



Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2669  
+1 415 773 5700  
orrick.com

Gary R. Siniscalco

E grsiniscalco@orrick.com  
D +1 415 773 5833  
F +1 415 773 5759

January 17, 2017

*Via E-Mail and U.S. Mail*

Ian H. Eliasoph  
U.S. Department of Labor  
Office of the Solicitor  
300 Fifth Avenue, Suite 1120  
Seattle, Washington 98104-2397

Re: Oracle America, Inc., Redwood Shores, California (OFCCP No. R00192699)

Dear Ian:

This letter addresses the sudden notice you sent on January 9, 2017 of your stated intent to file a complaint against Oracle America, Inc. in the next few days. As you are aware, we have been very concerned about OFCCP's conduct in this matter. Our concern extends to the Department of the Labor's pre-enforcement conduct.

Throughout OFCCP's investigation we have detailed the Agency's prejudicial and improper conduct, including baseless threats to bring a criminal action against company employees, fabrication of facts regarding OFCCP's requests and Oracle's responses, failure to follow its own Federal Contract Compliance Manual, and other conduct clearly reflecting prejudice towards Oracle. Then, without any prior notice, OFCCP issued a specious Notice of Violation predicated on few to no facts, improper use of aggregate statistics, and groundless legal claims. For example, the NOV purports to apply a negative presumption against Oracle for allegedly not providing records. But no facts or law warrant any such presumption, as no evidence exists that Oracle destroyed records and it is undisputed that OFCCP ignored Oracle's correspondence with regard to records. In spite of Oracle's efforts to engage in good faith conciliation, and refusals by OFCCP to provide the information and predicate analyses needed to further that conciliation, your office now requires a demand of some dollar amount, essentially in a vacuum of detail from the Agency, or else you say you will file what clearly is a midnight complaint.

It is well-known that the current administration and senior officials at OFCCP have a vested interest in securing "wins" on the compensation front, and that once filed a complaint would be unlikely to be withdrawn by the new administration. It is important to underscore—as the Department of Justice did in its March 9, 2012 memorandum—that federal civil service



employees are held to a standard where they “must be particularly sensitive to safeguarding the Department’s reputation for fairness, neutrality and nonpartisanship”:

Simply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges. Law enforcement officers and prosecutors may never select the timing of investigative steps or criminal charges for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party.

We assume that the Department of Labor and the attorneys of the Office of the Solicitor share these values.

We understand, Ian, that you have been authorized by “higher-ups” in the Department to suddenly and quickly file a complaint. It is no secret that Oracle’s CEO is a member of the incoming administration’s transition team. To the extent the timing here is motivated in whole or in part to advantage the outgoing Democratic administration, or to disadvantage the incoming Republican administration, such motivations would plainly be inappropriate. This is especially true here given the issues raised above and previously, as well as the manifest lack of any reasonable conciliation efforts or substantive discussion since October 10, 2016. As we move towards the last week of the outgoing administration, we strongly advise that OFCCP and the Office of the Solicitor refrain from any unwarranted rush to file. We are confident that any ALJ, and certainly new DOL management, would view any filing under these circumstances as improper.

Notwithstanding what we believe to be improper process, Oracle continues to be willing to address and resolve the alleged violations, consistent with applicable legal standards. We therefore request that you, or your client at OFCCP, promptly provide Oracle with a specific and appropriate set of proposed monetary remedies and other provisions that would reasonably and in good faith allow Oracle to assess the Agency’s conciliation demands, and that OFCCP engage in a responsible further dialogue regarding both the facts and merits of the legal theories underlying its findings. To date, we have received only verbal sketches of proposals that the OFCCP itself describes as formula-based “estimates” and acknowledges do not take into account any mitigation. We look forward to receiving an appropriately detailed proposal so that conciliation efforts can move forward productively.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gary R. Sinscalco". The signature is fluid and cursive, with a large initial "G".

Gary R. Sinscalco