

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

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

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

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

REDACTED PURSUANT TO COURT ORDER

I, Farouk Abushaban, hereby declare as follows:

1. I make this declaration in support of Oracle America, Inc. ("Oracle")'s motion for summary judgment or, in the alternative, for partial summary judgment. I have personal knowledge of the matters contained in this declaration. If called to testify to the information in this declaration, I could do so competently.

2. Before signing this declaration, I read it carefully to make sure it was accurate, and it is. I was not pressured or required to sign this declaration. I am providing this declaration voluntarily.

3. I am a male and a current Oracle employee. I joined Oracle in August 1997. Until recently, I worked in the Support job function. My system job title was Product Support Snr Manager, my job code was 90248, and my career level was M3. I worked in the line of business led by Charles Rozwat, Executive Vice President of Customer Support Services. On September 9, 2019, I transitioned into a new role in the Product Development job function. My new job title is Program Manager 5 and my new job code is 66685.

4. I am based in Colorado Springs, Colorado, but have supervised direct reports based in Oracle's California headquarters during my tenure as a Support manager.

5. I joined Oracle as a technical support engineer at the IC2 career level. I worked my way up through the company and, in September 2015, transitioned into management from an IC5 role into my former position as senior manager. I joined Oracle after working roughly 12 years in the tech industry as a field engineer in various capacities. My last position before joining Oracle was working onsite as a field engineer at Bank One (later acquired by J.P. Morgan Chase). I came to Oracle because I was seeking professional growth. During my interviews with Oracle, I learned that I could develop my existing skills in hardware and networking, and also expand my realm of knowledge into software. I saw Oracle as a bigger company with more opportunities for my career.

6. In my support role, my team and I were part of a global support team called the Enterprise Engineered Systems Support Team. Oracle's Engineered Systems refers to pre-

ABUSHABAN DECLARATION ISO ORACLE'S MOTION FOR SUMMARY JUDGMENT

integrated hardware and software systems that Oracle sells to customers looking to optimize and streamline their IT processes. Our customers ranged far and wide, as our products can be found in any company that needs to access, manage, secure, and store data. For example, we supported large companies, governments, hospitals, small businesses, and banks, both in the U.S. and internationally.

7. My group supported the engineered systems for three “appliances”: Exadata, Super Cluster, and Oracle Database Appliance. An “appliance” is a machine that contains preconfigured hardware and software – it is like a “pantry” that is full of high-end servers that we shipped to customers fully loaded with Oracle software, cables, and many other components. We also supported the cloud aspects of these appliances.

8. Exadata took up eighty percent of our work. It is a single piece of hardware (a database server machine) designed by Oracle that incorporates the database engine, the storage engines, the networking components, cloud, and other parts. It provides optimized functionality for Oracle Database and offers a highly efficient and cost-effective solution for customers who run their software on it. The other two appliances, Super Cluster and Oracle Database Appliance, serve a similar function. Exadata and Oracle Database Appliance mainly run on Oracle’s operating system, called Oracle Linux, and Super Cluster runs on another operating system that Oracle acquired, called Solaris.

9. From my experiences with these appliances, I know that when a customer experienced an issue, they filled out a service request (“SR”) describing the problem. The SR went to the global team, the Enterprise Engineered Systems Support Team, which consisted of approximately a dozen managers including me until recently (five to six in the U.S. and the remainder in India), all of whom supported the database components of the Oracle Engineered Systems. The SR system is set up to triage customer requests based on the product, the skills needed to support that product, and the engineers available. My team provided support from either 10 a.m. to 7 p.m. Mountain Time or 11 a.m. to 8 p.m. Mountain Time, depending on the time of year. Other teams filled in the gaps so that we could offer customer support 24/7. We

supported the hardware and software for the entire product, meaning everything from the power cord to the ethernet cord to the data stream. My team's role was to identify the issue, determine the steps needed to resolve it, and engage the proper Oracle team(s) to complete the task. For example, if one of our products had a hardware failure, we engaged the hardware team to replace it. We also worked with the networking, development, and many other teams. My team was the first line of defense in ensuring customers got what they needed.

10. In my prior managerial role, I had twelve direct reports, two of whom were female. My direct reports had differing areas of expertise: some had expertise in the Solaris operating system, others in the Linux operating system, and some had added expertise in the cloud. Most of my direct reports shared a system job title and job code—Technical Analyst 4-Support (job code 90023)—but had varying skills and responsibilities. Each engineer on my team had a niche technical proficiency in some aspect of our work. For example, a female Technical Analyst 4-Support on my former team named [REDACTED] had a very different skillset than another Technical Analyst 4-Support on my team, [REDACTED] even though they shared the same job title. [REDACTED] had a strong database background. Based on my interactions with [REDACTED] I know that she focused her career on fixing very specific pieces of code, internal components of the server, and the backend processes of the data server where data is stored. Before she joined my Support team several years ago, she specialized in fixing bugs in Oracle Database. This type of work is primarily solitary and does not require an understanding of the application and the end-user experience.

11. On the other hand, as [REDACTED] former supervisor, I know that he focused on Oracle applications before he joined my support team. He was skilled in middleware, which is the interface between the data stored on our appliances, and the application used by the end user. For example, a user accesses an email application like Hotmail from his or her browser to send photos stored on the computer's database. The application runs on one of our engineered systems, like ExaLogic or another application platform, but it does not house any data (i.e. photos); the data is stored in the backend server on Oracle's database. That bridge between the

database and the application is middleware. To work in middleware, [REDACTED] had to understand the application from the user end all the way to the server and storage ends, and also have reasonable competency in the underlying hardware. However, [REDACTED] did not need to know the details of how the application, Hotmail, operates; she specialized in the database used to store the photos being sent via Hotmail.

12. [REDACTED] and [REDACTED] had different skillsets. [REDACTED] was not as strong in the technical aspects of the database like [REDACTED] but he could support a customer with problems on both ends of the application and the database. Accordingly, [REDACTED] had the skills to handle situations such as a customer who needs an engineer onsite to evaluate a problem from a general perspective, which would require communicating with end users, management, information systems designers, and technical administrators to diagnose a problem. By contrast, [REDACTED] excelled at working with database administrators on the back end, including interacting with other technically-savvy customers who understand the technical aspects of the database. [REDACTED] and [REDACTED] each had different skills, but they were both valuable to my team.

13. Additionally, there are differences in skill level and expertise among the career levels of my direct reports. For example, a Technical Analyst 4, like [REDACTED] was able to generate a more detailed defect report than her colleague with a Technical Analyst 3 job title. A defect report is a document that explains where a product failed. It gets submitted to Oracle's product development teams, who work to create a fix for the failure. As her supervisor, I expected [REDACTED] defect reports to be more detailed because she had a higher level of expertise with the code—as compared to a lower-level employee—that allowed her to offer more nuanced examples and identify possible causes of the problem. I generally expected a correlation between higher career levels and the thoroughness of the work they produced.

14. My experience working with the product development teams in my support role allowed me to make connections that led to my transition to my new role as a Program Manager 5. This is a highly technical job that matches my background in applications, monitoring software, networking, and my current expertise in Oracle Database. In my support role, I

worked with the product development teams and waited for them to create the fix for my customer's problem. Now, I am part of the team that is developing the solution. Even though I am no longer in a managerial position and do not have direct reports, I missed doing this type of work and I find it satisfying in terms of my success and accomplishments.

15. I participated in hiring for my team in my managerial role, and in doing so I worked with my HR Business Partners to determine the appropriate salary range and career level for the candidate. Typically, I looked for expertise in Oracle products and experience in networking and systems administration (namely, with operating systems such as Linux and Solaris, and how they operate in the cloud). The closer a candidate's experience aligned with my team's daily work, the more likely that candidate became a finalist. My starting salary decisions have never been overturned, and I have never recommended a candidate outside the salary range for his or her position.

16. In making starting pay decisions, I considered many factors, including primarily the skills, experience, and expertise that the individual brings to my team. Although in some instances, I have considered prior pay among those factors, it was not the primary factor, and in fact, I have only noticed it when it was significantly out of range for my team. I have not hired since October 2017, but around that time, I received an email instructing me and all managers not to ask about prior salary in hiring. I also attended a mandatory webinar explaining this policy. I understand that since October 2017, Oracle prohibits managers or recruiters from asking about or considering prior pay in making starting pay decisions.

17. As a manager, I also participated in distributing focal increases for my direct reports, but I did not participate in bonus or equity distributions. During the focal cycle, I ranked my team from top to bottom in terms of performance. I evaluated performance based on customer ratings, the individual's contribution to my team, flexibility to handle escalations, attentiveness to customers, productivity, efficiency, accuracy, attention to detail with respect to documentation for our processes, contributions to publishing notes on customer solutions, and consistency in all these benchmarks. I also considered internal pay equity among my team

ABUSHABAN DECLARATION ISO ORACLE'S MOTION FOR SUMMARY JUDGMENT

members, and I aimed to ensure that each member was paid equitably as compared to his or her peers. I prioritized giving increases to my top performers who left a big impact on my team.

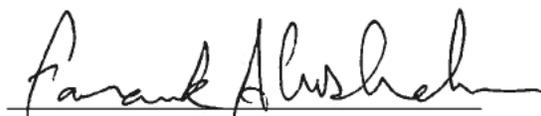
18. For example, my top-ranked report in the most recent focal cycle did not have extensive experience in [REDACTED] but [REDACTED] had a solid background in [REDACTED] and [REDACTED] and [REDACTED] used [REDACTED] skills to learn [REDACTED], performed well, and met and exceeded [REDACTED] key performance indicators. I rewarded [REDACTED] for hitting the ground running because I and the team valued [REDACTED] efforts.

19. As a manager, I regularly participated in Oracle's trainings, which are annual or biannual depending on the subject. I recall receiving training on topics including sexual harassment, retaliation, and various non-discrimination topics. The trainings are nuanced and have taught me to be aware that the playing field must be level for everyone.

20. I have never considered race or gender in hiring or in compensation decisions when I was a manager. I always based my decisions on technical expertise and performance, because those are the skills that got delivered to the customer and I felt that this was the right way to treat people. I also have never witnessed any gender- or race-based bias against any employees during my time at Oracle.

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

Executed in Colorado Springs, Colorado on Sept. 17th, 2019.



Farouk Abushaban