

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

OFFICE OF FEDERAL CONTRACT COMPLIANCE)
PROGRAMS, UNITED STATES DEPARTMENT)
OF LABOR,)

Plaintiff,)

v.)

Case No.)

JBS USA LUX S.A. f/k/a JBS USA, LLC, JBS USA, Inc.,)
and Swift & Co., and SWIFT BEEF COMPANY,)
collectively d/b/a JBS and JBS USA,)

Defendants.)

ADMINISTRATIVE COMPLAINT

Plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor (“OFCCP”), by and through its attorneys, alleges as follows:

1. This action is brought by OFCCP to enforce the contractual obligations imposed by Executive Order 11246 (30 Fed. Reg. 12319), as amended, (“Executive Order 11246” or “Executive Order”) and its implementing regulations issued pursuant thereto, set forth at 41 C.F.R. Chapter 60.
2. Jurisdiction over this action exists under Sections 208 and 209 of the Executive Order 11246, 41 C.F.R. § 60-1.26 and 41 C.F.R. Part 60-30.
3. This Administrative Complaint arises from an OFCCP follow-up evaluation of a beef processing plant located at U.S. Highway 287, Cactus, Texas 84319 (the “Cactus establishment”). OFCCP scheduled the follow-up evaluation on or about October 15, 2009 for the Cactus establishment.

4. Upon information and belief, at all times pertinent to this case, Swift Beef Company, a Delaware corporation, has owned and operated the Cactus establishment and has been the employer of general production employees who have worked at the establishment.

5. Upon information and belief, JBS USA Lux S.A. was previously known as Swift & Co. Since July 2007, Swift & Co., a Delaware corporation, has changed its legal name and corporate form on multiple occasions, first to JBS USA, Inc., a Delaware corporation, then to JBS USA, LLC, a Delaware Limited Liability Company, and most recently in 2016 to JBS USA Lux S.A., a Luxembourg Société Anonyme. Despite the changes in corporate name and form, JBS USA Lux S.A., f/k/a JBS USA, LLC, JBS USA, Inc., and Swift & Co., is a successor in interest to JBS USA, LLC, JBS USA, Inc., and Swift & Co. for successor liability purposes and is liable for its predecessors' violations of Executive Order 11246 and its implementing regulations.

6. Upon information and belief, Defendant Swift Beef Company and Defendant JBS USA Lux S.A. and its predecessors JBS USA, LLC, JBS USA, Inc. and Swift & Co. have been doing business as JBS and JBS USA.

7. From at least September 26, 2007, to present, at all pertinent times, Defendant JBS USA Lux S.A. and its predecessors JBS USA, LLC, JBS USA, Inc., and Swift & Co. each have had 50 or more employees and a government contract or subcontract of \$50,000 or more. From at least September 26, 2007, to present, at all pertinent times, Defendant Swift Beef Company and Defendant JBS USA Lux S.A., f/k/a JBS USA, LLC, JBS USA, Inc., and Swift & Co., operated as a single entity for purposes of coverage under Executive Order 11246. As a result, from at least September 26, 2007, to present, Defendant Swift Beef Company and Defendant JBS USA Lux S.A. and its predecessors JBS USA, LLC, JBS USA, Inc. and Swift &

Co., doing business as JBS and JBS USA, (collectively referred to as “Defendants” in this Complaint) were and are government contractors or subcontractors within the meaning of Executive Order 11246 and are now, and at all pertinent times have been, subject to the obligations imposed on government contractors and subcontractors by Executive Order 11246 and the implementing regulations issued thereunder.

8. Defendants are wholly owned indirect subsidiaries of JBS S.A., a Brazilian protein processing company.

9. Defendants maintain corporate headquarters at 1770 Promontory Circle, Greeley, Colorado 80634.

10. The regulations issued pursuant to Executive Order 11246 provide at 41 C.F.R. § 60-1.40 and 41 C.F.R. § 60-2.1 that each government contractor with 50 or more employees and a contract of \$50,000 or more must develop and maintain a written affirmative action program for each of its establishments in accordance with requirements set forth in 41 C.F.R. Part 60-2.

11. Pursuant to Section 202 of Executive Order 11246 and 41 C.F.R. § 60-1.4, Defendants agreed not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin and agreed to take affirmative action to ensure that applicants and employees are afforded employment opportunities without regard to their race, color, religion, sex, or national origin at the Cactus establishment.¹

12. At all times pertinent hereto, Defendants have been required to develop, maintain, and implement a written affirmative action program for the Cactus establishment in accordance with the requirements set forth in 41 C.F.R. Part 60-2.

¹ After OFCCP began its investigation of Defendants’ Cactus, Texas, facility, Section 202 of Executive Order 11246 and 41 C.F.R. § 60-1.4 were amended to extend the anti-discrimination provisions and affirmative action obligations to include sexual orientation and gender identity. These amendments are not relevant to the issues in this case.

13. At all times pertinent hereto, Defendants have been required to conduct, maintain, and have available adverse impact analyses on each race or national origin group constituting at least two percent of the labor force in the relevant labor area or two percent of the applicable workforce at the Cactus establishment in accordance with the requirements of 41 C.F.R. § 60-3.15A.

14. At all times pertinent hereto, Defendants have been required to conduct adverse impact analyses of the individual components of their selection process when the overall selection process for General Production jobs resulted in adverse impact at the Cactus establishment in accordance with the requirements of 41 C.F.R. § 60-3.4C.

15. At all times pertinent hereto, Defendants have been required to perform in-depth analyses of their total employment process to determine whether and where impediments to equal employment opportunity exist at the Cactus establishment in accordance with the requirements of 41 C.F.R. § 60-2.17(b).

16. In a compliance review of Defendants' Cactus establishment, which OFCCP commenced on or about October 15, 2009, OFCCP found that from at least September 26, 2007, to at least March 31, 2009, Defendants utilized hiring processes and selection procedures that discriminated against American Indian/Alaskan Native, black, Hispanic, and white applicants for General Production jobs on the basis of their race and/or national origin. Moreover, Defendants provided to OFCCP during the investigation documents that Defendants claimed were applicant flow logs covering the time period of March 30, 2009, through June 30, 2010. These documents indicate that Defendants continued to discriminate against American Indian/Alaskan Native, black, Hispanic, and white applicants for General Production jobs during the time period of April

1, 2009, through at least June 30, 2010. Upon information and belief, OFCCP alleges that the discrimination may continue to the present.

17. Additionally, OFCCP found that from at least September 26, 2007, to at least March 31, 2009, Defendants failed to conduct, maintain, and have available adverse impact analyses for each group constituting at least two percent of the labor force in the relevant labor area or two percent of the applicable workforce in accordance with the requirements of 41 C.F.R. § 60-3.15A. Upon information and belief, OFCCP alleges that this violation may continue to the present.

18. OFCCP also found that from at least September 26, 2007, to at least March 31, 2009, Defendants failed to conduct adverse impact analyses of the individual components of their selection process when their overall selection process for General Production jobs resulted in adverse impact in accordance with the requirements of 41 C.F.R. § 60-3.4C. Upon information and belief, OFCCP alleges that this violation may continue to the present.

19. OFCCP further found that from at least September 26, 2007, to at least March 31, 2009, Defendants failed to perform in-depth analyses of their employment process to determine whether and where impediments to equal employment opportunity exist in accordance with the requirements of 41 C.F.R. § 60-2.17(b). Upon information and belief, OFCCP alleges that this violation may continue to the present.

20. The acts, failures to act, and practices described in paragraphs 16 through 19 above violate Executive Order 11246 and the regulations promulgated thereunder and violate the contractual obligations of Defendants to the Federal Government.

21. All procedural requirements prior to the filing of this Complaint have been met. OFCCP issued to Defendants a notice to show cause why enforcement proceedings should not be

initiated based upon OFCCP's finding of violations of Executive Order 11246 by Defendants and has attempted to secure voluntary compliance through means of conciliation and persuasion. Those efforts were unsuccessful.

WHEREFORE, Plaintiff prays for a recommended decision and order pursuant to 41 C.F.R. § 60-30, providing the following relief:

- (1) An order permanently enjoining Defendants and their officers, agents, servants, successors, divisions, and subsidiaries and those persons in active concert or participation with them from violating the Executive Order;
- (2) An order canceling all of Defendants' government contracts and subcontracts and those of their officers, agents, successors, divisions, subsidiaries, and those persons in active concert or participation with them, declaring said persons and entities ineligible for an extension or modification of any such existing government contract or subcontract;
- (3) An order debarring Defendants and their officers, agents, servants, successors, divisions, and subsidiaries and those persons in active concert or participation with them from entering into future government contracts and subcontracts for an indefinite term, subject to reinstatement in accordance with 41 CFR § 60-1.31, including showing that they have established and will carry out employment policies and practices in compliance with the Executive Order and implementing regulations; and
- (4) An order requiring Defendants to provide complete relief to the affected classes of applicants to remedy all damages that resulted from Defendants' discriminatory

failure to hire the applicants, including but not limited to positions, lost wages, interest, retroactive seniority, and all other benefits of employment.

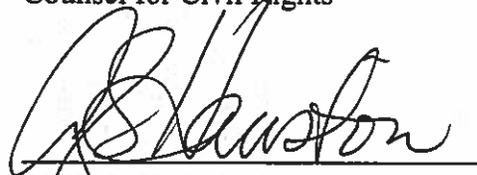
Plaintiff further prays for such other relief as justice may require.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

JAMES E. CULP
Regional Solicitor

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CERTIFICATE OF SERVICE

This certifies that on December 9, 2016, the foregoing Administrative Complaint was served upon Defendants JBS USA Lux S.A. and Swift Beef Company and their counsel of record, by certified mail, postage prepaid, at the following addresses:

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