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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

**ORACLE AMERICA, INC.'S
RESPONSE TO THE ISSUES FOR
HEARING CONTAINED IN THE
COURT'S ORDER FOLLOWING
PRE-HEARING CONFERENCE**

Oracle hereby submits this response to the Issues for Hearing contained in the Order Following Pre-Hearing Conference issued on November 29, 2019. Oracle understands that during the November 26, 2019 prehearing conference, the Court indicated such a response would be appropriate if either party had concerns regarding the Court's articulation of the issues once the parties had the opportunity to review them in the written Order. Oracle has reviewed the Issues for Hearing contained in the November 29, 2019 Order, and respectfully objects to Issue Numbers 1 and 2 as follows:

Issue No. 1: Oracle objects to the framing of Issue Number 1 as a breach of contract issue. As Oracle articulated in the Joint Pre-Trial Statement filed by the parties on November 21, 2019, the operative Second Amended Complaint does not allege a breach of contract claim. Rather, the substantive legal claims at issue are claims for compensation discrimination. Oracle further objects to the framing of Issue Number 1 on the basis that it cites to 41 C.F.R. § 60-1.4(a). This regulation specifies language ("the equal opportunity clause") a government

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FOLLOWING PREHEARING CONFERENCE**

contracting agency must include in each of its government contracts. It does not, however, affirmatively state that a contractor who allegedly violates the equal opportunity clause has committed a breach of contract. Oracle also is unclear from a damages perspective what implications might arise if a breach of contract finding is made – particularly given this is not a substantive legal claim OFCCP has brought, nor one the parties have explored through discovery in this case.

Issue No. 2: Oracle objects to the citation to 41 C.F.R. § 60-1.4(a) for the same reasons cited above. Oracle further objects to the reliance upon and citation to 41 C.F.R. § 60-20.4(b) in subparts (a) through (d) of Issue No. 2 on the grounds that this regulation was issued on June 15, 2016 and became effective on August 15, 2016 – more than three years after the beginning of the time frame relevant to this litigation, and more than two years after the close of the time period at issue during the audit. Additionally, even if this regulation was effective for the duration of the relevant time period at issue here, on its face it applies only to gender discrimination.

Respectfully, Oracle submits that the proper legal authority that governs this matter is Executive Order 11246 itself, as well as Title VII (and its interpretative case law), which provides the substantive law for analyzing discrimination claims under Executive Order 11246, as both parties and this Court have recognized.

Respectfully submitted,

December 2, 2019

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San Francisco, Ca

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I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, California 94105-2669. My electronic service address is jkaddah@orrick.com.

On December 2, 2019, I served the interested parties in this action with the following document(s):

ORACLE AMERICA, INC.'S RESPONSE TO THE ISSUES FOR HEARING CONTAINED IN THE COURT'S ORDER FOLLOWING PRE-HEARING CONFERENCE

RESPONSE TO ORDER TO SHOW CAUSE RE: ORACLE AMERICA, INC.'S AFFIRMATIVE DEFENSES FOR LACK OF REASONABLE CAUSE AND FAILURE TO CONCILIATE

by serving true copies of these documents via electronic mail in Adobe PDF format the documents listed above to the electronic addresses set forth below:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 2, 2019, at San Francisco, California.



Jacqueline D. Kaddah