

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORACLE AMERICA, INC.,

Plaintiff,

vs.

U.S. DEPARTMENT OF LABOR, *et al.*,

Defendants,

and

COMMUNICATIONS WORKERS OF
AMERICA, *et al.*,

*Proposed Intervenor-
Defendants*

Case No. 1:19-cv-3574 (APM)

DECLARATION OF JOHN ALEXANDER VAN SCHAICK

I, John Alexander “Alex” van Schaick, declare as follows:

1. My name is Alex van Schaick. I am a Counsel at Communications Workers of America (“CWA” or “the Union”). The statements made in this declaration are based on my personal knowledge, materials I have reviewed, and information made available to me pursuant to my duties at CWA.

2. I submit this declaration in support of CWA’s motion to intervene in *Oracle America, Inc. v. U.S. Dep’t of Labor*, 19-cv-3574 (D.D.C.). In that lawsuit, Oracle seeks to strip the Office of Federal Contract Compliance Programs (“OFCCP”) of its longstanding authority to pursue enforcement actions against companies, such as Oracle, which OFCCP has found in violation of the nondiscrimination provisions of Executive Order 11,246. *See* Exec. Order No. 11246, 30 Fed. Reg. 12319 (Sept. 24, 1965).

3. I joined the CWA in 2016 as one of the Union's legal counsel and serve in that position today. In that role, I advise and assist CWA in new organizing campaigns and in efforts to maintain industry standards.

4. CWA is an international labor union representing working people in a broad range of industries, including telecommunications, cable, information technology, airline, manufacturing, print and broadcast news media, customer service, education, public service, and healthcare, among others. CWA's central purpose is protecting the rights of workers through collective bargaining and public advocacy. Our members work, live, and seek employment throughout the United States. Our Union is divided into eight geographic regions—seven Districts and CWA Canada—and several industry Sectors, covering the entirety of the United States, Puerto Rico, other U.S. territories, and several other countries. CWA members reflect an impressive diversity of skills, interests, work experiences, and talents, making them a rich pool of potential candidates for job opportunities. Over 150,000 CWA members work at companies that hold federal contracts and that were audited by OFCCP between FY 2016 and FY 2020, according to OFCCP enforcement data.

5. CWA is committed as a matter of principle and policy to oppose all forms of discrimination, for whatever reason, until all vestiges of discrimination are eliminated from society. *See* CWA Constitution, CWA Policy on Mutual Respect, <https://cwa-union.org/for-locals/cwa-constitution#discrimination> (last visited Mar. 18, 2020). Part of the Union's mission is to ensure that employers do not unlawfully discriminate against employees, including Union members, on account of race, color, gender, religion, age, marital/parental status, political beliefs, sexual orientation, gender identity or expression, national origin, disability, or because a person is a military veteran. *Id.*

6. As described herein, the relief that Oracle seeks in this lawsuit—stripping OFCCP of its longstanding enforcement authority—would significantly inhibit CWA in its effectuation of this mission and require a substantial diversion of resources to address the gap that would be left in the area of enforcing antidiscrimination laws, including with respect to claims of race- and gender-based workplace discrimination at federal contractors.

7. The Human Rights Department of CWA is principally tasked with effectuating the Union’s mission to prevent and address discrimination. The Department aims to provide technical expertise in handling complaints of discrimination; to educate and train Union representatives on issues related to human rights, civil rights, and workplace discrimination; to develop resource material to aid Union representatives in their efforts to promote civil and human rights in the workplace and remedy workplace discrimination; and to organize advocacy efforts at the local, state, and federal level on issues related to civil rights.

8. In addition, CWA has established, by its Constitution, a Women’s Committee. The Women’s Committee works to encourage and assist local unions in establishing local committees addressing women’s rights; provides educational resources on health, economic, and social issues that affect women; advocates for women at the local, state, and national levels; promotes women candidates for elected public office; supports efforts to recruit and train women organizers; and strives continuously to educate women on the labor movement while encouraging their involvement at all levels. *See Women’s Committee, CWA*, <https://cwa-union.org/national-issues/human-rights/womens-committee> (last visited Mar. 18, 2020). Each District is staffed with a Women’s District Coordinator. *Id.*

9. CWA has also established, by its Constitution, a Committee on Civil Rights and Equity. This Committee provides guidance and information to the districts and local unions on

the CWA Civil Rights and Equity program; keeps the national Executive Board informed about civil and human rights issues that affect CWA members and communities, and when necessary, recommends a course of action; and researches, reports, and makes recommendations to give direction to national convention delegates on current civil and human rights issues. *See Committee on Civil Rights and Equity, CWA*, <https://cwa-union.org/national-issues/human-rights/committee-on-civil-rights-and-equity> (last visited Mar. 18, 2020). The Committee aims to fully integrate civil rights issues into the core work of the Union; increase grassroots activity on civil rights issues; increase community visibility of CWA's Civil Rights and Equity program; improve communications between the CWA Civil Rights and Equity office and locals and activists; and aggressively seek CWA representation in grassroots civil rights organizations that share our common goals. *Id.* Each District is staffed with a Civil Rights and Equity District Coordinator. *Id.*

10. Together, the Human Rights Department, Women's Committee, and Committee on Civil Rights and Equity work to support Union members. They also support CWA's Organizing Department and non-unionized employees at companies where we are engaged in efforts to organize—*i.e.*, where employees are coming together to form a Union in their workplace with CWA. Through our organizing campaigns, CWA works with employees to determine what their primary workplace issues are, demonstrates the Union's ability to support employees in addressing those issues, and educates employees about the benefits of establishing or joining a local CWA union and of collective bargaining. Accordingly, when concerns of workplace discrimination are raised by employees at companies where we are engaged in organizing efforts, our Human Rights Department and Committees work to provide our Union

organizers with the tools and resources they need to address such workplace discrimination and/or support employees in their efforts to address such workplace discrimination.

11. CWA has ongoing organizing campaigns at companies with federal contracts. For example, federally-contracted call center workers employed by MAXIMUS, Inc., a Virginia-based company, are uniting for family-supporting wages and a union with CWA. These MAXIMUS employees perform services helping millions of Americans access health care under a federal contract with the Centers for Medicare and Medicaid Services. Many MAXIMUS employees are organizing with CWA because, despite the critical and complex work they perform, they cannot make ends meet or access all the medical care they need due to their low wages and high-cost health coverage—a reality that has drawn scrutiny of the company’s business practices from Congress, federal agencies, and the media. *See* Homepage, Call Center Workers United, <https://www.callcenterworkersunited.org/> (last visited Mar. 18, 2020). MAXIMUS is subject to the jurisdiction of OFCCP.

12. CWA relies on OFCCP and its authority to enforce Executive Order 11,246 in at least two ways: by using information that OFCCP provides to the public as a result of its enforcement authority, and by relying on OFCCP as one avenue to remediate workplace discrimination claims made by our members and employees at companies where we are engaged in organizing campaigns. Each is discussed in more detail below.

13. CWA uses data generated through OFCCP enforcement efforts. That data includes: (1) the results of its enforcement-related investigations for all contractors during the previous five years, *see* Enforcement Data – Data Catalog, U.S. Dep’t of Labor, https://enforcedata.dol.gov/views/data_summary.php (last visited Mar. 16, 2020); (2) effective conciliation agreements negotiated by OFCCP based on its enforcement authority, *see Class*

Member Locator, OFCCP, <https://www.dol.gov/ofccp/cml/> (last visited Mar. 16, 2020); and (3) a list of companies OFCCP has declared ineligible to receive federal contracts due to violations of federal antidiscrimination laws, *see* Exec. Order No. 11246 § 209(a)(1); *OFCCP Debarred Companies*, OFCCP, <https://www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm> (last visited Mar. 16, 2020).

14. For example, CWA uses OFCCP data in its efforts to organize. I, and other CWA employees, will check the DOL enforcement data website for OFCCP Compliance Evaluation and Complaint Investigation Data during an organizing campaign at a new employer with significant federal contracts. We do this to determine whether that employer has been found to have engaged in discriminatory practices. This information is crucial to tailoring an organizing campaign because it enables CWA to better understand the precise issues affecting the employee community.

15. Additionally, CWA uses OFCCP enforcement data to track the practices of employers at which we currently represent members. Based on this data, and as described above, we know that over 150,000 CWA members work at companies that were audited by OFCCP between FY 2016 and FY 2020. Data of this sort enables us to know whether our employers are engaged in discriminatory practices that may be affecting Union members. That information further informs our bargaining with employers and how we represent members through the Union's grievance process. It also helps CWA to advise local unions on how to best engage with employers, as well as how to deal with complaints of workplace discrimination made by members.

16. CWA also uses OFCCP enforcement data in its efforts to maintain minimum industry standards. For example, in connection with a third-party complaint submitted by CWA

to the Department of Labor Wage & Hour Division (“DOL W&H Division”) over potential prevailing wage violations and retaliation by a federal contractor, CWA has relied on OFCCP enforcement data to show that the company had a history of other violations discovered by OFCCP .

17. Finally, CWA uses OFCCP data in developing informational materials, including fact sheets about particular employers. *See* Ex. 1.

18. If Oracle is successful in this lawsuit, and OFCCP is stripped of its enforcement authority, CWA will lose access to a robust government-produced database showing whether federal contractor employers have been found to have engaged in discriminatory practices.

19. CWA will have to expend substantial organizational resources in an effort to find similar information through other avenues so that the Union can continue to organize and operate in a data-driven manner.

20. This will not be an easy task. I am not aware of any other federally-produced database that provides information on federal contractors found to have engaged in discriminatory practices. While the Equal Opportunity Employment Commission (“EEOC”), for example, publishes statistics about its enforcement and litigation efforts, it does not provide data regarding employers who have been found to have violated civil rights laws.¹ *See, e.g., Race-Based Charges FY 1997 - FY 2019*, U.S. Equal Emp’t Opportunity Comm’n, <https://www.eeoc.gov/eeoc/statistics/enforcement/race.cfm> (last visited Mar. 18, 2020).

¹ EEOC does provide a limited list of employers that have been the subject of EEOC enforcements or settlements. This list is provided to the public for the sole purpose of enabling EEOC to identify potentially-affected class members. The list is limited in scope and time frame, and does not replace the OFCCP data published in the DOL enforcement database, which provides a list of all employers found to have engaged in discriminatory practices during the past five years.

21. We will therefore have to spend resources to gather and compile this information ourselves. To do this, we would likely engage in a variety of efforts, including by:

- a. Expanding our efforts under the Freedom of Information Act (“FOIA”), by sending more FOIA requests to federal agencies in an effort to find out more information about whether a company has been determined to have violated civil rights and antidiscrimination laws;
- b. Spending additional time and resources tracking EEOC litigation in federal courts in an effort to compile a list of federal contractors with a record of civil rights violations; and
- c. Spending time and resources to conduct a state-by-state review of publicly available information about employers found to have violated state or local civil rights laws.

22. CWA also relies on OFCCP’s enforcement authority to remedy claims of discrimination by Union members and employees at companies where we are engaged in organizing efforts. The existence of OFCCP as a forum is particularly important to CWA’s mission to eradicate discrimination because: (a) OFCCP has the authority to award a broader set of systemic and forward-looking remedies than the Union could obtain on behalf of a member through our grievance procedures; (b) OFCCP has investigative resources and legal expertise—beyond what the Union can offer—to handle complex claims of workplace discrimination; and (c) OFCCP provides a forum for non-unionized employees, which is an important tool for CWA organizers’ efforts to support employees who are not yet covered by the Union’s grievance procedures, such as those at Maximus contact centers.

23. Accordingly, OFCCP can be the more appropriate forum for remedying some claims of workplace discrimination, as opposed to the labor grievance process. CWA thus educates Union representatives and organizers about OFCCP and advises on whether certain claims should be brought to OFCCP.

24. If Oracle is successful in this lawsuit, CWA will have to expend resources to, among other things:

- a. Provide updated training to Union representatives and organizers to impart the skills and expertise necessary for investigating many different kinds of claims of workplace discrimination and representing members through the labor arbitration process on such claims;
- b. Determine new legal strategies for addressing systemic discrimination in situations where CWA or a member would have been best served by making an OFCCP complaint and having a federal agency analyze the range of information from the employer that comes with such investigations;
- c. Engage in efforts to broaden the type of remedial relief available to the Union and its members to include the full scope of relief currently available to OFCCP—including the ability to obtain systemic and forward-looking relief; and
- d. Retool our efforts to support non-unionized employees in seeking remedial relief for incidents of workplace discrimination in organizing campaigns.

25. In sum, CWA's mission to eradicate discrimination in the workplace would be significantly hampered if Oracle's lawsuit against OFCCP is successful and OFCCP is stripped of its authority to enforce antidiscrimination laws against federal contractors. In particular, CWA would lose access to the wealth of government-produced data about the practices of particular federal contractors found to have engaged in discriminatory practices. And CWA would lose its ability to refer Union members and employees to OFCCP as one forum to remedy claims of discrimination. This would likely cause CWA to divert significant resources to both (a) gather information about federal contractors to replace the loss of the OFCCP enforcement database, and (b) create new educational, training, and resources materials to aid Union representatives and organizers in efforts to support Union members and employees who have raised complaints of workplace discrimination.

26. It is difficult to quantify the number of hours and dollars that would be spent on these efforts. OFCCP has been in existence since 1977, and, accordingly, CWA's modern operations have been built around the fact that OFCCP has the enforcement authority to force federal contract compliance with federal civil rights laws. It is hard to precisely predict what a world without OFCCP—or, rather, without OFCCP's enforcement authority—would look like. Suffice it to say, CWA would need to expend significant resources to address that novel situation in, at least, the ways identified above in order to continue fully pursuing our mission to root out workplace discrimination in all forms.

* * *

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing declaration is true and correct to the best of my knowledge, information, and belief.

Executed on March 17, 2020.



Alex van Schaick

EXHIBIT 1



Fighting for Better Working Conditions at MAXIMUS' Federally-Contracted Call Centers

MAXIMUS, Inc. is a publicly traded company specializing in business process outsourcing for federal and state government agencies, primarily in the fields of health and social services. The company reported \$2.9 billion in revenue in FY2019.¹ The federal government is its single largest client, but contracts with state governments account for about 40% of the company's revenue.²

Federal CMS Call Centers: MAXIMUS employs about 10,000 customer service professionals at 11 call centers that it operates under a 10-year \$5.5 billion contract with the Centers for Medicare and Medicaid Services (CMS).³ These agents handle Medicare and ACA Federal Marketplace calls and earn as little as \$10.77 an hour. Due to poverty wages, many employees struggle to provide the basic necessities for their families and rely on public assistance.

Employees at these call centers, which are almost all located in the South, are predominately female and people of color. The workforce at its Hattiesburg, MS call center, for example, is about 80.8% female and 90.7% people of color; and its Bogalusa, LA workforce is about 82.7% female and 74.9% people of color.⁴ MAXIMUS began operating these CMS call centers in November 2018 when it purchased General Dynamics Information Technology's (GDIT) call center line of business. Employees at these call centers are organizing with the Communications Workers of America (CWA) for better working conditions and a voice on the job.

Wage Theft at CMS Call Centers: CWA has argued that GDIT, and now MAXIMUS, has systemically misclassified and underpaid CMS call center agents under the Service Contract Act (SCA), a federal law similar to the Davis-Bacon Act that sets minimum prevailing wages for federally-contracted service work. The U.S. Department of Labor (DOL) is currently investigating wage theft complaints filed by CWA at eight of these call centers. CWA estimates that workers could be owed over \$100 million⁵ in back wages if DOL finds systemic misclassification at the call centers.⁶

Separately, in litigation ending in 2017, MAXIMUS paid \$3.2 million to resolve overtime claims at CMS call centers it operated as a subcontractor to GDIT—in 2016, the judge held that MAXIMUS had violated the Fair Labor Standards Act.⁷

Labor Violations at CMS Call Centers: After workers started joining together with CWA for better pay and working conditions, both MAXIMUS and the previous employer, GDIT, responded by trying to stop them. Region 15 of the National Labor Relations Board (NLRB) issued a complaint in December 2019 alleging that MAXIMUS intimidated and coerced union activists who engaged in lawful organizing activities.⁸

Regional NLRB offices previously found merit to CWA's allegations that GDIT violated its employees' rights by threatening, misinforming, and discriminating against union activists,⁹ and issued three complaints in 2018.¹⁰ GDIT signed a global settlement agreement with CWA over the remaining charges in April 2019.¹¹ While MAXIMUS is not a party to this settlement agreement, it does appear to be a successor employer, and has kept in place GDIT managers who were involved in prior ULP charges.

¹ U.S. SEC, *Form 10-K: MAXIMUS, Inc.*, Nov. 27, 2019.

² *Ibid.*

³ These call centers are located in: Phoenix, AZ; Lynn Haven and Riverview, FL; Lawrence, KS; London and Winchester, KY; Bogalusa, LA; Hattiesburg, MS; Brownsville, TX; Sandy, UT; and Chester, VA.

⁴ Office of Federal Contract Compliance Programs evaluations, US Department of Labor Data Enforcement, <https://enforcedata.dol.gov/views/search.php>

⁵ CWA's calculations are based on the estimated staffing levels at each call center from the beginning of the contract in 2013 through January 2018 and the difference in hourly pay rates between Service Contract Act job classifications for each site and each year. Estimated staffing levels and total hours worked per month at each site were weighted to account for fluctuations in staffing based on the time of year.

⁶ Michael Sainato, "U.S. Union Seeks \$100M in Largest Wage Theft Case Involving Federal Contractor," *The Guardian*, April 4, 2019, <https://www.theguardian.com/us-news/2019/apr/04/us-union-seeks-100m-back-wages-federal-contractor>; Madison Alder, "Medicare Call Center Woes Persist With Maximus Taking Charge," *Bloomberg Law*, March, 11, 2019, <https://news.bloomberglaw.com/health-law-and-business/medicare-call-center-woes-persist-with-maximus-taking-charge-1>; Danielle Paquette, "Huge Federal Contractor 'Failed' to Pay Workers \$100 Million in Wages, Union Says," *Washington Post*, April 23, 2018, <https://www.washingtonpost.com/news/wonk/wp/2018/04/23/huge-federal-contractor-failed-to-pay-workers-100-million-in-wages-union-says>

⁷ *Norton et al v. Maximus, Inc.*, Docket#: 1:14-cv-00030, Idaho 2014.

⁸ NLRB Charge Numbers 15-CA-240635.

⁹ See NLRB Charge Nos: 05-CA-205869; 15-CA-211652, 09-CA-221358; 15-CA-221538; 15-CA-222384; 15-CA-229817; and 15-CA-231011.

¹⁰ Chris Opfer, "General Dynamics Accused of Threatening Workers," *Bloomerberg Law*, Sept. 4, 2018. Josh Eidelson, "Labor Board Says General Dynamics Unit Improperly Thwarted Union," *Bloomberg*, Feb. 8, 2018.

¹¹ Madison Alder and Chris Opfer, "General Dynamics Settles Dispute With Medicare Call Center Staff," *Bloomberg Law*, April 4, 2019.