

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-000006  
Office of Administrative Law Judges  
San Francisco, Ca

OFCCP No. R00192699

**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**

Defendant Oracle America, Inc. ("Oracle"), by and through its undersigned counsel and pursuant to 29 C.F.R. § 18.33 and 41 C.F.R. § 60-30.8, hereby requests that the Court grant relief in its Motion for Judgment on the Pleadings of the Claims Outside the Applicable Time Period and of the Claim for Alleged Refusal to Produce Records. This Motion is based upon the accompanying Memorandum of Points and Authorities, the declaration of Erin M. Connell and the Request for Judicial Notice filed herewith, all pleadings on file in this matter, and upon such other matters as may be presented to the court at the time of the hearing or otherwise.

Although Oracle also currently has pending a Motion for Summary Judgment, or, in the Alternative, to Stay Proceedings for Failure to Conciliate, which Oracle contends constitutes a basis to dismiss the litigation entirely, Oracle also brings the present motion for the Court's consideration, given that the applicable time period governing this case is a threshold issues that frames the scope of the litigation (including discovery) and impacts scheduling, in the event Oracle's pending Motion for Summary Judgment is denied.

Even if this case is not dismissed in its entirety, OFCCP is not permitted to pursue claims beyond the scope of its investigation and beyond the scope of the Notice of Violations ("NOV") and Show Cause Notice ("SCN") that it issued. Additionally, the Complaint's purported claim for alleged refusal to produce data and records is not properly included in this enforcement

action and it must also be dismissed.

As to the recruiting and hiring discrimination claims, OFCCP cannot pursue matters outside the time period at issue in the NOV and SCN. The NOV, and later the SCN which incorporates it, expressly limits the applicable time period of such claims to January 1, 2013 through June 30, 2014. Because of this limitation, and because of OFCCP's failure to either investigate or conciliate as to any claims after June 30, 2014, the claims must be dismissed.

The compensation discrimination claims outside of calendar year 2014 must also be dismissed because OFCCP admits that the claims lack a factual basis. Specifically, OFCCP acknowledges that it lacks any facts except a snapshot of compensation data from 2014. OFCCP has a regulatory obligation to investigate before bringing an enforcement action, and it must not be permitted to simply infer discrimination in compensation beyond the investigated period.

Finally, OFCCP's claim regarding Oracle's alleged "refusal" to produce requested information must be dismissed. A cause of action for "refusal" is not appropriate in this enforcement action. If Oracle had refused to produce information it was required to produce in the course of the compliance review, the proper recourse for OFCCP was to bring an expedited denial of access case to enable OFCCP to obtain the data to complete its compliance evaluation. *See* 41 C.F.R. §§ 60-30.31, 60-1.26(a)(vii).

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Accordingly, Oracle respectfully requests the Court to enter an Order granting its Motion for Judgment on the Pleadings of the Claims Outside the Applicable Time Period and of the Claim for Alleged Refusal to Produce Records.

Respectfully submitted,

Dated: May 5, 2017

GARY R. SINISCALCO  
ERIN M. CONNELL



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