

**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 31 2018

Office of Administrative Law Judges
San Francisco, Ca

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO STAY
PROCEEDINGS PENDING THE CASE MANAGEMENT CONFERENCE AND
MOTION FOR CASE MANAGEMENT CONFERENCE**

Plaintiff moves the Court to stay proceedings pending a case management conference and moves for a case management conference. This case presents multiple complex issues that should be discussed with the Court before the parties unnecessarily drain Court resources and time with the filing of motions that a case management conference might render superfluous. To ensure an effective use of the Court's resources, OFCCP moves the Court to schedule a case management conference as soon as practical, and to stay all proceedings prior to the case management conference.

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. On April 16, 2017, Defendant filed its answer to the amended complaint. On May 10, 2017, ALJ Larsen issued an Order barring the parties from filing any motion with the court without first conferring

telephonically with each other and with the court, in a good-faith effort to resolve issues that were the subject of the proposed motion.

In a three-week span, prior to ALJ Larsen's Order, Oracle filed two dispositive motions and motion for a protective order. The parties also had significant disputes about discovery, resulting in cross motions to compel and more than 100 pages of rulings from ALJ Larsen on those motions. In October, the parties sought to mediate their dispute; before mediation began some of the outstanding discovery disputes were at least partially resolved.

Because the parties have been engaged in efforts to mediate since October 2017, they have jointly filed several requests that ALJ Larsen stay the proceedings. ALJ Larsen granted each of their requests. Most recently, ALJ Larsen's August 14, 2018 Order extended the existing stay on proceedings to October 15, 2018. ALJ Larsen's stay has since expired and this case has been re-assigned to this Court.

ARGUMENT

"The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see also Clinton v. Jones*, 520 U.S. 681, 706-07 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.").

In deciding on a motion to stay, a reviewing court will weigh: (1) "the possible damage that may result from the granting of a stay;" (2) "the hardship or inequity a party may suffer in being required to go forward;" and (3) "the orderly course of justice measured in terms of simplifying or complicating of issues, proof, and questions of law which could be expected to

result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254).

Here, there will be no damage from the short delay caused by scheduling a case management conference. This matter has already been stayed for nearly one year. A few additional weeks of delay in returning to litigation will present no additional harm. Failure to stay these proceedings pending a case management conference, however, presents a great risk of harm to the parties and the Court, given this case’s complex procedural history and the myriad legal and factual issues involved. There has already been significant litigation in this case under Judge Larsen. It is unclear whether or how this Court intends the parties to litigate this case differently. Finally, and most importantly, the case at bar presents multiple complex issues for litigation. Considering that this case involves numerous factual and legal issues and that the Secretary seeks a damages award that amounts to hundreds of millions of dollars, the Secretary believes it is in the parties’ and the Court’s interest to have a case management conference before resuming motions practice or discovery.

Granting Plaintiff’s Motion for Case Management Conference together with the Motion to Stay Proceedings will ensure that the Motion to Stay is only in effect until the parties can remedy the harm – that is until the parties can meet with the Court to establish rules governing litigation of this case and a plan for how to manage a case as complex as the one at bar.

Accordingly, this Court should grant OFCCP’s Motion for Stay of Proceedings Pending the Case Management Conference and Motion for Case Management Conference.

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DATED: October 31, 2018

Respectfully submitted,

KATE O'SCANNLAIN
Solicitor of Labor
JANET M. HEROLD
Regional Solicitor
JEREMIAH MILLER
Acting Counsel for Civil Rights
NORMAN GARCIA
Senior Trial Attorney
LAURA C. BREMER
Senior Trial Attorney



BY: _____

NISHA PAREKH
Trial Attorney

U.S. Department of Labor
Office of the Solicitor
350 South Figueroa Street, Suite 370
Los Angeles, CA 90071
213-894-3990

Attorneys for Plaintiff OFCCP