

# CONCILIATION AGREEMENT

Between

THE U. S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

WARE MALCOMB

## **PART I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated Ware Malcomb's facility located at 10 Edelman, Irvine, CA 92618 and found that Ware Malcomb was not in compliance with the Executive Order 11246, as amended ("E.O. 11246"), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 ("Section 503"), and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 ("VEVRAA"), and their implementing regulations at 41 C.F.R. Section(s) 60-1, 60-2, 60-3, 60-4, 60-300, and/or 60-741.

OFCCP notified Ware Malcomb of the specific violations found and the corrective actions required in a Notice of Violation issued on August 22, 2019. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and Ware Malcomb enter this contract ("Conciliation Agreement" or "Agreement") and agree to all the terms stated below.

## **PART II. GENERAL TERMS AND CONDITIONS**

1. In exchange for Ware Malcomb's fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part III if Ware Malcomb violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. Ware Malcomb agrees that OFCCP may review its compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Ware Malcomb will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.

3. Ware Malcomb understands that nothing in this Agreement relieves Ware Malcomb of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, and other applicable equal employment laws.
4. Ware Malcomb promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 C.F.R. 60-1.32(a).
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
7. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
8. This Agreement becomes effective on the day it is signed by the Area Director of the Orange Office (the "Effective Date").
9. This Agreement will expire sixty (60) days after Ware Malcomb submits the final progress report required in Part IV (B) below, unless OFCCP notifies Ware Malcomb in writing prior to the expiration date that Ware Malcomb has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines Ware Malcomb has met all of its obligations under the Agreement.
10. If Ware Malcomb violates this Conciliation Agreement,
  - A. The procedures set forth at 41 C.F.R. 60-1.34 will govern:
    - 1) If OFCCP believes that Ware Malcomb violated any term of the Agreement while it was in effect, OFCCP will send Ware Malcomb a written notice stating the alleged violations and summarizing any supporting evidence.
    - 2) Ware Malcomb will have 15 days from receipt of such notice to demonstrate in writing that it has not violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
    - 3) If Ware Malcomb is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.

- 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- B. Ware Malcomb may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-741.66, 41 C.F.R. 60-300.66 and/or other appropriate relief for violation of this Agreement.

### **PART III. SPECIFIC VIOLATIONS AND REMEDIES**

1. **VIOLATION- FAILURE TO MAINTAIN PERSONNEL RECORDS:** During the period of October 1, 2017 to September 30, 2018, Ware Malcomb failed to collect and maintain personnel and employment records and conduct adverse impact analysis in accordance with the requirements of 41 C.F.R. 60-1.12(a) and Part 60-3.

**OFCCP'S SPECIFIC FINDINGS:** Specifically, Ware Malcomb failed to collect and maintain self-identification data for all expressions of interest which the contractor considered for a particular position.

**REMEDY:** Ware Malcomb agrees to ensure that all personnel employment records including applications, salary and position change notices, performance evaluations, job descriptions, and other supporting documents are collected, maintained and made available for inspection. Pursuant to 41 CFR 60-1.12(c) and 41 CFR Part 60-3, Ware Malcomb agrees to identify the race, gender, and ethnicity of all employees and where possible, all applicants and/or internet applicants. Ware Malcomb agrees to maintain employment records for two years from the date the record is created or the date of the personnel action involved, whichever occurs later.

2. **VIOLATION – FAILURE TO IMPLEMENT AN AUDITING SYSTEM:** During the period of October 1, 2017 to September 30, 2018, Ware Malcomb failed to develop and implement an auditing system that periodically measures the effectiveness of its total Executive Order affirmative action program in accordance with the requirement of 41CFR 60-2.17(d).

**OFCCP'S SPECIFIC FINDINGS:** Specifically, Ware Malcomb acknowledges that they had not performed any monitoring of its personnel activities to ensure that non-discriminatory practices have been followed.

**REMEDY:** Ware Malcomb agrees to conduct internal auditing and reporting in order to monitor all personnel activities for their Executive Order written affirmative action program. Ware Malcomb will implement and refine their monitoring of all personnel activities as outlined in 41 CFR 60-2.17(d)(1)-(4) to ensure that non-discriminatory practices have been followed.

**3. VIOLATION – FAILURE TO CONDUCT ADVERSE IMPACT ANALYSES:**

During the period of October 1, 2017 to September 30, 2018, Ware Malcomb failed to conduct appropriate adverse impact analyses in accordance with the requirements of 41 C.F.R. 60-2.17(b) and (d), 60-3.4 and 60-3.15A.

**OFCCP'S SPECIFIC FINDINGS:** Specifically, Ware Malcomb was unable to conduct appropriate adverse impact hiring analyses based on gender, race, and ethnicity because it lacked this information for the full pool of candidates.

**REMEDY:** Ware Malcomb agrees to conduct adverse impact analyses on at least an annual basis for the purpose of determining whether adverse impact exists against applicants based on sex, race and ethnic group pursuant to 41 C.F.R. 60-2.17(b) and (d), and 41 C.F.R. Part 60-3 (Uniform Guidelines on Employee Selection Procedures, "UGESP"). These analyses will be done by job group for each sex/race/ethnic group constituting more than 2% of the labor force in the relevant labor area or 2% of the applicable workforce. If adverse impact is identified in the total selection process, Ware Malcomb will evaluate each individual component of the selection process for adverse impact. If adverse impact is found to exist in any of the individual components of the selection process, Ware Malcomb will validate each such component in accordance with UGESP or utilize selection procedures which do not result in adverse impact. Ware Malcomb will ensure that its records are collected and maintained in accordance with the record retention requirements of 41 C.F.R. 60-1.12(a) and 41 C.F.R. Part 60-3.

**Part IV. REPORTS REQUIRED**

1. Ware Malcomb must submit the documents and report described below to: OFCCP, Hector M. Sanchez, Area Director, Orange Area Office, 770 The City Drive, Suite 5700, Orange, California 92868. The reporting periods and due dates for these progress reports are outlined below:

<u>REPORT</u>	<u>REPORTING PERIOD</u>	<u>DUE DATE</u>
First	January 1, 2019 – December 31, 2019	January 31, 2020
Second	January 1, 2020 – December 31, 2020	January 31, 2021

Each progress report (except where otherwise noted) shall contain the following:

- A. **FIRST REPORT** – Within 30 days after the start of its next AAP cycle (2020), due **January 31, 2020**, Ware Malcomb will submit the following support data and analyses for of period January 1, 2019 to December 31, 2019:
  - 1) An electronic spreadsheet/log of all applicants, to include all expressions of interest for all positions filled, and hires for each job or job group during the reporting period. For each applicant and hire listed, please include the name, race, gender, date of application, position applied for/hired into, job group, whether applicant was internal or external, date of hire (if applicable),

requisition number (if applicable), and disposition of application. Also, include whether the individual is considered an internet applicant for purposes of Ware Malcomb's AAP analyses;

2) Ware Malcomb will develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program in accordance with 41 C.F.R. § 60-2.17(d)(1)-(4). Ware Malcomb will provide:

- a) Results of records monitoring and whether all personnel activities were carried out in a nondiscriminatory manner;
- b) A copy of internal reporting schedule and confirmation of whether equal employment opportunity and organizational objectives were attained;
- c) Documentation that AAP results were reviewed with all levels of management;
- d) Documentation that shows top management has been advised of affirmative action program effectiveness or that recommendations were submitted, including specific steps and concrete strategies, to improve unsatisfactory performance.

3) For each job or job group, the results of Ware Malcomb's analysis as to whether its total selection process has adverse impact, as defined in 41 C.F.R. 60-3.4 and 60-3.15. In addition, for each case where the total selection process has an adverse impact, as defined in 41 C.F.R. 60-3.4D, Ware Malcomb will provide:

- a) The results of Ware Malcomb's evaluation of the individual components of the selection process for adverse impact;
- b) The actions taken by Ware Malcomb, where action is appropriate, after determining that any component of the selection process has an adverse impact.

**B. SECOND REPORT** – Within 30 days after the start of its 2021 AAP cycle, due **January 31, 2021**, Ware Malcomb will submit the following support data and analyses for period of January 1, 2020 to December 31, 2020:

- 1) An electronic spreadsheet/log of all applicants, to include all expressions of interest for all positions filled, and hires for each job or job group during the reporting period. For each applicant and hire listed, please include the name, race, gender, date of application, position applied for/hired into, job group, whether applicant was internal or external, date of hire (if applicable),

requisition number (if applicable), and disposition of application. Also, include whether the individual is considered an internet applicant for purposes of Ware Malcomb's AAP analyses;

- 2) Ware Malcomb will develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program in accordance with 41 C.F.R. § 60-2.17(d)(1)-(4). Ware Malcomb will provide:
  - a) Results of records monitoring and whether all personnel activities were carried out in a nondiscriminatory manner;
  - b) A copy of internal reporting schedule and confirmation of whether equal employment opportunity and organizational objectives were attained;
  - c) Documentation that AAP results were reviewed with all levels of management;
  - d) Documentation that shows top management has been advised of affirmative action program effectiveness or that recommendations were submitted, including specific steps and concrete strategies, to improve unsatisfactory performance.
- 3) For each job or job group, the results of Ware Malcomb's analysis as to whether its total selection process has adverse impact, as defined in 41 C.F.R. 60-3.4 and 60-3.15. In addition, for each case where the total selection process has an adverse impact, as defined in 41 C.F.R. 60-3.4D, Ware Malcomb will provide:
  - a) The results of Ware Malcomb's evaluation of the individual components of the selection process for adverse impact;
  - b) The actions taken by Ware Malcomb, where action is appropriate, after determining that any component of the selection process has an adverse impact.
2. Ware Malcomb will retain all records and data pertinent to the violations resolved by this Agreement and/or used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later (or "whichever time period is longer").

**Part V. SIGNATURES**

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Ware Malcomb.

(b) (7)(C), (b) (6)

Mr. Tobin Sloane  
CFO  
Ware Malcomb  
Santa Ana, CA

DATE: 9/13/19

(b) (7)(C), (b) (6)

(b) (7)(C), (b) (7)(E)  
Compliance Officer  
Orange Area Office  
Pacific Region

DATE: 9/19/19

(b) (7)(C), (b) (6)

Hector M. Sanchez  
Area Director  
Orange Area Office  
Pacific Region

DATE: 09/19/19