

**ORACLE FILES SUIT TO FORCE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO INVESTIGATE ALLEGATIONS OF MISCONDUCT, MISMANAGEMENT AND FRAUD IN OREGON UNDER AFFORDABLE CARE ACT**

***Suit Asks Court to Require HHS to Investigate Allegations Against State and Contractors Around Oregon's Failed Health Exchange; Allegations Against State Include Illegally Hijacking "Independent" Board, Making False Statements to HHS***

Redwood Shores, Calif. – March 8, 2016 – Oracle today filed a lawsuit against the U.S. Department of Health and Human Services (HHS) to force the agency to exercise its mandatory oversight duties under the Affordable Care Act (ACA) and investigate numerous allegations of misconduct, mismanagement and fraud made against the state of Oregon and private contractors, including Oracle itself, around Oregon's failed health insurance exchange.

The ACA specifically imposes on the HHS Secretary a responsibility to determine whether "an Exchange or a State has engaged in serious misconduct with respect to compliance with the requirements of, or carrying out of activities required under, this title."<sup>1</sup> Despite that mandate, HHS has not yet undertaken any investigation around the allegations of private and governmental misconduct in Oregon, or in any of the other six states with failed exchanges, despite the \$1.45 billion in federal grants awarded to those states to build the exchanges.<sup>2</sup>

The suit, filed as a complaint for writ of mandamus in federal court in the District of Columbia<sup>3</sup>, comes after the State filed litigation in Marion County, Oregon in *Rosenblum v. Oracle*, through which the state of Oregon has sought to recover federal funds used to build its health insurance exchange. Oregon received more than \$300 million in federal grants, but ultimately chose to abandon a working exchange in favor of the federal exchange, Healthcare.gov.

"We are taking this action because the extraordinary facts of this case require federal investigation and oversight," said John Cooney, Partner at Venable LLP, speaking for Oracle. "The state of Oregon illegally hijacked its independent health insurance board called Cover Oregon, gave unelected political operatives control over ACA implementation, made false statements to HHS, shut down a working exchange to shore up the re-election campaign of an embattled Governor, and then filed litigation against a contractor to attempt to distract attention from its own failures. Secretary Burwell has the statutory responsibility under the ACA to investigate these types of allegations against all parties involved, and we hope this suit will ensure she exercises that authority promptly."

The facts outlined in the suit include:

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<sup>1</sup> 42 U.S.C. § 18033(a)(4).

<sup>2</sup> United States Government Accounting Office, "[State Health Insurance Marketplaces: CMS Should Improve Oversight of State Information Technology Projects](#)," September 2015, Appendix II.

<sup>3</sup> A complaint for a writ of mandamus asks a court to order a government official to perform his or her official duties, in this case as required by the ACA.

- The ACA statute makes clear that HHS has the obligation to pursue claims of misconduct or fraud regarding the use of federal funds;
- There is substantial evidence that Oregon may have engaged in misconduct, mismanagement and/or fraud around its work on the Oregon health insurance exchange;
- E-mails released last year show that, for political reasons, state officials and unelected political advisors illegally seized control of Cover Oregon, the independent public corporation that received the majority of the ACA funds HHS awarded to establish Oregon's exchange;
- Evidence reveals how the state of Oregon made false statements to HHS to unlawfully support additional progress payments through ACA grants;
- The evidence makes clear that the state of Oregon is hopelessly and irreparably conflicted in any litigation, both as the grant recipient and due to credible evidence and admissions of its own culpability in the failure of the exchange;
- The state law that Oregon relies upon in its suit against Oracle does not apply to claims to recover federal grant funds; and
- Federal law preempts and otherwise bars Oregon's effort to recoup federal funds under the state's False Claims Act, because the state's False Claims Act conflicts with and usurps the federal government's prosecutorial discretion under the Federal False Claims Act.

The suit draws upon e-mails showing that former Governor John Kitzhaber's political appointees illegally hijacked decision-making authority from the Board of Directors of Cover Oregon, the fiduciary of ACA funds and the grant recipient.

Over the course of the Oregon litigation, important evidence has come to light that Oregon officials took actions against the exchange and Oracle for wholly political reasons designed to support the former Governor's reelection efforts.

"The Oregon litigation underscores the reasons why Congress insisted that a federal agency have the responsibility to investigate allegations of misconduct involving state exchanges, rather than allowing for situations where the states can investigate themselves," said Ken Glueck, Senior Vice President at Oracle. "When state officials may bear culpability for the failure of an exchange, or worse, may have committed fraud against the federal government, that state clearly cannot serve as an impartial party to judge its own conduct in any subsequent investigation or litigation. In such situations, where such wrongdoing is clearly in evidence, the federal government must step up to its duty to protect the interests of the public, and we believe that the law requires it to do so."

A full copy of Oracle's suit can be found at [www.oracle.com/oregon](http://www.oracle.com/oregon).

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