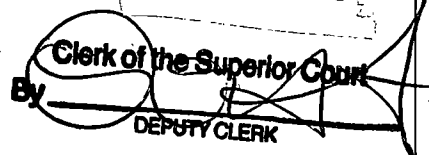


**FILED**  
**SAN MATEO COUNTY**  
**APR 30 2020**

Clerk of the Superior Court  
By   
DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN MATEO**

RONG JEWETT, SOPHY WANG, and XIAN MURRAY, on behalf of themselves, and ELIZABETH SUE PETERSEN, MARILYN CLARK, and MANJARI KANT, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ORACLE AMERICA, INC.,

Defendant.

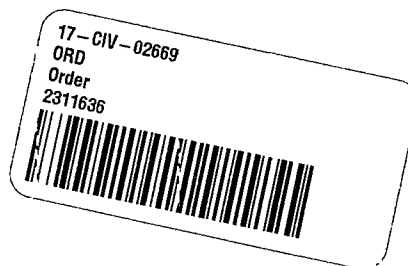
Case No.: 17CIV02669

**ORDER DENYING ORACLE'S  
MOTION TO STRIKE THE REPORT  
OF LEAETTA M. HOUGH IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR CLASS  
CERTIFICATION**

Assigned for all purposes to the  
Honorable V. Raymond Swope

Complaint Filed: June 16, 2017

Trial Date: No date set



17CIV02669

ORDER DENYING MOTION TO STRIKE LEAETTA M. HOUGH'S REPORT ISO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

1 Defendant Oracle's Motion to Strike the Report of Dr. Leaetta Hough submitted in  
2 Support of Plaintiffs' Motion for Class Certification came on for hearing on Friday, February 7,  
3 2020.

4 Having fully reviewed and considered Dr. Hough's report, the papers submitted by the  
5 Parties in connection with Oracle's Motion to Strike Dr. Hough's Report, and the oral arguments  
6 presented at the February 7, 2020, hearing, the Court makes the following findings of fact:

7 1) Dr. Hough, who has a Ph.D. in Industrial Organizational Psychology ("IO  
8 Psychology"), and is a Past President of the Society of the Industrial Organizational  
9 Psychologists, has specialized knowledge beyond common knowledge regarding compensation  
10 systems, performance evaluation systems, and job classification systems (including determining  
11 the skills, efforts and responsibilities required for specific jobs so as to reasonably classify them).  
12 She has published in the field of IO Psychology. *See* Hough Report, Appendix A (CV). Oracle  
13 does not contest that Dr. Hough is a well-credentialed, qualified Industrial Organizational  
14 Psychologist.

15 2) When writing her report, Dr. Hough reasonably relied on information from  
16 Oracle's documents and the deposition transcripts from witnesses Oracle designated as most  
17 qualified to testify about Oracle's compensation policies and practices, its job classification  
18 system, and its performance evaluation practices and procedures. *See* Hough Report, Appendix B  
19 (Materials Considered). The documents Dr. Hough reviewed included Oracle's Global Job Table  
20 (Finberg Decl., Ex. Z), which groups Oracle employees by job function, specialty, family, and  
21 responsibility level into job code-specific salary ranges; Oracle's Global Compensation Training  
22 PowerPoint (Finberg Decl., Ex. M), which describes the job classification system; Oracle's  
23 documents regarding core and functional job competencies (Finberg Reply Decl., Ex. G at  
24 00004918; Ex. P at 00005282 ["Functional competencies are specific to jobs and represent the  
25 most important capabilities or skills needed to perform successfully in each job"]); and the  
26 documents regarding responsibility levels, such as the "Global Job Classification Table"  
27 (Finberg Decl., Ex. AA). The deposition testimony included the deposition testimony of Kate  
28 Waggoner, the person Oracle designated as most qualified to testify about Oracle's

1 compensation policies and practices, who testified that “people are assigned a job code based on  
2 what they do.” Finberg Decl. Ex. B (Waggoner) at 48:16-17. Ms. Waggoner testified that “[t]he  
3 people in each of these job codes share certain basic skills, knowledge, and abilities...” *Id.* at  
4 225:11-19. Persons in the same job codes share “similar” “levels of responsibility and impact”.  
5 *Id.* at 229:7-9.

6 3) Dr. Hough also relied on the deposition testimony of Anje Dodson, the person  
7 Oracle designated as most Qualified to testify about performance evaluations, who testified that  
8 if a person transfers from one product team to another product team within the same job code,  
9 there is no required additional training. Finberg Decl. Ex. C (Dodson) at 126:14-128:1.

10 4) The information Dr. Hough obtained from Oracle’s documents and testimony  
11 from Oracle’s PMQ designees provided her with sufficient information about how Oracle groups  
12 persons with similar skills, effort, and responsibilities to have a reasonable basis, grounded in her  
13 professional expertise as an I/O psychologist, for her opinion that at Oracle, employees in the  
14 same job codes have similar skills, effort, and responsibilities.

15 5) Dr. Hough had a reasonable basis for her opinion as an IO Psychologist that  
16 Oracle’s employees within the same job code perform substantially equal or similar work.

17 6) Based on her review of PMQ Dodson’s deposition testimony and documents  
18 describing the performance evaluation system, Dr. Hough had a reasonable basis, grounded in  
19 her professional expertise as an I/O psychologist, with expertise regarding performance  
20 evaluation systems, for her opinion about the weaknesses of Oracle’s Performance Evaluation  
21 System.

22 7) Based on her review of PMQ Kidder’s deposition testimony, the Waggoner PMQ  
23 testimony, the Holman-Harries Declaration, various deposition exhibits, and her professional  
24 knowledge of the historical causes of gender pay discrimination, Dr. Hough had a reasonable  
25 basis for her opinion that Oracle’s use of prior pay to set starting pay was a disfavored policy that  
26 should have been a red flag it would result in pay inequities.

27 8) Based on her review of deposition testimony and exhibits (including but not  
28 limited to women’s complaints of unequal pay and the OFCCP allegations about unequal pay at

1 Oracle) a draft of Dr. Neumark’s report, and her professional expertise as an I/O psychologist  
2 about how companies can and should determine if they are paying employees of one gender less  
3 than the other for substantially similar work, Dr. Hough had a reasonable basis for her opinion  
4 regarding that Oracle should have taken steps to ensure that persons in the same job codes  
5 received equal pay.

6 The court reaches the following conclusions of law:

7 1) “[C]ourts must ‘be cautious in excluding expert testimony’ as the trial court’s  
8 gatekeeping goal ‘is simply to exclude ‘clearly invalid and unreliable’ expert opinion.”  
9 *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 293, as modified (Jan. 10,  
10 2018) (citing *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55  
11 Cal.4th 747, 772). “The court must not weigh an opinion’s probative value or substitute  
12 its own opinion for the expert’s opinion. Rather, the court must simply determine whether  
13 the matter relied on can provide a reasonable basis for the opinion or whether that  
14 opinion is based on a leap of logic or conjecture. The court does not resolve scientific  
15 controversies.” *Sargon Enterprises*, 55 Cal.4th at 772. *In Re Cipro Cases I & II* (2004)  
16 121 Cal.App.4th 402, 412 (“the class certification stage is not the proper forum in which  
17 to resolve such a dispute between experts. At this stage of the proceedings, ‘it is not our  
18 role, nor the trial court’s job, to involve ourselves with the merits of the underlying action  
19 or which parties’ experts are most qualified.”).

20 2) The California Supreme Court has expressly stated that in an employment class action,  
21 California Courts should consider “pattern and practice evidence, statistical evidence,  
22 sampling evidence, expert testimony, and other indicators of a defendant’s centralized  
23 practices in order to evaluate whether common behavior towards similarly situated  
24 plaintiffs makes class certification appropriate.” *Sav-On Drug Stores v. Superior Court*  
25 (2004) 34 Cal.4th 319, 333.

26 3) Whether employees are performing substantially equal or similar work must be  
27 “viewed as a composite of skill, effort, and responsibility.” Cal. Lab. Code §1197.5 (a).

28 4) An I/O Psychologist’s testimony based on review of company documents and

1 PMQ deposition testimony “is probative of the equality of the jobs in question.” *Campana v.*  
2 *City of Greenfield*, 164 F. Supp. 2d 1078, 1090 n. 7 (E.D. Wis. 2001), *aff’d*, 38 F. App’x 339 (7th  
3 Cir. 2002).

4 Whereby, the Court hereby orders as follows:

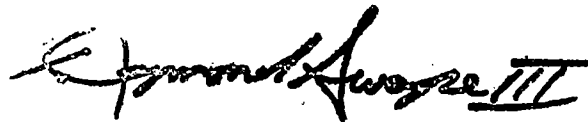
5 1) Oracle’s Motion to Strike Dr. Leatta Hough’s Report in Support of Plaintiffs  
6 Motion for Class Certification is DENIED.

7 2) Oracle’s criticisms of Professor Hough’s report go to the weight to be accorded  
8 her report, not to its admissibility.

9 3) Since Professor Hough’s report provides evidence that would assist the trier of  
10 fact in this case in evaluating whether or not Plaintiffs have proved the elements of their claims  
11 under the California Equal Pay Act and Unfair Competition Law, including whether persons in  
12 the same job code are performing substantially equal or similar work, her report is admissible  
13 pursuant to Cal. Evid. Code §801.

14  
15 IT IS SO ORDERED.

16  
17 Dated: APR 29 2020



18  
19 V. RAYMOND SWOPE  
20 JUDGE OF THE SUPERIOR COURT