

Sent: Mon, 31 Oct 2016 14:17:33 -0700 (PDT)
From: "Connell, Erin M." <econnell@orrick.com>
To: wipper.janette@dol.gov
Cc: "Siniscalco, Gary R." <grsiniscalco@orrick.com>, Shauna Holman Harries <shauna.holman.harries@oracle.com>
Subject: Oracle, HQCA Facility, OFCCP No. R00192699
HQCA Conciliation Correspondence (October 31, 2016).pdf

Dear Ms. Wipper,

Please see attached correspondence, with exhibits, following our October 6, 2016 conciliation meeting. We also will send a hard copy.

Best Regards,

Erin M. Connell

Partner

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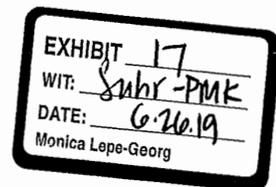


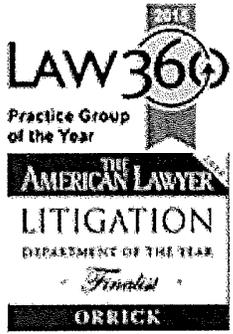
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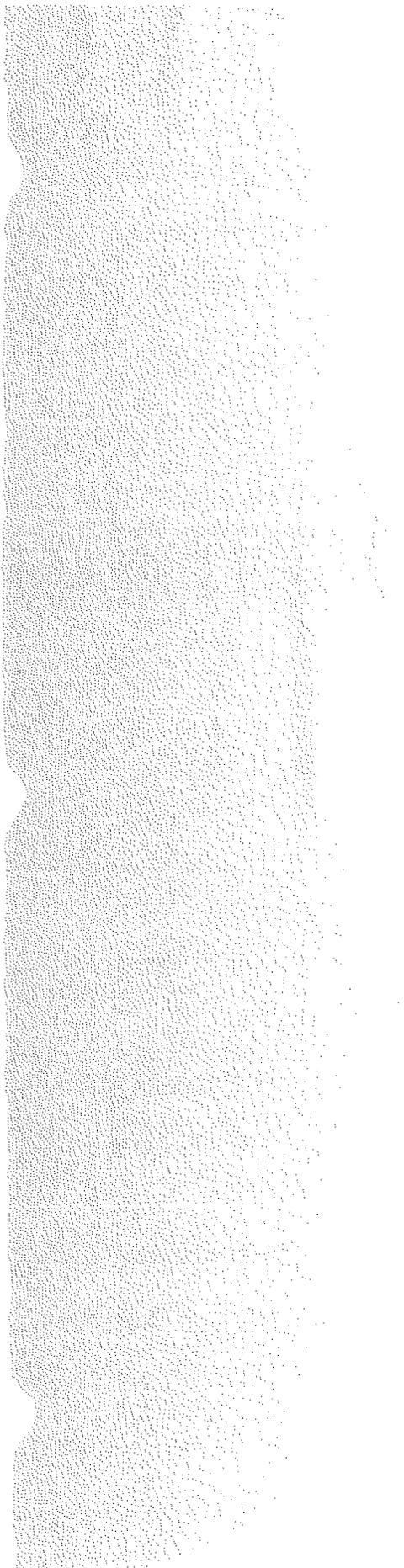
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Exhibit P-204









October 31, 2016

Confidential Conciliation Communication – FRE 408

VIA E-MAIL AND FEDERAL EXPRESS

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

Dear Ms. Wipper:

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

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

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

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

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



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A. Oracle's Recruiting Efforts for PT1 Positions Are Robust And Compliant.

A review of Oracle's actual recruiting practices for PT1 positions demonstrates that Oracle's recruiting efforts are robust, and further demonstrates Oracle has met its affirmative action obligations. For example, Oracle's jobs are open to *all* interested individuals, both internal Oracle employees and external individuals, worldwide. Any individual, from anywhere in the world, can access Oracle's website for jobs (and as described below, many Oracle applicants come from outside the U.S.). A simple Internet search, or by searching on Oracle.com, will allow any interested person to reach the website. Attached is a sample of a current website screen shot showing just some of the job postings for PT1 positions. *See Attachment A.* This form of website posting was also in place during the period covered by the NOV.

In addition to providing open access to all, Oracle undertakes substantial Good Faith Efforts (GFEs) in the U.S. to reach out to interested women and minorities for all positions, including PT1 positions. The PT1 job group includes more than one type of position. For example, several positions require a degree, but little or no prior work experience. These positions often are filled by applicants coming directly from colleges or graduate schools, and their paths to Oracle differ. Some apply to Oracle postings on their own, some are identified through school recruiting efforts, and some obtain Oracle internships. Other technical positions require both a degree and some level of relevant prior work experience. These positions more commonly are filled by applicants coming from internal and external postings, or through other communications and outreach. During the period in question, some examples of Oracle's GFEs relevant to the subject PT1 positions include:

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

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

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

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

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

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

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

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



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

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

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

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

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



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A quick review of random sets of the application data submitted to OFCCP illustrates the international scope of applicant interest in PT1 jobs at HQCA.² For example, the data for all of the 107 applicants we reviewed indicates that at least 34 (32% of the total applicants) were working or residing outside of the United States at the time of their application. Twenty-one of those applicants were internal applicants working at Oracle locations in India, Israel, the Philippines, China, Argentina, Mexico, Netherlands, or Egypt. The 13 external applicants who were working or residing outside the United States were located in Hungary, Italy, Taiwan, India, Russia, Canada, Germany, or Netherlands. Of the remaining 73 applicants whose applicant files did not indicate that they were working or residing outside the United States at the time of their application, 27 (25% of the total applicants) were non-United States citizens, including citizens of China, India, Taiwan, Korea, Hungary, Switzerland, or Canada. In other words, 57% of the applicants for those randomly selected positions were working or residing outside the United States and/or were citizens of countries other than the United States.

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

At Oracle, employees holding the same job title in IT, Product Development, and Support roles (*i.e.*, jobs within the PT1 job group) often have significantly different duties, responsibilities, and skill sets. For example, a comparison of employees who shared a common job title, as well as a common supervisor, and who showed the greatest differences in salary as of January 1, 2014 – *i.e.*, those individuals whom OFCCP’s analysis would suggest suffered the most wage discrimination – confirms that the common job title alone does not mean the employees are



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

III. Conclusion.

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

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

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



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

Very truly yours,

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

Erin M. Connell

cc: Shauna Holman-Harries
Gary R. Siniscalco