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To: suhr.jane@dol.gov <suhr.jane@dol.gov>
CC: Shauna Holman Harries <shauna.holman.harries@oracle.com>; Swirky, Maria" <mswirky@orrick.com>
Sent: 4/27/2015 10:22:02 PM
Subject: Compliance Evaluation of Oracle, Redwood Shores, CA
Attachments: 2015-04-27 G_Siniscalco Letter to J_Suhr @ OFCCP.pdf

Dear Ms Suhr, please see the attached letter replying to yours of April 15.

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April 27, 2015

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VIA E-MAIL AND U.S. MAIL

Ms. Jane Suhr
Deputy Regional Director, Pacific Region
U.S. Department of Labor
Office of Federal Contract Compliance Programs
90 Seventh Street, Suite 18-300
San Francisco, CA 94103

Re: Compliance Evaluation of Oracle, Redwood Shores, CA

Dear Ms. Suhr:

Thank you for your letter of April 15, 2015, in reply to mine of March 31. Given Oracle's efforts and demonstrated cooperation with OFCCP nationwide, it is unfortunate that we have a number of disputes and differences regarding OFCCP's inquiries and actions before and during the Redwood Shores review. I also note that in addition to your reply, your letter adds some concerns of OFCCP with regards to several on-site issues. I will endeavor below to address them as well. But first I want to address several general points.

Ms. Holman Harries and her team have a satisfactory and consistent record of cooperation and responsiveness to OFCCP in all other 39 compliance reviews nationwide. Further, even in other Pacific region reviews, and nationwide, OFCCP officers have shown similar cooperation, and followed generally consistent standards and practices. Moreover, in all other reviews, Ms. Holman Harries, her team, and Oracle managers and executives who have been interviewed at other locations, have felt respected, and regarded the interactions with OFCCP Compliance officers as professional and non-intimidating and demonstrating mutual respect. Unfortunately, this has not been the case during the Redwood Shores review.

I also want to address what we understand to be OFCCP's proper area of inquiry regarding "discrimination complaints." The FCCM provides express direction to COs regarding what to get and where to get them. *See* FCCM, 2C02, regarding EEOC and state or local complaints. Conversely, we can find no reference in the FCCM that authorizes or directs a

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CO to request all internal complaints, let alone for three years as specified in your last (5th) revised request. Moreover, I can assure you that not only is such a request not standard, but not one other CO anywhere in the country has requested such information. Notably, while the FCCM directs COs to review *contractor accommodation records*, there is no similar directive to obtain and review all internal EEO discrimination complaints. Indeed, the FCCM does specify certain types of contractor personnel records that a CO should consider requesting during an on-site. All internal complaints is not on the list. Moreover, as further described in the FCCM, where a CO obtains information about harassment or discrimination, then the CO must investigate further. Even then, a “fishing expedition” for all internal complaints, of whatever kind, covering three years, is not authorized.

Below I will endeavor to address various issues that I raised which have not been adequately addressed by you; respond to the specifics of your letter; and address the new issues you raised.

In-Person Meeting to Discuss Issues

You suggest meeting in person to discuss our respective remaining concerns. We would welcome that opportunity. Given that we believe the approach taken here is out of step with OFCCP’s nationwide practices, and given the respective issues we each have identified that apparently still remain, it may be useful to have someone from OFCCP’s National Office Operations present to ensure that national standards and practices are addressed.

Please note that I will be out of the country April 30 – May 20, but will be happy to meet upon my return. Since my representation on behalf of Oracle is with regard to the issues in these communications with OFCCP, my absence should not affect OFCCP’s ongoing work with Ms. Holman Harries and her team regarding other areas of inquiry or review activities that are not in dispute.

Unaddressed Concerns Pre-onsite

In my letter of March 31, I raised again the concern over the three day advance notice letter. You suggested that the March 4 letter served that purpose, but offered no explanation or rationale for the correspondence from Ms. Holman Harries on March 19 and 20, or the late night email of March 19 from Mr. Mikel, and the requests contained therein. You also did not address the basis for multiple different versions of OFCCP’s request for complaints (four, not counting the fifth version in your April 15 letter), and including the oral request



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made to Ms. Schurman during her “employee” interview. Nor has Oracle been informed of any specifics regarding the summary assertion that there are “indicators” of possible bias in hiring and compensation. Again, such a failure to provide meaningful information is not OFCCP’s standard or routine practice in other parts of the country. You continue to keep Oracle in the dark.

Response to OFCCP’s March 4 requesting a “listing of employees who have made...complaints...”

I explained in my letter why we answered NONE and we believe that response was and remains accurate.

The On-site Entrance Conference and My Role

You suggest that since I did not attend the entrance conference in person and, since I was only “recently retained”, you needed to provide “relevant correspondence so that (I would be) accurately informed.” You presume too much and say too little.

First, while I was retained to intercede on Oracle’s behalf as specified in my March 31 letter, I am not new to this compliance review, or to Oracle’s AAP compliance program. Quite the contrary, I have worked with Oracle on its EEO/AA compliance program and its related legal obligations for many years and on all of its recent audits, which now number forty (40) nationwide since early 2013.

Second, I am familiar with all of the relevant correspondence in connection with this audit and the onsite, and I can assure you there is much more to the picture than what you provided. You may want to reach out to your staff to get a more complete and accurate picture.

Third, with regard to my statements and description of how the conduct by OFCCP was observed, heard and received by Oracle, I assure you the information provided to me was not long delayed. On the contrary, given the surprising nature of the comments, I received reaction texts and emails during the entrance conference about OFCCP allegedly being misled, that you were aware of a lawsuit, and that OFCCP reminded the Oracle representatives present that it was a federal offense to lie to them and that it was a criminal charge. Immediately following the entrance conference, I met in person with Ms. Holman Harries. She personally was emotional and upset over the content, nature and approach taken by OFCCP during the entrance meeting, especially given that she had a demonstrated



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record of cooperation and responsiveness, and worked 12 hour days, forgoing vacation, to work on the onsite along with responding to requests on other compliance reviews. Others present also expressed their surprise at the attitudes exhibited by OFCCP staff during the meeting.

The Multiple Different Requests for Internal Complaints

In addition to my comments above regarding the nature and scope of inquiry regarding internal discrimination complaints, I address them here more specifically. First, nothing in your letter alters my description of the four different forms of requests. Obviously, if you thought the March 4 request was clear and adequate, Mr. Mikel would not have reformulated, modified and expanded the request. Now, with this fifth and further expanded request in your letter (*covering three years*), I can see no basis for it. Rather, this new, expansive request seems to be in retaliation for Oracle raising legitimate concerns.

In addition to my prior objections, and my comments above regarding the FCCM, I also object that the new complaint request appears to constitute an abuse of process and would be extremely burdensome.

Please note that as described to your staff during interviews, employees can complain orally, or in writing, to supervisors, to higher level managers, or to their respective HR Business Partners (HRBPs). Oracle does not maintain any compilation or list of such complaints or concerns. The Legal department, of course, does maintain files on formal charges which OFCCP should have already obtained from DFEH or EEOC. Complaints can also be made through the Oracle Helpline where they may be made anonymously.

Please also note that in many cases supervisors, higher level managers and HRBPs with responsibilities that include employees at Redwood Shores work at locations outside of Redwood Shores, and some even work outside the U.S. The converse is similarly true, Redwood Shores employees may report to a supervisor, or have a higher level manager located elsewhere in the U.S. or overseas. Each and every one of such individuals would need to be contacted and interviewed to identify what info they might have or remember that might be responsive to your internal complaint request.

You also couch the rationale for these various requests as “standard” and “routine in employment discrimination matters”. Unless this is another “black box” approach by your staff to hide facts, Oracle is unaware of any complaints or any complaint investigation into



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discrimination matters that OFCCP has received or is currently investigating. *See* FCCM, Chapter 6 (Complaint Investigations). If there are such complaints, Oracle has not been apprised of them.

The two cases you cite are inapposite. They both involve class action lawsuits in federal court. Notably, you cite to no OFCCP authority, case law, regulations, or elsewhere to justify your requests. I note further that the *Babbitt* case, decided here in the Northern District, and which I handled, authorizes only the type of discovery OFCCP should have done prior to the on-site, *i.e.* correspondence solely regarding DFEH and EEOC charges. There is no discussion of internal complaints. The *Goldman* case substantially limits discovery, even in the context of broad allegations in that sex discrimination class action. Finally, I remind you that OFCCP's standard, national practice is not to ask for such information.

Other Issues Raised

In your third from last paragraph, you raise some new issues whereby you stated your intention is to "clarify the record again." Unfortunately you do not do so. The record will, in fact, speak for itself. As I mentioned earlier, you may want to get a full record of the correspondence from and to OFCCP. You may also want to get a full and accurate report from the OFCCP staff who were present during the onsite.

- Invitation Email to Employees. You accuse Oracle of taking FCCM language out of context "indicating that employees who elect to be interviewed should have Oracle's legal representatives present." I suggest you reread the letter that was sent; the revised letter OFCCP insisted be sent, and read the relevant FCCM section. I request that you then tell me precisely what was taken out of context and explain how OFCCP's version, forcing unknowledgeable employees to search for their rights, was an appropriate and reasonable alternative. Your position and misstatements of the record is typical of the kind of inappropriate assertions and mischaracterizations of the record that create mistrust and unnecessary disputes. The same is true of your staff's communication to Ms. Holman Harries claiming, without support, that the email invitation sent to employees was "improper, misleading and coercive."
- Conference Rooms. You also take issue with the number of rooms made available for use by OFCCP staff (three large conference rooms) and their location. You imply Oracle somehow limited or hindered your staff, or employee access. You seem to



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ignore several facts: 1) Oracle provided three spacious, contiguous rooms, 2) all Redwood Shores buildings are security limited sites and no visitors have wide-open access, 3) your staff used only one or two rooms simultaneously for interviews, and never even made use of three, let alone four rooms, at one time, 4) no employee was prevented or denied access, and 5) OFCCP, in my experience nationwide, normally needs far less space and prefers being located near HR so that there can be easy access to any necessary HR records.

- 3 ½ Day “limit”. Finally, you defend your staff’s interview failure of employees by stating that “Oracle requested to limit the onsite review to three and a half days in order to accommodate its representatives travel arrangements.” You then suggest that, as a result of this “limit”, OFCCP could not contact all employees who requested to be interviewed....” This is again flatly contrary to the record.

I suggest you speak to your staff who remained on site on Wednesday through Friday. First, Ms. Holman Harries made a personal request that the last day end by 3:00 p.m. PDT on Friday, since she and her team wanted to catch a flight on Friday evening out of San Jose airport. However, she offered verbally, and in writing, to make up the two hours by starting earlier or staying longer the other days. This offer was declined. More importantly, you should inquire of your staff when they started each day and when they left. You will find they came at 9:00 a.m., with all of them leaving early one day because one of them was tired, and despite insisting that the email to employees inform employees that OFCCP representatives would be on-site and available from 8:00 a.m. to 7:00 p.m. PDT. They also cancelled several executives’ interviews, including a scheduled 4:00 p.m. interview with one very senior executive. This latter senior executive had come over, was sitting in a conference room awaiting his 4:00 p.m. interview, when your entire staff abruptly announced they all were leaving. No apology for this last minute cancellation was tendered to him.

With regard to employee (non-manager) interviews during the “3 ½ days”, Oracle first provided OFCCP in writing, early on Tuesday, March 24, at 10:46 a.m. PDT with an initial list of employees and phone numbers, with phone numbers, that accepted the invitation to be interviewed and who indicated they were available on Tuesday afternoon and on Wednesday. Oracle provided OFCCP additional updated lists as employees responded. Yet, no one at OFCCP contacted them on Tuesday or Wednesday. When Ms. Holman’s team learned of this from several apparently confused and disgruntled employees, whose availability on those days had lapsed, Mr. Nyakundi so informed your staff on Wednesday at 3:36 p.m. PDT. Mr Mikel replied late Wednesday night (10:14 p.m. PDT) that “we



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(OFCCP) would be contacting them.” Thus, despite the passage of all that time, no one from OFCCP had made any contact with the available and interested employees. The employees were simply left to wonder and the available conference rooms remained empty.¹

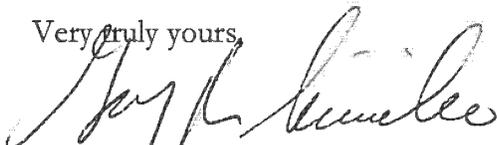
Conclusion

Regardless of the disputes and issues addressed in our respective correspondence, I hope that your team and Ms. Holman Harries and her team can proceed to work in a cooperative and non-accusatory fashion to complete this compliance evaluation.

I have long worked with the Company and I know that Oracle has a terrific program, as evidenced by its many successful compliance evaluations and its overall compliance performance. I am confident that the Redwood Shores review will prove equally successful.

If you have any questions, or require clarification on any of the foregoing, please let me know.

Very truly yours,



Gary R. Siniscalco

¹ Oracle's diversity team was apprised by one employee on April 6 of the several emails he sent to the OFCCP-directed email site asking "can anyone please respond" and receiving no answer.