
From: Siniscalco, Gary R. <grsiniscalco@orrick.com>
To: Atkins, Hea Jung K - OFCCP <Atkins.HeaJung@dol.gov>
CC: Vickie Thrasher <victoria.thrasher@oracle.com>; Shauna Holman Harries <shauna.holman.harries@oracle.com>
Sent: 7/9/2015 7:12:01 PM
Subject: Oracle/Redwood Shores
Attachments: 2015-07-09 G_Siniscalco Letter to H_Atkins @ OFCCP.pdf

Dear Ms Atkins, please see the attached letter.

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July 9, 2015

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VIA E-MAIL AND U.S. MAIL

Hea Jung Atkins
District Director
U.S. Department of Labor
Office of Federal Contract Compliance Programs
Greater San Francisco/Bay District Office
90 7th Street, Suite 11-100
San Francisco, CA 94103

Re: Oracle/Redwood Shores

Dear Ms. Atkins:

I write in response to your July 2 email to Shauna Holman Harries.

Your email alleges that Ms. Holman Harries, her team, and Oracle have, inter alia, engaged in misconduct, mischaracterized facts; attempted to interfere with and obstruct OFCCP's audit; sent an email designed to chill employee participation; claimed incorrectly that OFCCP requested that the email be sent to employees; claimed incorrectly to have copied you on the emails to employees; violated OFCCP's regulations and federal law; intimidated interviewees through strong and misleading messages; and made statements that suggested wrongdoing of the interviewees. You then advise that OFCCP views Oracle's "continued mischaracterization of [OFCCP] requests and misrepresentation of facts in this audit as interference and intimidation of [OFCCP's] ability to conduct a compliance evaluation."

These are extremely strong allegations, and coming from a federal government official, they should not be made lightly. Yet they run directly counter to the clear documented record of OFCCP's and Oracle's actions throughout the Redwood Shores review. Unfortunately, this is not the first time federal officials at OFCCP have hurled baseless allegations of this type in the Redwood Shores audit. I refer you to prior correspondence with federal representatives of OFCCP in April and May and the conduct referenced therein.

As we explained in that correspondence and reiterate here, Ms. Holman Harries and her team have a completely satisfactory and consistent record of cooperation and responsiveness

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to OFCCP in all of OFCCP's compliance reviews nationwide. And, in the thirty-eight (38) other OFCCP audits to date (other than Redwood Shores and the upcoming on-site in Pleasanton), OFCCP has followed its policies, regulations, and FCCM processes, treating Ms. Holman Harries, her team, and other Oracle employees with mutual respect. Unfortunately, this has not been the case during the Redwood Shores review.

While we have explained these issues in multiple prior communications, and it is not practical to repeat all of those communications in this letter, below are just a few examples of OFCCP actions and inactions that give Oracle legitimate cause for concern over OFCCP's motivations and abuses of process and practice in this review.

Only two working days before coming on site in March (in violation of OFCCP's express directive to COs regarding written notice of on-site demands), Mr. Mikel e-mailed Ms. Holman Harries with a list of nearly 400 employees that he wanted scheduled for interview the next week. Ms. Holman Harries responded to Mr. Mikel, explaining that because the company does not have the resources available to contact each employee to schedule an interview in just two days, an email would be sent telling the employees that they have been selected for interview and requesting that they provide their contact information and availability during the week that OFCCP would be on site. OFCCP stated no objection to Oracle communicating and scheduling interviews in this manner.

After Oracle sent an email to employees to schedule interviews upon very short notice as requested, OFCCP claimed the email misrepresented OFCCP policy; using words such as misleading, improper and coercive.

We asked several times for an explanation of how and requested that OFCCP provide us with specifics and authority for your position. You have yet to provide us with that information. Instead, Mr. Mikel (with a copy to you) proposed an alternative email ("exact language" was his term) be sent to employees. That version, which really suggested nothing different than the original email appeared only to make it more difficult for employees to search for their rights in the FCCM. Nevertheless, in a continued good faith effort to cooperate with you and Mr. Mikel during the audit process, the company used OFCCP's form of email going forward in communicating with employees.

Knowing that Mr. Mikel (with your knowledge and presumably concurrence) drafted and approved the email language in March, the company used the very same form of email in communicating with employees when you requested additional interviews in June.

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In another demonstrably false assertion, you incorrectly accuse Ms. Holman Harries of not responding to a May 29 email from Mr. Hoan Luong for an unprecedented and unlimited request for personal contact information for all current and former Oracle employees. However, Ms. Holman Harries did respond to this email on June 3, copying you. Neither you nor Mr. Luong ever responded.

Instead, Mr. Luong provided Ms. Holman Harries with a list of employees to schedule for interview. She promptly complied with that request by emailing the employees the same form of email insisted upon by OFCCP in March.

You now claim this email was designed to "chill participation!"

As an aside, given your past personal rapport, personal professionalism and interactions to date with Ms. Holman Harries and her team, and in light of these patently false claims, I have to wonder why you now are asserting such a false record. Alternatively, I have to question whether others, higher up at OFCCP, have ulterior motives in directing your attempt to create such a demonstrably false record.

With regard to interviewees themselves, when you learned that some of the proposed interviewees were either not available for interview or chose not to participate, you demanded that they be scheduled for interview anyway. The rationale was that you could discuss it with them while onsite and they could tell you directly that they did not want to participate in an interview with a federal compliance officer of the U.S. Department of Labor, OFCCP. As Ms. Holman Harries explained, and as you know, employees can choose whether they wish to accept OFCCP's invitation to be interviewed. Neither the company nor OFCCP can compel them to participate.

Oracle not only sent employees the email that you approved, but even sent a second reminder email to encourage them to respond. Some accepted, some did not. Your demands that they nevertheless be scheduled and appear for an interview did, indeed, border on harassment and intimidation of those individuals who declined the invitation and was an abuse of process by OFCCP.

I wish to underscore at this point two observations: First, the record is clear that Oracle's team, where possible and when contacted by individuals, encouraged employees to meet with your team, and second, I am reasonably confident that persons you did interview (certainly those June in lower level manager roles, including African Americans, Hispanics,

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females and Asians) described in glowing terms the Oracle culture, the diversity and the values placed on talent and ability¹, without regard to race, sex, ethnicity and every other protected class.

As we have since learned, informing employees of their rights during interviews with OFCCP has been more important than we anticipated; and apparently held in little regard by OFCCP.

You and your team have repeatedly blurred the lines between "management" interviews and "employee" interviews and have been dismissive of the rights of the company and its employees to have representatives present-rights that are expressly called out in the FCCM.

Recall for example, how four OFCCP representatives improperly switched back and forth in their telephone interview of Ms. Juana Schurman, asking her questions in her legal and managerial capacity, even though OFCCP expressly stated earlier that it wished to interview Ms. Schurman (a Vice President and Senior-most employment counsel in the Legal Department) in her capacity as an employee. As a result, and although at home sick, she readily agreed to a phone interview, without any representation.

Likewise, during your June visit, it is now clear that you and your team knew before even starting your interviews of managers that you intended to interview them in both their management and individual capacities, yet you did nothing to inform them of their rights to a representative of their own choosing in advance of the interview - and, in at least some, informed them improperly in the interview. You now criticize Ms. Holman Harries and her team for somehow interfering or intimidating the interviewees (and even the federal compliance officers) when the failure to inform interviewees timely and properly fell entirely on you and your team. What did you expect an employee (or Ms. Holman Harries and her team) to say or do when suddenly you switched questioning; when you failed to follow OFCCP standards?

These are just examples of a pattern and practice by OFCCP to pursue this compliance review with an apparently strong and unfounded bias against Oracle, notwithstanding

¹ I read with interest a June 30 report, published this week, surveying federal employees (both SES as well as lower level employees) on their respective views on fairness in promotions; the role of merit in promotions; recognizing performance and rewards for performance; and whether creativity and innovation were rewarded in federal agencies. The views differed greatly between SES level executives (who had much higher perceptions) and lower level employees. What is clear overall is how badly merit is perceived as being recognized and rewarded in the federal government. See BNA Daily Labor Report, "Improving Leadership", 120 DLR A-5, July 7, 2015. I will be happy to send you a copy.



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OFCCP's duty, and your duty as a federal officer, per the FCCM, to act as "neutral fact finders." This started before OFCCP even stepped foot on-site at Redwood Shores.

Despite several requests from Oracle before the on-site visit for specifics regarding OFCCP's summary assertion that there were "indicators" of possible bias in hiring and compensation, OFCCP refused to respond and continues to this date. At the beginning of the entrance conference, in the presence of senior Oracle executives who were there to welcome OFCCP and share their overall perspective of Oracle and its practices, and in the presence of Regional Director Wipper, one OFCCP official made unprofessional, inaccurate and blatantly bullying comments, including a threat of possible criminal prosecution for giving supposedly false information. In a similar manner, you now accuse Oracle of interfering with and obstructing the audit.

Throughout the review process, OFCCP has ignored Oracle's record of cooperation, responsiveness, and efforts by Ms. Holman Harries and her team to work 12 hour days, forgoing vacation, to work on the Redwood Shores on-site while also responding to requests on other compliance reviews throughout the country. OFCCP also failed to take the opportunity while onsite in March to learn first-hand from Oracle's diverse group of senior executives about Oracle's policies and practices that make Oracle a desirable place to work with a strong record of diversity and inclusiveness. Although the process of employee rights was fumbled, we were pleased to see that you did ask such questions of manager level individuals in your June interviews.

As I explained to Mr. Mikel on March 31, several senior executives who were interviewed (women and minorities) felt disrespected and explained that their roles and efforts in affirmative action, diversity and inclusion were ignored due to the type and nature of some of the questions. OFCCP's on-site process has been uneven at best, mismanaged, and fails in adherence to OFCCP's general standards and practice. As a further example, despite OFCCP's insistence on having a large group of senior executives set aside times from their busy schedules for their interviews in March, many were cancelled by your team at the last minute. I remind you again that Oracle also heard from non-manager employees in March, who accepted OFCCP's invitation to be interviewed and had indicated availability, that they were not being contacted about an interview time.

In sum, your heated allegations are inappropriate, misleading and entirely unwarranted. Instead, you react unreasonably to reasonable assertions of a contractor's and employees' rights and Oracle's efforts to ensure that OFCCP follow its rules and act accordingly.

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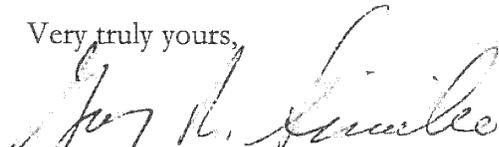


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Going forward, I urge you instead to proceed consistent with OFCCP's nationwide practices and its regulations and standards. As with other offices throughout OFCCP that have properly conducted their evaluations, you will find an eager and cooperative partner in Ms. Holman Harries and her team as you work to complete these evaluations.

Very truly yours,



Gary R. Siniscalco

cc: Shauna Holman Harries
Vickie Thrasher