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Page 1

1 UNITED STATES DEPARTMENT OF LABOR
2 OFFICE OF ADMINISTRATIVE LAW JUDGES
3 OFFICE OF FEDERAL CONTRACT)
COMPLIANCE PROGRAMS, UNITED)
4 STATES DEPARTMENT OF LABOR,)
))
5 Plaintiff,) OALJ Case No.
) 2017-OFC-00006
6 vs.) OFCCP No. R00192699
))
7 ORACLE AMERICA, INC.,)
))
8 Defendant.)
_____)
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10
11 VIDEOTAPED DEPOSITION OF
12 MICHAEL J. BRUNETTI - 30(b)(6)
13 Volume I
14 San Francisco, California
15 Wednesday, July 17th, 2019
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19
20
21 REPORTED BY:
MONICA LEPE-GEORG
22 CSR No. 11976
23 Job No. 10058065
24
25

Page 2

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2
3 VIDEOTAPED DEPOSITION OF 30(b)(6) - MICHAEL J.
4 BRUNETTI, VOLUME NO. I, taken on behalf of DEFENDANT,
5 at 405 Howard Street, 10th Floor, San Francisco,
6 California, beginning at 9:00 a.m. and ending at
7 2:55 p.m., on Wednesday, July 17th, 2019, before Monica
8 Lepe-Georg, Certified Shorthand Reporter No. 11976.
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1 APPEARANCES
2
3 FOR PLAINTIFF:
4 U.S. DEPARTMENT OF LABOR
5 OFFICE OF THE SOLICITOR
6 BY: JEREMIAH E. MILLER, ESQ.
7 300 Fifth Street
8 Suite 1120
9 Seattle, Washington 98104-2397
10 Telephone: 206.757.6757
11 Fax: 206.757.6761
12 E-mail: miller.jeremiah@dol.gov
13
14 CO-COUNSEL:
15 U.S. DEPARTMENT OF LABOR
16 OFFICE OF THE SOLICITOR
17 BY: JESSICA M. FLORES, ESQ.
18 90 Seventh Street
19 Suite 3-700
20 San Francisco, California 94103
21 Telephone: 415.625.7748
22 Fax: 415.625.7772
23 E-mail: flores.jessica@dol.gov
24
25

Page 4

1 APPEARANCES (Continued):
2
3 FOR DEFENDANT:
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
5 BY: KATHRYN G. MANTOAN, ESQ.
6 405 Howard Street
7 San Francisco, California 94105-2669
8 Telephone: 415.773.5887
9 Fax: 415.773.5759
10 E-mail: kmantoan@orrick.com
11
12 CO-COUNSEL:
13 ORRICK, HERRINGTON & SUTCLIFFE LLP
14 BY: JESSICA R.L. JAMES, ESQ.
15 400 Capitol Mall
16 Suite 3000
17 Sacramento, California 95814-4497
18 Telephone: 916.329.4909
19 Fax: 916.329.4900
20 E-mail: jessica.james@orrick.com
21
22 Also Present:
23 Lorenzo Fernandez-Kopec, Videographer
24
25

<p style="text-align: right;">Page 5</p> <p>1 INDEX OF EXAMINATIONS</p> <p>2</p> <p>3 PAGE</p> <p>4 EXAMINATION BY MS. MANTOAN 21</p> <p>5</p> <p>6</p> <p>7</p> <p>8 INDEX OF EXHIBITS</p> <p>9</p> <p>10 EXHIBIT NO. DESCRIPTION PAGE</p> <p>11 Exhibit 1 Defendant Oracle America, 24</p> <p>12 Inc.'s Amended Notice of</p> <p>13 Deposition of OFCCP Pursuant</p> <p>14 to 41 C.F.R. Section 60-30.11</p> <p>15 and Fed. R. Civ. P. 30(b)(6)</p> <p>16 Exhibit 2 Second Amended Complaint 45</p> <p>17 Exhibit 3 E-mail thread and attachment, 68</p> <p>18 beginning with Bates-Nos.</p> <p>19 ORACLE_HQCA_0000000405</p> <p>20 Exhibit 4 Michael Brunetti, LinkedIn 133</p> <p>21 profile</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 UNANSWERED QUESTIONS (Continued)</p> <p>2</p> <p>3 Did the OFCCP consider any of the 63 16</p> <p>4 written starting pay justifications</p> <p>5 for any employee at Oracle when it</p> <p>6 made choices about the statistical</p> <p>7 model in the SAC?</p> <p>8</p> <p>9 Did OFCCP consider any off-cycle pay 63 25</p> <p>10 justifications for any Oracle</p> <p>11 employee when it made choices about</p> <p>12 the statistical model in the SAC?</p> <p>13</p> <p>14 Did OFCCP consider the -- the full 64 7</p> <p>15 list of data files produced in</p> <p>16 October of 2017 when it made choices</p> <p>17 about the statistical model in the</p> <p>18 SAC?</p> <p>19</p> <p>20 Did OFCCP consider any information 64 14</p> <p>21 about the products and services that</p> <p>22 Oracle provides when it made choices</p> <p>23 about the statistical model in the</p> <p>24 SAC?</p> <p>25</p>
<p style="text-align: right;">Page 6</p> <p>1 UNANSWERED QUESTIONS</p> <p>2</p> <p>3 Did OFCCP consider any of the 62 12</p> <p>4 narrative text in any performance</p> <p>5 evaluations for any employee at</p> <p>6 Oracle when it made choices about the</p> <p>7 statistical model in the SAC?</p> <p>8</p> <p>9 Did OFCCP consider any of the written 62 24</p> <p>10 promotion justifications for any</p> <p>11 employee at Oracle when it made</p> <p>12 choices about the statistical model</p> <p>13 in the second amended complaint?</p> <p>14</p> <p>15 Did OFCCP consider any of the 63 8</p> <p>16 specific job postings or requisitions</p> <p>17 for any specific job opening for any</p> <p>18 position at Oracle when it made</p> <p>19 choices about the statistical model</p> <p>20 in the SAC?</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 UNANSWERED QUESTIONS (Continued)</p> <p>2</p> <p>3 Did OFCCP consider any interviews of 64 22</p> <p>4 any current or former Oracle</p> <p>5 employees when it made choices about</p> <p>6 the statistical model in the second</p> <p>7 amended complaint?</p> <p>8</p> <p>9 Did OFCCP consider any materials from 65 5</p> <p>10 the separate case of Jewett versus</p> <p>11 Oracle America when it made choices</p> <p>12 about the statistical model in the</p> <p>13 SAC?</p> <p>14</p> <p>15 Did OFCCP consider the expert report 65 13</p> <p>16 of Dr. David Neumark, which was</p> <p>17 provided in the Jewett case, when it</p> <p>18 made choices about the statistical</p> <p>19 model in the second amended</p> <p>20 complaint?</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 9</p> <p>1 UNANSWERED QUESTIONS (Continued)</p> <p>2</p> <p>3 Other than the four data files we've 65 21</p> <p>4 discussed, did OFCCP consider any</p> <p>5 facts provided by Oracle regarding</p> <p>6 its pay practices when making choices</p> <p>7 about the statistical model in the</p> <p>8 second amended complaint?</p> <p>9</p> <p>10 What did OFCCP do, if anything, to 66 5</p> <p>11 confirm that the employees being</p> <p>12 compared in the models, whose results</p> <p>13 are reflected in the second amended</p> <p>14 complaint were performing similar</p> <p>15 work?</p> <p>16</p> <p>17 What did OFCCP do, if anything, to 66 13</p> <p>18 determine whether the models, whose</p> <p>19 results are presented in the second</p> <p>20 amended complaint, group together</p> <p>21 comparable employees?</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 11</p> <p>1 UNANSWERED QUESTIONS (Continued)</p> <p>2</p> <p>3 Did OFCCP consider any facts about 68 3</p> <p>4 how work to develop different Oracle</p> <p>5 products might differ when it made</p> <p>6 choices about the statistical model</p> <p>7 in the SAC?</p> <p>8 What facts did OFCCP consider, if 68 12</p> <p>9 any, about Oracle's pay practices</p> <p>10 when it made choices about the</p> <p>11 statistical model in the SAC?</p> <p>12</p> <p>13 And did you provide any input as to 72 23</p> <p>14 whether those factors were</p> <p>15 appropriate to use?</p> <p>16</p> <p>17 Did you have any input into the 75 25</p> <p>18 decision to run regressions by job</p> <p>19 function and year?</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 10</p> <p>1 UNANSWERED QUESTIONS (Continued)</p> <p>2</p> <p>3 What facts, if any, did OFCCP 67 5</p> <p>4 consider about the factors that</p> <p>5 managers at Oracle consider when they</p> <p>6 set pay when making choices about the</p> <p>7 statistical model in the SAC?</p> <p>8</p> <p>9 What, if anything, did OFCCP do to 66 21</p> <p>10 determine whether the factors that</p> <p>11 are controlled for in the second</p> <p>12 amended complaint statistical models</p> <p>13 were, in fact, factors considered by</p> <p>14 Oracle managers when determining pay?</p> <p>15</p> <p>16 What, if anything, did OFCCP do to 67 13</p> <p>17 tailor the analytic procedures for</p> <p>18 the statistical models, whose results</p> <p>19 are presented in the SAC, to the work</p> <p>20 performed at Oracle in particular?</p> <p>21</p> <p>22 Did OFCCP consider any information 67 21</p> <p>23 about the products that Oracle makes</p> <p>24 when it made choices about the</p> <p>25 statistical model in the SAC?</p>	<p style="text-align: right;">Page 12</p> <p>1 UNANSWERED QUESTIONS (Continued)</p> <p>2</p> <p>3 Do you know if anyone at OFCCP 88 25</p> <p>4 considered the résumés of any</p> <p>5 employee, who -- who -- whose</p> <p>6 information is in the data you</p> <p>7 reviewed, when making decisions about</p> <p>8 the statistical model in the second</p> <p>9 amended complaint?</p> <p>10</p> <p>11 Why construct a model with separate 91 7</p> <p>12 controls for global career level, job</p> <p>13 specialty, and standard job title, if</p> <p>14 standard job title just subsumes</p> <p>15 those other two variables?</p> <p>16</p> <p>17 Do you have any understanding, Dr. 91 16</p> <p>18 Brunetti, of why -- why one would</p> <p>19 construct a model that controls for</p> <p>20 multiple things that are subsumed by</p> <p>21 another factor already in the model?</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 13</p> <p>1 UNANSWERED QUESTIONS (Continued)</p> <p>2</p> <p>3 So, did you review any of the 92 14</p> <p>4 narrative text of any performance</p> <p>5 evaluations for any employee at</p> <p>6 Oracle?</p> <p>7</p> <p>8 Dr. Brunetti, did you review any of 93 16</p> <p>9 the written promotion justifications</p> <p>10 for any employee at Oracle?</p> <p>11</p> <p>12 Did you review any of the specific 93 23</p> <p>13 job postings or requisitions for any</p> <p>14 particular job opening for any</p> <p>15 position at Oracle?</p> <p>16</p> <p>17 Did you review any of the written 94 5</p> <p>18 starting pay justifications for any</p> <p>19 Oracle employee?</p> <p>20</p> <p>21 Did you review any off-cycle pay 94 11</p> <p>22 justifications for any Oracle</p> <p>23 employee?</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 15</p> <p>1 UNANSWERED QUESTIONS (Continued)</p> <p>2</p> <p>3 Do you know anything about -- sorry, 95 24</p> <p>4 do you know how many products Oracle</p> <p>5 makes?</p> <p>6</p> <p>7 What facts does OFCCP know about the 97 13</p> <p>8 products and services that Oracle</p> <p>9 makes that were considered in making</p> <p>10 choices about the statistical model</p> <p>11 in the second amended complaint?</p> <p>12</p> <p>13 What facts does OFCCP know about the 97 21</p> <p>14 specific work that any individual</p> <p>15 employee at Oracle does that were</p> <p>16 considered in making choices about</p> <p>17 the statistical model in the second</p> <p>18 amended complaint?</p> <p>19</p> <p>20 Okay. What additional information 109 25</p> <p>21 would be needed to make that</p> <p>22 determination?</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 14</p> <p>1 UNANSWERED QUESTIONS (Continued)</p> <p>2</p> <p>3 Were you provided a list of the data 94 17</p> <p>4 files that had been produced in the</p> <p>5 case so you could determine which</p> <p>6 might be meaningful for you to</p> <p>7 review?</p> <p>8</p> <p>9 Did you review any information about 95 2</p> <p>10 the products and services that Oracle</p> <p>11 provides?</p> <p>12</p> <p>13 Did you review any information on 95 8</p> <p>14 how, if at all, the work needed to</p> <p>15 develop those different products and</p> <p>16 services differs?</p> <p>17</p> <p>18 Did you review any interviews or 95 16</p> <p>19 other statements from any Oracle</p> <p>20 employees to inform the statistical</p> <p>21 models you were generating?</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 16</p> <p>1 UNANSWERED QUESTIONS (Continued)</p> <p>2</p> <p>3 Okay. And was the method that you 113 13</p> <p>4 proposed initially, when asked to</p> <p>5 figure out a way to compute damages,</p> <p>6 the method that was -- whose findings</p> <p>7 are ultimately presented in the</p> <p>8 second amended complaint?</p> <p>9</p> <p>10 What facts were considered when OFCCP 117 22</p> <p>11 made the choice to present results</p> <p>12 for base compensation rather than</p> <p>13 total compensation in the second</p> <p>14 amended complaint?</p> <p>15</p> <p>16 Did OFCCP make any determination that 118 6</p> <p>17 somehow base compensation was a</p> <p>18 relevant measure of -- of pay to use</p> <p>19 when assessing black and</p> <p>20 African-American employees, but</p> <p>21 somehow not a relevant measure when</p> <p>22 evaluating Asian employees or female</p> <p>23 employees?</p> <p>24</p> <p>25</p>

UNANSWERED QUESTIONS (Continued)			Page 17
1			
2			
3	What techniques are those?	140	24
4			
5	Did the statistical work that you	143	13
6	did -- how, if at all, does the		
7	statistical work that you did take		
8	account of whether female employees		
9	are qualified within the meaning of		
10	this paragraph?		
11			
12	What facts did OFCCP consider in	143	21
13	determining which females were		
14	qualified, within the meaning of this		
15	paragraph, for purposes of its		
16	statistical analysis?		
17			
18	At the time that these statistical	150	1
19	models were run, was OFCCP aware of		
20	any documents or other information		
21	from Oracle indicating that		
22	differences in educational attainment		
23	can matter for pay at Oracle?		
24			
25			

UNANSWERED QUESTIONS (Continued)			Page 19
1			
2			
3	Why is this analysis focused on base	181	18
4	salary as opposed to total		
5	compensation?		
6			
7	So my question is: What controls in	185	9
8	the analysis that you ran here are		
9	used to group together employees who		
10	are in the same position?		
11			
12	Okay. Did OFCCP consider any facts	207	16
13	when it was developing the		
14	statistical models, whose results are		
15	reported in the second amended		
16	complaint, that it had not considered		
17	when developing the statistical		
18	models whose results are presented in		
19	the NOV?		
20			
21	Okay. Did OFCCP attempt to follow	209	1
22	Directive 2018-05 in constructing the		
23	statistical model in the second		
24	amended complaint?		
25			

UNANSWERED QUESTIONS (Continued)			Page 18
1			
2			
3	Do you know if or how Taleo is used	156	9
4	by Oracle?		
5			
6	Dr. Brunetti, what facts support	170	6
7	using job title as a way to define		
8	similar employees at Oracle?		
9			
10	What facts support treating every	172	2
11	employee who works in the same job		
12	title at Oracle as performing similar		
13	work?		
14			
15	Do you ever consider whether you	173	6
16	should include job title in this		
17	regression?		
18			
19	What facts did OFCCP consider when it	173	13
20	made the choice to control for global		
21	career level only and not job title		
22	in this statistical model described		
23	in Paragraph 22?		
24			
25			

			Page 20
1	San Francisco, California		
2	Wednesday, July 17th, 2019		
3	9:00 a.m. - 2:55 p.m.		
4	---oOo---		
5	THE VIDEOGRAPHER: Good morning. This		
6	begins the videotaped deposition of Michael Brunetti		
7	in the matter Office of Federal Contract Compliance		
8	Programs versus Oracle America, Inc., filed with the		
9	United States Department of Labor, Office of		
10	Administrative Law Judges, Case No. 2017-OFC-00006.		
11	This deposition is being held at 405 Howard		
12	Street, in San Francisco, California, on July 17th,		
13	2019.		
14	My name is Lorenzo Fernandez-Kopec. I'm		
15	the videographer. The court reporter today is		
16	Monica Lepe-Georg. And we're both here representing		
17	Aptus Court Reporters, located at One Embarcadero		
18	Center, Suite 1060, in San Francisco, California.		
19	The time is 9:00. We are on the record		
20	now.		
21	Will counsel please state their appearance		
22	and affiliation?		
23	MR. MILLER: Jeremiah Miller for the Office		
24	of Federal Contract Compliance Programs.		
25	MS. FLORES: Jessica Flores for the same.		

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1 MS. MANTOAN: Kathryn Mantoan with Orrick
 2 Herrington & Sutcliffe for defendant Oracle America,
 3 Inc.
 4 MS. JAMES: Jessica James on behalf of
 5 Oracle.
 6 (Witness sworn.)
 7 ---oOo---
 8 30(b)(6) - MICHAEL J. BRUNETTI,
 9 having been administered an oath, was examined and
 10 testified as follows:
 11 EXAMINATION
 12 BY MS. MANTOAN:
 13 **Q. Good morning.**
 14 A. Good morning.
 15 **Q. Could you please state your name for the**
 16 **record?**
 17 A. Michael Brunetti.
 18 **Q. And you're Dr. Brunetti, correct?**
 19 A. Yes.
 20 **Q. Have you ever given a deposition before?**
 21 A. No.
 22 **Q. Okay. Have you ever testified under oath**
 23 **before?**
 24 A. Yes.
 25 **Q. How many times?**

Page 22

1 A. Once.
 2 **Q. Okay. What time -- when was that?**
 3 A. About two years ago.
 4 **Q. And in connection with what case was that?**
 5 A. Google versus OFCCP, I guess, it would be.
 6 **Q. Is that a case that OFCCP had brought**
 7 **against Google?**
 8 A. Yep.
 9 **Q. And did you testify at an administrative**
 10 **hearing in that case?**
 11 A. Administrative law judge, yes.
 12 **Q. Okay. And in that hearing, were you**
 13 **testifying on -- were you testifying as a person**
 14 **most knowledgeable on behalf of OFCCP, if you know?**
 15 A. I don't know the answer to that question.
 16 **Q. Okay. I'd like to go over a few of the**
 17 **basics of a deposition, just so we're all on the**
 18 **same page there.**
 19 **We are here today to take your deposition**
 20 **with respect to an enforcement action brought by**
 21 **OFCCP against Oracle America, Inc.; do you**
 22 **understand that?**
 23 A. Yes.
 24 **Q. The court reporter has placed you under**
 25 **oath and you'll be testifying under oath throughout**

Page 23

1 **the remainder of the deposition; do you understand**
 2 **that?**
 3 A. Yes.
 4 **Q. Do you appreciate that that oath has the**
 5 **same force and effect here as it would have if you**
 6 **were testifying in a court of law?**
 7 A. Yes.
 8 **Q. Because you're under oath, it's extremely**
 9 **important that your testimony be truthful, complete,**
 10 **and accurate; do you understand that?**
 11 A. Yes.
 12 **Q. In addition, it's important that you**
 13 **understand the questions I'm asking you.**
 14 **Accordingly, if at any time my question is unclear**
 15 **or ambiguous, please let me know so that I can**
 16 **clarify or rephrase it. Is that all right?**
 17 A. Okay.
 18 **Q. And if you -- you don't indicate any**
 19 **problems understanding the question, you go ahead**
 20 **and answer it, I'll presume that you understood the**
 21 **question as I asked it.**
 22 A. Okay.
 23 **Q. Does that sound fair?**
 24 A. Yes.
 25 **Q. Because your testimony is so important, we**

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1 **want the reporter to be able to take down every word**
 2 **you're saying. Therefore, please try to wait a**
 3 **moment after I finish asking my questions so that**
 4 **she can take down the whole question and then**
 5 **separately take down your answer; is that all right?**
 6 A. Yes.
 7 **Q. At the end of the deposition, the court**
 8 **reporter will give you a copy of your testimony to**
 9 **review. At that time, you'd have the opportunity to**
 10 **correct your testimony or make changes if you deem**
 11 **them necessary. However, if you make any changes or**
 12 **corrections, I would have the opportunity to comment**
 13 **on the fact that you later changed your testimony**
 14 **and -- and comment on that going forward.**
 15 **Do you understand that?**
 16 A. Yes.
 17 **Q. Okay. Is there any reason you know of that**
 18 **you can't give truthful, complete, and accurate**
 19 **deposition testimony here today?**
 20 A. No.
 21 (Exhibit 1 was marked for identification.)
 22 THE REPORTER: Exhibit 1.
 23 BY MS. MANTOAN:
 24 **Q. Dr. Brunetti, have you seen Exhibit 1**
 25 **before?**

Page 25

1 A. I believe. This appears to be the
2 deposition notice.
3 **Q. That's correct.**
4 A. So, yes, I've seen this.
5 **Q. Okay. And do you understand that you've
6 been designated to testify on behalf of OFCCP with
7 respect to topics one through 21 in this deposition
8 notice?**
9 A. Yes.
10 MR. MILLER: Just to put something on the
11 record. Katie, we had a discussion, before this
12 came in, that Dr. Brunetti was here to testify about
13 the regression analysis, the statistical parts.
14 There are other pieces to these topics that he is
15 not currently designated to testify on.
16 MS. MANTOAN: Okay. That's -- that's --
17 that's consistent with my understanding as well.
18 MR. MILLER: Okay.
19 BY MS. MANTOAN:
20 **Q. Did you, yourself, Dr. Brunetti, perform
21 the statistical analysis that -- whose results are
22 reported in the second amended complaint in this
23 case?**
24 A. Yes.
25 **Q. And in order to prepare for today's**

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1 **deposition, what did you do?**
2 A. I reviewed this deposition notice, the
3 notice of interrogatories -- what is it? Sorry, I
4 can't remember the --
5 **Q. No, that's all right.**
6 A. -- I can't remember what you lawyers call
7 it, but it starts with i-n-t-e-r.
8 **Q. Interrogatories?**
9 A. Yes.
10 **Q. Okay.**
11 A. And then I -- I reviewed some of the
12 documents that I believe were produced to you.
13 There might be some other things, but that's what
14 comes to mind.
15 **Q. What can you remember about the documents
16 that you reviewed?**
17 A. Oh, the second amended complaint, I also
18 reviewed that.
19 What do I remember about them?
20 **Q. I guess, do you remember the title of any
21 of them or the content of any of them? I'm trying
22 to get a better sense of what documents you
23 reviewed.**
24 MR. MILLER: Counsel, I could also provide
25 you with a list of the things we gave him at some

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1 point. I think -- I don't mean to interrupt your
2 questioning, feel free to follow up, but I'd be
3 happy to tell you exactly what we gave him. I mean,
4 I don't have it right now, but I'd be happy to do
5 that.
6 MS. MANTOAN: Okay. I appreciate that.
7 BY MS. MANTOAN:
8 **Q. So maybe following up with counsel on that,
9 but for purposes of -- of questioning right now, do
10 you remember generally what kind of -- what kind of
11 documents you reviewed or what types of materials
12 they were?**
13 A. Well, generally, they were documents
14 related to this case. I don't -- but I'm not really
15 sure what you mean specifically.
16 **Q. So were they -- was it just documents that
17 related to, you know, statistical outputs or were
18 they documents related to Oracle more generally,
19 PowerPoints about Oracle or -- or things like that?**
20 A. I mean, they were documents like this --
21 like this notice of deposition (indicating). The
22 .do files that I created. Some letters that were
23 sent between Oracle, or maybe it's Orrick and the
24 solicitor's office.
25 **Q. Did you review any log files that you**

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1 **generated?**
2 A. No.
3 **Q. Do you typically run statistical programs
4 that -- by running the .do, it generates a log or is
5 there some other technical --**
6 A. Yes, it generates a log, yeah.
7 **Q. Okay. And what statistical program did you
8 work in to produce the statistical results that are
9 captured in the second amended complaint?**
10 A. Stata.
11 **Q. And are there analytic files that you used
12 in that Stata -- that you sort of fed into that
13 Stata program, are those .dta files?**
14 A. The -- well, it -- the first thing it does
15 is it reads the -- the raw files, what I understand
16 is Oracle's data that was given to me by the
17 solicitor's office, and then I do create some .dta
18 files in those .do files. And then those -- those
19 .dta files are later used for analysis.
20 **Q. Okay. So from the raw Excel files that are
21 produced, I understand you create sort of three
22 types of files, .dta files, then .do files, then log
23 files; is that right?**
24 A. Yeah.
25 **Q. Okay.**

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1 A. It's -- well, yeah, I mean, typically
2 you -- you -- the -- the .do file is a program.
3 It's a set of commands and then those -- the set of
4 commands and the output is captured in a log file.
5 The .dta files, you don't have to generate .dta
6 files. Those are just files that you want to hold
7 on to because you'll need them later, but, you know,
8 you could run a program where you didn't have to
9 save any .dta files.

10 **Q. Okay. With respect to the analyses**
11 **reported in the second amended complaint, though,**
12 **you did create .dta files?**

13 A. Yes.

14 **Q. Okay. Is Stata the only statistical**
15 **program that you used to generate the statistical**
16 **work, whose results are reported in the second**
17 **amended complaint?**

18 A. To generate the statistical work, yes.

19 **Q. Is there some other program that you used**
20 **to perform analyses that ended up in the second**
21 **amended complaint?**

22 A. I used R, which is another statistical
23 package.

24 **Q. What did you use R to do?**

25 A. There were -- in the data that was provided

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1 to me, there were some individuals whose gender
2 was -- was missing. So I used R to -- to determine
3 their gender.

4 So, there's a function in R -- I think it's
5 actually called gender, and what you can do is you
6 type in the -- the name of the person and then it --
7 it references the Social Security Administration
8 data and so it can give you a probability of what
9 their gender is.

10 **Q. Okay.**

11 A. And so there was -- there was a few -- of
12 those missing ones, there was a -- there was a few
13 people that had names that I was not familiar with
14 and so I used that to be sure.

15 **Q. And after running through R, did you end up**
16 **filling in some gender value for every individuals**
17 **in the data you received?**

18 A. The -- the missing ones, yeah.

19 **Q. Okay.**

20 A. I didn't -- I didn't -- so I -- just so
21 we're clear, I didn't create log files with R
22 because it -- you can do it -- you know, I didn't
23 need to because there was just a few people I had to
24 just type their name in, get the probability, and
25 then that was it. So --

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1 **Q. Okay. I'm not --**

2 A. I didn't -- I didn't create a -- sorry, I
3 didn't create a program or a log file for R.

4 **Q. Understood.**

5 A. Yeah. Okay.

6 **Q. Understood.**

7 **But if I understand you correctly, for**
8 **individuals for whom you -- you saw that gender was**
9 **missing in the data you received, you first just**
10 **sort of looked at the names yourself and if you saw**
11 **a name like Michael, for example --**

12 A. Yes. Yes. Yes. So, the -- in fact, for
13 several of them, it said Mr., Mr. So-and-So, and so
14 I assumed those were males. There was people -- I
15 think [REDACTED], I assumed those were
16 males.

17 **Q. Okay.**

18 A. Then there was a few other ones where I
19 just was not familiar with. I think one of the
20 names was [REDACTED] (phonetic). I thought that might
21 be a male, but I -- I went and checked it and it
22 was. And so I don't remember the other -- the other
23 few, what they -- what they were, but...

24 **Q. Okay.**

25 A. Yeah.

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1 **Q. In preparation for today's deposition, did**
2 **you go back and look at the actual Excel data files**
3 **that you were provided before you did your analysis?**

4 A. Yes. I looked at the Excel files.

5 MS. MANTOAN: And, Counsel, do you -- is it
6 possible to provide a list of that? I don't expect
7 Dr. Brunetti to remember every Bates-number, but it
8 might expedite questioning and -- and make the
9 deposition go more smoothly if I can understand
10 which specific ones.

11 MR. MILLER: Sure. I mean, I don't know if
12 I could provide it to you in real time. Maybe if we
13 are at a break at some point, I can give that to
14 you.

15 MS. MANTOAN: Okay. That would be helpful.

16 BY MS. MANTOAN:

17 **Q. I guess I -- I guess I'm presuming**
18 **something, but if I asked you for a -- Dr. Brunetti,**
19 **for a comprehensive list of every Excel file you**
20 **received --**

21 A. Yeah.

22 **Q. Oh, sorry, let me finish the question, just**
23 **for the record.**

24 A. Oh, I'm sorry. Sorry.

25 **Q. No, it's -- that's another thing I should**

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1 have mentioned at the outset. Sometimes you will
2 know where my question is going --
3 A. Uh-hm.
4 Q. -- and the sort of conversational
5 convention is that sometimes you answer before
6 someone has finished the question, but it's
7 important here that I finish the question, then you
8 give the answer.
9 So just to get that full question out,
10 if -- if I asked you, sitting here today, to tell me
11 the names of every Excel data file you received to
12 analyze for purposes of generating the second
13 amended complaint, I presume that you would not be
14 able to provide a comprehensive list; am I correct
15 in that assumption?
16 A. I -- I can't give you the names of the
17 files because they have names that are hard to
18 remember.
19 Q. Uh-hm.
20 A. I can tell you the types of files that I
21 received.
22 Q. Okay. And before you do that, do you
23 have -- do you have an estimate of how many files
24 you received?
25 A. My estimate is I received three Excel

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1 files.
2 Q. Okay. And did you make some particular
3 request for certain types of files or were those
4 files just given to you without -- without you
5 having requested a particular type of information?
6 MR. MILLER: So, I'm going to instruct the
7 witness not to answer this question, to the extent
8 that it would require him to reveal attorney-client
9 communications or attorney opinions about what files
10 were required.
11 MS. MANTOAN: Okay. So --
12 MR. MILLER: There may be another answer
13 that he can give that does not touch on the
14 communications we had.
15 MS. MANTOAN: So let me ask a different
16 question.
17 BY MS. MANTOAN:
18 Q. Prior to your receiving the Excel files,
19 had you made any request to receive any data of any
20 particular type?
21 MR. MILLER: I think it's going to be the
22 same instruction and I don't mean to impede your
23 questioning here, but, you know, our position is
24 that the solicitor's office instructed Mr. Brunetti
25 or Dr. Brunetti as to what to do for the analysis in

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1 this case. So things like what conversations he had
2 with the solicitor's office or the kinds of
3 information that were passed back and forth, we
4 think, is privileged from disclosure.
5 MS. MANTOAN: So, as -- as you know,
6 Counsel, this deposition is taking place after there
7 was motion practice and an order compelling the
8 deposition to take place, and in that order, the
9 Court specifically found -- I'm reading from page 18
10 of the order -- that "OFCCP had waived claims of
11 privilege as to the mechanics of the statistical
12 model, including instructions that were given to the
13 statisticians, even if those instructions were given
14 by an attorney."
15 And so my understanding of that order is
16 that conversations that relate to the statistical
17 work that ended up in the second amended complaint,
18 there's already been a finding of waiver.
19 MR. MILLER: Yeah, so I think we disagree
20 that all instructions would be available or any
21 conversation we had. I mean, I -- we -- I do agree
22 that it is fine for him to tell you, for instance,
23 the three categories of Excel sheets he looked at,
24 I'm happy to provide you the list of things we gave
25 him, I mean, that kind of stuff. But if what you're

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1 asking about is did we have some conversation before
2 there was any instruction issued, if there were
3 other things that were talked about before you got
4 to the point of making this analysis, I don't think
5 the order covers that.
6 MS. MANTOAN: Okay. Well, we'll see how
7 the remainder of the deposition goes, but I
8 anticipate, and we'll put on the record now, that we
9 will be leaving the deposition open because there
10 may be differences of opinion as to what the order
11 required, and if we believe we're entitled to
12 information that you're instructing the witness not
13 to provide, then we may find ourselves in motion
14 practice again and -- and back here again.
15 MR. MILLER: I understand.
16 BY MS. MANTOAN:
17 Q. Okay. So you said your best recollection,
18 Dr. Brunetti, is that you received three Excel
19 files. Did you receive any other documents at the
20 time you received those Excel files?
21 A. I believe, yes, but I -- I'm having a hard
22 time remembering.
23 Q. Okay. So I want to first get -- before we
24 get into some specifics about what those Excel files
25 were, I want to make sure I'm capturing the universe

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1 of materials -- documentary materials that you were
2 provided before you did the statistical analysis
3 whose results are reported in the second amended
4 complaint.
5 So, you've told me about three, to the best
6 of your recollection, Excel files. What other
7 documents did you receive prior to conducting your
8 statistical analysis?
9 A. I received some PowerPoints that were like
10 pay policy documents.
11 Q. And were you provided any instruction about
12 how -- how, if at all, to -- to integrate those pay
13 documents into your statistical analysis or -- or
14 construct your statistical analysis in light of
15 them?
16 A. I recall I was -- I was asked to review
17 them.
18 Q. Do you recall anything else about the
19 instruction you were given with respect to those
20 documents?
21 A. Not -- no. Sorry.
22 Q. Okay. So we've talked about some Excel
23 files, some PowerPoints. Any other types of
24 documents that, as you sit here, you recall
25 receiving prior to -- prior to conducting your

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1 statistical analysis?
2 A. I -- I believe that's all, but I --
3 Q. Okay.
4 A. It's possible that I received something
5 else, but I just don't recall.
6 Q. Right. And -- and I'm always entitled
7 to -- to just your best recollection, and I should
8 say that if you provide an answer at one point in
9 the deposition and later you remember, oh, that's
10 right, I also received this other document, you can
11 feel free to -- to supplement that answer.
12 A. Okay.
13 Q. Clarify it, if needed.
14 So, with respect to those three Excel
15 files, what can you tell me that you remember about
16 the contents or format of those files?
17 A. The three Excel files, you said?
18 Q. Correct.
19 A. So there -- there was one file. It started
20 with EM -- EMP personnel and it had some long name.
21 And that had -- I believe had five tabs. And so I
22 used -- there was one tab that had -- I think it's,
23 like, called EMP personnel or something. It
24 talked -- it had information like gender, race, hire
25 dates, some other information like that.

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1 And then there's another tab that had --
2 well, what I would call, you know, transactional
3 data, so it had information on where people were
4 working for a given date range. So it would have
5 their job -- you know, basically their job and I
6 think it had some term -- it had like -- it told you
7 if this record was for termination or -- yeah,
8 things like that.
9 Q. Okay. Anything else you remember from that
10 first E -- let's call it the EMP file?
11 A. Okay.
12 Q. Anything else you remember from that EMP
13 file?
14 A. Yeah. There were three other tabs that I
15 didn't use and one appeared to be education
16 background, the other appeared to be, like, prior
17 work experience, and the other one -- I think it
18 was, like, acquisitions tab.
19 Q. Why didn't you use the information in the
20 education tab?
21 A. I -- I wasn't asked to use education in the
22 analysis that I did.
23 Q. Why didn't you use the prior work
24 experience tab?
25 A. I wasn't asked to use that.

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1 Q. Okay. And why didn't you use the M&A,
2 mergers and acquisitions tab?
3 A. I wasn't asked to.
4 Q. Okay. Okay. So we have the -- that first
5 file is the EMP file. What, if anything, do you
6 remember about the other two Excel files that you
7 received?
8 A. One file was a location file and my
9 understanding is that lists the locations that are
10 in this class.
11 Q. Was it -- do you believe that was an AAP
12 location file? Is that what you recall?
13 A. I -- I don't know.
14 Q. Okay. Fair enough.
15 And then what about the third Excel file?
16 A. The third Excel file had -- is where I -- I
17 used it for base pay.
18 Q. There was one file produced in this case
19 that's name started with merged salary admin. Does
20 that sound like a file you received?
21 A. A merged salary admin? No. I just
22 remembered, there was actually -- I guess there
23 was -- there's one other Excel file.
24 Q. Okay.
25 A. I think it was called all earnings.

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1 **Q. Okay. And what did --**
2 A. That had -- I'm sorry.
3 **Q. What -- what did you use the all-earnings**
4 **file for?**
5 A. I used that for compensation -- total
6 compensation.
7 **Q. And what specifically in the all-earnings**
8 **file did you use as a measure of total compensation?**
9 A. I -- I might misstate this, but I believe
10 it was Medicare/EE taxable. That's the measure that
11 I was asked to use for total compensation.
12 **Q. When you say it's the measure you were**
13 **asked to use, did you, Dr. Brunetti, form any**
14 **independent opinion as to whether that was the**
15 **appropriate measure to use for total compensation?**
16 A. No.
17 **Q. As you sit here today, do you have an**
18 **independent opinion?**
19 MR. MILLER: Objection. It's beyond the
20 scope of this deposition.
21 THE WITNESS: Sorry, do I answer?
22 MR. MILLER: Yeah, I'm sorry.
23 THE WITNESS: Okay.
24 MR. MILLER: Unless -- not to interrupt,
25 but unless I specifically tell you not to answer it,

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1 she gets an answer.
2 MS. MANTOAN: Yep.
3 THE WITNESS: I don't have a strong opinion
4 because I don't know what all of those compensation
5 items are in that file.
6 MS. MANTOAN: Okay.
7 THE WITNESS: So...
8 BY MS. MANTOAN:
9 **Q. Going back to the base pay file, I have**
10 **a -- I just want to see if another file name rings a**
11 **bell as potentially being the file you looked at**
12 **there. There was a file that was produced in this**
13 **case called GSI comp history. There's five tabs at**
14 **the bottom like base pay, performance. Does that**
15 **sound -- does that sound like the file that you**
16 **reviewed?**
17 A. I believe that -- that sounds like it's the
18 file. I -- I don't know for sure, but it sounds
19 like the name of the base pay file that I used.
20 **Q. Okay. Did you -- did you ever receive any**
21 **Excel or other date files that contained information**
22 **about -- about equity that specified what equity was**
23 **awarded and in what time period it was awarded?**
24 A. Not that I recall. I -- I -- I do know
25 that what I'm referring to as that base pay file --

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1 **Q. Uh-hm.**
2 A. -- I believe that had other measures of pay
3 in it.
4 **Q. Uh-hm.**
5 A. And I'm -- I'm not sure what you mean by
6 equity --
7 **Q. Okay.**
8 A. -- but...
9 **Q. Did you use any of the -- of the**
10 **information in that -- that GSI comp history file**
11 **other than the base pay tab?**
12 A. No.
13 **Q. Okay. And why -- why didn't you use any of**
14 **that other information?**
15 A. I was not asked to do so.
16 **Q. So, with respect to the analyses that**
17 **you -- that you ran on this information, were any of**
18 **them analyses that you personally determined, sort**
19 **of, how to construct, or were all of those analyses**
20 **ones where you were given instructions about exactly**
21 **how to run the model and simply ran it pursuant to**
22 **those instructions?**
23 A. I'm sorry, could you --
24 **Q. So, I'm -- I'm -- we have the second**
25 **amended complaint. There's a series of analyses**

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1 **there and what I want to understand is whether any**
2 **of those analyses were ones that you, Dr. Brunetti,**
3 **personally, sort of, decided how to construct, what**
4 **variables to include, how to group employees, or**
5 **whether all of those analyses are such that you,**
6 **Dr. Brunetti, were given instructions about exactly**
7 **how to construct them and -- and constructed the**
8 **analyses pursuant to those instructions.**
9 MR. MILLER: So I'm going to give the same
10 instruction not to answer this question in a way
11 that would reveal either attorney --
12 THE REPORTER: I need -- when you object, I
13 need you to slow down, please.
14 MR. MILLER: Oh, okay. Sorry.
15 I'm going to give the same instruction that
16 Dr. Brunetti is not to answer this question to the
17 extent it would reveal attorney-client
18 communications or contain attorney work product.
19 There may be an answer he can give that does not
20 reveal either of those.
21 BY MS. MANTOAN:
22 **Q. So the question is simply whether the**
23 **analyses are ones that you designed or whether the**
24 **analyses are ones that you were instructed on how to**
25 **design?**

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1 A. Well, there's a lot of analyses in this
 2 second amended complaint and, you know, the
 3 solicitor is not an economist. So, to the extent
 4 that they provided me with what they wanted me to
 5 do, I did that, but, you know, for determining
 6 what's the appropriate statistical approach, that's
 7 something I would do.

8 **Q. Okay. And when you say the appropriate**
 9 **statistical approach, what do you mean by that?**

10 A. You know, I mean, I think we can -- I can
 11 give an example from -- well -- the --

12 MS. MANTOAN: Yeah, let's -- let's get the
 13 complaint in front of us. Maybe that would be
 14 helpful.

15 THE WITNESS: Okay.

16 THE REPORTER: Exhibit 2.
 17 (Exhibit 2 was marked for identification.)

18 THE WITNESS: All right. Just -- I -- I
 19 think what I would say is, you know, I might be
 20 asked to run a regression, but through different
 21 types of -- there's different types of regressions
 22 you would run, depending on the -- the data and
 23 the -- the analysis you're trying to estimate.

24 BY MS. MANTOAN:

25 **Q. But were the instructions you received that**

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1 **it needed to be some type of regression-based**
 2 **analysis where you then might decide technical**
 3 **details, or were you given an instruction to do some**
 4 **kind of an analysis more broadly which might have**
 5 **taken a nonregression form?**

6 A. I think -- do -- I think the easiest thing
 7 would be if I show an example.

8 **Q. So, let's -- yeah, let's look at Exhibit 2**
 9 **and just so that the record is clear, does Exhibit 2**
 10 **appear, to you, to be the second amended complaint**
 11 **in this matter?**

12 A. Yes, it appears to be.

13 **Q. Okay. So regarding my question about sort**
 14 **of who it was that determined how to structure the**
 15 **analyses, I believe you said that you thought giving**
 16 **an example would be helpful.**

17 **So, can you --**

18 A. Okay. So --

19 **Q. -- looking -- sorry -- looking at**
 20 **Exhibit 2, give one of those examples?**

21 A. Yeah. All right. So if you look at
 22 Paragraph 18.

23 **Q. Yes.**

24 A. And it's the third sentence, where it says,
 25 "OFCCP evaluated the likelihood that a given

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1 employee would be assigned to a" --

2 THE REPORTER: I need you to slow down.

3 OFCC evaluated the likelihood --

4 THE WITNESS: "That a given employee would
 5 be assigned to a higher level within Oracle's global
 6 career framework, where lower levels correspond to
 7 less responsibility and pay, controlling for the
 8 year and previous experience."

9 Okay. So to do that methodology, you can
 10 run just a regular OLS regression, which is what
 11 most people mean when they say regression, ordinary
 12 least squared. So -- in fact, I -- initially,
 13 that's what I did for this analysis. But the
 14 problem -- and so let me -- let me -- I think it
 15 will be easier for me if I just tell you what I did
 16 here and it will become evident why I can't just
 17 rely on the solicitor.

18 MS. MANTOAN: Sure. Okay.

19 THE WITNESS: So what I did here was I took
 20 the global career level variable, and there's --
 21 there's two sets of global career level. One is the
 22 Ms, or managers, I assume, and the other one is IC,
 23 individual contributor. So I ran the analysis
 24 separate between those two.

25 So for Ms, if it was M1, I assumed that --

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1 I took on a value of one; M2, value of two; M3,
 2 three; and so forth. Okay? I think there were
 3 seven Ms, and then I did the same thing for ICs.

4 Okay. So then initially what I did, then,
 5 is I ran regression of this manager global career
 6 level on year -- well, gender, year, prior
 7 experience, okay.

8 BY MS. MANTOAN:

9 **Q. And by "prior experience," you mean what?**

10 A. That's age, as a proxy, for prior
 11 experience.

12 **Q. Just straight out age or age minus 18,**
 13 **minus years at Oracle?**

14 A. It's -- it's age at hire. So it would be
 15 age minus the time in company, minus 18.

16 **Q. Okay.**

17 A. Okay. Okay. So initially I ran an OLS
 18 regression, okay, and I found that for females --
 19 females were less likely to be assigned to the
 20 higher levels for manager and for individual
 21 contributor, okay.

22 **Q. When you say "assigned" there -- sorry**
 23 **to -- sorry to interrupt.**

24 A. Yeah.

25 **Q. I just want to make sure I'm understanding**

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1 as you go.

2 **When you used the word "assigned" there,**

3 **what do you mean by that?**

4 A. So, yeah, I should say this is the

5 population of people who were hired at Oracle during

6 the class period. So I looked at people who were

7 hired and -- and then looked at which global career

8 level they ended up at.

9 **Q. Okay.**

10 A. Okay.

11 **Q. Thank you.**

12 A. Okay. So -- so, as I was saying, I ran an

13 OLS regression and I found that the results were

14 statistically significant for females for both the

15 manager and individual contributor, okay. And then

16 I think -- and then Asians, for individual

17 contributor, were statistically significantly

18 different. So Asians were being assigned to lower

19 levels than -- than whites.

20 **Q. And again, by "assigned" there, you just**

21 **mean that hire -- joined that the company at lower**

22 **levels?**

23 A. Yep. Yep.

24 **Q. Okay. Thank you.**

25 A. And then for blacks, they were assigned to

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1 lower levels than whites, for individual

2 contributor, and then for managers, there was not

3 one black employee assigned to a manager -- there was

4 no blacks hired as a manager during the class period

5 at Oracle. So that's actually a stronger result --

6 you can't run a regression on that because if you're

7 black, you didn't get assigned to a management --

8 manager level. So that's actually a stronger result

9 than statistically significant.

10 So -- okay. So I ran all of that analysis

11 using OLS, but the problem with that -- potential

12 problem with OLS is that this data that I -- that I

13 have is the dependent variable, the global career

14 level, is -- it's called ordinal data, okay. So,

15 what that means is that if you're going from the

16 distance between a one and a two, and a two and a

17 three, and a three and a four, and so forth might

18 not be the same, okay. So it might be easy to be

19 assigned -- to go from a two to three, but then

20 going from a five to a six can be harder, okay.

21 It's possible. And if that's true in the data, then

22 ordinary least squares would be -- it would violate

23 the IID, which is independent and identically

24 distributed assumption.

25 So, because of that possibility, I then ran

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1 what's called ordered logistic regression, okay, and

2 this is where I'm saying that the SOL would not know

3 to tell me to do that, okay. I had to rely on my

4 own knowledge or background.

5 **Q. Okay. I think that explanation was**

6 **helpful.**

7 A. Okay.

8 **Q. So it -- it sounds like you exercised some**

9 **judgment that an order logistic regression rather**

10 **than an OLS regression might be the appropriate type**

11 **of regression, given the type of data at issue,**

12 **correct?**

13 A. Yes.

14 **Q. Okay. But with respect to the fact that**

15 **the dependent variable was the global career level**

16 **and the independent variables were gender, year, and**

17 **prior experience defined as you described, was --**

18 **was that a decision you made or were those**

19 **decisions -- like instructions you were given?**

20 A. Those were instructions that I was given.

21 The -- you're asking about the control variables, is

22 that --

23 **Q. Correct. Which control variables to use.**

24 A. Those are instructions that I was given.

25 **Q. Okay. Did you form any independent**

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1 **judgment as to whether those were the appropriate**

2 **control variables to use?**

3 MR. MILLER: Objection. Again, this is

4 outside the scope of the 30(b)(6). You're asking

5 about his personal knowledge.

6 THE WITNESS: Did I -- sorry, could you

7 repeat the question?

8 BY MS. MANTOAN:

9 **Q. So you were instructed to use those three**

10 **control variables that you mentioned. Did you form**

11 **any independent opinion as to whether those were**

12 **appropriate control variables to use?**

13 A. I believe they were appropriate.

14 **Q. Okay. What do you base that belief on?**

15 A. Well, people, you know, all us being equal,

16 people with more prior experience will probably be

17 assigned to a higher global career level, all us

18 being equal. And then the same -- and year -- you

19 know, there could be years where -- you know, there

20 could be something about the -- if you're in a good

21 economy or the demands of the company need more, you

22 know, M5s than a previous year, then year could have

23 an impact.

24 **Q. Okay. And just so I don't have to keep**

25 **asking the same question over and over, when you use**

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1 the word "assigned" in any of your answers, can I
2 assume that what you mean by "assign" is just the
3 role that the person was hired at?
4 A. Yes.
5 **Q. The level they were hired at.**
6 A. It -- it means that of the people who were
7 hired, which global career level did they end up at.
8 **Q. Okay. Did -- did any of this analysis that**
9 **you were just describing take into account the**
10 **position for which a given applicant applied at**
11 **Oracle?**
12 A. Did it take into -- that's not information
13 that I had.
14 **Q. Okay. So the answer is that it did not**
15 **take that into account, correct?**
16 A. It did not.
17 **Q. Okay. And when you described sort of a**
18 **general principle, as I understood it, that, in**
19 **general, individuals with greater work experience**
20 **might tend to work at a higher levels in a company,**
21 **did you do anything to -- did you review any facts**
22 **that evaluated whether -- like, that helped you**
23 **evaluate whether that general assumption is true of**
24 **this specific population of employees at this**
25 **specific company?**

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1 A. I'm sorry. Can you --
2 **Q. So you described a general economic**
3 **principle, as I understood it, that, in general,**
4 **individuals who are older, when using age as a proxy**
5 **for prior experience, might tend to work at higher**
6 **levels, correct?**
7 A. People with more experience are -- are
8 probably more likely to be assigned to the higher
9 global career levels.
10 **Q. Okay. And did you review any information**
11 **that helped you assess whether that general sort of**
12 **theoretic economic principle held true of this**
13 **specific group of employee at this specific company?**
14 A. No, not that I recall.
15 MS. MANTOAN: Okay.
16 MR. MILLER: Counsel, could we go off the
17 record for a moment?
18 MS. MANTOAN: Sure.
19 THE VIDEOGRAPHER: The time is 9:39.
20 We are going off the record.
21 (Short recess was taken from 9:39 a.m. to
22 10:01 a.m.)
23 THE VIDEOGRAPHER: The time is 10:01.
24 We're back on the record.
25 MS. MANTOAN: So -- so, for the record,

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1 counsel for OFCCP and I conferred off the record.
2 It seems like we have some disagreements about what
3 the order compelling this deposition, in fact,
4 requires and what privileged objections have or have
5 not been waived. So I -- I believe that we're --
6 you were contemplating sort of a truncated
7 privileged objection that you will continue to make
8 where you think appropriate?
9 MR. MILLER: That's right. So I will stick
10 with an instruction not to answer on the basis of
11 attorney-client privilege or work product document
12 and that's all the same, was the context, I think,
13 requires me to give a better explanation about why I
14 think that's the case.
15 MS. MANTOAN: Okay. And I -- we will be
16 leaving the deposition open at the end with the --
17 with the understanding that we may well pursue
18 motion practice and if -- if the Court so orders,
19 come back and -- and pursue answers to those -- to
20 those questions.
21 BY MS. MANTOAN:
22 **Q. With that preamble, welcome back,**
23 **Dr. Brunetti. Are you okay to continue?**
24 A. Yes.
25 **Q. Okay. Anything during the break that you**

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1 **thought about that you might want to correct or**
2 **clarify about answers given previously?**
3 A. No.
4 **Q. Several times in our discussion so far,**
5 **you've mentioned instructions that you were given**
6 **about how to construct the statistical models**
7 **reported in the second amended complaint. Who did**
8 **you receive those instructions from?**
9 A. Jeremiah Miller.
10 **Q. Is there any other person that you received**
11 **those instructions from?**
12 A. I don't believe so.
13 **Q. Is there anyone else at the Solicitor of**
14 **Labor with whom you discussed the statistical models**
15 **whose results are reported in the second amended**
16 **complaint?**
17 A. I may have discussed them with Laura
18 Bremer.
19 **Q. Okay.**
20 A. I think that's -- that's all.
21 **Q. Okay. Is there -- are there any other**
22 **statisticians with whom you've discussed the**
23 **statistical analyses whose results are reported in**
24 **the second amended complaint?**
25 A. No.

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1 **Q. Are there any other individuals who --**
2 **employed by or working under contract for OFCCP with**
3 **whom you discussed the statistical analysis whose**
4 **results are reported in the second amended**
5 **complaint?**
6 A. Sorry, could you repeat the first part?
7 Are there any other what?
8 **Q. Oh, people who either are employees of**
9 **OFCCP or contractors for OFCCP, so OFCCP personnel**
10 **with whom you discussed the statistical analyses**
11 **whose results are reported in the second amended**
12 **complaint.**
13 A. My boss, Jane Suhr.
14 **Q. Okay.**
15 A. And just to clarify, I -- I -- you know, I
16 had -- I talked to her, but I haven't gone into
17 detail about the statistical results. I just kind
18 of generally talked about what I'm doing.
19 **Q. Okay.**
20 A. I guess -- I guess, you know, the
21 statistical results, I don't know if you mean, like,
22 oh, here, this one has 2.7 standard deviations or if
23 you mean just in general there was a disparity. So
24 I'm not sure.
25 **Q. Yeah, either of those.**

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1 A. But, yeah. But -- so she's my boss, so
2 when I work with a solicitor, I keep her informed
3 about what I'm doing. I don't believe I've had
4 specific, detailed conversations about the
5 statistical results.
6 **Q. Did -- did Ms. Suhr provide any input into**
7 **the structure of any of the statistical models in**
8 **the second amended complaint?**
9 A. No.
10 **Q. Did Ms. Bremer provide any input into any**
11 **of the statistical models in the second amended**
12 **complaint?**
13 A. No.
14 MR. MILLER: Oh, and, Counsel, I do want to
15 clarify for the record. The hiring portion of this
16 case is no longer an issue since the parties
17 resolved it. Ms. Bremer would have had input into
18 that piece, but I believe Dr. Brunetti is answering
19 based on what's still lacking in the case.
20 MS. MANTOAN: Thank you. I appreciate that
21 clarification.
22 BY MS. MANTOAN:
23 **Q. Did you review the notice of -- well,**
24 **are -- are you aware that there was a Notice of**
25 **Violation issued prior to litigation commencing in**

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1 **this case?**
2 A. Yes.
3 **Q. Did you review that NOV prior to doing your**
4 **statistical work?**
5 A. I -- I don't think so. I -- I think
6 possibly I received a copy of it, but I don't recall
7 looking at the NOV.
8 **Q. Did you receive a copy of any show cause**
9 **notice that was issued in this matter?**
10 A. I -- I don't think so.
11 **Q. When were you first contacted to perform**
12 **statistical analyses in connection with this case?**
13 MR. MILLER: Objection to the extent you're
14 asking about any contact. If you're asking him
15 about contact with respect to this second amended
16 complaint, that seems fine.
17 BY MS. MANTOAN:
18 **Q. So can you answer with respect to the**
19 **second amended complaint?**
20 A. I -- I don't remember exactly when I was
21 first contacted, but I do remember working on this
22 around Thanksgiving, so I suspect that it was
23 probably in October of 2018.
24 **Q. And were you provided those four Excel**
25 **files that we talked about when you were initially**

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1 **contacted?**
2 A. I don't remember at what point I received
3 those.
4 **Q. Okay. Do you know who --**
5 A. Sorry, is it four or three? I thought it
6 was three Excel files.
7 **Q. My recollection is that you talked about a**
8 **location file, an EMP personnel file, a base pay**
9 **file, and an all-earnings file.**
10 A. Uh-hm. Oh, yeah.
11 **Q. Is that right?**
12 A. Yeah, you're right.
13 **Q. Okay. Do you know who Shirong Andy Leu is?**
14 A. Yes.
15 **Q. Did he have any input into any of the**
16 **statistical analyses that are reflected in the**
17 **second amended complaint?**
18 A. No.
19 **Q. Okay. Do you know who Bob LaJeunesse is?**
20 A. Yes.
21 **Q. Who is that?**
22 A. He -- he was head of the branch of expert
23 services. I believe now he's acting head of
24 enforcement.
25 **Q. Did he have any input into the statistical**

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1 analyses that are -- whose results are reported in
2 the second amended complaint?
3 A. No.
4 **Q. Are you saying you're sure that he has no
5 input or that as far as you, individually, know, he
6 had no input?**
7 A. Bob LaJeunesse did not instruct me to do --
8 he had no input to me. I don't know if he spoke to
9 the solicitor, but...
10 **Q. Okay. Did you do anything prior to this
11 deposition to try to determine what, if any, input
12 Dr. LaJeunesse had with respect to any part of
13 developing the analyses that ended up in the second
14 amended complaint?**
15 A. Did I do something to determine if he had
16 input on what I did?
17 **Q. Right. So you -- so you're testifying as a
18 30(b)(6) today, right?**
19 A. Uh-huh.
20 **Q. And do you understand that that means
21 you're testifying to the agency's knowledge,
22 correct?**
23 A. Okay.
24 **Q. So you're not testifying to your personal
25 knowledge, you're testifying to what the agency**

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1 knows?
2 A. Okay. I don't know what Bob knows or what
3 input he had.
4 **Q. Okay. Okay.**
5 MR. MILLER: Counsel, if it helps, I'll
6 represent that Bob LaJeunesse had no input.
7 BY MS. MANTOAN:
8 **Q. I have a series of questions about what
9 facts OFCCP considered when it made choices about
10 how to construct the statistical model and -- let's
11 leave it at that.**
12 **Did OFCCP consider any of the narrative
13 text in any performance evaluations for any employee
14 at Oracle when it made choices about the statistical
15 model in the SAC?**
16 MR. MILLER: So I'm going to instruct the
17 witness not to answer the question as it may reveal
18 attorney-client communications and work product.
19 MS. MANTOAN: Okay. And for -- for the
20 record, I believe that that question, which -- whose
21 language is taken directly from the order compelling
22 this deposition, is appropriate.
23 BY MS. MANTOAN:
24 **Q. Did OFCCP consider any of the written
25 promotion justifications for any employee at Oracle**

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1 when it made choices about the statistical model in
2 the second amended complaint?
3 MR. MILLER: I'm going to instruct the
4 witness not to answer the question as it may reveal
5 attorney-client communications or attorney work
6 product.
7 BY MS. MANTOAN:
8 **Q. Did OFCCP consider any of the specific job
9 postings or requisitions for any specific job
10 opening for any position at Oracle when it made
11 choices about the statistical model in the SAC?**
12 MR. MILLER: I'm instructing the witness
13 not to answer the question as it may reveal attorney
14 product communications or work product.
15 BY MS. MANTOAN:
16 **Q. Did the OFCCP consider any of the written
17 starting pay justifications for any employee at
18 Oracle when it made choices about the statistical
19 model in the SAC?**
20 MR. MILLER: I'm going to instruct the
21 witness not to answer as it may reveal
22 attorney-client communications or attorney work
23 product.
24 BY MS. MANTOAN:
25 **Q. Did OFCCP consider any off-cycle pay**

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1 justifications for any Oracle employee when it made
2 choices about the statistical model in the SAC?
3 MR. MILLER: I'm going to instruct the
4 witness not to answer. It may reveal
5 attorney-client communications or work product.
6 BY MS. MANTOAN:
7 **Q. Did OFCCP consider the -- the full list of
8 data files produced in October of 2017 when it made
9 choices about the statistical model in the SAC?**
10 MR. MILLER: Instruct the witness not to
11 answer as it may reveal attorney-client
12 communications or attorney work product.
13 BY MS. MANTOAN:
14 **Q. Did OFCCP consider any information about
15 the products and services that Oracle provides when
16 it made choices about the statistical model in the
17 SAC?**
18 MR. MILLER: I'm going to instruct the
19 witness not to answer as it may reveal
20 attorney-client communications or work product.
21 BY MS. MANTOAN:
22 **Q. Did OFCCP consider any interviews of any
23 current or former Oracle employees when it made
24 choices about the statistical model in the second
25 amended complaint?**

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1 MR. MILLER: I'm going to instruct the
 2 witness not to answer as it may reveal
 3 attorney-client communication or work product.
 4 BY MS. MANTOAN:
 5 **Q. Did OFCCP consider any materials from the
 6 separate case of Jewett versus Oracle America when
 7 it made choices about the statistical model in the
 8 SAC?**
 9 MR. MILLER: I'm going to instruct the
 10 witness not to answer as it may reveal
 11 attorney-client communications or work product.
 12 BY MS. MANTOAN:
 13 **Q. Did OFCCP consider the expert report of
 14 Dr. David Neumark, which was provided in the Jewett
 15 case, when it made choices about the statistical
 16 model in the second amended complaint?**
 17 MR. MILLER: I'm going to instruct the
 18 witness not to answer as it may reveal
 19 attorney-client communications or work product.
 20 BY MS. MANTOAN:
 21 **Q. Other than the four data files we've
 22 discussed, did OFCCP consider any facts provided by
 23 Oracle regarding its pay practices when making
 24 choices about the statistical model in the second
 25 amended complaint?**

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1 MR. MILLER: I'm going to instruct the
 2 witness not to answer as it may reveal
 3 attorney-client communications or work product.
 4 BY MS. MANTOAN:
 5 **Q. What did OFCCP do, if anything, to confirm
 6 that the employees being compared in the models,
 7 whose results are reflected in the second amended
 8 complaint were performing similar work?**
 9 MR. MILLER: I'm going to instruct the
 10 witness not to answer as it may reveal
 11 attorney-client communications or work product.
 12 BY MS. MANTOAN:
 13 **Q. What did OFCCP do, if anything, to
 14 determine whether the models, whose results are
 15 presented in the second amended complaint, group
 16 together comparable employees?**
 17 MR. MILLER: I'm going to instruct the
 18 witness not to answer as that may reveal
 19 attorney-client communications or work product.
 20 BY MS. MANTOAN:
 21 **Q. What, if anything, did OFCCP do to
 22 determine whether the factors that are controlled
 23 for in the second amended complaint statistical
 24 models were, in fact, factors considered by Oracle
 25 managers when determining pay?**

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1 MR. MILLER: Instruct the witness not to
 2 answer as it may reveal attorney-client
 3 communications or work product.
 4 BY MS. MANTOAN:
 5 **Q. What facts, if any, did OFCCP consider
 6 about the factors that managers at Oracle consider
 7 when they set pay when making choices about the
 8 statistical model in the SAC?**
 9 MR. MILLER: I'm going to instruct the
 10 witness not to answer as it may reveal
 11 attorney-client communications or work product.
 12 BY MS. MANTOAN:
 13 **Q. What, if anything, did OFCCP do to tailor
 14 the analytic procedures for the statistical models,
 15 whose results are presented in the SAC, to the work
 16 performed at Oracle in particular?**
 17 MR. MILLER: I'm going to instruct the
 18 witness not to answer, as the answer may reveal
 19 attorney-client communications or work product.
 20 BY MS. MANTOAN:
 21 **Q. Did OFCCP consider any information about
 22 the products that Oracle makes when it made choices
 23 about the statistical model in the SAC?**
 24 MR. MILLER: I'm going to instruct the
 25 witness not to answer as it may reveal

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1 attorney-client communications or work product.
 2 BY MS. MANTOAN:
 3 **Q. Did OFCCP consider any facts about how work
 4 to develop different Oracle products might differ
 5 when it made choices about the statistical model in
 6 the SAC?**
 7 MR. MILLER: I'm going to instruct the
 8 witness not to answer as it may reveal
 9 attorney-client communications or attorney work
 10 product.
 11 BY MS. MANTOAN:
 12 **Q. What facts did OFCCP consider, if any,
 13 about Oracle's pay practices when it made choices
 14 about the statistical model in the SAC?**
 15 MR. MILLER: I'm going to instruct the
 16 witness not to answer as it may reveal
 17 attorney-client communications or work product.
 18 (Exhibit 3 was marked for identification.)
 19 THE REPORTER: Exhibit 3.
 20 BY MS. MANTOAN:
 21 **Q. So, Dr. Brunetti, I've put in front of you
 22 a document that is an e-mail, two pages, a string of
 23 e-mails that are two pages, Bates-number
 24 ORACLE_HQCA_405 to 406 and then a cover sheet for a
 25 native file ORACLE_HQCA_407. I'll represent to you**

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1 that the printout that follows is a printout of that
2 native file.
3 And my question for you is whether that --
4 that PowerPoint that appears behind the cover page
5 with the Bates-number that ends in 407, if this is
6 one of those PowerPoints that you recall receiving
7 before you -- to -- to review before you completed
8 your statistical analysis?
9 A. I can't say with 100 percent certainty that
10 this is what I reviewed, but the title, Global
11 Compensation Training, I think that was the title of
12 a document that I looked at and some of these
13 PowerPoints look similar to what I -- I looked at.
14 So I think it probably is, but I...
15 Q. Okay. I -- I will state for the record,
16 and I think opposing counsel would agree with me,
17 that there have been a lot of PowerPoints exchanged
18 in this case.
19 A. Yeah.
20 Q. So I understand that you may not be
21 positive that this is the exact, same one that you
22 reviewed -- you reviewed, but I understand that
23 your -- your testimony to be that this looks
24 similar, at least, to what you reviewed, correct?
25 A. Correct.

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1 Q. Okay. What, if any, impact did your review
2 of this PowerPoint have on the statistical analysis
3 that you performed, whose results are reported in
4 the second amended complaint?
5 MR. MILLER: So I'm going to instruct him
6 not to answer to the extent it would reveal
7 attorney-client communications or work product.
8 There may well be answers he can give you that do
9 not have to do with discussions with counsel.
10 THE WITNESS: Okay. There was -- I'm --
11 I'm not sure. It's possible that there was
12 something in here that I used and -- doing my
13 analysis, but if you can give me a couple minutes, I
14 can look through here and see.
15 MS. MANTOAN: Sure. Thank you.
16 THE WITNESS: So, one thing I recall is
17 when I was doing that assignment analysis that we
18 discussed previously, so initially I -- I -- I
19 looked at the data and, you know, I -- I mentioned
20 that I separated the ICs and the Ms, and part of the
21 reason I did that looking at the data is because I
22 had no way of linking like if an IC4 is the same as
23 an M3 or something like that, and so I decided,
24 based on the data, that I would separate it. And
25 then in reviewing this, I had noticed that they said

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1 there's no link between IC-level and M-level roles.
2 BY MS. MANTOAN:
3 Q. Can you tell me what the title of the slide
4 that you're on is? Like the --
5 A. Promotions, more difficult issues. I
6 remember seeing that, although now that I look at
7 it, it's under promotions, so it's not really...
8 Q. I see. So it looks like you're on the
9 slide with the -- there's very tiny numbers on the
10 slides, but it looks like 15?
11 A. Yeah. So -- so I remember reading that
12 point and -- and again, it -- I don't know if it's
13 from this PowerPoint or it might have been another
14 one, but I just remember thinking, okay, I was
15 already -- I decided I'm going to separate the
16 analysis based on the data that I had, separate IC
17 and M, that is.
18 Q. Uh-hm.
19 A. And I remember reading that and I said
20 okay, that -- there's more of a justification to do
21 that.
22 Q. Did your review of this PowerPoint have any
23 impact on the factors that you decided to control
24 for in any of the analyses that you ran?
25 A. No.

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1 Q. Okay.
2 A. For -- sorry, for which analyses?
3 Q. Any of the analyses in the second amended
4 complaint.
5 A. Okay. I'll have to take some time and look
6 it over. I -- 'cause I don't remember.
7 Q. Well, I guess -- so you received data files
8 and as I understood it, you received instructions as
9 to which factors to control for in those files,
10 correct?
11 A. Uh-hm. Uh-hm. Yes.
12 Q. After reviewing this, did you change any of
13 those factors from what had been instructed?
14 A. No.
15 Q. Okay. So the -- the factors that are
16 controlled for in the different analyses in the
17 second amended complaint, all of those factors
18 were -- were selected solely by counsel instructing
19 you what factors to use, correct?
20 A. Yes.
21 Q. Okay.
22 A. Yeah.
23 Q. And did you provide any input as to whether
24 those factors were appropriate to use?
25 MR. MILLER: So I'm going to instruct him

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1 not to answer, to the extent that there would be an
2 attorney-client communication or work product issue.
3 If he's got another answer -- well, actually, I take
4 that back. I'm not sure he could have another
5 answer.
6 So I'm instructing him not to answer.
7 BY MS. MANTOAN:
8 **Q. Did you add any factors to the ones that**
9 **counsel had told you to use?**
10 A. Yes. I believe in one of these analyses, I
11 added -- let's see.
12 I believe in the -- sorry, I'm look -- I'm
13 trying to find where this analyses is.
14 **Q. That's fine.**
15 A. All right. So I can't -- I can't find it,
16 but this -- basically we did an analysis on growth
17 and wages, and I believe that I was initially
18 instructed to include a set of factors, which, I
19 believe, are in here, if I can find the paragraph,
20 but I added an additional two factors to that
21 because I -- the way it was instructed, to me, it
22 did not make sense -- the way I was instructed
23 didn't make sense.
24 **Q. Is it the analysis starting at**
25 **Paragraph 29, by chance?**

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1 A. Okay. The growth and base pay -- actually,
2 I -- I'm mistaken, actually. So -- yeah, so if we
3 look at 29.
4 **Q. And we're on Exhibit 2, just for the**
5 **record.**
6 A. Yeah, and I'm on page 10, just looking at
7 where they talk about the control variables. The
8 change in those employees' global career levels, the
9 change in employees' job title, previous experience.
10 It actually -- it actually -- I'm mistaken. The
11 factors I was talking about were previous experience
12 and time at Oracle, but it is in there.
13 **Q. Okay.**
14 A. So I think I'm mistaken. What I -- I
15 recall I thought that I was not instructed to use
16 those, but apparently I was, so...
17 **Q. Okay. So, let's go through a few**
18 **paragraphs in particular, in Exhibit 2, which is the**
19 **second amended complaint, and I just want to make**
20 **sure that I'm clear about who made decisions about**
21 **how to structure various analyses and what facts**
22 **were considered when making those decisions.**
23 **So, Paragraph 13 of the second amended**
24 **complaint sets out -- describes a methodology for**
25 **analyzing total compensation, correct?**

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1 A. Yeah, can you repeat the question? Sorry.
2 **Q. Paragraph 13 of the second amended**
3 **complaint describes a methodology for analyzing**
4 **total compensation, correct?**
5 A. Yes.
6 **Q. And that is the methodology that was used**
7 **in Paragraphs 13 through 21; am I correct?**
8 A. Well, 16 mentions base compensation, so --
9 so that's not correct.
10 **Q. Okay. All right. So the methodology**
11 **described in Paragraph 13 is the methodology that**
12 **was used to generate the results reported for women**
13 **in Paragraph 14 and for Asian employees reported in**
14 **Paragraph 15, correct?**
15 A. Yes.
16 **Q. Okay. And that methodology grouped**
17 **together employees by job function, correct?**
18 A. The regressions were run by job function.
19 **Q. So a separate -- a separate regression was**
20 **run for each job function in each year?**
21 A. Correct.
22 **Q. Who made the decision to group -- to run**
23 **regressions by job function and year?**
24 A. The solicitor.
25 **Q. Did you have any input into the decision to**

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1 **run regressions by job function and year?**
2 MR. MILLER: I'm going to instruct the
3 witness not to answer that, as it may reveal
4 attorney-client communications or attorney work
5 product.
6 BY MS. MANTOAN:
7 **Q. And these regressions have seven control**
8 **variables in them, correct?**
9 A. Well, no, not correct. Technically,
10 there's a lot more than that because for job title
11 and global career level, I had to create what's
12 called dummy variables. So for every job title,
13 it's a -- if it's that specific job title, it takes
14 on a value of one. Otherwise, it takes on a value
15 of zero and the same for global career level. So
16 for all the M1s, ICs, it's a value of one, if it's a
17 particular global career level, and zero otherwise.
18 **Q. Fair enough.**
19 A. There was -- I don't know how many
20 variables. A lot more variables.
21 **Q. But those variables are intended to control**
22 **for seven factors; is that right?**
23 A. Yeah, that's fair. Yeah.
24 **Q. Okay. Who made the decision as to which**
25 **factors would be included?**

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1 A. The solicitor.
2 **Q. And when you say the solicitor, you're**
3 **talking about Mr. Miller, correct?**
4 A. Yes.
5 **Q. Who made the decision about how -- well,**
6 **scratch that.**
7 **If you're going to control for something**
8 **like previous experience, there are multiple**
9 **different ways an analyst can do that, correct?**
10 A. Correct.
11 **Q. Okay. Who made the decision about how**
12 **exactly to construct the previous experience**
13 **variables in this model?**
14 A. I believe it's a combination. I believe he
15 told me to use age -- age as a proxy for prior
16 experience. But then, you know, I was responsible
17 for creating that variable.
18 **Q. When you say "age as a proxy for prior**
19 **experience," that means that any two employees with**
20 **the same age are going to be treated by the model as**
21 **having equivalent previous experience, correct?**
22 A. The same age -- it's -- well, it's age at
23 the time of hire.
24 **Q. Okay.**
25 A. So -- so...

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1 **Q. So the -- am I correct, then, that the**
2 **models, whose results are reported in Paragraphs 14**
3 **and 15, those are going to treat any two employees**
4 **who are the same age when they were hired at Oracle**
5 **as having equivalent prior experience, correct?**
6 A. If -- if they were the same age at the date
7 of hire -- the same date of hire, then they would
8 have the same prior experience.
9 **Q. Okay. Is there anything in that variable**
10 **that controls the type of prior experience that the**
11 **employee had?**
12 A. No.
13 **Q. Is there anything that controls for the**
14 **amount of time that an employee actually spent**
15 **working as opposed to out of the workforce or on a**
16 **leave?**
17 A. No.
18 **Q. And the way the models you ran here were**
19 **constructed, that experience variable is going to**
20 **get a single coefficient for every employee who**
21 **works in a given function in a given year, correct?**
22 A. So a single -- sorry, can you just repeat
23 it again? I --
24 **Q. So when you say you controlled for previous**
25 **experience, in the way that we talked about, what**

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1 **that means is that the model is going to generate a**
2 **coefficient or a value that it assigns to, you know,**
3 **a given year of experience for each employee,**
4 **correct?**
5 A. Yeah. There's -- there's one coefficient
6 for every job function and year.
7 **Q. Okay.**
8 A. That's estimated -- so for each regression,
9 they have one prior experience variable that's
10 estimated.
11 **Q. Okay. So let's take employees in product**
12 **development in 2014. All 1,104 of those female**
13 **employees, the -- the estimated impact on pay of a**
14 **year of prior experience is going to be the same for**
15 **every one of those women in the model, right?**
16 A. For -- for every employee, not just women.
17 **Q. Okay. So every employee in product**
18 **development in a given year, the -- the estimated**
19 **impact of age on pay is going to be the same for**
20 **every single employee in the model, correct?**
21 A. Yeah, for age at hire.
22 **Q. Okay. But with that caveat, that's**
23 **correct, right?**
24 A. Yes.
25 **Q. And that's going to be the same -- that**

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1 **same feature is going to be true of every one of**
2 **these factors, right, in a given year and function,**
3 **each of these factors is going to be weighted in the**
4 **exact, same way for every employee in that model,**
5 **correct?**
6 A. I'm not sure if I -- sorry, can you clarify
7 the question 'cause it's a little bit confusing.
8 **Q. So in a -- your models are run by job**
9 **function and year, correct?**
10 A. Uh-hm. Yes.
11 **Q. So there's a model for, say, product**
12 **development in 2014, and within that model, there**
13 **are seven factors that you're controlling for,**
14 **correct?**
15 A. Correct.
16 **Q. Each of those factors is going to have a**
17 **coefficient that the regression equation generates**
18 **for it, correct?**
19 A. Yes.
20 **Q. And that coefficient is going to be the**
21 **same in how pay is estimated for every employee in**
22 **that function in that year, correct?**
23 A. Well, for each job function and each year,
24 there's one coefficient for prior experience.
25 **Q. And there's one coefficient for time in**

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1 **company?**
2 A. For time in company. There's several for
3 job title. Several for global career level.
4 There's one for exempt status and one for part-time
5 or full-time status.
6 **Q. And when you say there's several for global**
7 **career level, you just mean there's a separate**
8 **coefficient for each global career level?**
9 A. Not every one. You omit one global career
10 level from the regression.
11 **Q. Okay.**
12 A. Same with job title.
13 **Q. Okay.**
14 A. So...
15 **Q. These regressions, one of the factors they**
16 **control for is time in company, correct?**
17 A. Yes.
18 **Q. How is that time in company measured?**
19 A. So, I constructed this variable in two
20 ways. The first way I constructed it was I -- so
21 some employees have more than one spell of
22 employment at Oracle, so what I did was calculate
23 those spells for each employee and then I summed
24 them all up.
25 So, for example, if you started at Oracle

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1 in 2004 and then in 2007, you left for another job,
2 that would be three years. And then let's say you
3 stayed at another job until 2010 and then you were
4 terminated in 2012, that would be two more years.
5 So that would be five years of time in company.
6 **Q. Okay. When you say you computed it in two**
7 **ways, you just mean both, sort of, current spell of**
8 **employment --**
9 A. Yeah.
10 **Q. -- and then any prior spells, correct?**
11 A. No, that -- so that's the first way.
12 **Q. Oh, okay.**
13 A. The second way is I calculated -- I just
14 took a snapshot date minus the first hire date.
15 **Q. And did you leave both of those different**
16 **ways in the final regressions, whose results are**
17 **reported here, or did you select one of those ways?**
18 A. I -- I looked at them -- so -- so the one
19 that is in the results that I produced to you is the
20 one that uses the spells.
21 **Q. Okay.**
22 A. But I -- I created another variable and
23 that variable is actually in the .do files, you can
24 see it. And I -- as a check, I ran the regressions
25 with that other variable.

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1 **Q. Uh-hm.**
2 A. The results were very similar, so I just
3 stuck with the spell one. So...
4 **Q. And you were saying that this is about, you**
5 **know, hire dates at Oracle or spells at Oracle.**
6 **When you say that, are you talking about Oracle**
7 **America specifically?**
8 A. Well, it's -- it's whatever was provided in
9 the four Excel files, so -- and limited to the
10 locations that were in the class.
11 **Q. So it was only time worked at HQCA?**
12 A. I'm not sure what that means.
13 **Q. Only time worked at the locations that are**
14 **in the class. So if there was an employee who**
15 **worked in, say, Texas for Oracle for three years and**
16 **then worked at their headquarters location for three**
17 **years, so your model would give them credit for six**
18 **years of time with Oracle or three years of time?**
19 A. So the -- the class only includes the
20 people that are in that location's file. I'm not
21 sure if that answers your question, but that's --
22 that's who I considered.
23 **Q. But how are you counting experience for**
24 **those people if they may have spent some number of**
25 **years at the headquarters location and some number**

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1 **of years with Oracle America, but at a different**
2 **location?**
3 A. Well, if it's at -- if -- so if it's at a
4 different location, then it wouldn't be in the --
5 the class, so...
6 **Q. I'm worried we're talking past each other.**
7 A. Yeah.
8 MR. MILLER: I think you may be. I'm --
9 I'm happy to offer some clarification, if you'd like
10 it, Counsel.
11 MS. MANTOAN: Sure.
12 MR. MILLER: I think -- I -- my guess is
13 Dr. Brunetti actually doesn't know how to answer
14 this question because he just had the data files.
15 So whatever they recorded for experience is what he
16 used.
17 MS. MANTOAN: Well, so -- but he -- but he
18 didn't just take any value here. You're creating a
19 value by summing up different time periods.
20 MR. MILLER: Right.
21 BY MS. MANTOAN:
22 **Q. So what I'm trying to understand, you said**
23 **you could see transactional data that shows where**
24 **employees are working in different positions.**
25 A. Uh-hm.

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1 **Q. And that transactional data also shows the**
2 **location at which they're working.**
3 A. Yeah.
4 **Q. So did you back out time that they spent**
5 **working for Oracle America in times that is in the**
6 **data, but it was time that was worked, say, in**
7 **Texas?**
8 A. Yeah, it would have kicked out times that's
9 not at the location.
10 **Q. Okay. So time in company is really**
11 **cumulative number of years worked for Oracle America**
12 **at one of the locations on the location list?**
13 A. I -- I -- I believe so. I'd have to -- I
14 mean -- I guess I don't know -- I don't know what is
15 put in the transactional data. If -- if the
16 transactional data -- and I'm talking about the EMP
17 assignment file, if that includes all your time at
18 Oracle, then what I did was identified just those --
19 those periods when you were in the class and then
20 it -- it's going to sum up the total time in
21 company.
22 **Q. Do you recall seeing in that file a**
23 **continuous service date variable?**
24 A. I don't recall that.
25 **Q. Okay.**

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1 A. It's possible it's there, but I did receive
2 transactional data.
3 **Q. Okay. But in that -- fair to say that if**
4 **there is a continuous service date field in that --**
5 **in that data file, you did not use that continuous**
6 **service date field, correct?**
7 A. No. I used the -- the transactional data.
8 **Q. And why -- why didn't you use the**
9 **continuous service date?**
10 A. Well, the transactional data has more -- I
11 mean, it gives you the actual employment spells.
12 And again, I don't remember seeing a continuous
13 service variable, so...
14 **Q. Does your time in company variable account**
15 **for time that might have been spent working at --**
16 **like a target company that Oracle America, Inc.,**
17 **later acquired?**
18 A. No, I don't think so, unless the
19 transactional data considers that to be time at a
20 different company.
21 **Q. Okay.**
22 A. But I think probably not.
23 **Q. Okay. And does your time in company**
24 **variable include time that an -- an individual might**
25 **have spent working for an international Oracle**

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1 **affiliate, say Oracle India or Oracle Ireland?**
2 A. If it -- if it wasn't in the location file
3 that I was provided, then it would not be in there.
4 **Q. Does your time-in-company variable account**
5 **for leaves of absence that an employee might have**
6 **taken, you know, during a period of employment at**
7 **Oracle America?**
8 A. No.
9 **Q. Does your previous experience variable**
10 **account period of -- leaves of absence that an**
11 **employee might have taken historically during their**
12 **employment history?**
13 A. No.
14 **Q. Does your previous experience variable**
15 **account for periods of unemployment that an employee**
16 **may have had in their history?**
17 A. No.
18 **Q. And the previous experience variable you**
19 **used here, if there were two individuals who were**
20 **hired at Oracle on the same date and were the same**
21 **age when they were hired at Oracle, if prior to**
22 **coming to Oracle one of them had been working at a**
23 **technology startup on artificial intelligence and**
24 **one of them had been working as a retail store**
25 **clerk, am I correct that your previous experience**

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1 **variable would not distinguish that experience?**
2 A. I -- I'm confused. So are you saying there
3 are people that were working at -- what did you say?
4 **Q. Like a retail store clerk, prior to coming**
5 **to Oracle.**
6 A. That were hired at Oracle? I mean, are
7 there employees that are like that?
8 **Q. Do you know? Did you study that?**
9 A. I -- I don't know.
10 **Q. Okay. So, fair to say that your previous**
11 **experience variable would treat two employees who**
12 **were the same age when they were hired at Oracle as**
13 **having the same prior experience, even if one of**
14 **them had been working as a retail store clerk and**
15 **one of them had been at a technology startup working**
16 **on AI?**
17 A. Yes, but I don't think that's a realistic
18 example. This is --
19 **Q. Well, you didn't look at any --**
20 A. Yeah, I did not look at any.
21 **Q. Okay. Did you look at any résumés that**
22 **were available for any of the employees that you**
23 **were studying?**
24 A. No.
25 **Q. Do you know if anyone at OFCCP considered**

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1 the résumés of any employee, who -- who -- whose
2 information is in the data you reviewed, when making
3 decisions about the statistical model in the second
4 amended complaint?
5 MR. MILLER: Instruct the witness not to
6 answer, to the extent it reveals attorney-client
7 communications or work product.
8 MS. MANTOAN: Okay.
9 BY MS. MANTOAN:
10 Q. And if there were two individuals who were
11 the same age when they were hired at Oracle, one of
12 them had previously been working at a technology
13 startup on cutting-edge artificial intelligence
14 technology and the other one had been working at,
15 say, in the IT department of a bank maintaining
16 legacy systems, your prior experience variable would
17 treat those two employees the same, correct?
18 A. Yes.
19 Q. When you controlled for full-time and
20 part-time status, did you just use a -- a dummy
21 variable or did you attempt to account for the --
22 the extent to which someone is part time, in other
23 words, whether they're a 70-percent or a 50-percent
24 employee?
25 A. Dummy variable.

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1 Q. Okay. And which way did the dummy variable
2 work, or did you -- did you have separate variables
3 for part time and full time?
4 A. No. No. There's one variable.
5 Q. Okay. So someone got a one if they're full
6 time and they got a zero if they're part time?
7 A. Yeah.
8 Q. The four other factors here, exempt status,
9 global career level, job specialty, and standard job
10 title, do you understand those -- those factors to
11 be independent of one another or related to one
12 another?
13 A. I believe the global career level and job
14 title are related.
15 Q. Okay. Isn't it also true that for a given
16 standard job title in a given year, it is associated
17 with only one job specialty, one career level, and
18 one exempt status?
19 A. I don't know about exempt status, but I --
20 can you repeat your question?
21 Q. Isn't it true that for a given standard job
22 title in a given year, it is associated with only
23 one job specialty, one global career level, and one
24 exempt status?
25 A. I -- I believe that's true. I don't know

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1 about the exempt status part. Sorry.
2 Q. Okay. So why construct a model that
3 controls separately for, say, global career level,
4 job specialty, and standard job --
5 THE REPORTER: I need you to slow down.
6 BY MS. MANTOAN:
7 Q. Why construct a model with separate
8 controls for global career level, job specialty, and
9 standard job title, if standard job title just
10 subsumes those other two variables?
11 MR. MILLER: I'm going to instruct the
12 witness not to answer as it may reveal
13 attorney-client communications or attorney work
14 product.
15 BY MS. MANTOAN:
16 Q. Do you have any understanding, Dr.
17 Brunetti, of why -- why one would construct a model
18 that controls for multiple things that are subsumed
19 by another factor already in the model?
20 MR. MILLER: That's the same instruction.
21 THE WITNESS: Sorry. Could we take a break
22 pretty soon?
23 MS. MANTOAN: Sure. Now's a fine time.
24 THE WITNESS: Okay.
25 THE VIDEOGRAPHER: The time is 10:51.

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1 We are going off the record.
2 (Short recess was taken from 10:51 a.m.
3 until 11:08 a.m.)
4 THE VIDEOGRAPHER: The time is 11:08.
5 We're back on the record.
6 BY MS. MANTOAN:
7 Q. Welcome back, Dr. Brunetti.
8 So earlier I asked you a series of
9 questions about what facts OFCCP considered. And
10 there were a series of instructions. I -- I want to
11 ask a similar line of questions, but about just
12 what -- whether you reviewed certain information
13 when constructing the statistical models.
14 So, did you review any of the narrative
15 text of any performance evaluations for any employee
16 at Oracle?
17 MR. MILLER: I'm going to instruct the
18 witness not to answer. He's here as the agency's
19 designee under 30(b)(6) and is not available to
20 testify in his personal capacity because any work he
21 did do for us was as a consulting expert and thus,
22 therefore, completely bounds -- bounds the
23 discovery.
24 MS. MANTOAN: Okay. I -- so for the
25 record, we disagree with that position because

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1 the -- he's not a consulting expert once his work is
 2 made the -- the foundation for the operative
 3 complaint in this case. So we do believe that fact
 4 witness questions are -- are appropriate and we're
 5 going to hold the deposition open for this, among
 6 other issues.

7 For the record, though, I -- I do want to
 8 ask a series of -- of questions and it may be that
 9 you instruct on all of them, but I would -- I would
 10 like to ask those questions.

11 MR. MILLER: As before, I'll give the
 12 instruction not to answer, but in a shortened form,
 13 so it doesn't take up as much of our time.

14 MS. MANTOAN: Okay.

15 BY MS. MANTOAN:

16 **Q. Dr. Brunetti, did you review any of the**
 17 **written promotion justifications for any employee at**
 18 **Oracle?**

19 MR. MILLER: I'm instructing the witness
 20 not to answer. He's a 30(b)(6) designee and is not
 21 available in his individual capacity.

22 BY MS. MANTOAN:

23 **Q. Did you review any of the specific job**
 24 **postings or requisitions for any particular job**
 25 **opening for any position at Oracle?**

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1 MR. MILLER: I'm going to instruct the
 2 witness not to answer. He's a 30(b)(6) designee and
 3 is not available in his individual capacity.

4 BY MS. MANTOAN:

5 **Q. Did you review any of the written starting**
 6 **pay justifications for any Oracle employee?**

7 MR. MILLER: I'm going to instruct the
 8 witness not to answer. He's a 30(b)(6) designee and
 9 is not available in his individual capacity.

10 BY MS. MANTOAN:

11 **Q. Did you review any off-cycle pay**
 12 **justifications for any Oracle employee?**

13 MR. MILLER: I'm going to instruct the
 14 witness not to answer. He's a 30(b)(6) designee and
 15 he's not available in his individual capacity.

16 BY MS. MANTOAN:

17 **Q. Were you provided a list of the data files**
 18 **that had been produced in the case so you could**
 19 **determine which might be meaningful for you to**
 20 **review?**

21 MR. MILLER: I'm going to instruct the
 22 witness not to answer. He's here as a 30(b)(6)
 23 designee and is not available in his individual
 24 capacity.
 25 ///

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1 BY MS. MANTOAN:

2 **Q. Did you review any information about the**
 3 **products and services that Oracle provides?**

4 MR. MILLER: I'm going to instruct the
 5 witness not to answer. He's a 30(b)(6) designee and
 6 not available in his individual capacity.

7 BY MS. MANTOAN:

8 **Q. Did you review any information on how, if**
 9 **at all, the work needed to develop those different**
 10 **products and services differs?**

11 MR. MILLER: I'm going to instruct the
 12 witness not to answer. He's here as a 30(b)(6)
 13 designee and is not available in his individual
 14 capacity.

15 BY MS. MANTOAN:

16 **Q. Did you review any interviews or other**
 17 **statements from any Oracle employees to inform the**
 18 **statistical models you were generating?**

19 MR. MILLER: I'm going to instruct the
 20 witness not to answer. He's here as a 30(b)(6)
 21 designee and is not available in his individual
 22 capacity.

23 BY MS. MANTOAN:

24 **Q. Do you know anything about -- sorry, do you**
 25 **know how many products Oracle makes?**

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1 MR. MILLER: I'm going to instruct the
 2 witness not to answer. He's here as a 30(b)(6)
 3 designee and not available in his individual
 4 capacity.

5 MS. MANTOAN: So your position is just
 6 whether he knows something about Oracle is a
 7 question that is somehow protected by the privilege?
 8 Wouldn't the most -- the most that an instruction
 9 would be proper, would be if you learned, you know,
 10 something more limited, but just asking if he knows
 11 a piece of information, whether a certain fact is
 12 known to him, you're contending is privileged?

13 MR. MILLER: Well, yes, because he's here
 14 under a 30(b)(6) notice of deposition to be our
 15 designee to testify about statistical and regression
 16 analyses to support the second amended complaint.
 17 His personal knowledge about various facts about
 18 Oracle is not at issue here and, in fact, to the
 19 extent he gained any of that personal knowledge
 20 based on work he did at our direction not related to
 21 the --

22 THE REPORTER: I need you to slow down.
 23 Based on work --

24 MR. MILLER: Based on work he did at our
 25 direction, not for the purpose of the second amended

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1 complaint's statistical or regression analyses, that
2 information is not available because he would be a
3 consulting expert and, therefore, outside the bounds
4 of discovery.
5 BY MS. MANTOAN:
**6 Q. What does OFCCP know about the products and
7 services that Oracle makes?**
8 MR. MILLER: Objection. As we talked about
9 in the beginning, he's not here to give all
10 supporting facts. He's here to talk about the
11 statistical analysis.
12 BY MS. MANTOAN:
**13 Q. What facts does OFCCP know about the
14 products and services that Oracle makes that were
15 considered in making choices about the statistical
16 model in the second amended complaint?**
17 MR. MILLER: I'm going to instruct the
18 witness not to answer as it would reveal
19 attorney-client communications or work product.
20 BY MS. MANTOAN:
**21 Q. What facts does OFCCP know about the
22 specific work that any individual employee at Oracle
23 does that were considered in making choices about
24 the statistical model in the second amended
25 complaint?**

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1 MR. MILLER: I'm going to instruct the
2 witness not to answer as it may reveal
3 attorney-client communications or attorney work
4 product.
5 BY MS. MANTOAN:
**6 Q. All right. Dr. Brunetti, if we could turn
7 back to Exhibit 2, which is the second amended
8 complaint.
9 So in Paragraph 13, Paragraph 13 begins
10 with OFCCP's analysis of Oracle's compensation
11 policies and data.
12 What compensation policies are being
13 referred to here?**
14 MR. MILLER: Again, Mr. Brunetti or
15 Dr. Brunetti has not been offered for discussing all
16 facts. He's here to discuss the statistical
17 analysis/regression analysis.
18 MS. MANTOAN: So, Counsel, that's -- that's
19 not an objection because the -- this is an intro to
20 a paragraph that talks about the statistical
21 analysis that was conducted. So I believe the
22 question is proper. Are you instructing him not to
23 answer?
24 MR. MILLER: Well, he's not -- he has not
25 been prepared to answer that kind of a question

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1 because it's about the facts, not about the
2 statistical analysis.
3 MS. MANTOAN: The statistical analysis --
4 is it your position that the statistical analysis
5 was untethered to any factual support? And clearly,
6 the order is intended to allow us to inquire about
7 the factual support for the statistical analysis.
8 So is it your position that no information about any
9 Oracle compensation policies provided any factual
10 support for any of the statistical work?
11 MR. MILLER: In the context of the
12 statistical analysis, our position is that that
13 stuff all would have been considered and reviewed by
14 attorneys and then there was a position made about
15 what parts to use and what parts were important --
16 THE REPORTER: I need you to slow down
17 and --
18 MR. MILLER: Okay. Sorry.
19 The -- our position is that those kinds of
20 policies and all of the other things that might have
21 been reviewed and considered, were reviewed and
22 considered by attorneys and, therefore, whatever
23 happened there was attorney work product.
24 If you want to know about all of the
25 policies and compensation -- compensation policies

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1 and data that was -- that underlies this paragraph,
2 we've offered another deponent for that. If you
3 want to ask about how the statistical analysis was
4 done, that's what Dr. Brunetti is here for.
5 MS. MANTOAN: So your second witness will
6 be prepared to talk about how compensation policies
7 impacted the -- the choices made about the
8 statistical model and what groupings to use and what
9 controls to use. Is that what you're saying?
10 MR. MILLER: Well, again, the second
11 witness will be able to talk about the compensation
12 policies, but they're not going to be able to tell
13 you how they were selected because that, again, is
14 privileged.
15 MS. MANTOAN: So I disagree completely with
16 you about what the Court has already ordered OFCCP
17 to provide, but I suppose we will -- we will hash
18 that out in another form.
19 BY MS. MANTOAN:
**20 Q. Dr. Brunetti, if we could look back at the
21 second amended complaint and now moving to Paragraph
22 14.
23 A. Okay.
24 Q. It says, "OFCCP's regression analysis for
25 female employees based on the data and information**

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1 **obtained thus far."**

2 **What data is being referred to here?**

3 MR. MILLER: I mean, Counsel, this is the

4 same problem that we had in the last paragraph, so,

5 I mean, I'll reiterate my position, is that he

6 cannot answer questions about the universe of data

7 and compensation policies. He can answer your

8 questions about, you know, data that was provided to

9 him and the instructions given to him about doing

10 this, but the universe is not within anything he was

11 prepared for and the selections inside of that

12 universe are attorney work product.

13 MS. MANTOAN: Okay. So my question is

14 where it says the regression analysis based on the

15 data and information obtained so far, I've asked

16 what data that's referring to. And am I -- are you

17 instructing the witness not to answer that question?

18 MR. MILLER: To the extent he can answer it

19 without getting into the areas I just talked about,

20 he certainly can.

21 MS. MANTOAN: Okay.

22 THE WITNESS: So can you just ask the

23 question again?

24 BY MS. MANTOAN:

25 **Q. Okay. In Paragraph 14, it says that**

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1 **"OFCCP's regression analysis for female employees,**

2 **based on the data and information obtained thus far,**

3 **reveals" and then it continues. My question is,**

4 **when it says based on the data and information**

5 **obtained so far, what data is being referred to**

6 **there?**

7 A. I believe that's referring to the four

8 Excel files that we discussed earlier. The

9 all-earnings file, the one that starts with EMP, the

10 one locations, and the one that had base pay.

11 **Q. Okay.**

12 A. Although, this is -- sorry. If this is

13 total compensation, then base pay is not one of

14 those.

15 **Q. And in this same sentence, where it says,**

16 **"based on the data and information obtained thus**

17 **far," what information is being referred to there?**

18 MR. MILLER: Again, it's the same

19 instruction. Dr. Brunetti can testify about the

20 information he was provided in connection with his

21 assignment to do this, but not about other facts.

22 THE WITNESS: So do I answer or --

23 MR. MILLER: Yeah. I'm sorry, I should be

24 clear. I'm instructing you not to answer about

25 anything beyond what you were provided to do and

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1 asked to do or provided with and asked to do.

2 THE WITNESS: So your question -- sorry,

3 could you just please repeat it?

4 BY MS. MANTOAN:

5 **Q. In the same sentence in Paragraph 14, it**

6 **reads: "Based on the data and information obtained**

7 **thus far." I've already asked you what the word**

8 **"data" is referring to there and now I'm asking what**

9 **the word "information" is referring to there.**

10 A. Yeah, so the information would be the

11 PowerPoints, the pay policy PowerPoints that are

12 similar to the Exhibit 3 that you had me go over.

13 **Q. At the end of this paragraph, it says,**

14 **"These results are statistically significant."**

15 **Did you generate -- I don't see here the**

16 **actual -- the actual P values. Am I correct, that**

17 **you didn't report the actual statistical**

18 **significance? Or -- or -- scratch that.**

19 **The actual statistical significance is not**

20 **reflected in the second amended complaint, correct?**

21 A. Yeah. That's -- well, for Paragraph 14 for

22 this table, no, it's not reported there.

23 **Q. Okay. Did you generate log files that show**

24 **the actual statistical significance of various**

25 **results?**

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1 A. Yes.

2 **Q. Okay.**

3 MS. MANTOAN: And Counsel, I don't think

4 we've been provided with those.

5 MR. MILLER: I -- yeah, I think you're

6 correct. I think we've given you .do files, but not

7 the logs.

8 MS. MANTOAN: Are you -- are you willing to

9 provide those?

10 MR. MILLER: Let me get back to you on

11 that.

12 MS. MANTOAN: Okay. Clearly, I -- we're

13 going to contend that they're relevant since

14 they're -- they are the factual basis for the

15 statement that the results are statistically

16 significant in the second amended complaint.

17 MR. MILLER: Sure.

18 BY MS. MANTOAN:

19 **Q. There's a column here on that chart**

20 **following Paragraph 14 that says, "Example, Annual**

21 **Wages Lost."**

22 A. Uh-hm.

23 **Q. What does the word "Example" mean there?**

24 A. I suppose that means that this is an

25 estimate of how much each individual female employee

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1 lost because of the pay disparity.

2 **Q. Is it an average?**

3 A. Yes -- it's -- well, it's -- what it is, is

4 you take the average pay for all employees and you

5 multiply it by 7.26 percent for -- this is for IT

6 2013.

7 **Q. Okay. So does this -- does this -- let's**

8 **look at this first number here, negative \$13,366.31.**

9 **Does that number provide -- convey information about**

10 **the amount lost by any particular -- the amount that**

11 **any particular woman was, in fact, underpaid?**

12 A. Well, as I mentioned, that's -- that's

13 based on the total average for an IT employee.

14 **Q. Uh-hm.**

15 A. So that's -- really, it should be based on

16 the average of male employees 'cause you want to

17 get -- you want to multiply the 7.26 percent

18 relative to what males are paid. So this -- this

19 would be an understatement of the total damages.

20 And -- and each -- yeah, and each row, that would

21 understate the actual wages lost.

22 **Q. Again, an average isn't necessarily true of**

23 **all employees or even any particular employee,**

24 **correct?**

25 A. What do you mean by that?

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1 **Q. So an average number over a population**

2 **doesn't necessarily reflect the -- the actual value**

3 **of any particular person in that population, right?**

4 A. Yeah, I mean, the average is -- you're

5 correct. It may not -- there may not -- there may

6 not be one employee that lost exactly, you know, one

7 of these numbers.

8 **Q. There may be --**

9 A. If that's what you're asking. Is that what

10 you're asking?

11 **Q. Correct. There may be employees in the**

12 **population who lost no wages, according to the**

13 **residuals generated by the equation, correct?**

14 A. That lost no wages?

15 So, what do you -- what do you mean by

16 according to the residuals?

17 **Q. So he -- this is just an average number**

18 **that's reported here, this 13,366.31, correct?**

19 A. Yes.

20 **Q. The model that you ran for IT for 20 --**

21 A. But it -- sorry, this is an average

22 multiplied by the pay gap -- the percentage pay gap.

23 **Q. Okay. Right. But if I -- but looking**

24 **within the actual model that you ran for IT for**

25 **2013, one can determine predicted pay for each male**

Page 107

1 **and female employee in that model, correct?**

2 A. Yeah, you can.

3 **Q. And one can compare that to their actual**

4 **pay, correct?**

5 A. Yes.

6 **Q. So did you look at any of those residuals?**

7 A. No. Because that's -- that -- that type of

8 analysis is not meaningful here.

9 It -- let me just -- maybe I can explain it

10 through how I got -- if you want to know how I got

11 the 165,000 that's listed there.

12 **Q. 165 million.**

13 A. Million, yeah, sorry. 165 million. So,

14 basically what I did is I take the pay gap

15 percentages and these percentages come from the

16 coefficient on the gender variable in the

17 regressions that were run, and I multiply that by

18 the average pay for male for each job function and

19 year.

20 **Q. Uh-hm.**

21 A. Okay. And then that gives me -- then I

22 multiply that by the total number of females and

23 that gives me the nominal damage amount for each

24 year and for each job function, okay.

25 Then -- I -- and so that's -- and, again,

Page 108

1 it's based on the -- the male average pay, okay.

2 Then I multiply -- I adjust that number

3 with interest, so I apply interest rate to it,

4 compounded quarterly, to bring it up to present

5 value and I do that for all of them and then sum it

6 all up.

7 **Q. So did -- do these results, in your view,**

8 **show that every woman who worked at Oracle, in any**

9 **of these functions, in any of these years, was**

10 **underpaid by the amounts -- each of them was**

11 **underpaid by the amounts that you set forth here?**

12 MR. MILLER: Just to clarify, Counsel, when

13 you say "you," you're asking in his testifying

14 capacity on behalf of OFCCP?

15 MS. MANTOAN: Correct.

16 THE WITNESS: I don't know if there are any

17 women that lost exactly this amount.

18 BY MS. MANTOAN:

19 **Q. Okay. So the numbers in the annual wages**

20 **lost should not be understood as the amount lost by**

21 **every woman or even any particular woman, correct?**

22 A. That is how much -- well, that's the -- the

23 average -- okay. There's a couple things that are

24 different than the 165 million here. So, again,

25 this is based on the average of all employees, so it

Page 109

1 includes males and females.

2 **Q. Right.**

3 A. So that's not normally how I would do it.

4 And it's not what I did here. What I did here was

5 take the average male pay, multiply it by the pay

6 gap, 7.26 percent for IT for 2013 and then apply the

7 interest.

8 **Q. Does that 7.26 percent mean -- what --**

9 **what -- what does that mean for a particular woman**

10 **in IT in 2013? She was paid 7 -- every -- does it**

11 **mean that every woman in IT was paid 7.26 percent**

12 **less than she should have been?**

13 A. No, on average. On average. So, there are

14 some that are more, some that are less.

15 **Q. Are there some women that, according to**

16 **this model, were paid more than they, quote/unquote,**

17 **should have been?**

18 A. I -- are there -- based on this -- this is

19 average -- okay, the average amount that each

20 woman -- by which she was underpaid.

21 **Q. Okay. So does it tell me how much any**

22 **particular woman was --**

23 A. No, it does not tell you how much any

24 particular women was underpaid.

25 **Q. Okay. What additional information would be**

Page 110

1 **needed to make that determination?**

2 A. To determine how much a particular woman

3 was under paid?

4 **Q. Correct.**

5 MR. MILLER: Objection. This isn't within

6 the scope of the topics for this 30(b)(6)

7 deposition. You're asking for the things that

8 support these individual paragraphs. Speculation

9 about what would be required to prove something is

10 not in these paragraphs is not a proper topic

11 because Dr. Brunetti is only here as a 30(b)(6)

12 witness and not available in his individual

13 capacity. I'm instructing him not to answer.

14 MS. MANTOAN: Okay.

15 BY MS. MANTOAN:

16 **Q. We've talked at length now about**

17 **Paragraph 13, about the model that was constructed**

18 **and the factors controlled for in the model, how**

19 **those factors were constructed. We've also talked**

20 **about some more specific information that's**

21 **presented for women in Paragraph 14.**

22 Am I right that the information presented

23 in Paragraph 15 is basically an analog of the

24 information presented in Paragraph 14, just for

25 Asian employees and limited to the product

Page 111

1 **development function?**

2 A. It's -- yeah, it's for Asian employees

3 relative to white employees.

4 **Q. So are the methodologies that we discussed**

5 **that are set forth in Paragraph 13 and Paragraph 14,**

6 **are those the same methodologies that were used to**

7 **generate the information in Paragraph 15?**

8 A. Yes.

9 **Q. Okay. That saves us time, then, because I**

10 **don't need to ask you about all the methodologies**

11 **underlying Paragraph 15.**

12 A. I mean, just to be clear, Paragraph 14 is

13 females relative to males.

14 **Q. Uh-hm.**

15 A. Relative to male pay.

16 **Q. Okay.**

17 A. And this one is Asian relative to white

18 pay.

19 **Q. So what happens to employees whose -- whose**

20 **race was indicated as something other than white or**

21 **Asian in the models used to generate Paragraph 15?**

22 A. They're not included in those regressions.

23 **Q. Okay. Do you recall how many employees**

24 **that was?**

25 A. They -- I know for the -- the class period,

Page 112

1 there's approximately 7200 unique employees and

2 22,000, approximately, total employees.

3 **Q. When you say 22,000, you mean employees --**

4 A. 22 -- records. Sorry. There's -- there's

5 about 7200 unique employees in the class period,

6 okay. There's about 22,000 records in that period.

7 So if you're an employee and you're present in

8 multiple years, you know, you would be counted three

9 or four or two times.

10 So -- and you were asking, do I know how

11 many employees were basically dropped out?

12 **Q. Correct.**

13 A. So that would be -- if you take the 22,000

14 and you subtract the amount in this number, Asian

15 EEs, if you add up all those and subtract --

16 subtract it from 22,000, that would give you the

17 number of records. The number of employees, unique

18 employees, I'm not sure I can do that calculation

19 off the top of my head.

20 **Q. Okay. I guess I do have a question I**

21 **should have asked about Paragraph 14, so let me jump**

22 **back there.**

23 **With respect to the way that you described**

24 **that you generated the damages estimate in Paragraph**

25 **14 --**

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1 A. Uh-hm. Uh-hm.
2 **Q. -- who made the decision about how to**
3 **structure that damages estimate? Was it you or were**
4 **you instructed by the solicitor?**
5 A. I did.
6 **Q. Okay.**
7 A. I mean, for -- for the -- for the most
8 part, I -- I was.
9 **Q. What do you mean, for the most part?**
10 A. I mean, I think he -- I was instructed to
11 calculate damages and I was the one to figure out
12 how to go about doing that.
13 **Q. Okay. And was the method that you proposed**
14 **initially, when asked to figure out a way to compute**
15 **damages, the method that was -- whose findings are**
16 **ultimately presented in the second amended**
17 **complaint?**
18 MR. MILLER: I'm going to -- I'm going to
19 instruct the witness not to answer, as the answer
20 may reveal attorney-client communications or work
21 product.
22 MS. MANTOAN: I'm not asking for any
23 communications. I'm asking whether one fact,
24 namely, what you initially proposed, is or is not
25 the same as the second fact, what was ultimately put

Page 114

1 in here.
2 MR. MILLER: Right, but that requires
3 whether or not it was discussed with the solicitor's
4 office and then what I -- what they made of it --
5 what we made of it, so --
6 MS. MANTOAN: It doesn't require that. It
7 requires knowing what Point A was and what Point B
8 was and if they're the same.
9 MR. MILLER: Well, the instruction stands.
10 MS. MANTOAN: Okay. I just want to be
11 clear that the question was not asking for any
12 communications.
13 BY MS. MANTOAN:
14 **Q. When you said in Paragraph 14, if I**
15 **understood you correctly, you basically said you**
16 **used a different way of computing the average pay of**
17 **employees when you found the average pay that you**
18 **were going to use to then generate damages than was**
19 **used to -- to generate the average wage loss that's**
20 **in -- actually in the table, correct?**
21 A. This average wage loss combines male and
22 female pay.
23 **Q. Right.**
24 A. So it's -- the average wage loss that I did
25 to calculate the 165 million was based on male pay.

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1 **Q. Uh-hm. Right.**
2 A. So if it's -- if females were underpaid on
3 average 7.26 percent, I multiplied that by the
4 average male pay. So it's -- this example, annual
5 wages lost, and the table is going to understate the
6 damages, if you do it that way.
7 **Q. So were -- were you instructed to compute**
8 **the average annual wage losses -- loss in one way**
9 **and then made a decision for yourself to compute the**
10 **damages in a different way?**
11 A. No, I was not instructed to do that. This
12 is just not the way I would normally do it.
13 **Q. So why did you do it this way here?**
14 MR. MILLER: When you say "you," again,
15 Counsel, are you asking him in his capacity he's
16 testifying for OFCCP or in his individual capacity?
17 MS. MANTOAN: I don't think it matters.
18 You can answer it in either capacity.
19 MR. MILLER: Well, our position is he can't
20 answer in his individual capacity, but, I mean, in
21 order to clear this up, this was not part of his
22 instructions. The Example Annual Wages Lost, that
23 column, was not a thing that Dr. Brunetti was
24 instructed to do.
25 ///

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1 BY MS. MANTOAN:
2 **Q. So how does it end up in here? Who decided**
3 **to generate that column at all?**
4 A. I believe the solicitor did that.
5 **Q. Okay. I see. So you did not actually**
6 **compute the average annual wages lost?**
7 A. I did not, yeah, actually compute that
8 amount in that table.
9 **Q. Okay.**
10 A. I computed the 165 million and the 234
11 million.
12 **Q. Okay. But the solicitor computed this last**
13 **column of the chart --**
14 A. Yes.
15 **Q. Sorry, let me just finish the question.**
16 A. I'm sorry.
17 **Q. The solicitor computed the last column in**
18 **the chart following Paragraph 14, correct?**
19 A. Yes.
20 **Q. And the solicitor computed the last column**
21 **in the chart following Paragraph 15?**
22 A. Yes.
23 **Q. Okay. And you had -- you played no role in**
24 **computing either of those columns and the**
25 **information in them, correct?**

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1 A. Correct.

2 **Q. Let's move to Paragraph 16. My**

3 **understanding is that in many ways, Paragraph 16 is**

4 **sort of an analog analysis of what's in**

5 **Paragraph 15, although now you're comparing black or**

6 **African-American employees to white employees, but**

7 **with the sole change that the dependent variable is**

8 **now base compensation rather than total**

9 **compensation; is that correct?**

10 A. Yeah, it's base compensation and it's now

11 comparing black employees to white employees.

12 **Q. Okay. Who made the decision to substitute**

13 **base compensation for total compensation?**

14 A. I believe that the solicitor asked me to

15 compute both.

16 **Q. To compute both?**

17 A. Yeah.

18 **Q. Okay. Who made the decision to report the**

19 **results in the second amended complaint only for**

20 **base compensation rather than total compensation?**

21 A. The solicitor.

22 **Q. What facts were considered when OFCCP made**

23 **the choice to present results for base compensation**

24 **rather than total compensation in the second amended**

25 **complaint?**

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1 MR. MILLER: I'm going to instruct -- I'm

2 going to instruct the witness not to answer as it

3 may reveal attorney-client communications or

4 attorney work product.

5 BY MS. MANTOAN:

6 **Q. Did OFCCP make any determination that**

7 **somehow base compensation was a relevant measure**

8 **of -- of pay to use when assessing black and**

9 **African-American employees, but somehow not a**

10 **relevant measure when evaluating Asian employees or**

11 **female employees?**

12 MR. MILLER: I'm going to instruct the

13 witness not to answer as it would reveal

14 attorney-client communications or attorney work

15 product.

16 BY MS. MANTOAN:

17 **Q. If we could move to Paragraph 17. Oh, I'm**

18 **sorry, just back on 16 and the -- were -- were you**

19 **instructed to -- to generate results for**

20 **African-American employees only for years 2015 and**

21 **2016?**

22 A. No.

23 **Q. Did you generate results for other years?**

24 A. Yes.

25 **Q. Okay. And with respect to the chart**

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1 **following Paragraph 16, am I correct that you**

2 **generated the information that's in the columns,**

3 **number of black employees, number of employees, and**

4 **takeout percentage, but the solicitor generated the**

5 **information in the Example Annual Wages Lost column?**

6 A. Yeah, correct.

7 **Q. Okay. But you generated the 1.3 million**

8 **figure that's in the body of Paragraph 16; is that**

9 **correct?**

10 A. Yes.

11 **Q. Is that using the same methodology that you**

12 **described with respect to your total damages**

13 **compensations for Asian employees and for female**

14 **employees?**

15 A. Yes.

16 **Q. Who made the decision to evaluate the Asian**

17 **employees only in product development, but not in IT**

18 **or support?**

19 A. I -- I believe the solicitor.

20 **Q. Okay. Who made the decision to evaluate**

21 **the pay outcomes for African-American employees**

22 **only --**

23 THE REPORTER: I'm sorry. Evaluate the --

24 BY MS. MANTOAN:

25 **Q. Evaluate the pay outcomes for**

Page 120

1 **African-American employees only in product**

2 **development, but not in support or IT?**

3 A. The solicitor.

4 **Q. Moving to Paragraph 17, there's a**

5 **\$401 million loss total compensation estimate there.**

6 **You see that?**

7 A. Yes.

8 **Q. Did you generate that result?**

9 A. Yes.

10 **Q. Is that result simply summing the results**

11 **in the other paragraphs?**

12 A. Yes.

13 **Q. Okay. How did you account in -- in the**

14 **damage -- in coming to the damages number for the**

15 **fact that there's -- with respect to employees who**

16 **are both female and Asian or both female and**

17 **African-American, they're sort of over -- they're --**

18 **they're subject to multiple claims here?**

19 A. Yes. So I want to make sure I understand

20 your question. You're asking if somebody -- for

21 example, if somebody is a female and

22 African-American?

23 **Q. So, let's focus more on -- let's -- let's**

24 **focus, for example, on female and Asian, right?**

25 A. Okay. Okay. Okay.

Page 121

1 **Q. Are you computing her as having a wage loss**
2 **in Paragraph 14 that contributes to that 165 million**
3 **and then also having a wage loss in Paragraph 15**
4 **that contributes to the 234 million?**
5 A. So -- so what I did was when I computed the
6 results for Asians, I subtracted Asian females from
7 the analysis. So -- so, again, the formula is
8 multiply number of Asians, times the pay gap, times
9 the average white pay, right.
10 **Q. Uh-hm.**
11 A. So the number of Asians is going to exclude
12 females from that calculation.
13 **Q. So, then, are you comparing it to the white**
14 **pay of only males as well or the pay of white men**
15 **and women?**
16 A. No, it's the pay of white -- it's -- well,
17 it -- no, no. No. The --
18 **Q. Sorry.**
19 A. So this is -- this is -- the pay gap
20 percentage is the same. I don't change that, but I
21 just multiply the number of Asian male -- males,
22 times the pay gap, times the average white pay.
23 Is that what you're asking?
24 **Q. I'm not certain.**
25 A. All right. So -- okay. So, in order to

Page 122

1 not double count, what I did was exclude females
2 from both of the race damage calculations, Asian and
3 black.
4 **Q. But you're not -- you didn't exclude**
5 **females from the underlying computation that would**
6 **show the pay gap at all, right? So the pay gap**
7 **percentage, you generated using men and women, but**
8 **the damages figure, you generated using only men?**
9 A. The pay gap is -- yeah, the pay gap
10 percentage is based on regression, which is all
11 Asians versus all whites.
12 **Q. Okay.**
13 A. Okay? The -- the damages exclude females
14 from the count.
15 **Q. Okay. But they don't otherwise exclude**
16 **females from any other portion of that damages**
17 **calculation. Females are still contributing to the**
18 **pay gap percentage that you're then multiplying by**
19 **the number of Asian men?**
20 A. Correct.
21 **Q. Okay. So a question about a sentence in**
22 **Paragraph 17, and I'm just -- I'm trying to**
23 **determine whether the claim here is a statistical**
24 **one or not a statistical one because I think that**
25 **will help me understand whether Dr. Brunetti or the**

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1 forthcoming witness is the 30(b)(6) on this issue.
2 **So the sentence says, "Because OFCCP**
3 **believes that Oracle has not adjusted pay and**
4 **corrected compensation practices as of the date of**
5 **this amended complaint, the total cost of Oracle's**
6 **discrimination is much higher, as these practices**
7 **have continued to the present date, more than two**
8 **years after the initial filing of the first**
9 **complaint in January 2017."**
10 **So my question is whether OFCCP contends**
11 **that any statistical work supports the -- the**
12 **factual claim made here, which is that the cost of**
13 **discrimination is much higher. If so, I'm entitled**
14 **to ask this witness about it. If not, it's for**
15 **another day.**
16 MR. MILLER: Yeah, no, I understand. No,
17 I'm trying to parse this out. I mean, I -- you
18 know, I think Dr. Brunetti can give you an answer
19 about this. But it's not -- I mean, it's a
20 negative, right, so -- I -- maybe we should go off
21 the record for a moment. Maybe we can clear this
22 up.
23 Is that okay with you? Do you want to do
24 it on the record?
25 MS. MANTOAN: We can go off and then put

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1 back on what we need to.
2 THE VIDEOGRAPHER: The time is 11:43.
3 We are going off the record.
4 (Short recess was taken from 11:43 a.m.
5 until 11:46 a.m.)
6 THE VIDEOGRAPHER: The time is 11:46.
7 We're back on the record.
8 BY MS. MANTOAN:
9 **Q. So, Dr. Brunetti, the question I posed**
10 **before break, which I'll ask again, is: Does OFCCP**
11 **contend that any statistical work supports the --**
12 **the second sentence of Paragraph 17, which I read**
13 **into the record right before the break?**
14 A. Does any statistical evidence support
15 which -- which part of this?
16 **Q. The -- the claim that the total cost of**
17 **Oracle's discrimination is much higher than the 401**
18 **million reported earlier. Is that a conclusion**
19 **formed by some statistical work that was done or**
20 **not?**
21 A. Well, okay, so let me just -- I don't know
22 if I added this when I was describing how I
23 calculated the damages.
24 So, the damage calculation that I did goes
25 through December 31st of 2018. The class period

Page 125

1 goes --

2 **Q. 2018?**

3 A. The damage calculations that are in here,

4 yes, December 31st, 2018. That's -- it's -- I

5 assume that present value was December 31st, 2018.

6 I mean, when you do these things, you can assume

7 whatever date you want, but that's what -- that's

8 what I did at the time.

9 **Q. Are you just saying you ran interest on**

10 **amounts owed for, say, the year 2016 through 2018?**

11 A. Yeah. Yeah. Let me explain. So, the

12 interest goes through December 31st, 2018, and since

13 I didn't have -- I don't have any data and I don't

14 have any evidence that the pay disparity was

15 resolved and no pay adjustments have been made, I

16 assume the nominal damages in 2016 continued in 2017

17 and '18.

18 **Q. Did you add that into your \$400 million**

19 **number?**

20 A. So that's -- that's part of the 400

21 million, yeah.

22 **Q. So the 400 million is estimating the same**

23 **wages lost in 2017 and 2018?**

24 A. Yeah. So it's assuming, like, for example,

25 and I'm just throwing this out there, if it's 10

Page 126

1 million in product development, that's the nominal

2 damages, let's say, in 2016.

3 **Q. Uh-hm.**

4 A. Then I would assume it's 10 million in

5 2017, 10 million in 2018.

6 **Q. I see. And all of that is already captured**

7 **in this \$400 million number?**

8 A. That's in the 400 million. Yeah.

9 **Q. Okay. So it sounds like the statistical**

10 **work is actually -- the statistical work of the 400**

11 **million already was supposed to account for damages**

12 **through the end of 2018?**

13 A. Yes.

14 **Q. Correct? Okay.**

15 **When computing the damages figure, did you**

16 **factor in -- did you -- did you consider any facts**

17 **or make any adjustments related to mitigation?**

18 A. No.

19 **Q. Okay. Did you consider any facts relevant**

20 **to any particular employee?**

21 A. No.

22 **Q. And this damages number, this 400 million**

23 **and the subsidiary damages numbers that's summed to**

24 **it, those include an award of dollars to**

25 **individuals, even if OFCCP's model -- sorry. Let me**

Page 127

1 **just rephrase this.**

2 **This damages number, this \$400 million**

3 **number, includes an award of money, even to those**

4 **individuals whose actual pay exceeds what OFCCP's**

5 **model is predicting they would earn based on the**

6 **characteristics in OFCCP's model, correct?**

7 A. I'm not sure what you mean by that.

8 **Q. So OFCCP's model generates predicted pay**

9 **for each person based on their characteristics,**

10 **along the lines of the factors in the model,**

11 **correct?**

12 A. It's -- it's estimating the parameters

13 that -- of the variables that were outlined in, I

14 think, Paragraph 13.

15 **Q. So, for a given person, once I know the**

16 **feature -- like their specific time in company,**

17 **their specific previous experience, et cetera, the**

18 **model generates a predicted pay number for them,**

19 **correct?**

20 A. You -- you can generate a predicted pay

21 from that model.

22 **Q. Okay. And this -- the question is just**

23 **whether this \$400 million includes giving money to**

24 **individuals who, if I looked at that predicted pay**

25 **from OFCCP's model, are, in fact, earning more than**

Page 128

1 **OFCCP's model predicts they would earn?**

2 A. How are you coming up with the prediction?

3 **Q. You just told me how the model generates**

4 **the prediction for each person.**

5 A. I said you can generate a prediction, but

6 I -- I'm not sure what you're specifically referring

7 to. What's the prediction?

8 **Q. The residual.**

9 A. The residual? The residual is -- I don't

10 see what the residual would have to do with it.

11 **Q. Okay. The way the model works, right, is**

12 **that for any given person, it puts a coefficient on**

13 **each of these values, time in company, previous**

14 **experience?**

15 A. Uh-hm. Uh-hm.

16 **Q. So if an individual has ten years of time**

17 **in company and the coefficient on that is .1, it's**

18 **going to give them, in terms of generating what the**

19 **dependent variable is supposed to be, it's going to**

20 **give them a one, right? It's going to contribute to**

21 **the prediction for the dependent variable for that**

22 **person. Right? So for any given person, once the**

23 **regression line has been fitted, the regression**

24 **model has been fitted, it's going to give a**

25 **prediction as to what that person -- what the model**

Page 129

1 says that person's pay would be or should be
 2 according to the factors in the model, correct?
 3 A. Yeah, you -- yeah, but I don't see how
 4 that's relevant here.
 5 **Q. So that -- I -- it's not a question about**
 6 **relevance. It's just a question about whether or**
 7 **not -- so you can do that for each person, correct?**
 8 A. You can come up with a prediction, yes.
 9 **Q. Okay. And then you can compare that**
 10 **prediction to the pay that they actually earned,**
 11 **correct?**
 12 A. Yes, but I wouldn't do that with this model
 13 that was estimated here.
 14 **Q. Why?**
 15 A. Because that would include the average pay
 16 of women.
 17 **Q. Okay.**
 18 A. You're including -- so you're saying how
 19 much should -- and I think this is what you're
 20 saying. How much should -- or how much would you
 21 predict this particular female should be paid --
 22 **Q. Uh-hm.**
 23 A. -- but that's relative to the -- to the
 24 total average, okay.
 25 **Q. Uh-hm. Uh-hm.**

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1 A. It's males and females.
 2 **Q. Right.**
 3 A. What we're doing in regression is really
 4 comparing two populations.
 5 **Q. Uh-hm.**
 6 A. So if you're -- if you're going to do
 7 that --
 8 **Q. Uh-hm.**
 9 A. -- it should be compared to males, not to
 10 other females.
 11 **Q. Uh-hm. Okay. So that -- that seemed to be**
 12 **a lot of testimony about what you thought was or**
 13 **wasn't proper and I -- I guess I'm trying to just**
 14 **get a factual question to make sure I understand**
 15 **something about the \$400 million estimate, right?**
 16 A. Uh-hm. Yeah.
 17 **Q. You could -- you could generate predicted**
 18 **pay in a model where you dropped gender as a -- as a**
 19 **variable, right?**
 20 A. You could -- you could.
 21 **Q. Okay.**
 22 A. I don't think that would be very useful
 23 here, but you could.
 24 **Q. Okay. All right. Some way or another,**
 25 **there's different ways you can slice it, but you --**

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1 whatever model is here, you can use it to generate
 2 some measure of predicted pay, right? You can do
 3 that based on the model here?
 4 A. You can -- yeah.
 5 **Q. And you can compare that to what people are**
 6 **actually earning, correct?**
 7 A. Yeah, you could.
 8 **Q. Okay. And my question is just whether this**
 9 **\$400 estimate -- \$400 million estimate, sorry,**
 10 **includes giving money to women, Asian, and**
 11 **African-Americans, who OFCCP's own model predicts**
 12 **would earn less than they, in fact, earned? Are**
 13 **they included in this number?**
 14 A. This is -- this is the total amount for the
 15 entire class that would need to be paid to make
 16 everybody whole. How -- how you allocate it among
 17 employees is a different question that I didn't have
 18 time to answer.
 19 **Q. But in -- but in computing that**
 20 **\$400 million, you included money that would -- you**
 21 **included -- you included those women, Asians, and**
 22 **African-Americans in the model, even if -- even --**
 23 **even if the -- the underlying regression analysis**
 24 **generated a predicted pay value that was less than**
 25 **their actual pay, correct?**

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1 A. I -- I don't -- again, it depends on what
 2 model you're talking about to generate.
 3 **Q. The model that's here. The model that's**
 4 **here in the second amended complaint.**
 5 A. No. As I -- again, as I -- as I -- well, I
 6 tried to explain earlier. That would be -- what
 7 you're suggesting is that we compare a female --
 8 female employee to the average, which includes
 9 females and males, okay?
 10 **Q. I'm not suggesting anything. I'm just**
 11 **asking if you could use this model, that's described**
 12 **in Paragraph 13, to generate a predicted pay for a**
 13 **given woman. You said yes, right?**
 14 A. Yeah.
 15 **Q. And you could compare that predicted pay to**
 16 **the actual pay she earns in a given year?**
 17 A. You could.
 18 **Q. Correct.**
 19 A. You could.
 20 **Q. Okay. So my question is just whether that**
 21 **\$400 million, did you do anything to back those**
 22 **women out of the damages calculation if their --**
 23 A. No. Because it --
 24 **Q. Sorry.**
 25 A. Oh, sorry.

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1 **Q. Did you do anything to back the women out**
2 **of the damages calculation if their actual pay**
3 **exceeds what the model is predicting their pay would**
4 **be? It's just a did you do it or not?**
5 A. No.
6 MS. MANTOAN: Okay. I think now is a good
7 time for a lunch break, if everyone is okay.
8 MR. MILLER: Sure.
9 THE VIDEOGRAPHER: The time is 11:55.
10 We're going off the record.
11 (Lunch break was taken from 11:55 until
12 12:52 p.m.)
13 THE VIDEOGRAPHER: The time is 12:52.
14 We are back on the record.
15 BY MS. MANTOAN:
16 **Q. Good afternoon, Dr. Brunetti.**
17 A. Good afternoon.
18 **Q. Do you understand that you're still under**
19 **oath?**
20 A. Yes.
21 **Q. And is there any reason you can't continue**
22 **with the deposition right now?**
23 A. No.
24 THE REPORTER: Exhibit 4.
25 (Exhibit 4 was marked for identification.)

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1 BY MS. MANTOAN:
2 **Q. So, Dr. Brunetti, does Exhibit 4 appear to**
3 **be a printout of your LinkedIn profile?**
4 A. Yes, I believe so.
5 **Q. Okay. And is Associated Veterans, LLC, is**
6 **that your current -- still your current employer?**
7 A. Yes.
8 **Q. Okay. During your time with Associated**
9 **Veterans, have you worked exclusively on matters for**
10 **the OFCCP or have you worked on matters for any**
11 **other entity?**
12 A. Yes, I believe so.
13 **Q. Sorry, I asked an "or" question, which**
14 **is -- that's my fault.**
15 **During your time with Associated Veterans,**
16 **have you worked exclusively on matters for the**
17 **OFCCP?**
18 A. Yes.
19 **Q. Approximately how many matters would you**
20 **estimate you've worked on for OFCCP?**
21 A. Can you tell me what a matter is?
22 **Q. So a different -- a different compliance**
23 **review. So you might have different companies. You**
24 **might have a compliance review in three different**
25 **locations. I would count those as three different**

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1 **matters.**
2 A. Okay. Okay. I'm going to guess around 50
3 or so.
4 **Q. Okay.**
5 A. But it -- it -- the extent to which I'm
6 involved in cases varies, so on some cases, you
7 know, I'll be -- I'll take the data, do analysis,
8 calculate damages. Other cases, I'll just be
9 brought in to listen on a conference call, perhaps,
10 with the contractor.
11 Other times, I'll get calls from employees
12 about a statistical question, so I...
13 **Q. Do you supervise other employees?**
14 A. No.
15 **Q. Okay. Prior to joining Associated**
16 **Veterans, had you ever done work in connection with**
17 **an OFCCP audit or litigation before?**
18 A. I believe the answer is yes. I worked at
19 ER -- ERS Group from 2003 to 2007.
20 **Q. And what --**
21 A. So I was -- yeah. So yes, I believe the
22 answer is yes. I don't recall OFCC -- at the time,
23 I didn't really know what OFCCP was, but I worked
24 on -- more often on, like, the defense side of the
25 same type of thing we're doing here, so employment

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1 discrimination litigation.
2 **Q. So during your -- and this is reflected on**
3 **your LinkedIn profile, that you worked there for**
4 **about three and a half years?**
5 A. Three and a half years, yeah.
6 **Q. Okay. And that was right after receiving**
7 **your Ph.D., correct?**
8 A. Yes.
9 **Q. And your Ph.D. is in economics?**
10 A. Yes.
11 **Q. Did it have any specific focus within**
12 **economics?**
13 A. Econometrics and public finance.
14 **Q. What do you mean there by econometrics?**
15 A. Econometrics is basically statistics as
16 it's applied to economic data.
17 **Q. Did any of your coursework at Berkeley**
18 **focus on the use of statistics, specifically to**
19 **evaluate discrimination claims?**
20 A. At Berkeley, no.
21 **Q. Okay. But if I understood your testimony,**
22 **when you worked at ERS Group, you did -- you were**
23 **involved in matters where you were assisting with**
24 **statistical analysis relating to discrimination**
25 **claims, correct?**

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1 A. Yes.

2 **Q. Were any of those matters compensation**

3 **discrimination claims as opposed to hiring or**

4 **termination or some other employment --**

5 THE REPORTER: I'm sorry. Were any of

6 those matters --

7 BY MS. MANTOAN:

8 **Q. Compensation discrimination matters as**

9 **opposed to hiring or termination or some other**

10 **employment action?**

11 A. Well, I worked on all three of those things

12 that you mentioned.

13 **Q. So at ERS Group, you did work on**

14 **compensation discrimination matters?**

15 A. Yes. And hiring and reduction in force.

16 **Q. Okay. I know I'm asking you now to**

17 **remember back to work that you did ten to 15 years**

18 **ago.**

19 A. Yeah.

20 **Q. But as best as you can recall, what is the**

21 **-- what is the largest compensation discrimination**

22 **matter that you worked on while you were at ERS, so**

23 **like size of the company or size of the employee**

24 **population, is what I'm trying to gauge.**

25 A. Well, I guess I can say the name of the

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1 client now because it's so old, but the Walmart

2 cases.

3 **Q. Uh-hm.**

4 A. I worked on -- I was one of many economists

5 that worked on the Dukes and then I also worked

6 on -- I mean, that was probably the biggest one I

7 worked on.

8 **Q. Okay. And did you have responsibility for**

9 **evaluation compensation discrimination claims in**

10 **that case?**

11 A. Yeah, I mean, I was doing regressions as it

12 relates to discrimination claims.

13 **Q. Okay. So you said you didn't have any**

14 **coursework at Berkeley focused specifically on**

15 **statistical analysis of discrimination claims. Did**

16 **you get any kind of training on that particular**

17 **application of statistics when you started at ERS?**

18 A. On -- well, it was the first time I applied

19 statistics to discrimination. And, yeah -- I mean,

20 yes, I learned how to -- well, I -- let me just say,

21 like, I think most Ph.D. economists could do this

22 type of work. It's not that -- from a statistical

23 point of view, it's not that hard, but I -- you

24 know, I learned on the job at ERS Group.

25 **Q. Do you have an estimate of how many cases**

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1 **you worked on it or matters at ERS Group where there**

2 **was compensation discrimination issues involved?**

3 A. I -- I don't -- I don't know.

4 **Q. Okay. I'm just trying to get a sense of**

5 **whether that was sort of the primary thing you were**

6 **working on there or if it was one among many.**

7 A. Well, I did those three things that you

8 mentioned, so I did, you know, compensation, hiring,

9 RIFs. We also did wage and hour cases, like time

10 off the clock. So...

11 **Q. So subsequent to your time at ERS, I see on**

12 **your LinkedIn profile, the next position was at**

13 **Ernst & Young?**

14 A. Uh-hm.

15 **Q. Was there any statistical analyses related**

16 **to alleged compensation discrimination that you did**

17 **while at Ernst & Young?**

18 A. There was not -- there was statistical

19 analysis, okay, but -- and then there was -- there

20 was not statistical analysis applied to

21 discrimination, but I did do some work applied to

22 compensation. You can see at the bottom here, tax

23 controversy matters for CEOs of S corps. Actually,

24 C corps, too.

25 **Q. Okay. But not -- no --**

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1 A. But not discrimination.

2 **Q. Okay.**

3 A. Yeah.

4 **Q. And then your next position was at JP**

5 **Research?**

6 A. Yes.

7 **Q. Did you do any analysis at JP Research**

8 **related to alleged compensation discrimination?**

9 A. No.

10 **Q. And then under your current employment at**

11 **Associated Veterans, under the P accomplishment**

12 **section on page 2, the bullet is: "Testified in**

13 **court on behalf of the Solicitor of Labor." Is that**

14 **the Google matter that we described earlier?**

15 A. Yes.

16 **Q. Okay. The next says, "Introduced OFCCP to**

17 **new" --**

18 THE REPORTER: I need you to slow down.

19 MS. MANTOAN: Oh, sorry. I forget that

20 you're not reading it like I'm reading it.

21 BY MS. MANTOAN:

22 **Q. "Introduced OFCCP to new statistical**

23 **techniques which have been implemented agency-wide."**

24 **What techniques are those?**

25 MR. MILLER: I'm going to instruct the

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1 witness not to answer as it would reveal
2 deliberative process within the agency or its
3 investigative techniques.
4 BY MS. MANTOAN:
5 **Q. Did you use any of the new statistical**
6 **techniques, to which you're referring in this bullet**
7 **from your public LinkedIn profile, in connection**
8 **with the work on this case?**
9 A. No.
10 **Q. Have you received any training from the**
11 **OFCCP related to statistical analysis of**
12 **discrimination claims?**
13 A. No.
14 **Q. Have you received any training -- well, do**
15 **you know what Directive 307 is?**
16 A. I've -- I've heard it, but I'm not very
17 familiar with it.
18 **Q. Do you know what Directive 2018-5 is?**
19 A. No.
20 **Q. Do you know what the Federal Contract**
21 **Compliance Manual is?**
22 A. I've heard of it, but I'm not familiar with
23 it.
24 **Q. Do you know what the EEOC Compliance Manual**
25 **is?**

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1 A. No.
2 **Q. Okay. Have you published work on**
3 **statistical analysis?**
4 A. No.
5 **Q. Have you published any work related to**
6 **economics?**
7 A. Yes.
8 **Q. But there wasn't -- there was no**
9 **statistical analysis in that work?**
10 A. No. Oh. So I misunderstood your first
11 question. Yes, I used statistics. I -- when you
12 asked me the question, did I publish work on
13 statistical analysis, I thought you were talking
14 about I've designed a new statistical technique and
15 it's been published in like a statistics journal.
16 **Q. Uh-hm.**
17 A. But I've applied statistics to -- in my
18 research to -- I published two papers.
19 **Q. Did either of those papers relate to**
20 **employment?**
21 A. No.
22 **Q. I saw you got an award for one of those**
23 **papers, so congratulations.**
24 A. Oh, thanks.
25 **Q. Some more questions about the second**

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1 **amended complaint. If you could come back to that,**
2 **please.**
3 **I wanted to -- to back up a little bit and**
4 **go back to Paragraph 12. So the first -- first**
5 **sentence in Paragraph 12 reads: "Since at least**
6 **January 1st, 2013, Oracle discriminated against**
7 **qualified female employees in its product**
8 **development, information technology, and support job**
9 **functions at HQCA based upon sex by paying them less**
10 **than comparable males employed in similar roles."**
11 **Did I read that correctly?**
12 A. I believe so.
13 **Q. Did the statistical work that you did --**
14 **how, if at all, does the statistical work that you**
15 **did take account of whether female employees are**
16 **qualified within the meaning of this paragraph?**
17 MR. MILLER: I'm going to instruct the
18 witness not to answer 'cause that would reveal
19 attorney-client communications or work product.
20 BY MS. MANTOAN:
21 **Q. What facts did OFCCP consider in**
22 **determining which females were qualified, within the**
23 **meaning of this paragraph, for purposes of its**
24 **statistical analysis?**
25 MR. MILLER: So I'm going to instruct the

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1 witness not to answer on the ground that it would
2 reveal attorney-client communication and work
3 product information, but I do think I should clarify
4 that all of those things actually considered show up
5 in that .do file or are part of his testimony today.
6 The instruction I'm giving is related to other
7 things that may have been considered and discarded
8 and were not included.
9 BY MS. MANTOAN:
10 **Q. So what, in the analysis that you ran,**
11 **distinguishes qualified from not qualified**
12 **employees?**
13 A. Prior experience, time in company, the --
14 yeah, that's -- that's it.
15 **Q. And both of those, in different ways, just**
16 **come down to counts of time?**
17 A. Experience, yeah.
18 **Q. Experience defined by time spent either at**
19 **Oracle or time spent on planet earth prior to coming**
20 **to work at Oracle, correct?**
21 A. Yeah -- yes.
22 **Q. So they're -- they're quantitative**
23 **measures, they're not qualitative measures of the --**
24 **of the nature of the experience, correct?**
25 A. True.

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1 **Q. Okay. So, later in that same sentence,**
 2 **the -- the complaint uses the phrase "comparable**
 3 **males employed in similar roles." And so my first**
 4 **question is: What, in the analysis you ran,**
 5 **determines which male employees are comparable to**
 6 **which female employees?**
 7 MR. MILLER: I'm objecting that that's
 8 calling for a legal conclusion about what comparable
 9 means, but he can obviously answer if he's got an
 10 answer.
 11 THE WITNESS: Yeah, I -- I don't -- I -- if
 12 that's a legal question, I don't know the answer,
 13 but I can tell you that I controlled for job title,
 14 global career level, specialty, and then I ran it by
 15 the three job functions that are listed here.
 16 BY MS. MANTOAN:
 17 **Q. And the decision to use those controls was**
 18 **one that was made by Mr. Miller, not by you,**
 19 **correct?**
 20 A. Correct.
 21 **Q. And the decision to run the analyses by job**
 22 **function was made by Mr. Miller, not by you,**
 23 **correct?**
 24 A. Yes.
 25 **Q. Does -- when you're doing analysis to test**

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1 **discrimination claims, is there a -- is there a**
 2 **sense of comparability or similarity that you --**
 3 **that makes sense to you, as a statistical term, in**
 4 **the context of discrimination analyses?**
 5 A. I -- I'm not sure I understand this.
 6 **Q. So counsel objected to the use of the word**
 7 **comparable, to the extent that it was having a legal**
 8 **meaning, and I guess what I'm trying to understand**
 9 **is whether the word comparable has some nonlegal,**
 10 **analytical, or statistical meaning to you when**
 11 **you're thinking about conducting statistical**
 12 **analyses to test alleged discrimination.**
 13 MR. MILLER: So, I'm going to object. The
 14 question is not relevant to the extent that this is
 15 a legal document, but you can answer.
 16 THE WITNESS: Okay. I -- I believe, you
 17 know, adding controls for the -- the job title is --
 18 I'm not sure if this is the answer, but that's --
 19 that's making it -- when you're running the
 20 regression, controlling for job title, you're
 21 essentially making it so that they're comparable.
 22 BY MS. MANTOAN:
 23 **Q. So comparable, in the regression model that**
 24 **you ran, is defined by having the same job title?**
 25 MR. MILLER: Objection. Mischaracterizes

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1 testimony.
 2 THE WITNESS: Well, it's the -- we're
 3 running it by job function, so distinguishing based
 4 on job function, job title, specialty, and global
 5 career level.
 6 BY MS. MANTOAN:
 7 **Q. What are the differences between these**
 8 **three job functions at Oracle?**
 9 A. I don't know.
 10 **Q. Okay.**
 11 A. And that's comparable in the statistical
 12 sense, not --
 13 **Q. Only --**
 14 A. I'm not giving a legal --
 15 **Q. Yeah, I'm not asking you to opine on legal**
 16 **questions.**
 17 A. Okay.
 18 **Q. I see later, in the same sentence, back in**
 19 **Paragraph 12, it says, "Paying them less than**
 20 **comparable males employed in similar roles," so I**
 21 **have a similar question here.**
 22 **For purposes of your model, does similar**
 23 **just mean having the same job title?**
 24 A. Same job title, job function, specialty.
 25 **Q. But anyone who shares a job title and a --**

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1 **is going to also share a specialty --**
 2 A. Yes.
 3 **Q. -- and a career level, correct?**
 4 A. Yes.
 5 **Q. Okay. So is it fair to say, then, that the**
 6 **way in which employees are deemed comparable or**
 7 **similar, for purposes of your model, does sort of**
 8 **boil down to whether they have the same job title?**
 9 MR. MILLER: Objection. Mischaracterizes
 10 testimony.
 11 THE WITNESS: Okay. Do I answer or --
 12 MR. MILLER: Oh, I'm sorry. I'm not
 13 instructing you not to answer. Sorry.
 14 THE WITNESS: Okay. Sorry. Can you
 15 repeat?
 16 BY MS. MANTOAN:
 17 **Q. We discussed before that if you know an**
 18 **employees' job title in a given year, you know their**
 19 **specialty and their career level and their function,**
 20 **correct?**
 21 A. Uh-hm. Yeah.
 22 **Q. So, to me, that implies that the -- the**
 23 **notion of comparability or similarity being used in**
 24 **your model boils down to whether two employees have**
 25 **the same job title; is that right?**

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1 MR. MILLER: Same objection.
 2 THE WITNESS: Can I -- can I answer?
 3 MR. MILLER: Yeah, sorry.
 4 THE WITNESS: To me, that means you can
 5 actually run one regression, controlling for job
 6 title, in a statistical sense.
 7 MS. MANTOAN: Sorry, I -- maybe I'm -- I'm
 8 obviously not asking a question that's clear.
 9 BY MS. MANTOAN:
 10 **Q. So, in your -- in your regression models in**
 11 **the second amended complaint, two employees are**
 12 **deemed similar if they have the same standard job**
 13 **title, correct?**
 14 A. Yes.
 15 MR. MILLER: Objection. Asked and answered
 16 and also mischaracterizes prior testimony.
 17 BY MS. MANTOAN:
 18 **Q. In the statistical models that you ran,**
 19 **whose results are reported in the second amended**
 20 **complaint, is there -- scratch that.**
 21 **Do the statistical models that you ran,**
 22 **whose results are reported in the second amended**
 23 **complaint, include any control for different**
 24 **educational attainment among different employees?**
 25 A. No.

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1 **Q. At the time that these statistical models**
 2 **were run, was OFCCP aware of any documents or other**
 3 **information from Oracle indicating that differences**
 4 **in educational attainment can matter for pay at**
 5 **Oracle?**
 6 MR. MILLER: I'm going to instruct the
 7 witness not to answer as it may reveal
 8 attorney-client communications or work product.
 9 BY MS. MANTOAN:
 10 **Q. Do the statistical models that you ran**
 11 **contain any controls for differences in particular**
 12 **skill sets among employees? By that, I mean whether**
 13 **an employee has skills in, say, artificial**
 14 **intelligence or machine learning. That's an**
 15 **example, I guess. Would something like that be**
 16 **captured in your model?**
 17 A. I don't know.
 18 **Q. Why do you say "I don't know"?**
 19 A. It may be the case that it's captured in
 20 the job title.
 21 **Q. But you don't know one way or another?**
 22 A. No.
 23 **Q. Okay. What is omitted variable bias?**
 24 A. Omitted variable bias is when there is a
 25 factor that can explain -- in the context of just

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1 gender discrimination, it's a factor that could --
 2 that explains variation pay and is correlated with
 3 gender. So if you omit it, the gender variable will
 4 be biased, the estimate will be biased. So like
 5 the -- for example, on these tables, the pay gap
 6 percentage could be higher or lower.
 7 **Q. Okay. Did OFCCP do any work to test for**
 8 **omitted variable bias in the models that are**
 9 **presented in the second amended complaint?**
 10 A. To test for omitted variable bias?
 11 **Q. Right.**
 12 A. No. And I'll just say that, you know, in
 13 order -- I'm not sure how you would test for that,
 14 other than you can put an additional variable in and
 15 see if it's significant or not, but, no, I did not
 16 do that.
 17 **Q. Okay. When you're conducting statistical**
 18 **analysis related to alleged pay discrimination, do**
 19 **you always have available to you all of the factors**
 20 **that might influence pay in a numeric regressible**
 21 **form?**
 22 MR. MILLER: Objection. That's outside the
 23 scope of this 30(b)(6). You're asking about his
 24 general practices.
 25 THE WITNESS: Do I answer?

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1 MR. MILLER: I -- yeah, I'm sorry. Just to
 2 clarify for the witness, unless I say I'm
 3 instructing you not to answer, you can answer.
 4 THE WITNESS: Okay. Sorry. Could you
 5 please ask it again?
 6 BY MS. MANTOAN:
 7 **Q. Yeah, I don't know if regressible is a**
 8 **word, but hopefully you'll indulge me with what I'm**
 9 **trying to say. When you're conducting statistical**
 10 **analysis related to alleged pay discrimination, do**
 11 **you always have available to you all of the factors**
 12 **that might influence pay in a -- a numeric form or**
 13 **some other form that you can put into a regression**
 14 **model?**
 15 A. Okay. So I don't always know if -- what
 16 the important factors are, right?
 17 **Q. Uh-hm.**
 18 A. So, I mean, are you asking in general at
 19 the OFCCP or in general -- what -- what is --
 20 **Q. Yeah. I mean, I'm asking generally if that**
 21 **is sort of an issue that can arise when you're**
 22 **conducting statistical analysis related to alleged**
 23 **pay discrimination.**
 24 A. So if I don't have outside information,
 25 then I may not know that there's a factor that's

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1 important.

2 **Q. Uh-hm.**

3 **And the information that you had when you**

4 **conducted the statistical analysis underlying in the**

5 **second amended complaint, were just the materials**

6 **that Mr. Miller provided to you, correct?**

7 A. Yes.

8 And then, I -- sorry, I'm confused -- I

9 think the second part of the question, you asked

10 something about not having data in a numerical form?

11 Is that what you were --

12 **Q. Yeah, so -- right. So, for example --**

13 A. Well, job title doesn't come in a numerical

14 form.

15 **Q. Right.**

16 A. So I create dummy variables.

17 **Q. Uh-hm. Right.**

18 **What about, you know, something like**

19 **evaluations of performance, right? There might be**

20 **companies where that comes in a numeric form. There**

21 **might be companies in which it comes in a narrative**

22 **form. So have you had experience before conducting**

23 **analyses of alleged pay discrimination where**

24 **information about employees is provided, not in a**

25 **numeric form, but in narrative information about**

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1 **different employees?**

2 MR. MILLER: Objection. This is well

3 outside the scope of the 30(b)(6).

4 THE WITNESS: I think the answer is yes and

5 I'm trying to remember back to when I was at ERS

6 Group. I think, yes, but I --

7 BY MS. MANTOAN:

8 **Q. Did any of the Excel files that you were**

9 **provided in this case contain any narrative**

10 **information about either the work that particular**

11 **employees were performing or the performance of any**

12 **particular employees with respect to that work?**

13 A. I -- there was some fields that were

14 narrative, I think, that explained why the person

15 left the job. I didn't review those very closely,

16 other than I noticed that they were there.

17 **Q. If we could turn in the second amended**

18 **complaint to Paragraph 19. We talked earlier about**

19 **Paragraph 18 and about the -- the approach that you**

20 **took to evaluating what you deem assignment to**

21 **career level, correct?**

22 A. Uh-hm.

23 **Q. Do you recall that discussion earlier?**

24 A. Yes.

25 **Q. Okay. And then in Paragraph 19, it says,**

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1 **"Using the methodology described in Paragraph 18,**

2 **OFCCP's regression analysis based on the data and**

3 **information obtained thus far."**

4 **So my question here is, what data is being**

5 **referred to as the basis for the analysis in**

6 **Paragraph 19?**

7 A. Well, that would be -- so -- so, again,

8 that would be data from that EMP file and I -- I

9 think that's the only file that is relevant here.

10 And it's limited to people who were hired during the

11 class period.

12 **Q. And by class period, you mean?**

13 A. 2003 to '16.

14 **Q. 2003?**

15 A. '13, 2013 to '16.

16 **Q. Okay. I think the answer to these next**

17 **handful of questions is -- is implied by earlier**

18 **answers you've given, but I just want to be clear.**

19 A. Okay.

20 **Q. Were you provided any files from**

21 **iRecruitment to review in connection with this**

22 **analysis?**

23 A. No.

24 **Q. Do you know what iRecruitment is?**

25 A. No.

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1 **Q. Were you provided any files from Taleo to**

2 **review in connection with this analysis?**

3 A. No.

4 **Q. Do you know what Taleo is?**

5 A. I think it's an HR IS system of some sort.

6 **Q. Do you know --**

7 A. I -- that's the extent. That's a guess.

8 That's the extent to my knowledge.

9 **Q. Do you know if or how Taleo is used by**

10 **Oracle?**

11 MR. MILLER: Object -- well, I'm going to

12 instruct him not to answer to the extent it may

13 reveal attorney-client communications or work

14 product.

15 THE WITNESS: I -- I don't.

16 BY MS. MANTOAN:

17 **Q. Okay. Do you -- is it your understanding**

18 **that applicants to Oracle apply just to Oracle**

19 **generally or is it your understanding that they**

20 **apply to specific posted requisitions?**

21 A. I don't know.

22 **Q. So I take it, then, the analysis you've set**

23 **forth in Paragraph 19 does not take into account**

24 **what employees applied for which particular**

25 **requisitions; is that correct?**

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1 A. That's correct.

2 **Q. Okay. The percentages that are set forth**

3 **here in Paragraph 19, are those the results of one**

4 **of those .do files, one of those programs that you**

5 **ran?**

6 A. Yeah, one of the .do -- .do files, yes.

7 **Q. Sorry.**

8 A. They're -- it's actually -- you know,

9 again, the solicitor wrote the amended complaint,

10 not me. It's actually an odds ratio, so the

11 conclusion is still the same, but it's not really

12 70 percent. It's -- it's that females were -- the

13 odds of a female being in a higher level is .7

14 relative to men, so...

15 **Q. Okay.**

16 A. And same for the next one, 42 percent.

17 **Q. Is there a -- help me understand the**

18 **difference between saying women were only 70 percent**

19 **as likely versus the odds ratio for women was .7.**

20 **Is there a difference between those?**

21 A. There's a difference. The 70 percent of

22 likely is -- sounds like a probability, but the odds

23 ratio is defined. It's --

24 **Q. I'm asking you -- you get the leads here,**

25 **what's the difference between the probability and**

Page 158

1 **the odds ratio?**

2 A. The odds ratio is more, like, you know, you

3 could be -- like, for example, if you were three

4 time -- well, it's difficult -- I'm -- I'm -- I'm

5 sorry.

6 **Q. Yes.**

7 A. I'm concerned that I'm going to misstate

8 this because it's hard to explain this in a

9 simple --

10 **Q. Understood.**

11 A. But it's -- I just wanted to point out that

12 it's actually an odds ratio, not a probability.

13 **Q. Okay. Yeah.**

14 A. Okay. But you'll -- you'll see that in --

15 in the -- if you run the .do files, that comes out

16 as, like, .699 something.

17 **Q. Uh-hm.**

18 A. Okay. And it's the coefficient of the --

19 the gender variable.

20 **Q. And is that looking across all career**

21 **levels or is that an average of the odds ratio for**

22 **each career level, or how are you --**

23 A. Yeah, that's -- that's kind of a summary --

24 summary, like -- like an average over all of the

25 career levels.

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1 **Q. Okay. So it might be that in some career**

2 **levels, according to your analysis, women were**

3 **actually more likely than men to -- to start at that**

4 **career levels. There might be some other career**

5 **levels where it goes the other way and this is an**

6 **average?**

7 A. That's true. That's correct.

8 **Q. Okay. Would there be a log file that would**

9 **have been generated that would show those individual**

10 **career levels, the results?**

11 A. In the results? The log file won't show

12 that. Well, I -- I did it in -- in the .do files.

13 I did a cross tabulation, so you can see how many

14 women and men were assigned to the different career

15 levels.

16 **Q. Okay.**

17 A. But the logistic regression result will

18 just show like .69 and then it will have the number

19 of standard deviations.

20 **Q. And won't show -- it won't show subsidiary**

21 **sort of ways of computation?**

22 A. It won't show like -- it won't show like --

23 yeah, it won't show, you know, IC1, IC2, three,

24 four, five. It doesn't show that.

25 MS. MANTOAN: Okay. This is another case

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1 where it seems like there's a log file that I

2 believe we don't have because we just have the .do

3 files. So, again, I would make a request on the

4 record for prompt production of that.

5 MR. MILLER: Sure.

6 BY MS. MANTOAN:

7 **Q. Is every -- there's also another percentage**

8 **later in this paragraph, 42 percent. Was that**

9 **calculated in the same way that you just described**

10 **for the 70?**

11 A. Yes.

12 **Q. Okay. When you say the results were**

13 **statistically significant, is that by reference to a**

14 **P value or what's that by reference to?**

15 A. It's the number of standard deviations.

16 **Q. Okay. And would the log file show the**

17 **actual number of standard deviations?**

18 A. Yes.

19 **Q. What definition -- what -- what number of**

20 **standard deviations was OFCCP using to -- to**

21 **determine that something was statistically**

22 **significant for purposes of this complaint?**

23 A. Negative -- less than negative two would be

24 significant against women.

25 **Q. Not to be too particular, but is it**

Page 161

1 **actually negative 2.00 or is it negative 1.96?**

2 A. It's -- well, it's a funny question you

3 asked. Because it's actually 1.96 in statistics,

4 but OFCCP -- I don't know if it's a policy, but

5 everybody says two.

6 **Q. Okay.**

7 A. So...

8 **Q. So Paragraph 19 was focused on an analysis**

9 **of women versus men and then I see, if I look at**

10 **Paragraph 20, there's an analysis of**

11 **African-Americans versus white employees?**

12 A. Uh-hm.

13 **Q. Is the same sort of methodology, what you**

14 **reviewed, what you didn't, would that be true of**

15 **Paragraph 20 as it was for Paragraph 19?**

16 A. Yeah. Yeah, it's just the population just

17 compares whites and blacks only.

18 **Q. Okay. And -- and a similar question for**

19 **Paragraph 21. Did you employ the same methodology,**

20 **review the same kind of materials, et cetera, in**

21 **generating the results reported in Paragraph 21 as**

22 **you did with respect to Paragraph 19?**

23 A. Yeah. That's just comparing Asians to

24 whites.

25 **Q. And in both paragraphs 20 and paragraphs**

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1 **21, is it correct that any employees who are neither**

2 **Asian -- I'm sorry, neither white nor the protected**

3 **group being studied, those employees are -- are not**

4 **a part of the analysis; is that correct?**

5 A. That's correct. And just -- just to let

6 you know, I mean, you could run one regression and

7 have whites be like the -- the comparator, the

8 reference group, and then have Asians and blacks or

9 other protected groups in there. You could do it

10 that way.

11 **Q. Uh-hm.**

12 A. And that would be okay, too. I -- I like

13 to do it just black versus white --

14 **Q. Uh-hm.**

15 A. -- or, you know, Asian versus white, so

16 it's a -- I feel it's a cleaner analysis, but

17 usually in most cases, the results will be

18 approximately the same, so...

19 **Q. So did you make the decision or did**

20 **Mr. Miller make the decision that the comparator**

21 **group as it -- you know, you would compare Asians to**

22 **whites as compared to comparing Asians to non**

23 **Asians?**

24 A. It -- I -- it's probably my decision

25 because this is something that I almost always do.

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1 The rest of OFCCP, the other economists, they

2 usually run one regression. If we're talking about

3 pay. They don't do a lot of logistical regressions,

4 but if they're talking about pay, they'll run one

5 regression, whereas I like to run it separate for

6 each group.

7 **Q. And why is that?**

8 A. It's like I said, I -- I believe it's a

9 cleaner estimate, so.

10 **Q. What does cleaner mean? More accurate?**

11 **Better?**

12 A. Yeah, I mean, like, if -- let's say we have

13 a case where we think there's a pay disparity

14 against blacks relative to the whites, but we don't

15 think any of the other groups there's an issue.

16 Then including them in the analysis doesn't really

17 add a lot of value.

18 **Q. Okay. Is there anything in any of the**

19 **analyses that you ran, whose results are reported in**

20 **the second amended complaint, that controls for the**

21 **line of business in which an employee works?**

22 A. Is there any -- I missed the first part.

23 Is there any what?

24 **Q. Are there any -- is there any -- is there**

25 **any factor in any of the analyses that you ran,**

Page 164

1 **whose results are reported in the second amended**

2 **complaint, that controls for the line of business in**

3 **which an employee works?**

4 A. No.

5 **Q. Is there any factor in any of the analyses**

6 **you ran, whose results are reported in the second**

7 **amended complaint, that controls for the manager to**

8 **which an employee reported?**

9 A. No.

10 **Q. The analysis that we were discussion just a**

11 **few minutes ago that's described in Paragraph 18 and**

12 **whose results are in Paragraph 19, 20, and 21 --**

13 A. Uh-hm.

14 **Q. -- who made the decision about how to group**

15 **employees for purposes of that analysis?**

16 MR. MILLER: Objection. Vague as to group.

17 BY MS. MANTOAN:

18 **Q. Well, so, for example, these analyses are**

19 **not run by function, correct? They're run across**

20 **the whole population?**

21 A. You know, that's -- I was just trying to

22 remember that. For blacks and Asians, it's only

23 product development. That's the only job function.

24 For females, I -- I can't remember, but I

25 could tell if I looked at the .do file.

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1 **Q. So the -- but the question is different,**
2 **which is whichever way it was constructed, who made**
3 **that decision, was it Mr. Miller or you?**
4 A. I can't -- I can't remember if I did it
5 based off function, so I don't really remember if
6 Mr. Miller did --
7 **Q. Okay. You don't remember --**
8 A. -- determined it or if I did.
9 **Q. Okay. For the same analyses, the ones**
10 **reported in Paragraph 18 through 21, who determined**
11 **which factors to control for in the analysis?**
12 A. I believe -- I believe Mr. Miller did.
13 **Q. If we could turn over to Paragraph 22. The**
14 **back half of Paragraph 22 describes an analysis that**
15 **purports to show discrimination against Asians and**
16 **women in base compensation at the time of hire; is**
17 **that right?**
18 A. Yes.
19 **Q. Okay. Who made the decision to run that**
20 **type of an analysis? Were you -- were you**
21 **instructed to run a base pay analysis at the time of**
22 **hire?**
23 A. I -- yeah, I was instructed to do a
24 starting salary analysis, yes.
25 **Q. And who were you instructed by?**

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1 A. Mr. Miller.
2 **Q. Okay. And who decided how to group**
3 **employees in that analysis?**
4 A. Mr. Miller.
5 **Q. And who decided what factors to control for**
6 **in that analysis?**
7 A. Mr. Miller.
8 **Q. Am I correct that the previous experience**
9 **control in this analysis is computed the same way as**
10 **the prior previous experience control, namely, age**
11 **at the time of hire at Oracle minus 18?**
12 A. Yes.
13 **Q. And at -- both here and earlier, that's at**
14 **the time of the earliest hire that you see in the**
15 **data at Oracle for employees who may have left and**
16 **returned; is that correct?**
17 A. I think that's -- you were talking about
18 time in company. That's --
19 **Q. Well, now -- now I'm trying to get a**
20 **previous experience. So if an employee first joins**
21 **Oracle when they're 20 years old, they worked there**
22 **for two years, they then leave Oracle for five years**
23 **and then they return to Oracle when they're 27, are**
24 **you going to use 27 minus 18 as the hire date or are**
25 **you going to use 20 minus 18 as the hire date -- I'm**

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1 **sorry, as the previous experience measure?**
2 A. Yeah, so -- okay. So in computing -- so
3 I've already described how time in company is
4 computed with those spells, right. So then for
5 prior experience, it's -- it's equal to age minus
6 time in company, minus 18.
7 **Q. I see.**
8 A. Yeah. That's -- so what I'm talking
9 about -- well, at OFCCP, they say, you know, age at
10 the time of hire and that -- in most cases, they're
11 talking about where you take -- the time in company
12 is just snapshot date minus hire date, okay.
13 **Q. Uh-hm.**
14 A. The time in company that I created here
15 with the spells is, obviously, a little bit
16 different than that, but --
17 **Q. Uh-hm.**
18 A. -- I already mentioned that the analysis I
19 did was the same with either definition. So that's
20 also -- so depending on which one of those you take,
21 it's also going to create a different prior
22 experience variable.
23 **Q. Right.**
24 A. There was -- and so I -- I took that
25 prior -- the alternative prior experience variable

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1 and I ran that as well and it didn't change the
2 conclusions.
3 **Q. Okay.**
4 A. So...
5 **Q. So I just want to make sure I've got this**
6 **right by way of an example. So same example I was**
7 **just talking about. Employee first joins Oracle**
8 **when they're 20, they stay at Oracle for two years.**
9 A. Uh-hm.
10 **Q. They leave Oracle for five years.**
11 A. Uh-hm.
12 **Q. They come back when they're 27 and as of**
13 **the snapshot date, they're 30.**
14 A. Uh-hm. Yeah.
15 **Q. So the -- so you're going to count the two**
16 **years at Oracle and then three years at Oracle as**
17 **time in company, correct?**
18 A. Yes.
19 **Q. Okay. The five-year window in between,**
20 **you're going to put in previous experience?**
21 A. Yeah. If I understand your example, I -- I
22 believe so.
23 **Q. Okay.**
24 A. Yeah.
25 **Q. And you're going to put those five years in**

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1 **previous experience, even if the employee was, say,**
2 **not in the workforce for five years?**
3 A. Yeah. Well, I mean, when you're using age
4 as a proxy, that's -- that's what's going to happen.
5 **Q. Okay.**
6 A. And by the way, the -- the subtracting of
7 18 -- so -- so using age as a proxy is -- is pretty
8 common among labor economists. Some of them
9 subtract 22 'cause they think that you finished
10 college at the age of 22. Some subtract 18, but at
11 the end of the day in the regression, it's not going
12 to change the result -- it's not going to change the
13 impact on the gender coefficient, whether you
14 subtract 18 or 22 or you could subtract a million,
15 it's not going to matter because you're doing the
16 same thing to every observation. So it's just kind
17 of a -- I don't know why people do it because it
18 doesn't -- I think it's just more just so if you
19 look at the -- the age, you don't get these
20 surprising results.
21 Could we take a break and -- like right
22 now?
23 MS. MANTOAN: Sure. That's fine.
24 THE VIDEOGRAPHER: The time is 1:38.
25 We're going off the record.

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1 (Short recess was taken from 1:38 p.m.
2 until 1:47 p.m.)
3 THE VIDEOGRAPHER: The time is 1:47.
4 We're back on the record.
5 BY MS. MANTOAN:
6 **Q. Dr. Brunetti, what facts support using job**
7 **title as a way to define similar employees at**
8 **Oracle?**
9 MR. MILLER: Dr. Brunetti has not been
10 prepared to testify about the facts supporting using
11 individual factors. He's here to testify about the
12 statistics for the regression analysis.
13 MS. MANTOAN: So I guess I just want to be
14 clear about this on the record. You're going to
15 produce a different witness that I can ask that
16 question to who will answer it?
17 MR. MILLER: They will answer questions
18 about the facts that support the claim that are
19 not -- or at the second amended complaint that are
20 not the statistical analysis.
21 MS. MANTOAN: Well, this is the fact about
22 using a particular control in this statistical
23 model, so I just want to be clear that you're going
24 to produce another witness who would answer the
25 question that I just posed.

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1 MR. MILLER: Well, as you just phrased it
2 there, maybe not because now you're talking about an
3 attorney assessment about what factors matter or
4 which ones to use and those are not going to be
5 produced.
6 MS. MANTOAN: So it's not an assessment.
7 It's about the facts that were considered or used in
8 determining whether job title is the appropriate way
9 to define similar employees at Oracle.
10 MR. MILLER: Determining whether it's
11 appropriate is attorney work product.
12 MS. MANTOAN: So the objection is not that
13 he's not the right witness. Your objection is now
14 I'm never going to produce a witness to answer that.
15 Is that correct?
16 MR. MILLER: My statement is that as to the
17 way you phrased just now, that's attorney work, it's
18 attorney work product so we're not going to testify
19 about that. If what you want is somebody who can
20 testify about the facts that support these
21 paragraphs that are not related to the statistical
22 analysis or the regression, there's somebody else
23 that we've offered for that.
24 MS. MANTOAN: Okay.
25 ///

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1 BY MS. MANTOAN:
2 **Q. What facts support treating every employee**
3 **who works in the same job title at Oracle as**
4 **performing similar work?**
5 MR. MILLER: Again, I'm going to instruct
6 the witness not to answer because that would reveal
7 attorney-client communications or work product.
8 BY MS. MANTOAN:
9 **Q. Okay. If we could go back to Paragraph 22,**
10 **Dr. Brunetti. So this is an analysis of starting**
11 **pay, I believe you said, correct?**
12 A. Yes.
13 **Q. And it's describing a starting -- an**
14 **analysis of starting pay, meaning starting base**
15 **salary, correct?**
16 A. Yes.
17 **Q. Okay. Is there a control for job title in**
18 **this starting pay model?**
19 A. No.
20 **Q. Okay. And were you instructed by**
21 **Mr. Miller on the set of factors to use with that**
22 **set not including job title?**
23 A. He was the one who determined what I should
24 control for in the regression.
25 **Q. And so then implicitly, he was deciding**

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1 what you should not control for, correct?

2 A. Yep.

3 Q. Okay. So he decided you should not control

4 for job title in this regression, correct?

5 A. Yes.

6 Q. Do you ever consider whether you should

7 include job title in this regression?

8 MR. MILLER: Instruct the witness not to

9 answer. He's here in a 30(b)(6) capacity and he's

10 not available as a percipient witness in this

11 matter.

12 BY MS. MANTOAN:

13 Q. What facts did OFCCP consider when it made

14 the choice to control for global career level only

15 and not job title in this statistical model

16 described in Paragraph 22?

17 MR. MILLER: I'm going to instruct the

18 witness not to answer as it may reveal

19 attorney-client communications or work product.

20 BY MS. MANTOAN:

21 Q. So if we move to paragraphs 20 -- well,

22 okay. Sorry. Paragraph 22 describes a model by

23 which you tested starting pay outcomes for Asians

24 and for women; is that correct?

25 A. Sorry. Let me read this right now.

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1 Yeah, so the starting pay -- sorry, can you

2 repeat the question? I just want to make sure.

3 Q. Paragraph 22 describes a model by which you

4 tested starting pay outcomes for Asians and for

5 women; is that correct?

6 A. Yes.

7 Q. Okay. Were you instructed to look only at

8 starting pay outcomes for women and Asians and not

9 for African-Americans?

10 A. I don't -- no, I don't believe so.

11 Q. Okay.

12 A. I can -- I can look in the .do file and say

13 for -- for sure.

14 Q. Okay.

15 A. But...

16 Q. Okay. So your best recollection is that

17 .do file does contain results for African-Americans,

18 'cause you ran it for African-Americans?

19 A. That's my best recollection.

20 Q. Okay. And the -- let's focus on

21 Paragraph 23. The claim here is that the analysis

22 "reveals that female employees are paid less than

23 male employees on hire at Oracle."

24 Did I read that correctly?

25 A. Yes. It's -- it's -- yeah, their starting

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1 salary.

2 Q. Okay. And because of the structure of the

3 model, this is just comparing females, within a

4 given global career level, to males within that same

5 global career level, correct?

6 A. Yes.

7 Q. Okay. So if there's an employee -- if

8 there's a female employee who is in an IC4 position

9 who is doing testing or quality assurance work and

10 if there's a male who is in an IC4 position who is

11 designing software, the model, whose results are

12 presented here, is comparing those employees,

13 treating them as comparators, correct?

14 A. Yes.

15 Q. Okay. Are you familiar with a document

16 called Oracle's Global Job Table, or something that

17 you've heard referred to as that?

18 MR. MILLER: Objection. It's beyond the

19 scope of a 30(b)(6), if you're asking him in his

20 personal capacity.

21 There's not an instruction not to answer.

22 Just an objection.

23 THE WITNESS: Okay.

24 I believe that was in one of these

25 PowerPoints. When I reviewed those, I -- I believe

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1 I saw that.

2 BY MS. MANTOAN:

3 Q. I'm thinking of a document, not that

4 describes sort of the job framework, but that

5 actually contains information about each specific

6 IC2, IC3, IC4 position in these functions at Oracle.

7 Were you provided with any document that -- that you

8 can recall, that looked like that?

9 A. I don't recall that, but I -- I recall the

10 global job title. I think I saw that in one of the

11 documents or I saw it mentioned.

12 Q. Okay. And in the model described in

13 Paragraph 22, whose results are presented in

14 paragraphs 23 and 24, is previous experience

15 computed in the same way that you described

16 previously?

17 A. Yes.

18 Q. Okay. So how does that work with respect

19 to the specific employee example that we thought of

20 before, right? They're hired at Oracle when they're

21 20, they're there for two years, they leave for five

22 years, and then they're rehired at Oracle, and

23 you're trying to analyze their base pay at the time

24 of hire. Would you have looked at both of those

25 hiring events for this person, if they were both in

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1 the class period? I guess I'd need to make the
2 window shorter to make them both in the period, but
3 would you have looked at both of those hiring events
4 or would you look at only one hiring event per
5 employee?
6 A. So I'm trying to remember if this was just
7 people on the -- if it's just people in the class
8 period, I don't recall. But -- but potentially, if
9 they were -- these are for people who were hired.
10 So -- so say we're looking at the class period and
11 they were hired in 2013 and then they quit and they
12 came back and hired again in 2015, it would include
13 both.
14 **Q. Okay. And -- okay. Was this analysis only**
15 **focused on employees who were hired during -- from**
16 **2013 forward?**
17 A. That's -- that's a -- I -- in my previous
18 response, I was trying to remember if it was 2000 --
19 just the class period 2013 to '16.
20 **Q. Uh-hm.**
21 A. Or I may have done it -- I think I actually
22 might have done it for people in the class period
23 and then separately 2003 to '16 and, again, that can
24 be checked in the .do files.
25 **Q. Were you instructed to run it both ways or**

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1 is that a choice you made?
2 A. I -- I -- I don't recall. I think it -- I
3 don't remember. And I don't remember if I did it
4 both ways, so...
5 **Q. What does selection bias mean?**
6 A. Selection bias means -- it could mean a lot
7 of things, but it basically means that you're --
8 you're getting a result because you have a select
9 sample. It's the -- it's not that there's actually
10 a result there. It's that you've selected a
11 population that gives you that result rather than a
12 random sample.
13 **Q. Given the -- the population of employees**
14 **for whom you had data at the time you ran these**
15 **analysis, would there be a selection bias as true if**
16 **one tried to examine starting pay going back to**
17 **2003?**
18 A. Yeah, so it -- it -- it's during the class
19 period, we're not going to have a problem with
20 selection bias because we have -- well, all the
21 people in the class -- all the people are -- are
22 there. But if we were going back to 2003, we're
23 only getting people that were in the class period,
24 their job history. So we're not getting the job
25 history of somebody who was hired in 2003 and then

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1 was gone by the class period, so...
2 **Q. Okay. And as you sit here today, do you**
3 **know -- I think the -- I think I know the answer to**
4 **this, but I want to make sure I'm clear.**
5 **As you sit here today, do you know whether**
6 **the results that are reported here are for a**
7 **starting pay analysis that was limited to 2013**
8 **forward, as opposed to a starting pay analysis that**
9 **brought in earlier years?**
10 A. Yeah, I don't recall if I did it for 2013
11 forward, or 2003 forward, or both. I don't recall.
12 **Q. Okay.**
13 A. But, again, you can -- you can -- I can
14 easily determine that by looking at the .do files,
15 so.
16 **Q. Whichever way you did it, would that have**
17 **been pursuant to instruction from Mr. Miller?**
18 A. Which part of it?
19 **Q. Whether to focus solely on 2013 forward or**
20 **whether to include data points prior to 2013.**
21 A. Yeah. I think -- I think I answered that I
22 didn't recall. I mean, I don't recall which one of
23 those I did and so I certainly don't recall if it
24 was him or me that made whatever decision it was.
25 **Q. Okay. And when it says in Paragraph 23 at**

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1 the last sentence that "these results are
2 statistically significant," would there be a log
3 file that would show the specific number of standard
4 deviations?
5 A. Yes.
6 **Q. Okay. Same thing is true of Paragraph 24,**
7 **correct?**
8 A. Let me read that really -- first. Yes.
9 MS. MANTOAN: So, again, Counsel, I'll make
10 a request for those log files, which I think should
11 have been previously produced, but weren't.
12 BY MS. MANTOAN:
13 **Q. Can we move to Paragraph 25, please. So I**
14 **first have a question just about whether certain**
15 **terms that are used in Paragraph 25 are terms that**
16 **have like a statistical meaning to you, as opposed**
17 **to a meaning that may be a legal meaning, because**
18 **that will help me figure out what questions is**
19 **appropriate to ask.**
20 **So in the second paragraph here, it says,**
21 **"That is, Oracle suppressed the pay of female and**
22 **Asian employees." That word suppressed, is that --**
23 **is there like a statistical test of that term? Is**
24 **that a term that, I don't know, has a meaning in the**
25 **context of doing statistical tests in the**

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1 discrimination context?
2 A. I -- I don't know.
3 Q. Okay. And then later in that same
4 sentence, "By ensuring that they remained in lower
5 paid positions relative to other employees."
6 Is that the kind of concept, ensuring they
7 remained, is that like a -- is that something
8 that's -- you're familiar with as a statistical
9 conclusion or one that can be tested statistically?
10 A. I -- I don't know.
11 Q. Okay. So I see that the analysis that is
12 described in Paragraph 25 is an analysis of base
13 pay; is that right?
14 A. Yes.
15 Q. When we say base compensation, you mean
16 base salary, correct?
17 A. Base salary, yeah.
18 Q. Okay. Why is this analysis focused on base
19 salary as opposed to total compensation?
20 MR. MILLER: I'm going to instruct the
21 witness not to answer as it may reveal
22 attorney-client communications or work product.
23 BY MS. MANTOAN:
24 Q. Did you determine -- were you instructed to
25 construct this analysis using base salary as the

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1 dependent variable as opposed to total compensation?
2 A. I don't recall.
3 Q. How would you figure that out if you had to
4 figure that out, whether you were instructed or not?
5 A. I don't know.
6 Q. Do you think you'd have an e-mail that
7 would indicate that?
8 A. I -- I don't know.
9 Q. I guess that's a more general question when
10 we've been talking about -- we've talked about
11 several instructions that you received from
12 Mr. Miller regarding the statistical analysis. Were
13 those instructions relayed in writing, relayed
14 orally, or both?
15 A. We had phone conversations and an e-mail
16 exchange.
17 Q. Okay. Could you find that e-mail exchange
18 if you had to?
19 A. Probably.
20 Q. Okay. So the -- it may be that you don't
21 recall some of these other questions about who made
22 certain decisions about this analysis, but I'd like
23 to ask them to see if you do. I see that this was
24 an analysis of employees limited to the product
25 development job function. Were you instructed to

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1 limit your analysis to the product development job
2 function?
3 A. For females?
4 Q. Well, it looks like this is -- yeah, for
5 females, correct. I mean, it looks like the -- the
6 analysis is limited to product development for all
7 of these three groups of employees, right?
8 A. Yeah, that would have been a decision that
9 the solicitor made.
10 Q. Okay. And then, in that same sentence that
11 starts with "OFCCP analyzed base compensation," says
12 "grouping them into clades with varying amounts of
13 experience," is clades a statistical term?
14 A. That's -- no, not as far as I know.
15 Q. Okay. And then there's a number of factors
16 here listed that -- that were controlled for in the
17 model. Who made the decision about which factors to
18 control for in this analysis?
19 A. The solicitor.
20 Q. Is previous experience here defined in the
21 same way as previous experience is defined in other
22 analyses?
23 A. Yes.
24 Q. Is that true for all the analyses you ran,
25 so I don't have to keep bugging you with that

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1 question?
2 A. Yes.
3 Q. Okay. Is there any control in this
4 analysis for job title?
5 A. No.
6 Q. Is there any control in this analysis for
7 career level?
8 A. No.
9 Q. What facts did OFCCP consider when making
10 the choice about whether or not to include job title
11 in the analysis described in Paragraph 25?
12 MR. MILLER: I'm going to instruct the
13 witness not to answer as it may reveal
14 attorney-client communications or work product.
15 BY MS. MANTOAN:
16 Q. What facts did OFCCP consider when making
17 the choice about whether or not to include global
18 career level in the analysis described in
19 Paragraph 25?
20 MR. MILLER: I'm going to instruct the
21 witness not to answer as it may reveal
22 attorney-client communications or work product.
23 BY MS. MANTOAN:
24 Q. So, earlier in this paragraph, I'm going to
25 start, like, with that sentence that starts "There

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1 is -- that is." I'm going to read that sentence and
2 then ask you a question about the relationship of
3 the statistical model to the sentence.
4 "That is, Oracle suppressed the pay of
5 female and Asian employees by ensuring they remained
6 in lower paid positions relative to other employees
7 or at the lower end of the pay range relative to
8 other employees in the same positions."
9 So my question is: What controls in the
10 analysis that you ran here are used to group
11 together employees who are in the same position?
12 MR. MILLER: I'm going to instruct the
13 witness not to answer that as it may reveal work
14 product or attorney-client communications.
15 MS. MANTOAN: This is just what factors in
16 that model do that grouping.
17 MR. MILLER: Again, that's a legal
18 conclusion about how that would work, one that was
19 made by attorneys.
20 BY MS. MANTOAN:
21 Q. What controls are in this model that
22 describe the type of work that different employees
23 perform?
24 A. Well -- well, it's by product development.
25 I think that's -- that's it.

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1 Q. Anything other than the job function,
2 product development?
3 A. No.
4 Q. Are there any model -- controls in this
5 model that differentiate between the work that
6 different employees perform within that job
7 function, product development?
8 A. No, I -- except for -- I mean, you can say
9 maybe exempt status, but...
10 Q. But that would be it, right?
11 A. Yeah.
12 Q. Okay. Who made the decision to construct
13 these clades, if that's what we're going to call
14 them, or these groups by -- on the way they were
15 constructed, namely, one to less than three, three
16 to less than five, five to less than seven, seven to
17 less than nine?
18 A. The solicitor.
19 Q. Okay. Is -- is this analysis -- what about
20 employees who have been in product development for
21 more than nine years? Are they excluded from this
22 analysis?
23 A. Yes.
24 Q. Okay. And is this controlling for the
25 amount of time that they've -- is this controlling

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1 for the amount of time they've been in the function
2 product development or is this controlling --
3 what -- sorry, let me scratch that.
4 When it says, for example, PD one to less
5 than three, are those employees who have spent one
6 to less than three years specifically in product
7 development or at Oracle generally?
8 A. Product development.
9 Q. Okay. How does this analysis treat
10 employees who would have, say, been in the product
11 development function for some period of time, moved
12 to a different function, and then moved back to
13 product development?
14 A. If that happened, they would -- they would
15 be in this analysis when they were in product
16 development, but they would not be for the period
17 where they were somewhere else.
18 Q. So let's say they had two years in product
19 development and two years in IT and then two years
20 in product development --
21 A. Uh-hm.
22 Q. -- would they be in this model -- and their
23 most recent stint now has been for two years. Would
24 they be in the model as having two years of function
25 tenure, four years of function tenure?

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1 A. I -- to be honest, I don't -- I don't
2 recall. I --
3 Q. Is that in the DO --
4 A. -- I can look at the .do file and --
5 Q. Okay. I think I already asked this, sorry.
6 Did you review those actual .do files before, like
7 in preparation for the depo?
8 A. Yeah, but, you know, I can't memorize
9 everything that's in there.
10 Q. Fair enough.
11 Did you review the log files in preparation
12 for the depo?
13 A. No.
14 Q. Okay. So, at the -- in Paragraph 26, where
15 it's reporting the results of the analysis for
16 female employees, the last sentence says, "These
17 results are statistically significant." Would
18 statistically significant have been measured by a
19 number of standard deviations?
20 A. Yes.
21 Q. Okay. And would that be in the log file
22 associated with this analysis?
23 A. Yes.
24 MS. MANTOAN: Okay. Same request for these
25 log files as well, Counsel.

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1 BY MS. MANTOAN:
2 **Q. And looking at the chart that's underneath**
3 **Paragraph 26. We saw similar charts earlier in the**
4 **complaint with respect to a -- a different type of**
5 **analysis, but where your testimony was that you**
6 **generated the first several columns of results, but**
7 **that the final column, which, in that -- in that**
8 **instance, was Example Annual Wages Lost, was one**
9 **that Mr. Miller, rather than you, generated, right?**
10 A. Yes.
11 **Q. Okay. I guess I want to know if the same**
12 **thing is true here.**
13 A. Yes.
14 **Q. Okay. How did Mr. Miller compute the**
15 **example for employee numbers?**
16 A. I don't know.
17 **Q. Okay. Did you undertake any efforts before**
18 **the deposition to figure that information out or**
19 **learn that information?**
20 A. On this particular table -- well, I put
21 forth the effort, but, apparently, I did not look at
22 that.
23 **Q. Okay. That's not something I'd see in your**
24 **.do files or your log files because it's not an**
25 **analysis you ran, correct?**

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1 A. That would not be in my .do files.
2 MS. MANTOAN: Okay. I'm also going to make
3 a request if there's any files or documentation that
4 show how that was constructed.
5 MR. MILLER: You've already got whatever
6 there was.
7 MS. MANTOAN: I know we got a description
8 of how it was done. I don't know that we got the --
9 MR. MILLER: You got an Excel spreadsheet
10 that shows how averages were constructed. I mean,
11 to save you time later, I will just tell you it was
12 the same process as in the other ones.
13 MS. MANTOAN: Well, before it was talk --
14 you know, we talked about, you know, whether males
15 and females are included in generating the average,
16 whether it's males only. So I think that's his --
17 MR. MILLER: It's exactly the same
18 testimony he gave before. That's what happened.
19 BY MS. MANTOAN:
20 **Q. If we could flip over to paragraph -- well,**
21 **I guess I should make clear on the record. So we**
22 **just talked about how certain information was**
23 **generated and where backup can be found for**
24 **Paragraph 26. Would those answers be the same for**
25 **Paragraphs 27 and Paragraph 28?**

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1 A. Yeah. It's just -- for 27, it's white and
2 Asian employees -- sorry, yeah, white and Asian
3 employees and then for 28, it's black and white
4 employees.
5 **Q. If I look down in Paragraph 28 and the**
6 **table following it, I see that there's a result for**
7 **years three to less than five, where the pay gap is**
8 **negative 1.46 percent --**
9 THE REPORTER: I'm sorry. Where the --
10 BY MS. MANTOAN:
11 **Q. -- pay gap is negative 1.46 percent and the**
12 **text above indicates that that result is not**
13 **statistically significant.**
14 **Is there anything unusual that you noted in**
15 **the data about the -- that clade or group of**
16 **employees that it generated a result that was so**
17 **different than the other results with the same**
18 **statistical approach?**
19 A. Well, there are so few black employees,
20 that so when you go from -- you see one to three is
21 15 and then it's 19. So that -- I think, in
22 general, what's happening is there's just a lot of
23 variations because there's very few blacks.
24 (Sotto voce discussion between Ms. Mantoan
25 and Ms. James.)

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1 BY MS. MANTOAN:
2 **Q. Okay. If we could turn to Paragraph 29.**
3 **Does this -- does this describe a**
4 **statistical analysis that's intended to study wage**
5 **growth?**
6 A. Yes.
7 **Q. And I see on the second line up from the**
8 **bottom of the page 9, so we're in the middle of**
9 **Paragraph 29, you see that same phrase, same**
10 **positions.**
11 **What controls are included in the model**
12 **described in Paragraph 29 to group employees in the**
13 **same positions?**
14 A. So the controls are change in the
15 employee's global career level, change in job title,
16 prior experience, and time at Oracle and year.
17 **Q. So are you only comparing employees who,**
18 **between year one and year two, moved from the same**
19 **job title and career level to the same, you know,**
20 **next highest job title and career level?**
21 A. No. No, it's including all employees that
22 were in product development.
23 **Q. Who -- were you instructed to run this wage**
24 **growth analysis?**
25 A. Yes, I was instructed to run wage growth

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1 analysis.

2 **Q. By who?**

3 A. The solicitor.

4 **Q. And who decided to focus that wage growth**

5 **analysis on the product development job function as**

6 **opposed to other job functions?**

7 A. The solicitor.

8 **Q. And who decided what controls to include in**

9 **the model?**

10 A. The solicitor.

11 **Q. Okay. Who decided to analyze base salary**

12 **as opposed to total compensation?**

13 A. I believe the solicitor, but I -- I -- I

14 think that's something I probably would have

15 suggested because if you'd look at the Medicare

16 wages or total compensation, you have things like

17 bonuses. So that the year-to-year variation

18 could -- if you had -- the company had a great year,

19 everybody gets a bonus and then the next year, it's

20 a bad year and so the change would be negative, so

21 it's -- it's hard to do it on total comp. If you --

22 I think you need to do it on base pay.

23 **Q. Is that true, even if you control for a**

24 **year in the model?**

25 A. Year would help, but it's -- you're still

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1 going to -- well, you're still going to -- going to

2 get the -- this effect, that it's jumping all over

3 the place.

4 **Q. So this Paragraph 29 indicates that the**

5 **analysis excluded employees whose base compensation**

6 **dropped by more than \$1,000 in a year.**

7 A. Yeah.

8 **Q. Who made that decision?**

9 A. I believe I did.

10 **Q. Okay. Why?**

11 A. There were about 30 people in the class

12 period where their base pay just dropped off for

13 some reason and I couldn't figure out why.

14 **Q. And this analysis spanned the time period**

15 **from 2003 to 2016, correct?**

16 A. That's what it says here. I -- I had

17 thought that it was -- we may have done it both

18 ways. So it might be in the .do files again. It

19 might be the class period only and 2003 to '16.

20 **Q. Wouldn't those same selection bias issues**

21 **that we talked about earlier also impact the**

22 **analysis here, if you extend back to years prior to**

23 **2013?**

24 A. You mean back to 2003? Or -- what do you

25 mean?

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1 **Q. I'm saying if you extend back prior to**

2 **2013.**

3 A. Okay.

4 Possibly.

5 **Q. Did OFCCP do anything to test whether that**

6 **was a -- that possibility obtained in this case?**

7 A. Yeah, that's -- that's why I think that I

8 ran it for the class period and 2003 to '16.

9 **Q. Okay. And would you consider that a test**

10 **for whether there's selection bias present?**

11 A. Well, it -- if it's only during the class

12 period, then it's not an issue.

13 **Q. Okay. But would you then use that**

14 **within-class-period analysis to -- to evaluate**

15 **whether there was selection bias and an analysis**

16 **that expands outside the period?**

17 A. It would be -- it would be better to have

18 many years of data, so going back to 2003, to

19 analyze the wage growth rather than just, you know,

20 four years. So, you know, it's a -- it's a

21 tradeoff. If you want to ensure that there's no

22 selection bias, you can limit it to the class

23 period, but if you want to get a better estimate of

24 are women experiencing slower wage growth than men

25 or, you know, blacks and Asians, it would be better

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1 to have more years of data.

2 **Q. Okay. And just a -- like a technical**

3 **question, I guess, about how you're controlling for,**

4 **say, change in the employee's global career level.**

5 **Are you giving like a -- are you giving a -- like a**

6 **dummy variable or a variable of some sort that says**

7 **move from IC1 to IC2, a different variable that's**

8 **IC2 to IC3, or are you just giving a variable that**

9 **says moved up a career level, no matter what that**

10 **was?**

11 A. So, it's just -- it -- so let me -- let me

12 explain how this model is -- this type of model is

13 developed. So if you -- if you go back to like

14 the -- just the compensation regressions that we ran

15 with -- for base pay, for example, and we control

16 for job title and global career level and exempt

17 status and the other factors there, so that's --

18 that could -- that's your regression in, you know,

19 year one and then in year two, you have the same

20 factors. So when you're taking the difference,

21 which would -- the difference in the log base pay,

22 that's going to give you a percentage change, okay.

23 And when that happens, let's suppose that nobody

24 changed job title or global career level and so

25 forth, those variables would all just fall out of

Page 197

1 the regression, okay.

2 So by constructing it this way, you get a

3 percentage change and then you identify the people

4 that -- that, you know, moved up in global career

5 level or job title, and that controls for the fact

6 that they may have received a promotion or

7 otherwise.

8 **Q. How does that -- how does the model treat**

9 **employees who might have moved from an IC to an M**

10 **role?**

11 A. That would be captured by the change in

12 global career level.

13 **Q. What if they moved from an IC4 to an M2?**

14 **Is that going to treat it different than if they**

15 **moved from an IC4 to an M4?**

16 A. It's going -- the variable only identifies

17 if a person changed.

18 **Q. And it wouldn't -- oh, okay.**

19 A. Yeah.

20 **Q. And it identifies in the same way a change**

21 **from IC4 to IC3, as it would from IC4 to IC5?**

22 A. Yep.

23 **Q. Okay. And it treats, in the same way, a**

24 **move from IC4 to IC5, as it would treat a move from**

25 **IC4 to M2?**

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1 A. Yes.

2 **Q. And who made the decision to -- so I**

3 **earlier asked about who made the decision about**

4 **which factors to control for.**

5 A. Uh-hm.

6 **Q. Who made the decision about how to control**

7 **for, for example, change in career level? Was that**

8 **you or was that directed by Mr. Miller?**

9 A. Yeah. What I recall is that he told me the

10 factors to control for, but then when I am putting

11 this as I've described, you know, it's a -- it's a

12 change in log wage, that gives you the percentage

13 change, that -- I constructed it that way.

14 **Q. So on this specific example we were just**

15 **talking about, right, that the model would treat a**

16 **move from IC3 to IC4 --**

17 A. Uh-hm.

18 **Q. -- the same way it would treat a move from**

19 **an IC career level to a manager career level --**

20 A. Uh-hm.

21 **Q. -- is the decision to sort of treat those**

22 **the same way, is that a decision you made or is that**

23 **a decision that Mr. Miller made, where he said any**

24 **change, just treat it the same way?**

25 A. I don't think that specific thing was

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1 discussed.

2 **Q. Okay.**

3 A. But the model would treat all those

4 changes -- if it's like IC3 to IC5 or M2 to M6, they

5 would treat them the same. It's a change.

6 **Q. Okay. Is there any control in this model**

7 **that controls for the -- the reason why a given**

8 **employee may have changed job title?**

9 A. No.

10 **Q. Is there anything that controls for the**

11 **reason why a given employee may have changed career**

12 **level?**

13 A. No.

14 **Q. Are you just using the M personnel**

15 **experience file and the base pay file for this**

16 **analysis?**

17 A. Well, the location file.

18 **Q. Okay. Would you only be counting changes**

19 **in the career level for employees who both pre and**

20 **post change were at the location maps to HQCA?**

21 A. I'd have to think about that 'cause -- so

22 what I don't recall -- and, again, I can look at the

23 .do file, I -- yeah, I don't know. Sorry.

24 **Q. So on Paragraph 30, it describes the**

25 **results of the model whose details are set out in**

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1 **Paragraph 29 for women versus men, correct?**

2 A. Yeah.

3 **Q. Okay. And there's this word "male peers"**

4 **towards the end of that paragraph.**

5 A. Yes.

6 **Q. Who does this statistical model treat as**

7 **peers?**

8 A. I don't know what that word means in this

9 context.

10 **Q. Well, let me ask it a different way.**

11 **Who would -- if -- if -- can you tell me if**

12 **two employees were -- had the same values for X, Y,**

13 **Z, the model would predict them to have had the same**

14 **wage growth. What would -- what would need to be**

15 **true of two employees for the model to predict that**

16 **their wage growth would be the same?**

17 A. I'm not sure I understand. What --

18 **Q. So the -- the model is generating a**

19 **comparison of the wage growth rate for women versus**

20 **men.**

21 A. Yes.

22 **Q. So I presume that it's -- I mean, it's not**

23 **just saying -- it's not just a raw comparison of**

24 **wage growth. You're introducing certain controls,**

25 **right?**

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1 A. Yes.

2 **Q. So the model is saying that the wage growth**

3 **is different for men and women after I've controlled**

4 **for X, Y, and Z, correct?**

5 A. Yeah. As I mentioned, it -- it -- it

6 controls for job title, okay, but when you

7 difference the regression equations, they will --

8 that -- that factor doesn't -- if nobody switches

9 job title --

10 **Q. Uh-hm.**

11 A. -- that factor doesn't matter, okay. So --

12 **Q. But if some people do, it does?**

13 A. If some people do, then it -- there's an

14 indicator that it switched.

15 **Q. And is that, again, just -- there's been**

16 **some switch, there's -- independent of what kind it**

17 **is?**

18 A. Yep.

19 **Q. Okay. And then what is that change -- I**

20 **guess what I'm trying to understand is like -- so**

21 **there's an indicator that says that and so if there**

22 **are two employees, both of whom switched job --**

23 **changed job title between year one and year two,**

24 **they're going to get the same, sort of, coefficient**

25 **in a -- what's going to be true that's the same**

Page 202

1 **about them in the model?**

2 A. If -- say it again.

3 **Q. Other things being equal. So if there's**

4 **two employees, who between year one and year two**

5 **both changed job title.**

6 A. Uh-hm.

7 **Q. Let's say they changed -- they started**

8 **in -- they started in different job titles and they**

9 **end in different job titles. Is the model somehow**

10 **predicting that the wage growth would be similar for**

11 **them? Or what is the model -- how is the model**

12 **treating those people vis-à-vis each other?**

13 A. Yeah, they -- they -- both of them would --

14 it would indicate they both changed.

15 **Q. Okay.**

16 A. That's what it would do. Yeah.

17 **Q. And it would expect people who had both had**

18 **that change to have similar outcomes, all other**

19 **things being equal, to any two people who didn't**

20 **have that change, right, or one person who had the**

21 **change and one who didn't?**

22 A. Yeah, ultimately that's -- that's --

23 **Q. Okay.**

24 A. -- it's -- it's -- it's -- you know, it's

25 set up to identify people that were promoted, okay.

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1 So --

2 **Q. Uh-hm.**

3 A. But, you know, it's possible that some

4 people were demoted. I -- I don't know. But -- so

5 those two people would be treated -- treated as --

6 that they changed.

7 **Q. Do you have any understanding of whether**

8 **there are -- there's such a thing as like a**

9 **half-step promotion at Oracle, so if you stay in the**

10 **same job and -- but you, say, take on additional**

11 **responsibilities?**

12 A. I don't know about that.

13 **Q. Okay. So I'm correct, then, that the model**

14 **described in Paragraph 29, it doesn't have any**

15 **control for whether an employee, who stayed in the**

16 **same job title, assumed increased responsibilities,**

17 **correct?**

18 A. I -- I don't know.

19 **Q. Well, is there anything -- why are you**

20 **saying you don't know? You made the model.**

21 A. Well, can you tell me what you mean by

22 increased responsibilities? Because --

23 **Q. Well, is there anything that distinguishes**

24 **between employees within the same job title in the**

25 **same year -- scratch that. I'll move on.**

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1 MR. MILLER: Hey, Katie, I'm sure we're

2 interested in a break, but if you're close to

3 wrapping up a line of questioning or something, we

4 could wait a few minutes. If you want to take a

5 break.

6 MS. MANTOAN: This is fine. Thanks.

7 THE VIDEOGRAPHER: The time is 2:34.

8 We're going off the record.

9 (Short recess was taken from 2:34 p.m.

10 until 2:44 p.m.)

11 THE VIDEOGRAPHER: The time is 2:44.

12 We are back on the record.

13 BY MS. MANTOAN:

14 **Q. Just a couple more questions about the**

15 **second amended complaint. Well, I shouldn't say**

16 **that because whenever a lawyer says, "I just have a**

17 **couple more questions."**

18 MR. MILLER: I know, it's never -- it's

19 never a couple more.

20 MS. MANTOAN: Yeah.

21 BY MS. MANTOAN:

22 **Q. So going back to -- I don't know whether to**

23 **call them the main analyses, but the analyses in**

24 **Paragraphs 13 through 17. Is there -- is there**

25 **anything in those analyses that identifies or**

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1 studies the cause of this pay gap in that specific
2 analysis?
3 MR. MILLER: Objection. Vague as to cause
4 and also if you're asking for a legal conclusion,
5 obviously he can't testify as to that.
6 THE WITNESS: So I can answer?
7 MR. MILLER: Yes.
8 THE WITNESS: Okay.
9 Well, I think -- I mean, the regression,
10 what a regression does is look at average
11 differences in pay by gender. And then when we --
12 when we're controlling for variables, such as the
13 ones listed here, time in company, prior experience,
14 and so forth, we're effectively indicating that
15 those factors are not explaining why there's a pay
16 disparity.
17 So the underlying cause, I mean, you know,
18 one possibility is that there's discrimination, but
19 there could be other possibilities.
20 MS. MANTOAN: Okay. I guess --
21 THE WITNESS: And it's not any of those
22 controls.
23 MS. MANTOAN: Okay.
24 BY MS. MANTOAN:
25 **Q. Does the model, whose results are presented**

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1 in Paragraphs 13 through 17, does it study the
2 impact of any particular practice of Oracle's on
3 pay?
4 MR. MILLER: Objection. Again, as to -- I
5 guess vague or --
6 I mean -- I'm sorry, Counsel. The reason
7 I'm -- I'm raising this objection is that if you're
8 asking him to come to a legal conclusion, I don't
9 think that's appropriate. I guess I'm not sure if
10 that's what you're asking.
11 MS. MANTOAN: Yeah, I'm not intending to
12 ask about a legal conclusion. I'm just asking if
13 there's any, like, specific practice or specific
14 type of behavior, specific conduct of Oracle that
15 this model is testing to determine whether or not
16 it -- it generates different outcomes for men and
17 women, or Asians or whites.
18 THE WITNESS: It could be discrimination.
19 It could be something else.
20 BY MS. MANTOAN:
21 **Q. When you say discrimination, are you --**
22 **it's not -- it's not --**
23 A. Well, I guess I -- I want to understand
24 what you mean by practice. Like, let's say that
25 Oracle is discriminating.

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1 **Q. Uh-hm.**
2 A. I -- I'm not saying that they are, but --
3 **Q. Uh-hm.**
4 A. -- then that would be captured in the fact
5 that we have a statistically significant pay
6 disparity.
7 **Q. But this model isn't telling you why that**
8 **disparity -- what's generating that disparity,**
9 **correct? It's telling you it's not these seven**
10 **things you controlled for, but it's not telling you**
11 **what is generating?**
12 A. Well, it could be discrimination.
13 **Q. Right. But it could be other things, as**
14 **you said?**
15 A. Yes.
16 **Q. Okay. Did OFCCP consider any facts when it**
17 **was developing the statistical models, whose results**
18 **are reported in the second amended complaint, that**
19 **it had not considered when developing the**
20 **statistical models whose results are presented in**
21 **the NOV?**
22 MR. MILLER: I'm going to instruct the
23 witness not to answer as it may reveal
24 attorney-client communications or work product.
25 ///

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1 BY MS. MANTOAN:
2 **Q. Did OFCCP obtain any facts between the time**
3 **it developed the statistical model underlying the**
4 **NOV and the time it developed the statistical model**
5 **underlying the SAC that relate to compensation at**
6 **Oracle?**
7 A. I don't know. It -- just to be clear,
8 you're saying facts that we had at the time of NOV?
9 **Q. Correct.**
10 A. Okay. So I'm not familiar. I -- I think I
11 said earlier, I -- I don't think I've reviewed the
12 NOV. I may have received it at one point, but I
13 don't know what's in it.
14 MR. MILLER: And I'll object that that's
15 outside the scope of the 30(b)(6), too.
16 BY MS. MANTOAN:
17 **Q. So keeping in mind that you're here as a**
18 **designee as a 30(b)(6) witness for the OFCCP, my**
19 **question is: Did OFCCP attempt to follow the --**
20 **attempt to follow Directive 307 in constructing the**
21 **statistical model in the second amended complaint?**
22 A. I don't know. I -- I think I said earlier
23 that I said I'm not familiar with the 307. I've
24 heard it mentioned, but I don't exactly know what's
25 in it.

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1 Q. Okay. Did OFCCP attempt to follow
2 Directive 2018-05 in constructing the statistical
3 model in the second amended complaint?

4 MR. MILLER: So I'm going to instruct the
5 witness not to answer that question as it would
6 reveal attorney work product or attorney work
7 product -- or attorney-client communications.

8 MS. MANTOAN: Okay. So what -- you're
9 instructing the witness not to answer whether the
10 agency attempted to follow its own directives in
11 constructing the complaint?

12 MR. MILLER: That's right. That's right.

13 MS. MANTOAN: Okay. So I do want to take
14 time, since we're here, to -- and there have been --
15 there was just an instruction not to answer. There
16 have been instructions not to answer throughout the
17 day, just to meet and confer on the record about
18 those objections. I think I identified earlier the
19 specific passages of the order that I think permit
20 the questioning that I was doing that you were
21 instructing the witness not to answer, just so that
22 those are on the record.

23 Those are that OFCCP may not withhold the
24 factual basis for the statistical model, including
25 the decisions about what factors to deem relevant or

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1 to control for. I'm on page 17 of at least one
2 version of the -- of the order. On that same page,
3 the order says, "OFCCP may not withhold answers to
4 what facts its attorneys and statisticians
5 considered when they made choices about the
6 statistical model."

7 On page 12 of that same order earlier, the
8 Court notes, "An attorney can be a fact witness and
9 offer evidence without breaching any privileges."
10 And the Court continues: "OFCCP may need to educate
11 its statisticians and/or investigators so they are
12 able to provide the basic factual information about
13 what OFCCP considered and answer questions about the
14 statistical model it relied on in the SAC."

15 So those are the reasons why I believe that
16 the questions that I posed about facts considered
17 are appropriate. Are there specific parts of that
18 order that you believe dictate something else or are
19 there reasons why you don't believe that those parts
20 of the order say what I read them to say?

21 MR. MILLER: So I don't think this is
22 related to the deposition and I'm not clear how we
23 can have a meet and confer with an issue you've
24 raised to me today on the record during a
25 deposition. So that strikes me as strange, Katie.

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1 The other thing is, I told you that I --
2 our reading of the order does not permit you to get
3 into the whys of the selection. The whys of the
4 individual factors, all of those kinds of things,
5 and those questions go squarely to the why.

6 So, you know, I -- we are certainly happy
7 to meet and confer about this, but the purpose of
8 the meet and confer, as I understand the judge's
9 order, is for us to attempt to have an informal
10 resolution in these disputes before they rise to the
11 level of motions practice. And I don't think on the
12 record with a court reporter is the way to have
13 those informal conversations. So we're happy to
14 talk to you about it. If you want to -- if you want
15 to write me some correspondence about it, we can set
16 up some time to talk, but I don't think we can
17 adequately meet and confer on the record at a
18 deposition.

19 MS. MANTOAN: Okay. Well, I'll just say
20 it's clear that you had given some thought to this
21 issue prior to the deposition because you came in
22 ready to make certain objections and to argue a
23 certain position with respect to what the order
24 complies, and I feel like I've made our positions
25 clear, made the record clear.

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1 And we also spent some time talking off the
2 record earlier about this exact issue, so the -- we
3 had additional conversations about the -- the -- the
4 privilege issue and the proprietary of the questions
5 I was asking.

6 So with that, I'm going to say I have no
7 further questions for Dr. Brunetti today, but I am
8 keeping the deposition open for all of the reasons
9 that I specified earlier on the record. In
10 addition, I think there were a few questions where I
11 asked certain information about OFCCP, what it knew,
12 what it did, and there was no objection, but
13 Dr. Brunetti just said that he didn't know and I
14 think, as a 30(b)(6) he had an obligation to provide
15 and come to the deposition educated about certain
16 things with respect to the agency at large, not just
17 his particular knowledge. So I'm also going to keep
18 the deposition open to potentially need to ask
19 additional questions about that.

20 And I -- I think, also, with respect to
21 the, you know, log files, potentially correspondence
22 that directs the -- provides the instructions that
23 he was given in conducting the statistical model,
24 it's possible some of those documents that we
25 discussed at the deposition would probably warrant

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1 reopening the deposition to ask questions about
 2 them. So, that is what I have to say at this point.
 3 Do you have any questions?
 4 MR. MILLER: I've got nothing to say.
 5 MS. MANTOAN: Okay.
 6 THE VIDEOGRAPHER: All right. That
 7 concludes the deposition for today.
 8 The time is 2:55. We're going off the
 9 record.
 10 THE REPORTER: So I will send you the rough
 11 tonight and the final by Monday.
 12 MR. MILLER: And I will get back to you
 13 about when I get to order the transcript.
 14 (The deposition of 30(b)(6) - MICHAEL J.
 15 BRUNETTI was concluded at 2:55 p.m.)
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1 I, the undersigned, a Certified Shorthand
 2 Reporter of the State of California, do hereby
 3 certify:
 4 That the foregoing proceedings were taken
 5 before me at the time and place herein set forth;
 6 that any witnesses in the foregoing proceedings,
 7 prior to testifying, were placed under oath; that a
 8 verbatim record of the proceedings was made by me
 9 using machine shorthand which was thereafter
 10 transcribed under my direction; further, that the
 11 foregoing is an accurate transcription thereof.
 12 I further certify that I am neither
 13 financially interested in the action nor a relative
 14 or employee of any attorney of any of the parties.
 15 Further, that if the foregoing pertains to
 16 the original transcript of a deposition in a federal
 17 case, before completion of the proceedings, review of
 18 the transcript [X] was [] was not requested.
 19 IN WITNESS WHEREOF, I have this date
 20 subscribed my name.
 21
 22 Dated: July 22nd, 2019 
 23 _____
 24 MONICA LEPE-GEORG, No. 11976
 25

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1 DECLARATION UNDER PENALTY OF PERJURY
 2 Case Name: OFCCP vs. Oracle America, Inc.
 3 Date of Deposition: 07/17/2019
 4 Job No.: 10058065
 5
 6 I, MICHAEL BRUNETTI - 30(B)(6), hereby certify
 7 under penalty of perjury under the laws of the State of
 8 _____ that the foregoing is true and correct.
 9 Executed this ____ day of
 10 _____, 2019, at _____.
 11
 12
 13 _____
 14 MICHAEL BRUNETTI - 30(B)(6)
 15
 16 NOTARIZATION (If Required)
 17 State of _____
 18 County of _____
 19 Subscribed and sworn to (or affirmed) before me on
 20 this ____ day of _____, 20__,
 21 by _____, proved to me on the
 22 basis of satisfactory evidence to be the person
 23 who appeared before me.
 24 Signature: _____ (Seal)
 25

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1 DEPOSITION ERRATA SHEET
 2 Case Name: OFCCP vs. Oracle America, Inc.
 3 Name of Witness: Michael Brunetti - 30(b)(6)
 4 Date of Deposition: 07/17/2019
 5 Job No.: 10058065
 6 Reason Codes: 1. To clarify the record.
 7 2. To conform to the facts.
 8 3. To correct transcription errors.
 9 Page ____ Line ____ Reason ____
 10 From ____ to ____
 11 Page ____ Line ____ Reason ____
 12 From ____ to ____
 13 Page ____ Line ____ Reason ____
 14 From ____ to ____
 15 Page ____ Line ____ Reason ____
 16 From ____ to ____
 17 Page ____ Line ____ Reason ____
 18 From ____ to ____
 19 Page ____ Line ____ Reason ____
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 25 Page ____ Line ____ Reason ____
 26 From ____ to ____

1 DEPOSITION ERRATA SHEET

2 Page ____ Line ____ Reason ____

3 From _____ to _____

4 Page ____ Line ____ Reason ____

5 From _____ to _____

6 Page ____ Line ____ Reason ____

7 From _____ to _____

8 Page ____ Line ____ Reason ____

9 From _____ to _____

10 Page ____ Line ____ Reason ____

11 From _____ to _____

12 Page ____ Line ____ Reason ____

13 From _____ to _____

14 Page ____ Line ____ Reason ____

15 From _____ to _____

16 Page ____ Line ____ Reason ____

17 From _____ to _____

18 Page ____ Line ____ Reason ____

19 From _____ to _____

20 Page ____ Line ____ Reason ____

21 From _____ to _____

22 _____ Subject to the above changes, I certify that the transcript is true and correct

23 _____ No changes have been made. I certify that the transcript is true and correct.

24

25 _____

MICHAEL BRUNETTI - 30(B)(6)

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