

U.S. Department of Labor

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VIA HAND DELIVERY

Administrative Law Judge Richard M. Clark
OFFICE OF ADMINISTRATIVE LAW JUDGES
U.S. DEPARTMENT OF LABOR
90 7th Street, Suite 4-800
San Francisco, CA 94103-1516

Office of Administrative Law Judges
San Francisco, Ca

Re: *OFCCP v. Oracle America, Inc.*, Case No. 2017-OFC-00006,
Request for Immediate Hearing

Dear Judge Clark:

On behalf of OFCCP, the Office of the Solicitor asks for an immediate hearing to seek this Court's ruling and direction. In the last two days, confidential informers – current employees of Oracle who are women or are either Black or Asian – have advised the Department that Oracle's attorneys, attorneys with Orrick, Herrington & Sutcliffe, have made contact with them by email and are demanding that these employees submit to interview with Oracle's attorneys *about this case*. In these communications, Oracle's attorneys do not advise these employees that these interviews are not mandatory. The communication does not disclose *anything* about the claims at issue in this litigation, including specifically that these employees are within the class of employees for whom OFCCP seeks to recover back wages and secure prospective wage increases as a remedy for systemic gender and race pay discrimination. From the reports OFCCP has received thus far, the employees feel that they are required to attend these interviews.

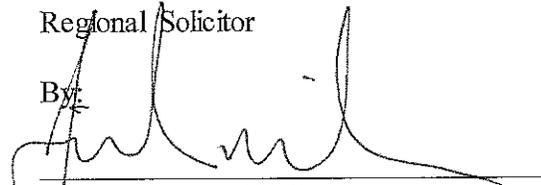
As OFCCP has advised the Court in its pending Motion for a Protective Order or in the Alternative for Leave to Amend the Complaint, this conduct by Oracle's attorneys runs afoul of two different Rules of Professional Conduct and is intimidating these witness in violation of the anti-intimidation provision of the Executive Order. In the lengthy meet and confer discussions leading up to the filing of this motion, however, Oracle never disclosed – despite OFCCP's specific inquiries – that Oracle had commenced or had plans to commence interviews with the members of the protected classes in relation to this case. In fact, Oracle's attorneys repeatedly reiterated that they were baffled as to why we were concerned about the communications they had in February and March of this year because those communications did not concern this case and were in the past. Had the Department had any indication from Oracle that such coercive interviews were planned to commence *in this case*, OFCCP would have filed its motion as an expedited matter.

Current employees of Oracle who are within the protected class of employees are in need of advice *immediately* as these interviews are being scheduled right now. Given the critical information that is being denied to these class members, including whether these interviews with *Oracle's attorneys* are mandatory, the basic facts regarding the claims at issue – including the fact that OFCCP seeks to recover wages and pay increases for the employees being contacted, and *written disclosures* to these employees that Oracle's attorneys are representing Oracle in a matter in which Oracle's interests are *directly adverse to their own*, these interviews being scheduled will be, by definition, coercive and certainly jeopardize the ability of these witnesses to participate freely in this proceeding. OFCCP must fulfill its mission of protecting workers from unlawful coercion and intimidation and must take immediate action to answer both the questions from workers reaching out to OFCCP for assistance but also to get a notice out to the host of other workers who might well either be too intimidated or uninformed to know that they have the right to contact OFCCP or even this Court for assistance. Respectfully, OFCCP asks for an immediate hearing to secure this Court's ruling and guidance so that it may advise informers of their rights and secure them protection from continuing coercion.

Respectfully,

JANET M. HEROLD
Regional Solicitor

By:



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