

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006
Office of Administrative Law Judges
San Francisco, Ca

OFCCP No. R00192699

**DEFENDANT ORACLE'S
REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEFENDANT'S MOTION FOR
JUDGMENT ON THE
PLEADINGS OF THE CLAIMS
OUTSIDE THE APPLICABLE
TIME PERIOD AND OF THE
CLAIM FOR ALLEGED
REFUSAL TO PRODUCE
RECORDS**

REQUEST

Defendant Oracle America, Inc., ("Oracle"), pursuant to 29 C.F.R. § 18.201, requests that the Court take judicial notice of the following documents, which are attached as Exhibits A through C to the Declaration of Erin M. Connell:

Exhibit	Description
A	OFCCP Scheduling Letter and Itemized Listing, OMB No. 1250-0003, OFCCP to Oracle (Sept. 24, 2014)
B	Notice of Violation ("NOV"), OFCCP to Oracle (March 11, 2016)
C	Notice to Show Cause ("SCN"), OFCCP to Oracle (June 8, 2016)

ARGUMENT

The Court may judicially notice an adjudicative fact that is: (1) generally known within the local area; (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned; or (3) derived from a not reasonably questioned scientific, medical or other technical process, technique, principle, or explanatory theory within the administrative agency's specialized field of knowledge. 29 C.F.R. § 18.201(b). Official

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notice may be taken at any stage in the proceeding. *Id.* § 18.201(f). The Court must take judicial notice “if requested by a party and supplied with the necessary information.” *Id.* § 18.201(d). The Court may also take judicial notice on a discretionary basis upon request. *Id.* § 18.201(c). Although judicial notice in the administrative context is governed pursuant to 29 C.F.R. § 18.201, the regulations mirror the Federal Rules of Evidence concerning judicial notice in most material respects. *See generally*, Fed. R. Evid. 201.

Official OFCCP correspondence, including a Scheduling Letter, NOV or SCN, are documents “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” 29 C.F.R. § 18.201(b)(2). In analogous circumstances, courts have held that “[e]ven though an EEOC charge is a matter outside the pleading, judicial notice of it may be taken as a matter of public record when deciding a [Rule 12 motion],” especially to the extent its authenticity cannot be contested. *King v. Life School*, 809 F. Supp. 2d 572, 579 (N.D. Tex. 2011); *see also Tucker v. Waffle House, Inc.*, Civil Action No. 12-2446, 2013 WL 1588067, at *6 (E.D. La. Apr. 11, 2013) (taking discretionary judicial notice of an EEOC charge attached to the moving party’s motion). Here, the documents for which Oracle request judicial notice are similar to an EEOC charge in that they are component parts of the respective agencies’ pre-suit administrative processes, and are therefore capable of judicial notice in the instant case.

Moreover, the authenticity of the above-named documents “cannot reasonably be questioned” given that the Scheduling Letter and Itemized Listing, NOV and SCN are documents on which the Amended Complaint itself relies. For example, the Amended Complaint incorporates the NOV and SCN expressly by referring to them in describing the alleged violations at issue. *See* Compl. ¶¶ 17–18. Likewise, the Amended Complaint references the Scheduling Letter and Itemized Listing in describing the onset of its 2014 compliance review. *See* Compl. ¶ 6.¹ Accordingly, the accuracy of the exhibits, which are central to the Agency’s

¹ Although the Amended Complaint does not mention the Scheduling Letter and Itemized Listing by name, the Scheduling Letter and Itemized Listing are the only means by which the OFCCP initiates a compliance review. *See generally*, *Bank of America*, 06-OFC-00003 (May 22, 2007); *United Space Alliance, LLC*, 11-OFC-00002 (Feb.

own case, cannot be questioned, and Exhibits A through C therefore may be judicially noticed under the governing standards.

In sum, Oracle respectfully requests that the Court grant its request for judicial notice and consider Exhibits A through C when considering Oracle's Motion for Judgment on the Pleadings of the Claims Outside the Applicable Time Period and of the Claim for Alleged Refusal to Produce Records.

May 5, 2017

Respectfully submitted,
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28, 2011). In addition, the Scheduling Letter and Itemized Listing are standardized forms approved by the Office of Management and Budget ("OMB") with OMB control numbers, and are therefore verifiable on this basis as well.

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