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UNITED STATES DEPARTMENT OF LABOR

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APR 25 2019

OFFICE OF FEDERAL CONTRACT COMPLIANCE
PROGRAMS, UNITED STATES DEPARTMENT
OF LABOR,

Office of Administrative Law Judges
San Francisco, Ca

Plaintiff,

OFCCP No.
R00192699

v.

OALJ Case No.
2017-OFC-00006

ORACLE AMERICA, INC.,

Defendant.

CONSENT FINDINGS AND ORDER

Pursuant to 41 C.F.R. 60-33.13, the parties to this action, Plaintiff United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and Defendant Oracle America, Inc. ("Oracle") (collectively, the "parties") have negotiated and agree to these Consent Findings and Order ("Consent Findings") to resolve hiring and related recordkeeping allegations in connection with Oracle's College Recruiting (CR) program as set forth in OFCCP's Second Amended Complaint ("SAC") including but not limited to ¶¶33-40, 44(b), 44(e), 46 and 48. Nothing in this agreement is intended to resolve any aspect of the compensation case, including related recordkeeping allegations, or to resolve denial of access allegations, except as related to the CR allegations.

I. PRELIMINARY FINDINGS

1. OFCCP initiated in September 2014 a compliance review of Oracle's headquarters at Redwood Shores, California ("HQCA").

2. OFCCP issued a Notice of Violation (“NOV”) identifying the alleged CR program violations on March 11, 2016. OFCCP issued a Notice to Show Cause (“SCN”) on June 8, 2016, why OFCCP should not initiate enforcement proceedings against Oracle based on OFCCP’s findings that Oracle violated EO 11246.

3. Oracle’s CR program, as revealed and confirmed in the course of OFCCP’s compliance review, involves and concerns the recruitment and hiring of highly-educated college graduates, predominantly graduates with Masters Degrees or higher, with scientific degrees in rigorous fields such as Mathematics and Computer Science. Oracle conducts its CR program in the context of a highly competitive industry with high demand for such graduates.

4. OFCCP’s SAC, filed on March 8, 2019, alleged inter alia the under-hiring of non-Asians and related recordkeeping violations including but not limited to paragraphs 33-40, 44(b), 44(e), 46 and 48 of the SAC. OFCCP acknowledges and confirms that Oracle has undertaken various steps and procedures to improve and update its CR recruiting, hiring and recordkeeping processes. In the course of litigation and ongoing discussions between the parties including in the course of discovery, information regarding Oracle’s new processes and procedures has been provided to OFCCP and its counsel. Upon review of that documentation, OFCCP supports the positive changes in Oracle’s CR program and related recordkeeping processes. Oracle has communicated its commitment, and OFCCP acknowledges that commitment to engage in recruitment that will broaden and diversify its applicant pool for its CR Program.

II. GENERAL PROVISIONS

5. OFCCP and Oracle agree that the terms of these Consent Findings resolve the CR hiring and CR recordkeeping portion of the SAC including but not limited to ¶¶33-40, 44(b), 44(e), 46 and 48.

6. The Effective Date of these Consent Findings shall be the date on which the Consent Findings are entered by the Court.
7. These Consent Findings shall be binding on Oracle, its successors, assigns, divisions and subsidiaries, and on OFCCP, its agents, officers and employees.
8. Nothing in these Consent Findings is intended to relieve Oracle from compliance with the requirements of EO 11246, or to limit OFCCP's right under applicable regulations to review Oracle's compliance with such requirements. Compliance with these Consent Findings shall constitute compliance with EO 11246 only with respect to those issues that are within the scope of this Agreement. Non-compliance with the terms of these Consent Findings provisions may result in further enforcement by OFCCP.
9. Each party agrees to pay its own fees, costs, and other expenses incurred at any stage of these proceedings.
10. The parties understand the terms of these Consent Findings and agree to them voluntarily.
11. These Consent Findings shall constitute the final Administrative Order in this case as to the hiring and related record keeping allegations in connection with Oracle's CR program in the SAC including but not limited to §§33-40, 44(b), 44(e), 46 and 48 and shall have the same force and effect as an order made after a full hearing and final review by the Administrative Review Board. The entire record on which these Consent Findings are based is the hiring and related record keeping allegations in connection with Oracle's CR program in the SAC including but not limited to §§33-40, 44(b), 44(e), 46 and 48, and the contents of these Consent Findings.
12. For purposes of this agreement only, for the sole purpose of enforcing implementation of these Consent Findings in accordance with its terms the Office of Administrative Law Judges shall have jurisdiction for a period of two (2) years following the Effective Date of these Consent

Findings. Except as provided herein, Oracle expressly reserves its rights and defenses in this and all other proceedings including with respect to OALJ jurisdiction.

13. Any timeframes set forth in this Agreement may be extended only by express written agreement of both OFCCP and Oracle.

14. Oracle in its Answer denied the allegations, and nothing in these Consent Findings constitutes any admission by Oracle that it has violated any provision of Executive Order 11246.

III. SPECIFIC PROVISIONS

15. Oracle agrees to maintain a compliant CR process with regard to recruiting, recordkeeping and hiring in its CR program. Oracle has provided and will identify, documents describing and supporting the operation of the CR program, including recruitment and record-keeping practices, within thirty (30) days of the Effective Date. If there is not documentation sufficient to show Oracle's recruiting efforts related to its CR program, OFCCP agrees that Oracle may communicate the scope and details regarding its CR program recruitment efforts, including targeted efforts related to Oracle's program and goals for diversifying the CR applicant pool, in a presentation to the Pacific Region Director.

16. If the Director or her designee identifies any deficiencies in the CR program with respect to recruiting efforts or training of CR managers that the Director deems noncompliant, she shall notify Oracle in writing within thirty (30) days of receipt or identification of the documents or completion by Oracle of any presentation to OFCCP, as detailed in paragraph 15 and identify with specificity the recruitment efforts that she deems non-compliant. In the event that OFCCP and Oracle are unable to resolve any dispute within thirty (30) days of notice by OFCCP, Oracle will refer the disputed item to an outside consultant (Mercer) to review and advise Oracle as to that issue. Oracle agrees to provide OFCCP with any report or advice provided by Mercer for

review. If Oracle agrees to make any further changes to address issues identified by OFCCP, it will so notify OFCCP in writing of the changes, if any, to be made. If OFCCP still believes there are non-compliance issues remaining, it may pursue enforcement of revisions to the CR process that it deems deficient.

IV. REPORTING

17. Oracle shall provide CR reports annually to OFCCP for two years, with the reports to be submitted by May 1, 2020 and May 1, 2021. Each report will contain the following information.
- a. Total number of applicants who submit resumes, applications or expressions of interest.
 - b. Total number of applicants who are deemed Internet Applicants.
 - c. For applicants and for Internet Applicants, the total number of persons who self-identify as Asian, White, Hispanic, African American, two or more races, Pacific Islanders or American Indians.
 - d. The total number of hires and the number of persons who self-identify as Asians, Whites, Hispanic, African American, two or more races, Pacific Islanders or American Indians.
 - e. The total number of offers made but declined and the number of persons who self-identify as Asians and to White, Hispanic, African American, persons of two or more races, Pacific Islanders or American Indians.
 - f. The total number of participants in Oracle's CR program, and the number of persons in that program who self-identify as Asians and to White, Hispanic, African American, persons of two or more races, Pacific Islanders or American Indians.

g. The total number of participants in Oracle's CR program who are hired into the CR program as full time employees, and the number of persons in that program who are hired who self-identify as Asians and to White, Hispanic, African American, persons of two or more races, Pacific Islanders or American Indians.

18. OFCCP will notify Oracle within sixty (60) days of receipt of a report if it deems a report non-compliant with the Consent Findings or the Executive Order and will specify in detail the specific items deemed non-compliant.

19. Oracle shall have thirty (30) days to address and resolve any non-compliant items determined by OFCCP to be non-compliant with the Executive Order.

20. In the event that any issue of non-compliance remains unresolved, OFCCP may promptly bring an enforcement action as to the remaining non-compliance item, provided it first gives Oracle notice, in writing, thirty (30) days in advance of its intended filing in the event that Oracle does not agree to address and resolve any noticed item of non-compliance in the report.

V. IMPLEMENTATION AND ENFORCEMENT OF THE CONSENT FINDINGS

21. OFCCP shall be solely responsible for initiating enforcement of compliance with the terms of these Consent Findings.

22. If at any time during the term of these Consent Findings, OFCCP believes that Oracle has materially violated any portion of these Consent Findings, it will promptly notify Oracle in writing as described in ¶¶ 16-17 and 18-20. The parties shall make reasonable efforts to cooperatively resolve any alleged violations.

23. Enforcement proceedings for violation of these Consent Findings may be initiated as described above, upon filing with the Office of Administrative Law Judges a motion for an order

of enforcement. The Administrative Law Judge may, if he deems it appropriate, schedule an evidentiary hearing on the motion. The issues in a hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion. Such hearing and any related proceedings and filings will be governed by the provisions set forth at 41 C.F.R. Part 60-30.31 through 60-30.37.

WHEREFORE, the parties move that an Order be entered adopting the above Consent Findings as the final disposition of the hiring and related record keeping allegations in connection with Oracle's CR program in the SAC including but not limited to ¶¶33-40, 44(b), 44(e), 46 and 48. Nothing in this agreement is intended to resolve any aspect of the compensation case, including related recordkeeping allegations, or to resolve denial of access allegations, except as related to the CR allegations.

IT IS SO ORDERED:

Dated: _____ 2019

RICHARD CLARK
Administrative Law Judge

AGREED AS TO FORM AND SUBSTANCE:

For Oracle America, Inc.:

For Office of Federal Contract Compliance Programs:



JUANA SCHURMAN
Senior Vice President &
Associate General Counsel, Law
Oracle America, Inc.

JANE SUHR
Regional Director
Office of Federal Contract Compliance Programs

DATE: April 24, 2019

DATE: _____, 2019

Orrick, Herrington & Sutcliffe LLP

By: 

ERIN M. CONNELL

DATE: April 24, 2019

KATE S. O'SCANNLAIN
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

JEREMIAH E. MILLER
Counsel for Civil Rights

By:

LAURA C. BREMER
Senior Trial Attorney
United States Department of Labor
Office of the Solicitor

DATE: _____, 2019

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For Office of Federal Contract Compliance Programs:



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Senior Vice President &
Associate General Counsel, Law
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Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

JEREMIAH E. MILLER
Counsel for Civil Rights

By: 

LAURA C. BREMER
Senior Trial Attorney
United States Department of Labor
Office of the Solicitor

DATE: April 25, 2019

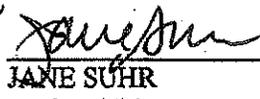
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For Office of Federal Contract Compliance Programs:



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Senior Vice President &
Associate General Counsel, Law
Oracle America, Inc.



JANE SUHR
Regional Director
Office of Federal Contract Compliance Programs

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JANET M. HEROLD
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JEREMIAH E. MILLER
Counsel for Civil Rights

By:


LAURA C. BREMER
Senior Trial Attorney
United States Department of Labor
Office of the Solicitor

DATE: _____, 2019

CERTIFICATE OF SERVICE

I certify that on this 25th day of April, 2019, the foregoing CONSENT FINDINGS and ORDER was served upon the following individuals by U.S. mail, as well as by courtesy copies via email, at the following addresses:

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Attorneys for Defendant Oracle America, Inc.

/s/ Llewlyn D. Robinson
Llewlyn D. Robinson
Paralegal Specialist

U.S. Department of Labor