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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

PLAINTIFF OFCCP'S PROPOSED FINDINGS OF FACT

Background

1. Oracle is a global technology corporation that designs, manufactures, and sells computer software and hardware products, and offers services related to its products.¹

Support: PX309 at 15 (Resp. to RFA No. 2); Tr. 1164:1-6.

2. In the United States, Oracle has more than 74 locations, employing more than 45,000 full-time employees, including approximately 7,500 employees at its headquarters in Redwood Shores, California (“HQCA”). Oracle has employed approximately ^{Redacted} employees in the Product Development job function, ^{Redacted} employees in the Information Technology (“IT”) job function, and ^{Redacted} employees in the Support job function at HQCA since 2013.

Support: Second Amended Complaint (“SAC”) ¶¶ 2-3; Answer to SAC ¶¶ 2-3; PX309 at 15-16 (Resp. to RFA No. 5); PX274 at 6 (¶18).

Oracle’s Leadership and Organization

3. Larry Ellison founded Oracle in 1977 and served as Oracle’s Chief Executive Officer (“CEO”) from 1977 through 2014. Since 2014, Ellison has served as Oracle’s Chief Technology Officer (“CTO”) and Chairman of the Board. He is Oracle’s largest shareholder.

Support: PX264 at 22-23; PX450 at 13; PX451 at 20.

4. Mark Hurd served on Oracle’s Board from 2010 until 2019 and as an Oracle CEO from September 2014 until September 2019. Support and part of IT reported to Hurd.

Support: PX451 at 9, 22; PX22A at 59:6-10, 60:1-12; Tr. 111:19-24.

5. Safra Catz has been a Director on Oracle’s Board since 2001, was a President from 2004 to September 2014, and has been an Oracle CEO since September 2014.

Support: PX264 at 20; PX450 at 12; PX451 at 9, 18.

6. Oracle uses the term “line of business” (“LOB”) to refer to its reporting structure. Each LOB is “led by a specific person,” who directly reports to Ellison, Hurd, or Catz (the “chief executives”).

Support: Tr. 1193:7-15; PX22A at 85:9-86:12, 87:1-88:3; PX287 at 7.

7. From before 2013 through September 2018, Thomas Kurian was the President of the Product Development LOB—which included all of Oracle’s broad product categories (Database,

¹ To avoid unnecessary duplication, OFCCP does not include the eight Stipulated Facts that the Court held “are established for all purposes.” Order Following Pre-Hearing Conference at 9. In addition, OFCCP relies on evidentiary support cited in the accompanying Post-Trial Brief.

Middleware, Infrastructure, Cloud, and Applications) and personnel in IT reporting to Campbell Webb. Kurian's direct reports included Steve Miranda, Andy Mendelsohn, Edward Screven, Don Johnson, and Campbell Webb. Kurian reported directly to Ellison.

Support: Tr. 1103:25-1104:22, 1193:16-24, 1392:1-11, 1414:24-1416:1, 1482:20-24; PX12A at 104:11-14; *see also* JX131 in columns ("cols.") D-E, AH, BR (most of the Oracle employees at HQCA in the 3 job functions at issue reported to Kurian).

8. After Kurian left Oracle, executives who had reported to him reported directly to Ellison.

Support: Tr. 111:19-22, 1103:20-1104:15, 1465:4-1466:18, 1482:20-24.

9. Executive Vice President ("EVP") Joyce Westerdahl has headed Oracle's Human Resources ("HR") since 2000 and reports directly to Catz. Westerdahl "runs everything that encompasses HR," including recruiting, compensation, Oracle's internal computer systems for recruiting and compensation, compliance, and investigations. Her direct reports include Senior Vice President Victoria Thrasher (diversity programs and training), Vice President ("VP") Anje Dodson (internal systems), VP Jonn Nolitt (internal recruitment), and VP Phil Jenish (compensation). Her indirect reports include Senior Directors Kate Waggoner (compensation), Shauna Holman-Harries (OFCCP compliance), and Tamerlane Baxter (internal investigations).

Support: PX26A at 12:14-15:11, 15:14-15, 17:5-22:4, 41:20-42:11; PX22A at 62:17-23; Tr. 64:25-65:5, 331:25-332:16, 477:6-478:15, 1341:13-15; PX81.

Oracle's Executives Exercise Authority Over Pay Decisions Through Setting Compensation Budgets, Establishment and Enforcement of Oracle's Compensation and Job Classification System, and the Pay Approval Process

10. Westerdahl "revamp[ed] [Oracle's] job code systems, all of [its] guidelines, all of [its] practices within every country, how [it] did offer letters, how [it] hired people, how [it] recruited them, and put it into a system." She implemented the systems Oracle uses to manage its employees and compensation, including offers to hires, focals (*i.e.*, salary increases), bonuses, equity (stock options or restricted stock units), and performance management. These software systems incorporated approval matrices requiring compensation recommendations to be approved by HR, the LOB hierarchy, and Oracle's chief executives.

Support: PX26A at 17:5-22:4; PX81; PX419; JX102A at 102:17-23, 105:14-106:7 (PX35); PX22A at 27:11-29:9.

11. Oracle's chief executives set Oracle's compensation budgets, including budgets for headcount, college offers, focal increases, equity, and bonuses.

Support: PX22A at 231:10-232:4 (JX142 at 4); PX24A at 192:19-194:5, 250:9-252:14, 265:9-20; PX26A at 76:5-18, 77:8-24, 108:3-12; Tr. 1107:15-1108:13, 1115:20-1116:11, 1224:24-1226:18, 1310:18-22; PX490; PX76.

12. The chief executives allocated a portion of the budget to each of their reports. Each level of management could decide to make a compensation recommendation for subordinate staff personally or delegate the recommendation decision to a lower-level manager. Managers who received a portion of the budget were given a few days to make pay recommendations for employees reporting to them. Managers who did not submit their recommendations within that window were not able to make pay recommendations. Recommendations for compensation offers at hire, focal increases, off-cycle salary increases (including "dive and saves"), equity, and bonuses had to be approved by HR, and by all levels of the LOB hierarchy above the recommending manager, up to and including the CEO's office.

Support: PX24A at 250:9-253:19, 265:9-266:19; PX26A at 84:19-85:17; PX22A at 110:17-111:23, 118:17-121:7 (JX16), 125:16-22; JX102A at 111:6-113:12 (PX38 at 53-64); Tr. 425:9-426:21, 1108:10-1109:7, 1115:20-23, 1120:19-24, 1126:6-13, 1135:18-1136:21 (PX105), 1137:22-1140:16 (PX146), 1152:3-18, 1224:22-1227:2, 1250:13-1252:17, 1256:3-7, 1421:14-1422:5, 1454:8-1457:14; JX108 at 11, 46; JX50 at 9-11; JX146 at 10-12.

13. The compensation approval process required submission and review of detailed documents and information. High-level managers and executives, including the LOB heads and the CEO's office, could and did modify pay recommendations of lower level managers and withhold approval and return pay recommendations to the manager for modifications. Managers were not permitted to communicate pay decisions to employees until the manager's recommendations received approval by the CEO's office.

Support: PX24A at 117:12-122:17, 162:14-25, 295:14-296:16; PX22A at 118:17-125:22, 147:15-148:2, 148:21-150:12, 151:8-152:4; JX102A at 102:17-23, 105:14-106:7, 112:15-113:12; PX490; PX176 at 22-24, 32-34; Tr. 131:21-135:8, 422:25-425:8, 1001:24-1006:8, 1084:17-24, 1091:9-21, 1114:19-21, 1117:20-1118:21, 1121:19-1123:25, 1126:6-1127:1, 1135:18-1137:11 (PX105), 1235:11-1237:8, 1287:5-1291:23, 1297:3-1299:8, 1304:23-1308:16 (JX11²), 1309:15-1310:22 (PX490), 1315:20-1323:2 (DX310, rows 1244-1251), 1323:6-1324:20 (DX310, rows 160-162), 1324:21-1329:24 (DX309, rows

² Global Approval Matrices identify HR, the highest-level LOB approver, and CEOs and CTO as approvers. *See, e.g.,* JX11 in the "Automated" tab at 1-2 and "Rules" tab at 1-2, PX35 at 1-2, 10; *see also* JXs: 2-6, 16-17, 36-37, 44-45, 63-64, 66-67, 71-72, 82-83, 91-92.

742-743, 1249-1252, 956-959), 1329:25-1331:1 (PX191, rows 8980-8993), 1331:14-1335:11 (PX479), 1416:6-1421:13, 1451:8-1458:19; PX37 at 4, 55; JX153 at 28-39; JX108 at 39; PX94 at 3-4; PX179 at 22.

14. Oracle's HR created training and guidelines for pay decisions, disseminated the training to Oracle's managers, assisted managers in making pay recommendations, and enforced these instructions before and during the approval process.

Support: PX26A at 74:12-17, 74:24-75:16; PX22A at 68:21-24, 77:3-10, 79:17-81:3, 285:15-286:9; JX102A at 13:9-22, 46:21-48:22, 152:6-153:10; PX24A at 65:4-66:4, 66:10-69:9, 74:20-76:14, 79:2-80:1; PX180 at 18-19; PX287 at 10; PX179 at 20-23, 32; Tr. 130:20-132:8, 1250:13-16; JXs: 24-25, 106, 113-114, 126-127, 138, 140-144 (compensation guidelines); JXs: 10, 50, 70, 78, 108-109, 146 (focal, bonus & equity guidelines); *see, e.g.*, Tr. 118:3-25, 421:22-425:6, 998:1-999:1, 1003:25-1005:17 (PX502), 1423:7-1424:1.

Oracle's Job Classification System Is Used to Set Compensation

15. Oracle's Employee Handbooks state: "[T]o determine your salary and total cash compensation package, we take into account market research, your Career Level and your individual performance." Oracle trains managers to use these factors in setting compensation: (1) "the job salary range which is based on the external market value for the job;" (2) "the employee's Global Career Level;" (3) the salaries of other Oracle employees in the same job and location;" (4) "and the individual employee's performance."

Support: PX50 at 39 (2014); JX155 at 42 (Nov. 2018); PX31 at 1; PX32 at 1.

16. Westerdahl "revamp[ed]" Oracle's job classification system in approximately 2000. Since then, Oracle has classified its jobs in a "Global Job Table" to reflect employees' roles within Oracle. Oracles' detailed Global Job Table contains approximately ^{Redacted} unique job codes that are each assigned an independent system job title ("SJT").³ The SJT refers to and incorporates four attributes: (1) job function (such as, Product Development), describing the "general type of work the employee performs," (2) specialty area (such as, Development), "to further identify the work performed," (3) job title/family, which indicates "what, within that specialty area, does the person do" (such as, Software Developer) and (4) career level, which indicates "skill, knowledge, and responsibilities and performance expectations." Oracle assigned

³ Each "job code" has a unique "system job title" associated with it. JX144 at 5; PX22A at 173:9-17. To avoid confusion, OFCCP uses SJTs to refer to the lowest level of Oracle's job compensation classification system, regardless of whether Oracle in the particular document or testimony referenced used the term "job code" or "system job title," as they refer to the same, most granular level of Oracle's job coding system.

approximately ^{Redacted} unique SJTs to its employees at HQCA in the Product Development, IT, and Support job functions. HR's compensation team maintains and updates the Global Job Table.

Support: PX26A at 17:10-18:11; JX111 at 12-13; JX127 at 12; JX144 at 4-9, 12-14; PX24A at 106:14-107:23; PX22A at 31:14-32:15, 90:12-93:12 (JX149 at 9), 98:3-17, 173:9-17, 225:11-19; JX102A at 72:12-23 (PX34 at 5), 74:24-78:25; JX123; PX131; Tr. 1165:5-1166:18.

17. Oracle has two career level paths: Management (M1-M10) and Individual Contributor (IC0-IC6). Responsibilities, individual contributions, and job complexity increase from one career level to the next in Oracle's career level hierarchy.

Support: PX24A at 100:24-102:16; JX102 at 75:15-77:17; JX111 at 14; JX127 at 13; JX144 at 9-11; JX114 at 5-7, 17, 23; JX1 at 1-2; PX22A at 172:9-20, 173:1-8, 227:15-229:9; JX1 at 2-3; JX114 at 6-7.

18. Oracle's compensation team assigns a salary grade with a corresponding salary range to each SJT on the Global Job Table. It develops salary ranges based on surveys providing salary data from its competitors. The salary range reflects the amounts Oracle is willing to pay for each SJT. The midpoint of each range "typically reflects the external market rate for an experienced, fully competent and solid performing employee performing this job." Oracle groups all SJTs "considered equal in value to Oracle" into the same grade with the same salary range.

Support: JX140 at 4, 6-11; JX127 at 17-19; JX102A at 86:17-87:21 (PX34 at 29 (*see also* 27-28, 30)); PX24A at 106:9-110:3, 126:10-127:9; PX22A at 173:9-22, 241:24-242:20; PX171 (showing systems job titles with same salary grades).

19. Oracle has acquired over 100 companies since 2005. During its acquisitions, HR's compensation team reviewed information on the job duties and experience levels of the targeted employees to map them to Oracle SJTs on the Global Job Table.

Support: PX81; Tr. 1238:4-1239:9; PX288 at 3-4 (¶¶ 6-9); JX102A at 18:21-19:11, 22:3-24:3; PX22A at 29:10-30:3; JX149 at 17-18; PX268 at 6.

20. Oracle uses its Global Job Table classifications for compensation decisions. Oracle's training instructs, "when choosing a job code [SJT], you should select the job that most closely reflects the role," which states is "important" because job code [SJT] impacts the employee's compensation, including setting the employee's salary range and eligibility for certain compensation.

Support: JX114 at 15-16; JX111 at 15; JX127 at 11, 14; JX144 at 4-5, 7, 12-14; JX102A at 81:13-82:19; PX24A at 250:9-251:15 & JX70 at 7-10, (global compensation team proposes focal budget to CEOs based on statistics by job function).

Oracle Does Not Use Product Assignments to Set Pay

21. Product is not a factor in the job classification system Oracle uses to set pay for employees in the Product Development, IT, or Support job functions. Oracle has no database that tracks the products on which these employees work.

Support: PX22A at 102:25-103:9, 226:12-227:22; JX102A at 76:14-19; JX103 at 112 (¶141), 222 (¶1); PX270 at 7:15-17 & 9:5-11; PX50 at 39; JX155 at 42; PX31 at 1. *See also* PX267 at 158-163, JXs: 24-25, 106, 113-114, 126-127, 138, 140-144; Tr. 1121:4-14.

22. Oracle employees' education and skills permit them to work on multiple products.

Support: Tr. 122:14-123:1, 124:11-125:9, 160:16-23, 169:7-170:14, 177:23-179:14, 201:20-206:3, 208:15-212:3, 214:6-23, 281:16-282:14, 283:23-284:21, 301:6-303:14, 311:20-312:5, 408:12-14, 428:11-14, 556:19-558:7, 560:14-561:2, 607:16-614:15, 607:6-8, 983:19-984:7, 990:2-993:11, 1066:19-1068:20, 1102:1-22, 1529:5-1534:4, 1539:2-23, 1886:13-1888:6, 1900:7-1901:3, 1919:14-1929:20, 1933:13-1935:2, 1936:14-1938:20.

23. Oracle does not change employees' pay when they work on different products. Oracle's policies state that employees transferring to jobs within the same career level should not receive salary increases (regardless of changing product assignments, reporting hierarchy, or SJT).

Support: JX106 at 6; JX114 at 31; PX176 at 42; PX22A at 296:2-297:10; PX21A at 105:4-23; JX111 at 35; PX24A at 309:18-25, 310:2-24; Tr. 122:3-10, 169:19-170:17, 281:16-282:8, 311:20-312:11, 418:21-420:2, 428:11-17, 1089:20-1090:2, 1489:4-6, 611:10-612:3, 618:7-620:11 & 622:3-5, 1938:10-12 & 1941:20-1942:16.

24. Finance, HR, and LOBs develop, alter, and delete "Cost Centers" (also called "organization names") to track expenses. Cost Centers do not align to specific product lines.

Cost Center is not a factor enumerated in Oracle's compensation guidelines and trainings.

Oracle employees may work in multiple Cost Centers and move between and among different Costs Centers without changes in pay. An employee's Cost Center assignment may remain the same when the employee moves between and among work on different products.

Support: PX14A at 176:14-178:5; PX26A at 143:19-144:5; JX102A at 103:23-104:2; PX209 at 5 (¶13); PX211 at 8-9 (¶13); Tr. 122:14-127:2, 271:4-21, 427:8-17, 746:15-752:11, 985:1-987:2, 990:2-993:11 & 1016:8-1017:16, 1068:21-1069:2, 1144:22-1145:2, 1146:12-13, 1400:7-20, 1467:2-5; JX103 at 112 (¶141), 222 (¶1); PX270 at 7:15-17 & 9:5-11; JXs: 24-25, 106, 113-114, 126-127, 138, 140-144 (compensation guidelines).

Oracle Does Not Systematically Base Pay Decisions on Performance

25. Oracle's trainings state that employees learning the job or performing below standard should receive salaries in the first quartile of the salary range for their jobs. Oracle's trainings

state that top performers, employees with a “hot skill,” and employees ready for a promotion should receive salaries in the third or fourth quartiles of the salary range for their SJTs.

Support: JX114 at 17; JX111 at 20; JX127 at 19; JX140 at 11.

26. Oracle does not require performance appraisals. The appraisal system is not linked to the compensation system. Appraisals are not required in the approval process for pay decisions.

Support: PX14A at 134:23-135:16, 155:9-17, 148:1-7; PX24A at 226:19-227:18; JX112 at 3 (Ellison - 35% completed); JX102A at 118:17-24, 125:6-126:8; PX21A at 114:19-24.

27. Oracle usually did not give salary increases when it promoted employees to the next career level.

Support: PX21A at 217:19-219:19; Tr. 133:19-134:4, 271:22-272:14, 275:17-21, 399:4-9, 406:14-407:24, 564:23-565:3, 984:8-17, 990:21-991:1, 1015:6-1016:7, 1922:19-1923:4, 1941:20-1942:16; JX127 at 22, 26; JX111 at 23, 27; JX114 at 26; PX102 at 1.

Professor Madden’s Studies Found Statistically Significant Gender and Racial Compensation Disparities among Employees with the Same SJTs

28. Professor Madden conducted specific regression analyses of Oracle’s compensation data from 2013 to 2018 to identify racial or gender pay disparities within Oracle’s SJTs, accounting for all factors Oracle uses to determine that employees are similarly situated for compensation purposes. Professor Madden compared the pay of employees Oracle placed in the same SJT and controlled further to compare only employees with the same degree level of education and same years of experience (both inside and outside Oracle). Her statistical analyses yielded findings that from 2013 through 2018, Oracle paid women less base pay and less total compensation than similarly-qualified men in the same SJT, with standard deviations between 7.32 and 9.03 for the disparities in base pay and between 4.27 and 5.21 for total compensation pay disparities. Her statistical analyses yielded findings that from 2013 through 2018, Oracle paid Asians less base pay and less total compensation than similarly-qualified Whites in the same SJT, with standard deviations between 3.92 and 5.24 for the disparities in base pay and between 2.67 and 5.29 for total compensation pay disparities. Professor Madden’s analyses yielded findings that from 2013 through 2018, Oracle paid African Americans less in base pay and total compensation than Whites in the same SJT, with statistical significance in base pay in 2017 and 2018. Professor Madden testified that the standard deviations for African Americans do not reach statistical

significance because the small number of African Americans employed by Oracle in Product Development means that “we simply can’t have much power in statistics.” Professor Madden testified that the fact that the standard deviations revealed by her analyses for African Americans in base pay approach statistical significance reflects the consistency of the pay disparities experienced by African-Americans in Product Development at Oracle. She testified that her findings show that the pay difference reported in her analyses “is virtually experienced by all of the African Americans versus all of the [W]hites.”

Support: PX1 at 14-17, 27-31, 38, 40-43, 62, 65, 69, 72, 76-77 (Tables 1(a), 1(d), 2(a), 2(d), 3(a), 3(b)); Tr. 728-729, 738:9-13, 782:2-21, 784: 8-12, 786:10-787:14.

Oracle Assigns Women, Asians, and African Americans to Jobs with Lower Starting Pay and Career Levels

29. Oracle maintains a team of internal recruiters who are assigned hiring managers. The recruiters’ “primary job . . . is to source the best talent available in the market.” Oracle’s internal recruiters proactively search for, recruit, and match recruits to specific requisitions.

Support: PX181 at 6-10, 17-18; PX179 at 7, 13; PX180 at 7-11, 16-19; Tr. 211:12-213:16, 985:16-987:2.

30. Oracle has and exercises its discretion at the time of hire to place employees one career level above or below the career level listed in a requisition.

Support: Tr. 1197:5-13; JX88 at 3; PX24A at 279:24-280:22; DX449 at 56-57 (Charts R1-R2).

31. Professor Madden studied the data utilized in the requisition study by Oracle’s expert, Dr. Ali Saad, and found that this data revealed that Oracle systematically favored men and White applicants when setting career level at hire.

Support: Tr. 833:19-837:16, 841:1-843:2; DX449 at 35-37, 56-57 (Charts R1-R2).

32. Professor Madden studied Oracle’s compensation of employees with the same degree level (education level), age (a proxy for experience), time at Oracle (a proxy for skill and experience), and the same job title/family (also called “job descriptor” by Professor Madden) (a proxy for exogenous specialized education and experience). From these statistical analyses, she found that Oracle pays women between 9.2% and 10.4% in salary below that of similarly-

situated men, with standard deviations above 12 and, it pays between 4.7% and 7.3% less in salary to Asians, with standard deviations from 4.6 to 8.3.

Support: PX1 at 7-10, 17-18, 65, 72 (Table 1(d) at column 6, Table 2(d) at column 6); Tr. 722:11-737:11, 740:16-743:3, 786:13-787:14, 799:1-10.

33. Based on her study of Oracle's compensation data, Professor Madden found that the gap in base pay attributable to Oracle's placing Asians and women in lower-paying career levels and pay rates at hire (controlling for gender, race, age, education, hire year, and job title) is approximately 3.4% for Asians, 6% for women, and 5.2% for African Americans.

Support: PX1 at 79 (Table 4).

34. Professor Madden conducted statistical analyses to determine when Oracle steered women and Asians into lower-paying positions. The findings of her study show that, for Asians, the steering chiefly occurs when Oracle sets career levels at hire. Her findings show that, for women, half of the pay gap occurred at hire while the other half occurred over time, through Oracle promoting women into higher career levels (and thus SJTs) at a lower rate than similarly situated men.

Support: PX1 at 80-81 (Tables 5-6); Tr. 831:14-833:4, 840:5-9.

Oracle's Reliance on Prior Pay to Set Pay at Hire Resulted in Lower Starting Pay and Classification into Lower-Paying SJTs for Women, Asians, and African Americans

35. Prior to October 2017, Oracle required managers to request current pay from candidates and provide both current salary and proposed salary in mandatory fields in Oracle's automated system used to approve offers. HR trained managers that offers involving a "[h]igh increase in comp[ensation] compared to current comp[ensation]" were "non-standard" and required additional justification for approval by Oracle's "executive office." Further, Oracle instructed managers that offers not including "any, and all, information that you have" could result in non-approval by the executive office, and that salaries would be verified in background checks.

Support: PX176 at 22-24, 30-34; JX88 at 14; PX24A at 56:15-57:2; PX22A at 363:6-265:2; PX289 at 3:18-21; PX20A at 29:25-30:6, 38:20-39:3, 59:15-60:1, 60:4-6; PX69 at 9-10; PX74 at 1-2, PX94 at 2-3; PX193; PX187 at 3; PX71 at 2; PX43 at 13 (¶11.b); DX309 in cols. B, D-E, H at row 343; Tr. 1323:6-1324:20 & DX310 in cols. B, D-E, H at rows 160-162; Tr. 1324:24-1326:9 & DX309 in cols. B, D-E, H at rows 742-744; Tr. 1326:10-1329:6 & DX309 in cols. B, D-E, H at rows 1249-1260; Tr. 1329:8-24 & DX309 in cols. B, D-E, H at rows 956-960; Tr. 1331:14-1335:11 & PX479 at 1-2.

36. Until approximately 2017, Oracle typically offered employees hired through acquisitions the same pay they had received at the acquired company. Oracle advised that recommendations to pay a different amount were “non-standard,” requiring “strong justification” that would be “closely scrutinize[d]” by the CEO’s office.

Support: PX22A at 167:2-168:11, 360:18-365:2; PX268 at 4, 7; Tr. 1239:10-1240:11; PX288 at 3-4 (¶¶ 6-9); PX43 at 13 & 16 (¶¶11 (a & i)); JX102A at 20:2-21:11, 24:10-25:8.

37. Professor Madden calculated the gender and racial differences between prior pay and starting pay and determined that the salary difference and standard deviations between prior pay and starting pay was “virtually zero.”

Support: PX1 at 51-52 and 79 (Table 4); Tr. 847:1-849:25.

Oracle’s Chief Executives Did Not Correct the Race and Gender-Based Pay Gaps They Knew Existed

38. Oracle’s chief executives provided focal budgets for salary increases on average every 14 to 18 months, and provided no focal budget in 2018. The focal budgets Oracle’s chief executives authorized between 2013 and January 18, 2019⁴ were “fairly lean,” meaning “little or no focal budget.”

Support: PX24A at 192:19-193:4, 327:24-328:16, 307:22-308:5; Tr. 1493:25-1494:3, 192:19-23, 245:6-246:14, 276:10-11, 247:4-248:17, 308:8-24, 328:5-12; PX102 at 1; JX70 at 5 (focal budget increases: ^{Redacted} % in 2015, ^{Redacted} % in 2016), 15; JX25 at 38; PX21A at 217:19-219:9; JX111 at 34 & JX24 at 5 (limited focal budgets had to address both promotions and merit increases).

39. Between 2013 and 2019, Oracle’s chief executives provided corporate bonus budgets in 2014, 2017, and 2018, which were “incredibly lean” or “tiny.”

Support: PX1 at 13; PX24A at 262:24-263:21, 269:1-6, 275:16-276:1, 276:14-15; Tr. 1234:1-7, 1559:2-1560:12.

40. When Oracle’s chief executives authorized a budget for salary increases, bonuses, or equity, Oracle’s executives established compensation guidelines to be followed by managers who received a portion of the budget to use for compensation recommendations. Oracle’s guidelines for focal reviews capped the percentage of recipients of salary increases at 40, 50, and 60% of eligible employees (depending on the year). Equity guidelines limited equity

⁴ Oracle provided data through January 2019. PX284 at 3.

disbursement to 5, 20, or 35% of eligible employees in North America (depending on the year), generally to high-level managers and individual contributors.

Support: Tr. 117:3-16, 120:9-122:2, 129:17-130:4, 133:7-16, 134:5-135:18, 421:1-425:8, 1091:9-21, 1114:16-21, 1461:1-19, 1559:2-8, 1566:22-1568:6; 1568:17-1569:5; PX146 at 2; PX24A at 247:4-13, 271:20-272:19; PX21A at 305:7-306:3; PX105 at 1-3; PX22A at 198:15-200:8.

41. Oracle’s executives communicated Oracle’s priority to retain “top talent” with the leanest budget possible.

Support: Tr. 1408:22-1409:3, 1423:7-22, 1484:3-6, 1550:2-1551:2; PX21A at 274:14-19, 285:12-286:5; JX25 at 38; JX106 at 17; JX111 at 14; JX127 at 33; JX138 at 17; PX198.

42. Oracle’s training materials advised managers that “you may not have the budget to perfectly place all employees” in the salary range based on the factors Oracle’s compensation and job classification trainings advised managers to consider. Oracle’s executives used the term “salary compression” to describe employees receiving pay below their jobs’ salary-range midpoint as a result of inadequate budgets to increase their salaries.

Support: JX114 at 17; Tr. 133:14-136:22, 575:11-17; JX70 at 7-10; JX127 at 22-23; PX21A at 283:6-17, 305:7-306:3; PX24A at 327:24-328:16, 238:11-239:5, 240:24-241:8, 243:8-246:14 & PX101 at 6, 12.

43. Oracle created a “dive and save” process, which permitted Oracle’s executives to consider and approve salary increases for employees who threatened to take a higher-paid job offer from a competitor.

Support: Tr. 1099:5-1100:2, 1126:6-1127:6, 1481:6-20; PX24A at 286:15-287:7; PX198.

44. Oracle’s chief executives funded the “dives and save” process through individual executives’ budgets.

Support: Tr. 1486:11-1487:4, 1257:16-20; PX21A at 279:17-280:14; JX70 at 7: Redacted; PX104 at 2.

45. Oracle’s executives and the CEO’s office received detailed justifications as part of the mandatory approval process for a “dive and save” request. The “dive and save” requests included factual information describing highly skilled and experienced women and Asians who received salaries lower than the salary mid-point for their positions, contrary to the guidelines and salary benchmarks identified in Oracle’s compensation program.

Support: See, e.g., PX103 at 1; PX104 at 1-2; PX105 at 1-3; PX294 at 1-3; PX298 at 1; PX299 at 1; PX301 at 1-3; PX313; PX315; PX316; PX321; JX24 at 19; Tr. 394:3-5, 398:16-399:3.

46. Dr. Kirsten Hanson-Garcia testified that when she worked for Oracle as Senior Director of Global Organization and Talent Development in HR, she attended a meeting with other Oracle executives, Oracle's current Executive Vice President for HR (and then Senior VP for HR), Joyce Westerdahl, and Oracle's CFO Greg Maffei. At this meeting, during the course of a discussion regarding interviewing and hiring, Dr. Hanson-Garcia heard Westerdahl advise Maffei to hire a woman, because "she'll work harder for less money."

Support: Tr. 63:3-5, 64:20-24, 79:1-80:23.

Oracle Did Not Analyze, Identify, or Correct Gender and Race Pay Gaps in Accordance with Their Affirmative Action Plan

47. Oracle's 2014 Affirmative Action Plan ("AAP") states that Oracle adopted it consistent with its obligations as a federal contractor. Catz signed Oracle's AAP. The AAP identifies Catz and Holman-Harries (Oracle's Director of Diversity Compliance) as "Responsible for Plan Implementation." The AAP states that Oracle's chief executives had given "senior management support" to Holman-Harries.

Support: PX195 at 1-2, 5-7, 12, 15; Tr. 339:5-18, 340:16-21; PX16A at 74:7-75:12.

48. The AAP identifies Holman-Harries as "responsible for implementing an effective auditing and reporting system." It states that Holman-Harries analyzes the results of Oracle's employment actions to determine their impact on Oracle's AAP objectives, "reviews problem areas," "makes recommendations," and "communicates with management." Oracle's AAP states that "Oracle develops and analyzes Internal Audit Reports to assess performance in . . . compensation." Oracle made its AAP available to employees, and provided it to OFCCP during the compliance review.

Support: PX45; PX195 at 1-2, 5-7, 12; Tr. 339:10-15, 340:16-21, 345:1-348:7; PX16A at 74:7-11, 77:2-80:10.

49. Oracle's chief executives did not provide Holman-Harries with a budget to close race- and gender-based pay gaps.

Support: Tr. 357:12-23, 128:9-12, 389:5-12, 1111:21-1112:5.

50. Holman-Harries testified that she “developed no internal audit report to assess performance” in compensation, and “never studied Oracle’s compensation system.” She testified that she did not review or analyze Oracle’s compensation data to identify race- or gender-based pay disparities, track problem areas, recommend goals to address pay disparities, or report to top management or other managers pursuant to the AAP or 41 C.F.R. § 60-2.17.

Support: Tr. 345:1-348:22, 350:5-353:24, 354:21-360:17; PX16A at 98:17-100:10, 106:20-109:4, 112:25-113:8, 116:8-17, 120:18-121:1, 155:10-156:5, 243:19-244:3, 249:11-18, 255:2-256:1, 257:25-267:5 268:15-269:6; PX287 at 4, 11 n.1; PX26A at 330:5-11.

Oracle’s Executives Did Not Provide Training or Information Necessary for Managers to Identify and Correct Gender or Racial Pay Gaps

51. Race and gender data is necessary to perform race and gender pay equity analyses.

Support: Tr. 1791:10-1792:1.

52. Oracle’s automated systems: (1) do not permit a manager making compensation recommendations for his or her reports to see the compensation of similarly-situated employees reporting to other managers, (2) prevent managers from seeing the budget allocated to personnel or LOBs beyond their direct and indirect reports, and (3) do not include data of employees’ self-identified race and gender.

Support: JX81; JX108 at 46; PX155 at 3; PX157 at 9; PX21A at 145:9-22, 161:2-162:11, 209:22-25; PX12A at 227:10-15; PX24A at 237:6-238:10; PX26A at 319:21-321:22; Tr. 67:11-68:22, 1111:8-1112:6, 1113:4-1115:19, 1296:25-1297:4, 1298:6-8, 1483:24-1484:2, 1484:25-1485:11.

53. Compa-ratio is the ratio of the employee’s salary to the midpoint of their SJT’s salary range, and Oracle uses compa-ratio “for salary benchmarking of peers in role.” Neither Holman-Harries nor Oracle’s business leaders analyzed the compa-ratios of employees in the same SJT by race or gender for AAP compliance purposes.

Support: JX114 at 18; JX111 at 21; JX127 at 20; JX140 at 13; PX21A at 273:10-274:19; PX24A at 135:1-23; Tr. 354:15-19, 1115:3-12, 1209:16-1210:1, 1484:17-24, 1561:2-7, 1910:3-7.

54. The training Oracle provided to its managers did not include information on Oracle’s AAP obligations to identify and correct race and gender pay gaps, or provide information to managers about what steps to take to comply with Oracle’s AAP obligations. Oracle managers who made compensation recommendations did not conduct Oracle’s compensation analyses to

identify race or gender pay gaps; they testified that they did not know Oracle had AAP obligations to identify and correct race or gender pay gaps, and understood that they were not permitted to make recommendations regarding compensation which considered race or gender.

Support: JX49 at 2, 4, 6; JX157; JX159; PX306 at 3:10-18; PX274 at 11 (¶ 32); PX16A at 121:19-122:15, 125:7-126:17, 174:12-175:9, 249:11-252:8, 269:7-270:12; JX115 at 10-11; PX26A at 336:14-22; Tr. 1111:8-1112:6, 1112:23-1113:17, 1114:1-15, 1484:25-1485:11, 151:25-152:3, 69:1-20, 445:8-10; PX21A at 321:20-324:23; Tr. 1135:23-1136:1; JX102A at 70:15-71:9, 146:20-24.

Oracle's Practices Suppressed Information about Gender and Racial Pay Gaps

55. Oracle's HR systems prevented employees from accessing information about their own job and pay, including their SJT, salary grade, salary range, and compa-ratio. High-performing women, Asians, and African Americans who testified at trial did not know that Oracle paid them far below their salary-range midpoint or, sometimes, below even the salary range minimum.

Support: PX26A at 165:13-166:2, 243:7-244:23, 320:21-321:22; PX24A at 133:1-22; Tr. 72:24-74:21, 1115:13-19, 1558:16-1561:7, 1567:17-1568:8 (PX105 at 1, JX134 at "Salary History Windows" tab in cols. B, F-G, L, N, S for rows 9567-9568), 174:3-16, 183:2-184:10, 185:5-15 (JX134 at "Salary History Windows" tab in cols. B, F-G, L, N, P for row 28417), 165:22-24 (JX131 at "EMP Assignment Information" tab in cols. B, D-E, H, AF-AG for rows 65736-65743, use E07 salary grade and 10830 job code for reference in DX117, DX117 at row 26 in cols. A-H, K-O, R-V, Y-AC, AF-AJ, AM-AQ), 1899:13-22, 1907:7-10, 1909:5-11, 1952:14-19, 218:25-222:4, 313:25-314:1, 558:8-20, 563:21-23, 584:12-585:3.

56. Baxter, who manages Oracle's internal complaints and testified as its corporate designee on this issue, could not recall any investigation that had found evidence of compensation discrimination. In communicating its determinations that Oracle had found of no evidence of pay discrimination to complainants, Oracle stated there were "legitimate" or "bona fide" reasons for lower pay, including "budgetary constraints" and the complainant's "starting salary."

Support: PX10A at 216:17-218:11; PX123; Tr. 517:5-14, 570:19-572:6, 575:20-578:17 (PX119), 534:6-18, 515:20-516:8, 517:5-14; PX128; PX113; PX116; PX121; PX10A at 88:24-89:20, 91:4-19, 95:7-96:15, 216:17-218:11.

57. Baxter, who was in charge of managing Oracle's internal investigations, testified that her team did not track employment decisions affecting employees who had brought a complaint of discrimination. The only claims of retaliation she recalled handling were the result of a complaint raised by the employee.

Support: PX10A at 96:9-97:9, 122:15-123:13; Tr. 514:21-515:15 (PX109), 524:1-24.

58. Dr. Nicole Alexander testified that after she asked HR to discreetly review her pay, her manager made an angry call to her, she got her first bad performance review, she became ineligible for a promotion, and she was terminated. Based on her experience with Oracle's HR investigators, Dr. Alexander testified that she "wanted to let my friends know that if you had a problem don't go to Oracle HR with it."

Support: Tr. 559:5-25, 563:2-567:17, 568:4-570:18 (PX118), 572:23-575:7, 578:18-582:1 (PX291); *see also* PX129.

59. Holman-Harries' team did not receive, review, or have access to complaints filed by employees internally concerning gender and racial pay inequities. Oracle does not track or maintain a central repository of all internal discrimination complaints. Baxter testified that her team does not necessarily receive complaints of pay discrimination from sources such as exit interviews or complaints to HR business partners. Baxter also testified that she did not coordinate or communicate at all with Holman-Harries, including regarding the complaints Baxter's team investigated or about AAP compliance.

Support: PX16A at 262:17-263:16; PX10A at 21:7-22:8, 75:2-76:12, 161:9-162:24, 163:5-8, 233:22-25; PX246 at 6; Tr. 358:7-359:2, 363:11-15, 483:2-490:7, 492:7-14, 520:5-21, 547:25-548:21, 137:7-139:20, 223:1-21, 363:11-15.

60. Since at least 2017, Ellison and other board members annually blocked shareholder proposals to prepare a pay equity report identifying any gender pay gap and steps taken to reduce the gap.

Support: PX264 at 22-23, 124-126; PX450 at 63-64; PX451 at 20, 91-92.

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