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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 LARA F.
GRAHAM IN SUPPORT OF
ORACLE AMERICA, INC.'S
MOTION TO SEAL LIMITED
PORTIONS OF PLAINTIFF
OFCCP'S REPLY TO
OPPOSITION TO OFCCP'S
MOTION FOR SUMMARY
JUDGMENT, OFCCP'S REPLY
IN SUPPORT OF MOTION TO
EXCLUDE THE TESTIMONY
AND REPORTS OF DR. SAAD,
AND OFCCP'S MOTION IN
LIMINE**

I, Lara F. Graham, declare as follows:

1. I am a member of the State Bar of California and authorized to practice before this Court. I am an attorney with Orrick, Herrington & Sutcliffe LLP, attorneys of record for Defendant Oracle America, Inc. in the above-titled action. I make this declaration in support of Defendant Oracle America, Inc.'s ("Oracle") Motion to Seal ("Motion") limited portions of the materials submitted in support of Plaintiff OFCCP's Reply to Opposition to OFCCP's Motion for Summary Judgment, OFCCP's Reply in Support of Motion to Exclude the Testimony and Reports of Dr. Saad (collectively "Replies") and OFCCP's Motion in Limine ("MIL"). The facts set forth in this declaration I know to be true of my own personal knowledge, except where such

DECLARATION OF LARA F. GRAHAM IN SUPPORT OF ORACLE'S MOTION TO SEAL

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CASE NO. 2017-OFC-00006

facts are stated to be based on information and belief, and those facts I believe to be true. If called as a witness, I could and would testify competently to the matters set forth in this declaration.

2. I met conferred with counsel for OFCCP in person on Tuesday November 19, 2019, and telephonically on November 22, 2019 to discuss the materials Oracle seeks to seal through its Motion. The parties reviewed the materials on a redaction-by-redaction basis and the chart below details the areas of agreement and/or disagreement over Oracle’s proposed redactions.

3. I have reviewed the materials that Oracle seeks to seal in its Motion to Seal OFCCP’s Replies and MIL. I have also reviewed the attached versions of the aforementioned documents. The attached versions include redactions covering the information that Oracle both deems confidential and seeks to seal through its motion; more specifically:

Graham Decl. Exhibit	Document Name	Confidential Material	Areas of Agreement and/or Disagreement and Other Locations on the Docket
A	OFCCP’s Reply to Opposition to OFCCP’s Motion for Summary	Compensation information about non-party employee: p. 9 Termination date of non-party employee: p. 9	OFCCP opposes compensation-related redactions but agrees with redaction of termination date. No other location on the docket.
B	OFCCP’s Reply in Support of Motion to Exclude the Testimony and Reports of Dr. Saad	Compensation information about non-party employee: p. 9 fn. 18 Termination date of non-party employee: p. 9 fn. 18	OFCCP opposes compensation-related redactions but agrees with redaction of termination date. No other location on the docket.

Graham Decl. Exhibit	Document Name	Confidential Material	Areas of Agreement and/or Disagreement and Other Locations on the Docket
C	Declaration of Janet M. Herold in Support of OFCCP's Reply to Oracle's Opposition to OFCCP's Motion to Exclude Testimony and Reports of Dr. Ali Saad ("Herold Decl.")	<p>Compensation information about non-party employees: ¶¶ 2, 3, 5</p> <p>Termination date of non-party employees: ¶¶ 4-5</p>	<p>OFCCP opposes compensation-related redactions but agrees with redaction of termination dates.</p> <p>No other location on the docket.</p>
D	Herold Decl., Ex. B	<p>Confidential Internal Network Configuration, Data Entry, and Network Access Information: ORACLE_HQCA_00003826 87-0000382710</p>	<p>OFCCP opposes various network screenshot image redactions at ORACLE_HQCA_0000382689-0000382710.</p> <p>No other location on docket.</p>
E	Declaration of Priyanka Jampana	<p>Compensation information about non-party employee: ¶ 9</p> <p>Personally-identifying and sensitive information about non-party employees, including names, job duties, race information, disability information, and retirement information: ¶¶ 7, 10, 12</p>	<p>OFCCP opposes sealing the following: a word at ¶ 7, line 21; the number of employees at ¶ 7, line 20; race information at ¶¶ 7, 12; description of job duties at ¶ 7; and compensation information about non-party at ¶ 13.</p> <p>OFCCP agrees with all other redactions.</p> <p>No other location on docket.</p>

Graham Decl. Exhibit	Document Name	Confidential Material	Areas of Agreement and/or Disagreement and Other Locations on the Docket
F	Declaration of Laura C. Bremer in Support of OFCCP’s Motion in Limine to Exclude Trial Evidence and Testimony Related to Subjects in Which Oracle Refused to Provide Discovery Based on Privilege or Relevance, Ex. C (Deposition of Tamerlane Baxter)	Personally-identifying information of non-party employee: p. 215:8	OFCCP agrees with this redaction. No other location on docket.

4. The materials that Oracle seeks to seal in its Motion include excerpts from depositions and/or documents produced to OFCCP and expressly designated as “Confidential,” and/or materials filed in this matter that Oracle indicated to this Court and OFCCP, by letter, it will move to seal, pursuant to the May 22, 2019 Protective Order adopting and amending Judge Larsen’s May 26, 2017 Protective Order (“Protective Order”):

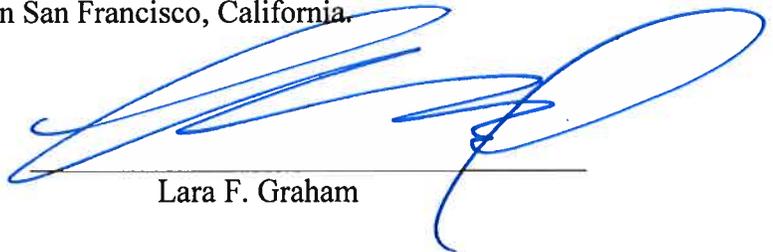
- a. OFCCP’s Reply to Opposition to OFCCP’s Motion for Summary, the redacted portions of which Oracle notified this Court and OFCCP it will move to seal by its November 14, 2019 letter, and which comprise sensitive employee information derived from confidentially produced database files;
- b. OFCCP’s Reply in Support of Motion to Exclude the Testimony and Reports of Dr. Saad, the redacted portions of which Oracle notified this Court and OFCCP it will move to seal by its November 14, 2019 letter, and which comprise sensitive employee information derived from confidentially produced database files;
- c. Declaration of Janet M. Herold in Support of OFCCP’s Reply to Oracle’s Opposition to OFCCP’s Motion to Exclude Testimony and Reports of Dr. Ali Saad (“Herold Decl.”), the redacted portions of which Oracle notified this Court and OFCCP it will move to seal by its November 14, 2019 letter, and which

comprise sensitive employee information derived from confidentially produced database files;

- d. Herold Decl., Ex. B, produced confidential at ORACLE_HQCA_0000382687-0000382710;
- e. Declaration of Priyanka Jampana, which Oracle notified this Court and OFCCP it will move to seal by its November 14, 2019 letter; and
- f. Declaration of Laura C. Bremer in Support of OFCCP's Motion in Limine to Exclude Trial Evidence and Testimony Related to Subjects in Which Oracle Refused to Provide Discovery Based on Privilege or Relevance, Ex. C (Deposition of Tamerlane Baxter), deposition testimony Oracle designated confidential on July 31, 2019.

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

Executed on November 25, 2019, in San Francisco, California.



Lara F. Graham

GRAHAM DECL. EX. A

(OFCCP'S REPLY TO OPPOSITION TO OFFCP'S
MOTION FOR SUMMARY JUDGMENT)

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

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
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**OFCCP'S REPLY TO OPPOSITION TO OFCCP'S MOTION
FOR SUMMARY JUDGMENT**

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The parties have collectively filed and exchanged twelve significant briefs and hundreds of exhibits in the last three weeks. But, the key facts necessary to apply the legal framework of Executive Order 11246 are not materially in dispute. This matter is ripe for decision, particularly as to Oracle's liability for breaching its federal contract by engaging in prohibited pay discrimination to the detriment of women, Asians, and African Americans.

OFCCP has brought forth robust statistical analyses that demonstrate discrimination by Oracle as to salary and total compensation. OFCCP's statistical analyses apply the data Oracle maintained regarding its compensation decisions. The analyses include Oracle's data regarding managerial designations and global career levels, which OFCCP contends is tainted due to Oracle impermissibly channeling women, Asians and African Americans into lower paying jobs. Yet, even after including these tainted variables, OFCCP's statistical analyses show systemic gender pay gaps in total compensation and salary compensation with average standard deviations above 4 and 8, respectively. OFCCP's statistical analyses show racial pay gaps in total compensation and salary compensation for Asians with average standard deviations above 3 and 4.5, respectively. OFCCP's statistical analyses are consistent with Oracle's own internal admissions and Oracle does not contest the mathematical accuracy of OFCCP's analyses.

Oracle has not rebutted OFCCP's statistical analyses. As to OFCCP's evidence of salary discrimination, Oracle has conceded liability by choosing to present no rebuttal evidence to OFCCP's statistical evidence of base pay discrimination. As to OFCCP's evidence of total compensation discrimination, Oracle offers no competing independent statistical study of its compensation data. Instead, Oracle has confined its expert testimony to attempting to poke holes in OFCCP's statistical analyses, a strategy made riskier by its expert failing to study the correct questions and data at issue in this case.

Further, Oracle's defense that it is "too big" or its business is "too complex" to be studied or to maintain records of objective data relied upon in setting compensation has no merit. To accept Oracle's position, the Court must close its eyes to: Oracle's affirmative action program (AAP) obligations which require top management to study and approve its compensation practices to ensure no discrimination; the Department's regulations that require basing pay

differentials on “objective” factors; and, black letter case law holding that defendants cannot rebut a prima facie case of discrimination by relying on post-hoc rationalizations or without showing that the alleged missing factors in a regression analysis actually change the calculations.

OFCCP respectfully requests that this Court promptly rule in its favor on liability prior to the date trial is scheduled to commence. To the extent additional evidence is needed to resolve issues related to damages, the current trial dates can be used for that purpose.

I. OFCCP HAS APPROPRIATELY REPRESENTED THE EVIDENCE

OFCCP devoted seven-pages of its summary judgment brief to describing Oracle’s compensation system, which begins with placing an employee in the correct job code created by its centralized Compensation Team in Human Resources (HR), and ends with CEO-level approval for virtually each and every compensation decision. *See* OFCCP MSJ 5-12. Once initial compensation is set, employee pay becomes essentially frozen and pay increases are not typically given even when an employee transfers to another position. *Id.* Oracle’s instructions to management make clear which employees should be considered similarly situated for purposes of pay (*i.e.*, those entering the same job family with similar levels of experience and similar education), but also specifically recognizes that not all employees will receive the same pay based on budget (which is determined from the top of the corporate hierarchy). *Id.*

Oracle’s Opposition to OFCCP’s Motion for Summary Judgment (“Opp.”) notably does not challenge these facts, nor can it as they are laid out in Oracle’s own documents. Oracle’s Opposition to Summary Judgment (“Opp.”), 3-6. Rather, Oracle grasps at the fact that front-line managers have some discretion in making recommendations as demonstrating that the whole process is “decentralized” and not based on actual policies.¹ *Id.*

This narrative backfires as Oracle begins its Opposition brief by aggressively arguing against itself through admissions that confirm violations of its own equal employment

¹ Oracle primarily relies on affidavits vaguely characterizing Oracle’s practices in a manner that is inconsistent with Oracle’s contemporaneous documents, which is insufficient to create a material dispute. *Agelli v. Burwell*, 164 F. Supp. 3d 69, 76 (D.D.C. 2016) (citing *Johnson v. Wash. Metro. Area Trans. Auth.*, 883 F.2d 125, 128 (D.C. Cir. 1989)) (a party’s “self-serving affidavit cannot, without more, create a genuine dispute of material fact” when contradicted by that party’s own contemporaneous records).

opportunity requirements.² Oracle is required to implement an affirmative action program that includes *policies* to ensure that employees are receiving equal opportunity for every term of employment, including compensation. 41 C.F.R. § 2.10(a)(3). First, Oracle argues that despite the use of the word “policy” in its October 4, 2019, court-ordered Position Statement Re: Compliance with 41 C.F.R. § 60-2.17 (“Oracle Position Statement”), it did not mean to suggest it has *any* compensation policies. Opp., 3-4. Oracle then states that it did not “develop[] written compensation ‘policies’ as part of its 2.17 compliance.” Opp., 5. Finally, Oracle argues that OFCCP has not proven that it failed to take action in response to compensation analyses for which Defendants have claimed attorney-client privilege—rather, Oracle states that OFCCP only has presented evidence that Oracle’s *Director of Compensation* was not aware of any action taken to correct pay based on the company’s compensation analyses.³

Contrary to Oracle’s argument in the last section of its Opposition brief, these admissions are directly relevant to these proceedings. *E.E.O.C. v. Gen. Tel. Co. of Nw.*, 885 F.2d 575, 578 (9th Cir. 1989) (“It is clear that affirmative action or equal opportunity evidence is relevant to and probative of an employer’s intent not to discriminate.”); *see also* Order on Motion to Compel Compensation Analyses (Sept. 19, 2019) (“41 C.F.R. § 60-2.17 is relevant because it includes a component requiring compensation analyses of some sort. See 41 C.F.R. § 60-2.17(b)(3). This case is very much a case about alleged compensation discrimination.”).

² As OFCCP has explained, as a federal contractor, Oracle is required to implement “*policies, practices, and procedures . . . to ensure that . . . employees are receiving an equal opportunity for . . . every . . . term and privilege associated with employment.*” 41 C.F.R. 60-210(a)(3) (emphasis added). Oracle is required to “monitor[] and examine[] its . . . compensation systems to evaluate the impact of those systems on women and minorities” (41 C.F.R. 60-2.10(a)(2)) and is required to “maintain . . . documentation of” its compliance with the regulations. 41 C.F.R. 60-2.10(c). Under 41 C.F.R. 60-2.17, Oracle is further required to conduct in-depth studies of its compensation systems, perform internal audits, including monitoring “records of all personnel activity, including . . . compensation”; require “internal reporting” and ensure “top management of program effectiveness.”

³ Citing a life-insurance case, Oracle suggests that because this Court upheld the privilege it asserted over its compensation studies, all actions taken in response to such studies are also privileged. Oracle cites no authority that supports this extraordinary proposition. Oracle seems to want to have its cake and eat it too by protecting its internal discussion from disclosure but then implying that it may have taken privileged *actions* that shaped compensation outcomes. Black letter law is the opposite of what Oracle claims it is here. *See E.E.O.C. v. Gen. Tel. Co. of Nw.*, 885 F.2d 575, 578 (9th Cir. 1989) (“The district court exempted from discovery relevant self-critical materials thus leaving the EEOC ill-equipped to effectively cross-examine those of GenTel’s witnesses who testified concerning the implementation and efficacy of GenTel’s equal opportunity efforts. Thus, the district court erred in admitting GenTel’s equal opportunity evidence.”).

Oracle has tied itself in knots—it cannot have no policies and at the same time be in compliance with its equal employment opportunity obligations. Moreover, Oracle achieves nothing from sacrificing its AAP compliance by insisting it has no policies because its objection to the word “policy” places form over substance. Oracle admits that the “policies” OFCCP described in its summary judgment motion exist, it merely decries calling them policies, insisting that its own “training materials, guidelines, and recommended practices” do not set “policy” because they do not “dictat[e] a formula from which managers cannot deviate.”⁴ *Id.* at 5. This statement is belied not only by the evidence, but by Oracle’s own accompanying admissions in its Response to OFCCP Statement of Uncontested Facts (“ORSUF”). For example, Oracle admits that approvals for base salary increase and other compensation go all the way up to the CEO’s Office, and managers are warned—in bolded, red, mandatory language—that they may not communicate any changes in compensation without final approval from the CEO. ORSUF 117, 120, 121. Moreover, individual Oracle managers cannot invent job codes, cannot unilaterally change salary ranges, or make up new global career levels. ORSUF 65-69. While Oracle can quibble with the precise meaning of the word “policy”, the English language is not so elastic as to call their HR-created compensation system that requires CEO-level approval on virtually all compensation decisions “decentralized.”

Moreover, Oracle’s attempt to redefine the word “policy” is misplaced. Liability attaches when an employer engages in a pattern and practice that is discriminatory, which has been shown by the statistical evidence presented by OFCCP. The legal claims at issue here do not hinge on the precise meaning of the word “policy.”

II. OFCCP HAS MET ITS PRIMA FACIE CASE.

Most of Oracle’s brief focuses on the assertion that OFCCP did not meet its *prima facie* case. Oracle knows that once OFCCP establishes its *prima facie* case, Oracle’s statistical reports are insufficient to mount a rebuttal. *Hemmings v. Tidyman’s Inc.*, 285 F.3d 1174, 1188–89 (9th

⁴ Oracle here attempts to adopt the strictest possible definition of the word “policy” so it can shoot it down. In common usage, a policy simply refers to “a definite course or method of action selected from among alternatives and in light of given conditions to *guide* and determine present and future decisions.” Merriam-Webster (emphasis added), <https://www.merriam-webster.com/dictionary/policy>.

Cir. 2002) (holding that to succeed in rebutting a statistical pattern and practice case, defendant must “produce credible evidence that curing the alleged flaws would also cure the statistical disparity”).

A. Oracle Asserts the Wrong Legal Standards for Determining Similarly-Situated Employees and Tries to Squeeze the Facts Here into the Incorrect Test.

Oracle attempts to argue that the relevant legal standards require employees to be identical cogs on an assembly line before they can be compared for pay purposes. In its opening brief, OFCCP explained that the Department’s regulations at 41 C.F.R. § 60-20.4 govern the analysis in these proceedings (a fact that Oracle acknowledges) and laid out the tests set forth therein. Tellingly, Oracle again cites one line from 41 C.F.R. § 60-20.4(a) out of context and just pretends the rest of 41 C.F.R. § 60-20.4(a) and (b) *do not exist*. Oracle prefers the Court to focus on the second sentence in 41 C.F.R. § 60-20.4(a), but the full regulation, in context, makes clear that not all factors need be considered in all cases:

(a) Contractors may not pay different compensation to similarly situated employees on the basis of sex. For purposes of evaluating compensation differences, the determination of similarly situated employees is case-specific. Relevant factors in determining similarity may include tasks performed, skills, effort, levels of responsibility, working conditions, job difficulty, minimum qualifications, and other *objective* factors. *In some cases, employees are similarly situated where they are comparable on some of these factors, even if they are not similar on others.*

(b) Contractors may not grant or deny higher-paying wage rates, salaries, *positions, job classifications, work assignments*, shifts, development opportunities, or other opportunities on the basis of sex. Contractors may not grant or deny training, apprenticeships, *work assignments*, or other opportunities that *may lead to advancement to higher-paying positions* on the basis of sex.

41 C.F.R. § 60-20.4 (emphasis added). Despite OFCCP calling attention to these provisions in its initial motion, Oracle’s Opposition does not acknowledge them. Oracle also provides no response to the instructions in the preamble to the regulations (which this Court must consider⁵)

⁵ See, e.g., *Magers v. Seneca-Re-Ad-Industries, Inc.*, ARB Case Nos. 16-038, 16-054, 2017 WL 512658, *20 (ARB Jan. 12, 2017) (relying on preamble for regulatory interpretation); *Mohammed Rehan Puri v. Alabama Birmingham Huntsville*, 2014 WL 4966174 at *6 (ARB Sept. 17, 2014) (same); *Spinner v. David Landau and Associates, LLC*, 2012 WL 1999677 at *3 (ARB May 31, 2012) (same); *Raytheon Aerospace Dispute*, 2004 WL 1166284 at *7 n.6 (ARB May 21, 2004) (same).

that makes clear that at point of hire, applicants with similar qualifications and skills will be similarly situated for purpose of pay. 81 Fed. Reg. 39108, 39127. Oracle also fails to acknowledge that in accordance with the instructions laid out in the regulatory preamble, this Court must examine “whether the factor” that the contractor claims explains the differential “is actually used by the contractor to determine compensation and whether the factor has been applied consistently without regard to sex or another protected basis” (such as race). 81 Fed. Reg. 39108, 39128.

In addition to disregarding the governing regulations, Oracle ignores the broader Title VII case law, which establishes that the types of regression analyses Dr. Madden performed are exactly the type of regression analyses courts have found to establish a *prima facie* case.⁶ For the reasons set forth in OFCCP’s Opposition to Oracle’s MSJ (“OFCCP MSJ Opp.”), Oracle misplaces reliance on inapposite individual cases that involve a different burden shifting regime and modes of proof. *See* OFCCP Opposition to Oracle’s MSJ at 8-14.

B) Dr. Madden’s Tables 1-3, Column 6, Analyses, Compare Similarly-Situated Employees’ Compensation.⁷

Oracle’s main attack on OFCCP’s statistical evidence relates to the results of Dr. Madden’s analyses that are reported in Column 6 of Tables 1-3 of her Report (“Madden Rpt”).⁸ These analyses compare employees of the same age (which is a standard proxy for experience⁹), the same level of educational degree (a proxy for skill), that started at Oracle at the same time (another measure of experience), and who work in the same “job descriptor” (a proxy for

⁶ *See Segar v. Smith*, 738 F.2d 1249, 1261 (D.C. Cir. 1984) (“Typically the independent variables in Title VII cases will be race, age, education level, and experience levels.”) (citations omitted); *Bazemore v. Friday*, 478 U.S. 385, 398-99 (1986) (approving plaintiff’s regression analyses considering four factors such as “race, education, tenure, and job title”, or “race, sex, education and experience”).

⁷ Oracle’s almost exclusive focus on Column 6 is surprising given that Dr. Madden finds gross disparities in Columns 7 and 8 of her analyses. As set out *infra*, Dr. Madden’s Tables included these additional Columns, which are more granular and ultimately compare only the employees with the same level of education and experience within a single job code—Oracle’s unit for determining an employee’s salary range.

⁸ The expert reports referred to in this brief were filed as Exhibits 91-94 that were submitted with OFCCP’s Motion for Summary Judgment.

⁹ *See e.g., Reed v. Advocate Health Care*, 268 F.R.D. 573, 591 (N.D.Ill.2009); *Gutierrez v. Johnson & Johnson*, 2006 WL 3246605, at *5 n. 6, 2006 U.S. Dist. LEXIS 80834, at * 15 n. 6 (D.N.J. Nov. 6, 2006); *Wright v. Stern*, 450 F.Supp.2d 335, 361 (S.D.N.Y. 2006). *See also Bush v. Ruth’s Chris Steak House, Inc.* 286 F.R.D. 1, 6-7 (D.D.C. June 18, 2012)

specialized skills, education and experience). These analyses yield systemic disparities in pay that are highly statistically significant. Thus, to avoid liability, Oracle must create doubt as to why these analyses conclusively demonstrate that women, Asians, and African Americans are paid less than their comparators with effective statistical certainty.

Oracle focuses its fire on misrepresenting what “job descriptor” is. Oracle tries to make it sound like it is a random concept that Dr. Madden “made up” that is “found nowhere in Oracle’s pay data.” Opp., 10. In truth, Dr. Madden invented nothing—“job descriptor” simply means using the system job title without including the career level component, a concept that Oracle calls “job family.” Opp., 10.¹⁰

After misrepresenting the variable, Oracle then argues it is insufficiently granular to make the comparisons meaningful for pay purposes. Oracle argues that only detailed work studies are sufficient to determine who is comparable for purposes of pay. But if true, Oracle would have been required to conduct such studies as part of its AAP obligation to ensure pay equity, which it did not. However, the reason “job descriptor” provides the right level of analysis is based on *Oracle’s* own stated pay factors and conduct, not on anything Dr. Madden did or invented.

1) Under Oracle’s Own Policies, Non-Discriminatory Application of the Factors Included in Column 6 Should Result in Similarly Qualified Individuals Receiving Similar Pay

As described in detail in OFCCP’s affirmative motion, Oracle’s own pay policies dictate that employees be placed into a system job title that is appropriate for their educational level, their experience level, and their expected responsibilities (skill). Thus, if Oracle placed employees in accordance with these factors into the appropriate career levels, the study should not indicate disparities in pay between employees with similar levels of experience and education, regardless of whether career level is considered, as career level is supposed to represent skill and experience. The fact that there are robust, statistically significant disparities

¹⁰See also Saad Rebuttal ¶77; see also OFCCP’s SUF 237. Oracle pushes another false narrative that has Dr. Madden doing an “about face” at her deposition when she purportedly embraces “job descriptor” as an appropriate variable. Opp. at 14. This is simply not true. See Madden Reb. at 6 (“To the extent that this variable accurately (and only) reflects gender differences in areas of prior experience and education, it is an appropriate control.”).

when this comparison is made—a fact that Oracle does not attempt to oppose mathematically—at the very least, poses a question that requires an answer: why are women, Asians, and African Americans so consistently paid less than the other people of similar education level and experience in the same job? Oracle has identified no answer to this question, other than to vaguely suggest that some other factors may be at play.

2) *Career Level is a Tainted Variable*

One potential answer to the disparities is discrimination in job assignment (*i.e.*, career level). To the extent discriminatory assignment to career level explains the disparity, it represents a tainted variable that neither OFCCP nor this Court can consider in the analysis. *See* Preamble to 41 C.F.R. Part 60-20, at 81 Fed. Reg. 39108, 39128 (“Whether any particular factor that explains differences in pay is ‘tainted’ by discrimination, or should be included or excluded as a legitimate explanation for sex-based disparities, will depend on case-specific evidence.”).¹¹ As this Court has observed, OFCCP’s job assignment claims “do not turn on a claim that similarly situated employees in reference to their particular job function are paid different amounts. Rather, they allege that Oracle has differently situated in particular job functions and career tracks otherwise similarly situated employees/hires based on impermissible factors.” Order Granting Conditional Leave to File Second Amended Complaint, *7 (March 6, 2019).

Dr. Madden studied this issue and determined that there were significant disparities related to how Oracle set job assignment and starting pay for comparable employees. *See* Madden Rpt., 49-52; Tables 4, 5. In her Rebuttal Report, Dr. Madden further studied the issue in light of Dr. Saad’s claim that the disparity was explained simply because men and Whites applied to different jobs. Dr. Madden concluded:

[T]he statistical evidence on initial assignments shows disparities in the salary and the global career levels given to women, Asian, and African American hires. My July 19, 2019 report showed differences in starting salaries arising from differences in starting assignments of global career levels and from differences in starting salaries within the same job and global career level. Once I modify Dr. Saad’s analyses of the small subset of hires with job requisition data available to include exogenous

¹¹ *See, e.g., James v. Stockham Valves & Fittings Co.*, 559 F.2d 310, 332 (5th Cir. 1977) (finding job assignment to be a tainted variable).

characteristics, such as education, and to control for the global career level of the job applied for, the evidence is consistent with gender and racial disparities in initial assignments.

Madden Rebuttal at 37; *See also* Madden rebuttal at R1, R2, and R9.

3) *Oracle's Attempt to Undermine OFCCP's Statistical Case with A Cohort Comparison Backfires*

Oracle attempts to undermine Dr. Madden's Column 6 analyses by picking the two most dissimilar employees that might be compared in the same pool, claiming that if the genders were reversed, Dr. Madden would attribute the disparities to intentional gender discrimination. *Opp.*, 16-18. This is plainly false—Dr. Madden does not attribute any specific one-on-one comparator to discrimination. Rather, Dr. Madden expressly studies what the statistics tell us about how groups (classified by sex and race) are treated: “An analysis of differences in group outcomes requires that we control for the characteristics by which the groups as a whole differ, but not those by which all individuals differ.” Madden Rpt. 46. Just as proof that someone flipped heads five times in a row would not disprove that the odds of flipping tails on the next toss is 50%, Oracle's attempt to find examples where the model does not appear to fit in isolation simply proves nothing. OFCCP could just as easily flip through the records and identify all instances where males are getting paid more—which, with sufficient observations, would simply confirm the statistical model that Oracle has never indicated is mathematically incorrect.

As it happens, Oracle's showcase female employee, ID 888762142, in 2014 exercised \$ [REDACTED] in non-qualified stock options which is included in the Medicare wages of \$ [REDACTED]. Declaration of Janet M. Herold accompanying OFCCP's Daubert Reply ¶ 2. In other words, these high Medicare wages were the result of a one-time stock option sale. Oracle showcases payment of \$ [REDACTED] in stock to claim a \$ [REDACTED] difference with a male comparator, but in reality employee 888762142 never received most of this money. The presentation in the table on pages of 16-18 of its Opposition relies on Dr. Saad's extremely flawed approach that treats promised stock grants as actual compensation. Because her employment was terminated on [REDACTED], [REDACTED] she forfeited 75% of \$ [REDACTED]. *Id.*, ¶¶ 3-5. The only thing this comparison proves is that Dr. Saad's alleged study of “total compensation” fails to measure actual compensation.

C) Oracle Fails to Acknowledge that Columns 7 and 8 of Dr. Madden’s Analysis Prove Discrimination.

While Oracle strongly criticizes Dr. Madden’s Column 6 analyses for not taking into account management status or career level, Oracle fails to acknowledge the elephant that remains in the room: Dr. Madden *did* analyze whether the disparities disappear when management status (Column 7) and when career level (Column 8) are considered. These studies demonstrate that the disparities remain staggeringly high, between 4.7 to 5.2 standard deviations for women in total compensation (Table 1(a)) and between 2.6 and 5.28 for Asians (Table 2(a)).¹² Stated simply, a full \$300 million of the \$700 million in compensation discrimination for which OFCCP seeks redress here is based on gender and racial pay gaps in compensation Oracle paid to employees working in the *same global career level* within their job titles. Madden Rpt. Tables 8, 9. This means that even if this Court discards the channeling that Dr. Madden’s analyses show occurs at the point of job assignment, the disparities within a single job code at Oracle’s headquarters remain overwhelming. To be clear, Dr. Madden’s analysis in Column 8 does not look at all employees in the job code and treat them the same. It further compares employees to other employees in the same job code, at the same location (Redwood Shores), with the same experience (both in general and specific to the Company) and level of education.

At this point, Oracle runs out of explanations other than to assert broadly that it is too big and complicated to be studied, sentiments that are definitively at odds with Oracle’s obligations as a federal contractor and the requirement that Oracle must explain pay differentials based on “objective”—*i.e.*, measurable—factors. *See* 41 C.F.R. § 60-20.4(a). Oracle’s most consistent additional refrain is the need to consider the more granular variable “product” in the analysis. As OFCCP explained in its opening brief (and to which Oracle, to date, has *no* response), the product explanation is simply inconsistent with Oracle’s own handbook, trainings, and the testimony of Oracle’s Senior Director of Global Compensation, all of which instruct that an internal transfer within a career level, even to a different product line, will not result in an increase in compensation except in rare situations. *See* ORSUF Nos. 172-178. Oracle also does

¹² While the African American population is far smaller and thus, harder to establish statistical significance, even in this population the SDs are over 2 for the 2017-2018, more than sufficient to establish an inference of discrimination. Madden Table 3(b).

not contest that it has no database to keep track of product assignments and thus is unable to demonstrate how including “product” would alter Dr. Madden’s analysis. ORSUF Nos. 192. In short, the “product” explanation is not the silver bullet Oracle seeks. Instead, it is an undocumented, post-hoc rationale for pay differentials affirmatively at odds with Oracle’s pay trainings, its statements to its employees, its global job table system, and the lived experience of the people who actually work at Oracle.¹³

III. OFCCP’S SALARY DISCRIMINATION CLAIMS ARE UNREBUTTED

A. OFCCP Expressly Plead Salary Discrimination as a Component of Oracle’s Compensation Discrimination.

Oracle’s claim that it was not on notice that OFCCP’s compensation claims include all components of compensation, including salary, is not supportable as a matter of law. Far from being a “gotcha” claim OFCCP sprung on Oracle at the last minute (Opp. at 25), the Notice of Violations (NOV) and Show Cause Notice issued to Oracle during the investigation expressly relied on regression analyses that were based on salary. *See* OFCCP MSJ Motion, Exhibit 66, Appendix A. Rather than being a “new” claim, notice that OFCCP’s allegations include salary discrimination literally goes back to the very beginning of the dispute at issue in this litigation.

Oracle’s claim that the Second Amended Complaint (SAC) abandons differentials in salary as a component of OFCCP’s claims for the compensation discrimination is similarly frivolous.¹⁴ Paragraphs 11 and 12 of the SAC allege “compensation discrimination” in pay, which, according to OFCCP’s regulations, includes discrimination in “higher-paying wage rates” and “salaries.” 41 C.F.R. 60-20.4(a). The SAC then provides numerous examples of the types of analyses that support its contention of compensation discrimination (SAC ¶¶ 13-32).¹⁵ Just as with the NOV, *twelve* of these paragraphs describe discriminatory pay practices that are expressly centered on base pay or salary or expressly rely on regressions of base pay or salary.

¹³ OEx 7, Kolotouros Decl. ¶ 9; OEx 42 Sen Decl. ¶ 10; OEx 20 Powers Decl. ¶ 10.

¹⁴ This is not the first time Oracle has mischaracterized a claim as new. *See* Order Granting Motion to Amend, (March 6, 2019) (“I start with the addition of a reference to Oracle’s reliance on prior salary. Contrary to Oracle’s representations, this is not a new claim.”).

¹⁵ In Paragraph 11, OFCCP explained that “OFCCP’s models, results, and theories of causation will continue to be refined as additional discovery is obtained, and expert(s) evaluate the data and evidence.” SAC at 11.

See SAC 16, 22-32. Additionally, ¶¶ 18-21, relate to assignment discrimination in global career level—which is the key determinant of an employee’s salary range—directly relates to salary discrimination. As a matter of law, the SAC provides ample notice that OFCCP’s claims include discrimination based on differentials in salary.

B. Dr. Madden Explicitly Studied Salary Disparities and Oracle Chose Not to Respond.

Dr. Madden’s report put Oracle on clear notice that OFCCP was asserting disparities based on base pay or salary that it was required to rebut. The words “base pay” appear in Dr. Madden’s initial 58-page report and accompanying tables no less than **88** times, and salary is referenced 15 times. These numerous references to base pay and salary are not tucked in—they are repeatedly used in the introduction, section headers, and the headings of tables specifically devoted to regressions run exclusively on base pay. Oracle’s and Dr. Saad’s decision to simply not respond based on the false claim that OFCCP did not allege base pay violations is a risk Oracle knowingly took, leaving them in the position of conceding liability for base pay discrimination.

Oracle’s second explanation for not opposing OFCCP’s base pay findings—*i.e.*, some employees receive significant amounts of stock and bonus—is simply a non-sequitur. The regulations prohibit discrimination in each component of pay as well as total pay, including “wage rates, salaries, . . . *or* other opportunities on the basis of sex.” 41 C.F.R. § 60-20.4(b) (emphasis added). *See also* 41 C.F.R. § 60-20.4(e) (“[a] contractor will be in violation of Executive Order 11246 and this part any time it pays wages, benefits, *or* other compensation that is the result in whole or *in part*” of discrimination) (emphasis added). The record evidence shows that Oracle was on notice of OFCCP’s claims related to base pay and simply chose not to respond.

C. Oracle’s Attempt to Move the Goal Posts Regarding Base Pay Discrimination Must be Rejected.

Dr. Madden’s unrebutted findings of salary discrimination are extremely robust. Using the appropriate Column 6 of Dr. Madden’s analyses, the statistical evidence of salary discrimination is in the stratosphere, with standard deviations (SDs) for women between **12** and

15 (Madden Rpt, Table 1(d)), SDs between 6 to 8 for Asians (Madden Rpt, Table 2(d)) (except for 2018, where the SD is above 4), and above 3 for African Americans. Even if this Court were to conclude that the results of Column 8 (which includes global career level) is more appropriate for summary judgment, women are disadvantaged in base pay at incredibly robust statistical rates, with SDs ranging from between 7 and over 9 (Table 1(d)); Asians disadvantaged at between almost 4 to over 5 SDs (Table 2(d)), and African Americans disadvantaged at statistically significant rates in 2017 and 2018 (Table 3(b)).

The only piece of evidence Oracle points to in its reply brief to try to create a material dispute is a table that Dr. Madden produced showing that even under Dr. Saad's approach—with which OFCCP vigorously disagrees—the findings corroborate rather than rebut OFCCP's claim of salary discrimination.¹⁶ Trying to move the goal posts, Oracle changes its defense from stating there are no disparities *according to the analysis by its own expert*, to saying there are statistically significant disparities but they are not *that* bad. OFCCP is not arguing that extrapolating Dr. Saad's flawed analysis to base pay is correct (as Oracle pretends is the case on page 26 of its Opposition). As OFCCP has said repeatedly in its Daubert motion and in other places, Dr. Saad's approach is fundamentally unsound and has no basis in the factual record. What is remarkable is that even using the approach advocated by Oracle's expert who has readily adopted all of Oracle's litigation positions, Oracle *still* cannot erase the statistically significant disparities in base pay for most of the class in most of the years.

IV. OFCCP HAS ESTABLISHED ASSIGNMENT DISCRIMINATION

Oracle claims that OFCCP has not established assignment discrimination because Dr. Madden relies on statistics, and not Oracle's actual practices, to prove the discrimination. Oracle is correct that Dr. Madden relies on statistical approaches of proof, but is wrong that OFCCP has relied on a "fictionalized version" of Oracle's jobs and compensation system. In recounting the evidence, Oracle simply omits that Dr. Madden, as discussed above, has a very detailed rebuttal

¹⁶ As this Court knows, Oracle went so far as to file an emergency motion to strike this table and prevented its own expert from even looking at it. Oracle cannot simultaneously seek to exclude Dr. Madden's table, while at the same time resting its entire defense regarding base pay on this same table.

to Dr. Saad's claim that the disparities can merely be attributable to relative application rates at different career levels. As set out in detail in OFCCP's Reply to Oracle's *Daubert* Opposition, the analyses Dr. Saad conducted and which Oracle relies upon here are erroneous for numerous reasons and should not be deemed admissible, let alone given weight.

V. OFCCP HAS NOT WAIVED ITS DISPARATE IMPACT CLAIMS OR FAILED TO SUPPORT ITS CLAIMS WITH ANECDOTAL EVIDENCE.

Oracle argues that because OFCCP has not asserted a disparate impact theory in its motion for summary judgment, Oracle argues that OFCCP's disparate impact claims should be dismissed. A party is not required to move for summary judgment on every possible issue or theory in the case, and *not* including a theory in a page-limited motion says nothing about whether the theory is viable. Oracle cannot reverse the purpose of a summary judgment motion from one in which a party seeks to prevail on an issue to a format where a party must file simply to preserve an issue. In any event, OFCCP has responded to Oracle's claim that OFCCP's disparate impact claims should be dismissed where it was more properly raised in Oracle's affirmative motion for summary judgment. OFCCP Opp. to MSJ, 15-16.

Similarly, Oracle faults OFCCP for not supporting its summary judgment claims with additional anecdotal evidence. While OFCCP certainly expects to support its case at trial with additional anecdotal evidence, OFCCP anticipated Oracle would simply respond to witness declarations with their own "happy camper" declarations in an attempt to create disputed facts. At this stage, OFCCP properly focused in its Motion for Summary Judgment on Oracle's own documents and the statistics that derive from Oracle's own data. This is an appropriate basis for summary judgment, and OFCCP has proven liability based on the undisputed facts revealed by Oracle's party admissions.¹⁷ Moreover, Oracle fundamentally misconstrues the nature of anecdotal evidence (which is not required where, as here, the statistics are robust) by suggesting

¹⁷ Oracle surprisingly cherry picks some items from OFCCP's attorney notes, which is not proper evidence, to try to land some points. Opp., 23. Obviously, should OFCCP attempt to use these notes for its own purposes, Oracle would object on strict evidentiary grounds, as it has made every conceivable (and novel) objection to the evidence possible in its 270 pages of evidentiary objections. This is yet another example of Oracle opportunistically trying to have it both ways—it sees no problem supporting its claims by cherry picking a few things it finds favorable from a vast catalogue of notes that are overwhelmingly supportive of OFCCP's case and which are clearly not admissible.

that witnesses must confirm “a systemic pattern or practice of pay discrimination.” Opp. at 22. The witness’s role is not to repeat the role of the statistics, but simply to bring the statistics “convincingly to life.” *Teamsters v. United States*, 431 U.S. 324, 339 (1977). In a compensation discrimination case, an individual employee would not know if they are the subject of a systemic practice. Indeed, witnesses testify that they were discouraged from talking about their pay with co-workers and reprimanded when they brought up pay issues.¹⁸ Here, OFCCP has provided ample support for its motion for summary judgment, including rigorous statistical analyses, Oracle’s own internal documents, and anecdotal evidence from the victims of Oracle’s discrimination.

CONCLUSION

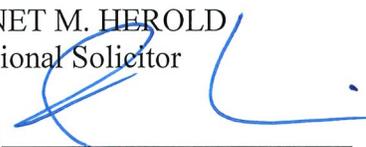
For the reasons explained in its initial Motion and in this Reply brief, OFCCP is entitled to summary judgment.

DATED: November 8, 2019

Respectfully submitted,

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¹⁸ See Decl. Bhavana Sharma ¶ 13; Nicole Alexander ¶¶ 14-16, 18. As the Department acknowledged when implementing OFCCP’s pay transparency regulation under Executive Order 11246: “Underpaid employees, who may be paid less because of their gender or race, will remain unaware of the disparity if compensation remains hidden. . . . If a contractor’s employees are unaware of how their compensation compares to that of employees with similar jobs because the risk of punitive action inhibits discussions about compensation, employees will not have the information they need to assert their rights.” 80 Fed. Reg. 54934, 54937.

GRAHAM DECL. EX. B

(OFCCP'S REPLY IN SUPPORT OF MOTION TO
EXCLUDE THE TESTIMONY AND REPORTS OF DR.
SAAD)

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**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'S REPLY IN SUPPORT OF MOTION

TO EXCLUDE THE TESTIMONY AND REPORTS OF DR. SAAD

INTRODUCTION

Oracle's opposition hurls an array of meritless accusations¹ at OFCCP but fails to articulate how Dr. Saad's opinions have any relevance to this proceeding. OFCCP agrees with Oracle that the threshold for admissibility of expert testimony, particularly in a bench trial, is low. But, Dr. Saad's testimony is focused on questions *not* at issue here and relies upon incorrect data or, worse still, no data at all. Thus, his testimony is of no assistance to the fact finder. Dr. Saad's testimony is inadmissible under FRE 702.

Oracle misapprehends OFCCP's *Daubert* motion as a personal attack on Dr. Saad. OFCCP does not quibble with Dr. Saad's qualifications. His credentials are not on par with those of OFCCP's expert, Dr. Madden, an Ivy-league tenured economics professor with a long career dedicated to studying the economics of employment discrimination. Dr. Saad is not an academic, but a professional expert for defense attorneys, and thus his opinions have not been tested or peer reviewed. As a professional expert, his job here is to follow Oracle's directions and attempt to provide statistical support for Oracle's defensive legal positions. Unlike Dr. Madden, Dr. Saad was not engaged to apply his expertise independently and evaluate whether Oracle's compensation data revealed compensation discrimination.

Indeed, it is Oracle's legal positions here that render Dr. Saad's testimony inadmissible. Oracle incorrectly advised Dr. Saad not to study salary discrimination, or Dr. Madden's specific regression analyses of salary compensation, because OFCCP had not alleged salary discrimination. Oracle must have advised Dr. Saad that discrimination in *promised* compensation was at issue, rather than gender and racial discrimination in compensation actually paid by Oracle and received by its employees.

Most critically, it is Oracle who advised Dr. Saad that its front-line managers considered a host of factors in setting compensation, but failed to clearly communicate to Dr. Saad that ***Oracle failed to maintain any data*** as to any of these factors—including the products on which

¹ Oracle repeatedly accuses OFCCP of misrepresenting the record and witness testimony here. Opp. at 1-10. OFCCP accompanied each factual representation with detailed references and exhibits, all of which speak for themselves and show Oracle's spirited rhetoric, once again, to be bluster. As noted in OFCCP's Opposition to Oracle's MSJ, it is Oracle that has failed to follow the dictates of the FRCP and this Court's instructions regarding accurate citations to the record. OFCCP MSJ Opp. at 2-3.

employees work. Dr. Saad, by training and degree, is well aware that opinions have no scientific validity if they are not based upon and tethered to actual data. Dr. Saad's development of opinions contradicted or unsupported by Oracle's data, or by any data whatsoever, is wholly Oracle's doing and renders Dr. Saad's testimony inadmissible.

Finally, Oracle cannot claim it is improperly maligned when Oracle and its expert seek to defend gender and racial pay gaps that are based on alleged differences Oracle chose **not** to measure or record, and which Oracle claims cannot be measured. Biases find fertile ground precisely when employment decisions are not based on hard data of measured skills and characteristics.² As a condition of receiving hundreds of millions of dollars taxpayer money, Oracle pledged it would not engage in employment discrimination. This requires Oracle to make decisions based on **objective** factors, not allegedly "unmeasurable" gender and racial differences. As a federal contractor, Oracle cannot defend compensation decisions that result in discriminatory outcomes for women, Asians, and African Americans by pointing to undocumented gender and racial differences within job skills and characteristics.

ARGUMENT

A) **Dr. Saad's Opinions Rely on Inaccurate and Incomplete Data Regarding Oracle's Compensation Decisions.**

Oracle devotes extensive time pointing to the parties' alleged disputes regarding whether Oracle has "policies" and what its policies say regarding how it sets compensation. Opp. at 5-6.³ Yet, a clear-eyed review of the parties' positions reveals that the parties mostly agree as to how

² See, e.g., 81 Fed. Reg. 39108, 39115 ("Research clearly demonstrates that widely held social attitudes and biases can lead to discriminatory decisions.")

³ Herein, OFCCP uses the following abbreviations for citation references:

Oracle's *Daubert* Opposition ("Opp.")

OFCCP's *Daubert* Motion ("*Daubert*")

Oracle's Opposition to OFCCP's Motion for Summary Judgment ("MSJ Opp.")

OFCCP's Motion for Summary Judgment ("MSJ")

Oracle's Motion for Summary Judgment ("ORMSJ")

OFCCP's Statement of Uncontested Facts in Support of MSJ ("SUF")

OFCCP's Additional Uncontested Facts in Opposition to Oracle's MSJ ("AUF")

OFCCP's Opposition to Oracle's *Daubert* Motion ("OFCCP *Daubert* Opp.")

Exhibits attached to Garcia Declaration filed with OFCCP's MSJ ("Ex.")

Exhibits attached to Bremer Declaration filed with OFCCP's Opposition to Oracle's MSJ ("OEx.")

Oracle's Response to OFCCP's Statement of Uncontested Facts ("ORSUF")

Oracle sets compensation. The only point the parties dispute ends in finding that Oracle engaged in prohibited compensation discrimination, regardless of which party's view is credited.

Oracle admits that its Global Compensation team sets salary ranges for each *job code*, which is a term that identifies the employee's job and career level within that job. ORSUF 65, 67. Oracle admits that its executive team sets budget limits for, and specifically requires that its executive team approve, manager recommendations regarding how to set salary and compensation within those ranges. MSJ Opp. at 4 n. 2. Oracle even admits that in that approval process, the approval forms used before October 2017 contained a mandatory field in which managers were required to collect and consider the prior pay of each applicant. SUF 159.

What the parties hotly dispute is how much discretion or authority its front-level managers have in setting compensation within those salary ranges. For purposes of Oracle's liability here, the resolution of this issue is irrelevant because, either way, it results in Oracle having breached its contractual obligation to *not* engage in employment discrimination.

Specifically, for purposes of assessing the relevance of Dr. Saad's testimony to the compensation discrimination questions at issue here, Oracle's understanding of the facts ends in the same place as OFCCP's understanding.⁴ According to Oracle, it vested its managers with nearly unbridled authority to set compensation within the salary ranges and budget limits provided by its executive team. Per Oracle, these managers set compensation on the basis of a wide range of factors, including product.⁵ But ***Oracle admits it failed to maintain data***

⁴ OFCCP's understanding of the facts here is well known to Oracle and the Court (MSJ at 9-12, 25-27): Oracle's executive team prevented managers from setting compensation consistent with the factors identified in its compensation policies by depriving its front line managers of the resources necessary to do so. *Id.* at 10. Oracle's front line managers had no ability to consider gender and racial pay equities because they had no access to race or gender data when considering compensation (*Id.* at 11-12), nor data of any kind for staff outside their narrow group they were charged with supervising (*Id.*), and Oracle's chief of compensation advised its managers never to consider race or gender in any way in compensation decisions. Janet M. Herold Decl. ("Herold Decl."), Ex. C (Waggoner Dep. 122:02-123:15). Oracle also required all front level managers to collect and consider prior pay in setting pay recommendations, and Oracle did not provide sufficient budget to permit front line managers to correct pay disparities they discovered. MSJ at 11-12; SUF 159. Oracle further admits it took no steps to study whether systemic gender or pay disparities existed and took no steps to correct any wage disparities on the basis of privileged wage studies it conducted. *Id.* at 12.

⁵ Oracle accuses OFCCP of misquoting and misrepresenting the testimony of Kate Waggoner, Oracle's 30(b)(6) designee, regarding Oracle's compensation practices. Opp. at 6. Not only are OFCCP's citations fully accurate, they correctly convey the evidence in this record regarding Oracle's post-hoc claim that product was weighed by Oracle in setting compensation. OFCCP cited the testimony of Kate Waggoner in support of Oracle's admission that

regarding the skills or characteristics these managers considered, including product assignments, when making compensation decisions. OFCCP’s *Daubert* Opp., Ex. A at ¶ 9.

Thus, the end result is the same: a finding that Oracle breached its federal contract by engaging in prohibited compensation discrimination.

The only analyses run on Oracle’s compensation data based on factors Oracle alleges it considered and as to which *it maintained data*—which are the same factors that Oracle identifies in its detailed written compensation policies—were run by OFCCP’s expert, Dr. Madden, not Dr. Saad. MSJ at 17-22. Dr. Madden ran regression analyses controlling not just for education, experience, time in Oracle, and job—the exogenous characteristics which she opines are the proper controls—but also for managerial status (Column 7) and global career level (Column 8). Ex. 91 (Madden Report) Tables 1-3.

Apart from Oracle’s leave of absence data which Dr. Saad recommends using to fashion a grossly inappropriate “motherhood” control (*Daubert* at 17-18), Oracle did not maintain data relating to controls Dr. Saad opines must be added to the regression analysis and there is no evidence that Oracle actually considered this data in setting compensation.⁶ As OFCCP explained in its opening brief, it is Dr. Saad’s application of a control for “Cost Center/Organization” which does the lion’s share of the skewing of Oracle’s data in Dr. Saad’s analysis. *Daubert* at 6-7, 18-19. Dr. Saad justifies application of Oracle’s Cost Center data as a proxy for “product” assignment (Ex. 89 at 245-6), which Oracle now claims is an important

product is not tied to *job code*, which is the touchstone for Oracle’s salary ranges set by Oracle’s Global Compensation team, as articulated in its written compensation policies. MSJ at 8; SUF 47, 55-58. While Waggoner did testify that she believed Oracle considered product in setting compensation within job codes, that testimony is negated by: the fact that Oracle maintained no records regarding product assignment (which it was required to maintain to comply with its AAP obligation to conduct a meaningful pay equity study)(SUF 192); Oracle’s detailed and extensive HR materials used to train managers regarding setting compensation, which make no mention of consideration of product line assignment (SUF 190-191); Oracle’s Executive Vice President of Human Resources, Joyce Westerdahl (SUF 42) testified that product is generally *not* a factor considered in approving salary increases or compensation (Herold Decl., Ex. A (Westerdahl Deposition at 144:06-144:24)); by the fact that Oracle’s transfer policies prohibited any change in compensation when employees transfer to a different product (SUF 175-178); and by Waggoner’s testimony that Oracle does not have a separate salary range for any product (Herold Decl., Ex. D).

⁶ Dr. Saad also applies controls for “patent bonuses,” but Oracle’s compensation policies never mention securing patents as a factor to be weighed in compensation (other than the patent bonus itself)(*Daubert* at 16) and Dr. Madden analyzed Dr. Saad’s recommended control for patent bonuses and found it had minimal impact on her reported results. Ex. 92 (Madden Rebuttal) at 14-16.

factor in setting compensation. Opp. at 6. While the parties vigorously dispute whether Oracle, in fact, considered product assignment in setting compensation,⁷ it is undisputed that Oracle did not maintain data of product assignment. SUF 190-191.

Oracle's entire defense of its Cost Center's relationship⁸ to product relies on a declaration from Steven Miranda, Oracle's Executive VP of Oracle Applications Product Development:

"Oracle organizes its business, teams, and employees through a financial and accounting hierarchy. This financial and accounting hierarchy mirrors the managerial hierarchy at a high level but often diverges from the managerial hierarchy at a more granular level. That divergence occurs because managers may oversee more than one product team, as that team is defined for purposes of the financial and accounting hierarchy A cost center can encompass a single product or service team, but not every product or service team has its own cost center."

ORMSJ, Miranda Decl. at 4, ¶8. This single declaration, which the record in this case directly contradicts, is not sufficient to support Dr. Saad's use of Cost Center as a "proxy" for product. This declaration itself makes clear that Cost Center frequently does *not* correlate to product line assignment, especially at the more granular levels of hierarchy. As OFCCP detailed in its opening brief, Cost Center is the *most* granular level of Oracle's financial accounting hierarchy, a variable class with more than 800 designations. *Daubert* at 6 n. 24, 7; Ex. 9 (Saad Report) at 117 (reporting that Oracle used 1,039 Cost Center designations between 2013-2018). Moreover, nothing in Mr. Miranda's description of Cost Center contradicts the manager testimony OFCCP gathered explaining that Oracle managers do *not* consider Cost Center when making compensation decisions.⁹

⁷ Curiously, Oracle contends that OFCCP's statement that Oracle's compensation policies explicitly provide that employees sharing the **same salary grade** have the **same value** to Oracle is not supported by HR compensation training documents OFCCP cites in its Statement of Undisputed Facts ("SUF"). Opp. at 16-17. In SUF No. 86, OFCCP cites Oracle's compensation training materials at page 8 (ORACLE_HQCA_000364272-15), which provides a script for the trainer to use in the training, which says: "**All jobs that are considered equal in value to Oracle are grouped into the same local grade level, and have the same salary range.**" OFCCP's SUF No. 86 cites other Oracle training materials which also includes this verbatim language, and after the citation "See also" OFCCP cited the document Oracle quotes in its brief which has similar language. It is impossible to believe that Oracle accidentally overlooked the first and primary citation OFCCP cited, which supports OFCCP's statement verbatim, when it decide to accuse OFCCP of making false representations of the record here. Oracle's inclusion of this clearly unsupported argument in its brief does not comply with Rule 11.

⁸ Dr. Saad himself notes that the Cost Center variable "is not entirely well suited to group employees doing similar work, due to its dual business and accounting function." Ex. 9 (Saad Report) at Attachment E at E1, Paragraph 1.

⁹ Ex. 97, Kolotouros Decl. at ¶ 7, 9; Ex. 98, Declaration of Rachel Powers at ¶ 10. Of further note, Oracle employees report working simultaneously on multiple products. *See, e.g.*, Declaration of Priyanka Jampana at ¶ 6 (discussing how she was responsible for testing multiple Oracle products).

The undisputed fact that Oracle did not maintain any data as to product assignment is of particular significance here, as it exposes Oracle's claim that product assignment drives compensation for what it is: a post-hoc attempt to explain the clear disparities revealed by Dr. Madden's analyses. Presumably if product assignment was weighed heavily in setting compensation as Oracle now asserts, Oracle would have maintained this data, especially since as a federal contractor, it was required to keep such data to comply with its AAP.

Not only does Oracle's failure to maintain product assignment data reveal the post-hoc nature of this justification for disparities, most importantly for purposes of this motion, it renders Dr. Saad's study scientifically invalid because it is not based on actual data, as this data does not exist. Thus, Dr. Saad's opinion is inadmissible because it depends upon utilization of data which Oracle admits it did not maintain.

B) Dr. Saad's Defense of Oracle's Assignment of Global Career Levels Fails to Apprehend Key Aspects of Oracle's Hiring and Global Career Level Assignment Processes.

Oracle cannot dispute that Dr. Saad performed no regression analyses of compensation to refute OFCCP's allegations regarding discriminatory assignment of women, Asians, and African Americans into lower-paid global career levels.¹⁰ Instead, Oracle asserts that Dr. Saad's study of Oracle's requisitions (which essentially are Oracle's job postings) provide a basis for admissible testimony. Opp. at 12-13. Again, though, Oracle failed to provide Dr. Saad with both complete data and a complete understanding of the many ways Oracle hires staff and assigns global career levels, and this renders Dr. Saad's opinion unhelpful to the fact finder.

The essence of Dr. Saad's opinion regarding assignment is that Oracle does not "assign" global career levels, but rather employees "choose" their global career levels when they apply for a particular requisition. Ex. 93 (Saad Report) at 112, ¶148. In support of this argument, Dr. Saad reviewed a data set of 1,324 requisitions, and concluded that women and Asians

¹⁰ The only regression analyses Dr. Saad performed regarding assignment concerned the assignment of levels, not a regression analysis of *compensation as impacted by global career levels*. Ex. 93, Saad Report at 112, ¶148. Oracle cannot dispute Dr. Madden's findings from regression analyses she conducted to explore the assignment of job levels on compensation because all of Dr. Saad's regression analyses of compensation included global career level as a control (which means his analyses assumed his conclusion that assignment of job level did not drive Oracle's gender and racial pay discrimination).

disproportionately applied to requisitions with lower global career levels. *Id.* at 112-4, ¶149, Table C15. In common language, Dr. Saad opines that women, Asians, and African Americans are in lower career levels at Oracle because they *choose* less well-paid jobs. However, this unsupported attempt to point to flaws in OFCCP’s analysis cannot overcome OFCCP’s statistical showing of discrimination. *See E.E.O.C. v. Gen. Tel. Co. of Nw., Inc.*, 885 F.2d 575, 583 (9th Cir. 1989) (defendant could not overcome statistical showing of discrimination by pointing to failure to analyze difference in job interest between men and women and its effect on job placement).

An array of missing data and assumptions well negated by this record reveal these conclusions to be wholly without foundation. Starting with the data errors, the data set Dr. Saad studied left out a large percentage of requisitions.¹¹ Ex. 92 (Madden Rebuttal) at 34. These missing requisitions invalidate Dr. Saad’s analysis, as he conducted no study of how these missing requisitions—assuming Oracle made him aware of the missing data—skewed his results.

Next, the record is clear that much of Oracle’s staff is hired outside of the requisition process. All employees added to Oracle through acquisitions are hired outside of the requisition process.¹² College hiring operated wholly outside the requisition process until 2015 (Ex. 39 at Steps 1-12), and even after that date, the requisition to which college recruits applied was a generic “student/intern” requisition. Herold Decl., Ex. B (College Recruiting Manual). Oracle then later matched applicants to its actual requisitions at the final stage of the college hiring process. *Id.* Finally, Oracle’s employee referral program, which Oracle endeavors to utilize for 30% of its annual hires (SUF 154-5), also operates outside the requisition process, with employees recommending their friends through informal conversations with Oracle managers

¹¹ Thus, Oracle’s assertion at brief that Dr. Saad found that “the majority of applicants were hired into the level to which they applied,” Opp. at 13, is devoid of a scientific basis. The best that Dr. Saad could have concluded is that in regard to the limited data set of requisitions he considered, the majority of applicants were hired into the global career level identified in the requisition. As discussed herein, the applicants do not have the agency which Oracle assigns them as to deciding for which requisitions they would be considered for hire.

¹² *See* ORMSJ, Connell Decl., Ex. I, (“Oracle Compensation & Mapping” Presentation, at slide 37, ORACLE_HQCA_0000400007) (describing the “mapping process” for assigning job titles and career levels to acquired employees).

and recruiters. Indeed, Oracle provides managers with the opportunity to draft a requisition to fit a candidate, rather than having the applicant choose a job by applying to a requisition.¹³

Even for those staff hired through the requisition process, Dr. Saad's conclusions do not account for other basic facts regarding Oracle's hiring process and the setting of global career levels at hire. Contrary to Dr. Saad's assumption that the hiring process begins when employees "choose" a requisition and submit an application (Ex. 93 at 112, ¶148), it is Oracle's recruiters who beat the proverbial bushes for qualified staff and then comb through available requisitions to match applicants with requisitions, driving the hiring process. SUF 152-3. Typically, it is not applicants who select the requisitions, but Oracle's recruiters who advise applicants as to the requisitions for which they should submit their applications.¹⁴ It is most likely for this reason that employees report having no knowledge of the global career level identified in the requisition or even the global career level to which they are assigned long after they are hired.¹⁵

Finally, Dr. Saad's analysis fails to account for a critical flexibility regarding Oracle's assignment of global career level at hire.¹⁶ Even for employees hired through requisitions which specify a global career level, Oracle advises its managers that they may set a new hire's global career level at one level up or down from the level specified in the requisition.¹⁷ SUF 156. As Dr. Madden's studies of Oracle's exercise of this flexibility reveal, women and Asians at Oracle are more likely to have their level set below, and less likely to have their level set above, the level in the requisition than their male or White counterparts. Ex. 92 (Madden Rebuttal) at 32-37.

Given the gaps in Dr. Saad's data and understanding of Oracle's hiring and global career assignment processes, his opinions fail to account accurately for the role Oracle's assignment of global career level plays in Oracle's compensation discrimination.

¹³ OEx. 29 (Email describing MAP program, ORACLE_HQCA_0000036994 ("The offer . . . has all the elements of other offers except a specific job position")).

¹⁴ See, e.g. Ex. 98, Powers Decl. at ¶ 7, 11; Ex. 99, Rosberg Decl. at ¶ 5; Decl. of Maura Joglekar at ¶ 8.

¹⁵ See, e.g., Ex. 100, Decl. of Donna Kit Yee Ng at ¶ 5 (stating that she knew what job title she was applying to but not global career level).

¹⁶ Dr. Saad acknowledges he is aware of Oracle's policy permitting managers to assign a level one up or down from that identified in the requisition. Ex. 93 (Saad Report) at ¶148.

¹⁷ See also Ex. 51, "Opening a Vacancy," slide 1, ORACLE_HQCA_0000056633-1 ("The offer form will only allow you to change the job code up a level or down a level within the same job family.")

C. Dr. Saad's Failure to Study Discrimination in Compensation Actually Paid by Oracle and Realized by Employees Renders His Opinions Inadmissible.

Every argument Oracle advances attempting to defend Dr. Saad's study of *promised* total compensation, rather than total compensation actually paid by Oracle and received by its employees, confirms that Dr. Saad studied the wrong question, rendering his opinions of no relevance here. To wit, Oracle, incredibly, argues: "Differences in the amount in their pockets is not evidence of discrimination by Oracle." Opp at 15. Actually, *the differences in what women, Asians, and African Americans received in their pockets compared to their male and White counterparts is complete evidence of discrimination by Oracle.*¹⁸

The hypothetical and example Oracle cites in both its *Daubert* and MSJ opposition briefs well illustrate the flaw in Oracle's understanding of what constitutes pay discrimination. Opp. at 14-16; MSJ Opp. at 16-18. As to this example, Oracle draws the Court's attention to female employees who receive stock awards but who leave before those stock awards vest. *This means that Oracle never paid the compensation and these employees never received the compensation.*¹⁹ At the core of this case is not inequality in the compensation Oracle promised,²⁰ but inequality in the compensation Oracle actually paid and its employees received. Oracle ignores the very likely possibility, well supported in this record, that Oracle's gender and racial pay discrimination itself ensures that women, Asians, and African Americans do not realize the compensation promised to the same extent as their male/White counterparts. Equity awards are

¹⁸ Oracle dedicates significant time in its briefing to defending Dr. Saad's valuation of unvested equity compensation as a *permissible* methodology. Opp. at 15. No estimate of annual compensation is required: the IRS, the government agency with both the authority and incentive to nail down precisely how much income is paid and received each year, specifies how to calculate total compensation paid and received and this data is available in Oracle's Medicare wages, used by Dr. Madden. *Daubert* at 11-12. OFCCP also notes its continuing dispute with Dr. Saad's failure to apply the nearly universally accepted *Black Scholes* equity valuation method (a method which Dr. Saad opined would be particularly appropriate to apply to Oracle's stocks and options). *Id.* at 12 n. 55.

¹⁹ Employee 88876142 (identified by Oracle at Oracle MSJ Opp. at 16-17) was awarded [REDACTED] RSUs on July 24, 2014, but her employment terminated on [REDACTED], meaning that she forfeited [REDACTED] units, 75% of what was awarded to her (worth \$ [REDACTED] according to Dr. Saad's calculation). Herold Decl. at ¶¶ 3-5, Exhibit 1.

²⁰ Again, as OFCCP explained in prior briefing, OFCCP suspects that Dr. Saad's estimates of promised compensation is operating to skew the data, as Dr. Madden specifically studied Oracle's equity awards and found that Oracle awards less equity to women, Asians, and African Americans than to their male and White counterparts. Ex. 91 (Madden Report) Tables 1(g), 2(g).

designed to reward employees for staying at Oracle,²¹ an unacceptable requirement to those employees experiencing ongoing pay discrimination.²² Worse still, employees who complained of pay inequities report being advised by their managers that the only way to get their pay corrected was to “leave and come back” – which means forfeiting any unvested equity awards.²³

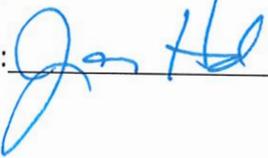
CONCLUSION

Dr. Saad’s testimony is inadmissible under FRE 702 because he failed to apply his expertise to the questions and facts actually at issue in this litigation. OFCCP asks the Court to exclude the testimony of Dr. Saad as it will not be of assistance to the Court.

Respectfully submitted,

KATE O’SANNLAIN
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

BY:  _____

HAILEY MCALLISTER
Trial Attorney

PAIGE PULLEY
Trial Attorney

Attorneys for Plaintiff OFCCP

²¹ Oracle’s argument also ignores that Oracle controls termination, which renders Oracle’s promises of equity compensation a tainted variable. Again, employees report facing retaliation, including termination, by Oracle soon after making complaints about inequitable pay. *See, e.g.*, Ex 103, Alexander Decl. at ¶¶14-16, 18 (after expressing concerns to HR regarding how inequitable salary, she was reprimanded, suddenly received a poor performance review and then laid off by Oracle); OEx 15, Ng Decl. at ¶¶ 14-15 (two months after Oracle audit revealed her low pay and granted her a salary increase, she was notified that she would be laid off, a notice she received two days after being told by management that she was a “model employee”); *See also* Jampana Decl. at ¶ 13 (advised that promised visa renewal would not occur after she complained of gender discrimination relating to maternity leave).

²² *See, e.g.*, OEx. 42, Declaration of Dalia Sen at ¶ 13-14 (describing leaving job at Oracle and securing immediate 20% pay increase and a “drastically difference experience” since leaving Oracle); Joglekar Decl. at ¶ 23, 28 (stating that she left Oracle and was paid almost 30% more).

²³ *See, e.g.*, OEx. 13, Declaration of Diane Boross at ¶ 9, 11 (advised by management that the only way to receive a pay increase was by leaving Oracle, coming back, and negotiating a higher raise).

GRAHAM DECL. EX. C

(DECLARATION OF JANET M. HEROLD IN
SUPPORT OF OFCCP’S REPLY TO ORACLE’S
OPPOSITION TO OFCCP’S MOTION TO EXCLUDE
TESTIMONY AND REPORTS OF DR. ALI SAAD
 (“HEROLD DECL.”))

**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

**DECLARATION OF JANET M. HEROLD IN SUPPORT OF
OFCCP'S REPLY TO ORACLE'S OPPOSITION TO OFCCP'S MOTION TO
EXCLUDE TESTIMONY AND REPORTS OF DR. ALI SAAD**

I, Janet M. Herold, state and declare as follows:

1. I am the Regional Solicitor of Labor for Region IX of the U.S. Department of Labor, Office of the Solicitor. I submit this declaration in support of OFCCP's Reply to Oracle's Opposition to OFCCP's Motion to Exclude Testimony and Reports of Dr. Ali Saad. I have personal knowledge of the matter set forth in this declaration, and I could and would competently testify thereto if called upon to do so.

2. Data Oracle produced on October 31, 2017 (ORACLE_HQCA_0000070721_AllEarnings.xlsx) shows Employee ID 888762142 exercised \$ [REDACTED] in non-qualified stock options in 2014, which is reflected in her Medicare wages of \$ [REDACTED]

3. Data Oracle produced on May 24, 2019 (ORACLE_HQCA_581403) shows this employee received [REDACTED] Restricted Stock Units (RSUs) in 2014.

4. The employment of Employee ID 888762142 was terminated on [REDACTED], [REDACTED]. This employee's termination date appears in the

“ORACLE_HQCA_0000070738_Emp_Personal_Experience_Qualification_Assign_Details.xls” file produced by Oracle on October 31, 2017.

5. As depicted in the May 24, 2019 dataset (ORACLE_HQCA_581403), the [REDACTED] termination resulted in the forfeiture of [REDACTED] of the [REDACTED] Restricted Stock Units she received in 2014. Thus, Employee ID 888762142 never received 75% ([REDACTED] of RSUs granted) of the \$[REDACTED] that Dr. Saad considered compensation.

6. Attached hereto as **Exhibit A** is a true and correct copy of an excerpt from the May 30, 2019 deposition of Joyce Westerdahl.

7. Attached hereto as **Exhibit B** is a true and correct copy of a document titled “US COLLEGE RECRUITING Oracle Recruiting Cloud Instruction Manual Part 1: Recruiting Process” dated July 21, 2015, and produced by Oracle with bates numbers ORACLE_HQCA_0000382682-710.

8. Attached hereto as **Exhibit C** is a true and correct copy of an excerpt from the July 19, 2019 30(b)(6) deposition of Kate Waggoner as person most knowledgeable for Oracle America, Inc.

9. Attached hereto as **Exhibit D** is a true and correct copy of an excerpt from the July 27, 2018 deposition of Kate Waggoner as person most knowledgeable for Oracle America, Inc. in the matter of *Jewett v. Oracle America, Inc.*, Case No. 17-cv-02669 (Sup. Ct. San Mateo), bates number ORACLE_HQCA_0000400890.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in Los Angeles, California on November 8, 2019.

/s/ Janet M. Herold
JANET M. HEROLD

Office of the Solicitor
U.S. Department of Labor

GRAHAM DECL. EX. D

(HEROLD DECL. EX. B)

Exhibit B

ORACLE CORPORATION

US COLLEGE RECRUITING Oracle Recruiting Cloud Instruction Manual

Part 1: Recruiting Process

Jocelyn Miyoshi & Katie Rider

7/21/2015

This document is meant to help streamline US College Recruiter usage of Oracle Recruiting Cloud Services (Taleo) and iRecruitment. This part of the manual guides the user in entering new candidates into Oracle Recruiting Cloud Services (Taleo).

00 INTRODUCTION – PART 1: RECRUITING

This document is meant to help streamline US College Recruiter usage of Oracle Recruiting Cloud Services (Taleo) and iRecruitment throughout the US College Recruiting and Offering processes. Following is the current set of processes; the new Taleo and iRecruitment processes are denoted with blue text and hyperlinks are provided for content within this document.

1. At the beginning of a season
 - a. The College Recruiter should prepare by creating and posting a Repository Requisition to hold the candidates they will be working with
2. Larry Lynn reviews hard copies of the resumes
 - a. If the resume is not approved, it is filed away
 - b. If the resume is approved, it is given to College Recruiters to add to the Resume repository
3. College Recruiters will contact the candidates to determine if they are interested or not
 - a. If they are not interested, no further processing is required
 - b. If they are interested
 - i. The College Recruiter will create a job-specific candidate profile on the Repository Requisition for the current season
 - ii. The College Recruiter will ask the Candidate to enter required EEO information by applying to the Repository Requisition
 - iii. The College Recruiter will send the Background Check group a correspondence requesting that they initiate a background check and also send the Candidate a correspondence informing them that a background check is being started
 - iv. The College Recruiter will coordinate a visit, remove contact information from the resume, and send an email with Candidate details and the edited resume to at least 5 different groups
 1. Interested Hiring Managers will interview the candidate and return an email if they are interested in the candidate.
4. The College Recruiter will inform the Candidate which development groups are interested in them and provide job descriptions
 - a. The Candidate decides and informs the College Recruiter of their desired position
5. The College Recruiter will create the job requisition for the desired position, match the Candidate to the job requisition, and attach the Candidate's resume to make it relevant to the job requisition
6. The College Recruiter coordinates the first round of approvals by email (HM up to SVP)
7. Decision whether to make an offer to the Candidate
 - a. If the background check failed, decide whether the reason is acceptable
 - b. If the Candidate has not completed the EEO information, the College Recruiter follows up with the Candidate
 - c. If the Candidate is not approved, failed the background check or refuses to apply for the job, reject the candidate, and replace the Candidate with another candidate on that requisition
 - d. If the Candidate was approved, passed the background check or the reason for failure is accepted, and has completed their EEO information, move the Candidate to GSI/iRecruitment status in Taleo
8. The College Recruiter completes the Offer template in iRecruitment, inputs the actual Hiring Manager's name, and submits it for the second round of approvals
9. Once the Offer is approved, GHRS will extend the offer to the Candidate
10. After the Candidate accepts the offer and returns the completed paperwork, GHRS will notify the College Recruiter and Hiring Manager, and create the employee record in the HR database
 - a. For OCH new hires, the College Recruiter will send a Welcome Letter in email

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Figure 2: Offer to Hire Process 4

01 PROCESS MAP

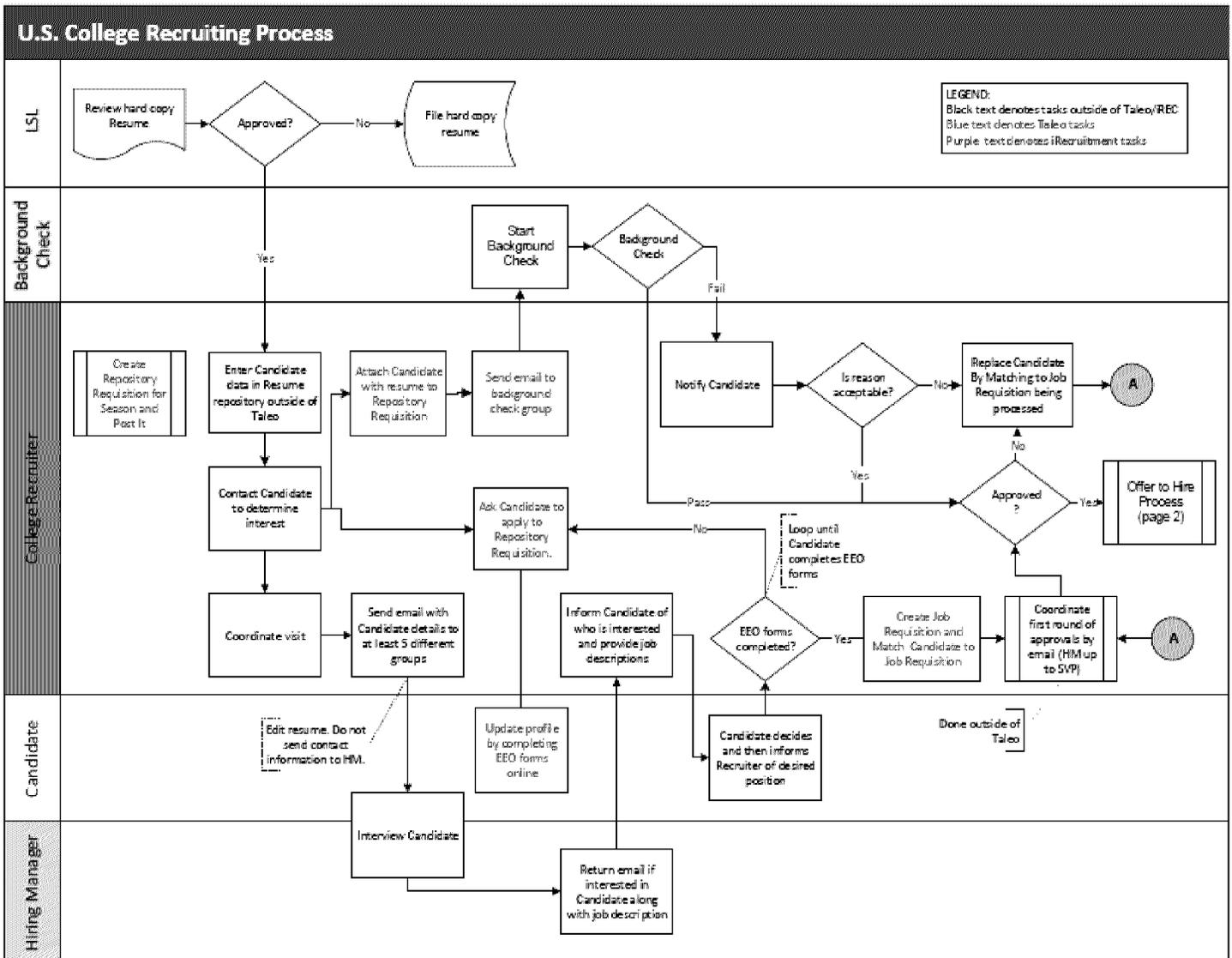


Figure 1: Recruiting Process

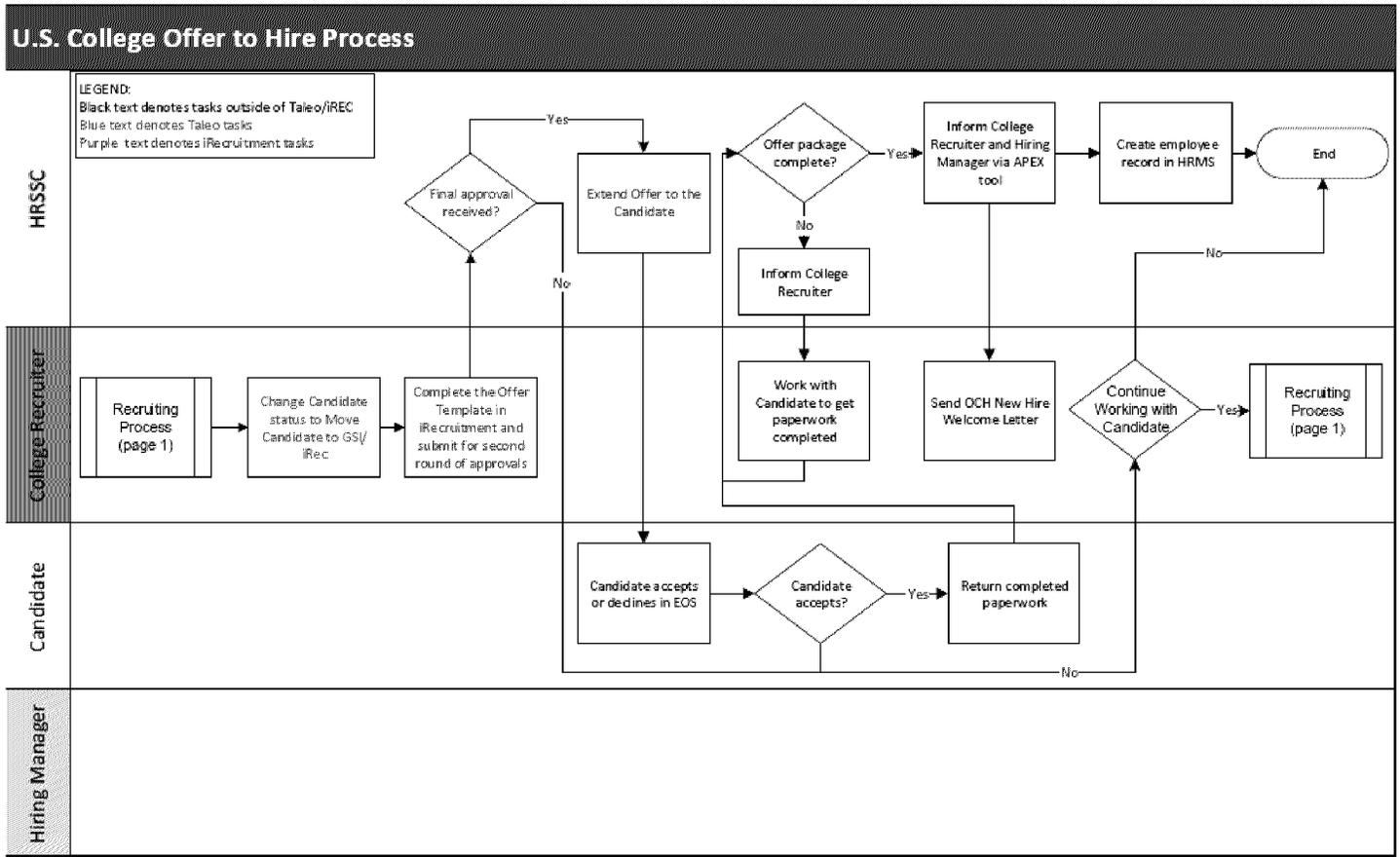
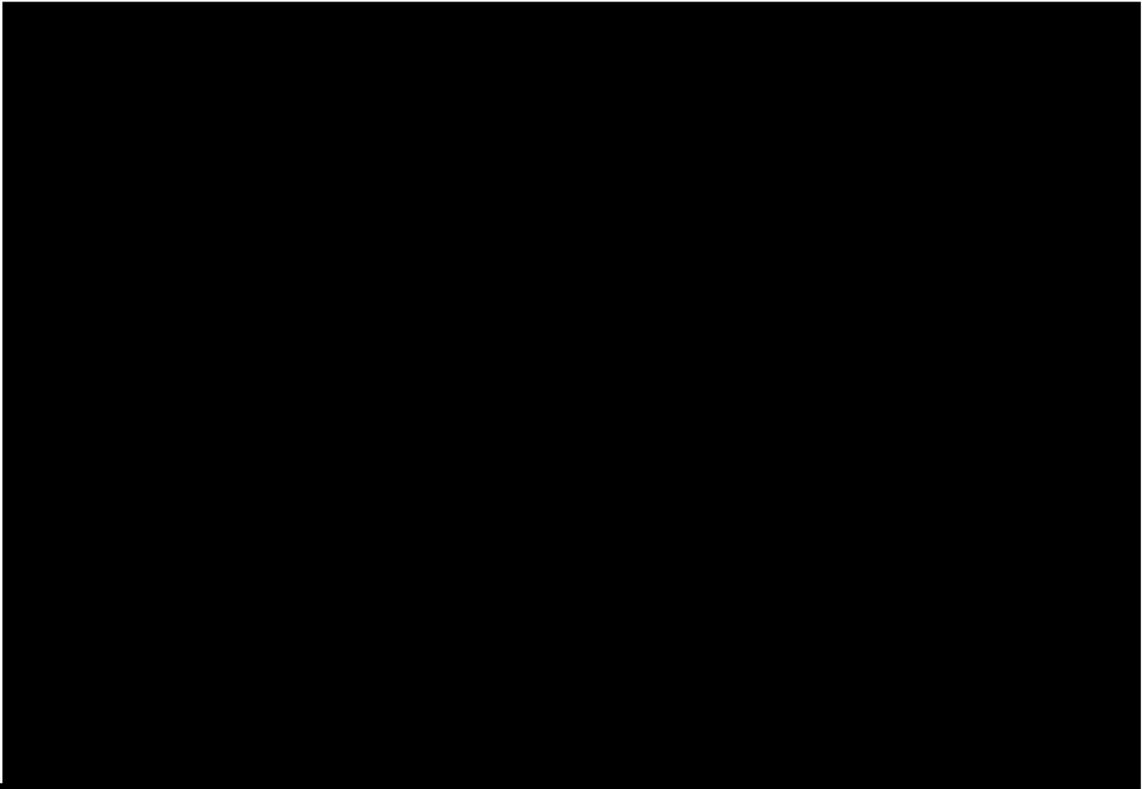
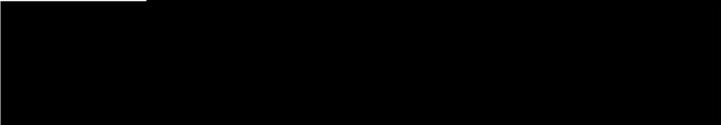
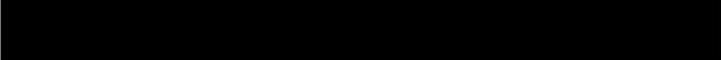


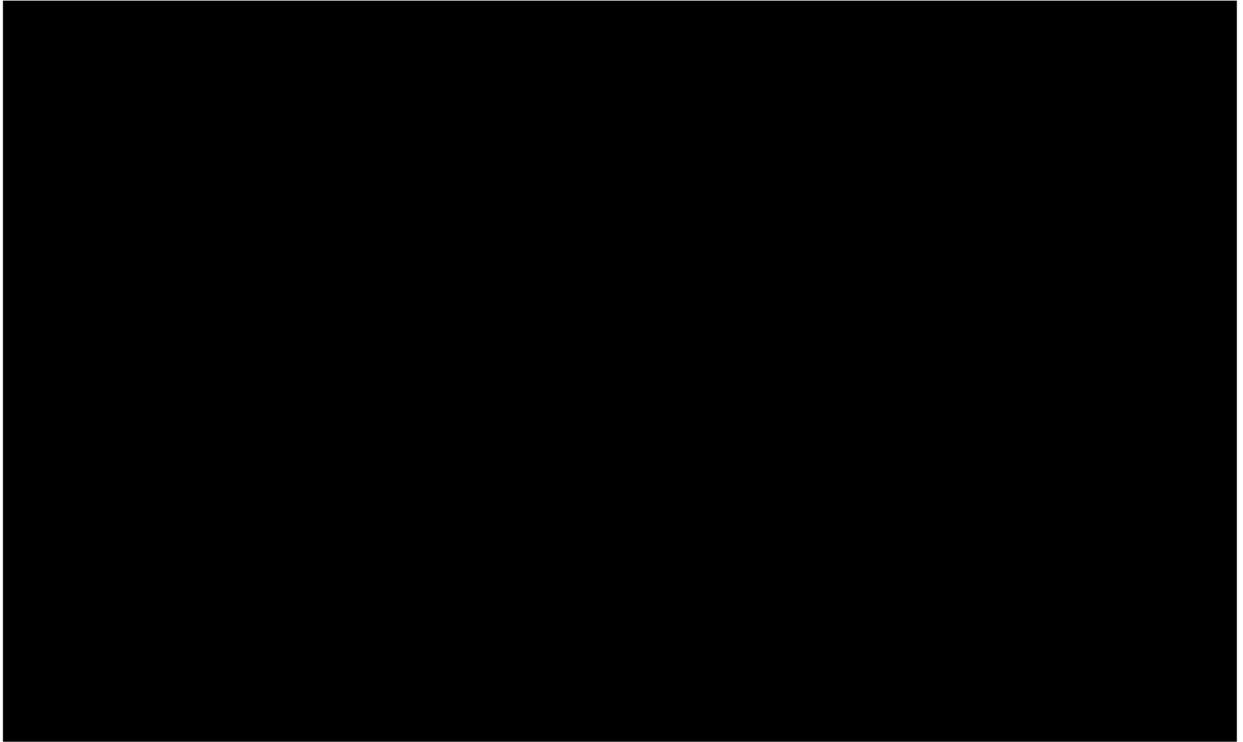
Figure 2: Offer to Hire Process

02 HOW TO LOG IN TO TALEO

1. Click on 



2. 
3. 



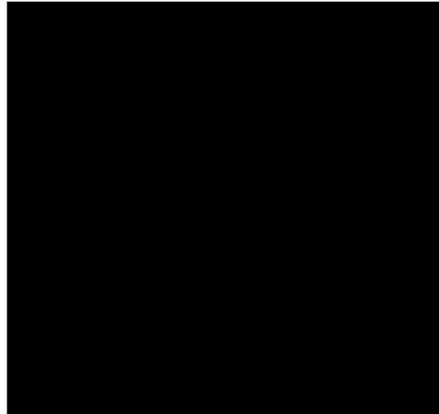
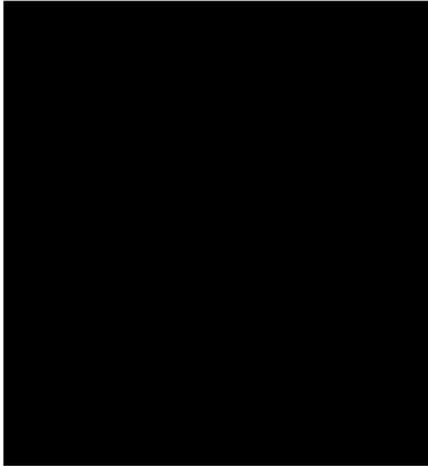
03 SEASONAL PREPARATION

CREATE A REPOSITORY REQUISITION THAT WILL HOLD ALL OF YOUR CANDIDATES

This is done at the beginning of each season to hold the candidates you will be promoting through the recruiting/hiring process.

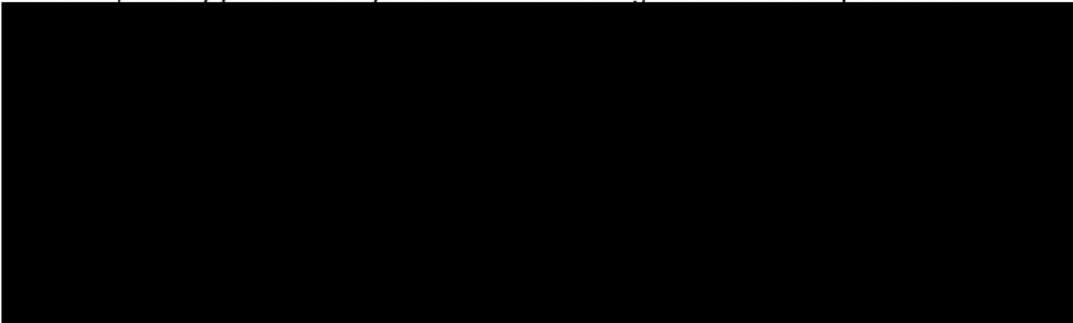
1. [Login to Taleo](#)
2. Create Requisition

a.

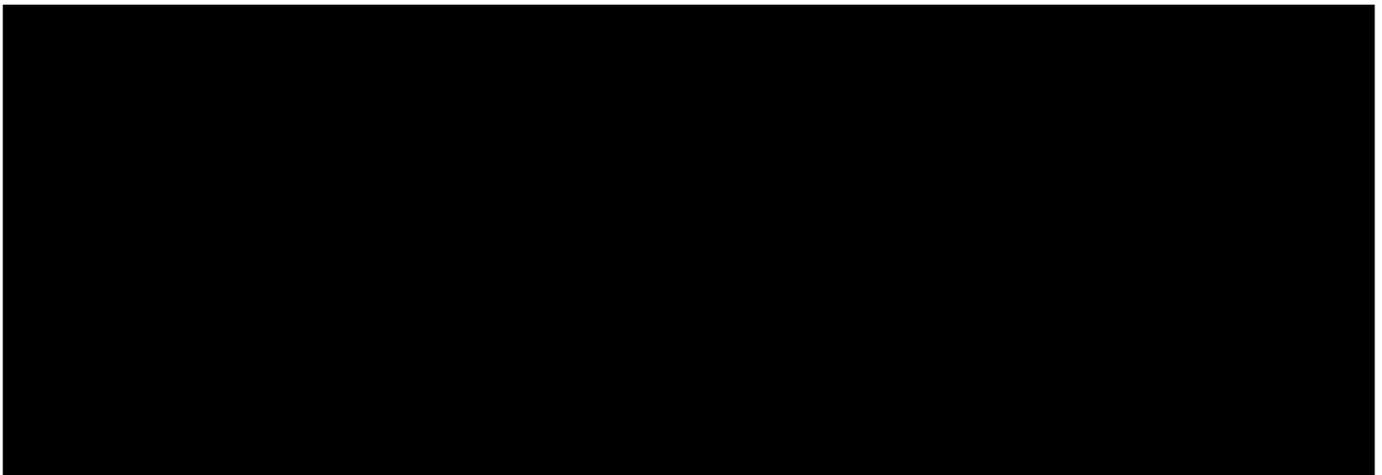


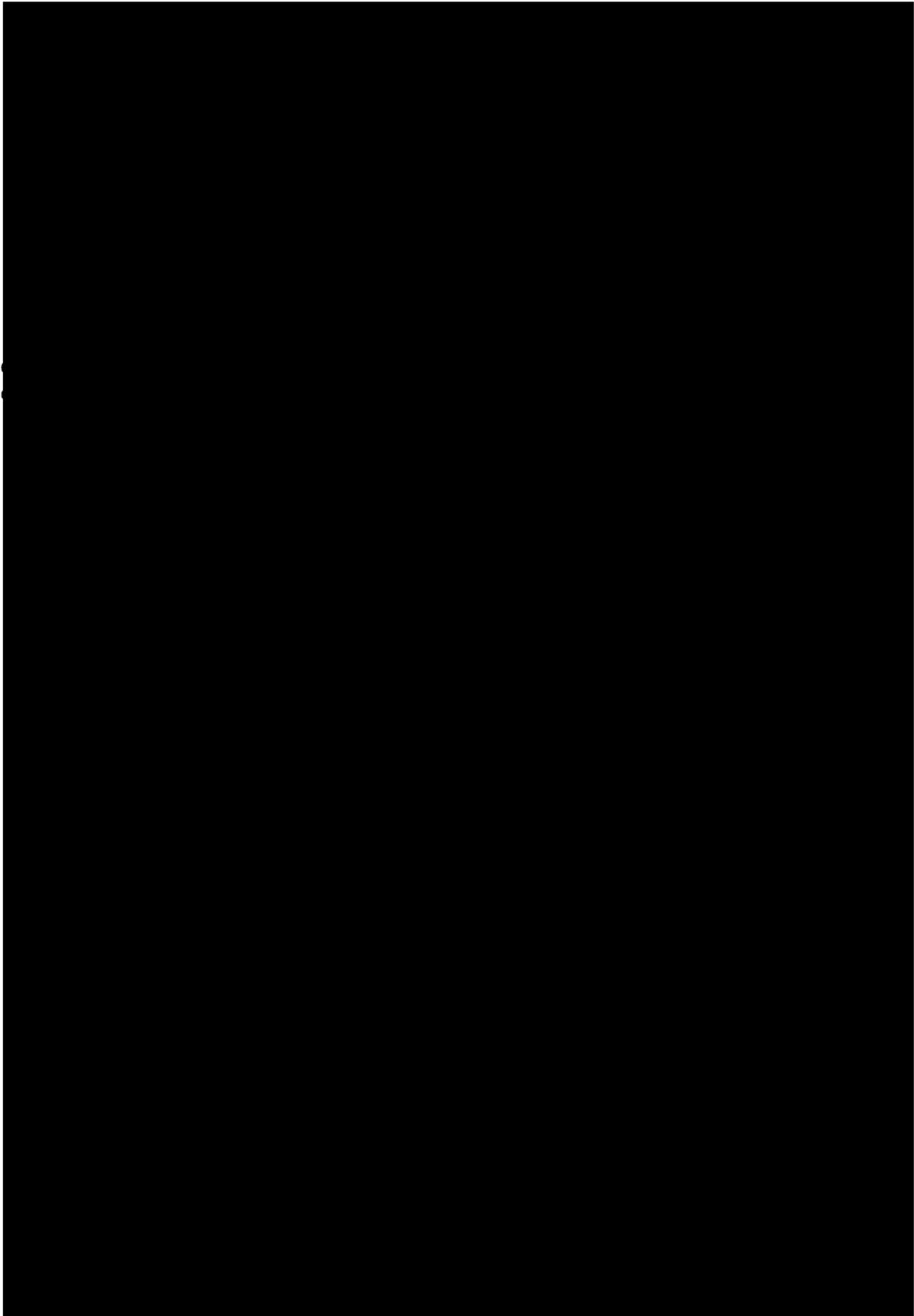
b. Select Campus Requisition

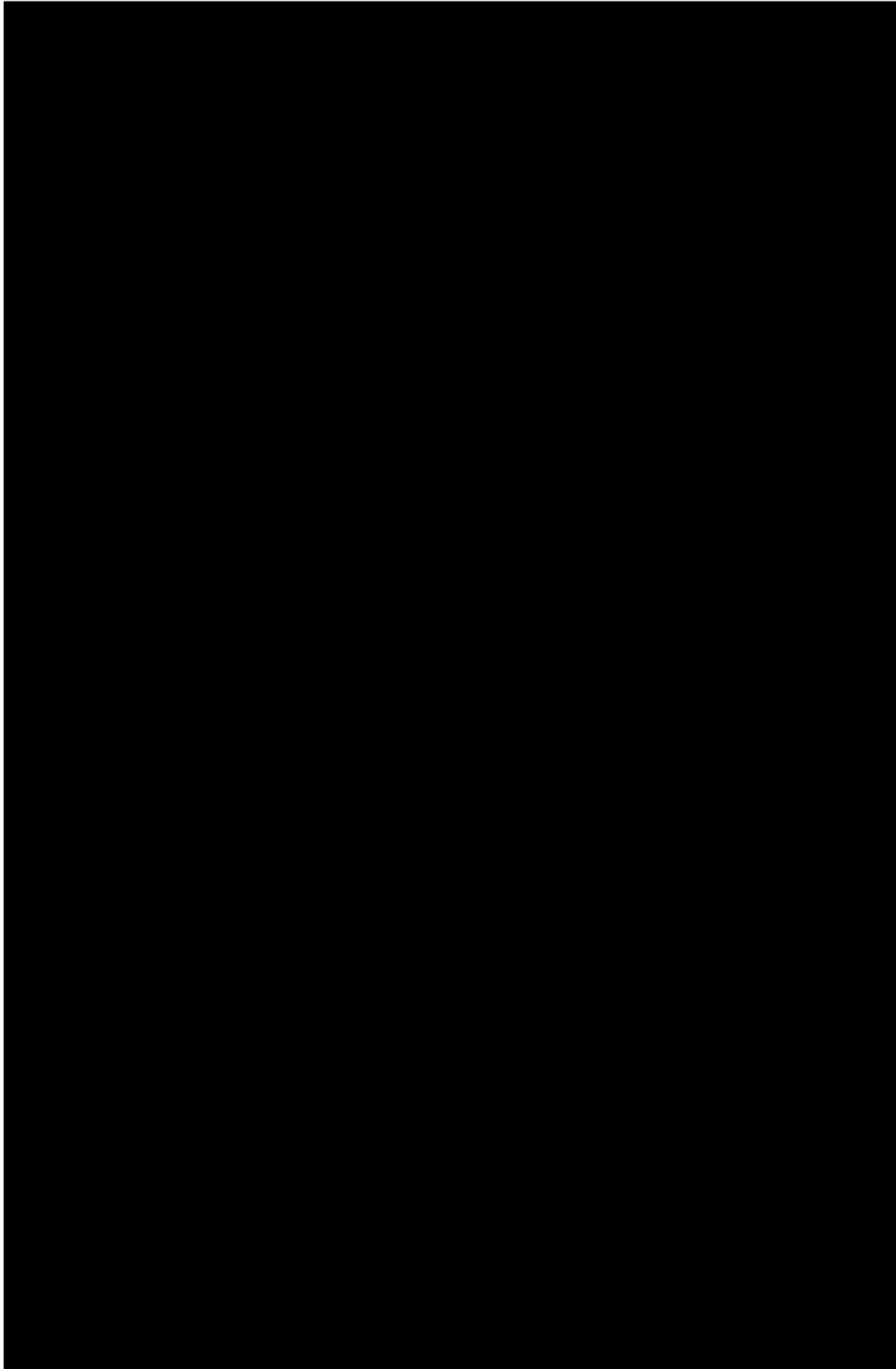
This step is only performed if you are NOT accessing Taleo as a Campus Recruiter

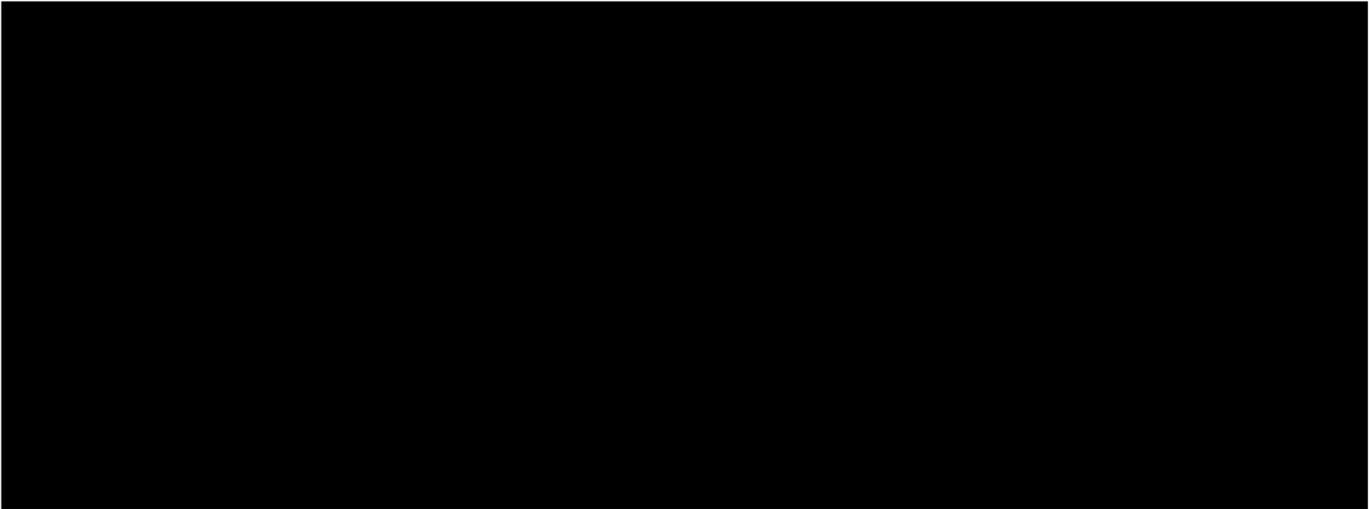


c. Enter the following information:



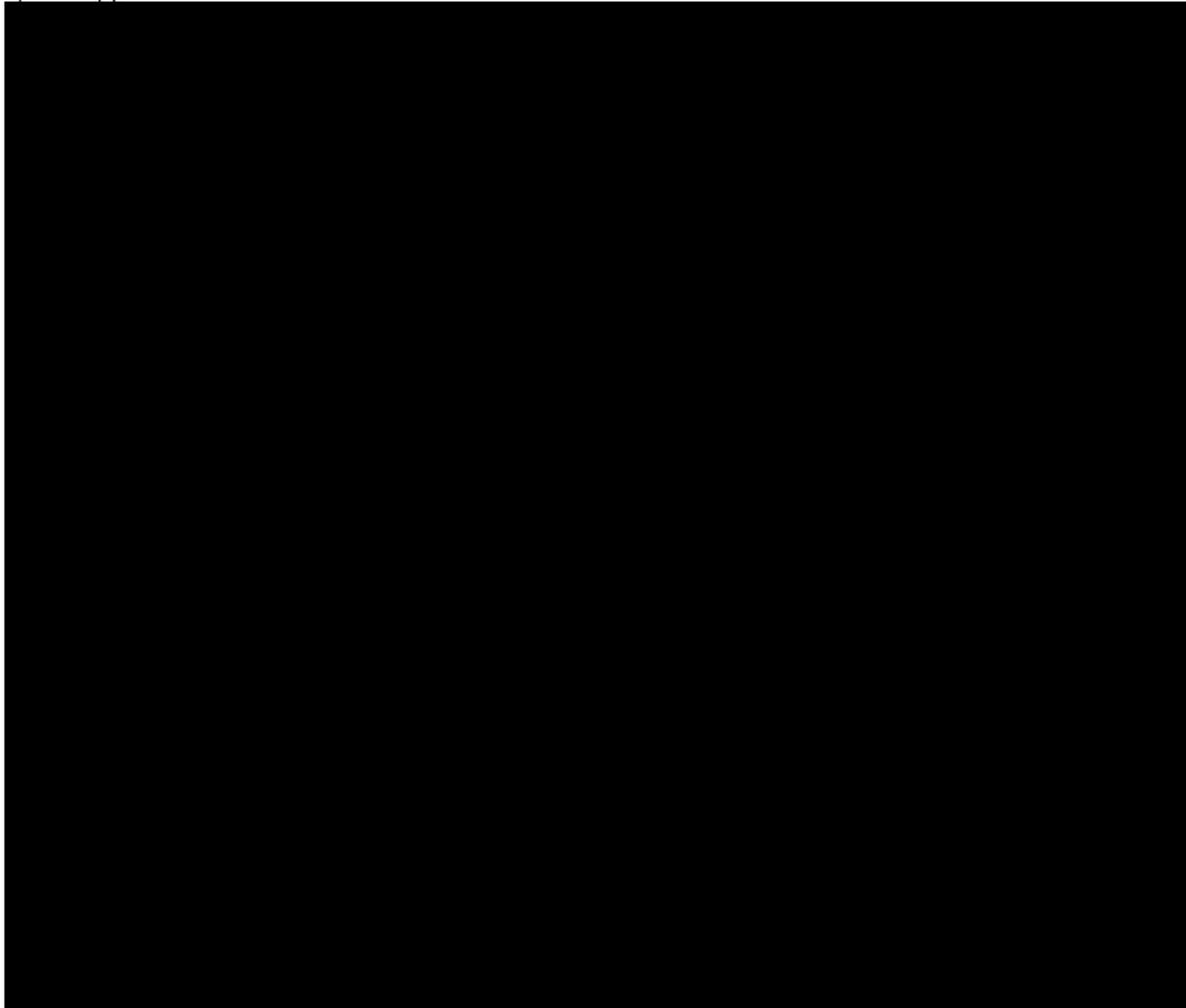






3. Request Approval

a.



b.

c.

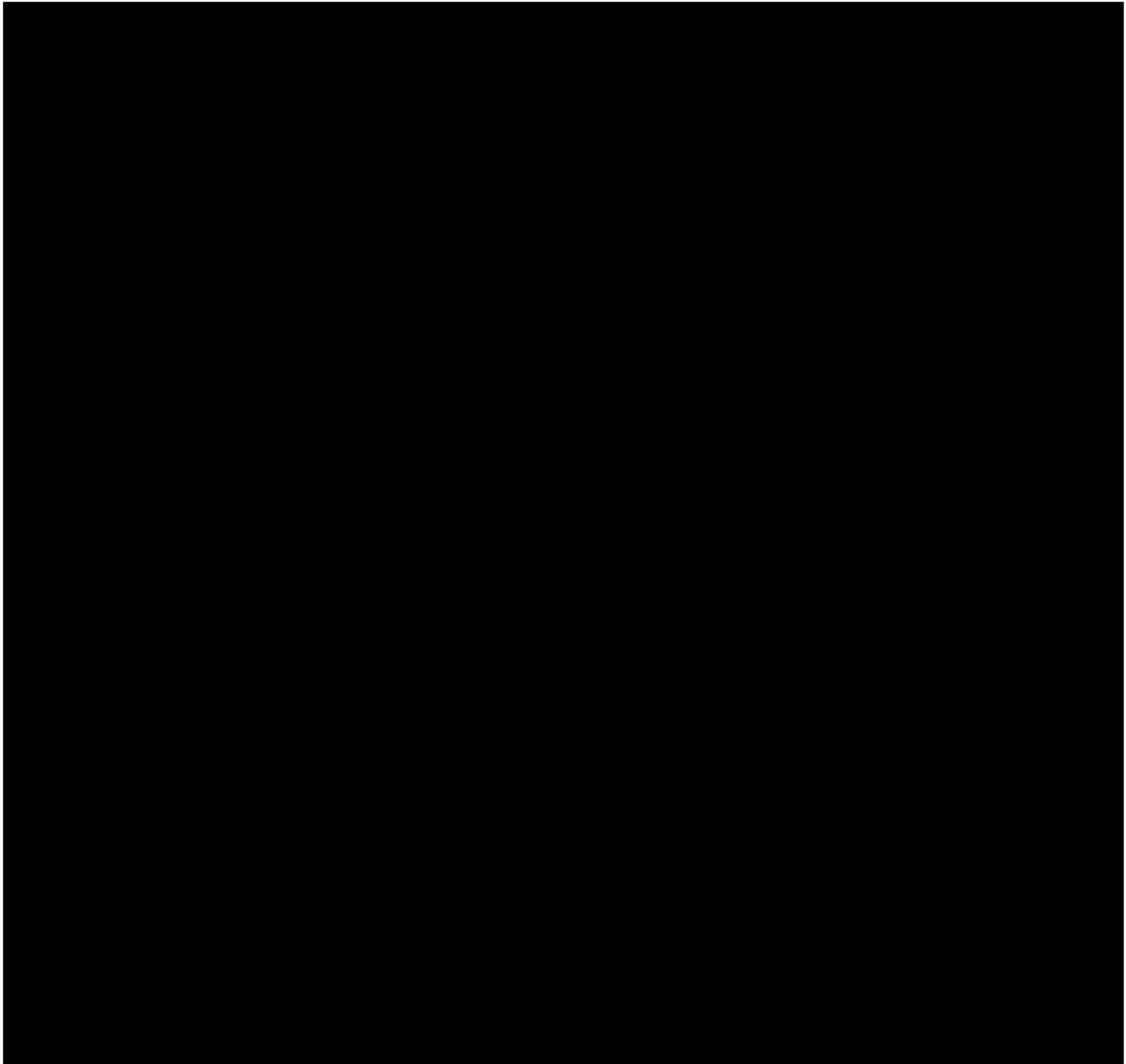
04 CREATE CANDIDATE PROFILES ON YOUR REPOSITORY REQUISITION

Pre-requisites: A Repository Requisition and the Candidate has expressed interest in Oracle

CREATE A JOB-SPECIFIC CANDIDATE AGAINST THE REPOSITORY REQUISITION

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

- 9.
- 10.



- 11.
- 12.

If you have more candidates to create,

05 SEND CORRESPONDENCES

Pre-requisites: A candidate has been added to the Repository Requisition

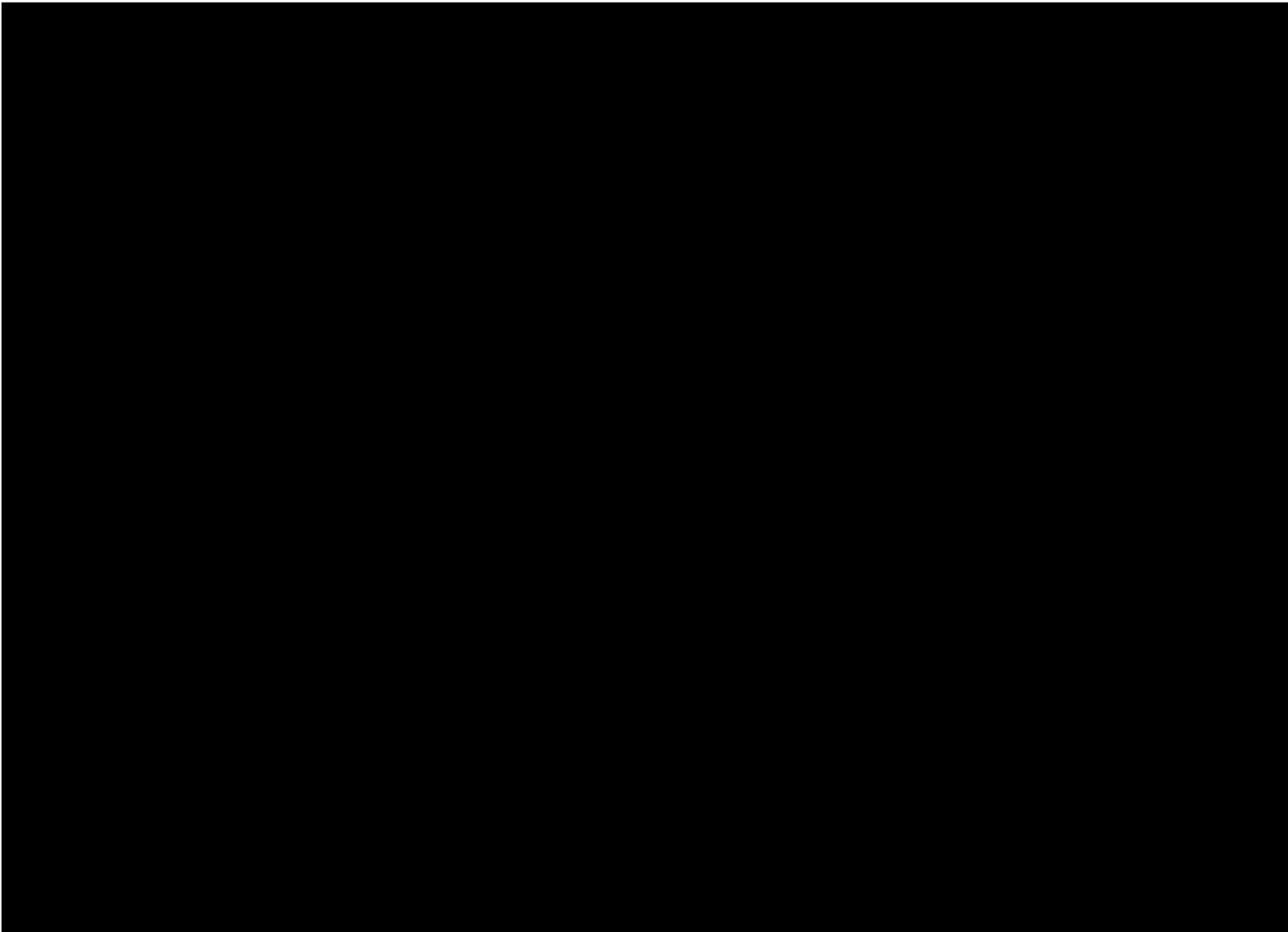
In order to cover HR policy requirements, ask the Candidate to complete their EEO/self ID information and start a background check on the Candidate

1.



2.

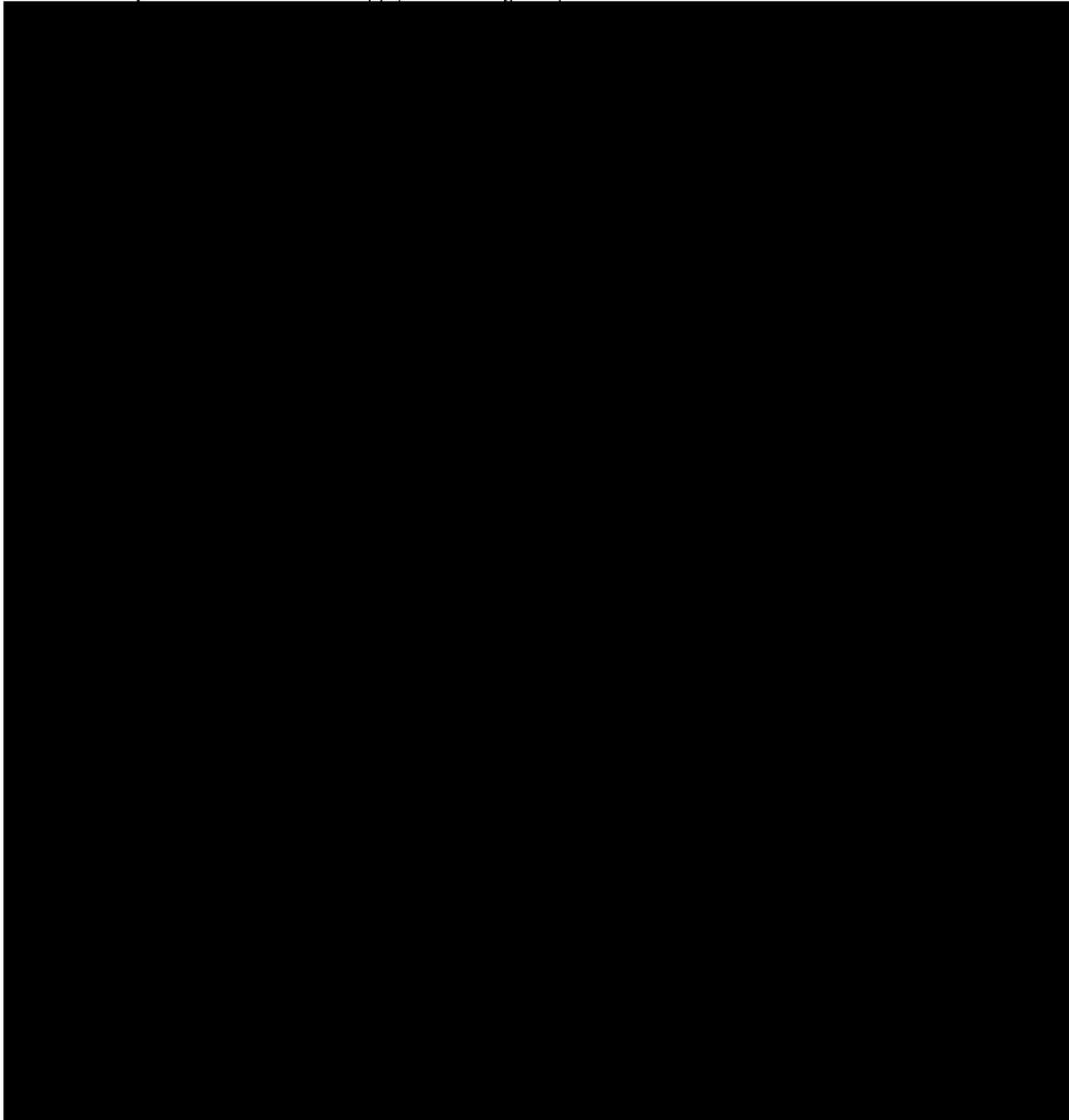
3.

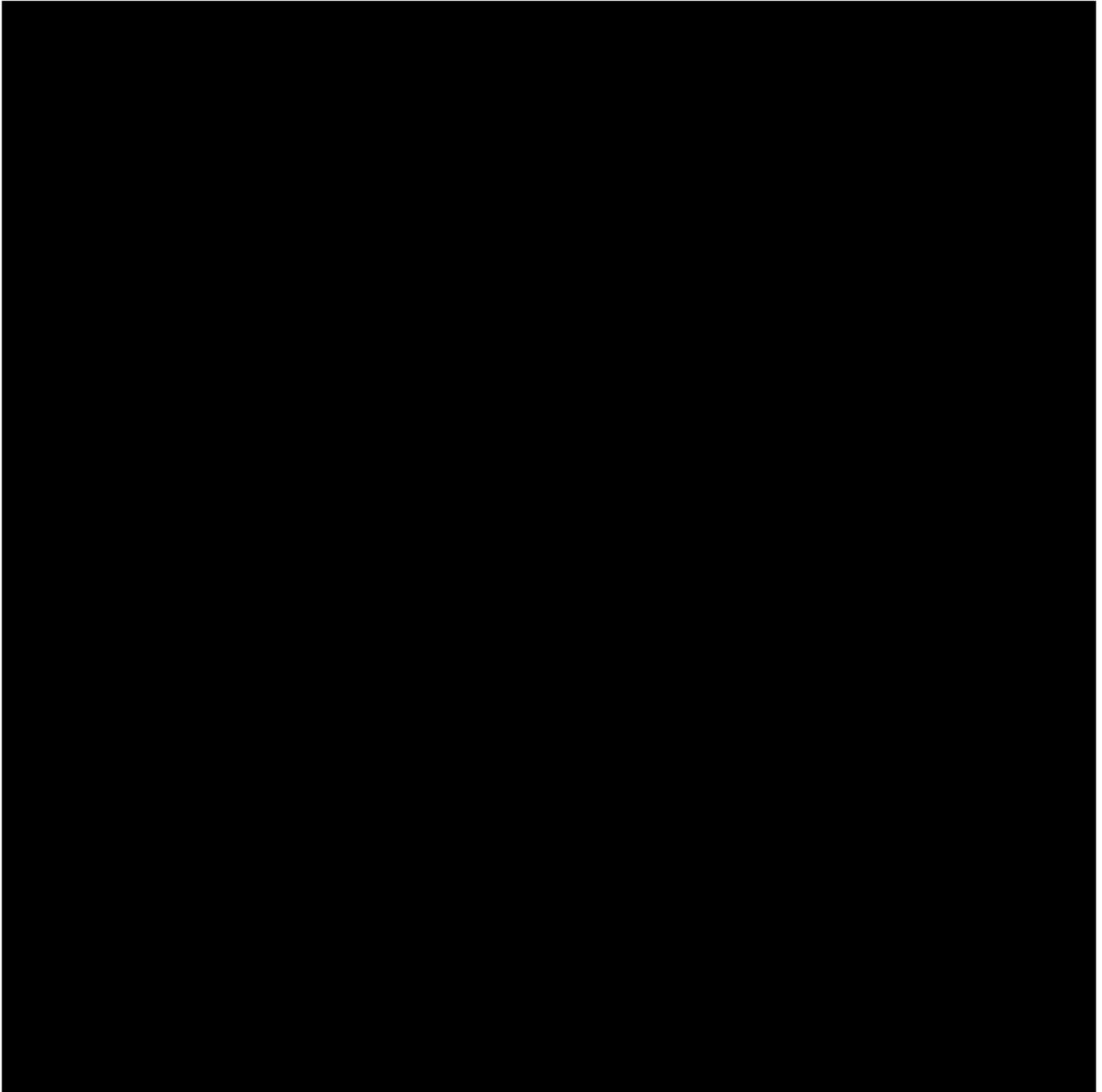


05A ASK THE CANDIDATE TO COMPLETE THE EEO INFORMATION

Pre-requisites: A candidate matched to the posted repository requisition

1. Send Correspondence "Invitation to apply for a college requisition"

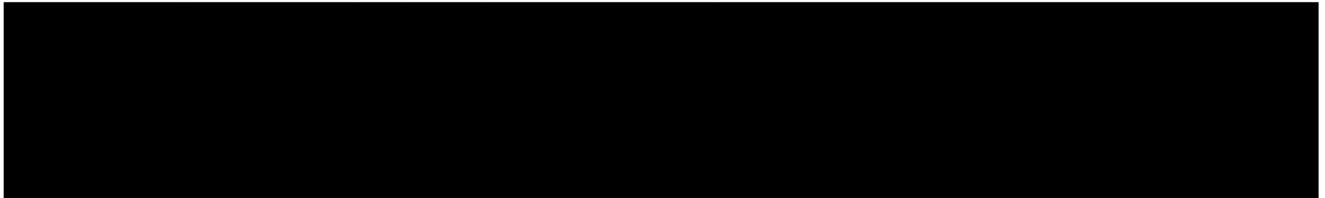


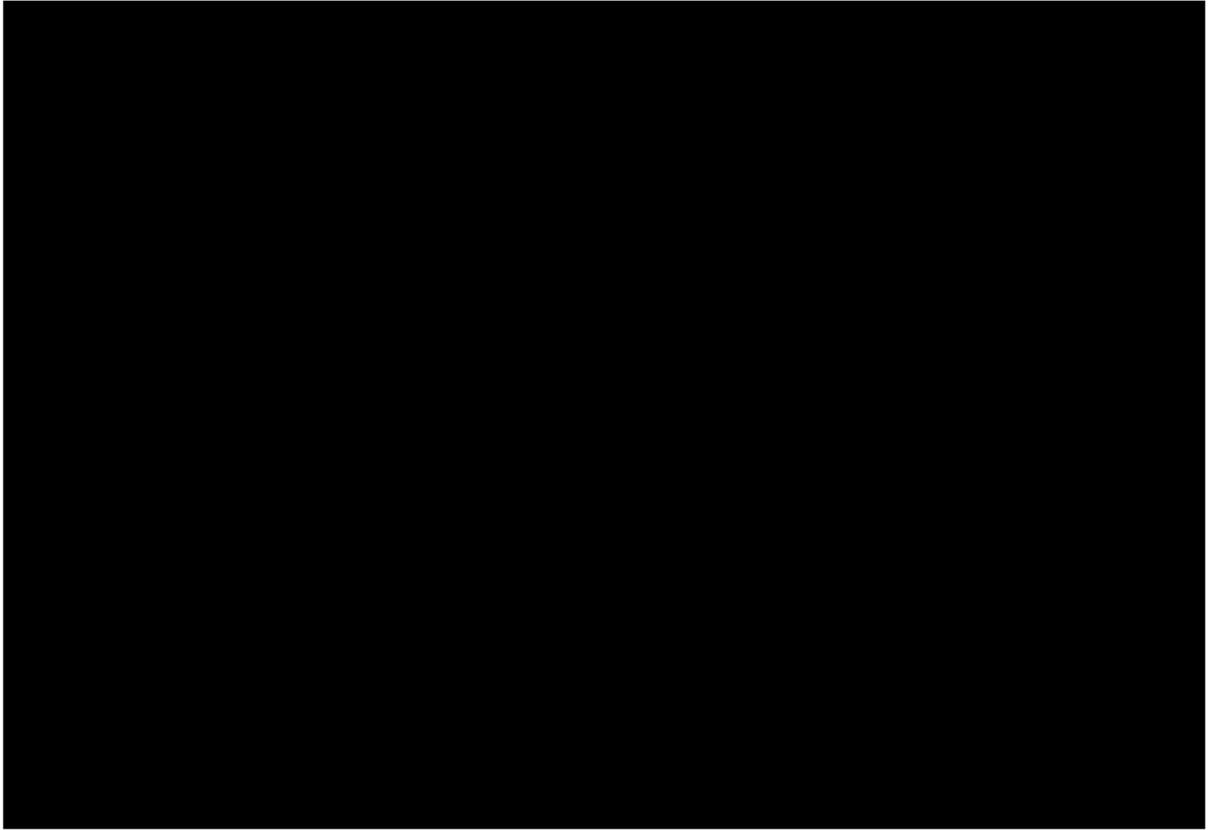


05B SEND BACKGROUND CHECK REQUEST

Pre-requisites: A candidate attached to your Repository Requisition and their resume

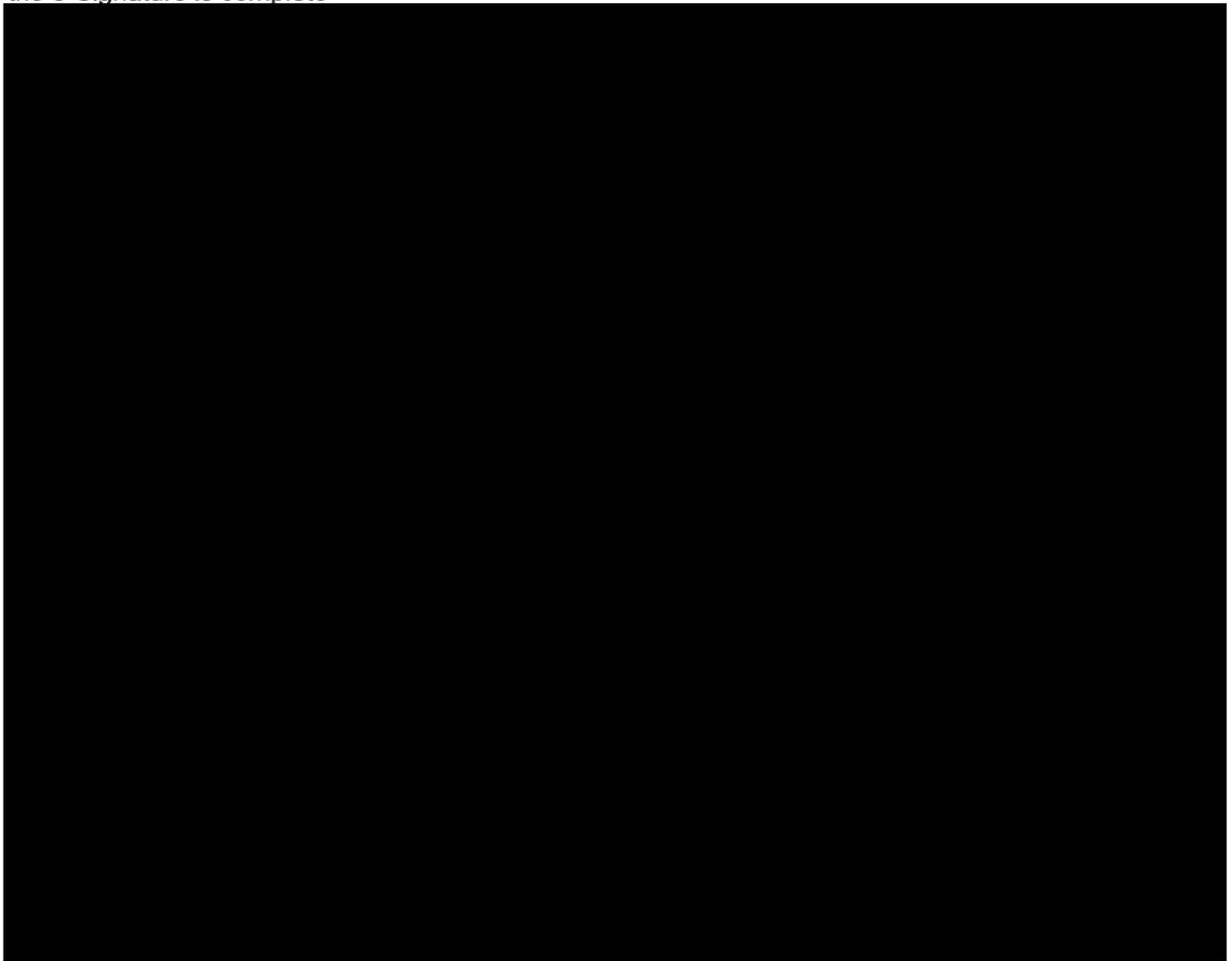
4. Send the Background Check group a request to start a background check





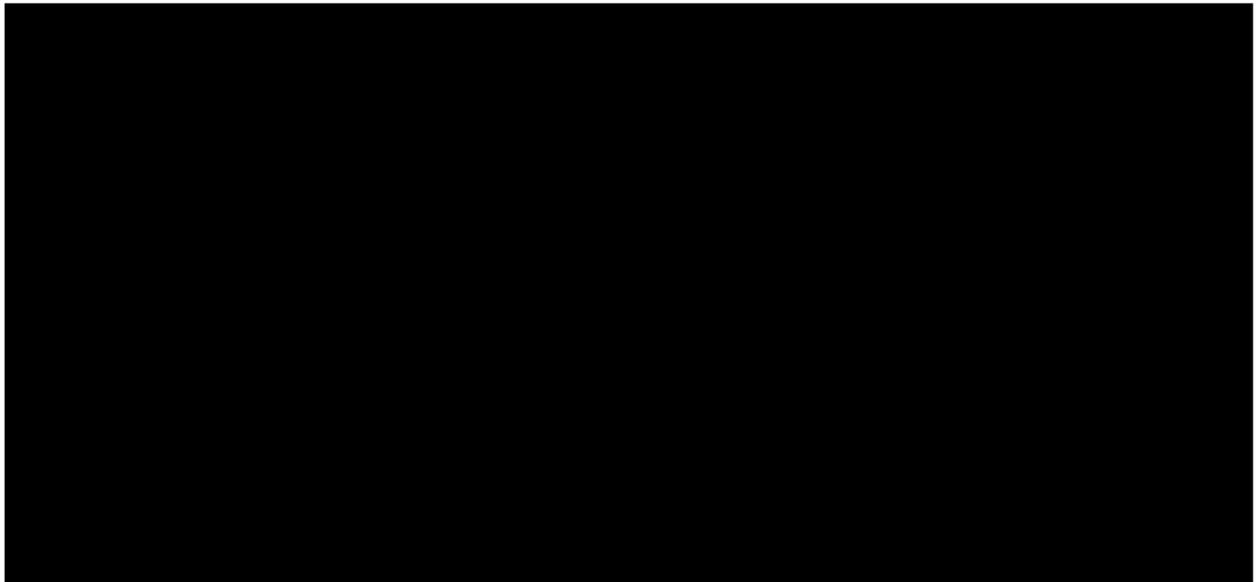
2. Check the e-Signature is complete

- a.
- b.



3. Check that the resume is attached correctly

- a.
- b.



06B CREATE A JOB REQUISITION FOR THE JOB THE CANDIDATE HAS CHOSEN

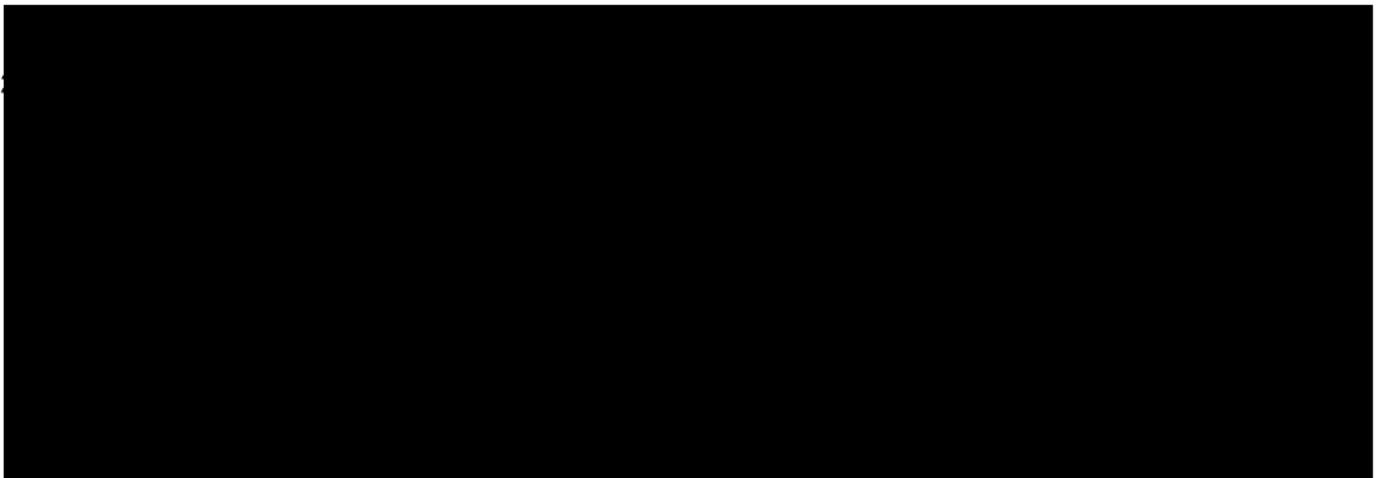
Pre-requisite: candidate has decided upon their job choice

1. Create Requisition

a.



b. Select Campus Requisition



c. Enter the following information:

1.

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- c.
- d.
- e.

)

- f.
- g.

2. Structure

- a.
- b.

2. Structure

Job Code / Job Title must be valid for the region you are hiring. Failure to validate this information with HR could negate your hire.

- 3. Description (Internal)
- 4. Description (External)

Opening Date and Closing Date are not needed for this requisition. It does not need to be posted.

f. 



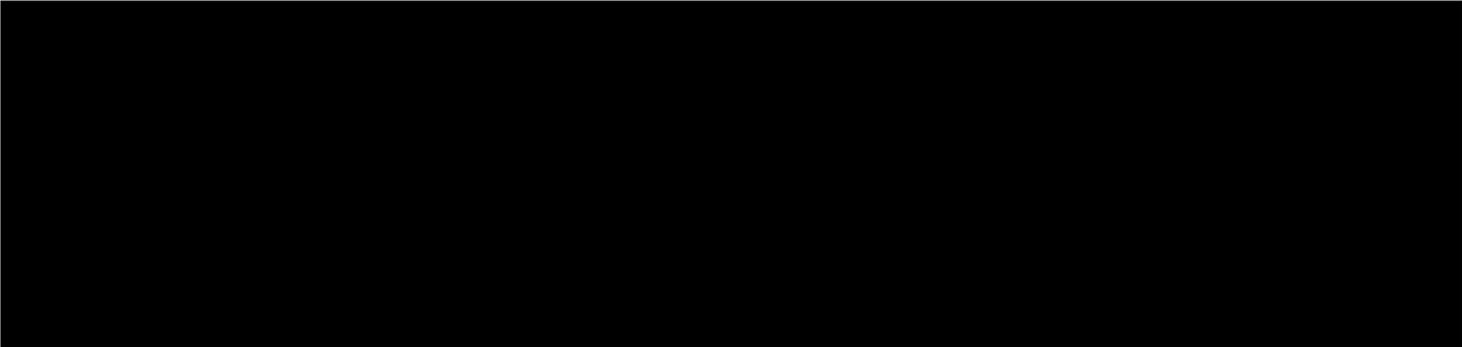
1. Basic Information

Identification

Please use Taleo supported browsers to access this screen. Find out Taleo supported browsers here

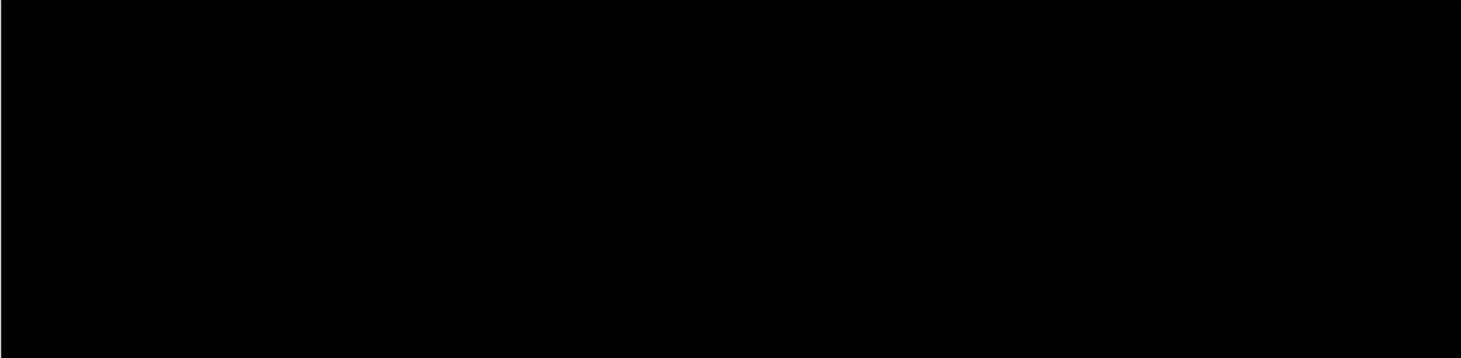
It is against Oracle Policy to change some of the information on the requisition after the requisition has been approved & posted. If you want to make changes please contact your recruiting manager or HRSSC for approval before making any edits. Unauthorized edits can be subject to disciplinary action.

As part of Oracle's employment process candidates will be required to complete a pre-employment screening process, prior to an offer being made. This will involve identity and employment verification, salary verification, professional references, education verification and professional qualifications and memberships (if applicable).



2. Request Approval

a. [REDACTED]



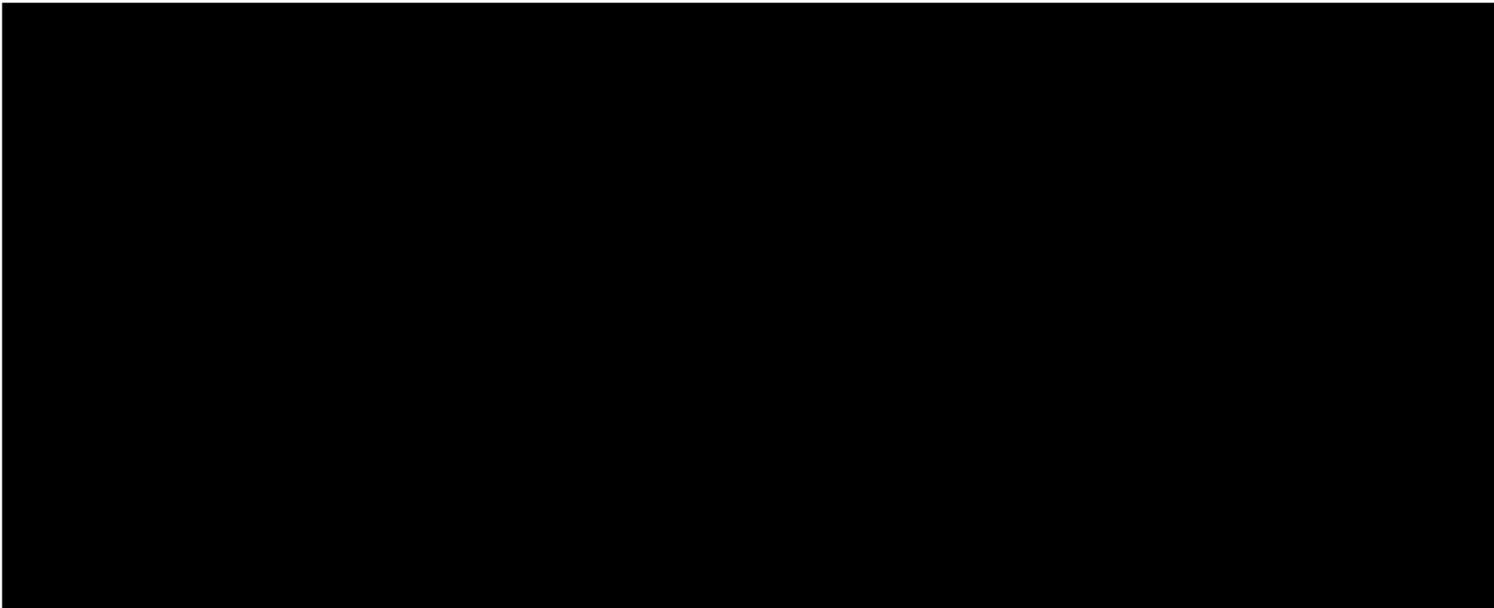
Please use Taleo supported browsers to access this screen. Find out Taleo supported browsers here

It is against Oracle Policy to change some of the information on the requisition after the requisition has been approved & posted. If you want to make changes please contact your recruiting manager or HRSSC for approval before making any edits. Unauthorized edits can be subject to disciplinary action.

As part of Oracle's employment process candidates will be required to complete a pre-employment screening process, prior to an offer being made. This will involve identity and employment verification, salary verification, professional references, education verification and professional qualifications and memberships (if applicable).



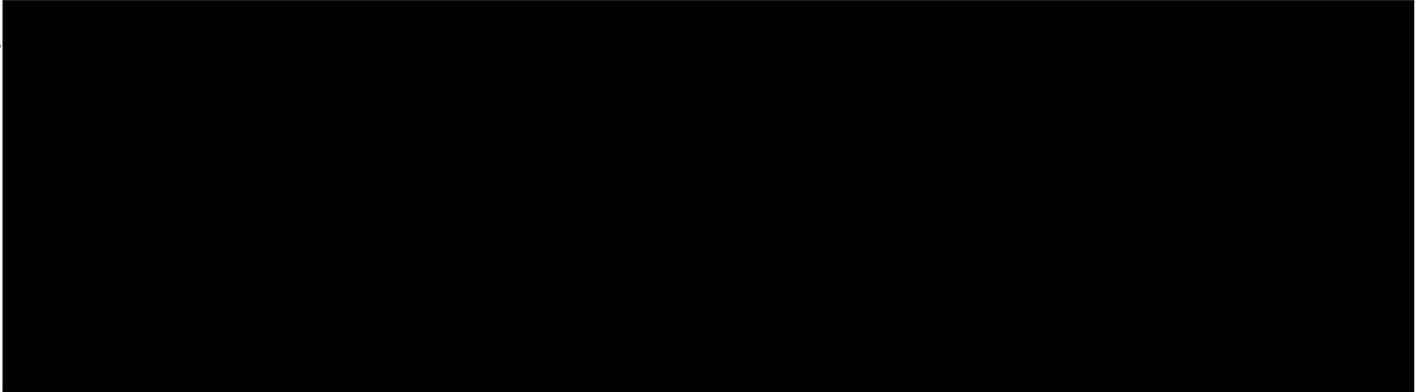
b. [REDACTED]
c. [REDACTED]



3. To Duplicate the job requisition

Remain in the job requisition that you just created

a.



b. Enter the following information

1. Basic Information

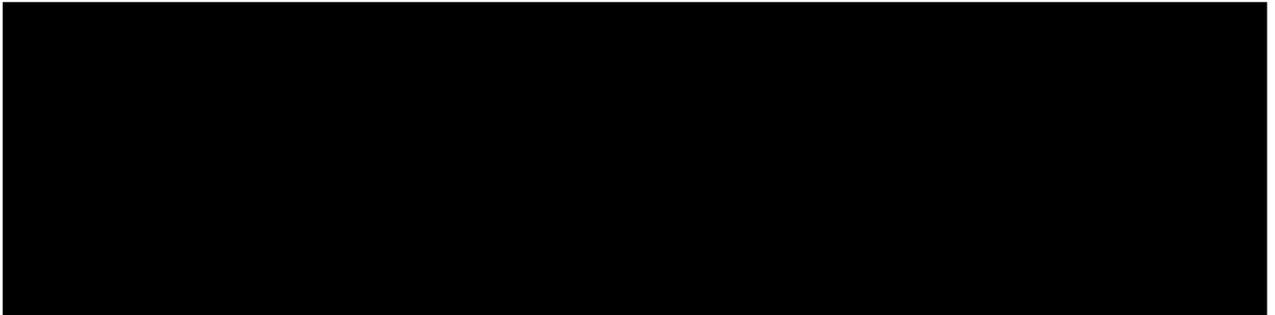
a.



Please use Taleo supported browsers to access this screen. Find out Taleo supported browsers here

It is against Oracle Policy to change some of the information on the requisition after the requisition has been approved & posted. If you want to make changes please contact your recruiting manager or HRSSC for approval before making any edits. Unauthorized edits can be subject to disciplinary action.

As part of Oracle's employment process candidates will be required to complete a pre-employment screening process, prior to an offer being made. This will involve identity and employment verification, salary verification, professional references, education verification and professional qualifications and memberships (if applicable).



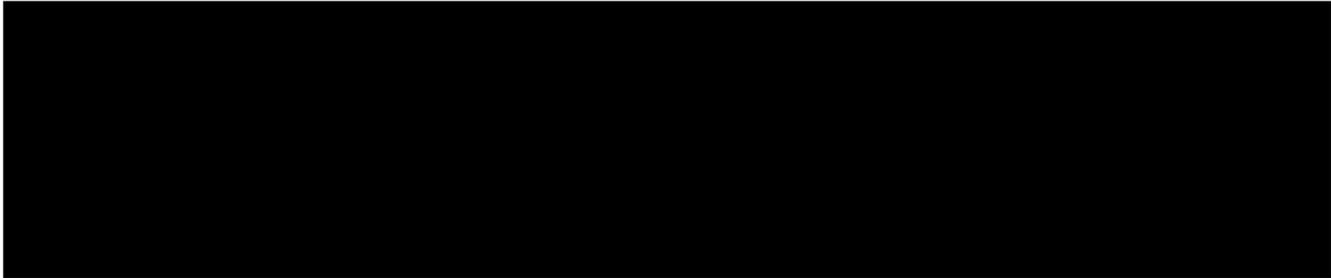
- 2. Enter any additional information specific to this particular job
- 3. 



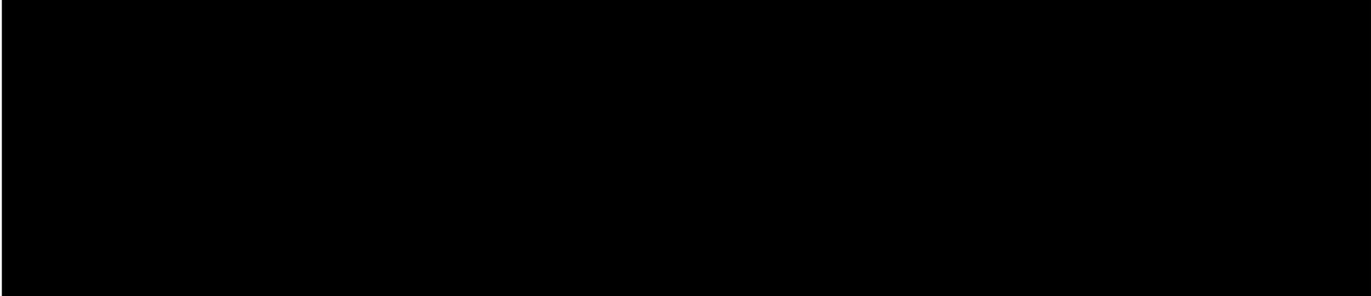
Please use Taleo supported browsers to access this screen. Find out Taleo supported browsers here

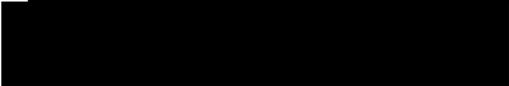
It is against Oracle Policy to change some of the information on the requisition after the requisition has been approved & posted. If you want to make changes please contact your recruiting manager or HRSSC for approval before making any edits. Unauthorized edits can be subject to disciplinary action.

As part of Oracle's employment process candidates will be required to complete a pre-employment screening process, prior to an offer being made. This will involve identity and employment verification, salary verification, professional references, education verification and professional qualifications and memberships (if applicable).



c. Request Approval

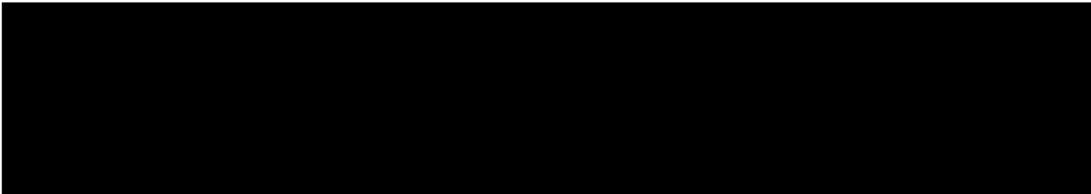
- 4. 



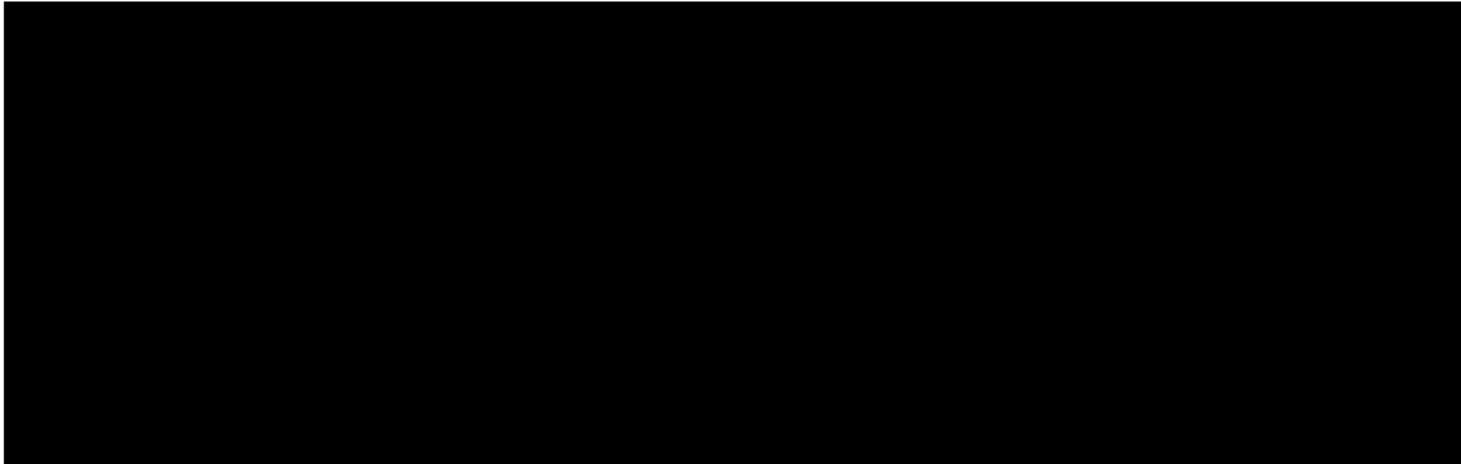
Please use Taleo supported browsers to access this screen. Find out Taleo supported browsers here

It is against Oracle Policy to change some of the information on the requisition after the requisition has been approved & posted. If you want to make changes please contact your recruiting manager or HRSSC for approval before making any edits. Unauthorized edits can be subject to disciplinary action.

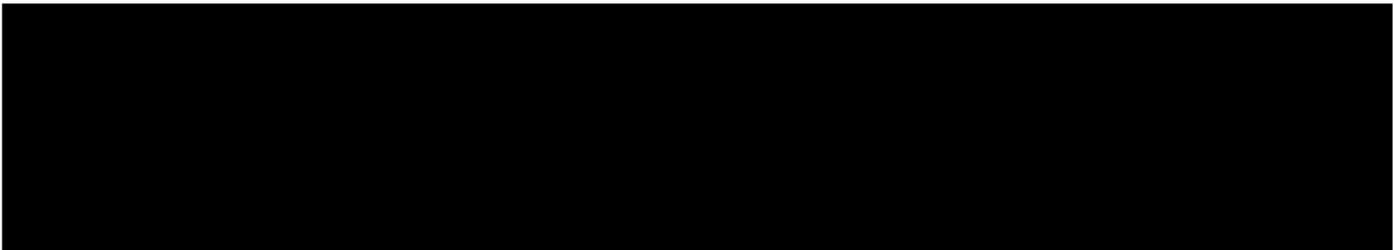
As part of Oracle's employment process candidates will be required to complete a pre-employment screening process, prior to an offer being made. This will involve identity and employment verification, salary verification, professional references, education verification and professional qualifications and memberships (if applicable).



- 5. [REDACTED]
- 6. [REDACTED]



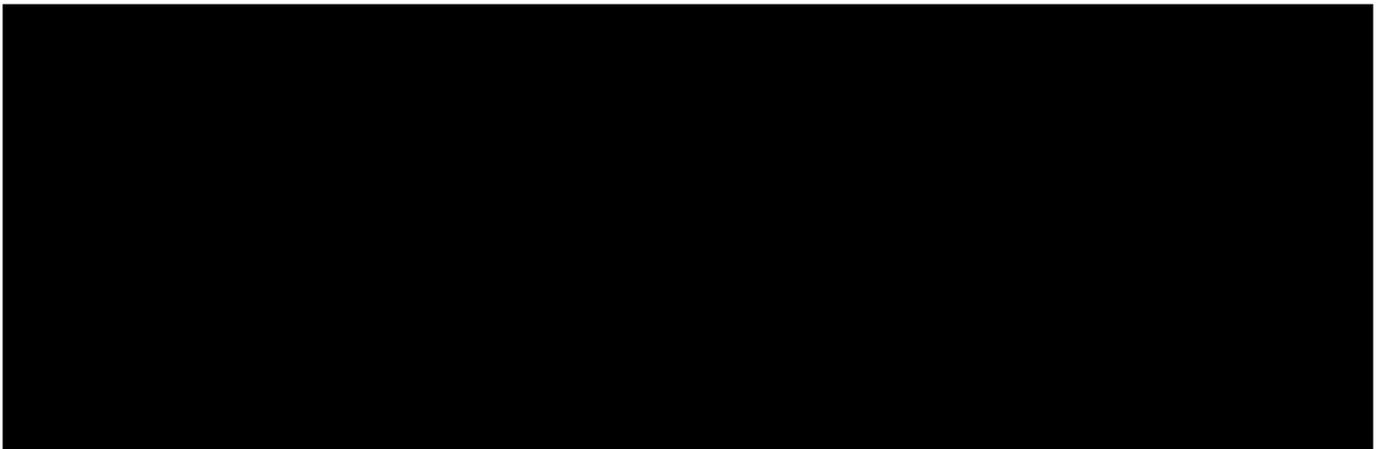
- d. Repeat from Step 4a as many times as needed.
- 4. To create another job requisition using a different job code
- e. [REDACTED]



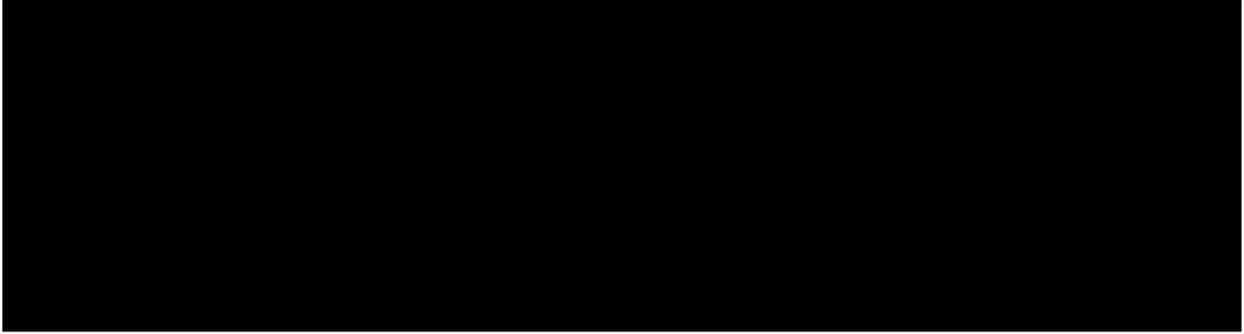
06C MATCH THE CANDIDATE TO THE JOB REQUISITION

Pre-requisites: A candidate attached to your Repository Requisition and a job requisition

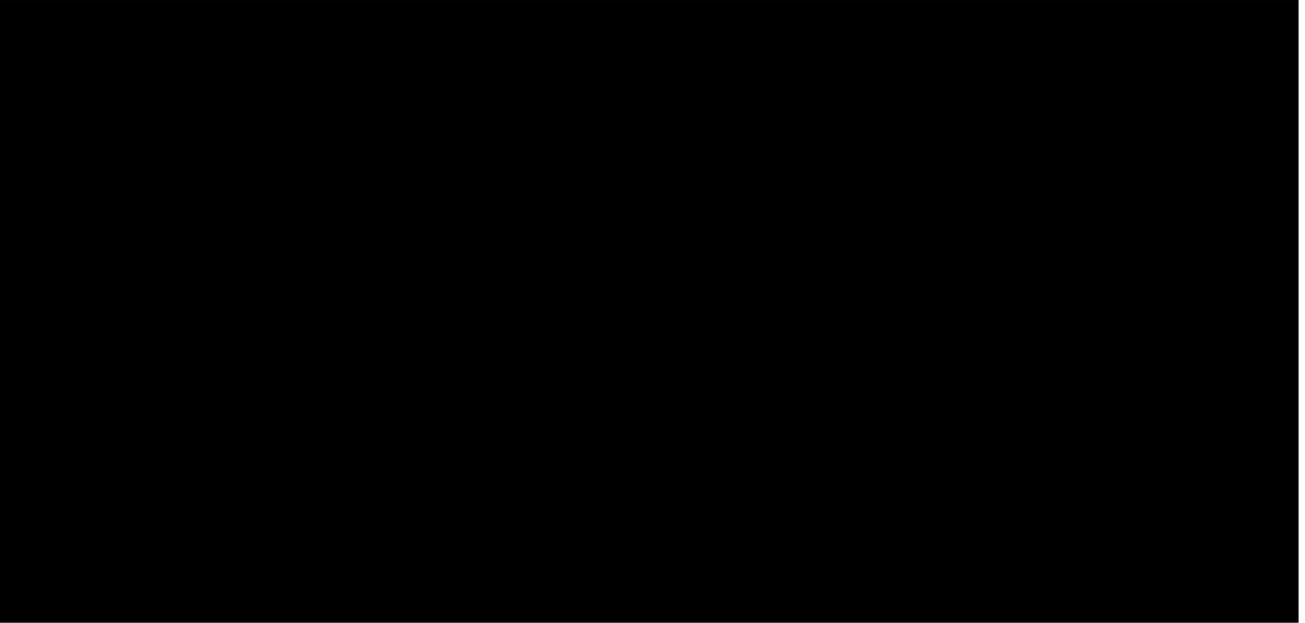
- 1. Find the Job Requisition to which you want to match the candidate



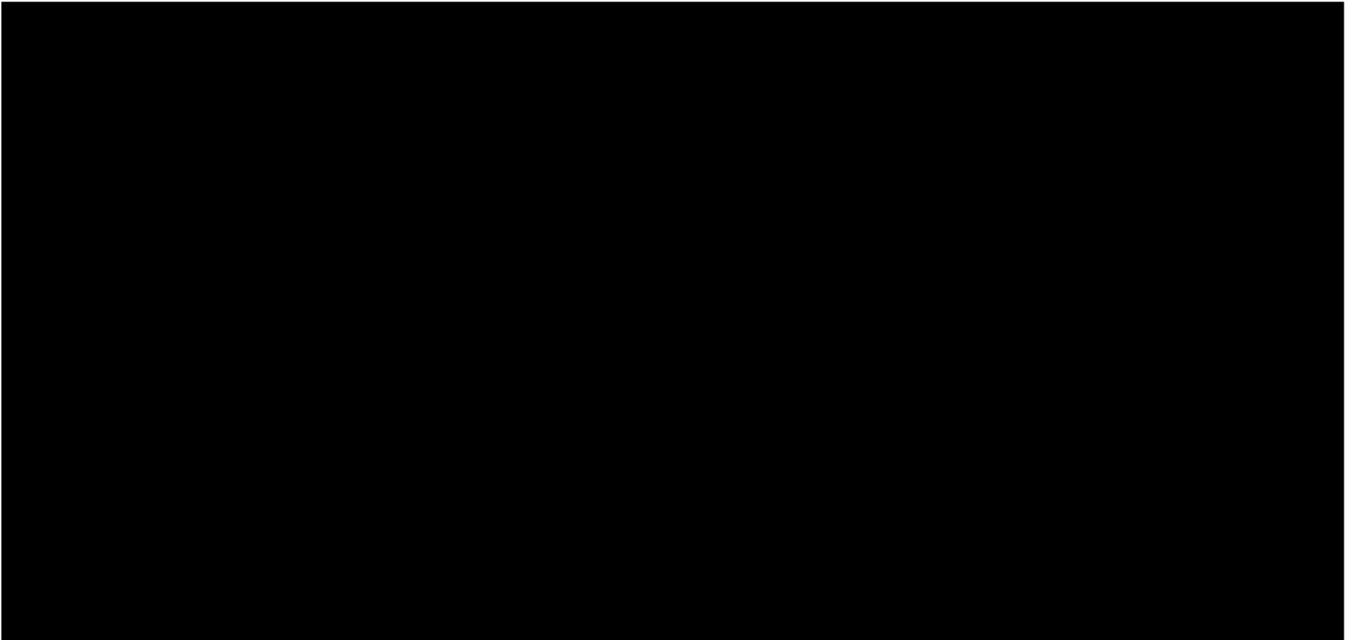
- b. Find the Requisition you want to match with the candidate

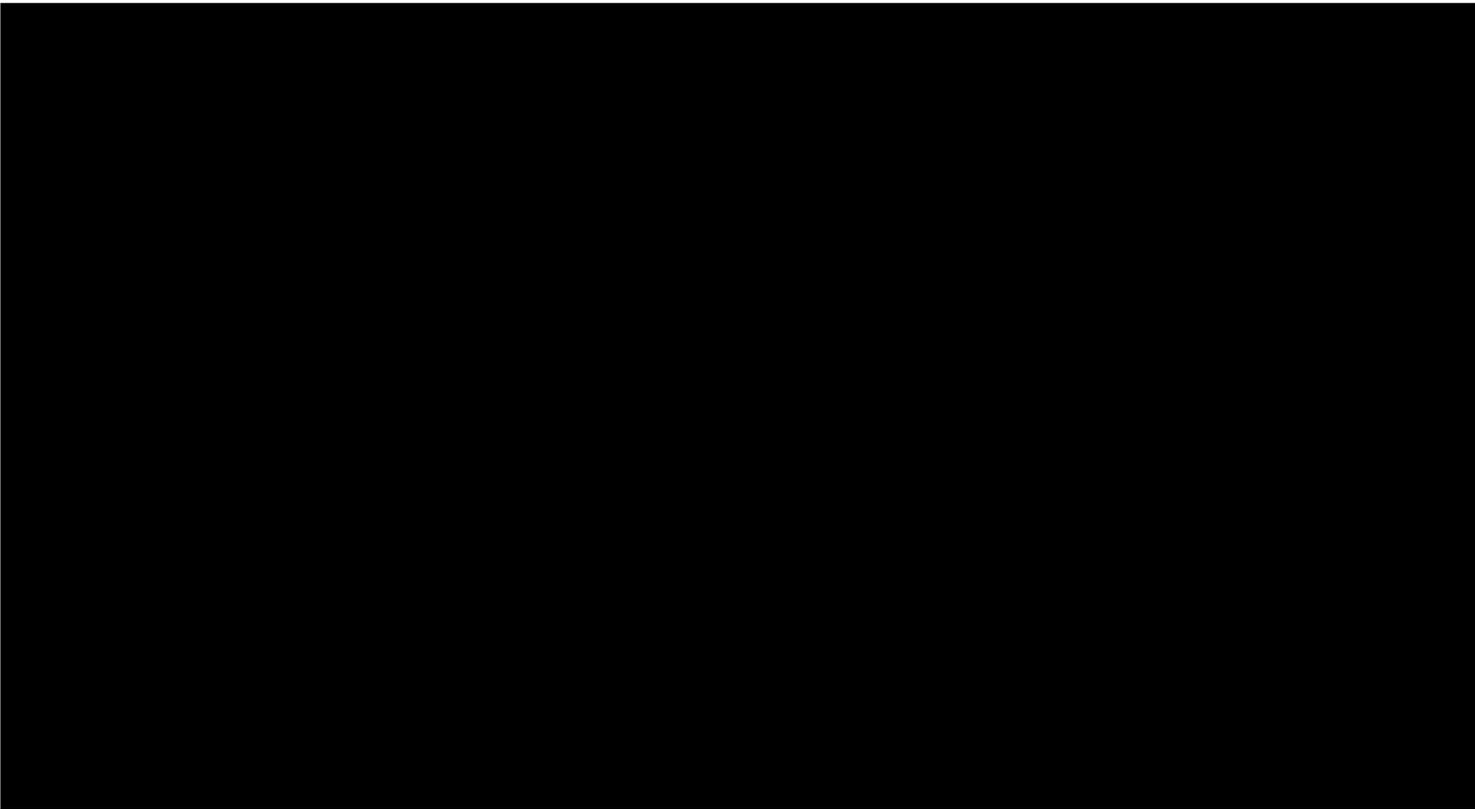


2. Find the Candidate

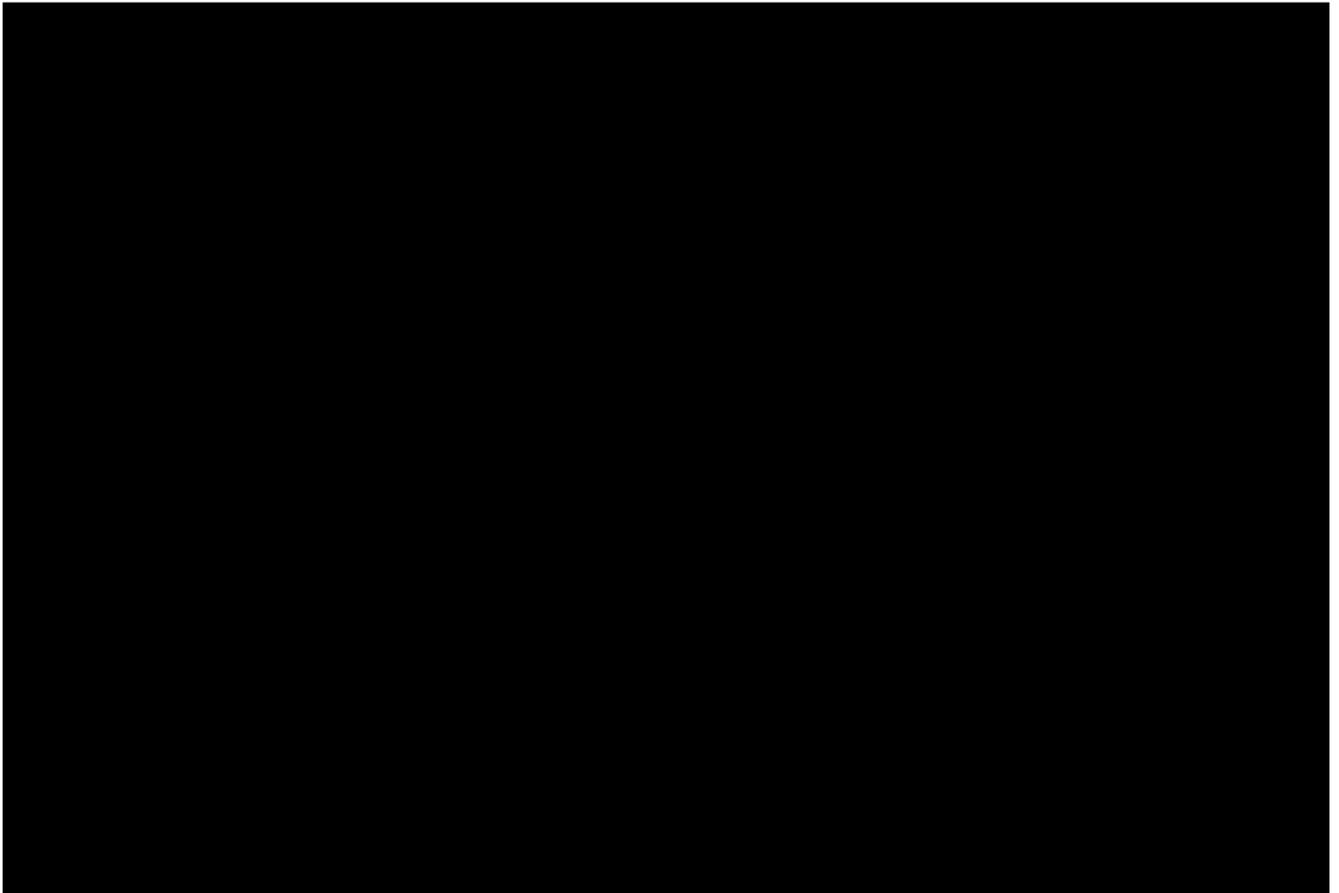


3. Match the Candidate



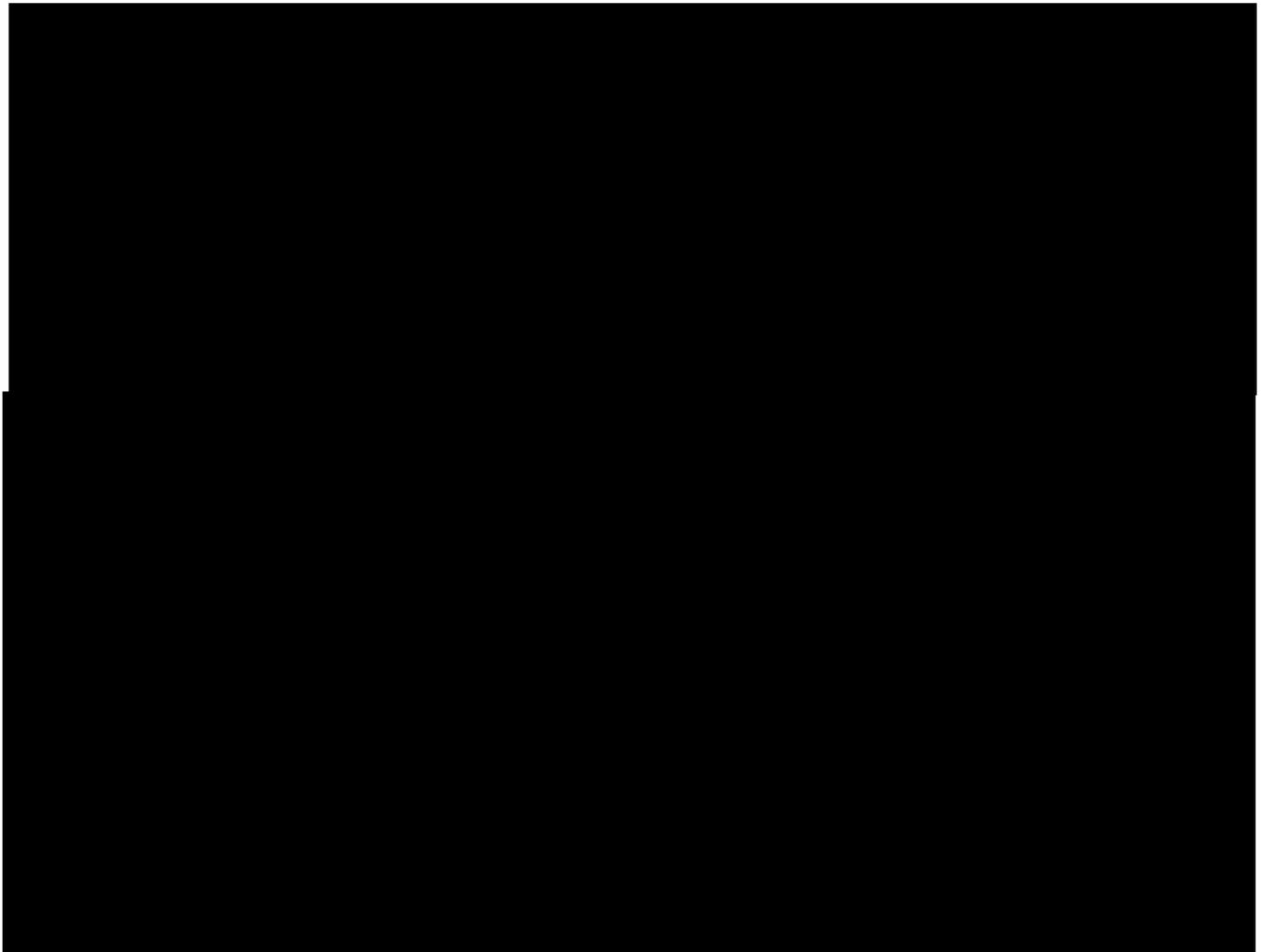
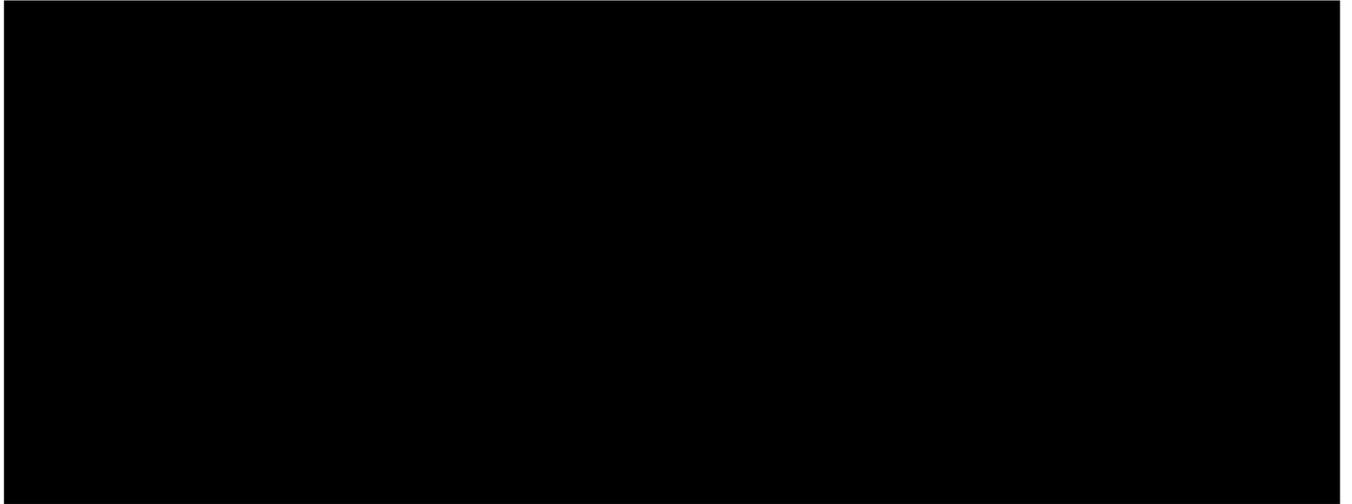


4. Go to the job requisition submission



5. Attach the Candidate Resume to the Profile

This is done so the candidate will not have to click on the checkbox to say the resume already attached is relevant for this job submission.



GRAHAM DECL. EX. E

(DECLARATION OF PRIYANKA JAMPANA)

1 JANET M. HEROLD
Regional Solicitor
2 LAURA C. BREMER
Acting Counsel for Civil Rights
3 IAN H. ELIASOPH
Counsel
4 M. Ana Hermosillo
Trial Attorney
5 United States Department of Labor
6 Office of the Solicitor
300 5th Ave, suite 1120
7 San Francisco, CA 99104
Telephone: (206) 757-6753
8 Facsimile: (206) 757-6761
9 Email: Hermosillo.Mary.A@dol.gov

10 Attorneys for Plaintiff, Eugene Scalia, Secretary
United States Department of Labor

11
12 UNITED STATES DISTRICT COURT FOR THE
13 NORTHERN DISTRICT OF CALIFORNIA

14	OFFICE OF FEDERAL CONTRACT)	Case No.: 2017-OFC-00006
	COMPLIANCE PROGRAMS, UNITED)	
15	STATES DEPARTMENT OF LABOR)	DECLARATION OF PRIYANKA
)	JAMPANA
16	Plaintiff,)	
	V.)	
17)	
)	
18	ORACLE AMERICA, INC.)	
)	
19	Defendant.)	
)	
20)	
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21)	
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1 I, Priyanka Jampana, state and declare as follows.

2 1. I am providing this declaration pursuant to a request from the U.S. Department of
3 Labor, Office of the Solicitor.

4 2. I am an Asian woman and I worked for Oracle America, Inc. at the Redwood Shores
5 facilities from approximately September 2015 to February 2018. I have personal knowledge of the
6 matters stated herein and, if necessary, I could and would testify to the facts stated below.

7
8 3. I obtained a Bachelor's degree in Biotechnology from Osmania University,
9 Hyderabad, India, and a Master's degree in Information Technology and Business Administration
10 from the International Technological University in San Jose.

11 4. Prior to joining Oracle, I had almost five years of experience in the technology
12 industry. In the job I had prior to working at Oracle, I held the title of Accessibility Specialist where
13 I was responsible for testing products related to accessibility. For example, I worked on mobile
14 technology, web-technology, platforms such as voice-over, talkback, Dragon Naturally Speaking,
15 etc. For example, with platforms such as Voice-Over and Talk, which are screen readers for mobile
16 technology such as i-phones and androids. These platforms are used by the visually impaired.
17 Talkback and Dragon Naturally Speaking are also platforms used by visually impaired persons.
18 Talkback is a screen reader used on android phones. Dragon Naturally speaking is used by those
19 with motor-disabilities, such that they can talk to a computer if they cannot use a keyboard.

20
21 5. At Oracle, I was hired to be an Accessibility Engineer, an IC 3 position. During the
22 time I worked at Oracle, I was the only person who worked in my position. I found the Accessibility
23 Engineer position online. After submitting my application online, I received a call from a recruiter.
24 After I had my interview, Oracle extended an offer to me. However, I thought the offer was too low,
25 so I rejected their offer. I told them that I wanted about \$20,000 more. To be clear, the amount I was
26

1 asking for was consistent with what I understand to be the H1B minimum, and I required an H1B
2 visa to work for Oracle. I also made it very clear, that I needed Oracle to sponsor my green card
3 application because I had been on an H1B visa for three years, and after 6 years I would need a
4 company to sponsor my green card application or I would no longer be permitted to work in the
5 United States. I was told that this request for green card sponsorship would not be a problem. After
6 some negotiating Oracle accepted my counter offer.

7
8 6. As an Accessibility Engineer, I was responsible for testing Oracle products to see if
9 they met industry accessibility standards. Much of my work included testing recently acquired
10 companies' products to determine if they met accessibility standards. The first thing I would do with
11 a product is test it to see if it passed the accessibility standards at a basic level. If it did not, then I
12 would do end-to-end testing and make recommendations to the development team so that the product
13 met the standards. I also worked with the product team when they were trying to sell a product to
14 another company or government agency. For example, if there was a proposed sale to a government
15 agency, then I would demonstrate the accessibility of the product during the sales meetings. I would
16 also provide trainings to teams within Product Development, so that they could learn what
17 accessibility is and how to be compliant with the industry accessibility standards. Most of my
18 trainings were the mobile platform and web platform design teams. I would give a lot of trainings
19 using JAWS on the web platform, which is a screen reader.

20 7. There were [REDACTED] other employees with whom I worked on [REDACTED], [REDACTED]
21 [REDACTED], [REDACTED] had more of an [REDACTED] role and [REDACTED] had more of a [REDACTED]
22 role. [REDACTED] performed the [REDACTED] before I was hired. [REDACTED] I
23 think his title may have been [REDACTED] I believe that [REDACTED] had a [REDACTED]
24 position. [REDACTED] also had the skills and abilities to do the work that I did, but it was not time-efficient

1 for him to do so. We were managed by the Accessibility Director Peter Wallack. All of these
2 employees were [REDACTED]

3
4 8. While working for Oracle, I took about 3 months of maternity leave. Before I went
5 on maternity leave, my manager Accessibility Director Peter Wallack, asked me to submit
6 documentation so Oracle could pursue sponsorship of my green card. Peter gave me a lot of praise
7 for doing a good job both orally and in writing. However, he never gave me an appraisal.

8 9. About a year and a half after I started working for Oracle, I asked Peter for a meeting
9 so I could ask him for an appraisal. This meeting occurred in person, in Peter's office at Redwood
10 Shores facility. During this meeting, in response to my question about getting an appraisal, he told
11 me that Oracle does not give appraisals. During the same meeting, I mentioned that I had been with
12 Oracle for more than a year and a half and I had not gotten a raise or a bonus. He told me that he
13 [REDACTED] He also told me that when you joined Oracle, we put you in a high
14 salary bracket so it would be hard to give you a raise. He gave me the impression that I could not
15 get a raise.

16
17 10. In around the fall of 2017, after I returned to work from my maternity leave, Peter
18 [REDACTED] and I got a new manager, Kent Boucher. Kent had the same title as Peter. Kent came from
19 Cisco. Kent worked at Redwood Shores, but [REDACTED]

20 11. My H1B visa was due for renewal in June 2018. In around February of 2018, Kent
21 told me that he wanted to meet with him at the office. When we had the meeting, he told me, we
22 can't do your visa anymore. I asked him why. He said that if I had any questions I could ask HR.
23 He told me, we aren't laying you off. You can stay until June if you want.

GRAHAM DECL. EX. F

(EXHIBIT C TO THE DECLARATION OF LAURA C. BREMER IN SUPPORT OF OFCCP'S MOTION IN LIMINE TO EXCLUDE TRIAL EVIDENCE AND TESTIMONY RELATED TO SUBJECTS IN WHICH ORACLE REFUSED TO PROVIDE DISCOVERY BASED ON PRIVILEGE OR RELEVANCE)

Exhibit C

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UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

---oOo---

OFFICE OF FEDERAL CONTRACT)	
COMPLIANCE PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR,)	
)	
Plaintiff,)	OALJ Case
)	No. 2017-OFC-00006
)	
vs.)	OFCCP
)	No. R001926999
ORACLE AMERICA, INC.,)	
)	
Defendant.)	
)	

VIDEOTAPED DEPOSITION OF TAMERLANE BAXTER
July 3, 2019
San Francisco, California

Stenographically Reported by:
GINA V. CARBONE, CSR, RPR, RMR, CRR, CCRR
California State Lic. No. 8249
Job No. 190703GCB

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UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

---oOo---

OFFICE OF FEDERAL CONTRACT)
COMPLIANCE PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR,)
)
Plaintiff,) OALJ Case
) No. 2017-OFC-0006
)
vs.) OFCCP
) No. R001926999
ORACLE AMERICA, INC.,)
)
Defendant.)

VIDEOTAPED DEPOSITION of TAMERLANE BAXTER,
taken on behalf of Plaintiff, at San Francisco
Federal Building, 90 7th Street, Suite B-140,
San Francisco, California, beginning at 8:57 a.m.
and ending at 5:17 p.m. on Wednesday, July 3, 2019,
before GINA V. CARBONE, a Certified Shorthand
Reporter, State License No. 8249.

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A P P E A R A N C E S

For the Plaintiff:

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
By: LAURA C. BREMER, Esq.
NORMAN E. GARCIA, Esq.
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bremer.laura@dol.gov
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ORRICK, HERRINGTON & SUTCLIFFE, LLP
By: WARRINGTON S. PARKER III, Esq.
YEKATERINA (KATIE) REYZIS, Esq.
405 Howard Street
San Francisco, California 94105
(415) 773-5700
wparker@orrick.com
yreyzis@orrick.com

ALSO PRESENT: FRANK QUIRARTE, videographer

--oOo--

1 Q. Okay. What about specifically claims of
2 compensation discrimination?

3 A. What we do in any investigation depends
4 specifically on that case.

5 Q. The second bullet point says, "Individually
6 or with management (depending on the matter)
7 communicate results of the investigation to the
8 accused individual."

9 If someone specifically has been accused of
10 compensation discrimination, would you convey that
11 to that person?

12 A. I don't know.

13 Q. If a manager has been accused of
14 compensation discrimination, are you aware of any
15 investigation that was conducted that did not convey
16 the result -- or let me ask that again.

17 A. Yeah, you kind of lost me there.

18 Q. Where your team conducts an investigation
19 of compensation discrimination and determines
20 whether or not there has been compensation
21 discrimination, can you think of a situation where
22 you have not conveyed the findings to a person
23 that's been accused of compensation discrimination?

24 A. Off the top of my head, no.

25 Q. The next bullet point says you "Work with

1 LOB" -- does that mean "line of business"?

2 A. I would assume it does, yes.

3 Q. -- "management to implement actions
4 resulting from the investigation."

5 Can you list for me the types of actions
6 that have resulted from investigations of
7 compensation discrimination?

8 MR. PARKER: Instruct not to answer.
9 Attorney-client privilege.

10 THE WITNESS: I can't answer that question.

11 BY MS. BREMER:

12 Q. You can't answer because of your attorney
13 instructing you not to answer?

14 A. I can't answer because whatever we do in
15 any given investigation is at the direction of
16 counsel.

17 Q. And so you're not answering for that
18 reason?

19 A. I just answered.

20 Q. Well, that's not an answer to my question,
21 but --

22 MR. PARKER: That is the reason she's not
23 answering.

24 BY MS. BREMER:

25 Q. Okay. I just want -- when you say things

1 were done at the instruction of or at the direction
2 of counsel, you're saying you're not going to answer
3 further because you're claiming attorney-client
4 privilege; is that right?

5 MR. PARKER: She is not. I am. And I'm
6 instructing her not to answer.

7 And you'll follow my instructions, correct?

8 THE WITNESS: That's correct.

9 MR. PARKER: All right. Now we're clear.

10 BY MS. BREMER:

11 Q. Have you conducted any other training on
12 how to conduct investigations of complaints?

13 A. Are you asking if I personally have
14 conducted training on --

15 Q. Why don't I ask, does Oracle provide any
16 other training on how to conduct investigations of
17 complaints?

18 A. I don't know.

19 Q. Have you conducted any training on how to
20 conduct investigations of complaints?

21 A. The training -- the only training that I
22 conduct is the training that we've already
23 discussed.

24 MR. PARKER: May I ask a question, just so
25 we're clear on something?

1 evidence gathered, the investigation revealed that
2 you are paid comparably to the majority of your
3 peers who perform substantially similar work. We
4 found no evidence that gender or any other protected
5 characteristic was a factor in the determination of
6 your compensation or that of others."

7 Are you aware of any other information
8 provided to [REDACTED] as a result of her
9 complaint in the investigation?

10 A. I am not aware.

11 Q. Are you aware of any investigation by
12 Oracle that resulted in a finding that there was
13 compensation discrimination?

14 MR. PARKER: Sorry. Hold on.

15 BY MS. BREMER:

16 Q. Are you aware of any investigation by
17 Oracle that resulted in a finding that there was --

18 MR. PARKER: I see it. I think it's vague.

19 BY MS. BREMER:

20 Q. Okay. Are you aware of any investigation
21 by your group --

22 MR. PARKER: Oh, I'm sorry, your question
23 is divorced of Exhibit 115?

24 MS. BREMER: It's not completely divorced.

25 I -- this Exhibit 115 says, "We found no

1 evidence that gender or any other protected
2 characteristic was a factor in the determination of
3 your compensation or that of others."

4 I'm wondering if she's aware of any
5 investigation by her group that did find gender
6 discrimination in compensation.

7 MR. PARKER: Okay. As framed, it calls for
8 attorney-client privilege.

9 MS. BREMER: No, I'm asking about the
10 results of the investigation.

11 MR. PARKER: But you didn't say that. And
12 are you saying something that was communicated to an
13 employee? Because if you don't have that, then it
14 would definitely be protected by attorney-client
15 privilege.

16 BY MS. BREMER:

17 Q. Okay. Are you aware of any results of an
18 HR investigation that communicated to an employee
19 that found compensation discrimination?

20 MR. PARKER: Is this for HQ and HCA?

21 MS. BREMER: Yes.

22 (Reporter clarification.)

23 MR. PARKER: This is for HQ and HCA.

24 Do you have the question in mind?

25 THE WITNESS: Okay. So you ask -- do I

1 understand your question to be, am I aware of any
2 results being communicated to an employee that we
3 found discrimination -- pay discrimination --
4 discrimination in pay?

5 BY MS. BREMER:

6 Q. Yes.

7 A. I am not aware.

8 Q. Are you aware of any investigation results
9 by the HR business partners that found pay
10 discrimination and were communicated to the
11 employee?

12 A. I can't answer that question as stated.

13 Q. Are you aware of any results of an
14 investigation by the HR business partners concerning
15 an employee at headquarters that found
16 discrimination, pay discrimination?

17 A. I'm --

18 MR. PARKER: As phrased --

19 THE WITNESS: I can't answer that question.

20 MR. PARKER: -- that would call for
21 attorney-client privilege.

22 And I don't understand why -- I don't
23 understand why she's saying she can't answer the
24 question. So do you mind if I take a break? I
25 don't care what the answer is.

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DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, declare under the penalty of perjury that I have read the entire foregoing transcript of my deposition or the same has been read to me, and the same is true and accurate, save and except for changes, corrections, additions or deletions indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

_____ I have made corrections to my deposition.

_____ I have NOT made any changes to my deposition.

Signed on the _____ day of _____,
20____, at _____, _____.
(City) (State)

TAMERLANE BAXTER

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REPORTER'S CERTIFICATE

I, GINA V. CARBONE, CSR No. 8249, RPR, RMR, CRR, CCRR, certify: that the foregoing proceedings were taken before me at the time and place herein set forth; at which time the witness was duly sworn; and that the transcript is a true record of the testimony so given.

The dismantling or unbinding of the original transcript will render the reporter's certificate null and void.

I further certify that I am not financially interested in the action, and I am not a relative or employee of any attorney of the parties, nor of any of the parties.

Dated this 17th day of July, 2019.



GINA V. CARBONE
CSR #8249, STATE OF CALIFORNIA