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Office of Administrative Law Judges
San Francisco, Ca

**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.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DEFENDANT ORACLE
AMERICA, INC.'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, FOR
PARTIAL SUMMARY
JUDGMENT**

Defendant Oracle America, Inc. ("Oracle"), by and through its undersigned counsel and pursuant to 41 C.F.R. §§ 60-30.8, 60-30.23; 29 C.F.R. § 18.33; and Federal Rule of Evidence 56, hereby requests that the Court grant summary judgment in its favor, or, in the alternative, if for any reason summary judgment cannot be granted, grant partial summary judgment on the claims in Plaintiff's operative Second Amended Complaint for all the reasons set forth below.

OFCCP failed to meet its mandatory presuit obligations, including lacking reasonable cause to issue the Show Cause Notice and failing to engage in reasonable conciliation efforts.

OFCCP's disparate treatment claim fails as a matter of law because neither OFCCP nor its expert compare similarly situated employees as required by Title VII law and OFCCP's own regulations. Consequently, OFCCP cannot establish that any of the pay decisions at issue were discriminatory. Further, OFCCP fails to consider Oracle's affirmative defenses, including differentiating pay based on factors other than gender or race, such as an employee's skills or performance. OFCCP also cannot establish any practice of assigning employees into lower-

ORACLE'S MOTION FOR SUMMARY JUDGMENT

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paying roles, and to the extent it relies on such a theory, it lacks jurisdiction to address assignments that occurred prior to the 2013-2014 audit period, or any such alleged assignments are outside of the applicable statute of limitations. OFCCP also lacks sufficient anecdotal evidence of discrimination to remedy the flaws with its or its expert's statistical analyses and OFCCP's admission it is not accusing individual managers of bias would render any such evidence irrelevant and insufficient.

OFCCP's disparate impact claim fails as a matter of law because OFCCP did not provide sufficient notice or properly allege a disparate impact claim in its Notice of Violation, Show Cause Notice, Complaint, First Amended Complaint, or Second Amended Complaint. In addition, OFCCP has not identified a specific, facially-neutral policy or practice that had an allegedly disparate impact on women, Asians, or African-Americans, nor can OFCCP combine multiple alleged policies and practices as the basis for a disparate impact claim. OFCCP also cannot establish causation by showing that any such alleged policy or practice caused a purported disparate impact. Further, OFCCP has not identified other policies or practices without allegedly undesirable effects that would serve Oracle's legitimate business needs.

OFCCP's claims also fail because it has not established that Oracle discriminated against women, Asians, or African-Americans during the 2013-2014 audit period, and therefore it may not proceed on a "continuing violation" theory.

The Court should also grant summary judgment in Oracle's favor on OFCCP's "refusal to produce" claim because OFCCP (1) cannot show that Oracle refused to produce any documents that OFCCP requested; (2) has now received through litigation discovery the documents and information at issue; (3) violated its own procedures by failing to pursue the documents through a denial of access case; and (4) has no legal basis for the adverse inference and injunction remedies it seeks.

This Motion is based upon the accompanying Memorandum of Points and Authorities; the Statement of Uncontested Facts in Support of Oracle's Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment; the Declarations of Erin M. Connell, Gary R.

Siniscalco, Shauna Holman-Harries, Kate Waggoner, and Steven Miranda and accompanying exhibits; the Declarations of Carolyn Balkenhol, Balaji Bashyam, Amanda Gill, Richard Sarwal, Vickie Thrasher, Campbell Webb, Farouk Abushaban, Kow Adjei, Suratna Budalakoti, Janet Chan, Leor Chechik, Kristin Desmond, Jon Eckard, Barbara Fox, Suzette Galka, Cindy Hsin, Christina Kite, Chandrasekhar Kottaluru, Brian Oden, Rita Outsterhout, Leslie Robertson, Sachin Shah, Harmohan Suri, Chandna Talluri, Athena Wu, and Nachiketa Yakkundi; the pleadings and other papers filed in this matter; all matters of which the Court may or must take judicial notice; and such oral and documentary evidence as may hereafter be submitted to the Court.

October 21, 2019

Respectfully submitted,

GARY R. SINISCALCO
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