

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

RECEIVED

MAY 05 2017

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

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006  
Office of Administrative Law Judges  
San Francisco, Ca

OFCCP No. R00192699

**DECLARATION OF ERIN M.  
CONNELL IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
JUDGMENT ON THE  
PLEADINGS OF THE CLAIMS  
OUTSIDE THE APPLICABLE  
TIME PERIOD**

I, Erin M. Connell, hereby declare as follows:

1. I am an attorney admitted to practice in the State of California. I am a partner at Orrick, Herrington & Sutcliffe LLP ("Orrick"), and counsel to Oracle America, Inc. ("Oracle") in the above captioned matter. I make this declaration in support of Defendant's Motion for Judgment on the Pleadings of the Claims Outside the Applicable Time Period. I have personal knowledge of the facts set forth herein, except where stated on information and belief, and if called as a witness could competently testify thereto. I am familiar with the documents issued by OFCCP to Oracle based on my knowledge and experience as Oracle's counsel in this matter.

2. Attached hereto as **Exhibit A** is a true and correct copy of OFCCP's Scheduling Letter to Oracle, which OFCCP's Amended Complaint incorporates by reference at page 3, ¶ 6. The Scheduling Letter, dated September 24, 2014, indicates that Oracle's headquarters location (500 Oracle Parkway, Redwood Shoes, CA 94065; hereinafter "HQCA") had been selected for a compliance review under Executive Order 11246.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Notice of Violation ("NOV"), which OFCCP's Amended Complaint incorporates by reference at page 6, ¶ 17. The NOV, dated March 11, 2016, concerns Oracle's HQCA location.

4. Attached hereto as **Exhibit C** is a true and correct copy of the June 8, 2016 Show

Cause Notice issued by OFCCP and received by Oracle, and which OFCCP's Amended Complaint incorporates by reference at page 6, ¶ 18.

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

Executed in San Francisco, California on May 5, 2017.



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Erin M. Connell



U.S. Department of Labor

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



SEP 24 2014

OMB NO. 1250-0003  
Expires 09/30/2014

VIA CERTIFIED MAIL  
7001 0320 0004 6350 4953  
RETURN RECEIPT REQUESTED

Top Onsite Official  
Oracle America Inc.  
500 Oracle Parkway  
Redwood Shore, CA 94065

Dear Top Onsite Official:

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) has selected your establishment located at 500 Oracle Parkway Redwood Shore, California for a compliance review under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, and their implementing regulations at 41 CFR Chapter 60. In addition, the review will include an examination of your establishment's compliance with the Federal Contractor Veterans' Employment Report (VETS-100) requirements (38 U.S.C. 4212(d)).

OFCCP will conduct the compliance review as described in the regulations at 41 CFR 60-1.20(a)(1) and 60-250.60(a)(1), 60-300.60, and 60-741.60, which outline the three possible phases of the process. These phases may include a desk audit, an onsite review, and an offsite analysis.

For the desk audit, please submit the following information: (1) a copy of your Executive Order Affirmative Action Program (AAP) prepared according to the requirements of 41 CFR 60-1.40 and 60-2.1 through 60-2.17\*; (2) a copy of your Section 503/38 U.S.C. 4212 AAP(s) prepared according to the requirements of 41 CFR Parts 60-741 and 41 CFR Parts 60-250 and/or 60-300, respectively; and (3) the support data specified in the enclosed Itemized Listing.

OFCCP will treat the information you submit in response to this letter as sensitive and confidential to the maximum extent permitted under the Freedom of Information Act.

The findings OFCCP makes during the desk audit generally will determine whether an onsite review will be necessary, and if so, whether the onsite review will focus on one, two, or several issues. If an onsite review is necessary, we will notify you.

You should note that 41 CFR 60-2.2 authorizes the initiation of enforcement proceedings if the materials you submit for desk audit do not represent a reasonable effort\* to meet the requirements of the regulations.

Please submit your AAPs and the support data specified in the enclosed Itemized Listing to the address listed on page one of this letter as

soon as possible, but no later than 30 days from the date of your receipt of this letter. We encourage you to submit as much information as possible in electronic format as doing so may reduce the amount of time it takes to complete our review.

If you have any questions concerning the compliance review, please feel free to contact Hea Jung Atkins, District Director, Greater San Francisco/Bay District Office at 415-625-7829.

Sincerely,



Hea Jung Atkins  
District Director

Enclosure: Itemized Listing

\*See Itemized Listing, "NOTE 1."

**NOTE:** The authority for requesting the following information is Executive Order (EO) 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended, 38 U.S.C. 4212. The information will be used in the compliance evaluation process. Furnishing the requested information is required. Failure to furnish the requested information may constitute noncompliance with the contractor's obligations per the above authorities.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1250-0003. The time required to complete this information collection is estimated to average 28.35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send any comments concerning this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Federal Contract Compliance Programs, Room C-3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

### ITEMIZED LISTING

NOTE 1: The Executive Order AAP submission must demonstrate a reasonable effort to comply with 41 CFR Part 60-2. To do so, at a minimum, you must submit the following elements.

Both the AAP and support data are essential to conduct the desk audit phase of the compliance review. If any of the following information is computerized, you may submit it in an electronic format.

#### Executive Order AAP:

1. An organizational profile prepared according to 41 CFR 60-2.11.
2. The formation of job groups (covering all jobs) consistent with criteria given in 41 CFR 60-2.12;
3. For each job group, a statement of the percentage of minority and female incumbents, as described in 41 CFR 60-2.13;
4. For each job group, a determination of minority and female availability that considers the factors given in 41 CFR 60-2.14(c)(1) and (2);
5. For each job group, the comparison of incumbency to availability, as explained in 41 CFR 60-2.15.
6. Placement goals for each job group in which the percentage of minorities or women employed is less than would be reasonably expected given their availability, consistent with 41 CFR 60-2.16.

#### Support Data

7. A copy of your Employer Information Report EEO-1 (Standard Form 100 Rev., see 41 CFR 60-1.7) for the last three years.
8. A copy of your collective bargaining agreement(s), if applicable. Please also include any other information you have already prepared that would assist us in understanding your employee mobility system(s), e.g., promotion, etc.
9. Information on your affirmative action goals for the preceding AAP year and, where applicable (see below), progress on your goals for the current AAP year. See 41 CFR 60-1.12(b), -2.1(c) and -2.16.

ITEMIZED LISTING (continued)

- 3 -

- b. Promotions: The regulations at 41 CFR 60-2.17(b) and (d) require an analysis of your promotion practices to determine if upward mobility of minority or female employees is occurring at a lesser rate (compared to workforce mix) than nonminority or male employees.

For each job group or job title, this analysis must consist of the total number of promotions, as well as the number of minority and the number of female promotions.

Please note that:

- (1) If you present promotions by job group, indicate how your company defines promotions and the basis on which the data were compiled (e.g., promotions to the job group, from and/or within the job group, etc.), or
- (2) If you present promotions by job title, include the department and job group from which and to which the person(s) was promoted.

- c. Terminations: The regulations at 41 CFR 60-2.17(b) and (d) require an evaluation of the degree to which nondiscrimination policy is carried out with respect to employee terminations.

For each job group or job title, this analysis must consist of the total number of employee terminations, as well as the number of minority and the number of female terminations.

Please note that if you present terminations by job title, include the department and job group from which the person(s) terminated.

11. Please provide annualized compensation data (wages, salaries, commissions, and bonuses) by either salary range, rate, grade, or level showing total number of employees\*\* by race and gender and total compensation by race and gender. Present these data in the manner most consistent with your current compensation system. If you maintain the information in electronic format, please submit in that format. See 41 CFR 60-1.4(a)(1). You may also include any other information you have already prepared that would assist us in understanding your compensation system(s). Alternatively, under the voluntary guidelines for self-evaluation of compensation practices, 71 Fed. Reg. 35114 (June 16, 2006), you have the option of seeking compliance coordination. If you so choose, you need not submit the annualized compensation data outlined in Item 11. However, you must notify OFCCP that you "seek compliance coordination under the voluntary OFCCP compensation self-evaluation guidelines."

\*\*For this purpose, the method used to determine employee totals by the contractor should be the same as that used to determine employee totals in the organizational profile for the AAP.



**U.S. Department of Labor**

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



March 11, 2016

**VIA CERTIFIED MAIL,  
7015 0640 0001 2393 5541  
(RETURN RECEIPT REQUESTED)**

Safra A. Catz  
Mark Hurd  
Chief Executive Officers  
ORACLE America, Inc.  
500 Oracle Parkway  
Redwood Shores, CA 94065

**RE: COMPLIANCE EVALUATION OF ORACLE AMERICA, INC.,  
REDWOOD SHORES, CALIFORNIA; OFCCP NO. R00192699**

Dear Ms. Catz and Mr. Hurd:

The United States Department of Labor ("DOL"), Office of Federal Contract Compliance Programs ("OFCCP"), is conducting a compliance evaluation of ORACLE America, Inc. ("ORACLE") in Redwood Shores, California pursuant to 41 Code of Federal Regulations ("C.F.R.") Chapter 60: Executive Order 11246, as amended ("E.O. 11246"); Section 503 of the Rehabilitation Act of 1973, as amended ("Section 503"); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended ("VEVRAA").

OFCCP found that ORACLE violated E.O. 11246. Consequently, OFCCP is issuing this Notice of Violations to ORACLE. ORACLE's violations, and the corrective actions required to remedy them, are set forth below.

**HIRING DISCRIMINATION (VIOLATION 1)**

**1. VIOLATION:**

During the review period from January 1, 2013 through June 30, 2014, ORACLE discriminated against qualified African American, Hispanic and White (hereinafter "non-Asians") applicants in favor of Asian applicants, particularly Asian Indians, based upon race in its recruiting and hiring practices for Professional Technical 1, Individual Contributor ("PT1") roles, in violation of 41 C.F.R. 60-1.4(a)(1).

Specifically, during the period of January 1, 2013 through June 30, 2014, ORACLE recruited approximately 6800 applicants to PT1 roles. Of those applicants, ORACLE recruited 2% African

Americans, 2.5% Hispanics, 19% Whites and 76% Asian applicants. Of the Asian applicants, Asian Indians were nearly 70% of Asian applicants and over 50% of all applicants in PT1.<sup>1</sup>

An analysis of ORACLE's applicant data and appropriate workforce availability statistics<sup>2</sup> show that ORACLE favored Asian applicants, particularly Asian Indians, in recruiting at a standard deviation as significant as +85. ORACLE disfavored non-Asian applicants in recruiting, particularly African American, Hispanic and White applicants, at standard deviations as significant as -8, -10, and -80, respectively.

Additionally, during the period of January 1, 2013 through June 30, 2014, ORACLE hired approximately 670 applicants into PT1 roles. Of those hires, ORACLE hired 1% African Americans, 2% Hispanics, 14% Whites, and 82% Asian applicants. Of the Asian hires, Asian Indians were nearly 60% of Asian hires and 45% of all hires in PT1.

An analysis of ORACLE's hiring data and appropriate workforce availability statistics<sup>3</sup> show that ORACLE favored Asian applicants, particularly Asian Indians, in hiring at a standard deviation as significant as +30. ORACLE disfavored non-Asian applicants in hiring, particularly African American, Hispanic and White applicants, at standard deviations as significant as -4, -3, and -28, respectively.

Evidence gathered during the compliance evaluation demonstrates that ORACLE's discriminatory recruiting and hiring practices skewed the racial composition of the applicant flow data to favor Asians, particularly Asian Indians, and disfavored other racial groups for PT1 roles. In order to further analyze ORACLE's recruitment and hiring practices for PT1 roles, OFCCP made multiple requests to ORACLE for copies of all application materials for all expressions of interest, including but not limited to names of hiring managers, employee referrals, requisition dates, hire dates, and copies of job postings and job requirements. Because ORACLE failed to provide complete and accurate information in response to OFCCP's multiple requests, OFCCP presumes that the information not produced would have been unfavorable to ORACLE.

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE recruited, selected and hired Asian applicants, particularly Asian Indians, for PT1 roles at a rate significantly greater than their non-Asian counterparts who were equally or more qualified for the roles. ORACLE's recruiting and hiring practices resulted in unlawful discrimination against non-Asian applicants based upon race, particularly African American, Hispanic and White applicants.

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<sup>1</sup> Asian Indians make-up less than 1% of the U.S. population. *Asians in the U.S. labor force: profile of a diverse population*, U.S. DOL, Bureau of Labor Statistics, Monthly Labor Review, November 2011, <http://www.bls.gov/opub/mlr/2011/11/art1full.pdf>.

<sup>2</sup> Availability statistics for the Software Developers, Applications & Systems Software Occupation in the United States is based upon 2006-2010 Census and/or 2013-2014 DOL, Bureau of Labor Statistics' Labor Force Statistics.

<sup>3</sup> See footnote 2.

**CORRECTIVE ACTION:**

ORACLE must agree to revise its personnel practices and procedures to ensure that the qualified non-Asian applicants for the PT1 roles are afforded equal employment opportunity for recruitment and selection. ORACLE must also agree to provide the following "make-whole relief" to the non-Asian applicants.

- a) Notice: Send notification to the class members to inform them of their rights and the potential remedies.
- b) Job Offer: Make bona-fide job offers on a priority basis at the rate of pay that class members would now be earning had ORACLE hired them on the date of the first opportunity following their application.
- c) Monetary Settlement: Provide back pay plus quarterly compounded interest at the IRS underpayment rate for the class members. Back pay will be calculated from the date class members should have been hired to the date the violation is resolved in a signed Conciliation Agreement or a bona fide job offer is made to the respective class members. Provide any and all employment benefits that the class members would have received had it not been for the discrimination described above; and
- d) Policies and Training: Develop recruitment and hiring policies that comply with Executive Order 11246, as amended, and its implementing regulations; provide mandatory training on the policies to supervisory, management and recruitment professionals involved in ORACLE's recruitment and selection process; and evaluate performance and compensation of supervisory, management and recruitment professionals based upon compliance with the policies.

**COMPENSATION DISCRIMINATION (VIOLATIONS 2-5)**

**2. VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against female employees in Information Technology, Product Development, and Support roles based upon sex by paying them less than comparable males employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).<sup>4</sup>

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review,

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<sup>4</sup> ORACLE refused to provide OFCCP with complete compensation data for all relevant employees, including contract and contingent employees, for the full review period. ORACLE also did not provide any data demonstrating that its continuing compensation disparities have been remedied. Accordingly, OFCCP presumes such data would be unfavorable to ORACLE.

OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon sex after controlling for legitimate explanatory factors. The results of OFCCP's regression analyses are attached. (**Attachment A**).

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid male employees in Information Technology, Product Development, and Support roles at a rate significantly greater than their female counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against female employees based upon sex.

**CORRECTIVE ACTION:**

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of sex. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Information Technology, Product Development, and Support roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against females in Information Technology, Product Development, and Support roles; 2) provide make-whole remedies to the class of females to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

**3. VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against African Americans in Product Development roles based upon race by paying them less than comparable Whites employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).<sup>5</sup>

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review, OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon race after controlling for legitimate explanatory factors. The results of OFCCP's regression analysis are attached. (**Attachment A**).

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid White employees in Product Development roles at a rate significantly greater than their African American counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against African American employees based upon race.

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<sup>5</sup> See footnote 4.

**CORRECTIVE ACTION:**

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of race. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Product Development roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against African Americans in Product Development roles; 2) provide make-whole remedies to the class of African Americans to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

**4. VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against Asians in Product Development roles based upon race by paying them less than comparable Whites employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).<sup>6</sup>

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review, OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon race after controlling for legitimate explanatory factors. The results of OFCCP's regression analysis are attached. (**Attachment A**).

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid White employees in Product Development roles at a rate significantly greater than their Asian counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against Asian employees based upon race.

**CORRECTIVE ACTION:**

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of race. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Product Development roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against Asians in Product Development roles; 2) provide make-whole remedies to the class of Asians to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

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<sup>6</sup> See footnote 4.

**5. VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against Americans in Product Development and Support roles based upon national origin by paying them less than comparable non-Americans employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).<sup>7</sup>

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; evaluated public disclosure files and related wage determination memoranda; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review, OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon national origin after controlling for legitimate explanatory factors. The results of OFCCP's regression analysis are attached. (**Attachment A**).

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid non-American employees in Product Development and Support roles at a rate significantly greater than their American counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against American employees based upon national origin.

**CORRECTIVE ACTION:**

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of national origin. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Product Development and Support roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against Americans in Product Development and Support roles; 2) provide make-whole remedies to the class of Americans to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

**AFFIRMATIVE ACTION VIOLATIONS (VIOLATIONS 6-8)**

**6. VIOLATION:**

ORACLE failed to perform an in-depth analysis of its total employment processes to determine whether and where impediments to equal employment opportunity exist as required by 41 C.F.R. 60-2.17(b)(3). Specifically, ORACLE failed to identify problem areas in its compensation system(s) to determine whether sex or race based disparities existed.

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<sup>7</sup> See footnote 4.

**CORRECTIVE ACTION:**

ORACLE must agree to perform in-depth analyses of its total employment processes to determine whether and where impediments to equal employment opportunity exist. ORACLE must agree to evaluate its compensation system(s), specifically base salary, bonus programs, starting wages, pay increases, restricted stock units (RSU) or other stock awards, promotions relative to pay, and any other benefits, to determine whether there are sex, race or national origin based pay disparities. ORACLE will incorporate these analyses and determinations into its current AAP and will update these analyses at least annually and incorporate them into future AAPs.

**7. VIOLATION:**

ORACLE failed to demonstrate good faith efforts to develop and execute action-oriented programs designed to correct pay disparities as of January 1, 2013. Specifically, ORACLE was unable to demonstrate that it had conducted any pay equity analyses, or otherwise attempted to correct the problem areas identified in 41 C.F.R. 60-2.17(b)(3) in violation of 41 C.F.R. 60-2.17(c).

**CORRECTIVE ACTION:**

ORACLE must agree to conduct an in-depth analysis of its total employment processes to determine whether any impediments to equal opportunity exist. ORACLE must then develop and implement action-oriented programs designed to remove any identified impediments and institute salary adjustment procedures to determine where and how equity adjustments should be made to ensure nondiscrimination.

**8. VIOLATION:**

ORACLE failed to develop and implement an internal audit and reporting system that periodically measured the effectiveness of its total affirmative action program as required by 41 C.F.R. 60-2.17(d). Specifically, ORACLE failed to monitor its records of all personnel activities, such as compensation, at all levels to ensure its nondiscriminatory policy was carried out.

**CORRECTIVE ACTION:**

ORACLE must agree to implement an internal audit and reporting system to periodically measure the effectiveness of its total affirmative action program. ORACLE must agree to take the following corrective actions:

- a) Monitor records of all personnel activity, such as all components of compensation, to ensure the non-discriminatory policy is enforced;
- b) Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;
- c) Review reports with all levels of management;

- d) Advise top management about the effectiveness of the equal employment opportunity program and submit recommendations to improve any unsatisfactory performance; and
- e) Provide training to all employees who participate in any component of ORACLE's compensation system(s).

## **RECORDKEEPING AND ACCESS VIOLATIONS (VIOLATION 9-10)**

### **9. VIOLATION:**

ORACLE failed to collect and maintain personnel and employment records and conduct adverse impact analyses in accordance with the requirements of 41 C.F.R. 60-1.12(a) and Part 60-3. Additionally, ORACLE failed to conduct the adverse impact analyses required by 41 C.F.R. 60-3.15A and 60-3.4.

### **CORRECTIVE ACTION:**

ORACLE will ensure that its records are collected and maintained in accordance with the requirements of 41 C.F.R. 60-1.12(a) and Part 60-3. ORACLE will conduct adverse impact analyses on at least an annual basis for the purpose of determining whether adverse impact exists against applicants based on race, sex, or national origin/ethnic group in hiring, promotion, termination, and other personnel activities. These analyses will be done by job for each group constituting more than 2% of the labor force in the relevant labor area or 2% of the applicable workforce. If adverse impact is identified in the total selection process, ORACLE will evaluate each individual component of the selection process for adverse impact. If adverse impact is found to exist in any of the individual components of the selection process, ORACLE will validate each such component in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures which do not result in adverse impact.

### **10. VIOLATION:**

ORACLE denied OFCCP access to records, including prior year compensation data for all employees and complete hiring data for PT1 roles during the review period of January 1, 2013 through June 30, 2014, which are relevant to the matter under investigation and pertinent to ORACLE's compliance with Executive Order 11246, as amended, and the regulatory requirements at 41 C.F.R. 60-1.12; 60-1.20; 60-1.43; 60-2.32 and 60-3.4.

### **CORRECTIVE ACTION:**

ORACLE must immediately provide to OFCCP all relevant compensation and hiring data, which was requested on April 27, 2015, May 11, 2015, May 28, 2015, July 30, 2015, October 1, 2015, October 14, 2015, November 2, 2015, and December 15, 2015.

Finally, please note that nothing herein is intended to relieve ORACLE from the obligation to comply with the requirements of E.O. 11246, Section 503, and/or VEVRAA, their implementing regulations, or any other equal employment opportunity/ nondiscrimination statute, executive order or regulation. In addition, this Notice of Violation in no way limits the applicability of the revised regulations implementing Section 503, 41 C.F.R. Part 60-741 (2014) and the revised regulations implementing VEVRAA, 41 C.F.R. Part 60-300 (2014).

\*\*\*\*\*

In order to come into compliance, ORACLE must enter into a binding Conciliation Agreement with OFCCP that encompasses all of the corrective actions described above. It is our desire to avoid enforcement proceedings. You may contact me at (415) 625-7839 within five (5) business days of receipt of this letter if ORACLE would like to begin conciliation and resolution of the specified violations.

Sincerely,



Robert Doles  
District Director

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

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

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

Enclosure

## ATTACHMENT A

### COMPENSATION DISCRIMINATION (VIOLATIONS 2-5)

#### Analysis of Employees' Annual Salary and Gender

The United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") conducted statistical analysis of the employment records Oracle America, Inc. ("Oracle") provided to OFCCP during its equal employment opportunity investigation of Oracle's facility in Redwood Shores, California. OFCCP analyzed Oracle employees' compensation data by Oracle job function using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' gender, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, and job title.

As displayed in the table below, the results of the analysis show a statistically significant salary disparity adverse to female employees in *Information Technology*, *Product Development*, and *Support* roles.

#### Regression Analysis of Female and Male Employees' Salary Difference at Oracle

Year <sup>1</sup>	Class	Number of Female Class Members	Standard Deviations
2014	Female <i>Information Technology</i> Employees	133	-2.71
2014	Female <i>Product Development</i> Employees	1,207	-8.41
2014	Female <i>Support</i> Employees	47	-3.67

<sup>1</sup> Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide OFCCP with its prior year compensation data.

**Analysis of Employees' Annual Salary and Race**

The United States Department of Labor, OFCCP conducted statistical analysis of the employment records Oracle provided to OFCCP during its equal employment opportunity investigation of Oracle's facility in Redwood Shores, California. OFCCP analyzed Oracle employees' compensation data by Oracle job function using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' race, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, and job title.

As displayed in the table below, the results of the analysis show a statistically significant salary disparity adverse to African American and Asian employees in *Product Development* roles.

**Regression Analysis of African American and White Employees' Salary Difference at Oracle**

Year <sup>2</sup>	Class	Number of Black Class Members	Standard Deviations
2014	African American <i>Product Development</i> Employees	27	-2.10

**Regression Analysis of Asian and White Employees' Salary Difference at Oracle**

Year <sup>3</sup>	Class	Number of Asian Class Members	Standard Deviations
2014	Asian <i>Product Development</i> Employees	3,086	-6.55

<sup>2</sup> Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide the Agency prior year compensation data.

<sup>3</sup> Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide the Agency prior year compensation data.

## Analysis of Employees' Annual Salary and National Origin

The United States Department of Labor, OFCCP conducted statistical analysis of the employment records Oracle provided to OFCCP during its equal employment opportunity investigation of Oracle's facility in Redwood Shores, California. OFCCP analyzed Oracle employees' compensation data by Oracle job function using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' national origin, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, visa status, and job title.

As displayed in the table below, the results of the analysis show a statistically significant salary disparity adverse to American employees in *Product Development* and *Support* roles.

### Regression Analysis of American and Non-American Employees' Salary Difference at Oracle

Year <sup>4</sup>	Class	Number of American Class Members	Standard Deviations
2014	American <i>Product Development</i> Employees	3,501	-7.07
2014	American <i>Support</i> Employees	185	-3.65

<sup>4</sup> Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide the Agency prior year compensation data.



U.S. Department of Labor

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



*Via Certified Mail, Return Receipt Requested*  
(#7015 0640 0001 7090 3364)

June 8, 2016

Safra A. Catz  
Mark Hurd  
Chief Executive Officers  
Oracle America, Inc.  
500 Oracle Parkway  
Redwood Shores, CA 94065

RE: COMPLIANCE EVALUATION OF ORACLE AMERICA, INC.,  
REDWOOD SHORES, CALIFORNIA; OFCCP NO. R00192699

Dear Ms. Catz and Mr. Hurd:

On March 11, 2016, the United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"), issued a Notice of Violations against Oracle America, Inc. ("ORACLE") based on the findings of our recent compliance evaluation of ORACLE in Redwood Shores, California. OFCCP conducted the compliance evaluation pursuant to ORACLE's status as a federal contractor subject to nondiscrimination and affirmative action regulations enforced by OFCCP.<sup>1</sup> During the compliance evaluation period to the present, ORACLE voluntarily assumed this status and related obligations in exchange for over \$300 million in federal contracts from American taxpayers.

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<sup>1</sup> Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; 41 C.F.R. Part 60; *see also First Alabama Bank of Montgomery v. Donovan*, 692 F.2d 714, 716 n.1 (11th Cir. 1982)(Executive Order 11246 "imposes a duty on the contractor or subcontractor to establish and update annually a written affirmative action program, and provides for compliance investigations by the Department of Labor. Sanctions for non-compliance include referral to the Department of Justice for legal action, termination of existing government contracts, and debarment from future government contracts.").

Throughout the recent compliance evaluation, OFCCP reviewed and analyzed ORACLE's individual applicant and employee records, written policies and other information, and concluded that ORACLE engaged in systemic discrimination in recruiting, hiring and compensation practices at its headquarters. For example, OFCCP's analyses uncovered evidence that:

- ORACLE's recruiting practices resulted in systemic disparities against non-Asian applicants, particularly African American, Hispanic and White applicants, at -8, -10, and -80 standard deviations, respectively;
- ORACLE's hiring practices resulted in systemic disparities against non-Asian applicants, particularly African American, Hispanic and White applicants, at -4, -3, and -28 standard deviations, respectively; and
- ORACLE's compensation practices resulted in systemic disparities against African American, Asian American, American and female employees, at -2, -7, -7, and -8 standard deviations, respectively.<sup>2</sup>

To resolve the violations listed in the Notice of Violations, OFCCP attempted to engage ORACLE in a good faith and timely conciliation process on March 16, March 29, and April 21, 2016. ORACLE, however, dismissed the government's conciliation efforts.

For example, ORACLE refused to meet to discuss conciliation with any official from OFCCP. ORACLE also rejected OFCCP's request for a written rebuttal analysis or substantive response to the statistical evidence relied upon in the violations of the Notice. ORACLE instead conditioned its response upon receipt of answers from the Agency to nearly sixty contention questions, which sought the identification of each fact supporting each finding listed in the Notice; and information about every factor, model, iteration, and computation considered in its analysis at any time during the compliance evaluation; among other privileged information. ORACLE also withheld information about employee witnesses, complaints and other records from OFCCP.

ORACLE has not provided a substantive rebuttal analysis, based upon statistical evidence, to the violations of the Notice. ORACLE either cannot or will not provide it. The additional information sought and procedural arguments raised by ORACLE are not a rebuttal.<sup>3</sup> It is

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<sup>2</sup> ORACLE withheld evidence from OFCCP regarding its recruiting, hiring and compensation practices and other information during the compliance evaluation; therefore, additional violations could be uncovered in future enforcement proceedings.

<sup>3</sup> This Federal Contract Compliance Manual (hereafter referred to as the "FCCM" or the "Manual") does not establish substantive agency policy. OFCCP continues to use directives and other issuances to communicate substantive policy guidance, procedures, and agency enforcement priorities to staff and those we regulate. The FCCM does not create new legal rights or requirements or change current legal rights or requirements for federal contractors. The official sources for contractors' compliance obligations remain Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; OFCCP's regulations at 41 CFR Part 60; and applicable case law.

neither a relevant nor appropriate response to the statistical evidence of systemic discrimination uncovered in the compliance evaluation and disclosed in the Notice.

Accordingly, OFCCP's findings remain unrebutted and conciliation efforts have failed to resolve the violations. OFCCP is now issuing this Notice to Show Cause, within 30 calendar days of your receipt of this Notice, why enforcement proceedings should not be initiated pursuant to Executive Order 11246, as amended, as implemented by 41 C.F.R. 60-1.26.

A list of the violations at issue is enclosed. You are required to correct these violations as indicated within 30 calendar days of your receipt of this Notice or OFCCP shall recommend that the Department of Labor initiate enforcement proceedings against ORACLE.

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact Hea Jung Atkins at (415) 625-7829 to schedule a meeting or telephone conference.

Sincerely,



Janette Wipper  
Regional Director  
Pacific Region

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

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

Gary R. Siniscalco (via email: [grsiniscalco@orrick.com](mailto:grsiniscalco@orrick.com))

Erin M. Connell (via email: [econnell@orrick.com](mailto:econnell@orrick.com))

Lauri A. Damrell (via email: [ldamrell@orrick.com](mailto:ldamrell@orrick.com))

Orrick Herrington & Sutcliffe LLP

Enclosure

**U.S. Department of Labor**

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



March 11, 2016

**VIA CERTIFIED MAIL,  
7015 0640 0001 2393 5541  
(RETURN RECEIPT REQUESTED)**

Safra A. Catz  
Mark Hurd  
Chief Executive Officers  
ORACLE America, Inc.  
500 Oracle Parkway  
Redwood Shores, CA 94065

**RE: COMPLIANCE EVALUATION OF ORACLE AMERICA, INC.,  
REDWOOD SHORES, CALIFORNIA; OFCCP NO. R00192699**

Dear Ms. Catz and Mr. Hurd:

The United States Department of Labor ("DOL"), Office of Federal Contract Compliance Programs ("OFCCP"), is conducting a compliance evaluation of ORACLE America, Inc. ("ORACLE") in Redwood Shores, California pursuant to 41 Code of Federal Regulations ("C.F.R.") Chapter 60: Executive Order 11246, as amended ("E.O. 11246"); Section 503 of the Rehabilitation Act of 1973, as amended ("Section 503"); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended ("VEVRAA").

OFCCP found that ORACLE violated E.O. 11246. Consequently, OFCCP is issuing this Notice of Violations to ORACLE. ORACLE's violations, and the corrective actions required to remedy them, are set forth below.

**HIRING DISCRIMINATION (VIOLATION 1)**

**1. VIOLATION:**

During the review period from January 1, 2013 through June 30, 2014, ORACLE discriminated against qualified African American, Hispanic and White (hereinafter "non-Asians") applicants in favor of Asian applicants, particularly Asian Indians, based upon race in its recruiting and hiring practices for Professional Technical 1, Individual Contributor ("PT1") roles, in violation of 41 C.F.R. 60-1.4(a)(1).

Specifically, during the period of January 1, 2013 through June 30, 2014, ORACLE recruited approximately 6800 applicants to PT1 roles. Of those applicants, ORACLE recruited 2% African

Americans, 2.5% Hispanics, 19% Whites and 76% Asian applicants. Of the Asian applicants, Asian Indians were nearly 70% of Asian applicants and over 50% of all applicants in PT1.<sup>1</sup>

An analysis of ORACLE's applicant data and appropriate workforce availability statistics<sup>2</sup> show that ORACLE favored Asian applicants, particularly Asian Indians, in recruiting at a standard deviation as significant as +85. ORACLE disfavored non-Asian applicants in recruiting, particularly African American, Hispanic and White applicants, at standard deviations as significant as -8, -10, and -80, respectively.

Additionally, during the period of January 1, 2013 through June 30, 2014, ORACLE hired approximately 670 applicants into PT1 roles. Of those hires, ORACLE hired 1% African Americans, 2% Hispanics, 14% Whites, and 82% Asian applicants. Of the Asian hires, Asian Indians were nearly 60% of Asian hires and 45% of all hires in PT1.

An analysis of ORACLE's hiring data and appropriate workforce availability statistics<sup>3</sup> show that ORACLE favored Asian applicants, particularly Asian Indians, in hiring at a standard deviation as significant as +30. ORACLE disfavored non-Asian applicants in hiring, particularly African American, Hispanic and White applicants, at standard deviations as significant as -4, -3, and -28, respectively.

Evidence gathered during the compliance evaluation demonstrates that ORACLE's discriminatory recruiting and hiring practices skewed the racial composition of the applicant flow data to favor Asians, particularly Asian Indians, and disfavored other racial groups for PT1 roles. In order to further analyze ORACLE's recruitment and hiring practices for PT1 roles, OFCCP made multiple requests to ORACLE for copies of all application materials for all expressions of interest, including but not limited to names of hiring managers, employee referrals, requisition dates, hire dates, and copies of job postings and job requirements. Because ORACLE failed to provide complete and accurate information in response to OFCCP's multiple requests, OFCCP presumes that the information not produced would have been unfavorable to ORACLE.

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE recruited, selected and hired Asian applicants, particularly Asian Indians, for PT1 roles at a rate significantly greater than their non-Asian counterparts who were equally or more qualified for the roles. ORACLE's recruiting and hiring practices resulted in unlawful discrimination against non-Asian applicants based upon race, particularly African American, Hispanic and White applicants.

<sup>1</sup> Asian Indians make-up less than 1% of the U.S. population. *Asians in the U.S. labor force: profile of a diverse population*, U.S. DOL, Bureau of Labor Statistics, Monthly Labor Review, November 2011, <http://www.bls.gov/opub/mlr/2011/11/art1full.pdf>

<sup>2</sup> Availability statistics for the Software Developers, Applications & Systems Software Occupation in the United States is based upon 2006-2010 Census and/or 2013-2014 DOL, Bureau of Labor Statistics' Labor Force Statistics.

<sup>3</sup> See footnote 2.

**CORRECTIVE ACTION:**

ORACLE must agree to revise its personnel practices and procedures to ensure that the qualified non-Asian applicants for the PT1 roles are afforded equal employment opportunity for recruitment and selection. ORACLE must also agree to provide the following "make-whole relief" to the non-Asian applicants.

- a) Notice: Send notification to the class members to inform them of their rights and the potential remedies.
- b) Job Offer: Make bona-fide job offers on a priority basis at the rate of pay that class members would now be earning had ORACLE hired them on the date of the first opportunity following their application.
- c) Monetary Settlement: Provide back pay plus quarterly compounded interest at the IRS underpayment rate for the class members. Back pay will be calculated from the date class members should have been hired to the date the violation is resolved in a signed Conciliation Agreement or a bona fide job offer is made to the respective class members. Provide any and all employment benefits that the class members would have received had it not been for the discrimination described above; and
- d) Policies and Training: Develop recruitment and hiring policies that comply with Executive Order 11246, as amended, and its implementing regulations; provide mandatory training on the policies to supervisory, management and recruitment professionals involved in ORACLE's recruitment and selection process; and evaluate performance and compensation of supervisory, management and recruitment professionals based upon compliance with the policies.

**COMPENSATION DISCRIMINATION (VIOLATIONS 2-5)**

**2. VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against female employees in Information Technology, Product Development, and Support roles based upon sex by paying them less than comparable males employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).<sup>4</sup>

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review,

<sup>4</sup> ORACLE refused to provide OFCCP with complete compensation data for all relevant employees, including contract and contingent employees, for the full review period. ORACLE also did not provide any data demonstrating that its continuing compensation disparities have been remedied. Accordingly, OFCCP presumes such data would be unfavorable to ORACLE.

OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon sex after controlling for legitimate explanatory factors. The results of OFCCP's regression analyses are attached. (**Attachment A**).

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid male employees in Information Technology, Product Development, and Support roles at a rate significantly greater than their female counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against female employees based upon sex.

**CORRECTIVE ACTION:**

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of sex. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Information Technology, Product Development, and Support roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against females in Information Technology, Product Development, and Support roles; 2) provide make-whole remedies to the class of females to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

**3. VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against African Americans in Product Development roles based upon race by paying them less than comparable Whites employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).<sup>5</sup>

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review, OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon race after controlling for legitimate explanatory factors. The results of OFCCP's regression analysis are attached. (**Attachment A**).

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid White employees in Product Development roles at a rate significantly greater than their African American counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against African American employees based upon race.

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<sup>5</sup> See footnote 4.

**CORRECTIVE ACTION:**

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of race. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Product Development roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against African Americans in Product Development roles; 2) provide make-whole remedies to the class of African Americans to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

**4. VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against Asians in Product Development roles based upon race by paying them less than comparable Whites employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).<sup>6</sup>

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review, OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon race after controlling for legitimate explanatory factors. The results of OFCCP's regression analysis are attached. (**Attachment A**).

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid White employees in Product Development roles at a rate significantly greater than their Asian counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against Asian employees based upon race.

**CORRECTIVE ACTION:**

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of race. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Product Development roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against Asians in Product Development roles; 2) provide make-whole remedies to the class of Asians to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

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<sup>6</sup> See footnote 4.

**5. VIOLATION:**

Beginning no later than January 1, 2013, and continuing thereafter, ORACLE discriminated against Americans in Product Development and Support roles based upon national origin by paying them less than comparable non-Americans employed in similar roles, in violation of 41 C.F.R. 60-1.4(a)(1).<sup>7</sup>

During the compliance review, OFCCP reviewed employment policies, practices, and records; interviewed management, human resources, and non-management employees; examined employee complaints; analyzed individual employee compensation data and other evidence; evaluated public disclosure files and related wage determination memoranda; and conducted an onsite inspection of the worksite. Based upon the evidence gathered during the compliance review, OFCCP evaluated and analyzed ORACLE's compensation system and, through regression and other analysis, found statistically significant pay disparities based upon national origin after controlling for legitimate explanatory factors. The results of OFCCP's regression analysis are attached. (**Attachment A**).

Based upon the analysis conducted and the evidence gathered during the compliance evaluation, OFCCP finds that ORACLE paid non-American employees in Product Development and Support roles at a rate significantly greater than their American counterparts who were equally or more qualified. ORACLE's compensation practices resulted in unlawful discrimination against American employees based upon national origin.

**CORRECTIVE ACTION:**

ORACLE must agree to take steps to ensure that its compensation system is nondiscriminatory to all of its employees, regardless of national origin. This applies to all aspects of compensation, including but not limited to, salary at the time of placement into roles, annual salary adjustments and incentive compensation in Product Development and Support roles. ORACLE agrees to: 1) cease the discriminatory compensation practice(s) resulting in lower pay and adverse impact against Americans in Product Development and Support roles; 2) provide make-whole remedies to the class of Americans to include back pay, interest, and other employment benefits; and 3) provide training to employees involved in setting and increasing compensation to ensure that the violation does not recur.

**AFFIRMATIVE ACTION VIOLATIONS (VIOLATIONS 6-8)**

**6. VIOLATION:**

ORACLE failed to perform an in-depth analysis of its total employment processes to determine whether and where impediments to equal employment opportunity exist as required by 41 C.F.R. 60-2.17(b)(3). Specifically, ORACLE failed to identify problem areas in its compensation system(s) to determine whether sex or race based disparities existed.

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<sup>7</sup> See footnote 4.

**CORRECTIVE ACTION:**

ORACLE must agree to perform in-depth analyses of its total employment processes to determine whether and where impediments to equal employment opportunity exist. ORACLE must agree to evaluate its compensation system(s), specifically base salary, bonus programs, starting wages, pay increases, restricted stock units (RSU) or other stock awards, promotions relative to pay, and any other benefits, to determine whether there are sex, race or national origin based pay disparities. ORACLE will incorporate these analyses and determinations into its current AAP and will update these analyses at least annually and incorporate them into future AAPs.

**7. VIOLATION:**

ORACLE failed to demonstrate good faith efforts to develop and execute action-oriented programs designed to correct pay disparities as of January 1, 2013. Specifically, ORACLE was unable to demonstrate that it had conducted any pay equity analyses, or otherwise attempted to correct the problem areas identified in 41 C.F.R. 60-2.17(b)(3) in violation of 41 C.F.R. 60-2.17(c).

**CORRECTIVE ACTION:**

ORACLE must agree to conduct an in-depth analysis of its total employment processes to determine whether any impediments to equal opportunity exist. ORACLE must then develop and implement action-oriented programs designed to remove any identified impediments and institute salary adjustment procedures to determine where and how equity adjustments should be made to ensure nondiscrimination.

**8. VIOLATION:**

ORACLE failed to develop and implement an internal audit and reporting system that periodically measured the effectiveness of its total affirmative action program as required by 41 C.F.R. 60-2.17(d). Specifically, ORACLE failed to monitor its records of all personnel activities, such as compensation, at all levels to ensure its nondiscriminatory policy was carried out.

**CORRECTIVE ACTION:**

ORACLE must agree to implement an internal audit and reporting system to periodically measure the effectiveness of its total affirmative action program. ORACLE must agree to take the following corrective actions:

- a) Monitor records of all personnel activity, such as all components of compensation, to ensure the non-discriminatory policy is enforced;
- b) Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;
- c) Review reports with all levels of management;

- d) Advise top management about the effectiveness of the equal employment opportunity program and submit recommendations to improve any unsatisfactory performance; and
- e) Provide training to all employees who participate in any component of ORACLE's compensation system(s).

#### **RECORDKEEPING AND ACCESS VIOLATIONS (VIOLATION 9-10)**

##### **9. VIOLATION:**

ORACLE failed to collect and maintain personnel and employment records and conduct adverse impact analyses in accordance with the requirements of 41 C.F.R. 60-1.12(a) and Part 60-3. Additionally, ORACLE failed to conduct the adverse impact analyses required by 41 C.F.R. 60-3.15A and 60-3.4.

##### **CORRECTIVE ACTION:**

ORACLE will ensure that its records are collected and maintained in accordance with the requirements of 41 C.F.R. 60-1.12(a) and Part 60-3. ORACLE will conduct adverse impact analyses on at least an annual basis for the purpose of determining whether adverse impact exists against applicants based on race, sex, or national origin/ethnic group in hiring, promotion, termination, and other personnel activities. These analyses will be done by job for each group constituting more than 2% of the labor force in the relevant labor area or 2% of the applicable workforce. If adverse impact is identified in the total selection process, ORACLE will evaluate each individual component of the selection process for adverse impact. If adverse impact is found to exist in any of the individual components of the selection process, ORACLE will validate each such component in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures which do not result in adverse impact.

##### **10. VIOLATION:**

ORACLE denied OFCCP access to records, including prior year compensation data for all employees and complete hiring data for PT1 roles during the review period of January 1, 2013 through June 30, 2014, which are relevant to the matter under investigation and pertinent to ORACLE's compliance with Executive Order 11246, as amended, and the regulatory requirements at 41 C.F.R. 60-1.12; 60-1.20; 60-1.43; 60-2.32 and 60-3.4.

##### **CORRECTIVE ACTION:**

ORACLE must immediately provide to OFCCP all relevant compensation and hiring data, which was requested on April 27, 2015, May 11, 2015, May 28, 2015, July 30, 2015, October 1, 2015, October 14, 2015, November 2, 2015, and December 15, 2015.

Finally, please note that nothing herein is intended to relieve ORACLE from the obligation to comply with the requirements of E.O. 11246, Section 503, and/or VEVRAA, their implementing regulations, or any other equal employment opportunity/ nondiscrimination statute, executive order or regulation. In addition, this Notice of Violation in no way limits the applicability of the revised regulations implementing Section 503, 41 C.F.R. Part 60-741 (2014) and the revised regulations implementing VEVRAA, 41 C.F.R. Part 60-300 (2014).

\*\*\*\*\*

In order to come into compliance, ORACLE must enter into a binding Conciliation Agreement with OFCCP that encompasses all of the corrective actions described above. It is our desire to avoid enforcement proceedings. You may contact me at (415) 625-7839 within five (5) business days of receipt of this letter if ORACLE would like to begin conciliation and resolution of the specified violations.

Sincerely,



Robert Doles  
District Director

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

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

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

Enclosure

**ATTACHMENT A**

**COMPENSATION DISCRIMINATION (VIOLATIONS 2-5)**

**Analysis of Employees' Annual Salary and Gender**

The United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") conducted statistical analysis of the employment records Oracle America, Inc. ("Oracle") provided to OFCCP during its equal employment opportunity investigation of Oracle's facility in Redwood Shores, California. OFCCP analyzed Oracle employees' compensation data by Oracle job function using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' gender, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, and job title.

As displayed in the table below, the results of the analysis show a statistically significant salary disparity adverse to female employees in *Information Technology*, *Product Development*, and *Support* roles.

**Regression Analysis of Female and Male Employees'  
Salary Difference at Oracle**

<b>Year<sup>1</sup></b>	<b>Class</b>	<b>Number of Female Class Members</b>	<b>Standard Deviations</b>
2014	Female <i>Information Technology</i> Employees	133	-2.71
2014	Female <i>Product Development</i> Employees	1,207	-8.41
2014	Female <i>Support</i> Employees	47	-3.67

<sup>1</sup> Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide OFCCP with its prior year compensation data.

**Analysis of Employees' Annual Salary and Race**

The United States Department of Labor, OFCCP conducted statistical analysis of the employment records Oracle provided to OFCCP during its equal employment opportunity investigation of Oracle's facility in Redwood Shores, California. OFCCP analyzed Oracle employees' compensation data by Oracle job function using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' race, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, and job title.

As displayed in the table below, the results of the analysis show a statistically significant salary disparity adverse to African American and Asian employees in *Product Development* roles.

**Regression Analysis of African American and White Employees' Salary Difference at Oracle**

Year <sup>2</sup>	Class	Number of Black Class Members	Standard Deviations
2014	African American <i>Product Development</i> Employees	27	-2.10

**Regression Analysis of Asian and White Employees' Salary Difference at Oracle**

Year <sup>3</sup>	Class	Number of Asian Class Members	Standard Deviations
2014	Asian <i>Product Development</i> Employees	3,086	-6.55

<sup>2</sup> Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide the Agency prior year compensation data.

<sup>3</sup> Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide the Agency prior year compensation data.

### Analysis of Employees' Annual Salary and National Origin

The United States Department of Labor, OFCCP conducted statistical analysis of the employment records Oracle provided to OFCCP during its equal employment opportunity investigation of Oracle's facility in Redwood Shores, California. OFCCP analyzed Oracle employees' compensation data by Oracle job function using a model that included the natural log of annual salary as a dependent variable, and accounted for differences in employees' national origin, work experience at Oracle, work experience prior to Oracle, full-time/part-time status, exempt status, global career level, job specialty, visa status, and job title.

As displayed in the table below, the results of the analysis show a statistically significant salary disparity adverse to American employees in *Product Development* and *Support* roles.

#### Regression Analysis of American and Non-American Employees' Salary Difference at Oracle

Year <sup>4</sup>	Class	Number of American Class Members	Standard Deviations
2014	American <i>Product Development</i> Employees	3,501	-7.07
2014	American <i>Support</i> Employees	185	-3.65

<sup>4</sup> Oracle provided OFCCP with one year of compensation data that included Oracle employees who were employed at the relevant facility on January 1, 2014. Oracle refused to provide the Agency prior year compensation data.