U.S. Department of Labor

Office of the Solicitor
90 7th Street, Suite 3-700
San Francisco, California 94103
Tel: (415) 625-7757
Fax: (415) 625-7772

January 25, 2017

2017 JAN 26 AM 11: 47
US DEPT OF LABOR
ADMIN LAW JUDGES
WASHINGTON, DC

VIA OVERNIGHT MAIL

Yvonne Washington
Chief Docket Clerk
Office of Administrative Law Judges
United States Department of Labor
Suite 400 North
800 K Street, NW
Washington, DC 20001-8002

Re: OFCCP v. Oracle America, Inc., OALJ Case No. 2017-OFC-00006

Dear Ms. Washington:

Enclosed please find a copy of the Amended Complaint being filed as a matter of course pursuant to 41C.F.R. 30.5(c) in the above-captioned case to correct a typographical error. The only change in the body of the Complaint is to paragraph 10, changing the date June 30, 2013 to the correct date, June 30, 2014. The sentence now reads: "Specifically, Oracle hired 82% Asians into the PT1 job group during the period January 1, 2013 through June 30, 2014, exceeding the approximately 75% of Asians who applied and resulting in statistically significant adverse impact against non-Asian applicants." Please let me know if need additional information.

Sincerely,

Laura C. Bremer

Laura C. Bremer
Senior Trial Attorney

Enclosure

US DEPT OF LABOR
ADMIN LAW JUDGES
WASHINGTON,DC

2017 JAN 26 AM 11: 47

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

AMENDED COMPLAINT

Plaintiff Office of Federal Contract Compliance Programs, United States Department of Labor ("OFCCP") brings this action against Defendant Oracle America, Inc. ("Oracle") to redress violations stemming from Oracle's systemic compensation discrimination against women and Asians and African Americans in three lines of business (including 80 job titles) at its headquarters in Redwood Shores, California. Specifically, OFCCP found gross disparities in pay even after controlling for job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure.

OFCCP further seeks redress in this complaint for Oracle's pattern and practice of hiring discrimination against qualified White, Hispanic, and African American applicants in favor of Asian applicants, particularly Asian Indians, based on race in 69 job titles at its headquarters. OFCCP specifically found that in addition to the significant overrepresentation of Asians in its applicant pool, Oracle nevertheless preferred Asian applicants over other qualified applicants in the Professional Technical 1, Individual Contributor job group and in the Product Development

job group at statistically significant rates. This conduct is in violation of by Executive Order 11246, as amended by Executive Orders 11375, 12086 and 13279 and its implementing rules and regulations ("Executive Order 11246" or the "Executive Order").

OFCCP alleges the following:

JURISDICTION

1. The Court has jurisdiction of this action under sections 208 and 209 of Executive Order 11246, and 41 C.F.R. § 60-1.26 and part 60-30.

DEFENDANT AND ITS STATUS AS A GOVERNMENT CONTRACTOR

2. Defendant Oracle America, Inc., designs, manufactures, and sells software and hardware products, as well as offers services related to its products. It is headquartered at Redwood Shores, California ("Oracle Redwood Shores"), and has 74 locations throughout the United States.

3. At all times relevant hereto, Oracle has had 50 or more employees. During the relevant time frame, Oracle employed approximately 45,000 full-time employees in the United States, and over 7,000 employees at Oracle Redwood Shores.

4. At all times relevant hereto, Oracle has had at least one contract with the federal government of $50,000 or more. Indeed, during the relevant time frame, Oracle had multiple contracts with the federal government totaling millions of dollars a year.

5. Based on the foregoing, Oracle has been a contractor within the meaning of the Executive Order, and has been subject to the obligations imposed on contractors by the Executive Order and its implementing regulations. These laws require, among other things, that Oracle not discriminate against any employee or applicant for employment because of race,

color, religion, sex, or national origin and to take affirmative action to ensure that applicants and employees are afforded employment opportunities without regard to their race, color, religion, sex, or national origin.

COMPLIANCE EVALUATION OF ORACLE AND FINDINGS OF DISCRIMINATION

6. On or about September 24, 2014, pursuant to its neutral selection process, OFCCP initiated a compliance review under the Executive Order of Oracle's headquarters in Redwood Shores, California.

7. As a result of the compliance review, OFCCP found that from at least January 1, 2014, and on information and belief, from 2013 going forward to the present, Oracle discriminated against qualified female employees in its Information Technology, Product Development, and Support lines of business or job functions at Oracle Redwood Shores based upon sex by paying them less than comparable males employed in similar roles. Specifically, OFCCP's analyses showed the following based on 2014 data controlling for job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure:

Class	Number of Female Class Members	Standard Deviations
Female Information Technology Employees	133	-2.71
Female Product Development Employees	1,207	-8.41
Female Support Employees	47	-3.67

8. Further, from at least January 1, 2014 and, on information and belief, from 2013 going forward to the present, Oracle discriminated against qualified African Americans in Product Development roles at Oracle Redwood Shores based upon race by paying them less than

comparable Whites employed in similar roles. Specifically, based on 2014 data controlling for job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure, OFCCP's analysis showed a standard deviation of -2.10.

9. From at least January 1, 2014, and, on information and belief, from 2013 going forward to the present, Oracle discriminated against qualified Asians in Product Development job functions at Oracle Redwood Shores based upon race by paying them less than comparable Whites employed in similar roles. Specifically, based on 2014 data controlling for job title, full-time status, exempt status, global career level, job specialty, estimated prior work experience, and company tenure, OFCCP's analysis showed a standard deviation of -6.55.

10. In addition, OFCCP found that beginning from at least January 1, 2013 and on information and belief, going forward to the present, Oracle utilized and, on information and belief, continues to utilize a recruiting and hiring process that discriminates against qualified African American, Hispanic and White (hereinafter "non-Asians") applicants in favor of Asian applicants, particularly Asian Indians, based upon race for positions in the Professional Technical 1, Individual Contributor ("PT1") job group and Product Development line of business (or job function) at Oracle Redwood Shores. Specifically, Oracle hired 82% Asians into the PT1 job group during the period January 1, 2013 through June 30, 2014, exceeding the approximately 75% of Asians who applied and resulting in statistically significant adverse impact against non-Asian applicants. Moreover, comparisons between available applicants from national labor data and Oracle's hires show gross and statistically significant disparities in the hiring of Asians versus non-Asians into PT1 and Product Development positions at Oracle Redwood Shores. These comparisons are particularly relevant because Oracle's applicant pool was heavily over-

represented by Asian applicants as the result of Oracle's recruiting and hiring practices (including its over-selection of Asian applicants, particularly Asian Indians, from its actual applicant pool, its hiring strategies such as targeted recruitment, and referral bonuses that encouraged its heavily Asian workforce to recruit other Asians, and its reputation for favoring Asians).

REFUSAL TO PRODUCE RELEVANT DATA AND RECORDS DURING COMPLIANCE EVALUATION

11. As part of the compliance evaluation, OFCCP requested several items from Oracle relevant to the agency's determination of whether Oracle had complied with the Executive Order. Pursuant to its government contracts, Oracle had agreed to produce these items to OFCCP.

12. Oracle refused to produce to the agency various records, including, but not limited to, prior year compensation data for all employees and complete hiring data for PT1 roles during the review period of January 1, 2013 through June 30, 2014, which are relevant to the matter under investigation and pertinent to Oracle's compliance with Executive Order 11246, as amended, and the regulatory requirements at 41 C.F.R. §§ 60-1.12, 60-1.20, 60-1.43, 60-2.32 and 60-3.4.

13. Oracle also refused to produce to the agency any material demonstrating whether or not it had performed an in-depth review of its compensation practices, the findings of any such review, and the reporting and corrective actions proposed as a result of such review, all of which is required by 41 C.F.R. § 60-2.17(b)-(d). Moreover, Oracle failed to provide any evidence that it conducted an adverse impact analyses required by 41 C.F.R. §§ 60-3.15A and 60-3.4.

14. Insofar as Oracle failed to produce the material identified in paragraph 13 because it did not conduct the underlying reviews and analyses, Oracle defaulted on its obligations under 41 C.F.R. § 60-2.17(b)-(d), 41 C.F.R. §§ 60-3.15A, and 41 C.F.R. § 60-3.4 to conduct such reviews and analyses.

15. Oracle's refusal to produce all data and records requested pertaining to its recruiting, hiring, and compensation practices further support OFCCP's findings in paragraphs 7-10.

VIOLATIONS

16. The conduct described above in paragraphs 7-10, 12, and 13 (or, alternatively, 14) violate Executive Order 11246, its implementing regulations, and Oracle's contractual obligations to the federal government.

17. On March 11, 2016, OFCCP issued a Notice of Violation identifying the violations noted above. Thereafter, the agency attempted to conciliate with Oracle to resolve the violations.

18. On June 8, 2016, OFCCP sent Oracle a Notice to Show Cause why OFCCP should not initiate enforcement proceedings against Oracle based on OFCCP's findings that the company violated Executive Order 11246. Before and after issuing the Notice to Show Cause, OFCCP attempted to secure Oracle's voluntary compliance through conciliation. These efforts were unsuccessful.

19. Unless restrained by an administrative order, Oracle will continue to violate its obligations under the Executive Order and the regulations issued pursuant thereto.

PRAYER FOR RELIEF

BASED ON THE FOREGOING, Plaintiff OFCCP requests a decision and order pursuant to 41 C.F.R. Part 60-30, finding that Oracle's hiring, and compensation policies violate Executive Order 11426 and providing the following relief:

(a) permanently enjoining Oracle, its successors, officers, agents, servants, employees, divisions, subsidiaries and all persons in active concert or participation with them from failing and refusing to comply with the requirements of the Executive Order;

(b) an order canceling all of Oracle's federal government contracts and subcontracts and those of its officers, agents, successors, divisions, subsidiaries and those persons in active concert or participation with them, and declaring said persons and entities ineligible for the extension or modification of any such existing Government contract or subcontract;

(c) an order debarring Oracle and its officers, agents, servants, successors, divisions and subsidiaries and those persons in active concert or participation with them from entering into future federal government contracts and subcontracts until such time as Oracle satisfies the Deputy Assistant Secretary for Federal Contract Compliance Programs that it has undertaken efforts to remedy its prior noncompliance and is currently in compliance with the provisions of the Executive Order and the regulations issued pursuant thereto;

(d) an order requiring Oracle to provide complete relief to the affected classes, including lost compensation, interest, and all other benefits of employment resulting from Oracle's discrimination; and

(e) any other relief as justice may require.

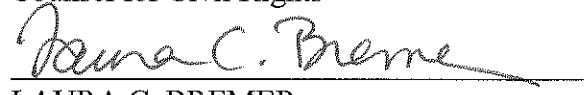
Respectfully submitted,

Date: January 25, 2017

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

IAN H. ELIASOPH
Counsel for Civil Rights



LAURA C. BREMER
Senior Trial Attorney
UNITED STATES DEPARTMENT OF LABOR
Office of the Solicitor
90 7th Street, Suite 3-700
San Francisco, CA 94103
Telephone: (415) 625-7757
Fax: (415) 625-7772
E-Mail: Bremer.Laura@dol.gov

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2017, the foregoing *Amended Complaint* was served upon the Defendant Oracle America, Inc. by hand delivering it to its counsel at the following address:

Gary R. Siniscalco, Esq.
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
San Francisco, California 94105-2669

s/*Llewlyn D. Robinson*
LLEWLYN D. ROBINSON
Paralegal Specialist

OFFICE OF THE SOLICITOR
U.S. DEPARTMENT OF LABOR