

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

RECEIVED

OCT 12 2018

Office of Administrative Law
San Francisco, CA

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO REASSIGN

Plaintiff moves for this case to be reassigned to a different Administrative Law Judge ("ALJ") following U.S. Supreme Court decision *Lucia v. Securities & Exchange Commission*, 138 S. Ct. 2044 (2018).¹ To cure potential Appointments Clause violations that might render ALJ Larsen's adjudication of this case invalid, OFCCP moves to have this matter reassigned to a different and properly appointed ALJ.

BACKGROUND

OFCCP filed an administrative complaint with the Office of Administrative Law Judges on January 17, 2017 and an amended complaint on January 25, 2017.² On April 21, 2017, Defendant filed a Motion for Summary Judgment, in which it objected to adjudication of these

¹ The Department of Labor (DOL) does not waive any potentially applicable defense to an Appointments Clause challenge in this or other cases. DOL reserves the right to raise such defenses as appropriate.

² On April 16, 2017, Defendant filed its answer to the amended complaint.

proceedings based on an Appointments Clause challenge.³ See April 21, 2017 Mot. Summ. J. note 8, at 18. On May 10, 2017, ALJ Larsen issued an Order after Pre-Hearing Conference. The Order overruled Defendant's objection that adjudication of these proceedings violates the Appointments Clause.

On October 30, 2017, ALJ Larsen issued an Order Staying Proceeding at the parties' request. ALJ Larsen has since extended the stay several times, at the parties' request. Most recently, his August 14, 2018 Order extended the stay to October 15, 2018. The parties' attempts to mediate, however, have not fully resolved. As such, these proceedings will require an ALJ's adjudication of existing claims and defenses.

ARGUMENT

The Supreme Court's decision in *Lucia* obliges the Court to grant OFCCP's request that this matter be reassigned to a different and constitutionally appointed ALJ. In *Lucia*, the Supreme Court found that Securities and Exchange Commission ALJs are inferior officers under the Appointments Clause of the Constitution, U.S. Const. art II, § 2, cl. 2. *Lucia*, 138 S. Ct. at 2055.⁴ The Court found that where a party makes a "timely challenge to the constitutional validity of the appointment of an officer who adjudicates his case," that party is entitled to relief. *Lucia*, 138 S. Ct. at 2055 (quoting *Ryder v. United States*, 515 U.S. 177, 182–183 (1995)) (citations omitted). An adjudication "tainted with an appointments violation" can be cured, however, when the case is

³ Defendant has objected to these proceedings based on an Appointments Clause challenge several times. Defendant first objected in its April 21, 2017 Motion for Summary Judgment, note 8, at 18. Defendant again raised an Appointments Clause objection in the parties' May 2, 2017 Joint Case Management Statement at 17-18; during the May 9, 2017 oral argument on Defendant's Motion for Summary Judgment, Hr'g Tr. at 14-15; and during the parties' August 10, 2018 Joint Case Management Statement, note 1, at 1.

⁴ On July 20, 2018, DOL determined that DOL ALJs are inferior officers under the Appointments Clause in accordance with *Lucia*'s reasoning. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Br. for the Fed. Resp. at 14, n.6.

heard before a properly appointed official who is different from the official that presided over the tainted adjudication. *Id.*

Prior to December 21, 2017, DOL ALJs, including ALJ Larsen, did not all have Constitutionally ratified judicial appointments. By December 21, 2017, Secretary Acosta had concluded ratifying the appointments of all existing DOL ALJs. See <https://www.oalj.dol.gov/>. Because all current DOL ALJs are now properly appointed, matters may be transferred to them in cases where timely Appointments Clause challenges have been raised. *Lucia*, 138 S. Ct at 2055; *Wilkes-Barre Hosp. Co., LLC v. Nat'l Labor Relations Bd.*, 857 F.3d 364, 371 (D.C. Cir. 2017) (“[R]atification can remedy a defect arising from the decision of ‘an improperly appointed official . . . when . . . a properly appointed official has the power to conduct an independent evaluation of the merits and does so.”) (quoting *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 796 F.3d 111, 117 (D.C. Cir. 2015)).

Here, ALJ Larsen has adjudicated proceedings in this case, including potentially dispositive motions, without having been constitutionally appointed. Further, Defendant timely presented an Appointments Clause challenge in its April 21, 2017 Motion for Summary Judgment, and maintained its objection to ALJ Larsen’s authority to hear the case. As such, *Lucia* invites invalidation of the motions and pleadings ALJ Larsen has adjudicated in this case. To preclude a Constitutional challenge, the Secretary requests that the Court reassign these proceedings to a constitutionally appointed ALJ who has not previously adjudicated this case. Reassignment will help ensure that litigation proceeds to the merits as expeditiously as possible. OFCCP has directed this motion to the Chief Judge out of an abundance of caution with respect to ALJ Larsen’s authority to rule on this motion.⁵

⁵ OFCCP is not taking the position that ALJ Larsen’s status prior to December 21, 2017 would prevent him from ruling on this motion. Rather, OFCCP seeks to avoid any question as to the propriety of the reassignment order it

Accordingly, this Court should grant OFCCP's Motion for Reassignment and assign this matter to a different ALJ.

DATED: October 12, 2018

Respectfully submitted,

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seeks under *Lucia*.