UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,	)	
Plaintiff,	)	
v.	)	OALJ Case No. 2017-OFC-00006
	)	OFCCP Case No. R00192699
ORACLE AMERICA, INC.,	)	
Defendant.	)	

DECLARATION OF DIRECTOR CRAIG E. LEEN

IN SUPPORT OF FORMAL CLAIMS OF PRIVILEGE

I, Craig E. Leen, hereby make this declaration on personal knowledge or upon information provided to me in the normal course of my duties as the Director of the Office of Federal Contract Compliance Programs ("OFCCP"), United States Department of Labor.

1. I am the Director of the Office of Federal Contract Compliance Programs at the U.S. Department of Labor. I have held this position since December 26, 2018 and previously held the position of Acting Director from July 22, 2018 through December 25, 2018.

2. Pursuant to 41 C.F.R. § 60-1.2, I have primary responsibility for the agency's administration and enforcement of Executive Order 11246, (30 Fed. Reg. 12139), as amended, including the conduct of complaint investigations and compliance reviews to determine federal contractor compliance with Executive Order 11246.

3. Executive Order 11246 and its implementing regulations at 41 CFR parts 60-1 through 60-50 prohibit federal contractors from discriminating against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. OFCCP conducts compliance reviews to determine if the contractor maintains

nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. A compliance review under Executive Order 11246 generally includes analyses of recruitment and hiring patterns; analyses of job qualification requirements and other criteria for employment; interviews with applicants as well as present and former employees concerning the nature of their employment and the manner in which they were recruited, hired, paid, and promoted; and interviews with the contractor's present and former human resources/compensation personnel and hiring officials regarding the contractor's employment policies and practices.

4. OFCCP's compliance reviews are usually initiated by the district or regional office that covers the geographic area where the contractor's scheduled establishment is located. The compliance review is carried out by a compliance officer and other OFCCP personnel in that region.

5. By Secretary's Order 16-2006, the Secretary of Labor has delegated to me the authority to formally invoke governmental claims of privilege, specifically the government's informant's privilege, in cases arising under Executive Order 11246.

6. I have personally reviewed relevant parts of the OFCCP investigative file and the Office of the Solicitor's litigation file from Oracle's Redwood Shores, California, establishment, including documents, materials and information that have been withheld or redacted under claim of the government's informant's privilege.

7. Based upon the information gathered during the compliance review of the Defendant, Oracle America, Inc. ("Defendant" or "Oracle"), OFCCP, through the Office of the Solicitor,

filed an Administrative Complaint, alleging that since at least January 1, 2013, Oracle discriminated against qualified female employees in its Product Development, Information Technology, and Support Job Functions at Oracle's headquarters based upon sex by paying them less than similarly situated males employed in similar positions. OFCCP further alleged that, since at least January 1, 2013, Oracle discriminated against qualified Asian and Black or African American employees in its Product Development job function at Oracle's headquarters based on race or ethnicity by paying them less than similarly situated White employees employed in similar positions. On March 8, 2019, OFCCP filed its Second Amended Complaint ("SAC"), modifying its allegations.

8. In Oracle's Motion to Compel, Oracle seeks certain documents that relate to OFCCP's allegations found in the SAC. Specifically, Oracle seeks interview memos and documents relating to communications OFCCP and the Office of the Solicitor has had with current or former employees. I believe that these requested documents fall within the governmental informant's privilege. By this declaration, and pursuant to the authority delegated to me by the Secretary of Labor, I formally interpose this claim of privilege. Below, I have described the documents for which OFCCP claims the government's informant's privilege. I also have stated my reasons for asserting that the documents are privileged and should be protected from disclosure.

9. OFCCP protects against disclosure of records or information that reveals the identities of persons who furnish information about possible violations of Executive Order 11246 and its implementing regulations to OFCCP investigators, pursuant to the informant's privilege codified at Exemption No. 7 of the Freedom of Information Act, 5 U.S.C. § 552(b)(7)(D) and which also applies in the litigation context during discovery.

10. The effective administration and enforcement of Executive Order 11246 necessitates the protection of the identity of persons who provide information concerning possible violations of the Executive Order to OFCCP investigators. I am informed and believe that such persons are frequently reluctant or refuse to provide information to OFCCP investigators or Solicitor Office attorneys unless they receive the assurance that their identities will not be disclosed. I am informed and believe that such persons also express concerns that their cooperation will result in retaliation or discrimination by their employer. If OFCCP investigators and Solicitor Office attorneys are unable to provide assurances to such persons that their statements will remain confidential, the agency's ability to secure the facts relevant and important to its investigations and litigation will be impaired. This impairment of the OFCCP's investigative functions would have a detrimental effect on its ability to fully enforce Executive Order 11246's prohibition against discrimination against any employee or applicant because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. I have personally reviewed interview statements and other related documents provided by Oracle's former/current employees to the Secretary's personnel. I am informed and believe that the release of the identities of these individuals, as well as any statement that may identify them, may adversely affect the persons who have provided information to OFCCP in this matter, and may also deter other persons from speaking candidly with Department personnel regarding violations of the laws OFCCP administers. In the interview statements I reviewed, individuals referenced many facts that contain identifying characteristics not only concerning themselves, but also related to those with whom they work on their teams/projects. Through process of elimination, the interview statements could potentially reveal the identities of those who confidentially communicated with OFCCP or Solicitor Office attorneys. The release of

interview memos and documents relating to communications OFCCP or Solicitor Office attorneys have had with current or former employees will negatively affect the agency's ability to obtain confidential statements from other employees or applicants, in this case and in other future investigations.

12. For the above reasons, by this declaration, and pursuant to the authority delegated to me by the Secretary of Labor, I formally interpose the claim of government informant's privilege for documents withheld and redacted from Plaintiff's Second Production of Documents.

I declare under penalty of perjury under the law of the United States of America that the above statements are true.

Executed this 13th day of May 2019.

CRAIG E. LEEN
Director
Office of Federal Contract Compliance Programs