE_HQCA0000380437-32.	**Undisputed but immaterial**.
182	In or around 2011, Oracle recognized that because a promotion without a salary increase can cause internal equity issues, it	Ex. 18, slide 13 (notes), ORACLE_HQCA_0000000407-25.	**The evidence cited does support this "fact," which should be disregarded.** OFCCP mispresents the statement made in the talking points for this particular training slide. In total, the paragraph states: "If an employee is

	strongly recommended that promotions without salary increases do not take place unless the individual's pay is appropriately positioned in the new range and peer group.		positioned very low in his or her current range, or has a salary that is not in line with the peer group in the new role, a promotion without a salary increase could cause internal equity issues, and may even cause the employee to fall below the minimum of the new range. Therefore, it is strongly recommended that promotions without salary increases do not take place unless the individual's pay is appropriately positioned in the new range and peer group." Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, the language on this training slide is irrelevant to OFCCP's claim of compensation discrimination. *See also* Oracle's Objections to Evidence.
183	In the Product Development LOB, it was "very rare" to get a salary increase as part of a promotion prior to 2018. Before 2018, it was a "policy" *not* to give salary increases with promotions.[20]	Ex. 31, Loaiza Dep. 217:19–219:9.	**The evidence cited does support this "fact," which should be disregarded.** For purposes of this litigation, "Product Development" is a job function without a leader, not a Line of Business. Waggoner Decl., ¶ 19, Ex. D (ORACLE_HQCA_0000364276 at 5, 7), Ex. E (ORACLE_HQCA_000056234 at 4); Connell MSJ Decl., Ex. A (ORACLE_HQCA_0000400584 at 47:20-48:24; 51:9-21).

[20] Juan Loaiza was an Executive Vice President in Product Development. *See supra* Fact 40.

			Moreover, Loaiza was not produced as a 30b6 witness and the line of questioning was limited to Loaiza's organization. Therefore, OFCCP has failed to meet its burden of supporting its factual position as to all of the Product Development job function. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event whether or not pay raises happened at the time of promotions in Mr. Loiza's organization prior to 2018 is not material – including because such a practice (as described by Mr. Loiza) plainly applied to everyone (not merely women, Asians or African-Americans), and the very documents OFCCP cites regarding promotions confirm that because the salary bands for job codes are so broad, even if a promoted individual did not get a pay raise exactly on the date of promotion (but instead, for example, received it during the next focal review, as was often the case) the employee could still be positioned appropriately within the salary band for the job into which he or she was promoted because the salary bands from one level to the next often overlap significantly. *See also* Oracle's Objections to Evidence.
184	An Oracle training instructed managers that a promotion does not necessarily	Ex. 18, slide 5, ORACLE_HQCA_0000000407-8.	**Undisputed but immaterial**. *See* Response to SUF 183.

	require a simultaneous salary increase, and that the salary increase would normally be taken care of during the salary increase process.		
185	In the Product Development LOB, there are situations where off-cycle promotions did not include raises and managers told employees that they would get them a raise on the next focal cycle.	Ex. 27, Waggoner 30b6 Dep. 256:13–17.	**Undisputed but immaterial**. *See* Response to SUF 183.
186	Oracle's training materials state that if an employee is positioned very low in their current salary range, or has a salary that is not in line with the peer group in the new role, a promotion without a salary increase could cause internal equity issues, and may even cause the employee to fall below the minimum of the new salary range.	Ex. 12, slide 26 (notes), ORACLE_HQCA_0000042098-48; Ex. 13, slide 26 (notes), ORACLE_HQCA_0000056234-48; Ex. 8, slide 27 (notes), ORACLE_HQCA_0000056391-52; Ex. 21, slide 16 (notes), ORACLE_HQCA_0000380437-32.	**Undisputed but immaterial and incomplete**. As explained in response to SUF 182, OFCCP conveniently leaves out the very next sentence, which states, **"Therefore, it is strongly recommended that promotions without salary increases do not take place unless the individual's pay is appropriately positioned in the new range and peer group."** *See also* Response to SUF 183.

187	Oracle's training materials state that while it is perfectly appropriate for a newly promoted employee to fall in the first quartile of the new salary range, the compensation team discourages dry promotions where new employees would fall below the range, because eventually getting the employee appropriately positioned in the range following a promotion without an increase can be quite difficult.	Ex. 7, slide 22 (notes), ORACLE_HQCA_0000042098-40; Ex. 14, slide 27 (notes), ORACLE_HQCA_0000382580-52; Ex. 11, slide 23 (notes), ORACLE_HQCA_0000056391-44; Ex. 18, slide 5 (notes), ORACLE_HQCA_0000000407-8.	**Undisputed but immaterial**. *See* Response to SUF 183.
188	Oracle does not have or maintain a centralized database that identifies or records specific skills or knowledge each employee possesses.	Ex. 89, Dep. of Expert Ali Saad, dated 10/11/19 ("Saad Dep.") 249:22–250:2.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** Dr. Saad did not say what OFCCP says he did. Instead, in response to questioning by OFCCP, Dr. Saad agreed he has not seen a column in the data he was provided for this case labeled "skill." This fact and the ridiculous question posed to Dr. Saad simply confirm OFCCP simply does not (or refuses to) understand the complexity of jobs at issue in the case. No

			data field could possibly capture all of the skills that the thousands of employees at issue hold – ranging from low level individual contributors all the way up to Senior Vice Presidents. It also underscores why it is reasonable for Dr. Saad to use proxies in his analysis such as patent bonus and Organization, because they may do a better job of grouping employees with similar skills than simply looking to job title as OFCCP suggests is appropriate (but which the evidence confirms is not). *See also*, Connell Opp. Decl.J, Ex. L, at DOL000041530 ("Comparison[s] are difficult because people have different experience and product lines have different performance. If product is doing well, thinks that could affect pay because generating more revenue."). Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.

J. Undisputed Facts Regarding Whether Products Impact Compensation

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
189	The Employee Handbook has sections that pertain to affirmative action, compensation, career development, promotions, transfers, and internal training and development.	Ex. 11, Handbook, ORACLE_HQCA_000000 0474502–13.	**Undisputed but immaterial**. The sections of Oracle's Employee Handbook are not material to the legal issues the Court must decide in this motion,

			including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA. Moreover, simply lifting words out of an Oracle document without having an appropriate Oracle witness confirm the statements within the document are true is insufficient from an evidentiary standpoint.
190	At no place in the compensation section of the Employee Handbook does it indicate that compensation is based on or will be adjusted by product.	Ex. 11, Handbook, ORACLE_HQCA_000000 0502–506. Ex. 106, Supplemental Excerpts from Holman-Harries May Dep. 155:10–165:24.	**Undisputed, but immaterial and misleading.** Oracle has never taken the position that compensation "is based on or will be adjusted by product." Instead, Oracle (including in its training documents) repeatedly takes the position that various legitimate, non-discriminatory factors can influence pay, including skills, experience, expertise, *etc*. At Oracle, these skills differ based on the products on which people work. *See* Miranda Decl., ¶¶ 4-9.

			Accordingly, references to things like skill, expertise, experience, *etc*. encompasses product. *See also* Response to SUF 165. Indeed, Oracle's Employee Handbook expressly acknowledges this reality when it states "you are compensated and rewarded based on your contributions to Oracle and in accordance with Oracle's business performance and success in the marketplace…Market research assists us in assessing what competitive companies pay for comparable jobs." Further, "recognition and reward for contributions that enhance Oracle's growth, success, and profitability," is "[c]entral to Oracle's compensation philosophy." Ex. 11, at ORACLE_HQCA_0000000502. Further, OFCCP's recently redacted interview notes of two Asian females reveal that these employees believe that pay is affected by the profitability of their product line. *See* Connell Opp. Decl., Ex. I, at DOL000041530; Ex. J, at DOL000041697-98. *See also* Oracle's Objections to Evidence.

191	At no place do the following compensation trainings produced by Oracle during the underlying investigation and this litigation indicate that Product should be considered in setting compensation: • Q4FY15 HR Webinar Oracle Compensation" dated March 2015; • "Oracle Compensation Guidelines," undated; • "Global Compensation," dated 12/18/17; • Untitled, PPT presentation, copyright 2012; • "Managing Compensation," dated July 2016; • "Managing Compensation at Oracle," undated; • "Global Compensation Training: Salary Ranges at Oracle," copyright 2011; • Global Compensation Training: Managing Pay Module, copyright 2011; • "Managing Compensation," dated April 2016; • "Global Compensation Training:	Ex. 8, ORACLE_HQCA_0000056391 Ex. 9, ORACLE_HQCA_0000380594 Ex. 10, ORACLE_HQCA_0000364301–03 Ex. 12, ORACLE_HQCA_0000042098 Ex. 13, ORACLE_HQCA_0000056234 Ex. 14, ORACLE_HQCA_0000382580 Ex. 16, ORACLE_HQCA_0000364272 Ex. 18, ORACLE_HQCA_0000000407 Ex. 21, ORACLE_HQCA_0000380437 Ex. 22, ORACLE_HQCA_0000364274 Ex. 24, ORACLE_HQCA_0000381306	**Undisputed, but immaterial and misleading.** Oracle's Employee Handbook states "you are compensated and rewarded based on your contributions to Oracle and in accordance with Oracle's business performance and success in the marketplace…Market research assists us in assessing what competitive companies pay for comparable jobs." Further, "recognition and reward for contributions that enhance Oracle's growth, success, and profitability," is "[c]entral to Oracle's compensation philosophy." Ex. 11, at ORACLE_HQCA_0000000502. *See also* Response to SUF 190. Moreover, simply looking for the absence of words in an Oracle document without having an appropriate Oracle witness confirm the statements within the document are true is insufficient from an evidentiary standpoint. Indeed, these presentations reflect that market value of a skill, which is routinely tied to specific products, is a relevant factor in compensation decisions.

	Compensation Processes," dated 2011; • "Annual Bonus Program and Workforce Compensation: Manager Training," copyright 2018; • "Manager Training: Compensation Process for Global Corporate Bonus & Fusion Workforce Compensation," dated June 2014; • "New Manager Training: Compensation Processes/Compensation Workbench," dated May 2011; • "Recruit & Hire at Oracle: Module 6: How to Create an Offer in iRecruitment," copyright 2017; • "Global Compensation Guidelines Training North America: US," dated May 2013.	Ex. 25, ORACLE_HQCA_0000056242 Ex. 26, ORACLE_HQCA_0000056957 Ex. 28, ORACLE_HQCA_0000057179 Ex. 59, ORACLE_HQCA_0000382399	*See, e.g.*, Miranda Decl., ¶¶ 4-9 and 11. For example, these materials highlight that salary ranges are intentionally broad "to allow managers to differentiate between employees" (Ex. 8 at 33; Ex. 12 at 29; Ex. 13 at 28; Ex. 16 at 9), recognize the importance of paying competitively in relation to peer companies (Ex. 8 at 35; Ex. 9 at 1; Ex. 10 at 1; Ex. 12 at 33; Ex. 16 at 13), acknowledge that an employee's pay within a salary range should vary based on skill, including higher pay for employees with a "hot skill" (Ex. 8 at 39; Ex. 12 at 35; Ex. 13 at 30); inform that bonuses are designed to reward employees for assisting the company in meeting key strategic company goals and objectives (Ex. 9 at 2; Ex. 10 at 2); inform that jobs at the same career level across different functions may have different salary ranges based on the current market data (Ex. 16 at 18-19). Further, OFCCP's recently redacted interview notes of two Asian females reveal that these employees believe that pay is affected by the profitability of their product line. *See* Connell

			Opp. Decl., Ex. I, atDOL000041530; Ex. J, at DOL000041697-98. *See also* Oracle's Objections to Evidence.
192	Oracle does not maintain a centralized database identifying the products on which its employees performed work.[21]	Ex. 62, Oracle's Response to Special Interrogatory No. 7 at ORACLE_HQCA_0000607048–50; Ex. 93, Expert Report of Dr. Ali Saad, dated 7/19/19, p. 190, ¶ 141; Ex. 89, Saad Dep. 248:7-13, 249:15-21.	**Undisputed but misleading.** The fact that Oracle does not maintain a database that identifies the products on which it's 136,000 global employees work is not surprising. Nor does Oracle have any obligation to undertake such a monumental exercise. The lack of any such database confirms, however, that when statistically analyzing pay at Oracle, proxies to control for things like similarity of work (including product) are needed, as Dr. Saad demonstrates in his rebuttal report criticizing Dr. Madden. Since this "fact" is not supported by competent evidence, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e).

[21] Interrogatory No. 7 stated: "Identify by name which ORACLE product or products are associated with a particular ORACLE line of business in which a COVERED EMPLOYEE performed work during the CLASS Period" (BSN ORACLE_HQCA_0000607048. Oracle's response that is identified as a fact above is: "[a]t present, despite reasonably diligent efforts, Oracle has not identified any systematic way to reasonably answer the Interrogatory as phrased, or any centralized data repository or source from which responsive information can be extracted." ORACLE_HQCA_0000607050.

			See also Oracle's Objections to Evidence.

K. Undisputed Facts Regarding Whether Cost-Centers Impact Compensation

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
193	The U.S. Employee Handbook that Oracle provided to OFCCP in the underlying investigation of this litigation did not identify "Organization" name or "Cost Center" as a factor that affected compensation under the heading of "Focal Salary Review."	Ex. 11, Handbook at ORACLE_HQCA_0000000505	**Undisputed but immaterial and misleading.** As Dr. Saad plainly explains in his report, he uses Organization in his modification of OFCCP's and Dr. Madden's models in an effort to better proxy employee skill and the similarity of work performed. Oracle has never taken the position that Organization is a "factor that affected compensation" in the sense of that field being part of some compensation-determining formula. Rather, in a statistical model purporting to compare the pay of similarly situated employees (as required by Title VII for purposes of proving a pay discrimination claim), Dr. Saad has explained why introducing Organization as a factor may enable the model to better group similar employees than simply relying upon Dr. Madden's made-up variable of "job descriptor."

194	At no place do the following compensation trainings produced by Oracle during the underlying investigation and this litigation indicate that "Organization" or "Cost Center" should be considered in setting compensation: • Q4FY15 HR Webinar Oracle Compensation" dated March 2015; • "Oracle Compensation Guidelines," undated; • "Global Compensation," dated 12/18/17; • Untitled, PPT presentation, copyright 2012; • "Managing Compensation," dated July 2016; • "Managing Compensation at Oracle," undated; • "Global Compensation Training: Salary Ranges at Oracle," copyright 2011; • Global Compensation Training: Managing Pay Module, copyright 2011; • "Managing Compensation," dated April 2016;	Ex. 8, ORACLE_HQCA_0000056391 Ex. 9, ORACLE_HQCA_0000380594 Ex. 10, ORACLE_HQCA_0000364301–03 Ex. 12, ORACLE_HQCA_0000042098 Ex. 13, ORACLE_HQCA_0000056234 Ex. 14, ORACLE_HQCA_0000382580 Ex. 16, ORACLE_HQCA_0000364272 Ex. 18, ORACLE_HQCA_0000000407 Ex. 21, ORACLE_HQCA_0000380437 Ex. 22, ORACLE_HQCA_0000364274 Ex. 24, ORACLE_HQCA_0000381306	**Undisputed, but immaterial and misleading.** *See* Response to SUFs 191 and 193.

	• "Global Compensation Training: Compensation Processes," dated 2011; • "Annual Bonus Program and Workforce Compensation: Manager Training," copyright 2018; • "Manager Training: Compensation Process for Global Corporate Bonus & Fusion Workforce Compensation," dated June 2014; • "New Manager Training: Compensation Processes/Compensation Workbench," dated May 2011; • "Recruit & Hire at Oracle: Module 6: How to Create an Offer in iRecruitment," copyright 2017; • "Global Compensation Guidelines Training North America: US," dated May 2013.	Ex. 25, ORACLE_HQCA_0000056242 Ex. 26, ORACLE_HQCA_0000056957 Ex. 28, ORACLE_HQCA_0000057179 Ex. 59, ORACLE_HQCA_0000382399	

L. Undisputed Facts Regarding the Lisa Gordon Interview

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
195	In or around January 9 and January 13, 2015, OFCCP Area Director Brian Mikel interviewed Oracle's Director of Compensation, Lisa Gordon.	Decl. of Erin Connell in support of Oracle's Position Statement, filed 10/3/19 & Ex. A to that Declaration (June 2, 2015 S. Holman-Harries email to H. Atkins). Ex. 41, Holman-Harries *Jewett* Decl., ¶4.	**Undisputed that Brian Mikel conducted a telephonic interview of Lisa Gordon as part of OFCCP's audit of Oracle's Pleasanton facility.**
196	Shauna Holman-Harries[22] attended OFCCP's interview of Lisa Gordon.	Ex. 41, Holman-Harries *Jewett* Decl., ¶4.	**Undisputed that Shauna Holman-Harries attended OFCCP's telephonic interview of Lisa Gordon but immaterial**.
197	After this interview, OFCCP sent Oracle an interview summary for Lisa Gordon's review and signature.	Ex. 41, Holman-Harries *Jewett* Decl., ¶4.	**Undisputed but immaterial**.
198	Lisa Gordon signed the interview summary that OFCCP sent for her review and signature on and around February 11, 2015.	Ex. 41, Holman-Harries *Jewett* Decl., ¶4, and Ex. A thereto (Lisa Gordon Sworn Statement), p. 18.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** OFCCP fails to provide any evidence that the signature is Lisa Gordon's. The cited declaration (which was requested by plaintiffs' counsel in *Jewett* in lieu of a deposition of Ms. Holman-Harries, and

[22] Holman-Harries is the Senior Director of Diversity Compliance for Oracle. *See supra* Fact 43.

			subsequently filed and relied upon by plaintiffs' counsel in *Jewett* – not by Oracle) simply attests that Ms. Holman-Harries understood that it was signed by Lisa Gordon. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
199	Attached as Exhibit A to the October 2, 2018, declaration of Shauna Holman-Harries is a true and correct copy of the OFCCP's interview of Lisa Gordon.	Ex. 41, Holman-Harries *Jewett* Decl., ¶4.	**Undisputed that Ms. Holman-Harries' declaration contains this language**.
200	The interview summary that was attached as Exhibit A to the October 2, 2018, declaration of Shauna Holman-Harries contains Lisa Gordon's hand written signature immediately above the line stating "Lisa Gordon, Director Compensation."	Ex. 41, Holman-Harries *Jewett* Decl., Ex. A (Lisa Gordon Sworn Statement), p. 18.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded .** *See* Response to SUF 198.
201	The interview summary that was Attached as Exhibit A to the October 2, 2018, declaration of	Ex. 41, Holman-Harries *Jewett* Decl., Ex. A (Lisa Gordon Sworn Statement), p. 18.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded but immaterial.** *See* Response to SUF 198.

	Shauna Holman-Harries contains Lisa Gordon's hand written signature immediately below the line stating: "The above is true to the best of my knowledge and recollection."		*See also* Oracle's Objections to Evidence.
202	The interview summary that was Attached as Exhibit A to the October 2, 2018, declaration of Shauna Holman-Harries contains Lisa Gordon's hand written signature that is to the left of a handwritten "2/11/15" that is on a line immediately above the word "date."	Ex. 41, Holman-Harries *Jewett* Decl., Ex. A (Lisa Gordon Sworn Statement), p. 18.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** *See* Response to SUF 198. *See also* Oracle's Objections to Evidence.
203	On February 10, 2015, Shauna Holman-Harries sent OFCCP Lisa Gordon's interview statement with revisions.	Ex. 42, E-mail dated 2/10/15, from Shauna Holman-Harries to OFCCP regarding revisions to Lisa Gordon's statement, DOL000039963–40002.	**Undisputed but immaterial.** OFCCP's continued reliance on the Lisa Gordon interview summary demonstrates how paltry its evidence in this case is. The parties have been litigating this case for nearly three years. Many videotaped depositions have taken place under penalty of perjury with a certified transcript so there is no question what was said or not said. OFCCP also has nearly all of the deposition transcripts from *Jewett*. It is telling that

			despite all this, and not withstanding the millions of data fields and tens of thousands of documents that have been produced in this case, OFCCP continues to rely upon its own summary of a telephone interview conducted with a former Compensation Director at Oracle in connection with a ***different*** audit as if it contains some critical admission by Oracle. It does not. Moreover, it is not a sworn statement under penalty of perjury, nor a verbatim, reliable transcription of everything said. *See also* Oracle's Objections to Evidence.
204	Lisa Gordon made changes to the interview statement that OFCCP initially sent and Shauna Holman-Harries forwarded these changes to OFCCP.	Ex. 43, Holman-Harries May Dep. 226:14–227:10, 227:23–24, 228:2–5, 232:16–233:12, 234:9–12. Ex. 44, OFCCP interview statement containing Lisa Gordon's revisions that Shauna Holman-Harries sent to OFCCP that was marked as Ex. 33 to Shauna Holman-Harries 5/8/19 deposition.[23]	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Ms. Holman-Harries cited testimony confirms she never reviewed the Gordon interview summary exchanged with OFCCP. Accordingly, she lacks personal knowledge to authenticate the exhibits which purport to be Gordon's revisions. *See also* Holman-Harries May Dep. 236:5-12. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e).

[23] The documents at Ex. 42 and 44 are exactly the same except Ex. 42 has bates stamp numbers and Ex. 44 does not, and Ex. 42 has the cover e-mail of Shauna Holman-Harries sending the document to OFCCP.

			See also Oracle's Objections to Evidence.
205	On February 12, 2015, Shauna Holman-Harries sent OFCCP Lisa Gordon's interview that Lisa Gordon signed on February 11, 2015.	Ex. 45, E-mail dated February 10, 2015, from Shauna Holman-Harries to OFCCP with Lisa Gordon's sworn statement, DOL000040003–22.	**This "fact" is not supported by the evidence to which it cites, and should therefore be disregarded.** Mr. Garcia was not a recipient of the communication and lacks personal knowledge to attest to its authenticity. It is also immaterial whether Ms. Holman-Harries was the individual who sent the interview summary back to OFCCP. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
206	Shauna Holman-Harries sent OFCCP the interview statement that Lisa Gordon signed.	Ex. 43, Holman-Harries May Dep. 235:236:4.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Ms. Holman-Harries cited testimony confirms that she never reviewed the iterations of the Gordon interview summary exchanged with OFCCP. Accordingly, she lacks personal knowledge to authenticate the exhibits which purport to be Ms. Gordon's revisions. *See also* Ex. 43, Holman-Harries May Dep. 236:5-12. Additionally, Mr. Garcia was not a recipient of the communication and lacks personal knowledge to attest to its authenticity.

			Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.

M. Undisputed Facts Regarding Oracle's Compensation Studies

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
207	Oracle's written AAP for January 1, 2014, to December 31, 2014 (2014 AAP, signed by Safra Catz, President) designated Shauna Holman-Harries, Director Diversity Compliance, as the "Individual Responsible for Plan Implementation. "	Ex. 63, "Affirmative Action Plan for Oracle America," dated January 2014, ORACLE_HQCA_0000005000, 04–05, 10. Ex. 106, Supplemental Excerpts from Holman-Harries May Dep. 73:11–80:21.	**Undisputed but immaterial**.
208	The 2014 AAP states that Oracle develops and analyzes Internal Audit Reports to assess performance in areas, including compensation.	Ex. 63, AAP, ORACLE_HQCA_0000005000	**Undisputed but immaterial**.
209	At no point in Oracle's Position Statement does it identify Internal Audit Reports or any other	Oracle's 10/13/19 Position Statement, p. 8.	**Undisputed but immaterial**. Oracle's "Position Statement" is not itself evidence. Nevertheless, the point of Oracle's "Position Statement"

	centralized compensation analysis it performed to comply with its federal regulatory obligations under its AAP.		was to respond to the Court's order requiring it. It was not to summarize each and every aspect of its AAP – the instructions in the Court's order were far narrower. *See also* Oracle's Objections to Evidence.
210	Oracle claims in its Position Statement that it complies with 41 C.F.R. § 60-217(b) because the employees' managers are the primary decision makers with assistance from HR and/or Oracle's compensation team if requested.	Oracle's 10/3/19 Position Statement, p. 9.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Oracle's "Position Statement" is not itself evidence. It does, however, speak for itself and does not say what this fact says it does. This entire fact section, however, is immaterial as the Court already has acknowledged (and a review of the NOV and SAC confirm) that OFCCP has not brought a claim alleging Oracle failed to comply with 41 CFR 60-2.17 with respect to Oracle's obligation to evaluate its compensation systems. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
211	Shauna Holman-Harris testified that she performed no compensation analyses apart from the privileged analyses she	Ex. 106, Supplemental Excerpts from Holman-Harries May Dep. 73:11–80:21, 87:15–89:9, 97:25–98:16, 112:25-113:23, 115:22-117:11.	**Undisputed but immaterial**.

	carried out at the direction of counsel.		
212	Oracle admits that it took no corrective actions in response to any pay analysis conducted.	Ex. 41, Ex. A, sworn statement of Lisa Gordon, Oracle Director of Compensation dated 2/11/15, p. 17, question 29; Ex. 31, Loaiza Dep. 321:20–325:4.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** The cited evidence does not support the statement that Oracle took no corrective actions in response to any pay analysis conducted, and Oracle has made no such admission. Setting aside the reliability issues of relying on the Lisa Gordon interview summary (again from 2015 in connection with a ***different*** audit), taking it at face value, it merely establishes that Gordon was not aware of such actions. Similarly, Mr. Loiza simply testified that he personally was not aware of any such actions. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). The truth is, the Court has now confirmed that the pay analyses on which this fact purports to rely are privileged. And, OFCCP has no idea what privileged actions Oracle has taken in response to its privileged pay analyses. Indeed, the Court confirmed OFCCP is not entitled to this information when it denied (in relevant part) OFCCP's motion to compel Oracle's privileged pay analyses, which included a document request for all actions taken "in response to" such

			analyses. *See* June 19, 2019 Declaration of Laura Bremer, Exs. 25, 26 at RFP Nos. 152-155; September 19, 2019 Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Oracle's Compensation Analyses at 18 ("OFCCP's motion is granted as to RFPs 71, 148, and 174, each of which is tethered to the regulations in question. . . . OFCCP's motion is otherwise denied."). It is black-letter law that OFCCP cannot use Oracle's assertion of privilege against it, and the Court should reject outright OFCCP's reliance upon "if you have nothing to hide" atmospherics that do not – and legally cannot – evidence bias. *Parker v. Prudential Ins. Co. of Am.*, 900 F.2d 772, 775 (4th Cir. 1990) (a party "asserting the privilege should not face a negative inference about the substance of the information sought"). *See also* Oracle's Objections to Evidence.
213	Madhavi Cheruvu, Vice President of Human Resources at Oracle, does not do anything to comply with affirmative	Ex. 19, Cheruvu Dep. 250:6–23.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Tellingly, OFCCP is representing to the Court that this is an undisputed fact, when the question that elicited the response was subject to an objection that it calls for a legal conclusion. Ms. Cheruvu is not a lawyer. She cannot possibly know which of her actions are

	action regulations.[24]		to comply with Oracle policy vs. AAP regulations. OFCCP's attempt to trick her and then discredit her should be rejected outright. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
214	Madhavi Cheruvu, who was Oracle's Human Resource Partner for President Thomas Kurian's Product Development LOB in 2015, does not know anything that Thomas Kurian did or attempted to do during the focal reviews to comply with the affirmative action regulations.[25]	Ex. 19, Cheruvu Dep. 250:6–23.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Once again, OFCCP is representing to the Court that this is an undisputed fact, when the question that elicited the response was subject to an objection that it calls for a legal conclusion and lacks foundation. Ms. Cheruvu is not a lawyer. She cannot possibly know which of Mr. Kurian's actions are to comply with Oracle policy vs. AAP regulations. Nor does she have personal knowledge of all the actions Mr. Kurian took. Again, OFCCP's attempt to use inadmissible deposition testimony elicited through deposition questions plainly meant to trick Ms. Cheruvu into giving OFCCP a sound bite to use in connection with this motion should be rejected.

[24] Madhavi Cheruvu is a Vice President of Human Resources at Oracle and works as a Human Resources business partner who supports seven lines of business at Oracle. *See supra* Fact 48.

[25] In 2015, Madhavi Cheruvu was Oracle's Human Resource Partner for President Thomas Kurian's Product Development LOB. *See supra* Fact 49.

			Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). And, as emphasized previously, none of these facts are relevant to the legal issues the Court must decide in connection with this motion, and therefore this entire "fact" section is immaterial. *See also* Oracle's Objections to Evidence.
215	Oracle had no compensation-related affirmative action goals.[26]	Ex. 106, Supplemental Excerpts from Holman-Harries May Dep. 120:18–121:1, 255:19–256:1. Ex. 37, Westerdahl Dep. 321:23–322:16.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Both Ms. Westerdahl and Ms. Holman-Harries testified only that they were not aware of any such goals. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, this "fact" is immaterial. *See also* Oracle's Objections to Evidence.
216	Oracle's Senior Director of Diversity Compliance, Shauna Holman-Harries[27], provided no compensation-related reports to	Ex. 106, Supplemental Excerpts from Holman-Harries May Dep. 255:19–256:1, 265:12–267:5. Ex. 37, Westerdahl Dep. 330:5–11.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Ms. Holman-Harries testified "I am not aware of anything that's been done outside of our work product …". Ex. 106 at 265-

[26] Joyce Westerdahl is Oracle's Executive Vice President for Human Resources. *See supra* Fact 42.

[27] Shauna Holman-Harries is the Senior Director of Diversity Compliance for Oracle, and she started at Oracle as a Director of Diversity Compliance in 2011. *See supra* Fact 43.

	Oracle's senior management pursuant to AAP regulations.		266. Further, Westerdahl only testified that she did not recall any such reports. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
217	Joyce Westerdahl is not aware of anyone at Oracle who has been trained to carry out internal pay equity assessments by gender or race.	Ex. 37, Westerdahl Dep. 336:14–22.	**Undisputed but immaterial.** Ms. Westerdahl is Oracle's Global VP of HR. The "fact" that she personally is unaware whether anyone at Oracle has been trained to conduct internal pay equity assessments is of no consequence, and is not material to the legal issues the Court must decide in this motion, including primarily whether OFCCP has met its burden of establishing that Oracle engaged in a pattern or practice of intentional compensation discrimination against women, Asians, or African-Americans in its Product Development job function, and against women in its IT and Support job functions, at HQCA.
218	Oracle's Senior Director of Diversity Compliance, Shauna Holman-Harries, does not supervise the actual analysis, oversee the individuals who are conducting the individual	Ex. 43, Holman-Harries Dep. 268:4–269:6; Ex. 106, Supplemental Excerpts from Holman-Harries May Dep. 87:15–89:9, 97:25–98:16, 117:5–118:20, 125:7–126:17, 174:12–176:14, 240:2–244:4, 249:11–17, 259:4–268:14.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** As stated, this fact is hopelessly vague and makes no sense. It is impossible to tell from this "fact" which analyses OFCCP is referring to. Ms. Holman-Harries testified "any kind of pay analysis by my team was

	analyses, or ensure that the individual managers have conducted analyses to determine whether there are gender-, race, or ethnicity-based disparities.	Ex. 63, AAP, ORACLE_HQCA_0000005000 5005, 5010.	done under attorney-client work product, and was submitted to our attorneys as part of their work product and as part of privileged information, you know, in the assessment of pay." Ex. 106 at 175:20-176:7. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). To the extent OFCCP is trying to establish Ms. Holman-Harries does not personally supervise the thousands of managers who assess pay equity as part of Oracle's 2.17 compliance as articulated in its Position Statement, discovery responses, and to OFCCP during the audit, that "fact" is not surprising and is also wholly immaterial. *See also* Oracle's Objections to Evidence.
219	Oracle admits that during a focal review, managers have no information to compare the compensation of the people within their organizations to the compensation of other Oracle employees outside of their organization.	Ex. 31, Loaiza Dep. 160:23–162:11; Ex. 37, Westerdahl Dep. 319:21–320:7, 321:7–22.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Neither Mr. Loaiza nor Ms. Westerdahl were testifying on behalf of Oracle, so their testimony does not constitute an admission on behalf of Oracle. Further, pages 319 and 320 of the Westerdahl transcript were not included in Ex. 37. Therefore, OFCCP has failed to meet its burden of supporting

			its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). This "fact" also is immaterial. *See also* Oracle's Objections to Evidence.
220	Oracle admits that during a focal review, if a manager's organization is small, e.g., only having four people, then the manager could only review the compensation for just those four employees.	Ex. 37, Westerdahl Dep. 321:12–22.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** In responding to OFCCP's posed hypothetical question (and in general) Ms. Westerdahl was testifying in her personal capacity and not on behalf of Oracle, so her testimony does not constitute an admission on behalf of Oracle. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, this fact is immaterial. *See also* Oracle's Objections to Evidence.
221	The compensation programs that these managers use to make the alleged compensation analysis and to recommend salary increase and bonus awards during the focal reviews do not have any	Ex. 31, Loaiza Dep. 209:22–25, 145:9–22. Ex. 76, Screenshots from "Workforce Compensation Hints and Tips" video from Oracle's Global Compensation Team showing fields included within the video from the Workforce Compensation program used during the focal review process, ORACLE_HQCA_0000417060	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Mr. Loiza was not testifying on behalf of Oracle, and his individual testimony only revealed that, to his recollection, race or gender fields were not present. Exhibit 76 purports to be screenshots of Oracle's

	race or gender fields.		compensation program taken from a video that was produced by Oracle during this litigation; however, OFCCP has proffered no foundation to establish the veracity of this demonstrative exhibit nor has OFCCP shown that the screenshots encompass all available fields within its compensation program such that the proffered fact is beyond dispute. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Additionally, the evidence cited says nothing about "alleged compensation analyses" and in general, this "fact" is immaterial. *See also* Oracle's Objections to Evidence.
222	Oracle dedicates no dollar budgets or funds (e.g., no dollar dive and save budgets) to ensure pay equity or to correct pay disparities based on race or gender.	Ex. 106, Supplemental Excerpts from Holman-Harries May Dep. 185:20–186:19 Ex. 27, Waggoner 30b6 Dep. 294:9–11.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** The cited testimony says nothing about any budgets to ensure pay equity or correct pay disparities. Moreover, OFCCP is *grossly* misrepresenting the evidence it cites. For example, Ms. Holman-Harries testified that she was *not involved* in setting budgets for salary increases (and therefore has no idea whether such budgets exist). Ex. 106, Supplemental Excerpts

			from Holman-Harries May Dep. 185:20–23. Further, Ms. Waggoner's testimony confirms only that at a corporate-wide level there is no "specific budget for dive and saves." Setting aside that **dive and saves are not the same thing as pay equity adjustments,** OFCCP ignores testimony that immediately follows the lines it cites confirming managers could use their own "salary budget" for dive and saves. Ex. 27, Waggoner 30b6 Dep. 294:7-18. *Oracle points this out not because it is material to this motion, but because it is yet another example of OFCCP grossly misrepresenting the evidence.* Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). The truth is, OFCCP has no idea whether Oracle set budgets for pay equity adjustments, nor what privileged actions Oracle has taken "to ensure pay equity." Indeed, the Court confirmed OFCCP is not entitled to this information when it denied (in relevant part) OFCCP's motion to compel Oracle's privileged pay analyses, which included a document request for all actions taken "in response to" such analyses. *See* June 19, 2019 Declaration of Laura Bremer, Exs. 25, 26 at RFP Nos. 152-

			155; September 19, 2019 Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Oracle's Compensation Analyses at, 18 ("OFCCP's motion is granted as to RFPs 71, 148, and 174, each of which is tethered to the regulations in question. . . . OFCCP's motion is otherwise denied."). It is black-letter law that OFCCP cannot use Oracle's assertion of privilege against it, and the Court should reject outright OFCCP's reliance upon "if you have nothing to hide" atmospherics that do not – and legally cannot – evidence bias. *Parker v. Prudential Ins. Co. of Am.*, 900 F.2d 772, 775 (4th Cir. 1990) (a party "asserting the privilege should not face a negative inference about the substance of the information sought"). *See also* Oracle's Objections to Evidence.
223	Oracle's "dive and save" budget is a headcount budget in terms of the number of dives and saves that could be given in a year, not a dollar budget.	Ex. 27, Waggoner 30b6 Dep. 297:13-23.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Ms. Waggoner's testimony does not support this fact, which is immaterial in any event. *See also* Response to SUF 222. *See also* Oracle's Objections to Evidence.
224	In response to internal complaints or concerns about	Ex. 65, Dep. of Tamerlane Baxter Rule 30(b)(6) dated 7/3/19 (Baxter 30b6 Dep.) 143:17–144:4.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.**

	pay equity, Oracle made no attempt at statistical analysis to determine if an employee's pay level was appropriate.		Once again, OFCCP is blatantly misrepresenting the evidence and asking this Court to make impermissible, harmful assumptions about what Oracle did or did not due pursuant to privilege. Ms. Baxter's cited testimony confirms only that she had not personally conducted a statistical analysis of compensation as part of a discrimination complaint investigation. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Response to SUF 222. *See also* Oracle's Objections to Evidence.
225	The U.S. Employee Handbook that Oracle provided to OFCCP in the underlying investigation contains a section titled "Internal Training and Development" with subsections titled "Required Training" and "Online Training" that do not list any training for affirmative action.	Ex. 11, Handbook, ORACLE_HQCA_0000000509-10.	**Undisputed but immaterial.** This fact is not material for several reasons, including that the point of the Handbook is not to list each and every training required for Oracle employees. On its face, it lists only a few examples.

226	The Affirmative Action Section of the U.S. Employee Handbook that Oracle provided to OFCCP in the underlying investigation did not address compensation	Ex. 11, Handbook, ORACLE_HQCA_0000000474	**Undisputed but immaterial.** This fact is not material for several reasons, including that the point of the Handbook is not to articulate all aspects of Oracle's AAP.
227	Oracle has never revised the U.S. Employee Handbook to address equity or affirmative action with respect to employee compensation.	Ex. 43, Holman-Harries Dep. 159:22–160:8.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** The cited testimony only proves that neither Ms. Holman-Harries nor her group revised any portion of the handbook to talk about equity or affirmative action with respect to employee compensation. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, this 'fact' is immaterial. *See also* Oracle's Objections to Evidence.
228	Oracle first made affirmative action training mandatory for all US managers and HR personnel in October 2015.	Ex. 77, "Affirmative Action Training at Oracle," dated 10/12/15, slide 2 (notes), slide 6, and slide 6 (notes), ORACLE_HQCA_0000416488 -2, -11, -12.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Again, OFCCP is misrepresenting the evidence in an easily demonstrable way, but one that (again) confirms that OFCCP simply cannot be trusted when it comes to telling

			this Court what the evidence says or shows. The 2015 training plainly states that what "changed" and was new were the regulations under Section 503 and VEVRAA related to individuals with disabilities and protected veterans. Oracle was rolling out new training to comply with those new regulations. The document (which OFCCP did not bother to authenticate through any Oracle witness) does *not* state that prior to 2015, Oracle did not require its US managers and HR personnel to take affirmative action training pursuant to EO 11246 and its implementing regulations. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
229	Oracle stated that this affirmative action training was "required" due to the Obama Administration's focus on hiring, selection, promotional opportunities and pay, and other terms and conditions of employment.	Ex. 77, slide 3, ORACLE_HQCA_0000416488-5.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** The document speaks for itself and does not say this is the only reason for the training. *See also* Response to SUF 228. *See also* Oracle's Objections to Evidence.

230	Oracle stated that this training was "required" because federal contractor employees must take this course if they are involved in recruitment, screening, selection, hiring, promotion, or other related employment making decisions.	Ex. 77, slide 4, ORACLE_HQCA_0000416488-7.	**Undisputed but immaterial and incomplete.** The document speaks for itself. Oracle's revised AAP training to comply with new regulations under Section 503 and VEVRAA related to individuals with disabilities and protected veterans is immaterial. *See also* Response to SUF 228. *See also* Oracle's Objections to Evidence.
231	Vice President Madhavi Cheruvu, Oracle's Human Resource Partner for President Thomas Kurian's Product Development LOB and seven lines of business, testified that she has not taken any affirmative action training and does not know any affirmative action requirements that Oracle has to meet.[28]	Ex. 19, Cheruvu Dep. 240:23–241:11.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Exhibit 19 does not include pages 240-241 of the Cheruvu deposition. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Even if she had testified as OFCCP claims, whether or not Ms. Cheruvu personally took affirmative action training or is personally familiar with Oracle legal obligations as a federal contractor is immaterial. *See also* Oracle's Objections to Evidence.
232	Vice President Madhavi	Ex. 19, Cheruvu Dep. 243:2–6.	**This "fact" is not supported by the evidence to which it**

[28] Madhavi Cheruvu is a Vice President of Human Resources at Oracle and works as a Human Resources business partner who supports seven lines of business at Oracle. *See supra* Facts 48 and 49.

	Cheruvu, Oracle's Human Resource Partner for President Thomas Kurian's Product Development LOB and seven lines of business, testified that she does not know if anyone in Product Development and in Thomas Kurian's old team have to receive affirmative action training.		**cites, and should therefore be disregarded but immaterial.** Exhibit 19 does not include page 243 of the Cheruvu deposition. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, whether Ms. Cheruvu is personally aware of the AAP training requirements for other employees is immaterial. *See also* Oracle's Objections to Evidence.
233	Vice President Madhavi Cheruvu, Oracle's Human Resource Partner for President Thomas Kurian's Product Development LOB and seven lines of business, testified that she does not think that anyone in her team has to keep any records to comply with Oracle's Affirmative Action Plan.	Ex. 19, Cheruvu Dep. 243:8–13.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Exhibit 19 does not include page 243 of the Cheruvu deposition. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, Ms. Cheruvu is not a lawyer and would not be expected to know whether records are kept to comply with AAP regulations or Oracle's many other legal record keeping obligations. This "fact" is immaterial. *See also* Oracle's Objections to Evidence.
234	Vice President Madhavi	Ex. 19, Cheruvu Dep. 243:15–21.	**This "fact" is not supported by the evidence to which it**

	Cheruvu, Oracle's Human Resource Partner for President Thomas Kurian's Product Development LOB and seven lines of business testified that she does not know if anyone on Thomas Kurian's team has to keep any records to comply with affirmative action regulations.		**cites, and therefore should be disregarded.** Exhibit 19 does not include page 243 of the Cheruvu deposition. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See* Response to SUF 233. *See also* Oracle's Objections to Evidence.

N. Undisputed Facts Relevant to Expert Reports

Fact #	OFCCP's Undisputed Material Facts	Supporting Evidence	Oracle's Response and Supporting Evidence
235	Neither of Dr. Janice Madden's reports relied on OFCCP's statistical analyses that supported the NOV or the SAC.	Ex. 90, Dep. of Dr. Janice Madden dated 10/10/19 (Madden Dep.) 63:22–64:10.	**Undisputed.** The cited testimony doesn't establish this fact, but it is true that OFCCP has abandoned entirely the "analyses" it conducted in connection with the NOV, FAC, and SAC and instead has made abundantly clear that its case now rises and falls entirely on the shoulders of Dr. Janice Madden. Regarding what Dr. Madden's reports do rely upon (and more importantly, what they don't), *see* Oracle *Daubert* motion and Objections to Evidence.

236	Within Product Development, the job descriptor variable ensures that the analysis only compares employees that are in the same job specialty, whether that be Application Developer, Development Systems Administrator Hardware Development, Product Management/Strategy, Product Development, Program Management, Quality Assurance, Release Developer, Software Development, Technical Writing, User Assistance, or User Experience Developer.	Madden Dep. 47:8–48:9; Ex. 108, excerpt of data file entitled "Amp_Personal_Experience_Qualification_Assign_Details.xlsx, Oracle produced 10/1/17, ORACLE_HQCA_0000070738 Garcia Decl. ¶ 108.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** This "fact" is argument and is not supported by the "evidence" to which it cites. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Paragraph 108 of the Garcia Decl. proves that "job descriptor" is not an Oracle term. Instead, it is a fiction created by Dr. Madden and OFCCP. Dr. Madden created a "job descriptor" variable, not found in Oracle's records, that aggregates job titles within a particular type or category of job, regardless of career level. *See* Connell MSJ Decl., Ex. N (Madden Report) 15-16 & Appx. A, Ex. U (10/10/19 Madden Dep.) 47:4-11, 174:1-15. In doing so, Dr. Madden assumed Oracle's job codes classify employees doing similar work. Connell MSJ Decl., Ex. U (10/10/19 Madden Dep.) 43:19-45:17. *See also* Oracle's *Daubert* Motion and Objections to Evidence. *See also* Oracle's Objections to Evidence.
237	Oracle's "systems job	Madden Dep. 47:8–48:9;	**This "fact" is not supported by the evidence to which it**

	title" is the job descriptor plus global Career Level.	Ex. 107, ORACLE_HQCA_0000070738 Garcia Decl. ¶ 108.	**cites, and therefore should be disregarded.** Paragraph 108 of the Garcia Decl. proves that "job descriptor" is not an Oracle term. Instead, it is a fiction created by Dr. Madden and OFCCP. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Dr. Madden created a "job descriptor" variable, not found in Oracle's records, that aggregates job titles within a particular type or category of job, regardless of career level. See Connell MSJ Decl., Ex. N (Madden Report) 15-16 & Appx. A, Ex. U (10/10/19 Madden Dep.) 47:4-11, 174:1-15. In doing so, Dr. Madden assumed Oracle's job codes classify employees doing similar work. Connell MSJ Decl., Ex. U (10/10/19 Madden Dep.) 43:19-45:17. *See also* Oracle's *Daubert* Motion and Objections to Evidence.
238	There are 35 job descriptors within the Product Development, Support, and Information Technology job functions.	Ex. 107, ORACLE_HQCA_0000070738 Garcia Decl. ¶ 82.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded .** This is not a "fact." Oracle does not use "job descriptors." Dr. Madden made up this variable. Therefore, OFCCP has failed to meet its burden of

			supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). Paragraph 82 of the Garcia Decl. is irrelevant to this fact. Assuming OFCCP intended to reference Paragraph 108 of the Garcia Decl., the cited reference proves that "job descriptor" is not an Oracle term. Instead, it is a fiction created by Dr. Madden and OFCCP. Dr. Madden created a "job descriptor" variable, not found in Oracle's records, that aggregates job titles within a particular type or category of job, regardless of career level. See Connell MSJ Decl., Ex. N (Madden Report) 15-16 & Appx. A, Ex. U (10/10/19 Madden Dep.) 47:4-11, 174:1-15. In doing so, Dr. Madden assumed Oracle's job codes classify employees doing similar work. Connell MSJ Decl., Ex. U (10/10/19 Madden Dep.) 43:19-45:17. *See also* Oracle's *Daubert* Motion and Objections to Evidence.
239	Dr. Saad evaluated whether Dr. Madden or OFCCP had done statistical analyses that supports OFCCP's claims.	Ex. 89, Saad Dep. 123:16–124:7.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** OFCCP is not accurately representing Dr. Saad's testimony. The deposition testimony cited by Dr. Saad says he analyzed "whether or

			not Dr. Madden or the OFCCP in their statistical analyses has done an analysis that supports their claims – supports the claims of OFCCP." Ex. 89, Saad Dep. 123:19–124:7. In any event, Dr. Saad's reports articulate specifically what he was asked to analyze, and what he did analyze. *See also* Oracle's Objections to Evidence.
240	Dr. Saad never analyzed the base pay of Oracle employees (other than for Oracle (except for starting pay of new hires).	Ex. 89, Saad Dep. 268:23–269:4.	**Undisputed but immaterial.** Although this fact is unintelligible as stated, Dr. Saad's analyses and testimony speak for themselves. Dr. Saad makes clear (as do his reports) that he responded to, and criticized, Dr. Madden's base pay models, and demonstrates why they fail to support (let alone sustain) OFCCP's claims of compensation discrimination. *See also* Oracle's Objections to Evidence.
241	Dr. Saad never ran an analysis on Medicare wages (other than replicating what OFCCP and Dr. Madden did).	Ex. 89, Saad Dep. 268:10–20.	**Undisputed but immaterial.** Although this fact is unintelligible as stated, Dr. Saad's analyses and testimony speak for themselves. *See also* Response to SUF 240.
242	Dr. Saad understands that Oracle does not have compensation policies (other	Ex. 89, Saad Dep. 269:5–17, 305:22-306:8.	**Undisputed.** OFCCP's strained attempt to place the label of "policies" on Oracle's compensation-related documents (including trainings

	than a 2017 policy regarding prior pay).		and other guidance document regarding compensation) is immaterial. It is also addressed in detail in Oracle's opposition to OFCCP's motion for summary judgment.
243	Dr. Madden used the job descriptor variable to analyze Oracle employees she deemed likely to have the similar majors, specializations, and similar prior experience.	Madden Dep. 175:5–179:4.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** The cited testimony confirms that Dr. Madden simply *assumed* employees had similar majors, specializations, and prior experience solely on the basis that the employees ended up in the same job family. Dr. Madden did not compare the pay of employees who perform similar work. Connell MSJ Decl., Ex. P (Madden Rebuttal Report) 10-11, Ex. U (10/10/19 Madden Dep.) 14:18-15:6; 43:4-18. Nor did Dr. Madden consider employee's actual skills, duties or responsibilities. Connell MSJ Decl., Ex. P (Madden Rebuttal Report) 9-11; Ex. U (10/10/2019 Madden Dep.) 43:4-18; 91:15-24. Further, Dr. Madden only looked to the level of degree attained, not the actual degree attained, and coded as "unknown" the education level of over 50% of the employees she analyzed. Connell MSJ Decl., Ex. N (Madden Report) 14-15; Ex. O (Saad Rebuttal) ¶ 19; n. 21. Therefore, OFCCP has failed to meet its burden of supporting

			its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's *Daubert* Motion and Objections to Evidence. *See also* Oracle's Objections to Evidence.
244	Dr. Madden re-analyzed Dr. Saad's Tables 1-5 from his July 19, 2019 report using basepay rather than Dr. Saad's measure of "total compensation."	Ex. 89, Saad Dep., Ex. 9 (Madden Decl.) ¶8, Tables D-1 through D-5 (column 6).	**This "fact" is not supported by admissible evidence, and therefore should be disregarded.** This evidence is inadmissible as untimely and irrelevant. Exhibit 9 contains "new" analyses by Dr. Madden that were generated weeks after the deadline for expert reports set forth in the Court's scheduling order, and must be rejected on that basis alone. Nor are Tables 1-5 "Dr. Saad's Tables" as OFCCP seems intent on using that term, as Dr. Saad has not presented a from-the-ground-up independent model reflecting similarly situated employees at Oracle because he was retained to critique OFCCP's statistical evidence, which is entirely consistent with OFCCP's burden in this case. Nor do Tables 1-5 appear in Dr. Saad's July 19, 2019 report. Rather, Tables 1-5 appear in his August 16, 2019 rebuttal report. This evidence is also inadmissible as irrelevant because Dr. Madden's models (to which Dr. Saad's models

			made modifications to correct certain flaws, and Dr. Madden in turn ran on an alternative measure of pay) fail to compare similarly situated employees as further explained in Oracle's *Daubert* Motion to exclude Dr. Madden's reports and testimony, and focus on an irrelevant measure of pay. These analyses are inadmissible as irrelevant and unreliable. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence Nos. 11-12; Oracle's *Daubert* Motion; Oracle's Opposition to OFCCP's MSJ.
245	Dr. Madden's results of re-running Dr. Saad's analysis for "total compensation" depicted in table 1 of his report, substituting basepay, showed statistically significant basepay differences for Women in the Information Technology job function for 2014, 2017, and 2018.	Ex. 89, Saad Dep., Ex. 9 (Madden Decl.) ¶9, Table D-1 (column 6).	**This "fact" is not supported by admissible evidence, and therefore should be disregarded.** *See* Response to SUF 244 (Dr. Madden's "new" analyses are untimely and irrelevant; these are not Dr. Saad's analyses but rather criticisms of Dr. Madden's approaches and methodology; failure to compare similarly situated employees or apply the appropriate measure of pay). *See also* Oracle's Objections to Evidence No. 11-12; Oracle's *Daubert* Motion; Oracle's Opposition to OFCCP's MSJ.

246	Dr. Madden's results of re-running Dr. Saad's analysis for "total compensation" depicted in table 1 of his report, substituting basepay, showed basepay differences for Women in the Information Technology job function of between 1.71 and 1.88 standard deviations in 2013, 2015, and 2016.	Ex. 89, Saad Dep., Ex. 9 (Madden Decl.) ¶9, Table D-1 (column 6).	**This "fact" is not supported by admissible evidence, and therefore should be disregarded.** *See* Response to SUF 244 (Dr. Madden's "new" analyses are untimely and irrelevant; these are not Dr. Saad's analyses but rather criticisms of Dr. Madden's approaches and methodology; failure to compare similarly situated employees or apply the appropriate measure of pay). *See also* Oracle's Objections to Evidence No. 11-12; Oracle's *Daubert* Motion; Oracle's Opposition to OFCCP's MSJ.
247	Dr. Madden's results of re-running Dr. Saad's analysis for "total compensation" depicted in table 2 of his report, substituting basepay, showed statistically significant basepay differences for Women in the Product Development job function for 2013, 2016, 2017, and 2018.	Ex. 89, Saad Dep., Ex. 9 (Madden Decl.) ¶9, Table D-2 (column 6).	**This "fact" is not supported by admissible evidence, and therefore should be disregarded.** *See* Response to SUF 244 (Dr. Madden's "new" analyses are untimely and irrelevant; these are not Dr. Saad's analyses but rather criticisms of Dr. Madden's approaches and methodology; failure to compare similarly situated employees or apply the appropriate measure of pay). *See also* Oracle's Objections to Evidence No. 11-12; Oracle's *Daubert* Motion; Oracle's Opposition to OFCCP's MSJ.
248	Dr. Madden's results of re-running Dr. Saad's analysis	Ex. 89, Saad Dep., Ex. 9 (Madden Decl.) ¶9, Table D-2 (column 6).	**This "fact" is not supported by admissible evidence, and therefore should be disregarded.**

	for "total compensation" depicted in table 2 of his report, substituting basepay, showed basepay differences for Women in the Product Development job function of 1.89 standard deviations in 2014.		*See* Response to SUF 244 (Dr. Madden's "new" analyses are untimely and irrelevant; these are not Dr. Saad's analyses but rather criticisms of Dr. Madden's approaches and methodology; failure to compare similarly situated employees or apply the appropriate measure of pay). *See also* Oracle's Objections to Evidence No. 11-12; Oracle's *Daubert* Motion; Oracle's Opposition to OFCCP's MSJ.
249	Dr. Madden's results of re-running Dr. Saad's analysis for "total compensation" depicted in table 3 of his report, substituting basepay, showed statistically significant basepay differences for Women in the Support job function for 2013, 2014, and 2017.	Ex. 89, Saad Dep., Ex. 9 (Madden Decl.) ¶9, Table D-3 (column 6).	**This "fact" is not supported by admissible evidence, and therefore should be disregarded.** *See* Response to SUF 244 (Dr. Madden's "new" analyses are untimely and irrelevant; these are not Dr. Saad's analyses but rather criticisms of Dr. Madden's approaches and methodology; failure to compare similarly situated employees or apply the appropriate measure of pay). *See also* Oracle's Objections to Evidence No. 11-12; Oracle's *Daubert* Motion; Oracle's Opposition to OFCCP's MSJ.
250	Dr. Madden's results of re-running Dr. Saad's analysis for "total compensation" depicted in table 4 of his report, substituting basepay, showed	Ex. 89, Saad Dep., Ex. 9 (Madden Decl.) ¶9, Table D-4 (column 6).	**This "fact" is not supported by admissible evidence, and therefore should be disregarded.** *See* Response to SUF 244 (Dr. Madden's "new" analyses are untimely and irrelevant; these are not Dr. Saad's analyses but rather criticisms of Dr.

	statistically significant basepay differences for Asians in the Product Development job function in 2013, 2016, and 2017.		Madden's approaches and methodology; failure to compare similarly situated employees or apply the appropriate measure of pay). *See also* Oracle's Objections to Evidence No. 11-12; Oracle's *Daubert* Motion; Oracle's Opposition to OFCCP's MSJ.
251	Dr. Madden's results of re-running Dr. Saad's analysis for "total compensation" depicted in table 4 of his report, substituting basepay, showed basepay differences of 1.62 through 1.83 standard deviations for Asians in the Product Development job function in 2014, 2015, and 2018.	Ex. 89, Saad Dep., Ex. 9 (Madden Decl.) ¶9, Table D-4 (column 6).	**This "fact" is not supported by admissible evidence, and therefore should be disregarded.** *See* Response to SUF 244 (Dr. Madden's "new" analyses are untimely and irrelevant; these are not Dr. Saad's analyses but rather criticisms of Dr. Madden's approaches and methodology; failure to compare similarly situated employees or apply the appropriate measure of pay). *See also* Oracle's Objections to Evidence No. 11-12; Oracle's *Daubert* Motion; Oracle's Opposition to OFCCP's MSJ.
252	Dr. Saad described "human capital" as the "value embedded in individuals and acquired through training, through experience. Some would regard innate ability as part of your stock of human capital which you enhance through	Ex. 89, Saad Dep. 172:16-25.	**Undisputed but immaterial and incomplete.** OFCCP includes in this "fact" only part of Dr. Saad's answer. A plain read of the testimony confirms he went on to elaborate and stated, "Your skills would be a component of human capital. Health is often regarded as a component of human capital." Ex. 89, Saad Dep. 173:1-3.

	training and experience."		In any event, Dr. Saad's general description of human capital is immaterial to this motion.
253	Dr. Saad testified that he used an organization name variable to attempt to proxy for the products that employees were involved with.	Ex. 89, Saad. Dep. 224:8-20.	**Generally undisputed, but imprecisely stated.** Dr. Saad's actual testimony is that he used an Organization variable as a "proxy for *the nature* of the products that employees are involved with."
254	The standard deviation for statistical significance is 1.96.	Ex. 91, Dr. Janice Madden's Expert Report, dated 7/10/10, p. 11; Ex. 89, Saad Dep. 145:8–147:8.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** This purported "fact" is not a fact. As Dr. Saad's testimony makes clear, it is a statistical concept that some courts have adopted. Dr. Saad's testimony also confirms, however, that the number of observations at issue matters (he references "probably 100, 125 observations"). Ex. 89, Saad Dep. 147:3-8. OFCCP has not, however, established in the abstract that for every possible statistical analysis that exists, 1.96 standard deviations is the threshold for significance, as this purported "fact" suggests. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
255	Bonuses are discretionary at Oracle.	Ex. 78, "Oracle Compensation Guidelines," ORACLE HQCA 0000382601	**Undisputed.**

256	Bonuses are not awarded to all employees at Oracle.	Ex. 78, ORACLE_HQCA_0000382601 –02.	**Undisputed.**
257	Stock grants are discretionary at Oracle.	Ex. 78, ORACLE_HQCA_0000382603	**Undisputed.**
258	Stock grants are not awarded to all employees.	Ex. 8, Slide 38 (notes), ORACLE_HQCA_0000056391 -73; Ex. 79, "Eligibility: FY14 Focal Stock Grant," no date, ORACLE_HQCA_0000022959 Ex. 80, "Eligibility: FY13 Focal Stock Grant," ORACLE_HQCA_0000380593 Ex. 84, Email from Stefanie Wittner, dated 5/30/13, ORACLE_HQCA_0000022961 Ex. 78, ORACLE_HQCA_0000382600-603	**Undisputed.**
259	Oracle caps the number of employees who can be granted stock in the United States to 35%.	Ex. 8, Slide 38 (notes), ORACLE_HQCA_0000056391 -73; Ex. 79, ORACLE_HQCA_0000022959 Ex. 80, ORACLE_HQCA_0000380593 Ex. 84, ORACLE_HQCA_0000022961	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** Absolutely nothing in these documents supports the assertion that Oracle "caps" the number of employees who can be granted stock in the United States to 35%. The email attached as Exhibit 35 simply notes that for the particular stock distribution happening in May 2013, no more than 35% of the "eligible employee" population would receive distributions given the overall budget and the fact that the minimum grant for that

			distribution was 1750 shares. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
260	Stock grants "vest" in 25% increments over 4 years.	Ex. 27, Waggoner 30b6 Dep. 270:13–271:14.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** OFCCP failed to include pages 270-271 in Exhibit 27. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.
261	If an employee separates from Oracle before the end of the first year of the award, the employee forfeits that compensation entirely because RSUs and stock options both require continuous employment in order to earn the right to the shares based on a 25% annual vesting schedule.	Ex. 83, Stock Options/Restricted Stock Units (RSUs) FAQ-June 2016, ORACLE_HQCA_0000416489 Ex. 27, Waggoner 30b6 Dep. 271:7–14.	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** OFCCP failed to include pages 270-271 in Exhibit 27 and Exhibit 83 does not discuss forfeiture. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, Exhibit 83 speaks for itself. *See also* Oracle's Objections to Evidence.
262	If an employee separates from Oracle before the annual	Ex. 27, Waggoner 30b6 Dep. 270:13–271:14;	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.**

	vesting date for any part of the award, the employee forfeits the percentage of the stock award that has not yet vested because RSUs and stock options both require continuous employment in order to earn the right to the shares based on a 25% annual vesting schedule.	Ex. 83, ORACLE_HQCA_0000416489	OFCCP failed to include pages 270-271 in Exhibit 27 and Exhibit 83 does not discuss forfeiture. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). In any event, Exhibit 83 speaks for itself. *See also* Oracle's Objections to Evidence.
263	Under Oracle's Affirmative Action Plan, Oracle's Director of Diversity Compliance has the responsibility to implement an effective auditing and reporting system that includes developing and analyzing internal audit for various areas including compensation	Ex. 106, Supplemental Excerpts from Holman-Harries May Dep. 73:11–80:21. Ex. 63, AAP, ORACLE_HQCA_0000005000 5005, 5010.	**Undisputed that the document cited contains this language, but immaterial.**
264	Oracle's job codes are not product-associated.	Ex. 81, PMK Dep. of Kate Waggoner in *Jewett v. Oracle Corp. Inc.*, Case No. 17-cv-02669 (Sup. Ct. San Mateo), dated 7/26/18, (Waggoner PMK *Jewett* Decl.) ORACLE_HQCA_0000400695 –66 (i.e., 102:0–103:9).	**This "fact" is not supported by the evidence to which it cites, and therefore should be disregarded.** When asked whether "people in IT and Product Development were never coded based on

			particular products." Ms. Waggoner testified they were not. Ex. 81 (103:3-9). She does not make any sweeping statements about Oracle job codes generally. In any event, this fact is immaterial. Therefore, OFCCP has failed to meet its burden of supporting its factual position. 29 C.F.R. § 18.72(c)(1)(i) and (e). *See also* Oracle's Objections to Evidence.

Respectfully submitted,

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