



October 31, 2016

Confidential Conciliation Communication – FRE 408

VIA E-MAIL AND FEDERAL EXPRESS

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Re: *Oracle America, Inc., Redwood Shores, California* (OFCCP No. R00192699)

Dear Ms. Wipper:

Thank you again for sharing your concerns during our October 6 meeting. In the limited time we have had, we have compiled, and set forth below, information and documentation OFCCP asked Oracle to provide with regard to the recruiting and compensation issues referenced in the NOV.

I. Oracle's Recruiting Efforts for PT1 Positions Are Robust, And Demonstrate Oracle Has Met Both Its Affirmative Action Obligations And Overall EEO Compliance Requirements.

OFCCP charges Oracle with a violation for allegedly favoring "Asian applicants, particularly Asian Indians, based upon race in its recruiting and hiring practices" for PT1 roles during the period January 2013 through June 2014. NOV at 1. In support of the alleged recruiting violation, OFCCP focuses not on Oracle's actual recruiting efforts or action-oriented programs, but instead on a summary statistical comparison of Oracle's applicant flow to one of two data sources ("2006-2010 Census Data and/or 2013-2014 DOL, Bureau of Labor Statistics' Labor Force Statistics"). NOV, p. 2, n. 2.¹

¹ As a legal matter, we believe a finding of discrimination based on a comparison of purported availability statistics to applicant flow is contrary to OFCCP policy, applicable law, and the facts here. For example, in order to ensure that affirmative action compliance does not become an unconstitutional effort to fill quotas, OFCCP has long-acknowledged that a contractor's compliance is to be measured not by its performance against a numerical target, but instead by an assessment of its actual good faith efforts:

A contractor's compliance is measured by whether it has made good faith efforts to meet its goals. Failure to meet goals is not a violation of the Executive Order. Therefore, a contractor that has not met its goals will be found in compliance if it has made good faith efforts.



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A. Oracle's Recruiting Efforts for PTI Positions Are Robust And Compliant.

A review of Oracle's actual recruiting practices for PTI positions demonstrates that Oracle's recruiting efforts are robust, and further demonstrates Oracle has met its affirmative action obligations. For example, Oracle's jobs are open to *all* interested individuals, both internal Oracle employees and external individuals, worldwide. Any individual, from anywhere in the world, can access Oracle's website for jobs (and as described below, many Oracle applicants come from outside the U.S.). A simple Internet search, or by searching on Oracle.com, will allow any interested person to reach the website. Attached is a sample of a current website screen shot showing just some of the job postings for PTI positions. *See Attachment A.* This form of website posting was also in place during the period covered by the NOV.

In addition to providing open access to all, Oracle undertakes substantial Good Faith Efforts (GFEs) in the U.S. to reach out to interested women and minorities for all positions, including PTI positions. The PTI job group includes more than one type of position. For example, several positions require a degree, but little or no prior work experience. These positions often are filled by applicants coming directly from colleges or graduate schools, and their paths to Oracle differ. Some apply to Oracle postings on their own, some are identified through school recruiting efforts, and some obtain Oracle internships. Other technical positions require both a degree and some level of relevant prior work experience. These positions more commonly are filled by applicants coming from internal and external postings, or through other communications and outreach. During the period in question, some examples of Oracle's GFEs relevant to the subject PTI positions include:

- Partnering with the United Negro College Fund, Oracle provided internships and scholarships for students attending historically black colleges. Many of the interns who participated in this program have been hired by Oracle, mainly in technology positions.
- Partnering with Project Hire, Oracle provided internships for injured veterans of all races, including internships for roles in technology.

Directive 1996-01 at 4 (December 13, 1995); *see also Texas Dep't of Housing and Cmty. Affairs v. Inclusive Project, Inc.*, 135 S.Ct. 2507, 2523 (2015) (without adequate safeguards at the *prima facie* stage, Title VII liability "might cause race to be used and considered in a pervasive way and 'would almost inexorably lead' governmental or private entities to use 'numerical quotas,' and serious constitutional questions could then arise").



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- Oracle externally posted open PT1 positions on U.S. job sites, and disseminated information about such positions to organizations that target job seekers from diverse backgrounds, including Women for Hire, IMDiversity, Diversity Working.com, Minority jobs, and The Black Perspective.
- Oracle provided recruiting tables at several Bay Area events and career fairs targeting job seekers from diverse backgrounds, including a Wounded Warriors Workforce event and an Out and Equal workplace summit.
- Oracle sponsored and provided presentations at several Bay Area events for organizations serving African-American and Hispanic students interested in STEM careers, including Cinnamon Girls and Green Scholars.

These are just a few examples of Oracle's many affirmative action-oriented outreach efforts to diverse potential applicants for jobs in the PT1 job group during the relevant time period. Attached to this response are several spreadsheets which set forth these and additional GFEs that Oracle engaged in during the relevant time period. **See Attachment B.**

Moreover, Agency COs interviewed both a senior general recruiter (white female) and a senior college-focused recruiter (African American female). Both of them shared the various ways that Oracle recruits and searches out potential applicants and the processes whereby any interested individual can apply.

These practices and GFEs demonstrate that Oracle has met its affirmative action compliance obligations of outreach to diverse candidates of all backgrounds. If the Agency has additional questions about Oracle outreach efforts, we would be happy to answer them.

B. Oracle's Recruiting Efforts for PT1 Positions Are Non-Discriminatory.

Not only were Oracle's recruiting efforts robust, they also were non-discriminatory. As courts recognize, there is an important distinction between insufficient outreach and discriminatory outreach. *See, e.g., Jarrells v. Select Pub., Inc.*, 2003 WL 23221278, at *6 (W.D. Wis. Feb. 19, 2003) (Title VII does not require employers to place advertisements only in forums that have an audience representing a mirror image of the general population; rather plaintiff must show that defendant's decision to recruit principally through a university job website for students was motivated by discriminatory intent and the mere fact that a forum attracts an audience that is disproportionately young is insufficient); *EEOC v. Consolidated Services Systems*, 777 F. Supp.



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599, 607-08 (N.D. Ill. 1991) (employer's use of Korean newspapers and word-of-mouth to recruit employees did not show discriminatory intent against non-Koreans).

Here, the NOV alleges that Oracle discriminated in recruiting. Yet OFCCP's only basis for this allegation is a comparison of purported U.S. census availability statistics to applicant flow, without regard to Oracle's actual GFEs or action-oriented programs. As described above, Oracle did not engage in any process or practice that in any way operated, or tended to deter or limit, applicants of any race for PT1 jobs, nor has OFCCP identified any facts to suggest that it did. For this reason as well, the recruiting violation (as well as the hiring violation that depends on the recruiting violation) is legally and factually erroneous.

C. OFCCP's Reliance on U.S. Census Data for its Statistical Analysis is Misplaced.

OFCCP's recruiting violation is further flawed because it improperly relies on specific U.S. census data that does not accurately reflect the available pool of candidates for positions in Oracle's PT1 job group. First, as noted above, Oracle undertakes open and fair processes to affirmatively seek out potential candidates, and also allows any interested individual worldwide to apply via a job website open to all. In the context of affirmative action compliance, census-occupation data is used solely for estimating availability for affirmative action plan purposes and possible goal setting. Yet even in the AAP context, OFCCP's regulations for assessing utilization and developing AAP goals are now decades old, predate the Internet, and do not contemplate worldwide access to electronic websites that allow anyone, anywhere, at no cost, to submit an application.

Moreover, relying on U.S. census data does not capture the global reach of Oracle's potential applicant pool. Not only do millions of software developers live in India, but Oracle presently employs more than 38,000 employees in India, primarily in software development and support roles. Indeed, a review of just a random sample of the actual applicants for Oracle's PT1 jobs confirms that applicants do not come from only within the United States. Many applicants come from outside the U.S., including from other Oracle locations worldwide. All of these international applicants were included in the applicant pools provided to OFCCP at the time of the desk audit. Additionally, much of that application data was provided in response to OFCCP's supplemental requests.



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A quick review of random sets of the application data submitted to OFCCP illustrates the international scope of applicant interest in PTI jobs at HQCA.² For example, the data for all of the 107 applicants we reviewed indicates that at least 34 (32% of the total applicants) were working or residing outside of the United States at the time of their application. Twenty-one of those applicants were internal applicants working at Oracle locations in India, Israel, the Philippines, China, Argentina, Mexico, Netherlands, or Egypt. The 13 external applicants who were working or residing outside the United States were located in Hungary, Italy, Taiwan, India, Russia, Canada, Germany, or Netherlands. Of the remaining 73 applicants whose applicant files did not indicate that they were working or residing outside the United States at the time of their application, 27 (25% of the total applicants) were non-United States citizens, including citizens of China, India, Taiwan, Korea, Hungary, Switzerland, or Canada. In other words, 57% of the applicants for those randomly selected positions were working or residing outside the United States and/or were citizens of countries other than the United States.

These examples confirm that OFCCP's reliance on U.S. census data as the basis for its finding of recruiting discrimination is misplaced, because even if a comparison of applicant flow to availability statistics was an appropriate basis for a finding of recruiting discrimination (which it is not), OFCCP is not using appropriate relevant source data.³

D. The NOV's Finding of Recruiting and Hiring Discrimination Is Contrary To Title VII Law.

Title VII case law confirms that a finding of unlawful bias, based solely on a comparison to misplaced census data, is unfounded. Rather, the probative statistics to examine when assessing a company's hiring practices involve a comparison of the actual, qualified applicants for a given position to those hired into the position – particularly where the position at issue requires specialized knowledge, skills or experience. “[I]n order to determine discriminatory exclusion, unskilled positions are compared to a different statistical pool than are jobs requiring special skills.” *Peightal v. Metro. Dade Cty.*, 26 F.3d 1545, 1554 (11th Cir. 1994) (citing *In 'll Brotherhood of Teamsters v. U.S.*, 431 U.S. 324, 337-38 (1977)). This is because “positions requiring special skills necessitate a determination of the number of minorities qualified to undertake the particular task.” *Id.* (citing *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469,

² In total, we reviewed the documentation for 107 applicants who applied to seven randomly selected jobs (IRC numbers 1891524, 2009578, 2145764, 1727737, 1889827, 1987662, 2053925).

³ A simple Internet search demonstrates that the number of software developers in Asia, especially India, is growing at a far more rapid pace than in the U.S., and soon the aggregate number of software developers in Asia is expected to surpass the number in the U.S.



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501-02 (1989)). *See also Hester v. S. R.R. Co.*, 497 F.2d 1374, 1379 n. 6 (5th Cir. 1974) (“comparison with general population statistics is of questionable value when we are considering positions for which, as here, the general population is not presumptively qualified”); *Mazus v. Dep’t of Transp.*, 629 F.2d 870, 875 (3d Cir. 1980) (citation omitted) (“statistical source [which] did not accurately reflect the percentage of females interested in the work force in question ... did not establish a prima facie case”).

Here, OFCCP makes no effort in the NOV to compare the actual applicant pool to those hired into Oracle’s PT1 positions during the relevant period. Instead, the NOV alleges that undisclosed discriminatory recruiting practices “skewed” the applicant pool. Yet because, as explained above, there is no evidence of discriminatory recruiting practices, OFCCP’s statistics fail to provide a meaningful comparison and fail to support a *prima facie* case of any recruiting or hiring violation. *See, e.g., EEOC v. Sears, Roebuck & Co.*, 839 F.2d 302, 324, 328 (7th Cir. 1988) (rejecting statistical analysis that used overinclusive data pool and did not “account for differences in interests or qualifications among [actual] applicants,” as “the EEOC did not analyze the hiring situations actually confronted by Sears managers”); *Ste. Marie v. E. R.R. Ass’n*, 650 F.2d 395, 400 (2d Cir. 1981) (“plaintiff’s statistical evidence and the EEOC reports on which it was based were totally wanting in probative value” because they failed to isolate pool of candidates with requisite skills and experience).

The fact that many qualified Asians, including Indians, both inside and outside the U.S., would like to work in California and apply to work for Oracle in what OFCCP regards as disproportionate numbers, has nothing to do with unlawful discrimination or bias. At best, the NOV issued by Mr. Doles identifies a relatively high number of interested and qualified Asian applicants in a single technical AAP Job Group. This does not, however, equate to recruiting and hiring discrimination against non-Asians.

II. The NOV’s Compensation Discrimination Findings Do Not Compare Similarly Situated Employees.

At the conciliation meeting on October 6, Oracle explained to OFCCP its position that OFCCP’s compensation discrimination findings fail because they do not compare individuals who are similarly situated. At one point, OFCCP observed that if the Agency accepted Oracle’s position regarding wide differences in jobs, it would affect the Agency’s ability to conduct a statistical analysis. Although the observation was apt, it does not change the reality of Oracle’s workforce, or the legal standards that must be met. As we have stated previously, Oracle is a highly diverse technology company that develops, supports and sells a wide range of products (hardware and software) to a wide range of companies worldwide. Oracle is not a commodity operation, nor a



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mass retailer or manufacturer. Oracle does not have hundreds, or even dozens, of employees who are fungible in their roles; and certainly not at any single location. To the contrary, Oracle is a highly diverse company in terms of people, skills, products, and customers. As a result, generalized statistics that might be probative in assessing employers with large numbers of teamsters, teachers, bank tellers, retail store clerks or cashiers, car assemblers, or other similar positions are not meaningful here. The discussion below offers both legal and documented factual support for Oracle's position.

A. Job Title Is Not Determinative Of Whether Employees Are Similarly Situated

OFCCP's findings of compensation discrimination depend on the premise that all employees at Oracle with the same job title (and in the same pay level) are similarly situated, and therefore presumably entitled to equal pay. Yet uncritically assuming that all, or even most, employees holding the same job title are "similarly situated" does not suffice. Instead, Directive 307 underscores an expectation that OFCCP will conduct a rigorous investigation into the actual job duties, responsibility levels, and skills and qualifications involved with the jobs:

The determination of which employees are similarly situated is case specific. Relevant factors in determining similarity may include tasks performed, skills, effort, level of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors.

Directive 307 at 3. The Directive goes on to explain that in every case, there are three key questions to answer, including:

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

Id. at 7-8 (emphasis added). Uncritically assuming all employees in the same job title are similarly situated, without a deeper factual inquiry, omits the important second step outlined above.



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Because Directive 307 is based on Title VII principles, it follows that Title VII case law is in accord. It specifically recognizes that job title alone is not determinative of whether employees are similarly situated for purposes of compensation analysis. *See, e.g., Sims-Fingers v. City of Indianapolis*, 493 F.3d 768, 772 (7th Cir. 2007) (rejecting Title VII and Equal Pay Act compensation claims because “[t]he jobs of the managers of the different parks in the sprawling Indianapolis park system are nonstandard, mainly because the parks are so different from one another.”); *Horn v. Univ. of Minn.*, 362 F.3d 1042, 1045-46 (8th Cir. 2004) (university assistant coaching positions with identical contracts and job descriptions were not substantially equivalent for purposes of Title VII and the Equal Pay Act where the day-to-day responsibilities of one position involved recruiting and public-relations skills and experience but the other involved more “behind the scenes” work); *Davis v. S.C. Dep’t of Health & Env’t Control*, 2015 WL 5616237, *6, 8 (D.S.C. Sept. 24, 2015) (plaintiff failed to establish prima facie case of wage discrimination despite relaxed Title VII standard, noting that courts look to actual job duties performed and not job description or title); *Hooper v. Total Sys. Servs., Inc.*, 799 F. Supp. 2d 1350, 1361-62, 1364 (M.D. Ga. 2011) (under Title VII, courts must focus on the actual job duties of the employees and not job titles and job descriptions meant to be used across business units); *Wildi v. Alle-Kiski Med. Ctr.*, 659 F. Supp. 2d 640, 659-60 (W.D. Pa. 2009) (citations omitted) (“For the same reasons that job titles are not determinative, job descriptions are not determinative. The relevant inquiry focuses upon the content of the position ... [and] evidence of the actual job duties performed”).

Rather, an individualized, case specific inquiry, like that contemplated in Directive 307, is required. Indeed, “[e]mployers are permitted to compensate employees differently based on skills that are not specifically required in a given job description so long as the employer considers those skills when making the compensation decision.” *Warren v. Solo Cup Co.*, 516 F.3d 627, 630-31 (7th Cir. 2008) (rejecting Title VII compensation claim where plaintiff could not show she was similarly situated to more highly skilled co-worker).

B. The Duties, Responsibilities, Skill Sets and Expertise Vary Significantly Among Oracle Employees Holding The Same Job Title Within the PT1 Job Group.

At Oracle, 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. For example, a comparison of employees who shared a common job title, as well as a common supervisor, and who showed the greatest differences in salary as of January 1, 2014 – *i.e.*, those individuals whom OFCCP’s analysis would suggest suffered the most wage discrimination – confirms that the common job title alone does not mean the employees are



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similarly situated. Rather, those employees, in fact, have materially different duties, responsibilities, and skill sets which prevent them from being comparators, and which explain the pay differentials.

Information Technology roles: By way of example in the IT role, in January 2014, Scott Campbell supervised two employees who held the title System Administrator 3: Mr. Scott Forten (white male) and Ms. Tatyana Yastreb (white female). Ms. Yastreb's base salary was nearly \$40,000 less than Mr. Forten's. Although these employees shared the same job title, their duties and responsibilities differed significantly.

Mr. Forten was a highly skilled technical employee whose responsibilities include supporting several key services, including Network Information Systems (NIS) and Domain Name Service (DNS). He also served as a subject-matter expert for several products and spent at least 50-60% of his time each week working to solve challenging technical problems. Mr. Forten's 2012 performance review, for example, praised his work "managing the NIA to LDAP/DSEE conversion" (a "challenging project") as well as "showing leadership in the NTP service area." See Attachment C.⁴ Ms. Yastreb, by contrast, spent 90-95% of her time doing data entry and clerical work. Of note, Mr. Campbell repeatedly offered Ms. Yastreb opportunities to develop her technical skills and take on more challenging work, but she declined. In her 2012 performance review, for example, Mr. Campbell noted that she "could develop higher level skills in the area of networking, security or system administration" but that "[i]t is of course [her] decision if [she] wish[ed] to [do so]." See Attachment D. Mr. Forten's greater skill set and scope of responsibility and duties, which Ms. Yastreb did not perform, demonstrates that these two employees were not similarly situated, *even though* they held the same job title.

Product Development roles: By way of example in the Product Development role, in January 2014, Abhishek Jain supervised two employees holding the title of Software Developer 4: Mr. Mark Polivka (white male) and Mr. Michael Edwards (black male). Mr. Edwards' base salary was over \$37,000 less than Mr. Polivka's. Again, however, their identical job title belies their very different duties and responsibilities, informed by their different skills and experience.

Mr. Polivka had previously worked as a Software Development Director at Oracle, but chose to transition back into a technical, non-managerial engineering role. He brought with him a host of

⁴ While we provide sample performance reviews which show the differing duties and responsibilities of these example employees who hold the same job title, we also note that a contractor is not required to create documentation that demonstrates that employees' duties vary and certainly has no obligation to provide such documentation.



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management and core technical expertise. Given that additional training and expertise, Mr. Polivka expanded the scope of his duties and responsibilities in the Software Developer 4 role. He “not only [did] an exceptional job” on his own work “but also pitche[d] in on other [projects] in the time of need” and “work[ed] very closely with” other departments in Oracle. See **Attachment E**. Mr. Polivka served as an architect of solutions and a go-to person for questions, and coordinated the efforts of others both within and outside of his the team.

Mr. Edwards, by contrast, was a strong performer on the individual projects to which he was assigned, but he did not have the level or breadth of expertise of Mr. Polivka and did not perform the additional coordination or cross-team collaboration that Mr. Polivka did. Mr. Edwards’ scope of work more closely resembled the work of another Software Developer 4 (Sina Tarassoly, an Asian male), whose salary was, appropriately, comparable to Mr. Edwards’.

As another example in a **Product Development role**, in January 2014, Anand Subbaraman supervised two employees with the job title Product Manager/Strategy 5: Mr. Kautul Mehta (Asian male) and Ms. Alka Asthana (Asian female). Ms. Asthana’s salary was over \$60,000 less than Mr. Mehta’s. While they held the same job title, Mr. Mehta had significantly more training and experience in product strategy and management than Ms. Asthana, who had only transitioned into that type of role in mid-2013, and therefore he performed far more complex tasks and also served in a lead role to other employees.

Mr. Mehta possesses a B.S. in computer engineering, an M.A. in computer science, and an M.B.A. Mr. Mehta had worked at Oracle as an engineer before completing his M.B.A. program, left Oracle to work in complex product management for a competitor in 2009, and returned to Oracle in 2011 in a product management and strategy role. Mr. Mehta’s responsibilities as a Product Manager/Strategy 4 in 2014 involved the supervision of a complex piece of Oracle’s portfolio – defining the vision and requirements for the video platform to support Oracle’s next generation learning management system – and the direct management of two employees.

Ms. Asthana, by contrast, earned B.S. and M.S. degrees in physics rather than computer science or engineering, and did not have any business or marketing education. She asked to move into product strategy in July 2013, after spending fifteen years as a functional software architect. Her first year in the Product Manager/Strategy 5 position was spent primarily learning the new role and working on less complex projects (*e.g.*, writing white papers as opposed to driving strategy for products). She also was still learning about the marketing and selling aspects of product management, which were not a focus of either her degree programs or her prior engineering roles. She did not serve as a lead to manage work of other employees. Hence, despite their



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common job title, in light of his training and expertise, Mr. Mehta had a far more expansive scope of duties and responsibilities than Ms. Asthana.

As yet another example in the **Product Development** role, in January 2014, Qian Jang supervised three employees with the job title Applications Developer: Ms. Kajal Upadhyay (Asian female, non-American, earning a salary of \$113,499), Ms. Xiao Lu (Asian female, non-American, earning a salary of \$107,099), and Mr. Jason Gage (white male, American, earning a salary of \$78,000). At the outset, we note that under this supervisor and job title, two Asian females are earning more than a white male, which contradicts OFCCP's findings of discrimination in relation to alleged victim groups involving women and Asians. Still, while these individuals share the same job title, their job duties and responsibilities differed significantly, such that they are not in fact similarly situated comparators.

Mr. Gage initially operated solely in a linguistics development role at Oracle, which is an entirely different job category than applications development. Linguistics development analyzes data to determine how search results are influenced by the language used to craft a search—it does not involve coding to implement the changes. In contrast, an applications developer is responsible for data analysis, design, and implementation of design with java coding language. When Mr. Gage expressed an interest in applications development, he transferred into a hybrid role providing both linguistic and applications development. As reflected in Mr. Gage's performance evaluation, he performed strongly on a linguistics platform, but required additional coaching to perform the basic tasks for java coding and applications development. *See Attachment F.* Ms. Upadhyay and Ms. Lu, in contrast, had extensive expertise in coding broader web-based applications that focus on user interaction and required little or no supervision to complete their assigned projects.

Support Roles: By way of example in the Support role, in January 2014 Andrea Byrne supervised two employees with the job title Systems Analyst 4: Mr. Mehdi Ketiraei (male earning a salary of \$131,040) and Ms. Avanti Bhat (female earning a salary of \$97,760).

During the relevant time period, Ms. Bhat operated exclusively in a "service request support role," which is a "functional" position that involves working service requests from existing clients. For example, if a client experienced a malfunction in payroll software and submitted a service request, Ms. Bhat was responsible to remotely troubleshoot the issue. In contrast, Mr. Ketiraei was responsible for more "architectural" tasks, which involved on-site implementation of software and providing focused guidance and consultations directly to clients. Further, while Ms. Bhat was responsible for resolving service tickets after a product had been released to a client, Mr. Ketiraei primarily communicated with a client prior to production and his



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responsibilities were to apply complex problem solving skills related to engineering the system to meet the client's needs.

We note that Agency COs were on site and interviewed managers. They could have inquired about the "relevant factors in determining similarity" (*see* FCCM, Section 2L03), such as the factors discussed above.⁵ This type of inquiry would have allowed the COs to assess "similarity" as set forth in Section 2L03 and Directive 307, and consistent with Title VII law.⁶

For these and other reasons addressed in our prior correspondence, the Agency's compensation analysis is flawed and does not support a *prima facie* case of discrimination.

III. Conclusion.

As both sides recognized at the end of our conciliation meeting on October 6, the exchange of information in person was productive and useful. We appreciate your request to provide meaningful information and we believe the materials set forth herein allow us to move in that direction. We hope the Agency similarly finds productive and useful the information provided herein, which (as requested) articulates Oracle's response to the Agency's recruiting violation, and provides further explanation and documentation for Oracle's position that the compensation findings do not take into account any assessment of who are similarly situated employees.

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⁵ While we do not presume to suggest or formulate questions that could have been asked to determine "similarity," some questions COs might consider include the following: (a) Do employees on your team do the same work? If yes, which ones; if no, how is their work different? (b) Do the employees on your team have basically the same duties and responsibilities and the same level of skills and expertise? If different, can you describe those differences? (c) Are employees different, or similar, in other aspects of the work?

⁶ Furthermore, while job title is not determinative in assessing which employees are similarly situated, we note that over 1,000 job titles in the roles noted in the NOV had only a single incumbent, and therefore no "job title comparator."



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Oracle would be happy to address additional questions or issues of concern. We appreciate OFCCP's desire and willingness to hear from us at this stage in the process. We look forward to the Agency's response.

Very truly yours,

A handwritten signature in cursive script that reads "Erin M. Connell".

Erin M. Connell

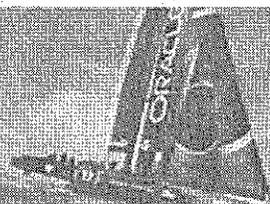
cc: Shauna Holman-Harries
Gary R. Siniscalco

Exhibit A



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Jobs available in English (33)

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Specify your job search criteria, then click "Search for Jobs".

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Requirements Summary

Keywords

"Software Developer"

Job Category

Job Category

Product Development

Add Job Category

Location

Location

United States

California

Redwood City

Add Location

Posting Date

Not Specified

Today

Yesterday

Last 7 Days

Last 14 Days

Last 21 Days

Last 28 Days

Job Type

Regular Employee Hire

Temporary Employee Hire

Student/Intern Hire

Contractor Hire

Travel (Up to...)

No

Yes, 25 % of the Time

Yes, 50 % of the Time

Yes, 75 % of the Time

Yes, 100 % of the Time

Search Tips

You can search jobs by selecting relevant criteria in the drop-down menus. You can also use a job number or alternate

Saving searches

You can save the current search for reuse by clicking "Save this Search" at the end of the page. Your searches will be stored in the "My Saved Searches" section under the "My Jobpage" link.

Basic job search

To perform a job search using basic search criteria, click the "Basic Search" tab and select the relevant criteria.

Search for Jobs | Clear

Search Results (33 jobs found)

Results per page

10

Sort by

Candidate Profile

Take a few minutes to create or modify your employment profile and to specify your preferred working criteria for

Job Title (Ascending Order)

Principle Automation Engineer-160016CB

Oct 22, 2016 | US-CA, California-Redwood City

Apply | Add to My Job Cart |

Senior/Principal QA Engineer-160014T3

Oct 13, 2016 | US-CA, California-Redwood City

Apply | Add to My Job Cart |

Software Developer - Engineer-160013GV

Oct 4, 2016 | US-CA, California-Redwood City

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Software Developer 3-16001774

Oct 28, 2016 | US-CA, California-Redwood Shores, NL-NL, Netherlands-Utrecht, Switzerland-More

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Software Developer 3-160016CD

Oct 22, 2016 | US-CA, California-Redwood City

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Software Developer 3-160016CC

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Exhibit B

Direct Traffic Report 1/1/2014 to 12/31/2014

Syndicated Network Sites 1-1-2014 to 12-31-2014	Unique Job Seeker Visitors
Beyond.com DirectEmployers	12753
American Job Center	3626
Veterans Job Bank	2776
IMDiversity	1187
California State Job Bank	730
Beyond.com	659
Veterans Representatives	398
Veterans.jobs	122
Think Beyond The Label	49
H2H.jobs	39
Women For Hire	30
RecruitMilitary	25
LandAjob.org	24
veterancentral.com	20
US Military Pipeline	18
Military Spouse Corporate Career Network (MSCCN)	10
VetSuccess.gov	8
DiversityWorking.com	7
USA Cares	6
Vets.jobs	6
Save Our Veterans	5
Agency for Persons with Disabilities	4
DeafToWork.jobs	3
Minority.jobs	3
Hiring Our Heroes	2
The Black Perspective	2
Veterans Enterprise	1

Exhibit C

Appraisal Super User

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Appraisal Review

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Employee Name	Forten, Scott	Employee Number	19030
Manager	Campbell, Scott	Organization Email Address	scott.forten@oracle.com
Cost Center	RS70 - Enterprise IT - ORCL	Job	75630.System Administrator
	USA		3-IT.INFTECH.DCS.IC3

Setup Details

Initiator	Forten, Scott	Main Appraiser	Campbell, Scott
Appraisal Period Start Date	01-Jun-2011	Appraisal Creation Date	02-Jul-2012
Appraisal Period End Date	31-May-2012	Appraisal Review Discussion Date	
Template	FY12 Appraisal Template		

Overall Rating and Comments

Overall Rating **3-Successfully meets expectations**
 Overall Comments **Scott,**

Good work this year managing the NIS to LDAP/DSEE conversion. This is a challenging project since you are not typically able to specify requirements but instead have to deal w/ the solutions as they are developed by the IDM and PDIT Dev team.

Good work coming up to speed on DNS and ntp. Nice work showing leadership in the NTP service area.

Finally, congrats on finishing your work assisting GIT w/ the DNS service refresh.

Appraisee Feedback

Details Shared with Appraisee

- | | |
|--|---|
| <input checked="" type="checkbox"/> Overall Rating | <input type="checkbox"/> Participant Names |
| <input checked="" type="checkbox"/> Overall Comments | <input checked="" type="checkbox"/> Participant Ratings |
| <input type="checkbox"/> Participant Comments | |

Competency Ratings

[Show All Details](#) | [Hide All Details](#)

Details Competencies and Target Levels

Hide Core Business, Professional & Technical Depth and Credibility

Participant Ratings

[Show All Details](#) | [Hide All Details](#)

Participant	Participation Type	Performance Rating	Comments
Show Campbell, Scott A	Main Appraiser	3-Successfully meets expectations	
Show Forten, Mr Scott (Scott)	Appraisee	3-Successfully meets expectations	

Core.Professional.Business Ethics

Participant Ratings

Show All Details | Hide All Details

Details Participant	Participation Type	Performance Rating	Comments
Show Campbell, Scott A	Main Appraiser	3-Successfully meets expectations	
Show Forten, Mr Scott (Scott)	Appraisee	4-Exceeds expectations	

Core.Professional.Communication

Participant Ratings

Show All Details | Hide All Details

Details Participant	Participation Type	Performance Rating	Comments
Show Campbell, Scott A	Main Appraiser	3-Successfully meets expectations	
Show Forten, Mr Scott (Scott)	Appraisee	3-Successfully meets expectations	

Core.Professional.Customer Focus

Participant Ratings

Show All Details | Hide All Details

Details Participant	Participation Type	Performance Rating	Comments
Show Campbell, Scott A	Main Appraiser	4-Exceeds expectations	
Show Forten, Mr Scott (Scott)	Appraisee	4-Exceeds expectations	

Core.Professional.Innovation

Participant Ratings

Show All Details | Hide All Details

Details Participant	Participation Type	Performance Rating	Comments
Show Campbell, Scott A	Main Appraiser	4-Exceeds expectations	
Show Forten, Mr Scott (Scott)	Appraisee	3-Successfully meets expectations	

Core.Professional.Personal Drive

Participant Ratings

Show All Details | Hide All Details

Details Participant	Participation Type	Performance Rating	Comments
Show Campbell, Scott A	Main Appraiser	3-Successfully meets expectations	
Show Forten, Mr Scott (Scott)	Appraisee	3-Successfully meets expectations	

Core.Professional.Problem Solving

Participant Ratings

Show All Details | Hide All Details

Details Participant	Participation Type	Performance Rating	Comments
Show Campbell, Scott A	Main Appraiser	3-Successfully meets expectattons	
Show Forten, Mr Scott (Scott)	Appraisee	3-Successfully meets expectations	

Core.Professional.Quality

Participant Ratings

[Show All Details](#) | [Hide All Details](#)

Details Participant	Participation Type	Performance Rating	Comments
<input type="checkbox"/> Show Campbell, Scott A	Main Appraiser	4-Exceeds expectations	
<input type="checkbox"/> Show Forten, Mr Scott (Scott)	Appraisee	3-Successfully meets expectations	

Hide Core Professional Teamwork

Participant Ratings

[Show All Details](#) | [Hide All Details](#)

Details Participant	Participation Type	Performance Rating	Comments
<input type="checkbox"/> Show Campbell, Scott A	Main Appraiser	3-Successfully meets expectations	
<input type="checkbox"/> Show Forten, Mr Scott (Scott)	Appraiser	4-Exceeds expectations	

Hide Functional.IT.Measurement & Metrics

Participant Ratings

[Show All Details](#) | [Hide All Details](#)

Details Participant	Participation Type	Performance Rating	Comments
<input type="checkbox"/> Show Campbell, Scott A	Main Appraiser	3-Successfully meets expectations	
<input type="checkbox"/> Show Forten, Mr Scott (Scott)	Appraiser	3-Successfully meets expectations	

Objectives

Details Objective Name	Start Date	Target Completion Date	Achievement Date	Comments
No results found.				

Questionnaire: Appraiser

Questionnaire Name: **Questionnaire for Appraisee**

Last Submitted On: **02-Jul-2012**

 [Hide Questionnaire](#)

1. Summarize the major accomplishments achieved during this performance appraisal period.
 Built new YPmaster Server (still in UAT) and working with APS team to finalize cutover.
 Built a DNS OS and post install for P18400 DNS Tech Refresh project.
 Built a domU image for virtual DNS servers which was deployed for use by PDIT OPC dns servers.
2. List areas to be further developed in order to increase your expertise or strengthen your job performance.
3. List the most and least satisfying aspects of your job.
4. Describe your short and long term career and professional development goals.
 Become "the" go to guy for DNS issues and resolutions. Start learning the infrastructure for BigIP.
5. List any additional comments for this performance appraisal period.

Questionnaire: Main Appraiser

Questionnaire Name: **Questionnaire for Main Appraiser**

Last Submitted On:

 [Hide Questionnaire](#)

Participants

Details	Full Name	Participation Type	Questionnaire Name	Comments	Participation Status	Last Notified Date	Date Completed
	Campbell, Scott	Main Appraiser	Questionnaire for Main Appraiser		Completed	14-Sep-2012	14-Sep-2012

Questionnaire:

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Exhibit D

Appraisal Worksheet

Appraiser: [Name] Appraisee: [Name]

Job Title: [Title] Job Code: [Code]

Rating Scale: [Scale]

Comments:

Strengths:

Areas for Improvement:

Overall Rating: [Rating]

Signature: [Signature]

Date: [Date]

Exhibit E

Appraisal Super User

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Appraisal Review

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Employee Name: Pollock, Mark
 Manager: Jain, Ashishak
 Cost Center: CR88 - CR Integration - ENCL USA

Employee Number: 42892
 Organization Email Address: HR@oracle.com
 Job: 10540 Software Developer 4, PRODEM SWENG LCA

Setup Details

Appraiser: Pollock, Mark
 Appraisal Period Start Date: 01-Jun-2012
 Appraisal Period End Date: 31-May-2013
 Template: FY13 Appraisal Template

Ratee Appraiser: Jain, Ashishak
 Appraisal Creation Date: 12-Jun-2012
 Appraisal Review Discussion Date:

Overall Rating and Comments

Overall Rating: 3- Outstanding
 Overall Comments: Mark has done an outstanding job during this appraisal period. He is an asset to the Integration team at HQ.
 Appraiser Feedback: Thank you for the excellent ratings.

Details Shared with Appraiser

- Overall Rating
- Overall Comments
- Appraiser Comments
- Participant Rating
- Participant Comments

Competency Ratings

Appraisal Details | Appraisal Details

Details Competencies and Target Levels

CR88 - CR Integration Professional & Technical Skills and Credibility

Participant Ratings

Appraisal Details | Appraisal Details

Details Participant

Appraiser: Jain, Ashishak

Appraiser: Pollock, Mark

CR88 - CR Integration Learning to Change

Participant Ratings

Participation Type:
 Main Appraiser
 Appraiser

Performance Rating:
 3- Outstanding
 4- Exceeds expectations

Comments

Appraisal Details | Appraisal Details

Details Participant

Appraiser: Jain, Ashishak

Appraiser: Pollock, Mark

CR88 - CR Integration Business Skills

Participant Ratings

Participation Type:
 Main Appraiser
 Appraiser

Performance Rating:
 4- Exceeds expectations
 3- Successfully meets expectations

Comments

Appraisal Details | Appraisal Details

Details Participant

Appraiser: Jain, Ashishak

Appraiser: Pollock, Mark

CR88 - CR Integration Coaching

Participant Ratings

Participation Type:
 Main Appraiser
 Appraiser

Performance Rating:
 4- Exceeds expectations
 3- Successfully meets expectations

Comments

Appraisal Details | Appraisal Details

Details Participant

Appraiser: Jain, Ashishak

Appraiser: Pollock, Mark

CR88 - CR Integration Communication

Participant Ratings

Participation Type:
 Main Appraiser
 Appraiser

Performance Rating:
 4- Exceeds expectations
 3- Successfully meets expectations

Comments

Appraisal Details | Appraisal Details

Details Participant

Appraiser: Jain, Ashishak

Appraiser: Pollock, Mark

CR88 - CR Integration Business Skills

Participant Ratings

Participation Type:
 Main Appraiser
 Appraiser

Performance Rating:
 3- Outstanding
 4- Exceeds expectations

Comments

Appraisal Details | Appraisal Details

Details Participant

Appraiser: Jain, Ashishak

Appraiser: Pollock, Mark

CR88 - CR Integration Innovation

Participant Ratings

Participation Type:
 Main Appraiser
 Appraiser

Performance Rating:
 4- Exceeds expectations
 3- Successfully meets expectations

Comments

Appraisal Details | Appraisal Details

Details Participant

Appraiser: Jain, Ashishak

Appraiser: Pollock, Mark

CR88 - CR Integration Problem Solving

Participant Ratings

Participation Type:
 Main Appraiser
 Appraiser

Performance Rating:
 4- Exceeds expectations
 3- Successfully meets expectations

Comments

Participant Ratings

<p>Search Results View Details Details Participant Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd Job: Core Professional Quality</p>	<p>Participation Type Non Approver Appraisee</p>	<p>Performance Rating 4 Exceeds expectations 4 Exceeds expectations</p>	<p>Comments</p>
---	--	---	-----------------

Participant Ratings

<p>Search Results View Details Details Participant Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd Job: Core Professional Business Operations</p>	<p>Participation Type Non Approver Appraisee</p>	<p>Performance Rating 4 Exceeds expectations 3 Successfully meets expectations</p>	<p>Comments</p>
---	--	--	-----------------

Participant Ratings

<p>Search Results View Details Details Participant Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd Job: Core Professional Technical</p>	<p>Participation Type Non Approver Appraiser</p>	<p>Performance Rating 4 Outstanding 3 Successfully meets expectations</p>	<p>Comments</p>
---	--	---	-----------------

Participant Ratings

<p>Search Results View Details Details Participant Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd Job: Functional Development Coding and Test Testing</p>	<p>Participation Type Non Approver Appraisee</p>	<p>Performance Rating 3 Outstanding 3 Successfully meets expectations</p>	<p>Comments</p>
--	--	---	-----------------

Participant Ratings

<p>Search Results View Details Details Participant Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd Job: Functional Development Functional Design</p>	<p>Participation Type Non Approver Appraisee</p>	<p>Performance Rating 4 Exceeds expectations 3 Successfully meets expectations</p>	<p>Comments</p>
--	--	--	-----------------

Participant Ratings

<p>Search Results View Details Details Participant Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd Job: Functional Development Support and Maintenance</p>	<p>Participation Type Non Approver Appraisee</p>	<p>Performance Rating 4 Exceeds expectations 3 Successfully meets expectations</p>	<p>Comments</p>
--	--	--	-----------------

Participant Ratings

<p>Search Results View Details Details Participant Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd Job: Functional Development Technical Design</p>	<p>Participation Type Non Approver Appraisee</p>	<p>Performance Rating 3 Outstanding 1 Successfully meets expectations</p>	<p>Comments</p>
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Participant Ratings

<p>Search Results View Details Details Participant Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd</p>	<p>Participation Type Non Approver Appraisee</p>	<p>Performance Rating 4 Exceeds expectations 3 Successfully meets expectations</p>	<p>Comments</p>
---	--	--	-----------------

Objectives

<p>Search Results View Details Details Objective Name Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd</p>	<p>Start Date 01-Jan-2012</p>	<p>Target Completion Date 31-May-2013</p>	<p>Assignment Date</p>	<p>Completed</p>
--	--	--	------------------------	------------------

Additional Details

Created By: Pooja, Mr Mark Floyd
 Apprised By: Pooja, Mr Mark Floyd
 Detail: Ensure sponsored labels are completed in a timely manner for the AXK 3.3.2 stream.
 Stephen O'Keefe

Participant Ratings

<p>Search Results View Details Details Participant Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd</p>	<p>Participation Type Non Approver Appraiser</p>	<p>Appraised Performance 3 Successfully meets expectations 4 Exceeds expectations</p>	<p>Comments</p>
---	--	---	-----------------

<p>Search Results View Details Details Objective Name Appraiser: Jan, Mr Abhishek Appraisee: Pooja, Mr Mark Floyd</p>	<p>Start Date 01-Sep-2012</p>	<p>Target Completion Date 31-May-2013</p>	<p>Assignment Date</p>	<p>Completed</p>
--	--	--	------------------------	------------------

Additional Details

Created By: Pollock, Mr Mark Floyd
 Assigned With:
 Detail: Get the PDF (installing) functioning for AIX 13.1 (VAC 11) labels which includes STAIN. Work with IBM to get compiler base as specified.

Success Criteria

Performance Ratings

Participant Name	Participant Type	Appraisal Performance	Comments
Pollock, Mark	Self Appraiser	5-Exceeding	

Additional Details: AIX 13.1 components in IBM

Created By: Pollock, Mr Mark Floyd
 Assigned With:
 Detail: Ensure component labels are completed in a timely manner for the AIX 13.1 VAC stream.

Success Criteria

Performance Ratings

Participant Name	Participant Type	Appraisal Performance	Comments
Pollock, Mark	Self Appraiser	5-Exceeding	

Additional Details: AIX 13.1 components in IBM

Created By: Pollock, Mr Mark Floyd
 Assigned With:
 Detail: Ensure component labels are completed in a timely manner for the AIX 13.1 VAC stream.

Success Criteria

Performance Ratings

Participant Name	Participant Type	Appraisal Performance	Comments
Pollock, Mark	Self Appraiser	4-Exceeds Expectations	

Additional Details: AIX 13.1 components in IBM

Created By: Pollock, Mr Mark Floyd
 Assigned With:
 Detail: Creation of 20K labels on demand (OS and Fusion Middleware) for all ports except Linux and Windows. OSs are SUSE, RHELAS (Linux and MAC), HP-UX (Solaris and S), Linux, Solaris and Linux. Includes BROCKY labels. Provide backup for LINUX and Windows.

Success Criteria

Performance Ratings

Participant Name	Participant Type	Appraisal Performance	Comments
Pollock, Mark	Self Appraiser	5-Exceeding	

Additional Details: Support VMS team on older infrastructure

Created By: Pollock, Mr Mark Floyd
 Assigned With:
 Detail: Provide support to the VMS team on the older automation infrastructure for S.S.S.S systems, includes responding to integration questions.

Success Criteria

Performance Ratings

Participant Name	Participant Type	Appraisal Performance	Comments
Pollock, Mark	Self Appraiser	5-Exceeding	

Additional Details: Support VMS team on older infrastructure

Questionnaire Appraisal

Questionnaire Name: Questionnaire for Appraiser

Last Submitted On: 12-28-2015

Additional Details

- 1. Review the employee's responsibilities of the position during the past performance period.
- 2. Review the employee's performance in the position during the past performance period.
- 3. Review the employee's performance in the position during the past performance period.
- 4. Review the employee's performance in the position during the past performance period.
- 5. Review the employee's performance in the position during the past performance period.

Questionnaire: Main Appraiser

Questionnaire Name: Questionnaire for Main Appraiser

Last Modified On: 28-Aug-2013

1. (Mandatory)

- 1. Review the employee's responsibilities of the position during the past performance period.
 Mark this field as responsible for the day-to-day operation and development of the AEM platform. The responsibilities include:
 PDF setup for 11.1 and 11.2
 11.1 component build in Java
 11.2 component build in Java
 Main component build in Java
 EOL build for all ports (J2E and J2EE)
- 2. Review the employee's performance in the position during the past performance period.
 1. Work programming for Fusion Development environment.
 2. Review development environment.
- 3. Review the employee's performance in the position during the past performance period.
 Mark as an outstanding professional with great level of responsibility. He not only does an exceptional job on the AEM platform work but also pitches in on other parts of the time of need. He also works very closely with IT to resolve post-specific IT issues.

Participants

Details Full Name	Participant Type	Questionnaire Name	Comments	Participation Status	Last Modified Date	Date Completed
John, Abhishek	Main Appraiser	Questionnaire for Main Appraiser		Completed	15-Aug-2013	28-Aug-2013

Questionnaire

- 1. Review the employee's responsibilities of the position during the past performance period.
 Mark this field as responsible for the day-to-day operation and development of the AEM platform. The responsibilities include:
 PDF setup for 11.1 and 11.2
 11.1 component build in Java
 11.2 component build in Java
 Main component build in Java
 EOL build for all ports (J2E and J2EE)
- 2. Review the employee's performance in the position during the past performance period.
 1. Work programming for Fusion Development environment.
 2. Review development environment.
- 3. Review the employee's performance in the position during the past performance period.
 Mark as an outstanding professional with great level of responsibility. He not only does an exceptional job on the AEM platform work but also pitches in on other parts of the time of need. He also works very closely with IT to resolve post-specific IT issues.

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Exhibit F

Performance Review

Created By: Steve Jones
Approved By: Steve Jones
This will be processed by the manager and your manager
regarding the performance review. It is an opportunity to provide
input on the review and the review.

Review Dates

Performance Review

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Completed

10/24/2016 10:22 AM

Performance Review

Created By: Steve Jones
Approved By: Steve Jones
This will be processed by the manager and your manager
regarding the performance review. It is an opportunity to provide
input on the review and the review.

Review Dates

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Performance Review

Created By: Steve Jones
Approved By: Steve Jones
This will be processed by the manager and your manager
regarding the performance review. It is an opportunity to provide
input on the review and the review.

Review Dates

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Completed

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Performance Review

Created By: Steve Jones
Approved By: Steve Jones
This will be processed by the manager and your manager
regarding the performance review. It is an opportunity to provide
input on the review and the review.

Review Dates

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Completed

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Performance Review

Created By: Steve Jones
Approved By: Steve Jones
This will be processed by the manager and your manager
regarding the performance review. It is an opportunity to provide
input on the review and the review.

Review Dates

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Performance Review

Created By: Steve Jones
Approved By: Steve Jones
This will be processed by the manager and your manager
regarding the performance review. It is an opportunity to provide
input on the review and the review.

Review Dates

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Performance Review

Created By: Steve Jones
Approved By: Steve Jones
This will be processed by the manager and your manager
regarding the performance review. It is an opportunity to provide
input on the review and the review.

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10/24/2016 10:22 AM

Performance Review



U.S. Department of Labor

Office of Federal Contract Compliance Programs
Pacific Regional Office
90 Seventh Street, Suite 18-300
San Francisco, CA 94103



December 9, 2016

*Via Certified Mail, Return Receipt Requested (#7015 0640 0001 7126 0350)
and Electronic Mail*

Erin M. Connell
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669

Re: Oracle America, Inc., Redwood Shores, California (OFCCP No. R00192699)

Dear Ms. Connell:

At our conciliation meeting on October 6, 2016, Oracle agreed to provide a more thorough rebuttal response to OFCCP's findings set forth in the Notice of Violations (NOV). Following the meeting, on October 31, 2016, Oracle submitted a letter to OFCCP with "...information and documentation¹ OFCCP asked Oracle to provide [during the conciliation meeting] with regard to the recruiting and compensation issues in the NOV." See 10/31/2016 Ltr. at 1. We have carefully reviewed this submission. For the reasons discussed at the conciliation meeting and again below, the Agency will refer this matter for enforcement proceedings to the Solicitor's Office.

* * *

As an initial matter, Oracle's latest submission fails to rebut the violations in the NOV. Oracle responded to the overrepresentation of Asians in recruiting and hiring activity for technical positions, for example, with references to outreach efforts and "various" unexplained recruiting actions. Additionally, Oracle responded to widespread gender and race salary disparities across thousands of technical employees in the same job title with a handful of select cohort comparisons. Oracle has not submitted additional data, competing statistics, or other evidence explaining the significant statistical disparities in recruiting and hiring, or compensation. Nor has Oracle provided persuasive legal authority in support of its positions.

¹ Such documentation includes: a screenshot of Oracle's career site, and select performance appraisals.

1) Oracle has Failed to Rebut OFCCP's Findings with Respect to Recruiting and Hiring Discrimination.

On March 11, 2016, OFCCP issued the NOV to Oracle. In the NOV, OFCCP describes the recruiting and hiring discrimination violations uncovered at Oracle's headquarters facility, and the classes of applicants and employees impacted. It also describes the substantial evidence of discrimination – including gross disparities in recruiting, hiring and compensation at significant standard deviations across technical jobs – that was uncovered during the review. After issuing the NOV, OFCCP provided additional explanation and information during conciliation, including through correspondence and during the October 6, 2016 meeting.

In response to OFCCP's finding that Oracle has a discriminatory preference for Asians, particularly Asian Indians, compared to non-Asians (Whites, Hispanics, and Blacks), Oracle takes issue with OFCCP's use of U.S. Census data in determining availability. However, using U.S. Census data and other workforce data reflecting the potential applicant pool to evaluate recruiting and hiring decisions for U.S. jobs is consistent with Title VII and relevant case law. *See, e.g., Heldt v. Tata Consultancy Servs.*, 2015 U.S. Dist. LEXIS 126131 (N.D. Cal. Sept. 18, 2015) (“Plaintiffs allege that, as a result of TCS's discrimination, its United States workforce consists of approximately 95% persons of South Asian descent, race, and/or national origin, compared to 1-2% of the United States population.”); *Koehler v. Infosys Techs. Ltd. Inc.*, 2015 U.S. Dist. LEXIS 60907, 18-19 (E.D. Wis. May 8, 2015) (denying motion to dismiss case alleging that the significant disparity in the defendants' racial demographic statistics gives rise to the inference that this practice resulted in discrimination based on race or national origin, and reflects the defendants' preference to recruit and hire persons of South Asian race and of Indian, Bangladeshi, and Nepalese national origin); *Castaneda v. Pickard*, 648 F.2d 989, 1003 (5th Cir. Tex. 1981) (“[I]n cases such as this one where there is an allegation that the employer's discriminatory practices infect recruiting, the process by which applications are solicited, such applicant flow data cannot be taken at face value and assumed to constitute an accurate picture of the relevant labor market. Discriminatory recruiting practices may skew the ethnic composition of the applicant pool.”).

In your letter, Oracle also argues that OFCCP is required to identify specific recruiting practices that are the root cause of the adverse impact in both recruiting and hiring practices. OFCCP does not agree that it is required to identify every practice that contributes to the disparities—particularly in light of Oracle's failure to provide relevant data and information requested during the review. Nonetheless, the gross disparities uncovered in the review alone provide compelling evidence of Oracle's discriminatory recruiting and hiring practices. *See, e.g., Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977).

Specifically, an analysis of Oracle's Professional Technical 1, Individual Contributor (“PT1”) applicant data uncovered gross disparities between the expected applicant rate (availability) and the actual applicant rate. In these entry-level technical roles, the Asian applicant rate was over 75%, compared to less than 30% in the available workforce in the relevant labor market. Among Oracle's college applicants, the overrepresentation of Asians was even more extreme: the Asian

applicant rate was 85% in 2013 and 92% in 2014. Based upon this data, OFCCP found race disparities in Oracle's recruiting practices against African American, Hispanic and White applicants at *-8, -10, and -80 standard deviations*, respectively.

Similarly, OFCCP found gross disparities between the available workforce in the relevant U.S. labor market² and Oracle's hires in PT1. In PT1 roles, OFCCP found race disparities in Oracle's hiring practices against African American, Hispanic and White applicants at *-4, -3, and -28 standard deviations*, respectively.

The following chart highlights these comparisons.

Comparison of Relevant U.S. Market Data and Oracle Applicant, Hiring, and Workforce Data in PT1 Job Group

PT1 Job Group	% Asian	% Non-Asian
<i>U.S. Labor Market Data for Software Developers</i>	28.8%	71.2%
Oracle Applicant Flow Data	75.8%	24.2%
Oracle Hiring Data	82%	18%
Oracle Workforce Data	73.9%	26.1%

Notably, even with such a skewed applicant pool in favor of Asians, Oracle's Asian hiring rate significantly exceeded it -- *by more than 6%*. Compared to approximately 75% Asian applicants (and 74% Asian incumbents), Oracle hired over 82% Asians in PT1 roles during the review period. To date, Oracle has provided no explanation for the gross disparities between Asians and non-Asians in its recruiting and hiring practices, nor any other rebuttal to this evidence.

Additional evidence, including anecdotal evidence, also reinforces that these gross statistical findings are not due to chance. OFCCP has obtained statements from confidential sources evincing Oracle's reputation as favoring Asians, specifically Asian Indians. Such a reputation both constitutes additional evidence of discrimination, and justifies relying on availability data. *See EEOC v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1282-1283 (11th Cir. Fla. 2000) (discussing a company's actions and resulting reputation on potential applicants, stating "that Joe's hiring decisionmakers systematically excluded female applicants from consideration, that over time this male-only preference became common knowledge, and that eventually most potential, qualified,

² See Oracle's Reasonable Recruitment Labor Area Distributions for PT1. Oracle's recruitment area for PT1 jobs is nationwide based upon AAP and evidence gathered in compliance review. See, U.S. Census, *Percentage of Foreign-Born Information Technology (IT) Workers: 2014* (<https://www.census.gov/content/dam/Census/library/publications/2016/acs/acs-35.pdf>), U.S. Census data already incorporates the international characteristics and work authorization requirements related to software developers in the U.S. For example, in 2014, software developers, applications and systems software, were 39% foreign born in the U.S. See also EEO-1 data (<https://www.eeoc.gov/eeoc/statistics/reports/hightech/>).

female applicants self-selected out of Joe's hiring process precisely because of its reputation for intentional sex discrimination.”).

Oracle's reputation is consistent with its recruiting efforts for engineering roles, which target Asian Indians. (See, e.g., <http://gadgets.ndtv.com/apps/news/oracle-says-its-second-largest-workforce-is-in-india-716257>; <http://www.cxotoday.com/story/why-india-is-becoming-so-important-for-oracle/>; <https://blogs.oracle.com/TheOracleBlog/oracle-invests-in-india-future>; <http://timesofindia.indiatimes.com/business/india-business/75-of-management-is-from-India-Oracle-CEO/articleshow/50938387.cms>). Oracle also publicizes its recruitment priorities on its career website. On the site, the company describes how it recruits directly from India for entry-level software positions in the U.S.³ It does so despite the oversupply of STEM graduates in the U.S. -- U.S. colleges graduate 50% more students than are hired into computer engineering jobs each year in the U.S.⁴

Oracle also has a longstanding and well-known preference of sponsoring H1B visas almost exclusively for employees from Asia and particularly India. Over 92% of all Oracle H1B employees are Asian. Such preference is most pronounced in entry-level technical roles (or PT1 roles). Nearly one third of Oracle's PT1 workforce are H1B employees, compared to 13% of Oracle's overall workforce. Across Oracle headquarters, approximately 90% of H1B employees work in PT1 roles. Cf., *Koehler*, 2015 WL 2168886 at *7 (denying motion to dismiss allegations that H1B visa practices had disparate impact based on race).

Consequently, Oracle's PT1 workforce at the time of the review was overwhelmingly Asian:

Comparison of U.S. Market Data and Oracle Workforce Data in PT1 Job Group

PT1 Job Group	% Black	% Asian	% Hispanic	% White
U.S. Labor Market Data for Software Developers	4.1%	28.8%	5.3%	65.3%
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³ [https://blogs.oracle.com/campusrecruitment/entry/my_journey_from_college_to](https://blogs.oracle.com/campusrecruitment/entry/my_journey_from_college_to;); Oracle 10K Annual Report 6/2014, "We continually focus on improving our cost structure by hiring personnel in countries where advanced technical expertise and other expertise are available at lower costs." (<https://www.sec.gov/Archives/edgar/data/1341439/000119312514251351/d725622d10k.htm>)

⁴ Economic Policy Institute, *Guestworkers in the high-skill U.S. labor market: An analysis of supply, employment, and wage trends*, "For every two students that U.S. colleges graduate with STEM degrees, only one is hired into a STEM job," (<http://www.epi.org/publication/bp359-guestworkers-high-skill-labor-market-analysis/>); Code2040, *Tech's Opportunity Gap*, "While 18% of CS degrees are awarded to Blacks and Latino/as, just 9.2% of tech industry workers are Black or Latino/a." (http://www.lpfi.org/wp-content/uploads/2015/04/code2040_lpfi_final.pdf).

Despite the heavy concentration of Asians in Oracle's workforce, Oracle relied on word-of-mouth recruiting practices, which further perpetuated already existing disparities.⁵ In PTI, most successful employment referrals (or referrals that lead to a hire) originate from Asians. For technical jobs, approximately 74% of successful referrals come from PTI employees, and approximately 80% of the referrals come from Asians. Oracle's reliance on employee referrals contributed to a skewed applicant pool in favor of Asians.

Based on the above information and other relevant evidence, relying on actual applicant data in this matter would be wholly inappropriate, as it ignores Oracle's systemic and discriminatory preference in favor of Asians as against other races, and the tainted applicant pool resulting from it.

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How can employers avoid racial discrimination when recruiting?

- **Word-of-mouth employee referrals**- Word-of-mouth recruitment is the practice of using current employees to spread information concerning job vacancies to their family, friends, and acquaintances. *Unless the workforce is racially and ethnically diverse, exclusive reliance on word-of-mouth should be avoided because it is likely to create a barrier to equal employment opportunity for racial or ethnic groups that are not already represented in the employer's workforce.*
- **Homogeneous recruitment sources** - *Employers should attempt to recruit from racially diverse sources in order to obtain a racially diverse applicant pool. For example, if the employer's primary recruitment source is a college that has few African American students, the employer should adopt other recruitment strategies, such as also recruiting at predominantly African American colleges, to ensure that its applicant pool reflects the diversity of the qualified labor force.*

2) *Oracle has Failed to Rebut OFCCP's Findings with Respect to Compensation Discrimination.*

With respect to the compensation violations, Oracle still has not provided a competing statistical analysis to rebut OFCCP's regressions. Rather, Oracle continues to insist that, notwithstanding its own decision to categorize employees for compensation practices and decisions, those categories have no bearing on whether those employees are comparable. Setting aside Oracle's apparent attempt to disavow its own salary-determination process, Oracle's argument relies on an overly strict interpretation of Title VII case law. Title VII does not require, as Oracle suggests, a near identical set of duties among those employees being compared.

As cases Oracle cited state, Title VII "does not require equal work" to prove compensation discrimination. *See Sims-Fingers v. City of Indianapolis*, 493 F.3d 768, 772 (7th Cir. 2007); *Hooper v. Total System Servs., Inc.*, 799 F. Supp. 2d 1350, 1364 (M.D. Ga. 2011). Rather, Title VII requires only that comparators' jobs be comparable. *Hooper, Inc.*, 799 F. Supp. 2d at 1364 (citation omitted); *see also Brinkley-Obu v. Hughes Training, Inc.*, 36 F.3d 336, 343 (4th Cir. 1994) (noting "relaxed standard of similarity between male and female-occupied jobs" in Title VII compensation discrimination cases); *Mulhall v. Advance Sec., Inc.*, 19 F.3d 586, 598 (11th Cir. 1994) (same). This analysis requires only that "the members of the comparison group are sufficiently comparable [to the focus group] to suggest" discrimination occurred. *Crawford v. Ind. Harbor Belt R. Co.*, 461 F.3d 844, 846 (7th Cir. 2006).

Consistent with Directive 307, OFCCP relied in part on Oracle's salary-determination system to evaluate whether employees were comparable. Under that system, according to materials Oracle provided and statements by Oracle personnel, employees are organized by the types of jobs they perform. On its face, such systemic categorization renders employees within a given category comparable for purposes of Title VII's relaxed similarity standard. Indeed, Oracle fails to explain how, for its compensation practices and decisions, its system of comparing and organizing employees is sufficient, but for OFCCP's purposes, it is not.

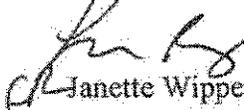
The select examples Oracle cites in its letter are not persuasive. Oracle only provides decontextualized details regarding these select employees, ignoring how these individuals were given the same job title, notwithstanding their purported differences. Further, the examples also raise more concerns. For instance, Oracle highlights at least two instances where pay disparities are purportedly based on males performing management duties, with females relegated to "clerical work" or non-leadership roles. *See 10/31/2016 Ltr. at 10-11.*

To date, Oracle has not responded fully to OFCCP's requests for records related to its compensation practices, leading OFCCP to presume that such missing records only support OFCCP's findings of violations. If there is additional material Oracle wants OFCCP to consider in the context of its compensation practices, such materials must be produced promptly.

* * *

For the reasons set forth herein, OFCCP has referred this matter for enforcement proceedings to the Solicitor's Office.

Sincerely,


Janette Wipper
Regional Director

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

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

Gary R. Siniscalco (via email: grsiniscalco@orrick.com)
Orrick Herrington & Sutcliffe LLP





December 12, 2016

Confidential Conciliation Communication – FRE

Via E-Mail and Federal Express

M. Patricia Smith
Solicitor of Labor
U.S. Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
+1 415 773 5700
orrick.com

Erin M. Connell

E econnell@orrick.com
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F +1 415 773 5759

Re: Oracle America, Inc. Redwood Shores, California (OFCCP No. R00192699)

Dear Solicitor Smith:

We write on behalf of Oracle America (Oracle) regarding the Office of Federal Contract Compliance Programs' (OFCCP) audit of Oracle's Redwood Shores facility. On December 9, 2016, we received the attached letter from OFCCP advising us that OFCCP "will refer" the audit to the Solicitor's Office.¹ In the same letter, OFCCP also stated that it "has referred" the matter to the Solicitor's Office. Notwithstanding the internal ambiguity, we write to advise you that OFCCP has failed to meet its legal requirement to engage in reasonable conciliation efforts. We request that your office return the matter to OFCCP to complete the conciliation process.²

OFCCP's regulations implementing Executive Order 11246 expressly state that "Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion." 41 CFR 60-1.20(b). Courts have regularly enforced this "reasonable efforts" requirement as a prerequisite to suit. See, e.g., *United States v. Thurston Motor Lines, Inc.*, 718 F.2d 616, 617 (4th Cir. 1978) ("Under § 209(b) of [Executive Order 11246], such reasonable efforts [by methods of conference, conciliation, mediation and persuasion] are a prerequisite to the institution of legal action."); *Beverly Enterprises, Inc. v. Herman*, 130 F. Supp. 2d 1, 17 n.12 (D.D.C. 2000) (describing "attempt by the OFCCP to settle the dispute before filing an administrative complaint" as "required"); *Traylor v. Safeway Stores, Inc.*, 402 F. Supp. 871, 875-76 (N.D. Cal. 1975) (holding that "before [enforcement proceedings] are initiated, the federal contracting agency must make reasonable efforts to secure compliance by

¹ We received a nearly identical letter on December 6, 2016. A comparison of the two letters illustrates that the changes are stylistic, with the exception of an apparent correction to one of the online data sources to which OFCCP cites. It appears, therefore, that for some reason, the December 6 letter was sent in haste, before final edits and cite checks had been completed.

² As additional background and to lend context to Oracle's significant concerns, we have also provided our responses to OFCCP's Notice of Violation and Show Cause Notice as a means to advise you of the significant procedural concerns related to the conduct of this audit. This information paints a picture of Agency overreach, and a failure to follow its own rules and regulations. To the extent that the Solicitor's Office is inclined to accept this referral, we believe these significant defects dictate that the Solicitor's Office not seek enforcement.



M. Patricia Smith
December 12, 2016
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means of conference, conciliation, mediation, and persuasion" and that "[i]t is only after exhausting administrative efforts to obtain compliance that the OFCCP can seek to secure compliance through the courts.").

OFCCP has failed to meet its legal obligation. On March 11, 2016, OFCCP issued its Notice of Violation, which was devoid of any factual information, Oracle attempted, to no avail, to obtain basic facts supporting OFCCP's NOV and, specifically, how the Agency's findings complied with the law and OFCCP's own compensation directive (Directive 307). OFCCP failed to provide any facts. Following further correspondence regarding the NOV findings, on June 8, 2016, OFCCP issued a Show Cause Notice asserting a failure of conciliation and Oracle responded on June 29, 2016, explaining why that was not accurate and that, in fact, there had not been reasonable conciliation efforts. Oracle heard nothing until September 9, 2016 when OFCCP's San Francisco regional office invited Oracle to engage in a conciliation meeting but declined to withdraw the erroneously issued Show Cause. The conciliation meeting occurred on October 6, and included regional OFCCP and regional Solicitor's Office officials. Thereafter, the parties exchanged emails indicating that a positive tone existed as to the nature of the negotiations, and confirming a desire to continue conciliation. Oracle promised to provide additional factual (rebuttal) information and did so on October 27, 2016. OFCCP's response was its December 6, 2016 letter ambiguously referring the matter to your office, and stating only that the information in the December 6 letter offered inadequate rebuttal to OFCCP's NOV.

Oracle has been, and is, ready to discuss OFCCP's findings in depth, and engage in a real exchange of information. OFCCP has not reciprocated, as evidenced by its December 6 letter. On its face, the letter fails to include any facts demonstrating that conciliation has failed. Rather, the letter focuses solely on Oracle's alleged failure to rebut OFCCP's allegations. While Oracle disagrees with this position from a substantive standpoint, OFCCP's letter, which offers new facts and arguments, presents, at best, an additional exchange of information. During the conciliation process overall, OFCCP's actions have not indicated any reasonable effort to conciliate. OFCCP has held only one conciliation meeting ending with representations of continuing the process. In addition, other than initial summary numbers communicated verbally, OFCCP has never detailed a backwage proposal, provided a draft form of conciliation agreement, explained how it would calculate or distribute backwages for alleged class members, or offered any terms regarding future reporting obligations.

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M. Patricia Smith
December 12, 2016
Page 3

Based on the above, Oracle has firmly established that OFCCP has not met its obligations to conciliate, and requests that your office return this matter to OFCCP to complete the conciliation process.

Very truly yours,

A handwritten signature in cursive script that reads "Erin M. Connell".

Erin M. Connell

cc: Shauna Holman-Harries
Gary R. Siniscalco

EXHIBIT A

U.S. Department of Labor

Office of Federal Contract Compliance Programs
Pacific Regional Office
90 Seventh Street, Suite 18-300
San Francisco, CA 94103



December 9, 2016

*Via Certified Mail, Return Receipt Requested (#7015 0640 0001 7126 0350)
and Electronic Mail*

Erin M. Connell
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669

Re: Oracle America, Inc., Redwood Shores, California (OFCCP No. R00192699)

Dear Ms. Connell:

At our conciliation meeting on October 6, 2016, Oracle agreed to provide a more thorough rebuttal response to OFCCP's findings set forth in the Notice of Violations (NOV). Following the meeting, on October 31, 2016, Oracle submitted a letter to OFCCP with "...information and documentation¹ OFCCP asked Oracle to provide [during the conciliation meeting] with regard to the recruiting and compensation issues in the NOV." See 10/31/2016 Ltr. at 1. We have carefully reviewed this submission. For the reasons discussed at the conciliation meeting and again below, the Agency will refer this matter for enforcement proceedings to the Solicitor's Office.

* * *

As an initial matter, Oracle's latest submission fails to rebut the violations in the NOV. Oracle responded to the overrepresentation of Asians in recruiting and hiring activity for technical positions, for example, with references to outreach efforts and "various" unexplained recruiting actions. Additionally, Oracle responded to widespread gender and race salary disparities across thousands of technical employees in the same job title with a handful of select cohort comparisons. Oracle has not submitted additional data, competing statistics, or other evidence explaining the significant statistical disparities in recruiting and hiring, or compensation. Nor has Oracle provided persuasive legal authority in support of its positions.

¹ Such documentation includes: a screenshot of Oracle's career site, and select performance appraisals.

1) Oracle has Failed to Rebut OFCCP's Findings with Respect to Recruiting and Hiring Discrimination.

On March 11, 2016, OFCCP issued the NOV to Oracle. In the NOV, OFCCP describes the recruiting and hiring discrimination violations uncovered at Oracle's headquarters facility, and the classes of applicants and employees impacted. It also describes the substantial evidence of discrimination – including gross disparities in recruiting, hiring and compensation at significant standard deviations across technical jobs – that was uncovered during the review. After issuing the NOV, OFCCP provided additional explanation and information during conciliation, including through correspondence and during the October 6, 2016 meeting.

In response to OFCCP's finding that Oracle has a discriminatory preference for Asians, particularly Asian Indians, compared to non-Asians (Whites, Hispanics, and Blacks), Oracle takes issue with OFCCP's use of U.S. Census data in determining availability. However, using U.S. Census data and other workforce data reflecting the potential applicant pool to evaluate recruiting and hiring decisions for U.S. jobs is consistent with Title VII and relevant case law. *See, e.g., Heldt v. Tata Consultancy Servs.*, 2015 U.S. Dist. LEXIS 126131 (N.D. Cal. Sept. 18, 2015) (“Plaintiffs allege that, as a result of TCS's discrimination, its United States workforce consists of approximately 95% persons of South Asian descent, race, and/or national origin, compared to 1-2% of the United States population.”); *Koehler v. Infosys Techs. Ltd. Inc.*, 2015 U.S. Dist. LEXIS 60907, 18-19 (E.D. Wis. May 8, 2015) (denying motion to dismiss case alleging that the significant disparity in the defendants' racial demographic statistics gives rise to the inference that this practice resulted in discrimination based on race or national origin, and reflects the defendants' preference to recruit and hire persons of South Asian race and of Indian, Bangladeshi, and Nepalese national origin); *Castaneda v. Pickard*, 648 F.2d 989, 1003 (5th Cir. Tex. 1981) (“[I]n cases such as this one where there is an allegation that the employer's discriminatory practices infect recruiting, the process by which applications are solicited, such applicant flow data cannot be taken at face value and assumed to constitute an accurate picture of the relevant labor market. Discriminatory recruiting practices may skew the ethnic composition of the applicant pool.”).

In your letter, Oracle also argues that OFCCP is required to identify specific recruiting practices that are the root cause of the adverse impact in both recruiting and hiring practices. OFCCP does not agree that it is required to identify every practice that contributes to the disparities—particularly in light of Oracle's failure to provide relevant data and information requested during the review. Nonetheless, the gross disparities uncovered in the review alone provide compelling evidence of Oracle's discriminatory recruiting and hiring practices. *See, e.g., Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977).

Specifically, an analysis of Oracle's Professional Technical 1, Individual Contributor (“PT1”) applicant data uncovered gross disparities between the expected applicant rate (availability) and the actual applicant rate. In these entry-level technical roles, the Asian applicant rate was over 75%, compared to less than 30% in the available workforce in the relevant labor market. Among Oracle's college applicants, the overrepresentation of Asians was even more extreme: the Asian

applicant rate was 85% in 2013 and 92% in 2014. Based upon this data, OFCCP found race disparities in Oracle's recruiting practices against African American, Hispanic and White applicants at *-8, -10, and -30 standard deviations*, respectively.

Similarly, OFCCP found gross disparities between the available workforce in the relevant U.S. labor market² and Oracle's hires in PT1. In PT1 roles, OFCCP found race disparities in Oracle's hiring practices against African American, Hispanic and White applicants at *-4, -3, and -28 standard deviations*, respectively.

The following chart highlights these comparisons.

*Comparison of Relevant U.S. Market Data and
Oracle Applicant, Hiring, and Workforce Data in PT1 Job Group*

PT1 Job Group	% Asian	% Non-Asian
<i>U.S. Labor Market Data for Software Developers</i>	28.8%	71.2%
Oracle Applicant Flow Data	75.8%	24.2%
Oracle Hiring Data	82%	18%
Oracle Workforce Data	73.9%	26.1%

Notably, even with such a skewed applicant pool in favor of Asians, Oracle's Asian hiring rate significantly exceeded it -- *by more than 6%*. Compared to approximately 75% Asian applicants (and 74% Asian incumbents), Oracle hired over 82% Asians in PT1 roles during the review period. To date, Oracle has provided no explanation for the gross disparities between Asians and non-Asians in its recruiting and hiring practices, nor any other rebuttal to this evidence.

Additional evidence, including anecdotal evidence, also reinforces that these gross statistical findings are not due to chance. OFCCP has obtained statements from confidential sources evincing Oracle's reputation as favoring Asians, specifically Asian Indians. Such a reputation both constitutes additional evidence of discrimination, and justifies relying on availability data. See *EEOC v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1282-1283 (11th Cir. Fla. 2000) (discussing a company's actions and resulting reputation on potential applicants, stating "that Joe's hiring decisionmakers systematically excluded female applicants from consideration, that over time this male-only preference became common knowledge, and that eventually most potential, qualified,

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Based on the above information and other relevant evidence, relying on actual applicant data in this matter would be wholly inappropriate, as it ignores Oracle's systemic and discriminatory preference in favor of Asians as against other races, and the tainted applicant pool resulting from it.

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How can employers avoid racial discrimination when recruiting?

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- **Homogeneous recruitment sources -** *Employers should attempt to recruit from racially diverse sources in order to obtain a racially diverse applicant pool. For example, if the employer's primary recruitment source is a college that has few African American students, the employer should adopt other recruitment strategies, such as also recruiting at predominantly African American colleges, to ensure that its applicant pool reflects the diversity of the qualified labor force.*

2) *Oracle has Failed to Rebut OFCCP's Findings with Respect to Compensation Discrimination.*

With respect to the compensation violations, Oracle still has not provided a competing statistical analysis to rebut OFCCP's regressions. Rather, Oracle continues to insist that, notwithstanding its own decision to categorize employees for compensation practices and decisions, those categories have no bearing on whether those employees are comparable. Setting aside Oracle's apparent attempt to disavow its own salary-determination process, Oracle's argument relies on an overly strict interpretation of Title VII case law. Title VII does not require, as Oracle suggests, a near identical set of duties among those employees being compared.

As cases Oracle cited state, Title VII "does not require equal work" to prove compensation discrimination. *See Sims-Fingers v. City of Indianapolis*, 493 F.3d 768, 772 (7th Cir. 2007); *Hooper v. Total System Servs., Inc.*, 799 F. Supp. 2d 1350, 1364 (M.D. Ga. 2011). Rather, Title VII requires only that comparators' jobs be comparable. *Hooper, Inc.*, 799 F. Supp. 2d at 1364 (citation omitted); *see also Brinkley-Obu v. Hughes Training, Inc.*, 36 F.3d 336, 343 (4th Cir. 1994) (noting "relaxed standard of similarity between male and female-occupied jobs" in Title VII compensation discrimination cases); *Mulhall v. Advance Sec., Inc.*, 19 F.3d 586, 598 (11th Cir. 1994) (same). This analysis requires only that "the members of the comparison group are sufficiently comparable [to the focus group] to suggest" discrimination occurred. *Crawford v. Ind. Harbor Belt R. Co.*, 461 F.3d 844, 846 (7th Cir. 2006).

Consistent with Directive 307, OFCCP relied in part on Oracle's salary-determination system to evaluate whether employees were comparable. Under that system, according to materials Oracle provided and statements by Oracle personnel, employees are organized by the types of jobs they perform. On its face, such systemic categorization renders employees within a given category comparable for purposes of Title VII's relaxed similarity standard. Indeed, Oracle fails to explain how, for its compensation practices and decisions, its system of comparing and organizing employees is sufficient, but for OFCCP's purposes, it is not.

The select examples Oracle cites in its letter are not persuasive. Oracle only provides decontextualized details regarding these select employees, ignoring how these individuals were given the same job title, notwithstanding their purported differences. Further, the examples also raise more concerns. For instance, Oracle highlights at least two instances where pay disparities are purportedly based on males performing management duties, with females relegated to "clerical work" or non-leadership roles. *See 10/31/2016 Ltr. at 10-11.*

To date, Oracle has not responded fully to OFCCP's requests for records related to its compensation practices, leading OFCCP to presume that such missing records only support OFCCP's findings of violations. If there is additional material Oracle wants OFCCP to consider in the context of its compensation practices, such materials must be produced promptly.

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