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Administrative Law Judges
San Francisco, Ca

Attorneys for OFCCP

**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.

Case No. 2017-OFC-00006

**STATEMENT OF UNCONTESTED MATERIAL FACTS IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ORACLE'S
AFFIRMATIVE DEFENSES RE CONCILIATION**

As required by 41 C.F.R. 60-30.23(d), OFCCP submits the following statement of
uncontested material facts for which there is no genuine issue to be tried.

1. On September 24, 2014, the San Francisco District Office of OFCCP sent a scheduling letter initiating a compliance evaluation of Defendant Oracle America, Inc.’s (“Oracle”) headquarters in Redwood Shores, California. Declaration of Shauna Holman –Harries in Support of Defendant’s Motion for Summary Judgment, or in the Alternative to Stay the Proceedings for Failure to Conciliate¹ (“Holman-Harries Decl.”), ¶ 2, Ex. A.

2. On March 11, 2016, after the compliance evaluation, OFCCP issued a Notice of Violations (“NOV”) to Oracle. Holman-Harries Decl. ¶ 8, Ex. E.

3. The NOV alleged ten violations of EO 11246 and included an attachment with a summary of the regression analysis conducted by OFCCP. Holman-Harries Decl., Ex. E. Among other things, the NOV alleged (1) disparities in the compensation of women relative to men employed in the Product Development, Information Technology, and Support job functions at Oracle’s HQCA; (2) disparities in the pay of Asians, and Blacks or African Americans relative to Whites employed in Oracle’s Product Development job function at Oracle’s HQCA; and (3) disparities in the hiring non-Asian applicants relative to Asian applicants. *Id.* The NOV described the statistical evidence substantiating the violations, and the remedies it sought. *Id.*

4. In the NOV, OFCCP invited Oracle to contact the agency to begin the conciliation process. Holman-Harries Decl., Ex. E. at 9.

¹ This declaration and the declaration of Gary Siniscalco were filed on April 21, 2017, as attachments to Oracle’s Motion for Summary Judgment, or in the Alternative, to Stay the Proceedings for Failure to Conciliate. OFCCP can provide courtesy copies of the declarations if needed.

5. On March 29, 2016, OFCCP sent an email to Oracle inviting “an Oracle representative . . . to meet during the week of April 18, 2016 to conciliate this matter.” Holman-Harries Decl. ¶ 10, Ex. G.

6. On April 11, 2016, Oracle sent a letter responding to the email. Declaration of Gary Siniscalco in Support of Defendant’s Motion for Summary Judgment, or in the Alternative to Stay the Proceedings for Failure to Conciliate (“Siniscalco Decl.”) at ¶ 2, Ex. I. In that letter, Oracle declined the invitation for a meeting, and stating that Oracle preferred “written communication.” Siniscalco Decl., Ex. I at 5. The letter also included two appendices with a total of 57 questions, which Oracle asked OFCCP to answer. *Id.* at 6-9.

7. On April 21, 2016, OFCCP responded in writing to the issues raised in Oracle’s letter, reiterating the statistical evidence underlying the NOV, and including responses to 40 of the company’s 57 questions. Siniscalco Decl. ¶ 3, Ex. J. In the responses, OFCCP declined to answer certain questions that invaded on the Agency’s deliberative process and other privileged matters. *See* Siniscalco Decl. Ex. J at 5-11.

8. On May 25, 2016, Oracle submitted a 21-page position statement making various procedural and legal arguments in response to the NOV and challenging the statistical evidence underlying OFCCP’s allegations. *See* Siniscalco Decl. ¶ 4, Ex. K.

9. On June 8, 2016, OFCCP responded in writing that Oracle’s statement had failed to rebut the violations in the NOV, and issued a Show Cause Notice. Siniscalco Decl. ¶ 5, Ex. L.

10. On June 29, 2016, Oracle sent a letter objecting to the Show Cause Notice, and complaining that the parties had not conciliated. Siniscalco Decl. ¶ 6, Ex. M.

11. On September 9, 2016, OFCCP sent a letter responding to the issues raised in Oracle's June 29 letter, and again offering to meet in person to conciliate the violations.

Siniscalco Decl. at ¶ 7, Ex. N.

12. Over the next several weeks, the parties exchanged several more emails and letters regarding a meeting and the sufficiency of Oracle's response to the NOV. Siniscalco Decl. ¶ 8, Ex. O at 1-43.

13. On September 23, 2016, OFCCP sent Oracle a letter explaining in detail why OFCCP did not consider Oracle's previous submissions sufficient to rebut the evidence underlying the NOV. Siniscalco Decl. Ex. O at 44-46.

14. On October 6, 2016, the parties met in person. Siniscalco Decl. ¶ 9. During the meeting, the parties discussed the issues raised in their written correspondence, including their respective views of the evidence. Siniscalco Decl. ¶ 9. OFCCP reiterated its view that Oracle thus far had not rebutted the violations. *Id.* Additionally, OFCCP presented a preliminary estimate of potential monetary remedies for conciliation purposes, noting that the amount would be subject to revision based on the review of further evidence. *Id.* ¶ 10. OFCCP asked Oracle to respond by the end of the month. Siniscalco Decl. ¶ 11, Ex. P.

15. On October 31, 2016, Oracle sent OFCCP another letter regarding the alleged violations. Siniscalco Decl. at ¶ 12, Ex. Q. In the letter, Oracle reiterated many of the same arguments it had made in its position statement five months before, including arguments challenging the statistical methodology used by OFCCP. *Compare* Siniscalco Decl., Ex. Q at 5-12 *with* Ex. K at 16-21. The submission did not include any rebuttal statistics or a settlement offer. *Id.* at Ex. K.

16. On December 9, 2016, OFCCP sent Oracle a detailed response addressing the issues raised in Oracle's letter, defending its statistical methodology, and again explaining why in OFCCP's view Oracle had failed to rebut the violations. *See* Siniscalco Decl. ¶ 13, Ex. R. In the letter, OFCCP advised Oracle that it was referring the matter for enforcement. *Id.*

17. On January 9, 2017, the Solicitor's Office sent a letter to Oracle offering a final opportunity to resolve the matter without litigation. Siniscalco Decl. at ¶ 15, Ex. T at 1-2. The letter asked Oracle to make a settlement offer by January 17th, or the Agency would initiate enforcement proceedings. *Id.* at 2.

18. On January 17, 2017, Oracle sent a letter objecting to the enforcement proceedings, but failing to make any settlement offer. Decl. at ¶ 16, Ex. U.

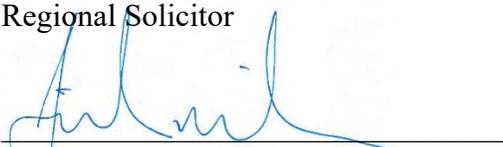
19. The same day, OFCCP filed an Administrative Complaint against Oracle alleging violations of Executive Order 11246.

20. OFCCP filed an Amended Complaint on January 25, 2018.

DATED: April 17, 2019

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