



March 12, 2019

Delivery by Hand

Judge Richard M. Clark
U.S. Department of Labor
Office of Administrative Law Judges
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San Francisco, CA 94103-1516

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Erin Connell

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Re: OFCCP v. Oracle America, Inc.; 2017-OFC-00006

Dear Judge Clark:

Oracle America, Inc. (“Oracle”) respectfully submits this letter to address, and request resolution of, two important issues in an attempt to avoid unnecessary motion practice and in the interest of judicial efficiency. Oracle and OFCCP have met and conferred over these issues, both in writing and telephonically, as reflected in Attachment A to this letter.

OFCCP has asserted a new affirmative action plan claim in paragraph 47 of its revised SAC that is an entirely different claim. OFCCP has asserted a new affirmative action plan claim in paragraph 47 of its revised Second Amended Complaint (“SAC”) that is entirely different from any previously asserted claim.¹ Oracle wishes to avoid motion practice over this new claim, but has concerns about it, and has not yet had the opportunity to raise them. Accordingly, Oracle respectfully raises these concerns here.

As the Court is aware, in its initial Complaint and First Amended Complaint, (“FAC”), OFCCP made no allegation regarding Oracle’s Affirmative Action Program (“AAP”). At most, OFCCP alleged that Oracle “refused to produce” prior year compensation data for all HQCA employees, as well as complete hiring data for employees in the PT 1 job group from January 1, 2013 through June 30, 2014, and further failed to produce evidence Oracle had conducted a review and/or analyses of its compensation and hiring practices, which OFCCP claims Oracle was required to do. FAC, ¶¶ 12, 13. While Oracle denies these allegations, they are entirely different than the new allegation that Oracle failed to develop, maintain and make available an AAP in its entirety.

In its proposed SAC, as filed with the Court on January 22, 2019, OFCCP claimed for the first time that because Oracle allegedly failed to “collect and maintain information regarding all Internet Applicants to Oracle’s college recruiting program” Oracle [in relevant part here] “failed to comply with its obligations to develop an Affirmative Action Program.” Prop. SAC ¶ 46 (citing 41 C.F.R. §§ 60-1.12(a), Parts 60-2 & 60 3). The Court described the allegation as “somewhat puzzling”—“part of a subsidiary clause in a sentence about the alleged failure to collect and maintain information about internet applicants.” Op. at 8. The Court acknowledged it was not clear whether OFCCP

¹ Once again, OFCCP did not provide Oracle an opportunity to review its revised SAC before filing it. OFCCP emailed Oracle a copy of both the SAC and letter that accompanied it last Friday at 1:13 p.m., and at 1:29 p.m. sent another emailing confirming both documents had been filed.



Judge Richard M. Clark
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“actually means to add” a “completely new and distinct claim” for failure to develop an affirmative action plan. *Id.* The provision OFCCP cited (41 C.F.R. § 60.12(a)) “does not mention affirmative action.” *Id.* The more appropriate provision—requiring contractors to “develop and maintain a written affirmative action program for each of its establishments”—is 41 C.F.R. § 60-1.40, which OFCCP did not cite. *Op.* at 8. In light of the confusion, the Court ordered OFCCP to “clarify” whether it was filing an independent claim in ¶ 46 of its proposed SAC, and confirmed that it would “reconsider whether [any] proposed addition would cause undue prejudice.” *Id.* at 15, 16.

OFCCP’s revised SAC, filed on March 8, 2019, makes an entirely new and separate claim related to Oracle’s affirmative action plan. Once again, the FAC contains no affirmative action plan claim at all. *Id.* at 15. But even when compared to OFCCP’s proposed SAC, OFCCP’s new affirmative action plan claim no longer ties the allegations specifically to Internet Applicants in Oracle’s college recruiting program, and no longer limits the allegation to a purported failure to develop an AAP. Instead, OFCCP makes the entirely new allegation that Oracle failed to develop, maintain and make available an AAP at all. SAC, ¶ 47.

Because this new claim is a “completely new and distinct claim,” *Op.* at 8, that does not “come[] within the general scope of the original complaint,” it appears to be just the sort of claim this Court ordered would fall outside the scope of 41 CFR § 60-30.5, and would therefore not be appropriate for amendment. *Op.* at 11. Indeed, OFCCP’s new paragraph 47 alleges that Oracle failed to maintain and make available all aspects of its AAP, including (for example) its organizational profile, job group analysis, placement of incumbents in job groups, determination of availability, comparing incumbency to availability, placement goals, and internal audits of its employment processes, which encompass the entire Oracle employee population at its HQCA location – not simply employees in the PT 1 group who came to Oracle through its college and university hiring program (as OFCCP has now limited its hiring claim), nor employees in the Product Development, IT and Support job functions (which are the employee populations at issue in its compensation claim).

Moreover, to the extent OFCCP’s new AAP claim is based on the notion that Oracle’s AAP is flawed because the data on which it is based is somehow inaccurate or incomplete, proving this claim could entail discovery into every aspect of Oracle’s AAP – including not only the entire HQCA employee population, but other employment practices such as promotions, as well as hiring and compensation for employee groups outside the groups at issue in this litigation. Indeed, a contractor’s AAP is the first thing listed and sought in OFCCP’s standard itemized listing (and was among the first set of documents Oracle produced to OFCCP when the underlying HQCA audit began). In that sense, OFCCP’s new AAP claim could be construed as an attempt to begin the HQCA audit anew, but for every calendar year since 2013.

This novelty and breadth of this new claim also confirm that OFCCP’s assertion of it now is unduly prejudicial to Oracle. Trial is less than a year away, and the parties have a tremendous amount of work to accomplish on OFCCP’s existing claims. Moreover, despite this case’s long history, up until this point in time, it has not included any allegation that Oracle entire AAP is deficient, as opposed to its recruiting and hiring practices in the PT 1 job group and its compensation practices in its Product Development, IT and Support job functions.

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Oracle wishes to avoid moving to dismiss OFCCP's claims regarding channeling, prior pay, alleged violations outside the audit period, and its AAP, but is concerned about preserving the issues for appeal. As to each of these claims, although Oracle respectfully disagrees they should proceed (including because OFCCP did not conciliate them before filing this lawsuit and because asserting them now is unduly prejudicial to Oracle), *see* Oracle Opp. to OFCCP Mot. for Leave to File SAC at 8-15, Oracle believes the Court has indicated in its Order on OFCCP's motion for leave to amend that it would like to avoid further motion practice on the SAC.² Oracle is concerned, however, about preserving for appeal the futility arguments made in its opposition to OFCCP's motion for leave to amend, as well as the arguments asserted in this letter regarding OFCCP's new AAP claim (which Oracle previously did not have the opportunity to address) – not only in the procedural posture of a motion for leave to amend (as to the futility arguments already raised there), but also as a motion to dismiss the claims in the operative complaint at issue in this case.

To spare the parties and the Court the effort and time of briefing and adjudicating such a motion to dismiss, Oracle respectfully asks the Court to issue an order confirming Oracle has preserved for appeal the futility arguments made in its Opposition to OFCCP's Motion for Leave to File a Second Amended Complaint, as dispositive legal issues in this case, and confirming Oracle need not raise them again before this Court in a motion to dismiss. Oracle further respectfully ask that, to the extent the Court disagrees with Oracle and determines OFCCP should be permitted to amend its SAC to include paragraph 47, the Court's order also include the arguments asserted by Oracle in this letter regarding OFCCP's new AAP claim asserted in paragraph 47 of its SAC.

While OFCCP disagrees with the substance of Oracle's arguments, OFCCP has confirmed it does not oppose Oracle's request for an order confirming they are preserved for appeal as dispositive legal issues in this case, such that Oracle does not need to file a motion to dismiss to preserve them.

² As this Court is aware, Oracle argued in its opposition to OFCCP's motion for leave that OFCCP should not be permitted to amend its complaint to add claims regarding assignments/channeling, prior pay, and alleged violations outside the audit period because such amendment would be "futile"—*i.e.*, those claims would "[n]ot survive a motion to dismiss" due to "failure to comply with required pre-suit obligations." Oracle Opp. at 8. In its lengthy opinion, this Court concluded that OFCCP should not be precluded from amending its complaint with regard to these claims on the basis of futility. Op. at 9-11. The Court characterized Oracle's opposition as "essentially ask[ing] that some aspects of the SAC [Second Amended Complaint] be dismissed." *Id.* at 9. And while the Court acknowledged that resolution of such an "issue might properly be deferred, in the interests of efficiency I will consider Oracle's arguments in more detail." *Id.* In analyzing the issues such as the Court did, combined with the reference in #4 of the Court's order at page 16 to Oracle's "time to answer" (and not "time to respond"), Oracle believes the Court does not want Oracle to file a motion to dismiss on the same claims raising the same arguments that were the basis for Oracle's futility argument.



Judge Richard M. Clark
March 12, 2019
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Respectfully submitted,

A handwritten signature in blue ink that reads "Erin M. Connell". The signature is fluid and cursive.

Erin M. Connell

cc: Laura C. Bremer (*via email*)
Norman E. Garcia (*via email*)
Jeremiah Miller (*via email*)
Mark Pilotin (*via email*)

EXHIBIT A

Flores, Christine J.

From: Connell, Erin M.
Sent: Tuesday, March 12, 2019 3:22 PM
To: Bremer, Laura - SOL
Cc: Miller, Jeremiah - SOL; Garcia, Norman - SOL; Siniscalco, Gary R.; Parker, Warrington; Kaddah, Jacqueline D.
Subject: RE: OFCCP's Second Amended Complaint & Letter to the Court

Laura,

Thank you for your response below. To address your first request, yes, we will attach the substantive meet and confer correspondence to our letter to the court. As I explained yesterday during our call, I disagree with your characterization below about selective disclosure, but in any event, the correspondence below speaks for itself, and we intend to attach it.

Thank you also for agreeing you will not oppose our request to the court on the appeal preservation issue. To confirm regarding paragraph 47, however, our position is not only that allowing the amendment now would unduly prejudice Oracle, but also is that OFCCP should not be permitted to amend its SAC to include the new AAP claim in paragraph 47 because OFCCP did not conciliate it. That position is laid out in writing in my March 11 email below (referencing page 11 of Judge Clark's order), and we discussed it yesterday, so I don't believe this impacts OFCCP's position that it will not oppose our request to avoid unnecessary motion practice. Please let me know right away if it does.

Regarding OFCCP's substantive position, we are not convinced that the new claim stated in paragraph 47 of the SAC bears any resemblance to anything asserted in the First Amended Complaint (FAC), and also still believe it goes far beyond the AAP reference contained in the initial proposed SAC. I believe we have met and conferred on this issue in good faith, and are at point where further discussion will not help resolve our dispute. Again, we appreciate the discussion yesterday and follow up correspondence today.

Finally, on the discovery issue related to the timing of Oracle's Answer, we are willing to meet and confer further, and understand your concern. But because this is a newly raised issue that impacts the court-approved scheduling order, however, we believe it warrants further discussion and consideration and don't believe we will be in a position to finalize the specifics of that agreement today (even though we do anticipate we will be able to reach one). Please let us know if you would like to schedule a call to discuss that issue further.

Thanks,
Erin

Erin M. Connell
Partner

Orrick
San Francisco 
T +1-415-773-5969
econnell@orrick.com



Employment Blog



From: Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Sent: Tuesday, March 12, 2019 2:40 PM
To: Connell, Erin M. <econnell@orrick.com>
Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP's Second Amended Complaint & Letter to the Court

Erin,

Initially, I want to make sure that when you submit Oracle's letter to Judge Clark regarding paragraph 47, you include all of the meet and confer communications we have had on this issue, including the substantive email that I sent to you at 1:24 p.m. yesterday. While you selectively disclosed the information from my email that I was not available for a call until after 4 p.m., you neglected to mention my substantive response to Oracle's request for a meet and confer. OFCCP has not seen the letter Oracle says it is submitting to Judge Clark, but if the meet and confer and OFCCP's positions are not accurately represented, OFCCP will notify the Court.

When we spoke yesterday afternoon, we discussed the basis for paragraph 47 in further detail, as well as the relief Oracle sought. We explored whether Oracle would be satisfied if OFCCP limited paragraph 47. Ultimately, you stated that Oracle would seek to have paragraph 47 stricken, not limited. OFCCP has a good faith basis for alleging paragraph 47, for the reasons stated in my email yesterday. In addition to the reasons stated in my email yesterday, paragraph 47 is similar to OFCCP's other allegations that Oracle did not maintain, develop, and/or supply information and analyses required by the regulations. Like the compensation data, Oracle only provided an AAP for 2014, not the entire review period. In paragraph 47, OFCCP alleges that contractors are required to develop and maintain an affirmative action program, and to make its AAP available to OFCCP. Like the pay equity analyses, Oracle has not agreed to produce any additional AAPs it has prepared, even though the regulations require them to prepare and provide them to OFCCP. Thus, the issues raised in paragraph 47 are similar to the issues already raised in the Second Amended Complaint. Any additional discovery required by paragraph 47 is limited and will not prejudice Oracle. Thus, OFCCP does not agree to strike paragraph 47.

We also discussed Oracle's request that the argument Oracle made in opposition to OFCCP's motion for leave to file a second amended complaint that Oracle had failed to conciliate the claims would be preserved for appeal without the necessity of Oracle having to file a motion to dismiss to the amended complaint. Similarly, Oracle requests that if the Court permits the Second Amended Complaint to be filed with paragraph 47, Oracle will preserve the argument it raises in its letter to Judge Clark that it was prejudiced by the inclusion of paragraph 47 in the Complaint. OFCCP agrees that the arguments Oracle made for failure to conciliate in opposition to the motion for leave to amend, and the arguments Oracle makes in its letter arguing that it would be prejudiced by the additional of paragraph 47 in the Second Amended Complaint will be preserved for appeal.

OFCCP notes that motion practice has already impacted the schedule in this case. Pursuant to Judge Clark's March 6, 2019 Order, the time to answer "will run from the date of a future order informing the parties the SAC has been filed." So, Oracle's answer will not be due until after the deadline for serving RFPs has passed. Accordingly, OFCCP requests that Oracle stipulate and request an order from Judge Clark, that OFCCP may serve RFPs requesting facts and documents Oracle relied upon in support of its affirmative defenses raised in its Answer. Please let us know if Oracle agrees to this stipulation. Since it arises from the Court's March 6, 2019, OFCCP would like to raise this issue at the same time as Oracle raises its arguments about the SAC.

Sincerely,

Laura C. Bremer
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
90 7th Street, Suite 3-700
San Francisco, California 94103
(415) 625-7757

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From: Connell, Erin M. <econnell@orrick.com>
Sent: Tuesday, March 12, 2019 2:26 PM
To: Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>
Subject: RE: OFCCP's Second Amended Complaint & Letter to the Court

Thank you for confirming.

From: Bremer, Laura - SOL <Bremer.Laura@dol.gov>
Sent: Tuesday, March 12, 2019 2:18 PM
To: Connell, Erin M. <econnell@orrick.com>
Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Siniscalco,

Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: OFCCP's Second Amended Complaint & Letter to the Court

Erin,

You asked us to respond by 3, and we expect to send you a response before that time. I'm working on it now.

Laura C. Bremer
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From: Connell, Erin M. <econnell@orrick.com>

Sent: Tuesday, March 12, 2019 2:15 PM

To: Bremer, Laura - SOL <Bremer.Laura@dol.gov>

Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: OFCCP's Second Amended Complaint & Letter to the Court

Hi Laura,

I'm following up on my email below – do you still anticipate having a response today?

Thanks,

Erin

From: Connell, Erin M.

Sent: Monday, March 11, 2019 9:23 PM

To: Bremer, Laura - SOL <Bremer.Laura@dol.gov>

Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Connell, Erin M. <econnell@orrick.com>

Subject: RE: OFCCP's Second Amended Complaint & Letter to the Court

Laura and Norm,

Thank you again for making time this afternoon for a call. To reiterate my understanding of where we left off, I confirmed that Oracle wishes to avoid the time and expense to the parties and the court of a motion to dismiss OFCCP's second amended complaint, but at the same time wants to ensure our arguments are preserved for appeal as to the operative complaint in this matter. Accordingly, Oracle intends to send a letter to the court tomorrow articulating its concerns with the AAP claim asserted in OFCCP's new paragraph 47. Oracle will further ask that, if the Court disagrees with Oracle and allows the AAP claim asserted in paragraph 47 to

remain, the Court confirm that Oracle's arguments regarding paragraph 47 are preserved for appeal and Oracle does not need to file a motion to dismiss based on those same arguments. Similarly, Oracle will request that as to the futility arguments it raised in opposition to OFCCP's motion for leave to amend, the Court confirm those issues also are preserved for appeal. If the Court does confirm the appellate issues are preserved, Oracle will Answer the SAC instead of moving to dismiss it. You agreed you would let me know tomorrow if OFCCP will oppose Oracle's proposed requests regarding the appeal issues. Please let me know if this is inconsistent with your understanding.

Thanks,
Erin

From: Connell, Erin M.

Sent: Monday, March 11, 2019 2:23 PM

To: 'Bremer, Laura - SOL' <Bremer.Laura@dol.gov>

Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Connell, Erin M. <econnell@orrick.com>

Subject: RE: OFCCP's Second Amended Complaint & Letter to the Court

Hi Laura,

I will give you a call at 4:30 this afternoon – we believe Judge Clark would like us to discuss our disputes telephonically before bringing them to his attention. The reason we were trying to accomplish everything today is that we are concerned the Court may issue an order on the SAC before we have the chance to raise our concerns about it.

While your explanation below more fully explains OFCCP's position, it does not address our concerns. We disagree it will not be prejudicial to Oracle to add a claim relating to Oracle's AAP in its entirety, particularly because up until this point in time, this case has not included the any allegation that Oracle's entire AAP is deficient, as opposed to its recruiting and hiring practices in the PT 1 job group and its compensation practices in its Product Development, IT and Support job functions. We also disagree that this new claim is related to OFCCP's prior "refusal to produce" claim, which (again) relates to compensation- and hiring- related data, records and analyses, and not to Oracle's AAP in its entirety.

We want to raise a separate issue as well, which we hope will be non-controversial. We read Judge Clark's order as indicating he does not want Oracle to file a motion to dismiss that raises the same futility arguments as those contained in Oracle's opposition to OFCCP's motion for leave to amend because he already has addressed them, and in the interest of judicial economy. We, too, would like to avoid unnecessary motion practice. We are concerned, however, with preserving the issue for appeal – not only in the procedural posture of a motion for leave to amend, but also as a motion to dismiss the claims in the operative complaint at issue in this case.

Accordingly, to spare the parties and the Court the effort and time of briefing and adjudicating such a motion to dismiss, Oracle intends to ask the Court to issue an order confirming Oracle has preserved for appeal the futility arguments made in its Opposition to OFCCP's Motion for Leave to File a Second Amended Complaint as dispositive legal issues in this case, and confirming Oracle need not raise them again before this Court in a motion to dismiss.

We would like to know if OFCCP would oppose such a request.

To confirm, I will call you at 4:30 to discuss these issues, as we believe Judge Clark wants us to do. In the meantime, we will let the Court know we have not yet had the opportunity to discuss them with you, and therefore will follow up with the Court tomorrow instead of today to allow the parties time to discuss.

Thanks,
Erin

From: Bremer, Laura - SOL <Bremer.Laura@dol.gov>

Sent: Monday, March 11, 2019 1:24 PM

To: Connell, Erin M. <econnell@orrick.com>

Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: RE: OFCCP's Second Amended Complaint & Letter to the Court

Erin,

We don't understand your position. Judge Clark provided explicit instructions in his Order, which we carefully followed. Specifically, Judge Clark directed that "OFCCP must 1) remove the reference to a potential Affirmative Action Plan violation; 2) revise para. 46 to make clear that there is not an independent Affirmative Action Plan complaint; or (3) state the independent Affirmative Action Plan complaint in a separate paragraph, giving fair notice of the particular allegation it is making." (Order, p. 15.) OFCCP made no changes to the proposed Amended Complaint, other than those specifically directed by Judge Clark. Judge Clark explicitly instructed OFCCP to "clarify its reference to a violation related to the Affirmative Action Plan" and to submit a Revised Second Amended Complaint by March 18, 2019. (Order p. 16.) OFCCP did no more than make the Affirmative Action Plan complaint in a separate paragraph, as Judge Clark directed. OFCCP carefully followed the instructions in Judge Clark's Order, which did not include a requirement, or even suggestion, that the parties should further meet and confer prior to filing the Amended Complaint.

The violation related to the Affirmative Action Plan does not "go far beyond any claims asserted in the NOV or FAC," as Oracle states. It is related to the claims that Oracle did not develop and maintain various analyses Oracle was required to conduct or maintain records it was required to keep by the regulations. Your suggestion that Judge Clark implied that "leave to amend would not be appropriate" is inconsistent with the Order. Judge Clark rejected Oracle's argument that OFCCP must conciliate every time it brings a new claim arising out of the same compliance review at the same facility. (Order, p. 11.) With respect to the claim that Oracle failed to develop and maintain an AAP, the claim relates to the same facility, is similar to other claims, and is much simpler than the types of discrimination claims Judge Clark suggested could be added (which would require the development of substantial data and evidence).

The claim regarding the AAP is intertwined with the claim that Oracle did not maintain resumes and data, as required, as alleged in paragraphs 44-48. For example, Oracle's failure to maintain applicant data renders any AAPs it did develop and maintain inadequate. Moreover, in response to OFCCP's request that Oracle "Produce the YOUR AAPs for HQCA YOU are required to make AND maintain pursuant to 41 C.F.R. §§ 60-2.10(b) & (c) from 2013 to the present," Oracle responded, in addition to boilerplate objections, "Oracle objects to this Request on the grounds that the Request is unintelligible, vague and ambiguous as Oracle understands this Request; that is, 41 C.F.R. §§60-2,10(b) & (c) do not

require Oracle to make and maintain AAPs.” (RFP No. 173.) It is difficult to see how Oracle could be prejudiced from OFCCP adding this simple allegation, or that separate conciliation would be the most efficient means to handle the evidence of Oracle’s non-compliance that arose during discovery. This is an issue related to, and appropriately included in the current enforcement action. It requires limited additional discovery, and does not warrant separate conciliation and enforcement. It will not prejudice Oracle to include this claim.

Please advise if this addresses your concern. If not and you still believe that a telephone call is necessary to discuss the matter, please explain why by addressing the points raised above so that we can thoroughly understand Oracle’s position on this matter before we talk on the telephone.

Since I am tied up in meetings until about 4 p.m. this afternoon, please let me know your availability after that time to discuss.

Sincerely,

Laura C. Bremer
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor
90 7th Street, Suite 3-700
San Francisco, California 94103
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From: Connell, Erin M. <econnell@orrick.com>

Sent: Monday, March 11, 2019 8:42 AM

To: Bremer, Laura - SOL <Bremer.Laura@dol.gov>

Cc: Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>; Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; Parker, Warrington <wparker@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>

Subject: FW: OFCCP's Second Amended Complaint & Letter to the Court

Laura,

Please let me know when you are available today to meet and confer regarding the new claim OFCCP has asserted in paragraph 47 of its revised SAC. Once again, you did not provide us an opportunity to review the revised SAC before you filed it – as reflected below, Norm sent it to us via email on Friday afternoon, and less than 20 minutes later confirmed it had been filed. This new claim – which appears to assert that Oracle did not develop, maintain, and make available to OFCCP an AAP during the audit – goes far beyond any claims asserted in the NOV or First Amended Complaint (FAC). We also don’t understand the basis for it, as Oracle plainly did produce its AAP. At page 11 of Judge Clark’s order, he acknowledges that “[a]t some point an ‘amendment’ is an entirely different claim,” and indicates that leave to amend would not be appropriate in such a circumstance. We believe this new assertion in paragraph 47 is just such a claim, and plan to promptly alert Judge Clark of our concern about it. To avoid unnecessary motion practice, we would

like to do so today, prior to him issuing any orders on OFCCP's revised SAC, but also would like to discuss it with you first if possible.

Please let me know if and when you are available to discuss.

Thanks,
Erin

From: Garcia, Norman - SOL <Garcia.Norman@DOL.GOV>

Sent: Friday, March 8, 2019 1:29 PM

To: Connell, Erin M. <econnell@orrick.com>; Siniscalco, Gary R. <grsiniscalco@orrick.com>; James, Jessica R. L. <Jessica.james@orrick.com>; Kaddah, Jacqueline D. <jkaddah@orrick.com>; Parker, Warrington <wparker@orrick.com>

Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>

Subject: RE: OFCCP's Second Amended Complaint & Letter to the Court

Erin, Gary and Warrington,

Attached are the conformed filings for the documents listed below.

Norm

Norman E. Garcia
Senior Trial Attorney
United States Department of Labor
90 7th Street, Rm. 3-700; SF, CA 94103 Telephone number: (415) 625-7747 Facsimile number: (415) 625-7772

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor. If you think you received this e-mail in error, please notify the sender immediately.

From: Garcia, Norman - SOL

Sent: Friday, March 8, 2019 1:13 PM

To: 'Connell, Erin M.' <econnell@orrick.com>; 'Siniscalco, Gary R.' <grsiniscalco@orrick.com>; 'jessica.james@orrick.com' <jessica.james@orrick.com>; 'Kaddah, Jacqueline D.' <jkaddah@orrick.com>; Parker, Warrington (wparker@orrick.com) <wparker@orrick.com>

Cc: Bremer, Laura - SOL <Bremer.Laura@dol.gov>; Miller, Jeremiah - SOL <Miller.Jeremiah@dol.gov>

Subject: OFCCP's Second Amended Complaint & Letter to the Court

Erin, Gary and Warrington,

Attached are OFCCP's Second Amended Complaint and Letter to the Court that we will be filing today. I will send you conformed filings of them later today.

Norm

Norman E. Garcia
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