From: Siniscalco, Gary R. <grsiniscalco@orrick.com>
To: doles.robert@dol.gov <doles.robert@dol.gov>
CC: Swirky, Maria <mswirky@orrick.com>
Sent: 4/11/2016 6:03:13 PM
Subject: Oracle Corporation, Redwood Shores, CA; OFCCP No. R00192699
Attachments: [Oracle_Redwood Shores] 2016-04-11 Letterto Robert_Doles.pdf

Hello Mr Doles, please see attached letter and Appendices. Please let me know if you have any questions.

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April 11, 2016

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Mr. Robert Doles
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Re: Oracle Corporation, Redwood Shores, California; OFCCP No. R00192699

Dear Mr. Doles:

Oracle has asked me to respond to your March 29 letter and represent the Company in future proceedings on this matter. Please direct all future communications to me.

I.

OFCCP has offered that it "is prepared to engage in a meaningful, good faith and timely conciliation process in order to attempt to reach an acceptable resolution of the Notice of Violations." As we have advised, so is Oracle. However, we are dismayed by OFCCP's misrepresentations in its March 29 letter, which make it more difficult for both sides to have a productive conversation about next steps.

II.

We are particularly concerned with OFCCP's suggestion that it advised Oracle of any of the compliance evaluation findings before it issued the NOV on March 11. The NOV states that the Agency found compensation discrimination in relation to (1) Non-Asians in the Professional Technical 1 role, (2) women in the Information Technology, Product Development, and Support roles, (3) African Americans in the Product Development role, (4) Asians in the Product Development role and (5) "Americans" in the Product Development role. At no point prior to the NOV did the Agency advise Oracle of those compliance evaluation findings; identify any specific employees or purported comparators; inquire about any potential comparators; or otherwise identify any concerns or issues related to any specific employees in those areas. Nor was Oracle provided any indication or information regarding any of the other NOV findings. As the March 29 letter acknowledges, at best, OFCCP told Oracle that it would be reviewing the information collected and conducting further analysis to determine its findings.

III.

Oracle asked OFCCP on at least nine occasions to explain what indicators it found, including on December 31, 2014, February 17, 2015, March 9, 2015, March 11, 2015, March 12, 2015, March 13, 2015, June 3, 2015, July 2, 2015, and December 17, 2015. OFCCP never responded, and even now, it has not explained why it failed or refused to do so. Finally, the description of the entrance conference and of any exit conference (there was none) is simply wrong. To the extent that OFCCP believes that it made those specific representations to Oracle and complied with the FCCM, please advise us by specific reference to the compliance evaluation record.

IV.

The NOV also fails to provide Oracle with a sufficient explanation of OFCCP's findings to allow for meaningful, good faith, and timely conciliation. For instance, with regard to the alleged hiring violation, the Agency has alleged that Oracle discriminated against several groups "in favor of Asians, particularly Asian Indians." Oracle does not collect information regarding "Asian Indians" and is at a loss to determine how the Agency defined this group. As such, Oracle requests that the Agency explain how it defined this group and describe how it arrived at its findings related to this group with regard to recruitment, applicant consideration, and hiring.

V.

As to the compensation violations, the Agency should explain how it met its obligation under Directive 307, which provides that once the Agency finds a measurable difference, it should consider and answer: (a) whether the difference in compensation is between employees who are comparable under the contractor's wage or salary system; and (b) whether there is a legitimate (i.e. non-discriminatory) explanation for the difference. To date, the Agency has failed (and refused despite requests) to provide Oracle with any specific information detailing or otherwise describing which employees (now identified by OFCCP in the above groups) are comparable. Nor has the Agency ever explained whether, and if so how, it considered (and apparently rejected) any of the legitimate pay factors Oracle provided throughout the investigation. Moreover, even if the Agency's position is that somehow Directive 307 does not mandate these steps, we believe applicable Title VII law does require OFCCP to properly establish and show who are actual comparators.

VI.

More broadly, Oracle has no information from OFCCP allowing it to understand, let alone recreate, the Agency's statistical analysis set forth in Attachment A to the NOV. Any position statement or rebuttal would be premature absent this crucial information about a measurable difference.

VII.

With regard to the data requests listed in the attachment to the March 29 letter, OFCCP's assertions are inaccurate and incorrect. We believe the record is clear and will show that Oracle has done its best to comply with extraordinarily broad and burdensome requests, and that OFCCP failed to respond to questions Oracle raised.

One of the best examples of this is OFCCP's failure to acknowledge Oracle's 29-part email response dated October 29, 2015 that addresses most of the requests listed in the attachment. On November 2, four days after Oracle submitted this significant production, Ms. Holman-Harries received a letter from you dated November 2 (emailed to her by Hoan Luong that same day) inquiring about when Oracle would be producing the documents. She then followed up with Mr. Luong that very same day (November 2) to confirm OFCCP's receipt of the responses. Notwithstanding these efforts, it appears that these responses were ignored in your March 29 letter.

For instance, with regard to the request for internal pay equity analysis[1], we explained that this request was part of a larger request that we initially responded to on December 11, 2014. In her telephone interview with Brian Mikel and Jennifer Yeh on January 13, 2015, our compensation director, Lisa Gordon, talked about the process followed to evaluate compensation at Oracle. We sent the final version of the notes of that interview to Mr. Mikel and Ms. Yeh on February 10, 2015. We again addressed our pay equity analysis in an email sent to Hea Jung Atkins on June 2, 2015.

We also have explained that OFCCP's requests for additional data points, such as name of school attended, educational degree earned, prior salary, and years of experience, are not in any electronic database. Any such information, we explained, if available in an individual employee's file, would be extremely burdensome and time consuming to compile. Notably, at no time did any Compliance Officer request to remain on-site and review files.

With regard to resume files, we similarly explained that there is no other format we can use to submit resumes and applications and that we would have to rely on screen shots pasted into a Word or pdf document. We also explained that we completed a lengthy time motion study carefully outlining why it would take six months to a year to complete this request. We explained how onerous this process is on June 7, 2015 and sent the process workflow on June 10, 2015. Again, no Compliance Officer requested to go through the files on-site.

These are just some of the examples of the responses that Oracle provided to OFCCP inquiries that OFCCP never acknowledged or attempted to answer or resolve. We encourage the Agency to read through the voluminous record of responses sent by Oracle throughout the review process to better

[1] OFCCP seems to be of the view that a contractor is required to conduct some form of statistical pay analysis. If that is your position, please provide the basis for your position including reference to the appropriate OFCCP regulation.

understand the significant efforts made by Oracle to respond to OFCCP's requests and comply in good faith with its obligations.

Oracle has never improperly refused to provide requested information. The references to such refusals in the NOV are simply wrong, without merit and contrary to the compliance review record. In every instance, Oracle has either provided the requested information or explained why it could not do so.

Furthermore, we note that requests such as the resumes "in a usable format" are improper as Oracle has no obligation to create or format documents beyond their native formats. Nor was Oracle required to compile possibly relevant and legitimate information manually for use by OFCCP in creating its data fields, such as information on relevant prior experience or education. Similarly, Oracle employees have no obligation to sign summary interview statements created by OFCCP compliance officers and sent months after the interviews took place. We do not know why the Agency delayed in providing the statements for review and approval by Oracle managers. However, we believe that the Agency may have recognized that its compliance officers failed to ask meaningful and relevant questions regarding comparators and information on other legitimate bases for alleged pay differences. As such, we suspect it had no option but to offer cursory statements for management approval that left out the questions posed to interviewees.

VIII.

Overall, the Agency's lack of evidence to support its findings has led it to allege that Oracle has failed to provide documentation and, accordingly, the Agency is due an adverse inference presumption in its favor. Such a presumption would not be appropriate here. Moreover, even if there were the purported "refusals," the presumption, per OFCCP's regulation, relates solely to a contractor's "destruction" of relevant records or a failure of a contractor to maintain required records. The Agency has no evidence that either of these occurred.

IX.

To move this along, we had hoped that OFCCP would be forthcoming on our few initial questions as set forth in the letter. We now ask the Agency to address all the questions listed in **Appendix A** to this letter. In addition, with specific reference to the alleged "refusals" by Oracle, we ask that OFCCP answer the questions in **Appendix B** to this letter. Once the Agency provides these answers, we hopefully will be better able to understand its allegations and findings.

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For the reasons stated above, we believe the invitation for a face-to-face meeting at this stage would likely be premature. We are also concerned about engaging in a face-to-face dialogue given that the region has mischaracterized and misstated other in-person interactions going all the way back to the entrance conference. Until we have reason to believe there would be a more accurate and forthright exchange, we believe it best to have written communication.

Very truly yours,

Gary R. Siniscalco

Attachments: Appendices A and B

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APPENDIX A

Questions arising from OFCCP's letter dated March 11, 2016 (NOV)

With regard to violation #1:

1. Please state how OFCCP determined that Asian Indians, and Asians generally, were favored in recruiting.
2. Please identify who OFCCP determined were "qualified" African-Americans, Hispanic and White … applicants" who were discriminated against in recruiting.
3. For those identified in #2 above, please identify all those OFCCP identified as qualified persons discriminated against in hiring.
4. Please describe with specificity the recruiting actions that OFCCP determined were discriminatory.
5. Please provide the underlying statistical data and actual computations used by OFCCP to determine the standard deviations in violation #1.
6. Please describe with specificity what facts OFCCP relied upon in finding that Oracle "disfavored non-Asian applicants in hiring."
7. Please describe specifically what facts OFCCP "gathered during compliance evaluation (to demonstrate) that Oracle's discriminatory recruiting and hiring practices showed the racial composition of the applicant flow data to favor Asians, particularly Asian Indians."
8. Please describe with specificity how OFCCP identified any individuals referenced in violation #1 as Asian Indians.
9. Please identify the multiple requests made by OFCCP for "copies of all application materials, etc."
10. Please explain why OFCCP compliance staff made no request to review application materials on site.
11. Please identify the non-Asian counterparts who were equally or more qualified for the PT roles filled by Individual Contributors.

The following questions relate to the alleged NOV violations 2-5:

12. Did OFCCP (or its statistician) look only at the factors referenced in the statistical summary in Attachment A to the NOV?
13. Were other factors considered? If so, which ones?
14. Were other factors rejected? If so, why?
15. How many different models, iterations, and computations did the statistician run besides the three listed in Attachment A?

16. What were the statistical results of all the other models and computations conducted by the statistician?
17. Oracle was unable to replicate the analysis, methodology and results in Attachment A. Please provide it with all the necessary information, data, descriptions of methodology, etc., sufficient to allow Oracle to replicate the results in Attachment A.
18. Please describe with specificity the data used in Attachment A with regard to "work experience at Oracle" and "work experience prior to Oracle." If these simply mean "time at Oracle" and "time working prior to Oracle," please explain the reason for use of these timeframes.
19. Because of the relatively small groups of employees, did OFCCP or its statistician do any statistical tests to ensure that practical significance was not at play?
20. If other factors were considered and rejected by OFCCP, what did the results show using the factors that were rejected? In other words, did OFCCP consider a factor that explained or reduced the disparity and then reject it?
21. For just the model used in Attachment A, OFCCP made computations for each role and for each protected group. How many roles and how many analyses were done using the Attachment A model?
22. Directive 307 allows OFCCP to use different groupings of jobs, roles, job titles, etc., to develop PAGs. How many different PAGs did OFCCP develop and consider as part of its statistical analysis? What facts were considered to determine if the roles or job titles in the PAGs comprised only comparators?
23. Directive 307 states that in every case there are three key questions to answer. Once a measurable difference is found, questions b and c are as follows: b) is the difference in compensation between employees who are comparable under the contractor's wage or salary system and c) Is there a legitimate (i.e. non-discriminatory) explanation for the difference?
24. What did OFCCP do to answer questions b and c and what actual facts and information did it obtain?
25. If OFCCP did identify comparators, who are they as referenced in the NOV where it states variously that respective protected class members (Females, Blacks, Hispanics non-Americans) were paid less than similarly situated (males, Asians, whites)?
26. Why did OFCCP never give Oracle an opportunity to provide legitimate explanations under question c?
27. What did OFCCP do to answer question c?
28. Did OFCCP consider performance in assessing pay differences? If not, why not?
29. Did OFCCP consider relevant job experience, business lines (for example, work on Peoplesoft products v. cloud v. fusion), criticality of the role or product to Oracle, or market factors? If not, why not?
30. For each finding in the NOV, state whether the finding constitutes unlawful disparate treatment or disparate impact?

31. The NOV refers variously, and in summary fashion, to evidence in personnel records, interviews, complaints, anecdotes but is lacking in any details or specific information of any kind. Please identify or explain what facts or information was found that supports each of the alleged violations 2-5.

With regard to alleged violations 6-10 under the heading of "Affirmative Action Violations," please answer the following:

32. For alleged violation #6, please describe the "in depth analysis" OFCCP believes is required and how Oracle "failed" to identify problem areas.
33. Please identify with specificity the "problem areas in its compensation system" that Oracle failed to identify.
34. For alleged violation #7, please describe with specificity the type of pay equity analysis Oracle failed to conduct in accordance with 41CFR 60-2.17(c).
35. For alleged violation # 8, please describe with specificity the nature and type of monitoring OFCCP contends (1) was not done and (2) must be done in accordance with 41 CFR 60-2.17(d).
36. For alleged violation #9, please identify which records Oracle failed to maintain and collect.
37. For alleged violation #9, please identify the adverse impact analysis not done as required by 41 CFR 60.1.12(a).
38. For alleged violation #10, please identify with specificity when and how OFCCP requested access to records.
39. For alleged violation #10, please identify with specificity each and every instance in which Oracle denied OFCCP access.
40. For all of the alleged violations 6-10, please specify what technical assistance OFCCP has available to provide to contractors.
41. For all of the alleged violations, please identify the person or persons in the SF region knowledgeable and experienced in providing technical assistance to contractors.
42. Please specify when and what technical assistance, if any, was ever offered to Oracle in connection with 6-10.

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APPENDIX B

1. What facts support OFCCP's determination that Oracle refused OFCCP access to prior year compensation data for all employees for PT1 role during the review period of January 1, 2013 through June 30, 2014?
2. What facts support OFCCP's determination that Oracle refused OFCCP access to complete hiring data for PT1 riles during the review period of January 1, 2013 through June 30, 2014?
3. What facts support OFCCP's determination that Oracle refused to provide data on April 27, 2015?
4. What facts support OFCCP's determination that Oracle refused to provide data on May 11, 2015?
5. What facts support OFCCP's determination that Oracle refused to provide data on May 28, 2015?
6. What facts support OFCCP's determination that Oracle refused to provide data on July 30, 2015?
7. What facts support OFCCP's determination that Oracle refused to provide data on October 1, 2015.
8. What facts support OFCCP's determination that Oracle refused to provide data on October 14, 2015?
9. What facts support OFCCP's determination that Oracle refused to provide data on November 2, 2015?
10. What facts support OFCCP's determination that Oracle refused to provide data on December 15, 2015?
11. For each refusal noted above, state all efforts made by OFCCP to arrange to review the documents on site.
12. What facts support OFCCP's determination that Oracle refused to provide complete compensation data for all relevant employees in the Information Technology, Product Development and Support roles for "the full review period" as noted in footnote 4.
13. What, if anything, did OFCCP do to review on-site the items referenced in footnote 4 that Oracle allegedly refused to provide?
14. What, if anything, did OFCCP say or do in response to seek access to information on site to the extent such effort is not described in response to questions 1 – 13 above?
15. Please identify the legal and regulatory basis for presuming data would be unfavorable (i.e. applying an adverse inference) in the NOV with regard to the refusal referenced in footnote 4.