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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.)
))
7 ORACLE AMERICA, INC.,)
))
8 Defendant.)
_____)
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10
11
12 VIDEOTAPED DEPOSITION OF SHIRONG "ANDY" LEU
13 Volume I
14 San Francisco, California
15 Monday, July 1st, 2019
16
17
18
19
20
21 REPORTED BY:
MONICA LEPE-GEORG
22 CSR No. 11976
23 Job No. 10057521
24
25

Page 2

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2
3 VIDEOTAPED DEPOSITION OF SHIRONG "ANDY"
4 LEU, VOLUME NO. I, taken on behalf of DEFENDANT, at
5 405 Howard Street, 10th Floor, San Francisco,
6 California, beginning at 9:37 a.m. and ending at
7 5:10 p.m., on Monday, July 1st, 2019, before Monica
8 Lepe-Georg, Certified Shorthand Reporter No. 11976.
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Page 3

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Page 4

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20
21
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			Page 5
1	INDEX OF EXAMINATIONS		
2			
3		PAGE	
4	EXAMINATION BY MS. MANTOAN	11	
5			
6			
7			
8	INDEX OF EXHIBITS		
9			
10	EXHIBIT NO.	DESCRIPTION	PAGE
11	Exhibit 1	Defendant of Oracle's Notice	15
12		of Deposition of Shirong	
13		(Andy) Leu	
14	Exhibit 2	March 11, 2016, letter to	82
15		Safra A. Catz from Robert	
16		Doles	
17	Exhibit 3	October 26, 2017, e-mail from	86
18		Marc A. Pilotin to Erin M.	
19		Connell, cc'd to various	
20		others	
21	Exhibit 4	Document Bates-Nos.	88
22		DOL000005298 to -5320	
23	Exhibit 5	March 23, 2015, e-mail from	151
24		Brian L. Mikel to Shauna	
25		Holman-Harries	

			Page 7
1	INDEX OF EXHIBITS (Continued)		
2			
3	Exhibit 13	United States Department of	194
4		Labor Office of Federal	
5		Contract Compliance Programs,	
6		Renumbered on 9/16/2013 as	
7		DIR 2013-03	
8	Exhibit 14	Federal Contractor Compliance	263
9		manual	
10	Exhibit 15	Diagram drawn by Mr. Leu at	280
11		deposition	
12			
13			
14			
15			
16			
17	UNANSWERED QUESTIONS		
18			
19	So with respect to the Oracle's	80	8
20	headquarters' compliance review,		
21	Ms. Wipper sent you a data file and		
22	sent you instructions on which		
23	factors to include in your		
24	regression; is that correct?		
25			

			Page 6
1	INDEX OF EXHIBITS (Continued)		
2			
3	Exhibit 6	November 19, 2019, letter to	159
4		Shauna Holman-Harries from	
5		Hoan Luong	
6	Exhibit 7	Document Bates-Nos.	162
7		DOL000001365 to -1366	
8	Exhibit 8	E-mail thread, top one dated	165
9		December 11, 2014, from Shauna	
10		Holman-Harries to Hoan Luong,	
11		cc'd to various others	
12	Exhibit 9	June 8, 2016, letter to	173
13		Safra A. Catz and Mark Hurd	
14		from Janette Wipper	
15	Exhibit 10	Defendant Oracle's	180
16		Interrogatories, Set Two, and	
17		OFCCP's Response,	
18		Interrogatory No. 27	
19	Exhibit 11	Second Amended Complaint	187
20	Exhibit 12	E-mail thread, top one dated	191
21		2/26/2015 from Shauna	
22		Holman-Harries to Hoan Luong,	
23		cc'd to various others	
24			
25			

			Page 8
1	UNANSWERED QUESTIONS (Continued)		
2			
3	In connection with the compliance	203	17
4	review of Oracle's headquarters'		
5	location, after you received Oracle's		
6	data, did you ask any questions to		
7	try to understand Oracle's pay system		
8	before you ran your analysis?		
9			
10	And did you conduct a normality check	239	16
11	in connection with your analysis of		
12	the data for Oracle's headquarters'		
13	location?		
14			
15	Did your statistical models of	278	12
16	Oracle's headquarters' location		
17	include any controls for performance?		
18			
19			
20			
21			
22			
23			
24			
25			

Page 9

1 San Francisco, California
 2 Monday, July 1st, 2019
 3 9:37 a.m. - 5:10 p.m.
 4 ---oOo---

5 MR. ELIASOPH: And we will be ordering a
 6 copy.
 7 MS. MANTOAN: I'll take a rough earlier and
 8 the final by the end of this week.
 9 THE VIDEOGRAPHER: Good morning. We are on
 10 the record. The time is 9:37 a.m. on July 1st,
 11 2019.
 12 This begins the videotaped deposition of
 13 Shirong Leu taken in the matter Office of Federal
 14 Contract Compliance Program.
 15 THE WITNESS: The last name spelled is
 16 wrong, L-e-u, is not L-i-u.
 17 THE VIDEOGRAPHER: It's L-e-u?
 18 THE WITNESS: That's correct.
 19 THE VIDEOGRAPHER: Okay. Thank you.
 20 THE WITNESS: And the E is sign -- you
 21 know, just call me Leu, yeah. Thank you.
 22 MR. ELIASOPH: Okay. But you don't need to
 23 worry about the transcript.
 24 THE WITNESS: Okay.
 25 MR. ELIASOPH: Okay.

Page 10

1 THE VIDEOGRAPHER: All right. Let me state
 2 that one more time.
 3 This is taken in the matter Office of
 4 Federal Contract Compliance Programs, United States
 5 Department of Labor versus Oracle America, Inc.,
 6 filed in the United States Department of Labor
 7 Office of Administrative Law Judges, case number of
 8 which is 2017-OFC-00006.
 9 This deposition is being held at Orrick
 10 located at 405 Howard Street, San Francisco,
 11 California.
 12 My name is Marisa Ramos. I'm your
 13 videographer; the court reporter today is Monica
 14 Lepe-Georg, and we are both here representing Aptus.
 15 Please note that audio and video recording
 16 will continue to take place unless all parties agree
 17 to go off the record. Microphones are sensitive and
 18 may pick up whispers or private conversations.
 19 Please silence cellphones and other
 20 electronic devices or place them away from the
 21 microphone as it may interfere with the deposition
 22 audio.
 23 Counsel, will you please state your
 24 appearance and affiliations for the record after
 25 which the court reporter will swear in the witness.

Page 11

1 MS. MANTOAN: Kathryn Mantoan from Orrick,
 2 Herrington & Sutcliffe for defendant Oracle America,
 3 Incorporated.
 4 MS. JAMES: Jessica James from Orrick,
 5 Herrington & Sutcliffe for Oracle.
 6 MR. ELIASOPH: Ian Eliasoph for the
 7 Solicitor's Office of the U.S. Department of Labor
 8 representing OFCCP.
 9 THE WITNESS: Shirong Leu, OFCCP and
 10 statisticians.
 11 MS. MANTOAN: So good morning, Dr. Leu.
 12 (Witness sworn.)
 13 ---oOo---

14 SHIRONG "ANDY" LEU,
 15 having been administered an oath, was examined and
 16 testified as follows:
 17 EXAMINATION
 18 BY MS. MANTOAN:
 19 **Q. Good morning, Dr. Leu.**
 20 A. Good morning.
 21 **Q. I just introduced myself, but just now, to**
 22 **you, my name is Kathryn Mantoan and I'm here to take**
 23 **your deposition today.**
 24 A. Uh-hm.
 25 **Q. Have you ever given a deposition before?**

Page 12

1 A. Um, no. This is first time.
 2 **Q. Okay. Let me go over some of the ground**
 3 **rules and basics for the deposition.**
 4 A. Uh-hm.
 5 MR. ELIASOPH: Sorry. The transcript says
 6 "Dr. LaJeunesse," which just really surprised me.
 7 If we can just clear that up that this is Dr. Leu
 8 and not LaJeunesse.
 9 MS. MANTOAN: I believe I said "Dr. Leu."
 10 MR. ELIASOPH: Okay.
 11 THE REPORTER: One second.
 12 BY MS. MANTOAN:
 13 **Q. So Dr. Leu, I'd like to go over some of the**
 14 **ground rules for a deposition.**
 15 A. Yes.
 16 **Q. So we're here today to take your deposition**
 17 **with respect to a lawsuit brought by the Office of**
 18 **Federal Contract Compliance Programs against Oracle**
 19 **America, Inc.**
 20 **Do you understand that?**
 21 A. Uh, yes.
 22 **Q. And the court reporter has placed you under**
 23 **oath and you will be testifying under oath for the**
 24 **remainder of the deposition.**
 25 **Do you understand that?**

Page 13

1 A. I understand.
2 **Q. And that oath has the same force and effect**
3 **as if you were testifying in a court of law.**
4 **Do you understand that?**
5 A. Yes.
6 **Q. Because you are under oath it's extremely**
7 **important that your testimony today be truthful,**
8 **accurate, and complete.**
9 A. Uh-hm.
10 **Q. Do you understand that?**
11 A. Yes, I do.
12 **Q. In addition, because you're testifying**
13 **under oath, it's important that you understand the**
14 **questions I'm asking you. So if at any time my**
15 **question is in any way unclear or ambiguous please**
16 **let me know so I can clarify or rephrase it.**
17 **Will you do that?**
18 A. Yes, I will do that.
19 **Q. Okay. And if you don't understand my**
20 **question but you go ahead and answer it, I will just**
21 **have to presume that you understood the question.**
22 **Do you understand that?**
23 A. I understand that.
24 **Q. Because your testimony is important the**
25 **court reporter here is transcribing the questions I**

Page 14

1 **ask and the answers you give so I ask that you let**
2 **me finish the question so the court reporter can**
3 **take it down before you begin your answer.**
4 **Can you do that?**
5 A. Yes.
6 **Q. In addition because the court reporter is**
7 **taking things down it's important that you give your**
8 **answers orally, so instead of nodding your head or**
9 **saying "uh-huh" or "huh-uh," saying "yes" or "no."**
10 **Can you do that?**
11 A. Yeah.
12 **Q. At the conclusion of the deposition the**
13 **court reporter will give you a copy of the**
14 **transcript to review. At that time you will have an**
15 **opportunity to correct your testimony as you deem**
16 **necessary; however, if you make changes to your**
17 **transcript after today's deposition I, or my**
18 **colleagues, will have the opportunity to comment on**
19 **that at trial, on the fact that you changed your**
20 **answers, so for that reason it's important that you**
21 **give your best testimony today.**
22 A. Uh-hm.
23 **Q. Do you understand that?**
24 A. Yes, I do.
25 **Q. Okay. Is there any reason you know of that**

Page 15

1 **you can't give truthfully, complete, and accurate**
2 **testimony today?**
3 A. Can you repeat the question again?
4 **Q. Sure. Is there any reason you know of that**
5 **you can't give truthful, complete, and accurate**
6 **testimony today?**
7 A. No.
8 THE REPORTER: Exhibit 1.
9 (Exhibit 1 was marked for identification.)
10 BY MS. MANTOAN:
11 **Q. Dr. Leu, the court reporter has marked**
12 **Exhibit 1 and placed it in front of you.**
13 **Have you seen this document before?**
14 A. First time.
15 **Q. Okay. But you -- you did understand, when**
16 **you came here today, that you were here to give your**
17 **deposition in a matter concerning Oracle, correct?**
18 A. Yes, kind of witness, right?
19 **Q. As a witness, correct.**
20 A. As a witness, okay.
21 **Q. Did you -- did you meet with anyone in**
22 **order to prepare for this deposition?**
23 A. No, uh-hm.
24 **Q. Okay. Did you review any documents in**
25 **order to prepare for this deposition?**

Page 16

1 A. No.
2 **Q. You can set that aside.**
3 A. Okay.
4 **Q. I want to start with some questions about**
5 **your educational background.**
6 A. Sure.
7 **Q. What was the first school that you attended**
8 **after high school?**
9 A. It's a normal -- Taiwan Normal University
10 in Kaosiung, and that's -- looks like -- I graduate
11 from there 197- -- 1976, I thought it was, or '77.
12 I cannot recall exactly.
13 **Q. And what was your major?**
14 A. At that time major is education and
15 chemistry -- chemistry education.
16 **Q. And did you graduate from that university?**
17 A. Yes, I did.
18 **Q. What degree did you obtain?**
19 A. BS, uh-hm.
20 **Q. And did you pursue further education at any**
21 **point after the BS?**
22 A. Yeah. I came to US -- USA in 1981 and I
23 went to Pittsburg State University, Kansas. And the
24 major in -- it's called general technology, and
25 basically is an electronic technology -- you know,

Page 17

1 electronic technology. Then --

2 **Q. And what -- I'm sorry.**

3 **Did you graduate from that institution?**

4 A. Yes. It's called Pittsburg State

5 University in Kansas, yeah.

6 **Q. Okay.**

7 A. It's a small -- you know, community -- it's

8 not community college. It's about 10,000 students,

9 you know --

10 **Q. And --**

11 A. --'cause they have a relationship with

12 Taiwan. You know, they kind of assist the

13 school, --

14 **Q. I see.**

15 A. -- so I got something like assistantship.

16 That's why -- that's 1981.

17 **Q. And did you get a second BS or some other**

18 **degree --**

19 A. Master degree.

20 **Q. -- from the university?**

21 A. Master degree in technology, yeah.

22 **Q. I --**

23 MR. ELIASOPH: Make sure she finishes --

24 THE WITNESS: Oh, okay.

25 MR. ELIASOPH: -- her question --

Page 18

1 THE WITNESS: Okay.

2 MR. ELIASOPH: -- before you start

3 answering.

4 BY MS. MANTOAN:

5 **Q. Sometimes you may anticipate where the**

6 **question is going or feel that you know that I'm**

7 **going to -- what I'm going to ask, but again for the**

8 **benefit of the reporter, as your counsel**

9 **indicated --**

10 A. Okay.

11 **Q. -- try to let me finish.**

12 A. Sure.

13 **Q. So you got a master's degree in technology**

14 **from the University in Kansas, correct?**

15 A. Yeah -- yes. Yeah.

16 **Q. And that was in 1981?**

17 A. 1981, yes.

18 **Q. Okay. Did you then immediately pursue**

19 **additional educational studies or did you start**

20 **working at that point?**

21 A. That's around 1983 and I worked probably

22 summertime in Los Angeles. One of the -- they're

23 called All Computer -- a company called All

24 Computer, and I was salesperson.

25 I answer the phone and talk with the

Page 19

1 client, you know, in a sale output like today.

2 **Q. What's the -- how do you spell the name of**

3 **the company?**

4 A. It's called A, as Apple, I-I, like lucky,

5 lucky, All Computer, Incorporations.

6 **Q. All --**

7 A. I don't know they still have it or not.

8 It's been long time. It's summertime, yeah.

9 **Q. And you started working for them in the**

10 **summer --**

11 A. Yeah.

12 **Q. -- of 1981?**

13 A. Yeah -- 19- -- no, 1983. Because 1981

14 is -- went to the -- for the master's degree and a

15 couple years graduate, 1983 work in there, but it's

16 very short time.

17 Then I -- I found a good job in Taiwan, so

18 I went back to Taiwan and I pass certain criteria

19 and a test to become associate professor with master

20 degree at the time, you know. They're called

21 Chihlee Institute of Technology, and I was an

22 electronics instructors at the time.

23 **Q. And what -- when you say you were an**

24 **electronics instructor, is that --**

25 A. It's electronic technology, you know. At

Page 20

1 that time it looked like -- for example, is a major

2 called electronics in the college and, you know, I

3 was teaching, like -- like an interface, a computer

4 interface. So, for example, I -- one of class I

5 teach is called, like -- you know -- like, a machine

6 called an assembly language.

7 Assembly language is -- the label is

8 between, you know, like -- like a machine call and

9 apply label of a computer program language and

10 they -- they can talk with the machine and a

11 computer, you know, back and forth.

12 That's the class that I recall, but any --

13 another class -- I also teach English, too.

14 **Q. So let me ask a little bit more about the**

15 **master's degree that you got in technology.**

16 A. Okay.

17 **Q. Did that involve courses in computer**

18 **languages?**

19 A. Just at that time I take some pascal and --

20 THE REPORTER: I'm sorry. At that time...

21 THE WITNESS: I took, like, one class

22 called pascal language -- you know, Pascal.

23 **Q. Is that P-a-s-c-a-l?**

24 A. -- c-a-l, yeah. Pascal.

25 It's the language after the four training.

Page 21

1 Maybe -- I don't know, maybe I'm too old already,
 2 but you guys probably can recall it's called Pascal,
 3 and another one called like -- I forgot that one.
 4 That one usually is AI -- is AI language, you know,
 5 is artificial intelligence, you know, language, but
 6 I forgot. It's involved about computer hydraulics,
 7 mechanic, and electronic automation control,
 8 something like that, yeah.

9 **Q. So you're familiar with the idea that there**
 10 **are many different programming languages that are**
 11 **used in computer?**

12 A. Yeah, yeah. Right now still learning the C
 13 language, something like that.

14 **Q. Okay. So just going back to the timeline.**
 15 **It sounds like in 1983 you returned to**
 16 **Taiwan to become an associate professor?**

17 A. Uh-hm. And after that I taught about
 18 almost 3 -- 3.5-some years. And in 1987 and I come
 19 back to here, to USA.

20 **Q. And "here" means to the United States?**

21 A. United States, yes.

22 **Q. And, again, a note to try to let me finish**
 23 **the question --**

24 A. Okay.

25 **Q. -- in its entirety before you reply.**

Page 22

1 A. So, I'm sorry, yes.

2 **Q. It's an artificial setting, the deposition?**

3 A. Sure, uh-hm. Okay.

4 **Q. So in 1987 you returned and what work did**
 5 **you do in the United States when you returned in**
 6 **1987?**

7 A. At that time I just try to apply school
 8 for, like, a Ph.D. programs and, by the way, I do
 9 some, like, tutoring at that time because I come
 10 here, I cannot find job right away, so I do the SAT
 11 tutoring and do, like, AP -- AP studies class at
 12 that time.

13 Before I got -- I should -- I'm sorry. You
 14 don't ask. I'm sorry. Sorry about that.

15 **Q. So you said you were applying to Ph.D.**
 16 **programs.**

17 A. Uh-hm.

18 **Q. Were you admitted to a Ph.D. program?**

19 A. I don't understand your question.

20 **Q. Were you -- did you begin a Ph.D. program?**

21 A. No. I kind of work one years and a half.
 22 One is do the SAT and the other one I also work
 23 nighttime in some of the restaurant as a way -- as a
 24 waiter.

25 **Q. Okay. At some point you did begin a Ph.D.**

Page 23

1 **program, correct?**

2 A. 19- -- since 1989.

3 **Q. And where did you begin that program?**

4 A. Will be Greeley, Colorado.

5 **Q. Is that the name of the city?**

6 A. City, yes. G-r-e-e-l-e-y.

7 **Q. And what's the name of the institution?**

8 A. University of Northern Colorado.

9 **Q. Okay. And what was the Ph.D. in?**

10 A. Apply statistics.

11 **Q. What exposure to statistics had you had**
 12 **prior to beginning the Ph.D. program?**

13 A. You mean a requirement?

14 **Q. What courses had you taken on statistics,**
 15 **if any, before you started the Ph.D. program?**

16 A. I had calculus. I had precalculus. I had
 17 basic statistics, you know.

18 And also -- the school also had the
 19 sister-school relationship with us, you know, in
 20 Taiwan, so...

21 **Q. And why did you decide to pursue a Ph.D. in**
 22 **applied statistics?**

23 A. Because I work -- at that time my job is
 24 not, like, a full-time job, you know, I do the SAT
 25 and I also worked in the nighttime for a, you know,

Page 24

1 restaurant/waiter job. So I think -- and because I
 2 know I like the math, and I ask my friend, you know,
 3 and they said, "Oh, statistics probably have a good
 4 job in the future," that's why I started looking for
 5 the programs.

6 **Q. And you completed your Ph.D. in 1994; is**
 7 **that correct?**

8 A. That's correct.

9 **Q. Okay. Did any of your coursework in your**
 10 **Ph.D. program involve statistical models of**
 11 **employment decisions?**

12 A. Employ- -- no. Not specifically for
 13 employment, no.

14 **Q. Did any of your coursework in the Ph.D.**
 15 **program involve the relationship between statistical**
 16 **modeling and evaluating discrimination claims?**

17 A. No, not specifically.

18 **Q. Okay. Have you ever attended law school?**

19 A. No.

20 **Q. Have you ever taken any classes on the law?**

21 A. No.

22 **Q. Do you have any professional licenses or**
 23 **certifications?**

24 A. Yes, I do.

25 **Q. What are those?**

Page 25

1 A. American Society Institute -- I forgot the
2 name exactly. ACIVS. There's inventory -- there's
3 inventory control. American Inventory Control
4 Society. We call something called CPIM.
5 **Q. What does CPIM stand for?**
6 A. P is production, I is inventory.
7 **Q. Okay.**
8 A. And I took -- I have to pass a
9 six-subject -- so usually one subject a year and
10 after they give a very big certificate, CPIM, a
11 certificate.
12 **Q. Okay.**
13 A. It is a kind of the supply chain
14 certificate, yeah. APICS -- I'm sorry APICS, yes.
15 **Q. And did any of the study that you did to**
16 **obtain that certification focus on supply chain**
17 **issues in technology companies?**
18 A. Can you re-address the question again.
19 **Q. Did any of the study that you did to obtain**
20 **that certification focus on supply chain issues in**
21 **technology companies in particular?**
22 A. So can I re-address the question and see --
23 I want to make sure that I understand the
24 question very well.
25 **Q. Okay.**

Page 26

1 A. So your questions asks me the -- the supply
2 chain certification of the --
3 THE REPORTER: I'm sorry?
4 THE WITNESS: "That you did to obtain that
5 certificate for" --
6 MR. ELIASOPH: Could you break the question
7 down into parts?
8 THE WITNESS: Yeah. It's kind of very
9 wide. I don't know how --
10 MS. MANTOAN: Sure.
11 THE WITNESS: -- to focus.
12 BY MS. MANTOAN:
13 **Q. So you obtained a certification related to**
14 **supply chain management; is that correct?**
15 A. Yes.
16 **Q. Okay. And you had to study certain topics**
17 **in order to obtain that certification, right?**
18 A. Uh-hm. Uh-hm.
19 MR. ELIASOPH: Remember to say "yes"
20 though.
21 THE WITNESS: Oh, okay. Okay.
22 BY MS. MANTOAN:
23 **Q. Was that a "yes"?**
24 A. Can you -- the last question, can you
25 repeat it?

Page 27

1 **Q. So there was a course of study that led to**
2 **a test that led to the certification, correct?**
3 A. Uh-hm. Uh-hm.
4 **Q. Is that right?**
5 A. Yeah.
6 **Q. Did anything in that course of study focus**
7 **on supply chain issues specifically in technology**
8 **companies or the technology sector?**
9 A. No.
10 **Q. Okay. Aside from this supply chain**
11 **certification do you have any other professional**
12 **certifications or licenses?**
13 A. No.
14 **Q. Are you a member of any professional**
15 **organizations?**
16 A. Statistical Association.
17 **Q. Is that the American Statistical?**
18 A. Yeah, American Statistical, yes.
19 **Q. And how does one become a member of the**
20 **American Statistical Association?**
21 **Is it by invitation or is it something**
22 **anyone can join?**
23 A. Anyone can join if you like. You know, you
24 can apply whenever you want, yeah.
25 **Q. Okay. After completing your Ph.D. in 1994,**

Page 28

1 **have you taken any other educational courses, aside**
2 **from those connected to that supply chain**
3 **certification?**
4 A. Yeah. I took the Six Sigma Training.
5 **Q. What is the Six Sigma Training?**
6 A. Sigma is kind of quality -- control,
7 quality insurance.
8 **Q. Why did you take that course?**
9 A. Because at that time, you know, looking for
10 a job and I tried to, you know, make myself to know
11 a little bit -- a little bit more than, you know, so
12 I think, "Oh, that probably involved a lot of
13 statistics." That's why I thought "Okay, that's not
14 the" -- so I just joined.
15 **Q. Did you ever seek an academic position**
16 **after completing your Ph.D.?**
17 A. No.
18 **Q. Did you -- had you secured a job at the**
19 **time you obtained your Ph.D.?**
20 **So when you graduated from the Ph.D.**
21 **program did you already have a job that you --**
22 **A. No. No.**
23 **Q. -- went to next? Okay.**
24 **So what was your first job after completing**
25 **the Ph.D.?**

Page 29

1 A. I was in Gateway Computer. And, you know,
2 I went there, I applied, but they don't have job for
3 me so -- but I think I have to leave.
4 **Q. So did you work -- I'm sorry, did you work**
5 **there or you just applied to work there?**
6 A. I worked there -- eventually I worked
7 there.
8 **Q. So I'm asking about the first job after you**
9 **completed your Ph.D. in 1994.**
10 A. Yes, in -- like a -- Gateway Computer.
11 **Q. Okay. What year did you start at Gateway**
12 **Computer?**
13 A. Technical support.
14 **Q. And in what year did you start?**
15 A. Looks like 1996, uh-hm.
16 **Q. So what did you do between 1994 and 1996**
17 **for employment, if anything?**
18 A. I -- basically I went to the -- I went to
19 New England, the Institute of -- Institute of
20 Medical Science.
21 I trained in Tufts University between
22 those -- year before I went to the Gateway. And
23 it's kind of the -- the program is epidemiology --
24 **Q. Epidemiology?**
25 A. -- training.

Page 30

1 Yes. In the Tufts University.
2 **Q. Did that -- did that result in any degree?**
3 A. It's not degree. It's just kind of
4 training, you know, and they give you a certificate,
5 you know, something like that.
6 **Q. Did you complete the program at Tufts?**
7 A. Yeah. Yeah. It's kind of related public
8 health, yeah, public health.
9 **Q. Was there any particular public health**
10 **issue that was the focus of your work in the program**
11 **at Tufts?**
12 A. No, not that I recall.
13 **Q. Okay. So if I understand correctly, you**
14 **completed that program at Tufts in 1996 and then you**
15 **went to work at Gateway Computer in technical**
16 **support?**
17 A. Yes.
18 **Q. Was the technical support role you had at**
19 **Gateway Computer from -- supporting other Gateway**
20 **Computer employees or was it supporting external**
21 **customers of Gateway Computer?**
22 A. External customer.
23 **Q. Would they call in with questions and you**
24 **would answer those on the phone?**
25 A. That's correct, yes.

Page 31

1 **Q. Was there a particular product or group of**
2 **products that you did technical support for?**
3 A. You -- generally you cover anything -- any
4 issues of computers.
5 **Q. Any issues with Gateway's computers?**
6 A. With Gateway computers, yes.
7 **Q. Were you supporting software, or hardware,**
8 **or both?**
9 A. Okay. Can you re-dress the question
10 because it's very wide for me.
11 "Software, hardware," I don't know. It's
12 too wide for me, the question.
13 **Q. So in your technical support role at**
14 **Gateway were you fielding questions only about**
15 **issues with the software, only about issues with the**
16 **hardware, or with both kinds?**
17 A. Both -- both -- both, yeah.
18 **Q. Did you find that you were using your**
19 **statistical training as part of that job at Gateway**
20 **Computer?**
21 A. No.
22 **Q. Did you ever have a development role at**
23 **Gateway Computer -- actually developing hardware or**
24 **software?**
25 A. After probably seven or eight months, and

Page 32

1 one of the manager in marketing -- oh, no, in
2 manufacturing, his name called Skip Post, he found
3 my resume have statistics so he promote me into the
4 statistician -- statistician after probably seven
5 or -- I cannot recall exactly the months. They
6 promote me into the manufacturing statisticians, you
7 know.
8 And -- but after probably couple, three
9 months, there's a VP -- VP marketing, he saw my
10 resume, so he moved me to marketing industry in
11 marketing department, and the -- report to, you
12 know, marketing department.
13 At that time I started the statistics
14 through the forecasting, you know, something like
15 that.
16 **Q. So were any of those roles roles actually**
17 **developing software or hardware?**
18 A. No. I don't develop the software.
19 **Q. Do you know how to develop software?**
20 A. If it's basic level, it's okay, but high
21 level, no. You know, they have...
22 **Q. When did your employment at Gateway**
23 **Computer end?**
24 A. I don't know. It's either 1998 or 1999,
25 before I moved to the Answerthink computer --

Page 33

1 Answerthink consulting company in Florida.
2 **Q. So in 1998 or 1999 you left?**
3 A. Yeah, 1998 or 1999. I cannot recall which
4 years. I cannot.
5 **Q. Okay. And my question -- just so that I'm**
6 **clear.**
7 **In 1998 or 1999 --**
8 A. Uh-hm.
9 **Q. -- you left Gateway Computer and you moved**
10 **to a company called Answerthink consulting?**
11 A. Answerthink consulting, yes.
12 **Q. And again --**
13 A. Sure.
14 **Q. -- try to let me get the whole question out**
15 **even if you can anticipate what the question will**
16 **be.**
17 A. Okay, okay.
18 **Q. Is that okay?**
19 A. Yeah, it's okay. Thank you.
20 **Q. And what -- what was your role at**
21 **Answerthink consulting?**
22 A. I went out, installed software and
23 customized with their hardware. And I trained them
24 how to do the forecasting.
25 **Q. What kind of forecasting?**

Page 34

1 A. Like the units -- the sales units,
2 manufacture units, is a customer demand, you know.
3 **Q. So were the customers that you were working**
4 **with at Answerthink consulting businesses?**
5 A. One is Ohio, one time is -- I think a cash
6 register, the first job.
7 And the second job in Canada, I forgot
8 which one, I forgot the name already.
9 **Q. But it was for businesses, not individual**
10 **consumers, correct?**
11 A. Say again.
12 **Q. So the work that you were doing for**
13 **Answerthink consulting, am I correct that the**
14 **clients you worked with were businesses as opposed**
15 **to, like, individual consumers using home computers,**
16 **or things like that?**
17 A. No, it's a company.
18 **Q. Company?**
19 A. Uh-hm.
20 **Q. Businesses?**
21 A. Uh-hm.
22 **Q. Okay. How long were you at Answerthink**
23 **consulting?**
24 A. I think it's not too long. One year and
25 something, you know. Until 2002, I think -- 2001,

Page 35

1 2002, I think. Not too long. And -- yes.
2 **Q. Have you ever been terminated from any**
3 **position?**
4 A. Yes. That's Answerthink.
5 **Q. Okay.**
6 A. They said -- okay, well, yes.
7 **Q. What is your understanding of the reason**
8 **you were terminated from Answerthink?**
9 A. They told me because -- at that time, they
10 call the year 2000 -- you know, the IT, is kind of
11 the collapse. So they told me, you know, "If you
12 want earlier" -- "early leave," they give me \$5,000,
13 but if I still there until they figured out they
14 want to retire me, then you got nothing. So I
15 decided to just go -- got the \$5,000 and just go.
16 **Q. Okay. To your -- to your understanding,**
17 **have you ever been fired from any job?**
18 A. No.
19 **Q. So when you left Answerthink in 2001 or**
20 **2002, where did you next work?**
21 A. USDA, government.
22 **Q. Was this your first time working for the**
23 **U.S. --**
24 A. Government.
25 **Q. -- Government?**

Page 36

1 A. Yes.
2 **Q. And what was your first role at USDA?**
3 A. FSIS.
4 **Q. What does that stand for? Let me ask this,**
5 **is that food safety and inspection service?**
6 A. (Witness gives a thumbs up.)
7 **Q. "Yes"?**
8 A. Yes.
9 **Q. Okay. And what did you do at FSIS?**
10 A. Of course it's a statistics, you know, and
11 analysis -- and analysis.
12 **Q. Statistics and what? I'm sorry.**
13 A. Statistical analyst.
14 **Q. What kind of issues or questions were you**
15 **analyzing there?**
16 A. Just very variety. I cannot describe, you
17 know. Variety of them.
18 **Q. Can you give me some examples?**
19 A. It's kind of quality -- you know, quality
20 control. Quality control, the data -- you know, and
21 verify data. When they have data comes in, verify
22 the data and write a report, data is consistent or
23 not consistent.
24 **Q. Was the data about food safety?**
25 A. Yeah, about food safety or, like, they

Page 37

1 have -- onsite they didn't have slaughter data
2 onsite -- you know, onsite data. You know, onsite
3 data, they collect and sent to me and I do the -- to
4 verify, you know, and to -- like, a simple -- like a
5 descriptive analysis.
6 **Q. Okay. So descriptive statistics?**
7 A. Descriptive statistics, yes.
8 **Q. Were you doing hypothesis testing at FSIS?**
9 A. Very few, not always, you know. Basically
10 just they need a descriptive, you know, more than
11 the -- hypothesis testing, no.
12 **Q. Were you doing regression analyses at FSIS?**
13 A. No.
14 **Q. Did your role change at any time while you**
15 **were employed with FSIS?**
16 A. No.
17 **Q. Okay. And how long were you at FSIS?**
18 A. Two and a half.
19 **Q. So I think that takes us to around 2005?**
20 A. 2005, yeah.
21 **Q. Okay.**
22 A. Let's start with the -- okay. I'm sorry.
23 **Q. And where were you next employed after**
24 **FSIS?**
25 A. DOL OFCCP --

Page 38

1 THE REPORTER: DO --
2 THE WITNESS: DOL, department of labor.
3 Yeah, DOL. Sorry.
4 BY MS. MANTOAN:
5 **Q. Did you spend any time employed at the**
6 **employment standards administration?**
7 A. Yes, I do.
8 **Q. Is that part of DOL?**
9 A. That's correct.
10 **Q. Is that part of OFCCP?**
11 A. That's correct.
12 **Q. Is that the first place that you worked**
13 **after FSIS?**
14 A. Yes.
15 **Q. Okay. What is the employment standards**
16 **administration?**
17 A. Say again.
18 **Q. What is the employment standards**
19 **administration?**
20 A. Oh, they -- usually they make some policy
21 for us to, you know, to follow or whatever, you
22 know.
23 **Q. They make policy for OFCCP?**
24 A. Some of them, yes, uh-hm.
25 **Q. Do they make policy for other department of**

Page 39

1 **labor entities?**
2 A. No, they -- no. To my understanding, no.
3 **Q. So you said some of the policies they make**
4 **are for OFCCP; if I understood you correctly. Do**
5 **they make policies for anything else?**
6 A. I should say, you know, I don't know them
7 too much.
8 **Q. Okay. So as far as you know, your**
9 **experience at the employment standards**
10 **administration was limited to policy making for**
11 **OFCCP; is that right?**
12 MR. ELIASOPH: Objection. Misstates the
13 testimony.
14 THE WITNESS: I don't know.
15 BY MS. MANTOAN:
16 **Q. What did you do at the employment standards**
17 **administration?**
18 A. I -- I do for OFCCP.
19 **Q. And what kind of work did you do?**
20 MR. ELIASOPH: Can I -- can I offer
21 something that --
22 I wonder if there's just some confusions.
23 There's been some reorganizations in the department
24 and he may be saying that OFCCP was under the
25 employment standards administration umbrella.

Page 40

1 Is that what you're --
2 I'm not exactly clear, but I think the
3 witness is a little confused, so maybe you can kind
4 of lay that out.
5 BY MS. MANTOAN:
6 **Q. Yeah, I'm just trying to see when you moved**
7 **from FSIS to this different role in the department**
8 **of labor. I'm trying to understand what that role**
9 **was.**
10 **So what did you do once you moved over to**
11 **the department of labor?**
12 A. Statisticians --
13 **Q. And what --**
14 A. -- within OFCCP.
15 **Q. You did statistical work for OFCCP?**
16 A. That's correct.
17 **Q. Okay. And what kind of statistical work?**
18 A. Regressions.
19 THE REPORTER: I'm sorry?
20 THE WITNESS: Regression.
21 BY MS. MANTOAN:
22 **Q. Is that regression?**
23 A. Regression analysis as a statistical
24 regression analysis (sic).
25 **Q. Is this the first position in your**

Page 41

1 employment history in which you regularly did
2 regression analyses?
3 A. That's correct -- can I change? Can I
4 correct?
5 Q. Yes.
6 A. When I was in the Answerthink, I do
7 regression every day too. Sorry about that.
8 Q. What --
9 A. We had to do the forecasting, you know,
10 demanding, yeah.
11 Q. What kind of regression analyses were you
12 doing at Answerthink?
13 A. I give example. For example, in Florida
14 they provide a lot -- they have import/export of
15 flowers. So flower is a for-sale product, so I need
16 to forecast the demanding next week or next two
17 weeks, you know, the demand -- forecast the demand
18 for the company.
19 Q. Okay. So you were using regression
20 analysis at Answerthink to forecast product demand?
21 A. Yes. And in Gateway, when I work in the
22 marketing department, I have to run the regressions
23 also.
24 'Cause marketing -- for example, company
25 want me to -- like, forecasting the computer units,

Page 42

1 short term and the long term, you know.
2 Q. So in that kind of forecasting regression
3 what would typically be, like, the dependent
4 variable and what would be the independent
5 variables?
6 A. Oh, dependent -- like, you know, units is
7 dependent.
8 Q. Uh-hm.
9 A. And, you know, the independent, such like
10 the factors. They have many kind. They have a --
11 similar GDP factors, or like, you know, the new
12 computer train, right, or like the past or
13 historical data, right? So they have a lot of
14 factors. I cannot name all of them. You know, they
15 have too many some time, yeah.
16 Q. Okay. Do the types of regression analyses
17 that you were doing at the department of labor
18 differ from the types of regression analyses that
19 you had been doing in your prior work?
20 A. I don't know. As a statistician I think
21 regression is a very -- is kind of standard for
22 every kind of the applications, --
23 Q. Okay.
24 A. -- you know.
25 Q. And when you first moved over to the

Page 43

1 department of labor were you actually running
2 regression analyses or were you involved in making
3 policy about how the agency would run regression
4 analyses?
5 A. No, I just simply run regressions.
6 Q. Were you a compliance officer?
7 A. No. I'm not CO. I'm not compliance
8 officer.
9 Q. Were you in the national office when you
10 moved to the department of labor?
11 A. That's correct.
12 Q. And that's in Washington, D.C.?
13 A. Washington, D.C., that's correct.
14 Q. Who did you first report to when you
15 started working at the department of labor?
16 A. You mean a who?
17 Q. Who did you first report to? Who was your
18 supervisor when you first started at the department
19 of labor?
20 A. Mike Sinclair.
21 Q. Okay.
22 THE REPORTER: Mike?
23 THE WITNESS: Sinclair.
24 MS. MANTOAN: Sinclair.
25 THE WITNESS: Sinclair.

Page 44

1 BY MS. MANTOAN:
2 Q. That's S-i-n-c-l-a-i-r?
3 A. S-i-n-c-l-a-i-r, that's correct.
4 Q. Okay. And how long did you report to Mike
5 Sinclair?
6 A. I think he left -- I think he left 2007,
7 200- -- I cannot recall. Sorry.
8 Q. Was it less than five years; do you think?
9 A. Yeah, less than five years.
10 Q. Okay. Where do you work today?
11 A. Same as usual, run regressions.
12 Q. Still at the department of labor?
13 A. That's correct.
14 Q. Still at OFCCP?
15 A. That's correct.
16 Q. Okay. Are you still based in Washington,
17 D.C.?
18 A. That's correct. But I'm located here --
19 located in San Francisco.
20 Q. Oh. So now you're located in
21 San Francisco?
22 A. Yeah, in San Francisco.
23 Q. Has your role at OFCCP changed at any point
24 between when you first began working there in 2005
25 and now?

Page 45

1 A. No.

2 **Q. Does your work typically involve doing**

3 **statistical analyses in connection with a compliance**

4 **review?**

5 A. Yes, uh-hm, it do.

6 **Q. How many compliance reviews would you**

7 **estimate that you have done statistical work in**

8 **connection with?**

9 A. You mean the cases or the people?

10 **Q. Cases.**

11 A. Precisely I cannot recall it all, you know.

12 Precisely I cannot recall how many. It's many, but

13 I don't know exactly, you know.

14 **Q. So this is something maybe I should have**

15 **mentioned at the outset. There are times when my**

16 **questions may ask for something that you can't**

17 **remember precisely, --**

18 A. Uh-hm.

19 **Q. -- and I don't want you to guess or**

20 **speculate, --**

21 A. Uh-hm.

22 **Q. -- but I am entitled to your best estimate.**

23 **So, by way of example, if I asked you to**

24 **tell me how long this (indicating) conference room**

25 **table that we're sitting at is you may not know**

Page 46

1 **precisely but you could probably give me an**

2 **estimate, right?**

3 A. Uh-hm.

4 **Q. By contrast, if I said "How long is my**

5 **dining room table?" --**

6 A. Yeah, I understand.

7 **Q. -- you couldn't -- you couldn't give me an**

8 **estimate.**

9 A. I understand.

10 **Q. So with that understanding of an estimate,**

11 **can you give me an estimate of the number of**

12 **compliance reviews on which you've worked at OFCCP?**

13 A. You mean how many cases I running?

14 **Q. Correct.**

15 A. I really --

16 MR. ELIASOPH: It might be helpful if

17 you --

18 THE WITNESS: Because --

19 MR. ELIASOPH: -- can provide a range,

20 perhaps.

21 THE WITNESS: Yeah.

22 BY MS. MANTOAN:

23 **Q. Is it more than a hundred?**

24 A. More than a hundred, yes.

25 **Q. Would it be more than 500?**

Page 47

1 A. I think more than 500, yes.

2 **Q. Okay. Do you have a standard practice or**

3 **approach you use in doing statistical analyses in**

4 **connection with compliance reviews?**

5 A. You mean a --

6 MR. ELIASOPH: Objection. Vague.

7 THE WITNESS: Yeah, just I cannot -- I

8 cannot -- what means "standard practice"? You know,

9 that...

10 BY MS. MANTOAN:

11 **Q. So I'm trying to understand more about your**

12 **particular role on compliance reviews. You said you**

13 **do statistical analyses, but can you give me some**

14 **more detail or understanding about the work that you**

15 **do?**

16 A. Oh. They send the data to me and, of

17 course, they -- you know, everybody know the -- we

18 have a directive, so they're based on directive.

19 Send the datas to me and, you know, I have

20 to verify that you say dependent variable,

21 independent variable. I review the data is

22 consistent or not consistent; in effect is it

23 legitimate or not -- not legitimate, something like

24 that.

25 **Q. Okay. I want to break down a couple things**

Page 48

1 **in that answer.**

2 **You said they're based on a directive. Is**

3 **there a particular directive that you have in mind?**

4 A. Okay. We have -- okay, and a recent

5 directive usually is a 307.

6 **Q. Okay. Am I right that Directive 307 became**

7 **operative in 2013?**

8 A. I cannot recall exact year, you know.

9 **Q. Have there been multiple different**

10 **directives during your time at OFCCP that govern how**

11 **you structure statistical analyses?**

12 A. What do you mean "multiple directives"?

13 **Q. Have there been different ones over time?**

14 A. Yes. They have -- long time ago, when I

15 came, they had Directive 289.

16 **Q. Okay.**

17 A. And this is 307. And then another one I

18 cannot recall.

19 **Q. Okay. You said that in running these**

20 **analyses you have to verify the dependent variable.**

21 A. Uh-hm.

22 **Q. What did you mean by that?**

23 A. Oh. Like it's a base pay, or a total pay,

24 or bonus, something like that; and the other

25 dependent variables have some status issues or not

Page 49

1 status issues.

2 **Q. So what is your practice with regard to**

3 **determining which dependent variable to study?**

4 A. Oh, for example, it's -- for example, it's

5 across over many periods or not across many periods.

6 If it's just one period or couple periods,

7 the status method is different.

8 **Q. Okay. But first I'm talking about the type**

9 **of dependent variable, so let's take a**

10 **compensation --**

11 A. Oh. Okay.

12 **Q. Let me just finish the question.**

13 A. Sorry.

14 **Q. In a compensation case base pay versus**

15 **total comp versus bonus, --**

16 A. Uh-hm.

17 **Q. -- how do you decide which dependent**

18 **variable you're going to study?**

19 A. I don't understand. Maybe it's too

20 generic? I don't know your question. Can you --

21 **Q. So the dependent variable in a compensation**

22 **case is some measure of pay, correct?**

23 A. Uh-hm.

24 **Q. How do you decide which measure of pay**

25 **you're going to study, whether it's base pay, or**

Page 50

1 **total comp, or bonus, or something else?**

2 A. Okay. Usually the CO, they will tell me,

3 you know, they went to the basement -- base pay or

4 the total compensations, and I will make a good

5 judgment, you know, see is it -- can we have enough

6 legitimate factor to run with this or -- the base or

7 total compensation?

8 **Q. Okay. So I'm going to come back to the**

9 **phrase "legitimate factor," which you've used a**

10 **couple times, but when you say you have to use**

11 **judgment to determine if you have enough of those**

12 **factors, what do you mean?**

13 **What kind of -- is it a numeric threshold,**

14 **or what do you mean by determine if we have enough**

15 **factors to use a different measure of pay?**

16 A. For example, if they want me to do the

17 total compensations -- and total compensation may

18 include base pay, may include shift difference, or

19 it may -- may include, like, a company compensation

20 policy or plan, right, like strategic, you know, but

21 I cannot find any factor to integrate the pay so I

22 cannot do.

23 **Q. You mean you can't find data on shift**

24 **differential or something; is that what you mean?**

25 A. Or like a description -- a distribution

Page 51

1 pay. Some company, they provide their distribution

2 pay, but some, they don't.

3 If I don't have company distribution pay I

4 cannot do some analysis.

5 **Q. You can't do an analysis of distribution**

6 **pay if you don't have distribution pay? That's what**

7 **you're saying?**

8 A. For example -- for example, if the total

9 pay they have bonus component in there, and the --

10 and the factors, right, they don't have any factor

11 that can explain the role of bonus component then I

12 say "I cannot do."

13 **Q. What do you mean by factor that explains**

14 **the bonus component?**

15 A. For example, year's of experience, right --

16 **Q. Uh-hm.**

17 A. -- can explain the base compensation,

18 right? You work more years, your base compensation

19 will be more, right?

20 So if I --

21 **Q. Are you saying that's true in all -- in all**

22 **cases?**

23 A. Yeah. It's -- normally. Standard --

24 normally will do that, yeah, but of course they call

25 the reverse -- you know, if they have a reverse

Page 52

1 trend then we probably have to collect them -- you

2 know, more legitimate factors, so...

3 **Q. Okay. When you say -- you've used the**

4 **phrase "legitimate factor" a couple times and I want**

5 **to make sure I understand what you mean when you use**

6 **the phrase "legitimate factor."**

7 MR. ELIASOPH: Objection to the extent it

8 calls for a legal conclusion.

9 She's just asking what you mean by the

10 term.

11 THE WITNESS: It's kind of a -- the factors

12 can connect -- interplete (sic), you know, or

13 evaluate the pay. They're reasonable -- reasonable.

14 MS. MANTOAN: Yeah, I --

15 THE REPORTER: The factors can connect...

16 THE WITNESS: Can explain the pay

17 reasonably -- logically, reasonably, you know.

18 For example, I cannot use a GDP to explain

19 our base salary, you know, it's nothing to do with

20 that.

21 BY MS. MANTOAN:

22 **Q. You're saying you wouldn't use the United**

23 **States' GDP as a factor to explain base pay at a**

24 **particular company?**

25 A. Yeah.

Page 53

1 **Q. Is that what you're saying?**
2 A. That's right.
3 **Q. Okay. In any particular compliance**
4 **evaluation how do you go about determining which**
5 **factors can explain pay at that particular company?**
6 A. Okay. Let me -- okay. Usually, you know,
7 we -- the directive, they give us --
8 MR. ELIASOPH: So, I'm just going to object
9 to the extent that the question calls for him
10 explaining information that other people do and he'd
11 be speculating on it.
12 You can only testify about what your role
13 is or if you know something else.
14 THE WITNESS: Uh-hm.
15 Okay. My role -- actually, you know, we
16 base on the directive, which the company -- they
17 provide 12 or 13 or 14 factors. So we just base on
18 the company providing the factors to do the
19 analysis.
20 BY MS. MANTOAN:
21 **Q. So anything a company provides you put into**
22 **your analysis?**
23 A. Yes -- yeah.
24 **Q. What did you mean by "legitimate factors"**
25 **then?**

Page 54

1 A. Is very -- "legitimate" is kind of very
2 wide, you know, sometime incorrect, you know, they
3 are tentative, you know?
4 **Q. What was that last word? I'm sorry.**
5 A. "Tentative."
6 Like the data is not -- is not consistent,
7 or they have some type errors in there, then I don't
8 use it, you know.
9 **Q. Okay.**
10 A. Uh-hm.
11 **Q. In a typical compliance review, where**
12 **you're doing a regression analysis, are you actually**
13 **the person that determines which factors to include**
14 **in the regression?**
15 A. No.
16 **Q. Okay. Who is typically the person who**
17 **determines which factors to include in the**
18 **regression?**
19 MR. ELIASOPH: Objection to the extent it
20 calls for speculation.
21 THE WITNESS: It can involve many, many
22 kind of people. I don't know, maybe from the
23 district. I really don't know. I can't recall all
24 of them.
25 ///

Page 55

1 BY MS. MANTOAN:
2 **Q. How are you typically informed -- let me**
3 **strike that.**
4 **Are you -- in a typical compliance review**
5 **are you told that you that should structure your**
6 **model in a particular way, use a particular**
7 **dependent variable and a particular set of control**
8 **factors?**
9 A. I just use the standard procedures the
10 directive say -- the 12, 13, or 14 factors the
11 company provide to us usually.
12 And after that -- and maybe some people
13 reviewed, some -- another statistician or someone in
14 the district, you know, they do another methods -- I
15 don't know.
16 **Q. So let me ask it this way: In a typical**
17 **compliance review, how do you first become involved**
18 **in the compliance review?**
19 **Like, do you receive a phone call from**
20 **someone, or an e-mail, asking you to do something?**
21 MR. ELIASOPH: To the extent we're talking
22 about communications, I'm willing to allow some
23 discussion of generalized if we agree that's not in
24 any way waiving our deliberative process privilege
25 once -- in case you start asking about specific

Page 56

1 communications.
2 MS. MANTOAN: I understand that you have
3 made a deliberative privilege process objection --
4 MR. ELIASOPH: Well, --
5 MS. MANTOAN: -- and I really just am
6 trying to understand how the -- the facts about how
7 he becomes involved.
8 MR. ELIASOPH: Well, I need your agreement
9 that you're not later going to argue by allowing
10 generally, like, how he does -- you know, how things
11 get started -- you know, you're not going to argue
12 that we have now waived the deliberative process
13 privilege with respect to specific communications.
14 MS. MANTOAN: Let's go off the record and
15 take a break so I can -- we can make sure we
16 understand each other.
17 MR. ELIASOPH: Uh-hm.
18 THE VIDEOGRAPHER: We are going off the
19 record.
20 The time is 10:33 a.m.
21 (Short recess was taken from 10:33 a.m.
22 until 11:21 a.m.)
23 THE VIDEOGRAPHER: We are back on the
24 record.
25 The time is 11:21 a.m.

Page 57

1 BY MS. MANTOAN:
2 **Q. Good morning again, Dr. Leu.**
3 A. Good morning.
4 **Q. So we're back on the record here, --**
5 A. Yeah.
6 **Q. -- and we took a longer than usual break.**
7 **I believe counsel for both sides has now had a**
8 **chance to read the order issued today by the ALJ,**
9 **the order granting Defendant Oracle's motion to**
10 **compel Plaintiff OFCCP to designate and produce**
11 **30(b)(6) witnesses.**
12 **Dr. Leu, have you ever helped to design a**
13 **compensation or pay system?**
14 A. Design a compensation pay -- no.
15 **Q. Okay. Have you ever offered an expert**
16 **opinion in court?**
17 A. No.
18 **Q. Have you ever offered an expert opinion**
19 **before the Office of Administrative Law Judges of**
20 **the Department of Labor?**
21 A. No.
22 MR. ELIASOPH: Object -- objected --
23 objection. Vague as to "expert opinion."
24 BY MS. MANTOAN:
25 **Q. Have you ever been qualified as an expert**

Page 58

1 **to offer an opinion before the administrative law**
2 **judges as far as you know?**
3 MR. ELIASOPH: Objection. Calls for a
4 legal conclusion.
5 You --
6 BY MS. MANTOAN:
7 **Q. So do you know if you've ever been**
8 **qualified as an expert in front of the Office**
9 **Administrative Law Judges?**
10 A. I don't know what it means -- how do you
11 define a -- "qualify"?
12 **Q. Do you recall ever going through a process**
13 **where attorneys asked you questions about your**
14 **expertise and background and then formally asked an**
15 **ALJ to deem you an expert?**
16 A. No.
17 **Q. Okay. When you first began -- well, strike**
18 **that.**
19 **At any time since coming to work for the**
20 **department of labor have you received any training**
21 **on conducting statistical analyses?**
22 A. Yes.
23 **Q. What training is that?**
24 A. Like, you know, we have desk auditors.
25 THE REPORTER: I'm sorry? Ex-audit?

Page 59

1 MS. MANTOAN: Desk.
2 THE WITNESS: Desk auditors.
3 And we also have expert consultant come to
4 us to train for a compensation pay, 2006, 2007 -- I
5 cannot recall exactly the date.
6 BY MS. MANTOAN:
7 **Q. Do you recall the name of that person who**
8 **provided training on compensation?**
9 A. No, I cannot recall.
10 **Q. Do you recall if it was a man or a woman?**
11 A. No, I cannot recall. I'm sorry.
12 **Q. And, as you sit here today, what -- if**
13 **anything, do you recall from that expert training on**
14 **compensation?**
15 A. They just tell you how to, you know,
16 collect related datas and also teach us how to, you
17 know, run a model and how to check the model, like a
18 validation of the model.
19 **Q. You said "validation of the model"?**
20 A. Validation of the model.
21 **Q. So is it -- is it fair to say that you were**
22 **taught a standard way to run compensation models at**
23 **that training?**
24 A. I cannot say. As I understand, it's just
25 outside consulting company come to us. And usually,

Page 60

1 at that time, we -- we have -- almost have every
2 year of -- like a training of some type.
3 **Q. Sorry. What was -- can you say that again?**
4 A. They have the kind of training, but they
5 don't tell us, "This is the standard methods or not
6 standard methods," no.
7 **Q. Okay. Have you received any training at**
8 **the department of labor on conducting compensation**
9 **analyses since that 2006, 2007 training you just**
10 **described?**
11 A. Yes.
12 **Q. Can you tell me about that additional**
13 **training?**
14 A. Usually that's called -- they released a
15 Directive 307, and a 307 will -- you know, that will
16 show us how to create the PAG for statistical
17 analysis.
18 THE REPORTER: I'm sorry. Create the...
19 THE WITNESS: PAG, like, a pay analysis
20 group -- P -- p-a-y, analysis group.
21 BY MS. MANTOAN:
22 **Q. And what is your understanding of what**
23 **Directive 307 says about how to create pay analysis**
24 **groups?**
25 MR. ELIASOPH: Objection to the extent it

Page 61

1 calls for legal conclusions.
2 THE WITNESS: Oh, it's usually -- it's more
3 flexible, this -- well, as long as you think the
4 group is comparable, you know, based on their -- you
5 know, the job group or job title or -- job group or
6 job title.
7 MS. MANTOAN: Job group or job title.
8 MR. ELIASOPH: Job group or job title.
9 BY MS. MANTOAN:
10 **Q. In a typical compliance review, where you**
11 **are the statistician working on the review, are you**
12 **the person who determines what pay analysis groups**
13 **to do or are you told by someone else what pay**
14 **analysis groups to use?**
15 A. Basically I was told.
16 **Q. Okay.**
17 A. Yeah.
18 **Q. Okay.**
19 A. And this I -- like, I found this, you know,
20 legitimate factor then I will tell them, "No, not
21 this one."
22 They decide, you know, I -- for example,
23 like, if you have time in company, usually that is
24 legitimate, but only have -- 50 percent people have
25 that TIC, or time in -- time in company. So I tell

Page 62

1 them, "No, I cannot use the time in company factor."
2 **Q. So I want to distinguish, in this line of**
3 **questioning -- and I guess throughout the session**
4 **today, between determining which employees are**
5 **comparable and then determining what factors could**
6 **differentiate pay among those employees.**
7 **Do you understand that distinction?**
8 A. PAG is -- we decide, you know, the
9 comparable pool, right, then we can perform the
10 regression on the pool.
11 **Q. And when you perform the regression on the**
12 **pool you introduce certain factors to control for?**
13 A. Yeah, the factor usually provided by the
14 contractor.
15 **Q. Okay. So using that distinction that we**
16 **talked about -- on the one hand deciding which**
17 **employees to group together and then on the second**
18 **hand deciding what factors to control for within**
19 **that group, in a typical compliance review where you**
20 **are doing the statistical analysis who decides -- if**
21 **you know, who decides which employees to group**
22 **together in an analysis?**
23 A. Usually district office or managers -- or
24 the managers. For example, we have, like, a DORO,
25 the district operations managers in San Francisco,

Page 63

1 or sometime we'll be -- I don't know, RD were
2 involved, too, you know, sometimes.
3 **Q. But on the reviews where you've worked,**
4 **you, as the statistician, aren't actually the one**
5 **who decides which employees should be grouped**
6 **together in a typical case; is that accurate?**
7 A. Usually I don't decide, no. They decide.
8 **Q. Okay. And in a typical review where you**
9 **are the statistical analyst, am I correct that you**
10 **do not decide which factors to control for in the**
11 **model?**
12 A. Yeah, basically that is, unless I found
13 something not legitimate, like they have only
14 50 percent data, right, then I tell them "I cannot
15 use this one."
16 **Q. Okay. But I'm not sure I asked a clear**
17 **question, so let me just make sure it was clear.**
18 A. Yeah.
19 **Q. Am I correct that typically the person**
20 **deciding which factors to control for in a**
21 **statistical model you're going to run is someone**
22 **other than you?**
23 A. Uh-hm.
24 **Q. Correct?**
25 A. Yeah, but sometime I also -- if, like -- to

Page 64

1 my knowledge, if I understand it's not the -- the
2 pool is not, like, a -- you know, comparable, I will
3 also tell them, you know, like my opinion, but they
4 will make the final decisions, yeah.
5 **Q. What standard do you apply when you're**
6 **looking at whether a pool of employees actually**
7 **compares people who are comparable?**
8 A. You mean a criteria to put them together?
9 **Q. Correct.**
10 A. Oh, okay.
11 MR. ELIASOPH: Objection. Vague.
12 THE WITNESS: You mean decide the pool?
13 MS. MANTOAN: Correct.
14 BY MS. MANTOAN:
15 **Q. What standard do you use when you're**
16 **looking and determining whether that pool contains,**
17 **in your words, comparable employees?**
18 A. The --
19 MR. ELIASOPH: Objection to the extent it
20 calls for speculation.
21 BY MS. MANTOAN:
22 **Q. Well, I'm asking what standard you use. So**
23 **you said you do an assessment of the employees**
24 **groupings to determine whether you agree that they**
25 **are comparable, correct?**

Page 65

1 (Overlapping speakers.)

2 MR. ELIASOPH: Objection. Misstates prior

3 testimony.

4 BY MS. MANTOAN:

5 **Q. Was I correct?**

6 A. Say again?

7 **Q. Am I correct that you typically -- even if**

8 **you're given a grouping of employees, do your own**

9 **assessment of whether you agree that the employees**

10 **in that grouping are comparable; is that correct?**

11 A. Comparable?

12 **Q. Comparable.**

13 A. Comparable, okay.

14 MR. ELIASOPH: Asked and answered.

15 THE WITNESS: Hmm, okay. "Do your own

16 assessment of whether you agree."

17 No, usually I don't provide any assessment.

18 I just sometime give opinion on that.

19 BY MS. MANTOAN:

20 **Q. Okay. So you, at times, offer your opinion**

21 **as to whether the grouping in fact contains**

22 **comparable employees, --**

23 A. Yeah, --

24 **Q. -- correct?**

25 A. -- because the 307 is very clear, you know,

Page 66

1 everybody can use. They can use -- I think they --

2 the district, they use very well, you know.

3 **Q. Okay. And when -- when you're offering**

4 **your views, on whether employees in a grouping are**

5 **comparable, what standard or definition of**

6 **comparable are you using?**

7 A. Like I say, they have directive in the 307.

8 I cannot recall the detail of them, you know, but I

9 know it's in the Directive 307.

10 **Q. So I will show you Directive 307 later**

11 **today --**

12 A. Yeah.

13 **Q. -- but I'm wondering, as you sit here**

14 **today --**

15 A. Uh-hm.

16 **Q. -- do you have a general understanding of**

17 **the standard of comparability that you use when**

18 **you're determining whether a grouping contains**

19 **comparable employees?**

20 MR. ELIASOPH: Objection. Confusing.

21 Vague. Misstates prior testimony.

22 THE WITNESS: I -- I don't know how to

23 answer this question very well, so...

24 BY MS. MANTOAN:

25 **Q. So is it your testimony that sitting here**

Page 67

1 **today you just don't have any understanding of what**

2 **the word comparable means in the context we've been**

3 **discussing?**

4 A. Uh, okay --

5 MR. ELIASOPH: Objection. Asked and

6 answered. Argumentative.

7 THE WITNESS: When you say "asked and

8 answered" means I have to ask or answer?

9 MR. ELIASOPH: No, you -- I'm stating

10 objections for the record.

11 THE WITNESS: Okay.

12 MS. MANTOAN: Yeah.

13 MR. ELIASOPH: With that objection what I'm

14 saying is I believe that the question has been asked

15 and you've already provided an answer.

16 THE WITNESS: Okay.

17 MS. MANTOAN: Yeah, unless counsel

18 instructs you not to answer, generally objections

19 are just for the record and you would continue to

20 answer the question.

21 So, let me ask a simpler question...

22 BY MS. MANTOAN:

23 **Q. What does the word "comparable" mean for**

24 **you -- mean to you in the context of --**

25 A. Okay.

Page 68

1 **Q. -- employee groupings for pay analysis**

2 **purposes?**

3 A. Okay, for example, right, if you work in

4 management administrations and I work as engineer,

5 then we don't work together because it's, like --

6 you know, not comparable. You are an engineer and

7 you are in management administration. They cannot

8 group together.

9 **Q. And why wouldn't you put those groups**

10 **together in the example you just gave?**

11 A. Why? Why we don't put altogether?

12 **Q. Yes.**

13 A. Because it's kind of very bad, you know.

14 See, you (indicating) engineer and you are

15 (indicating), like, management, so usually

16 management -- the compensation pay usually they have

17 the rules, pay for the manager and then pay for --

18 they have -- for example, manager, they have --

19 they're called, like, an MBO, manager by objective

20 pay, right, but the engineer, they don't have that

21 kind of pay. And mainly engineer is kind of an

22 individual contributor, so we should not put them

23 together. That's -- you know, that's comparable,

24 yes.

25 And the more details/definitions should be

Page 69

1 in the 307, so I cannot --

2 **Q. In your understanding, are comparable**

3 **employees those who are doing similar work?**

4 A. Same, like if they assume same opportunity

5 with the same skills or knowledge, you know.

6 **Q. Would whether employees have the same**

7 **responsibilities or not be relevant in your view to**

8 **whether they're comparable?**

9 MR. ELIASOPH: Objection to the extent it

10 calls for a legal conclusion.

11 Objection to the extent it calls for

12 speculation.

13 THE WITNESS: So I cannot answer this

14 questions because I don't make this policy or -- you

15 know. I'm just doing regression analysis and this

16 one for a group, you know, is not my job.

17 BY MS. MANTOAN:

18 **Q. But you did testify earlier that you also**

19 **look at groupings and make your own -- develop your**

20 **own opinion as to whether or not they're comparable,**

21 **correct?**

22 A. Yes.

23 MR. ELIASOPH: Objection. Misstates prior

24 testimony.

25 THE WITNESS: Yeah, I -- I did. I see

Page 70

1 their PAG, but usually I don't change anything.

2 It's just my opinion, that's it. I don't -- you

3 know, I don't have the right, or whatever, change

4 anything there.

5 BY MS. MANTOAN:

6 **Q. Has anyone ever instructed you or informed**

7 **you that you don't have the right to change pay**

8 **analysis groups for statistical analyses you're**

9 **asked to run?**

10 A. No.

11 **Q. Okay. So why do you say that you don't**

12 **have the right to change anything with respect to**

13 **the employee groupings in a statistical analyses**

14 **you're asked to run?**

15 A. That's my personal feel. I'm not

16 manager -- I'm not management so I don't -- and I

17 just -- for statistical -- you know, my job, is just

18 kind of my opinion, my thinking. This is my job, do

19 like this.

20 And, by the way, create a PAG need a

21 company -- a contractor's compensation pay, and

22 usually I don't have that. The CO, they collect the

23 information. So they put CO -- they have a district

24 director. They control information. They don't

25 give to me, so I cannot decide anything.

Page 71

1 **Q. Okay.**

2 A. Yeah. But because I read the 307 -- so I

3 have some knowledge, you know, if they're really way

4 off I just provide some opinion, that's it.

5 **Q. So tell me if this is -- is correct, 'cause**

6 **I want to make sure I'm understanding you.**

7 **Is your role -- typical role in a**

8 **compliance review just to take the pay analysis**

9 **groups and the pay factors that you've been told to**

10 **run and simply do the mathematical statistical work**

11 **on that exact pay analysis group using those exact**

12 **factors?**

13 A. Pretty much that, yeah -- pretty much that,

14 yeah.

15 **Q. Okay. Okay. When I asked you about any**

16 **training that you've received you mentioned desk**

17 **audit tools, if I understood you correctly.**

18 **What did you mean by "desk audit tools"?**

19 A. It's -- before a regression we don't have

20 individual data so the district will, you know,

21 check the initial, you know, neutral or not neutral,

22 you know, for the pay.

23 **Q. Sorry. I don't understand what that means.**

24 A. Okay. So desk audit, you know,

25 compensation analysis is just -- basically just

Page 72

1 gender race and then the salary. They don't have

2 individual data -- like individual -- individual

3 data, --

4 **Q. Okay.**

5 A. -- so we cannot perform the regression

6 analysis.

7 **Q. So a desk audit --**

8 A. It's before a -- before a regression

9 analysis, so...

10 **Q. Okay. So, in your experience, the desk**

11 **audit analysis is typically just average pay**

12 **differences by gender or race?**

13 A. Yeah, the average difference. You know, I

14 got trained, but basically I don't involve that

15 part. I just involve the regression analysis.

16 **Q. Okay. But you've had training on these**

17 **desk audit tools; is that right?**

18 A. Yeah, yeah, I did -- I did have.

19 **Q. Does the acronym DAC mean anything to you?**

20 A. Huh?

21 **Q. DAC, is that the name of a program or...**

22 A. DAC? Oh, yeah. That's a desk audit. DAC,

23 that's desk audit, I believe, yeah.

24 **Q. Is that --**

25 A. Maybe I'm wrong.

Page 73

1 **Q. Is it a program, or is it a website, or a**
2 **math- --**
3 A. It's a tool. It's a tool.
4 **Q. What does that mean, "It's a tool"?**
5 A. It's a compensation regression --
6 compensation tool before regression.
7 **Q. So it's a preregression tool?**
8 A. Preregress- -- not -- no, no, no, not
9 preregression, they are just descriptive, you know.
10 Just a simple testing, you know, hypothe- simple --
11 like a t-testing.
12 **Q. And by t-test you mean something that would**
13 **just compare, say, average salaries between men and**
14 **women?**
15 A. That's right.
16 **Q. Without any other controls, correct?**
17 A. No.
18 **Q. Okay.**
19 A. No control.
20 **Q. No controls in the -- in the DAC program?**
21 A. Uh-hm.
22 **Q. Okay. Have you ever received any training**
23 **from the department of labor on -- well, let me**
24 **start with this:**
25 **Do you know what Title VII of the Civil**

Page 74

1 **Rights Act is?**
2 MR. ELIASOPH: Ob- --
3 BY MS. MANTOAN:
4 **Q. Do you have an understanding of what Title**
5 **VII is?**
6 A. I -- you know, yeah, I read that, you know.
7 I just cannot memorize them. I read that.
8 **Q. And I don't intend it to be a memory test.**
9 **I guess I'm curious whether you've had any training**
10 **from the department of labor on the law of**
11 **employment discrimination.**
12 A. Maybe I had one. I cannot recall because
13 I've been here almost 20 years, you know.
14 **Q. Okay. But as you sit here today there's no**
15 **specific training on employment discrimination law**
16 **that you recall sitting here?**
17 A. Yeah.
18 **Q. Correct?**
19 A. Uh-hm, yeah.
20 **Q. Okay.**
21 A. No, no. They don't -- they don't provide
22 the law training too much. If they have it, maybe I
23 cannot recall it all.
24 **Q. Do you have an understanding of what a**
25 **cohort analysis is?**

Page 75

1 A. Cohort?
2 **Q. Cohort.**
3 A. Yes.
4 **Q. What is your understanding of what a cohort**
5 **is?**
6 A. Cohort is small group usually and we cannot
7 use a standard -- like you say, you know, "Analysis
8 is to find the pattern."
9 **Q. To find what?**
10 A. To find a pattern.
11 **Q. A pattern?**
12 A. The pattern, yeah -- find the patterns.
13 And the number is very small and maybe they also
14 involve very specific issues, you know. Then, you
15 know, we probably conduct a cohort analysis.
16 **Q. Have you ever received any training from**
17 **the department of labor that deals with when it is**
18 **appropriate to do a cohort analysis as opposed to a**
19 **regression analysis on the issue of pay?**
20 MR. ELIASOPH: Objection. Vague as to
21 term -- vague as to the term "training."
22 THE WITNESS: Look like we have one time a
23 long time ago, but I cannot recall it all. It's
24 kind of -- it's kind of very vague for me.
25 ///

Page 76

1 BY MS. MANTOAN:
2 **Q. Do you recall ever having a conversation**
3 **with anyone at OFCCP about whether you should**
4 **conduct a cohort analysis as opposed to a**
5 **statistical analysis in a particular compliance**
6 **review?**
7 MR. ELIASOPH: Objection. That's squarely
8 within the deliberative process privilege.
9 Do not answer with respect to specific
10 conversations.
11 THE WITNESS: Maybe they have, maybe they
12 don't have. I cannot recall for this question. I'm
13 sorry.
14 BY MS. MANTOAN:
15 **Q. To be clear that was an instance where I**
16 **think your counsel was intending to instruct you not**
17 **to answer.**
18 MR. ELIASOPH: He can provide a general
19 answer but not discuss a specific conversation.
20 MS. MANTOAN: Okay. And that's the -- is
21 that the position you're going to take on the
22 deliberative process privilege notwithstanding
23 today's order?
24 MR. ELIASOPH: Nothing about this order
25 applies to this witness or invades the deliberative

Page 77

1 process privilege with respect to this witness.
2 MS. MANTOAN: Okay.
3 BY MS. MANTOAN:
4 **Q. Have you ever worked on an OFCCP compliance**
5 **review for Oracle?**
6 A. Can you repeat again?
7 **Q. Have you ever worked on an OFCCP compliance**
8 **review for Oracle?**
9 A. Yes, for regression part.
10 **Q. How many compliance reviews have you worked**
11 **on for Oracle?**
12 A. How do you measure "how many"? How do you
13 measure?
14 **Q. How many different locations?**
15 A. Sorry, I cannot recall.
16 **Q. Can you give me your best estimate?**
17 A. 'Cause I have several -- I don't know,
18 several and another company, too, but I don't know.
19 **Q. Would it be more than 10?**
20 A. When you count -- when you count -- when
21 you count you measure each individual regressions or
22 all locations?
23 You know, the question is not very clear.
24 **Q. So am I correct that at -- it's often the**
25 **case that an OFCCP compliance review will be**

Page 78

1 **conducted on an establishment basis by a location,**
2 **correct?**
3 A. Yeah.
4 **Q. Okay. So I'm wondering how many different**
5 **establishment compliance reviews for Oracle you have**
6 **worked on?**
7 MR. ELIASOPH: Objection. Asked and
8 answered.
9 THE WITNESS: I cannot remember exact
10 number, you know.
11 BY MS. MANTOAN:
12 **Q. Do you estimate that it's more than 10?**
13 A. You mean more than 10 location?
14 **Q. Correct?**
15 A. No.
16 MR. ELIASOPH: Objection. Vague.
17 BY MS. MANTOAN:
18 **Q. Is it more than five locations.**
19 MR. ELIASOPH: Objection. Vague.
20 THE WITNESS: I still cannot -- I still
21 cannot recall exact number, you know.
22 BY MS. MANTOAN:
23 **Q. Okay. But fewer than then ten, correct, as**
24 **far -- as best you can recall?**
25 A. Fewer than 10, okay, yeah.

Page 79

1 **Q. And did you work on a compliance review for**
2 **Oracle's headquarters' location in Redwood Shores?**
3 A. Where?
4 **Q. In Redwood Shores, the headquarters'**
5 **location?**
6 A. Redwood and --
7 **Q. Redwood Shores is the name of the city.**
8 A. Ah, yes, yes.
9 **Q. It's also the headquarters.**
10 A. Yes, yes.
11 **Q. Okay. Do you recall if that headquarters'**
12 **review was the first compliance review of Oracle in**
13 **which you were involved?**
14 A. I don't remember if it was the first one or
15 not first one, but I -- I think so. I -- I involved
16 that one, yeah, but I don't know if it's the first
17 one or second or third one. I don't know.
18 **Q. Okay. What was your involvement with the**
19 **OFCCP compliance review of Oracle's headquarters'**
20 **location?**
21 A. Oh, this one, I just do the regressions
22 from -- I think it's a -- management, they sent me
23 the database and provide me factors to do the
24 regressions.
25 **Q. When you say "management" who are you**

Page 80

1 **referring to?**
2 A. It's Janette Wipper.
3 THE REPORTER: I'm sorry?
4 MS. MANTOAN:
5 **Q. Janette Wipper?**
6 A. Janette Wipper.
7 **Q. That's W-i-p-p-e-r; is that correct? Okay.**
8 **So with respect to the Oracle's**
9 **headquarters' compliance review, Ms. Wipper sent you**
10 **a data file and sent you instructions on which**
11 **factors to include in your regression; is that**
12 **correct?**
13 MR. ELIASOPH: Objection. This is
14 deliberative process privileged information. I'm
15 instructing the witness not to answer.
16 MS. MANTOAN: So, I disagree in light of
17 today's order, just for the record, which says that
18 the factual basis for the statistical model,
19 including what individuals are told about what to
20 include, or not, is not something that's privileged
21 when the results of the statistical model are made
22 public. True, the order is about the SAC, but the
23 NOV was made public and included in the original
24 complaint in this action, so I disagree with that
25 legal -- with that -- with that interpretation of

Page 81

1 the privilege.
2 Are you still instructing the witness not
3 to answer?
4 MR. ELIASOPH: I am. I'll just state for
5 the record that we have only had a limited
6 opportunity to really consider and review the
7 opinion. I did appreciate the time to read the
8 opinion. I do think from the face of the opinion
9 it's specifically discussing matters related to the
10 second amended complaint.
11 And with respect to a 36 -- 30(b)(6)
12 deposition, the opinion goes into detail about how
13 privileges may be preserved and I believe we are
14 squarely within this decision in producing Mr. Leu
15 today and allowing him to testify on nonprivileged
16 aspects of this case.
17 MS. MANTOAN: And to be clear, he's not
18 being produced as a 30(b)(6).
19 MR. ELIASOPH: He is not.
20 MS. MANTOAN: Correct. Okay, well, I'm
21 going to -- I'm going to leave the deposition open
22 at the end so that we can resolve those issues, and
23 it's possible I may need to call Dr. Leu back
24 depending on the resolution of those -- of those
25 issues.

Page 82

1 BY MS. MANTOAN:
2 **Q. As you sit here today do you -- what do you**
3 **recall about the regression model that you ran for**
4 **Oracle's headquarters' location, if anything?**
5 MR. ELIASOPH: So, you can answer to the
6 extent you're not revealing deliberative
7 information, meaning communications and
8 conversations you had leading up to the decision.
9 THE WITNESS: Okay. Can you repeat your
10 question again, please?
11 BY MS. MANTOAN:
12 **Q. What do you recall about the regression**
13 **model that you ran for Oracle's headquarters'**
14 **location, if anything?**
15 A. It's very good questions, but this is --
16 it's very long time ago. I really cannot just
17 memorize right away, you know.
18 MR. ELIASOPH: Thank you.
19 THE REPORTER: Exhibit --
20 THE WITNESS: Thank you.
21 THE REPORTER: -- Exhibit 2.
22 (Exhibit 2 was marked for identification.)
23 BY MS. MANTOAN:
24 **Q. And will you take a moment to look at this,**
25 **Dr. Leu.**

Page 83

1 **Just for the record, Exhibit 2 is a**
2 **document bearing Bates No. DOL 1395 to DOL 1406.**
3 **And my first question for you, Dr. Leu, is**
4 **just going to be: Have you ever seen this document**
5 **before?**
6 MR. ELIASOPH: And you can take your time
7 to look at it --
8 THE WITNESS: Thank you.
9 MR. ELIASOPH: -- to make sure you know
10 what it is.
11 Do you know what the question is? Do you
12 remember?
13 THE WITNESS: Yeah. It's --
14 BY MS. MANTOAN:
15 **Q. Have you seen this before?**
16 A. No.
17 **Q. Okay. Can you flip to Attachment A, which**
18 **if you look at the numbers in the lower right-hand**
19 **corner it starts at No. 1404.**
20 A. Uh-hm.
21 **Q. And my question is whether you've seen**
22 **Attachment A before.**
23 A. No.
24 **Q. Okay. Do you have an understanding of what**
25 **a Notice of Violation is?**

Page 84

1 A. No.
2 **Q. Okay. So this -- if you turn back to the**
3 **first page of this document, it's dated March 11th,**
4 **2016.**
5 A. Uh-hm.
6 **Q. And my question for you is whether the**
7 **statistical analysis for Oracle's headquarters'**
8 **location -- that you testified about before, whether**
9 **you ran that before or after March 11th, 2016.**
10 MR. ELIASOPH: Objection. Calls for
11 speculation. Confusing.
12 THE WITNESS: I believe that I run it
13 before.
14 BY MS. MANTOAN:
15 **Q. Okay. Did you ever run any statistical**
16 **analysis for Oracle's headquarters' location after**
17 **this Notice of Violation?**
18 MR. ELIASOPH: Objection. Calls for
19 speculation.
20 THE WITNESS: I -- I really cannot recall,
21 you know.
22 BY MS. MANTOAN:
23 **Q. On how many different occasions did you run**
24 **a statistical analysis for Oracle's headquarters'**
25 **location?**

Page 85

1 A. When you say "occasions," what -- the time?
2 **Q. Correct.**
3 A. It means, you know, how many times they
4 come ask me, "Andy, you will do again regression,"
5 how many times they come back -- come back?
6 **Q. Correct.**
7 A. I cannot -- I cannot recall exact number.
8 **Q. Was it more than one?**
9 A. Yeah. More than one, yeah.
10 **Q. And what do you recall about any times you**
11 **were asked to run a different statistical model?**
12 **What do you recall about those**
13 **conversations?**
14 MR. ELIASOPH: Again, objection with
15 respect to the extent this calls for invading the
16 deliberative process privilege.
17 MS. MANTOAN: Again, I don't think what
18 he's told about how to run the model, to the extent
19 the model ends up being part of anything that's
20 disclosed in the NOV or any of the complaints in the
21 case, is covered by that.
22 BY MS. MANTOAN:
23 **Q. Let's look at Attachment A --**
24 A. Uh-hm.
25 **Q. -- of Exhibit 2.**

Page 86

1 **I'm going to ask you to read the first**
2 **paragraph and then I'll have some questions for**
3 **about you that first paragraph.**
4 A. This is 1404.
5 **Q. Correct. That starts "The United States**
6 **Department of Labor."**
7 A. Okay.
8 **Q. Okay. Does the paragraph you just read on**
9 **page 1404 describe a statistical model that you ran**
10 **on data for Oracle's headquarters' location?**
11 MR. ELIASOPH: Objection. Calls for
12 speculation.
13 THE WITNESS: Yeah, I run many models with
14 different factors. And this probably is -- maybe
15 one of them, maybe. I don't know, maybe somebody
16 run for this. I cannot be sure because this doesn't
17 look like my report.
18 Thank you.
19 THE REPORTER: Exhibit 3.
20 (Exhibit 3 was marked for identification.)
21 BY MS. MANTOAN:
22 **Q. So we've marked as Exhibit 3 an**
23 **October 26th, 2017, e-mail from Marc Pilotin at the**
24 **solicitor's office to Erin Connell of Orrick copying**
25 **a few other folks.**

Page 87

1 **And indicating in the e-mail that "the**
2 **second thing that was attached is the SAS code**
3 **related to the analysis underlying the complaint.**
4 **So my question is if you turn past the**
5 **e-mail to the pages Bates-numbered DOL 39877 to DOL**
6 **39880; do you recognize this as --**
7 A. Which page?
8 **Q. The pages numbered DOL 39877 --**
9 A. Okay.
10 **Q. -- to DOL 39880.**
11 A. Uh-hm.
12 **Q. Is this SAS code related to an analysis**
13 **that you conducted of Oracle's headquarters'**
14 **location?**
15 MR. ELIASOPH: Objection to the extent it
16 calls for speculation.
17 THE WITNESS: Usually -- oh, I run so many.
18 I don't know if this one -- I run this one or not,
19 you know. But looks like it's from our SAS -- from
20 our SAS program, yeah.
21 BY MS. MANTOAN:
22 **Q. From your -- from the SAS program?**
23 A. The SAS program, yeah. And my name is not
24 there -- my name is not there either. Usually I
25 will put my name. If I run a regression, I put my

Page 88

1 name there.
2 **Q. So when you -- when you run a regression do**
3 **you usually include your name in the SAS code**
4 **itself?**
5 A. Yes. I put "Andy Leu," L-e-u, there, so...
6 MS. MANTOAN: Okay.
7 THE REPORTER: Exhibit 4.
8 THE WITNESS: Thank you.
9 (Exhibit 4 was marked for identification.)
10 BY MS. MANTOAN:
11 **Q. So, for the record, Exhibit 4 is a document**
12 **with Bates-numbers DOL 5298 to DOL 5320.**
13 **And my first question is whether you -- it**
14 **has -- the document has a number of boxes that are**
15 **redacting or obscuring information, but with that**
16 **aside, do you recognize the document that's**
17 **Exhibit 4? Does it look familiar to you?**
18 A. Yes. This looks like it's from our -- the
19 CS report, yes.
20 **Q. Which report?**
21 A. The compensation analysis report.
22 **Q. Okay. Does this look to you, based on your**
23 **experience, like a report that came after a**
24 **regression was run in SAS?**
25 A. Uh-hm. But I cannot be sure I did this one

Page 89

1 or not, or somebody did that, but it's a form of CS,
2 yeah.

3 **Q. So I'm going to represent to you that we**
4 **served what is called a discovery request in this**
5 **case where we asked the other side for information.**
6 **And we asked OFCCP to identify each person who**
7 **participated in this compliance review of Oracle's**
8 **headquarters' location and that in response they**
9 **identified Shirong Andy Leu, statistician.**

10 **With that information, does that refresh**
11 **your recollection at all as to whether or not you**
12 **were the statistician who ran the analysis whose**
13 **results are reported in Exhibit 4?**

14 A. Yeah, I can recognize that this is from CS
15 reports, but I cannot really recognize this is a
16 report from my analysis.

17 You know what I mean?

18 **Q. Do you typically write an actual analysis**
19 **report after you run a regression model?**

20 A. No, just CS -- this table (indicating),
21 this table (indicating). And then sometime they --
22 you know, sometime they want me to write one page of
23 the conclusion, but most the time they don't.

24 **Q. Okay.**

25 A. Yeah.

Page 90

1 **Q. But do the results reported in Exhibit 4**
2 **take the form of the --**

3 **Do they look like how the results are**
4 **reported out when you run regression analyses?**

5 A. Yeah, look like -- yes, uh-hm.

6 **Q. Okay. So a while back I asked if you**
7 **participated in the compliance review of Oracle's**
8 **headquarters' location --**

9 A. Uh-hm.

10 **Q. -- and you said yes.**

11 A. Uh-hm.

12 **Q. But now I've asked a couple questions about**
13 **particular statistical analysis and you've told me**
14 **that you're not sure if it was you.**

15 A. Because sometime, you know, not only myself
16 run this one. Maybe they are other people. Because
17 many case sometime, for example, you a statistician,
18 sometime you run, sometime I run, so I don't know.

19 You know, at that time, for example, we
20 pull a case in Florida and we -- if any people have
21 time, right, you can go there -- you can go there
22 and, you know, pull down and then do the analysis.
23 And sometimes, you know, we have some other people
24 to do the second review, or whatever, and the
25 result, whatever. So --

Page 91

1 **Q. Do you recall any other statisticians**
2 **working on the compliance review of Oracle's**
3 **headquarters' location?**

4 A. I cannot make sure. I don't know.

5 **Q. Okay. When you say "sometimes other**
6 **statisticians" --**

7 A. I just --

8 **Q. -- "would look at the reports," who -- who,**
9 **in your experience, are some of those other**
10 **statisticians who at times will -- will look at an**
11 **analysis for an open compliance review that you are**
12 **also working on?**

13 MR. ELIASOPH: So --

14 THE WITNESS: I don't know.

15 MR. ELIASOPH: Yeah --

16 THE WITNESS: I cannot recall.

17 MR. ELIASOPH: She's -- okay. He answered.

18 BY MS. MANTOAN:

19 **Q. What other statisticians do you work with**
20 **at OFCCP?**

21 MR. ELIASOPH: Okay. Objection to the
22 extent you're requesting that he identify outside
23 consultants or other experts.

24 MS. MANTOAN: Right.

25 ///

Page 92

1 BY MS. MANTOAN:

2 **Q. I'm not asking for that. I'm asking what**
3 **other statisticians employed by the department of**
4 **labor do you work with?**

5 A. I don't know. Only the management --
6 maybe, you know, Janette knows. Janette can tell
7 you, I don't know.

8 **Q. You don't -- so you don't know the names of**
9 **any other statisticians who work at the department**
10 **of labor?**

11 MS. MANTOAN: Objection. Misstates prior
12 testimony.

13 THE WITNESS: Uh-hm, uh-hm. I don't know.

14 BY MS. MANTOAN:

15 **Q. Okay. Do you know who Bob LaJeunesse is?**

16 A. Yeah. He is my current supervisor.

17 **Q. Okay. Is he a statistician?**

18 A. It's just I call him Mr. and a
19 statistician, yes.

20 **Q. Okay. Does he work at the department of**
21 **labor?**

22 A. Yes.

23 **Q. Okay. So other than Dr. LaJeunesse, can**
24 **you think of any other statisticians who work at**
25 **the -- for the department of labor?**

Page 93

1 MR. ELIASOPH: Objection. Overly broad.
2 Vague.
3 THE WITNESS: You mean you want the name of
4 a statistician?
5 MS. MANTOAN: Correct?
6 THE WITNESS: But because I don't know
7 who -- sometimes Janette one you do, but I don't
8 know.
9 MR. ELIASOPH: She's just asking if you can
10 name other statisticians.
11 THE WITNESS: Oh, oh. Okay.
12 MR. ELIASOPH: I believe you mean OFCCP,
13 but maybe you mean the whole department of labor.
14 MS. MANTOAN: My understanding is he's only
15 worked in that unit of OFCCP, but given the re-org
16 you described I didn't want to limit it in that way.
17 BY MS. MANTOAN:
18 **Q. So, I guess, can you name any other**
19 **statisticians at the department of labor who to your**
20 **knowledge work on OFCCP matters?**
21 A. Work for OFCCP matters (sic), right?
22 **Q. Work on OFCCP matters.**
23 A. Okay. There's a Bret Phillips.
24 **Q. What's that name?**
25 A. Bret, B-r-e-t.

Page 94

1 **Q. Uh-huh.**
2 A. Phillips.
3 **Q. How is that spelled?**
4 A. P-h-i-l-l-i-p-s.
5 **Q. Bret Phillips.**
6 A. Yes.
7 **Q. Okay. Any others?**
8 A. Timothy Li, L-i -- L-i-l -- L, like Larry,
9 I like icon, Li -- Timothy Li.
10 **Q. Uh-hm. Timothy Li.**
11 A. Uh-hm.
12 **Q. Any others?**
13 A. Kuan Chen Sheng.
14 **Q. Could you spell that?**
15 A. I don't know I can be exact to the Kuan
16 Sheng. Like a Q-u-e-s (sic) -- I don't know, but
17 last name is Sheng, S-h-e-n-g.
18 **Q. S-h-e-n-g?**
19 A. Sheng, yeah. Kuan Sheng, kind of Chinese
20 name. I cannot remember. I'm sorry.
21 **Q. Okay. Any others?**
22 A. David -- David. Last name is -- Garber,
23 G-a-r-b-e-r. David Garber.
24 **Q. Any others?**
25 A. I forget last name; first name is called

Page 95

1 Eno, E-n-o, Eno, and I forget last name.
2 **Q. Okay. Any others that you can recall as**
3 **you sit here?**
4 A. Another one -- I forget her name. At that
5 time -- it's -- maybe the -- I forget her name, you
6 know. He's kind of new, you know. He's new, so
7 I -- last name I cannot --
8 MR. ELIASOPH: If you don't remember, you
9 don't remember.
10 THE WITNESS: I cannot memorize.
11 MS. MANTOAN: Okay.
12 THE WITNESS: I cannot remember her.
13 BY MS. MANTOAN:
14 **Q. To your knowledge, did Dr. LaJeunesse work**
15 **on the Oracle headquarters' compliance review?**
16 A. No.
17 **Q. To your knowledge, did any of the other**
18 **statisticians at OFCCP work on the Oracle**
19 **headquarters' compliance review?**
20 A. I don't know.
21 **Q. How is it that you don't know whether other**
22 **statisticians worked but you're sure that**
23 **Dr. LaJeunesse did not work on this review?**
24 A. Because every time -- oh, every time
25 Janette come to my desk and say, "Andy run this" --

Page 96

1 MR. ELIASOPH: Just a reminder not to --
2 not to reveal the deliberative communications.
3 THE WITNESS: Okay.
4 BY MS. MANTOAN:
5 **Q. Are you aware of any -- so you said you**
6 **don't know if any other statistician worked --**
7 A. Uh-hm.
8 **Q. So that means, to the best of your --**
9 A. Uh-hm.
10 **Q. You can't name another statistician at**
11 **OFCCP who worked on the Oracle headquarters'**
12 **compliance review; is that correct?**
13 A. No, I cannot. I cannot.
14 **Q. Okay.**
15 A. I cannot. I don't know who or whatever,
16 you know.
17 **Q. Okay.**
18 A. It's -- our floor is open. I don't know
19 who go there. I don't know. I don't know. I
20 really don't know this.
21 MS. MANTOAN: Okay. Can we go off the
22 record for just a second?
23 THE VIDEOGRAPHER: We are going off the
24 record.
25 The time is 12:15 p.m.

Page 97

1 (Short recess was taken from 12:15 p.m.
2 until 12:16 p.m.)
3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 12:16 p.m.
5 BY MS. MANTOAN:
6 **Q. So, I want to ask you some questions**
7 **looking back at Exhibit 2.**
8 A. One, four, three -- two, okay.
9 **Q. Looking at Attachment A. That's what**
10 **starts at page 1404.**
11 A. 1404, okay.
12 **Q. Okay. Starting in the middle of that first**
13 **paragraph it says, "OFCCP analyzed Oracle employees'**
14 **compensation data by Oracle job function."**
15 **Do you see where I read that?**
16 A. Yeah.
17 **Q. Did you conduct an analysis of Oracle's**
18 **headquarters' location by job function?**
19 A. I believe so, yeah.
20 **Q. Okay. What is a job function at Oracle?**
21 MR. ELIASOPH: Objection. Calls for
22 speculation.
23 THE WITNESS: I just followed Janette, you
24 know, who used this PAG.
25 ///

Page 98

1 BY MS. MANTOAN:
2 **Q. Okay. So separate question, though, is if**
3 **you have an understanding of what job function is at**
4 **Oracle.**
5 A. It's kind of the -- to my knowledge, it's
6 kind of -- I don't know if it's correct or not.
7 Really I don't want to answer. You know what, I'm
8 not hundred percent sure, you know, --
9 **Q. Okay.**
10 A. -- so...
11 **Q. So, as you sit here today, you don't have**
12 **an understanding that you can share of what job**
13 **function is at Oracle?**
14 MR. ELIASOPH: Objection. Calls for
15 speculation. Asked and answered.
16 MS. MANTOAN: I'm just asking his
17 understanding.
18 THE WITNESS: I cannot remember. I know
19 it, but I just cannot remember.
20 BY MS. MANTOAN:
21 **Q. Do you have a rough idea? I appreciate**
22 **that it's been some time and so you may not have**
23 **every precise detail memorized, but as you sit here**
24 **today, do you have even any rough understanding of**
25 **what a job function is at Oracle?**

Page 99

1 A. It's a look like a company they have job
2 structures and usually the job function is --
3 because job structure, so they have hierarchy. So a
4 job function may be in the top hierarchy. Below
5 that job function they have subfunctions, below the
6 subfunction usually they have a microfamily --
7 microjob family and below that they have job family,
8 then after that maybe have career track, so on and
9 so forth, you know. And they have definition, but
10 I'm sorry, I cannot remember all the definition at
11 all.
12 **Q. And is what you just testified to your**
13 **understanding, generally, of what job functions are**
14 **at companies or is that your understanding of what a**
15 **job function is at Oracle in particular?**
16 A. I don't know about Oracle in particular,
17 that's true.
18 **Q. Okay.**
19 A. But this is -- I just tell you, is kind of
20 general IT, you know.
21 **Q. Okay.**
22 A. Not -- I don't know, maybe Oracle have
23 special structure -- job structure. I don't know.
24 **Q. Okay.**
25 A. I never see that.

Page 100

1 **Q. Okay. So I have a few questions here and I**
2 **am going to ask about your understanding of these**
3 **terms with respect to Oracle in particular, and if**
4 **you don't have an understanding with respect to**
5 **Oracle in particular that's fine; you can say so.**
6 **Before I do that, you mentioned earlier**
7 **that in connection with the Oracle headquarters'**
8 **compliance review you received a data file, correct?**
9 A. Uh-hm.
10 **Q. To your recollection, did you receive just**
11 **a single data file or did you receive more than one?**
12 A. Okay. When you see -- just clarify your
13 questions.
14 When you see multi-profile what do you
15 mean? Like a different period -- different period
16 of time?
17 **Q. I mean did you get a --**
18 A. Time period different, you know.
19 **Q. Did the data that you recall receiving come**
20 **in an Excel file?**
21 A. It's Excel file, that's right.
22 **Q. Okay. So did you get one or more than one**
23 **Excel files in connection with your work on Oracle's**
24 **headquarters' compliance review?**
25 A. I cannot recall, but I know there is at

Page 101

1 least one.

2 **Q. Right. And you don't remember if you got**

3 **any others; is that correct?**

4 A. Yeah.

5 **Q. Okay. What, if any --**

6 A. Maybe I have. I don't know.

7 **Q. What, if any, other documents or data did**

8 **you receive to review in connection with Oracle's**

9 **headquarters' compliance review?**

10 A. I think the data already in Excels. I

11 heard probably they pull from --

12 THE REPORTER: I'm sorry. I heard...

13 THE WITNESS: I heard the data -- I heard

14 data may be from different legacy system put into

15 the Excels, but I don't know that part. I don't

16 know.

17 BY MS. MANTOAN:

18 **Q. Okay. So you got one or more Excel files,**

19 **correct -- at least one, maybe more?**

20 A. Yeah, maybe one, or two, or three -- I

21 don't know, at least one.

22 **Q. Did you get any documents that weren't**

23 **Excel files to review in connection with the Oracle**

24 **headquarters' compliance review?**

25 A. What kind of --

Page 102

1 MR. ELIASOPH: Go ahead. You can answer

2 the question, just don't state the content of the

3 communications.

4 THE WITNESS: Okay.

5 MR. ELIASOPH: But you can discuss the

6 communications that you received.

7 THE WITNESS: Okay.

8 MS. MANTOAN: Yeah.

9 BY MS. MANTOAN:

10 **Q. Did you receive any other information,**

11 **other than that data file -- one or more data files,**

12 **to review in connection with this compliance review**

13 **of Oracle's headquarters' location?**

14 A. I cannot recall how many. I don't know.

15 **Q. But you -- do you recall receiving anything**

16 **other than a data file?**

17 A. No. Just data file and the model from

18 Janette, that's it.

19 **Q. Did you receive -- the answer to these next**

20 **series of questions maybe somewhat contained in what**

21 **you just said, but I'm going to ask just so the**

22 **record is clear.**

23 **Did you receive any policy documents to**

24 **review?**

25 MR. ELIASOPH: Objection. Vague.

Page 103

1 BY MS. MANTOAN:

2 **Q. Did you receive any Oracle policies to**

3 **review?**

4 A. No.

5 **Q. Did you receive any interview notes or**

6 **memos to review?**

7 A. No.

8 **Q. Did you receive any e-mail communications**

9 **from Oracle?**

10 A. I cannot recall.

11 **Q. Did you --**

12 A. I mean probably -- I believe "probably"

13 means no, but I cannot recall.

14 **Q. Okay.**

15 A. Because I -- my job, right, usually they

16 don't send me the documents from the contractor, so

17 I assume no.

18 **Q. Did you receive any explanations --**

19 **separate from whether they were policies, any**

20 **explanations that you understood to have been**

21 **written by Oracle about how pay works at Oracle?**

22 A. No.

23 **Q. Okay. Did you receive any data**

24 **dictionaries that would define or explain the data**

25 **fields that were in the data files that you**

Page 104

1 **reviewed?**

2 A. No.

3 **Q. Turning back to Attachment A in Exhibit 2.**

4 **That sentence that started "OFCCP analyzed" --**

5 **Oh, I'm sorry, I'm on page 1404 again.**

6 **That will be the page I'm on for the majority --**

7 A. Okay.

8 **Q. -- of this set of questions.**

9 **There's the sentence that starts with:**

10 **"OFCCP analyzed Oracle employees'**

11 **compensation data by Oracle job function,"**

12 **continues, "using a model that included the**

13 **natural log of" --**

14 THE REPORTER: I need you to slow down.

15 MS. MANTOAN: It continues:

16 -- "using a model that included the natural

17 log of annual salary as a dependent

18 variable."

19 BY MS. MANTOAN:

20 **Q. Why would you conduct a model using the**

21 **natural log of annual salary as opposed to just**

22 **the dollar value of annual salary?**

23 A. Oh, for the economy reason. Because this

24 nature log, they will produce the percentage -- how

25 many percent of female was paid along with the male,

Page 105

1 they produced the percentage.
2 It's easy to -- it's easy to understand,
3 you know, that way. That's why we used the log.
4 And --
5 **Q. And why did you analyze -- does annual**
6 **salary here mean base salary?**
7 A. Yes.
8 **Q. Why did you analyze base salary as opposed**
9 **to total compensation or some other measure of**
10 **compensation?**
11 A. Here it's annual salary, right?
12 **Q. That says "annual salary" in the exhibit.**
13 A. Yeah. So what's your question?
14 **Q. Why did you analyze annual salary as**
15 **opposed to total compensation?**
16 A. As -- as opposed to total compensation?
17 **Q. Yeah.**
18 A. Okay. Let me regress your questions.
19 It means what's the difference between the
20 base pay or a total compensation when you do the
21 regression for both of them?
22 **Q. I'm asking why did you do a regression for**
23 **annual salary instead of for total compensation?**
24 A. Oh. Usually we -- every time we start with
25 the base salary.

Page 106

1 **Q. Why?**
2 A. I don't know. You can start -- you can
3 start total, too, but like I say, we don't know --
4 we cannot find factor to evaluate the total comp,
5 basically.
6 **Q. Did you do a total compensation analysis of**
7 **Oracle's headquarters' location?**
8 MR. ELIASOPH: Objection. Deliberative
9 process.
10 THE WITNESS: I cannot -- I cannot
11 remember.
12 MS. MANTOAN: Are you instructing him not
13 to answer?
14 MR. ELIASOPH: I am.
15 THE WITNESS: I cannot recall.
16 BY MS. MANTOAN:
17 **Q. I'm going to continue reading this**
18 **sentence, and I have a few questions about --**
19 A. Yes, please.
20 **Q. -- this.**
21 **The sentence after "dependent variable"**
22 **continues.**
23 **-- "and accounted for differences in**
24 **employees' gender, work experience at**
25 **Oracle, work experience prior to Oracle,**

Page 107

1 **full-time/part-time status, exempt status,**
2 **global career level, job specialty, and job**
3 **title."**
4 **Did I read that correctly?**
5 A. Yes.
6 **Q. Okay. So how did your model control for**
7 **work experience at Oracle?**
8 **What was used to represent or capture work**
9 **experience at Oracle?**
10 A. You mean the work experience prior to
11 Oracle?
12 **Q. No, work experience at Oracle.**
13 A. Okay. From the date they hire -- they were
14 hired to the snapshot you -- I mean contractor sent
15 to us, the snapshot. So this one will be time in
16 the company.
17 **Q. Did you account for leaves of absence in**
18 **your measure of work experience at Oracle?**
19 A. No.
20 **Q. Okay. When you say "date of hire," do you**
21 **mean date of hire at Oracle America, Inc., or do you**
22 **mean date of hire at, let's say, a predecessor**
23 **company that Oracle might have acquired with the**
24 **employee then continuously working at Oracle?**
25 A. I cannot recall.

Page 108

1 MR. ELIASOPH: Objection to the extent it
2 calls for speculation.
3 BY MS. MANTOAN:
4 **Q. You don't recall how you selected that hire**
5 **date to measure from hire to snapshot, correct?**
6 A. Yeah, I just -- they provide us a hire date
7 there, right, but they don't explain a little bit
8 more explanation, so they say, "Andy, can you do the
9 regression for us" like that.
10 **Q. Do you have a view, as a statistician, as**
11 **to whether you would ideally use the hire date only**
12 **at Oracle America or whether you would use the hire**
13 **date at a predecessor company or a sister company?**
14 MR. ELIASOPH: Objection. Calls for
15 speculation. Calls for legal conclusion.
16 THE WITNESS: I cannot recall that specific
17 situation, no.
18 BY MS. MANTOAN:
19 **Q. So I'm just asking if you have a view as to**
20 **which is statistically more proper.**
21 A. Yeah, yeah, well, I will review, yes, so
22 sometimes I review, so...
23 **Q. But did you -- it's not "did you review";**
24 **it's "do you have a view."**
25 **Do you have an opinion as to whether the**

Page 109

1 hire date that's used in a work experience
 2 calculation should be hire date only at the legal
 3 entity you're looking at or a continuous service
 4 date which might bring in time at a prior company?
 5 A. Yeah.
 6 MR. ELIASOPH: Objection. Calls for legal
 7 conclusion. Calls for speculation.
 8 THE WITNESS: I think at that time I just,
 9 you know, follow Janette's, you know, instruction.
 10 Do the -- they already come -- they already come,
 11 the time in company, for us -- for me already. They
 12 come for me. They send me that data, you know.
 13 MS. MANTOAN: Okay.
 14 THE WITNESS: They don't give a -- for
 15 example -- they give me the --
 16 I'm sorry, go ahead.
 17 BY MS. MANTOAN:
 18 Q. Yeah, I'm -- I'm not asking sort of a
 19 historical question about how this came to be in
 20 this analysis. I'm asking you, as someone with a
 21 Ph.D. in applied statistics, whether you have a view
 22 as to whether when you're looking at work experience
 23 at a company that may have, say, acquired other
 24 companies if you should look only at the hire date
 25 at that company or if you should look at the

Page 110

1 continuous service date.
 2 A. Yeah, usually I --
 3 Q. I'm asking your opinion.
 4 A. I'm sorry.
 5 MR. ELIASOPH: Objection to the extent it
 6 calls for a legal conclusion and speculation.
 7 THE WITNESS: So what do you want me
 8 answer?
 9 BY MS. MANTOAN:
 10 Q. I'm asking your opinion, as --
 11 A. Okay. Okay.
 12 Q. -- someone with a Ph.D. in applied
 13 statistics, --
 14 A. Uh-hm.
 15 Q. -- whether you have a view as to how work
 16 experience should be computed when a company has,
 17 say, acquired a company and assumed their employees?
 18 A. Yes, I will --
 19 MR. ELIASOPH: Same -- same objections.
 20 THE WITNESS: Yeah, I will review based on
 21 the information they give to me. If I don't have
 22 information, I cannot do that.
 23 MS. MANTOAN: Right.
 24 THE WITNESS: Yeah.
 25 ///

Page 111

1 BY MS. MANTOAN:
 2 Q. So, I'm not asking about the information
 3 you were given. I'm asking about your opinion about
 4 how a statistical analysis should be done.
 5 A. Uh-hm.
 6 Q. How should the work experience variable be
 7 constructed --
 8 A. Uh-hm.
 9 Q. -- based on your knowledge of -- and Ph.D.
 10 in, applied statistics?
 11 So if you're -- so, let me -- with that
 12 background, let me ask the question.
 13 In constructing a work experience variable
 14 in a compensation analysis, for a company that has
 15 acquired other companies, do you think the hire date
 16 you should use is the hire date only at the present
 17 company or should it extend back to the hire date at
 18 the predecessor company?
 19 MR. ELIASOPH: Objection. Confusing.
 20 Calls for legal conclusion. Calls for speculation.
 21 THE WITNESS: You know, my -- my opinion is
 22 of course you have to consider, you know --
 23 MS. MANTOAN: Okay.
 24 THE WITNESS: -- you have to reflect, you
 25 know, the work and the years of experience.

Page 112

1 BY MS. MANTOAN:
 2 Q. Okay. In constructing a work experience
 3 variable in a compensation analysis, do you think
 4 that leaves of absence should be reduced or backed
 5 out of the work experience calculation?
 6 MR. ELIASOPH: Objection. Calls for
 7 speculation. Calls for a legal conclusion.
 8 THE WITNESS: I don't have an opinion for
 9 this.
 10 MS. MANTOAN: Okay. Just a few more
 11 questions right here and then maybe we'll have a
 12 good time to stop for the lunch break.
 13 MR. ELIASOPH: Okay.
 14 BY MS. MANTOAN:
 15 Q. Are you okay to keep going right now,
 16 Dr. Leu?
 17 A. Yes, please.
 18 Q. Okay. After work experience at Oracle, the
 19 next -- the next factor listed here in Attachment A
 20 is "Work Experience Prior to Oracle."
 21 How was that work experience prior to
 22 Oracle variable constructed or reflected in the
 23 model that you did?
 24 A. Okay. Usually we use the -- their birthday
 25 as a proxy.

Page 113

1 So, in the first step I use the hire date
2 and the snapshot, I already find time in company,
3 right? Time in company are here. So then after
4 that I find birthday, right? So this prior proxy is
5 a -- from a -- from a -- from the birthday and from
6 the 18 years old, okay? And before he started his
7 job, you know, is they have a very after -- but
8 basically we operate like this. We calculate the
9 prior experience by after 18 years old and before
10 the first job. before that -- no, I'm sorry, before
11 they start to count in Oracle. If we don't -- you
12 know, if we don't find any actual prior experience,
13 we can this way.
14 Q. What was the last thing you said?
15 A. If we don't find any, like, actual,
16 actual -- actual experience, prior experience, so we
17 use the time -- time in company, right?
18 Q. Uh-hm.
19 A. Time in company, thinking about here,
20 right?
21 Q. Uh-hm.
22 A. And 18 years old here, right, when you're
23 18 years old.
24 Q. Uh-hm, yes.
25 A. And you're in Oracle right here

Page 114

1 (indicating).
2 MR. ELIASOPH: Okay. Just remember the
3 transcript won't pick up your hand gestures.
4 THE WITNESS: Okay.
5 MR. ELIASOPH: So to the extent you can say
6 it and not show it -- we do have the videographer
7 here, but that's harder to get in front of the
8 Court.
9 BY MS. MANTOAN:
10 Q. So is it -- the way you constructed this
11 variable, am I correct, is hire date at Oracle
12 America minus their birth date, --
13 A. Let me -- let me speak this way --
14 Q. -- so how old they were when they worked at
15 Oracle America minus 18 years?
16 A. Uh-hm.
17 Q. Is that correct?
18 A. Yeah.
19 Q. That's how --
20 A. That's the period, yeah.
21 Also you can say, like, you know, you use
22 the snapshot, subtract the birthday, because we
23 already have a time in company snapshot, subtract
24 the hiring date.
25 Q. Uh-hm.

Page 115

1 A. Okay. Then after that you subtract the
2 18 years old. That would be prior experience.
3 Q. So, I'm sorry, I feel like we just
4 described two different ways. I had described a
5 way, you said "Yes, that's how it's done," and then
6 you described a different way.
7 A. Okay.
8 Q. So can you explain again?
9 A. Okay.
10 MR. ELIASOPH: So just so we have a clear
11 record, maybe if you can ask him what -- what
12 specifically do you want him to explain.
13 BY MS. MANTOAN:
14 Q. I would like you to explain how you
15 calculated work experience prior to Oracle in the
16 model reflected in Attachment A.
17 A. Can I have a pen?
18 MR. ELIASOPH: Okay.
19 MS. MANTOAN: Well, the record won't be
20 able to tell what you're writing down.
21 MR. ELIASOPH: Yeah.
22 MS. MANTOAN: -- but --
23 MR. ELIASOPH: Do you --
24 THE WITNESS: But I try -- this way --
25 MS. MANTOAN: To give an example?

Page 116

1 THE WITNESS: No, no. I can -- sometime I
2 put in here. I can speak well --
3 MS. MANTOAN: Okay.
4 THE WITNESS: Speak it -- speak it well.
5 Okay.
6 MR. ELIASOPH: Okay. I object to the
7 extent this calls for speculation.
8 You've previously stated that you don't
9 remember a lot of specific details, but if you do
10 remember please go ahead and answer the question.
11 THE WITNESS: Yeah, this is a statistical
12 part I remember --
13 MR. ELIASOPH: Okay.
14 THE WITNESS: -- very well. This is my
15 personal -- you know, so I do this part.
16 MS. MANTOAN: Great.
17 THE WITNESS: Okay. We calculate this way,
18 we use a -- the snapshot, the years between snapshot
19 and the birthday, okay, and then subtract the time
20 in company, means the time in Oracle company, and
21 then subtract the 18. That will be my years of
22 experience prior -- for prior.
23 MS. MANTOAN: Thank you.
24 THE WITNESS: Okay.
25 ///

Page 117

1 BY MS. MANTOAN:
2 **Q. So I believe this is the same thing, but**
3 **tell me -- tell me if I'm right.**
4 A. Yeah.
5 **Q. The age of a given employee as of the date**
6 **of the snapshot?**
7 A. Uh-hm.
8 **Q. You then subtract the years that they've**
9 **been at Oracle, so the time between the snapshot**
10 **date and the hire date?**
11 A. Yeah.
12 **Q. And then you know how old they were when**
13 **they were hired at Oracle --**
14 A. Uh-huh.
15 **Q. -- according to that hire date?**
16 A. Uh-huh.
17 **Q. And then you subtract 18 --**
18 A. Uh-huh.
19 **Q. -- from that? And then what remains is --**
20 A. Yeah.
21 **Q. -- the work experience prior to Oracle?**
22 A. Yeah. Because before 18 we can assume it
23 was in college time. They don't have work yet,
24 so...
25 **Q. Okay. Is that a standard way that you**

Page 118

1 **compute work experience or was that something**
2 **different that you did in this Oracle headquarters'**
3 **compliance review?**
4 A. No. This is basically a lot of article --
5 economic article, right? They did a lot of
6 compensation and they used it prior. They used this
7 way, you know.
8 **Q. Okay. And this work experience prior to**
9 **Oracle is a proxy variable, correct?**
10 A. It's a proxy, yes.
11 **Q. That's because you didn't know the actual**
12 **work experience that any given employee that was**
13 **included in this model had prior to Oracle, correct?**
14 A. Uh-hm. Uh-hm. Before -- before the
15 Oracle, right, we don't have the actual years of
16 experience.
17 **Q. Okay. So you don't, in fact, know for any**
18 **employee who was is included in this model how many**
19 **years of actual work experience they had prior to**
20 **Oracle, correct?**
21 MR. ELIASOPH: Objection. Asked and
22 answered.
23 THE WITNESS: I don't know this part, you
24 know.
25 ///

Page 119

1 BY MS. MANTOAN:
2 **Q. Sorry, I'm not clear if --**
3 **Do you know for any employee who was**
4 **included in this model in Attachment A how many**
5 **actual years of work experience they had prior to**
6 **Oracle?**
7 MR. ELIASOPH: Objection. Asked and
8 answered.
9 THE WITNESS: No, I don't know.
10 BY MS. MANTOAN:
11 **Q. Okay. Do you know the type of work**
12 **experience, prior to Oracle, that any of the**
13 **employees, who you included in the model in**
14 **Attachment A, had prior to Oracle?**
15 A. You mean they have prior experience?
16 **Q. So your work experience prior to Oracle**
17 **variable is just a count of years, correct?**
18 A. Yeah.
19 **Q. Is there anything in the model, whose**
20 **results are reflected in Attachment A, that accounts**
21 **for the type of prior experience as opposed to just**
22 **a numeric count of -- of years?**
23 A. No.
24 **Q. Okay.**
25 A. Yeah, not here, no.

Page 120

1 **Q. So if you had two employees at Oracle who**
2 **as of the date of the snapshot were 40 years old,**
3 **had each been at Oracle for five years, you're going**
4 **to assign the same value for work experience prior**
5 **to Oracle to both of them, correct?**
6 A. Usually I don't -- I -- it's not my job to
7 do that, no.
8 **Q. That's what the -- the calculation would**
9 **give them the same value for work experience prior**
10 **to Oracle, correct?**
11 A. Prior to the Oracle?
12 **Q. If two employees -- let me start again.**
13 **If two employees, as of the snapshot date**
14 **that you're looking at, were the same age --**
15 A. Uh-hm.
16 **Q. -- and had been at Oracle for the same**
17 **amount of time --**
18 A. Uh-hm.
19 **Q. -- the model would give them an identical**
20 **value for work experience prior to Oracle?**
21 A. Yes.
22 **Q. Okay. And that would be true even if one**
23 **of them had never worked prior to Oracle and one of**
24 **them had worked consistently in tech prior to**
25 **Oracle, correct?**

Page 121

1 MR. ELIASOPH: Objection. Asked and
2 answered.
3 THE WITNESS: Can you repeat the -- the --
4 What do you mean "work consistently in tech
5 prior"? What does that mean?
6 BY MS. MANTOAN:
7 **Q. So if one of these two employees that we're**
8 **discussing in this example --**
9 A. Uh-hm.
10 **Q. -- had never worked before they came to**
11 **Oracle --**
12 A. Uh-hm.
13 **Q. -- and the other one had worked in a series**
14 **of jobs in the technology industry --**
15 A. Uh-hm.
16 **Q. -- the work experience prior to Oracle**
17 **variable in this model is not going to distinguish**
18 **between those people; isn't that correct?**
19 A. That's correct.
20 **Q. Okay. And if one of these two people in**
21 **this example we've been discussing had worked as a**
22 **barista and if the other one had worked programming**
23 **software in the artificial intelligence space prior**
24 **to coming to Oracle this work experience prior to**
25 **Oracle variable is not going to capture that**

Page 122

1 **different, correct?**
2 MR. ELIASOPH: Objection. Asked and
3 answered.
4 THE WITNESS: No, I don't know how to
5 answer this question.
6 MS. MANTOAN: Okay.
7 THE WITNESS: Too wide.
8 BY MS. MANTOAN:
9 **Q. Okay. Turning back to Attachment A. The**
10 **next factor listed here is "full-time/part-time**
11 **status." My question here is: Did you just use an**
12 **indicator for -- sort of a dichotomous indicator for**
13 **full time and a dichotomous indicator for part time,**
14 **or did you account for, say, 40 hours versus**
15 **32 hours versus 24 hours versus 16 hours?**
16 A. We used a categorical, yes.
17 **Q. Categorical, okay.**
18 **Categorically each employee is either coded**
19 **as full time or part time?**
20 A. That's correct.
21 **Q. Okay. And then these next variables,**
22 **"exempt status, global career level, job specialty,**
23 **and job title," do you have any understanding of how**
24 **those four different variables relate to one**
25 **another, whether they're overlapping or not?**

Page 123

1 MR. ELIASOPH: Objection. Vague. Calls
2 for legal conclusion. Calls for speculation.
3 THE WITNESS: I don't know if they are or
4 not. I don't know.
5 BY MS. MANTOAN:
6 **Q. Okay. So do you know if it's accurate that**
7 **according to the data you were analyzing here if you**
8 **know an employee's job title you also know their job**
9 **specialty, their global career level, and their**
10 **exempt status?**
11 **Do you know if that's a true statement?**
12 MR. ELIASOPH: Objection. Confusing.
13 THE WITNESS: I don't understand, you know.
14 BY MS. MANTOAN:
15 **Q. Okay. When you ran the analysis, whose**
16 **results are reported in Attachment A, did that**
17 **analysis generate -- in addition to the standard**
18 **deviation numbers listed in Attachment A, a**
19 **percentage difference number? Like a percent pay**
20 **difference?**
21 A. I don't understand the question.
22 **Q. You said when you run your statistical**
23 **models you generate a report.**
24 A. Yeah.
25 **Q. Okay. Does the report only include the**

Page 124

1 **information that's in this chart on Attachment A or**
2 **does it include additional information that's not in**
3 **Attachment A here?**
4 A. Oh, yeah. They have additional
5 information.
6 **Q. What additional information?**
7 MR. ELIASOPH: So you can talk about the
8 type of the information --
9 THE WITNESS: Yeah, okay.
10 MR. ELIASOPH: -- but the specifics is
11 covered by the deliberative process privilege.
12 THE WITNESS: For example, a total size of
13 establishments.
14 BY MS. MANTOAN:
15 **Q. The size of the establishment?**
16 A. Uh-hm.
17 **Q. Okay. What else?**
18 A. And the descriptive statistics of the race
19 and the gender.
20 **Q. Just how many employees are of which race?**
21 A. Yeah, something like that.
22 **Q. Okay. Do those reports typically include**
23 **the percent pay difference that you found?**
24 A. Percentage what?
25 **Q. Percent pay difference.**

Page 125

1 A. Yes, percentage -- percentage difference,
2 yes, for the pay.
3 **Q. Do those reports typically include**
4 **information about whether each of the separate**
5 **factors that you've included in the model is itself**
6 **statistically significant?**
7 A. Say again, please.
8 **Q. Do those reports typically include**
9 **information about whether each of the separate**
10 **factors that you've included in the model is itself**
11 **statistically significant?**
12 MR. ELIASOPH: Objection to the extent that
13 this is a confusing question.
14 BY MS. MANTOAN:
15 **Q. So if you have a tenure variable in a model**
16 **does the report you generate typically indicate**
17 **whether that tenure variable is a statistically**
18 **significant predictor of pay?**
19 THE REPORTER: I need you --
20 Does the report you generate typically...
21 BY MS. MANTOAN:
22 **Q. -- typically indicate whether tenure is a**
23 **statistically significant predictor of pay?**
24 A. Yes, they provide a significance, yes.
25 **Q. Okay.**

Page 126

1 A. They do.
2 **Q. And for each of the factors that you**
3 **include in the model the report you generate**
4 **typically indicates whether that factor is a**
5 **statistically significant predictor of pay, correct?**
6 A. Yes.
7 **Q. Okay. Did you personally review any**
8 **information to determine whether or not these -- the**
9 **factors listed in Attachment A were valid factors to**
10 **include in a statistical model of Oracle?**
11 A. Not for Oracle, no.
12 **Q. Have you done that in other compliance**
13 **reviews?**
14 MR. ELIASOPH: Don't --
15 THE WITNESS: Not that I can recall.
16 MR. ELIASOPH: Okay.
17 And just -- we want to keep confidential
18 the names of other entities.
19 THE WITNESS: Uh-hm.
20 BY MS. MANTOAN:
21 **Q. What did you do, if anything, to confirm**
22 **that the employees being compared through the model,**
23 **whose results are reflected in Attachment A, were**
24 **performing similar work?**
25 MR. ELIASOPH: Objection. Asked and

Page 127

1 answered. Compound. Calls for speculation.
2 THE WITNESS: I cannot recall for this
3 part.
4 BY MS. MANTOAN:
5 **Q. Did you -- do you recall doing anything to**
6 **confirm whether the employees that the model**
7 **compares are performing substantially similar work?**
8 MR. ELIASOPH: Objection. Asked and
9 answered.
10 THE WITNESS: What do you mean? You mean
11 compare the similar work? I don't know. I
12 cannot -- I cannot answer this question, so --
13 BY MS. MANTOAN:
14 **Q. We talked earlier --**
15 A. Yeah.
16 **Q. -- about needing to group together**
17 **comparable employees.**
18 A. Uh-hm. Uh-hm.
19 **Q. What did you do, if anything, to determine**
20 **whether the model, whose results are presented in**
21 **Attachment A, groups together comparable employees?**
22 A. No, I don't do that part, no.
23 **Q. So you don't have any opinion, one way or**
24 **another, as to whether the model, whose results are**
25 **presented in Attachment A, groups together employees**

Page 128

1 **who are comparable; is that correct?**
2 A. Yeah. Janette, she decide, I believe,
3 yeah.
4 MS. MANTOAN: I am ready to take a lunch
5 break, if you are.
6 MR. ELIASOPH: Yeah -- yes, let's do that.
7 THE VIDEOGRAPHER: We are going off the
8 record.
9 The time is 12:50 p.m.
10 (Lunch break was taken from 12:50 p.m.
11 until 1:32 p.m.)
12 THE VIDEOGRAPHER: We are back on the
13 record.
14 The time is 1:32 p.m.
15 BY MS. MANTOAN:
16 **Q. Good afternoon, Dr. Leu?**
17 A. Good afternoon.
18 **Q. I understand -- well, let me ask this...**
19 **Did you have an opportunity to speak with**
20 **counsel during the break?**
21 A. To what?
22 **Q. Did you speak with your lawyer during the**
23 **break?**
24 A. Me?
25 **Q. Yes.**

Page 129

1 A. I met him?
2 **Q. Did you speak with him during the break?**
3 A. Oh, yeah, yeah.
4 **Q. Okay. So having taken a break and having**
5 **spoken with your lawyer what would you like to**
6 **clarify? I understand there's something you wanted**
7 **to clarify.**
8 A. Oh. In the beginning you asked me a
9 question about "Did you talk to anybody before I
10 come here."
11 **Q. Uh-hm.**
12 A. I said "No."
13 **Q. Uh-hm.**
14 A. But I was thinking to my group, you know, I
15 said, but I talked with him.
16 **Q. Oh.**
17 A. And usually, you know, he talked to me --
18 (To Mr. Eliasoph) Since last Friday, right?
19 MR. ELIASOPH: Oh, yeah.
20 BY MS. MANTOAN:
21 **Q. Okay. Okay. So you did meet with**
22 **Mr. Eliasoph --**
23 A. Yeah, yeah, yeah. I --
24 **Q. -- before the deposition?**
25 A. I say - "no" means my group, no, I don't

Page 130

1 anytime --
2 **Q. Okay.**
3 A. -- talk to them.
4 **Q. Was there anyone else present in your**
5 **meeting with Mr. Eliasoph?**
6 A. Any what?
7 **Q. Was anyone else present when you met with**
8 **Mr. Eliasoph?**
9 A. No. Yeah.
10 **Q. Okay.**
11 A. oh, yeah, yeah. One people, one people.
12 **Q. Okay. Who is that?**
13 A. He's call him Andrew.
14 **Q. Okay. Another attorney?**
15 A. Yeah, yeah, Andrew, yes.
16 **Q. Did you meet last Friday, you said?**
17 A. Last Friday, yes.
18 **Q. Okay. And for how long did you meet?**
19 A. Probably one hour.
20 **Q. Okay.**
21 A. One hour, one hour, five minutes, 10
22 minutes, something like that.
23 **Q. Okay. And in that meeting did you review**
24 **any documents that refreshed your memory about the**
25 **compliance review we've been talking about?**

Page 131

1 A. No.
2 **Q. Okay. Anything else that you want to**
3 **clarify or expand on from this morning?**
4 A. I don't -- I don't think, yeah, except the
5 one. I don't think -- no, I don't think, yeah.
6 **Q. Okay.**
7 A. Yeah.
8 **Q. So let's go back to Exhibit 2, if we can.**
9 A. Okay.
10 **Q. And turn to Attachment A in that, which**
11 **starts at 1404.**
12 A. Two and 14-4 (sic).
13 **Q. Yes, please.**
14 A. Okay.
15 **Q. So we spent a lot of time before the**
16 **break --**
17 A. Uh-hm.
18 **Q. -- talking about the model whose results**
19 **are reflected here.**
20 A. Uh-hm.
21 **Q. And we talked about the factors --**
22 A. Uh-hm.
23 **Q. -- that were included in that model,**
24 **correct?**
25 A. Uh-hm.

Page 132

1 **Q. So if you flip over to the next page, 1405.**
2 A. Uh-hm. Okay.
3 **Q. Well, let's back up a second.**
4 **The results on 1404 are the results of a**
5 **regression analysis looking at differences between**
6 **men and women, correct?**
7 A. That's correct.
8 **Q. Okay. And then if you flip to 1405 it**
9 **presents the results of a regression analysis first**
10 **looking at differences between African-Americans and**
11 **White employees, correct?**
12 A. Correct.
13 **Q. And second looking at differences between**
14 **Asian and White employees, correct?**
15 A. Asian, yeah.
16 **Q. Okay.**
17 A. Uh-hm.
18 **Q. So I believe that the model that was used**
19 **to generate the results that appear on page 1405 is**
20 **the same model that was used to generate the results**
21 **on 1404 based on the description of what was**
22 **included and I just wanted to confirm whether that's**
23 **correct.**
24 **Was the same model used to generate the**
25 **results on 1405 as was used to generate the results**

Page 133

1 on 1404?

2 MR. ELIASOPH: And objection to the extent

3 it calls for speculation.

4 The witness has testified he has never seen

5 these documents before.

6 THE WITNESS: I cannot make sure, but looks

7 like -- based on the factors right here, looks like

8 from the same model.

9 Like I say, you know, because maybe they

10 copy something to here (indicating), not original

11 show my report right here (indicating).

12 MS. MANTOAN: Uh-hm.

13 THE WITNESS: So maybe they cut -- I did

14 not -- you say, how many regression I did; I did

15 maybe less than five -- 100, right -- like, you

16 know, we talk about, maybe 10, less 100, and I think

17 probably the -- I assume they're the same -- same

18 models.

19 MS. MANTOAN: Okay.

20 THE WITNESS: You know, because my -- I

21 have my own CS report, right, and usually they just

22 take the CS report, the standardation (sic), right?

23 And put it right here (indicating), and then the

24 female or the male counts on there. That's it.

25 MS. MANTOAN: Okay.

Page 134

1 THE WITNESS: Yeah.

2 BY MS. MANTOAN:

3 **Q. Do you believe that Attachment A presents**

4 **the results of a statistical analysis that you did**

5 **of Oracle's headquarters' location?**

6 MR. ELIASOPH: Objection. Asked and

7 answered.

8 THE WITNESS: I -- I cannot be sure because

9 my run also have -- for example, right on here

10 (indicating) I have standard deviation negative 2.1

11 and negative 3.55, and this is for maybe another

12 company. They pull -- pull out from another report.

13 I don't know. So you have show my original report,

14 you know, and I can -- "Oh, okay, this is from me."

15 You know what I mean?

16 BY MS. MANTOAN:

17 **Q. Well, do you believe Exhibit 4 are your**

18 **original results?**

19 A. Which one? Let me see.

20 This one (indicating)?

21 **Q. Correct.**

22 A. Well, every -- every report come out look

23 like this, not just in Oracle.

24 You know what I mean?

25 **Q. Okay.**

Page 135

1 A. Yeah.

2 **Q. But when we were talking this morning about**

3 **how different variables were constructed --**

4 A. Uh-hm.

5 **Q. -- you were testifying as to how you**

6 **constructed variables in the analysis you did of**

7 **Oracle's headquarters' location, correct?**

8 A. Yeah, I think so, Oracle location, yes,

9 right.

10 **Q. Okay. And when you were conducting your**

11 **statistical analysis of Oracle headquarters'**

12 **location did you use the same model structure to**

13 **evaluate compensation differences between men and**

14 **women as you used to evaluate compensation**

15 **differences between White employees and other races?**

16 A. Yeah, usually should be that way, yeah.

17 **Q. Okay.**

18 A. Same models for gender and the race, yeah.

19 **Q. Okay.**

20 A. And, of course, like we -- I'm just kind of

21 worried that if I did many, many models -- you know,

22 Model A, Model B, and they put Model A for the

23 gender, the extract from Model A, right?

24 **Q. Uh-hm.**

25 A. And it erase from whatever.

Page 136

1 Basically, I just in the beginning I told

2 you I don't read this kind of report. You know,

3 first time I read this report.

4 **Q. You've never seen this Exhibit 2 --**

5 A. Yeah.

6 **Q. -- this Notice of Violation?**

7 A. No, no, yeah.

8 **Q. Okay. Did the statistical model that you**

9 **used to evaluate Oracle's headquarters' location**

10 **include any control for differences in education?**

11 A. I have to -- I don't know. I can't recall.

12 I cannot recall. I'm sorry.

13 MS. MANTOAN: Okay. Counsel, to make these

14 questions easier, are you willing to stipulate that

15 the results in Attachment A are the results of a

16 model that Dr. Leu ran?

17 MR. ELIASOPH: Yes.

18 MS. MANTOAN: Okay. And are you willing

19 to --

20 MR. ELIASOPH: That's my -- that's my

21 understanding.

22 MS. MANTOAN: And are you willing to

23 stipulate that Exhibit 4 presents the results of the

24 model that Dr. Leu ran?

25 MR. ELIASOPH: I'll just say that's my

Page 137

1 understanding.

2 MS. MANTOAN: Okay. So in addition to

3 potentially keeping the deposition open for certain

4 privileged objections pending the resolution that

5 would be another reason to keep the deposition open

6 at the end if that understanding proves to be

7 incorrect.

8 BY MS. MANTOAN:

9 **Q. So, Dr. Leu, operating on the assumption**

10 **and the stipulation that the results presented in**

11 **Attachment A to Exhibit 2 are results of a model**

12 **that you ran, did that -- did the model that you ran**

13 **contain any control for differences in education?**

14 A. I cannot recall. I'm serious, I cannot

15 recall.

16 **Q. Do you see anything in the description of**

17 **the model set forth in Attachment A that indicates a**

18 **control for education?**

19 A. Right here we don't have -- in this paper I

20 don't see any education right here. Okay.

21 Like I say, you know, usually I recognize,

22 you know -- the analysis I was doing, it should have

23 my name in there, but I don't know, this -- it don't

24 have my name in here.

25 **Q. Let's look at Exhibit 3 --**

Page 138

1 A. Yeah.

2 **Q. -- please.**

3 A. Exhibit 3, all right. Okay.

4 **Q. And if you could flip to the second page of**

5 **Exhibit 3, the one that starts with 39877.**

6 A. Okay. Yeah.

7 **Q. We talked about this earlier as a SAS code,**

8 **correct?**

9 A. Yes.

10 **Q. Okay. Do you see anything in this SAS code**

11 **that indicates that the statistical model it was**

12 **generating included any control for education?**

13 A. Okay. No, they don't have educations.

14 **Q. Okay. When you completed the statistical**

15 **analysis --**

16 A. Uh-hm.

17 **Q. -- that you did of Oracle headquarters'**

18 **location --**

19 A. Uh-hm.

20 **Q. -- who, if anyone, did you send it to?**

21 A. I just directly send to Janette.

22 **Q. You said you just sent it to Janette?**

23 A. Yeah.

24 **Q. Did you copy anyone on that e-mail?**

25 A. But I cannot recall, but sometime there's

Page 139

1 some analysts, but I don't know specifically for

2 Oracle, if I sent to Jane as well -- Jane Suhr,

3 S-u-h-r is the last name.

4 **Q. Jane Suhr?**

5 A. Yeah. Jane Suhr, yes.

6 **Q. Okay.**

7 A. Other than that, I never -- I don't send to

8 any other people at all.

9 **Q. Okay. And is that typical in a compliance**

10 **review that you send your statistical analysis to --**

11 **that you would send it to Ms. Wipper when she was at**

12 **OFCCP?**

13 A. Yeah.

14 **Q. Okay.**

15 A. Because she give me the order, so I just

16 send to her. That's it.

17 **Q. And the order she gave you included which**

18 **factors to include in the model, correct?**

19 A. Yeah.

20 **Q. And the order she gave you included which**

21 **employee groupings to use?**

22 A. Yes. They included -- yeah, the -- yeah,

23 that's right.

24 **Q. Okay. Do you have any understanding of**

25 **whether Oracle --**

Page 140

1 MR. ELIASOPH: I just want to state for the

2 record that I allowed those questions in light of

3 the judge's order, --

4 MS. MANTOAN: Okay.

5 MR. ELIASOPH: - not that I believe that

6 it's directly on point, but I do think that should

7 take care -- because he asked of any concern you

8 think would linger that that was the specific line

9 of questioning the judge authorized, and I don't

10 believe it goes anything further.

11 MS. MANTOAN: Okay. That is noted.

12 BY MS. MANTOAN:

13 **Q. Do you have any understanding, one way or**

14 **the other, of whether Oracle ever said that**

15 **employees should be grouped in the way that your**

16 **statistical model groups them?**

17 A. You mean the -- hear from Oracle?

18 **Q. Right. Did you ever -- did you ever see or**

19 **hear any information that indicated that Oracle had**

20 **said that those were the groupings that should be**

21 **used to evaluate pay --**

22 A. No.

23 **Q. -- amongst its employees?**

24 A. No.

25 MR. ELIASOPH: Okay. And let her finish

Page 141

1 her questions.

2 THE WITNESS: Oh, sorry.

3 BY MS. MANTOAN:

4 **Q. And did you ever see or hear any**

5 **information that indicated that Oracle had said that**

6 **the factors that you included in your model were the**

7 **factors that should be used to evaluate pay amongst**

8 **its employees?**

9 MR. ELIASOPH: Objection. Compound. Calls

10 for speculation.

11 THE WITNESS: No.

12 BY MS. MANTOAN:

13 **Q. What, if anything, did you do to determine**

14 **whether the factors that are controlled for in your**

15 **statistical model were in fact factors considered by**

16 **Oracle when it was determining pay?**

17 MR. ELIASOPH: Objection. Confusing.

18 Asked and answered.

19 THE WITNESS: "Did you do to determine"...

20 No.

21 BY MS. MANTOAN:

22 **Q. "No" meaning you did not do anything?**

23 A. Na-huh. I didn't hear, yeah, from

24 anywhere.

25 **Q. No, the question is whether you did**

Page 142

1 **anything to determine whether the factors that you**

2 **controlled for in your statistical model --**

3 A. Uh-hm.

4 **Q. -- are factors that Oracle managers in fact**

5 **consider when determining pay.**

6 MR. ELIASOPH: Objection. This has been

7 asked and answered.

8 MS. MANTOAN: Well, the answer was about

9 whether he'd heard anything, --

10 BY MS. MANTOAN:

11 **Q. -- and the question is whether you,**

12 **yourself, did anything to determine whether the**

13 **factors in this model in Attachment A of**

14 **Exhibit 2 --**

15 A. No, just -- I just followed, you know,

16 Janette's e-mail colonies, yeah.

17 **Q. And earlier today --**

18 **Oh, I'm sorry, were you finished?**

19 A. No, I'm finished.

20 **Q. Oh. Okay.**

21 **Earlier today you used the phrase**

22 **"legitimate factors," --**

23 A. Yeah.

24 **Q. -- what, if anything, did you do to**

25 **determine whether the factors controlled for in your**

Page 143

1 **statistical model, set forth in Attachment A,**

2 **Exhibit 2 --**

3 A. Uh-hm.

4 **Q. -- were legitimate factors at Oracle?**

5 MR. ELIASOPH: Objection. Calls for legal

6 conclusion. Vague.

7 THE WITNESS: No, I just followed Janette

8 orders at the time. I don't think a little bit

9 further about, you know -- 'cause I was -- I heard

10 the data is pretty clean at that time. I don't

11 know...

12 BY MS. MANTOAN:

13 **Q. So the model set forth --**

14 A. Uh-hm.

15 **Q. -- in Attachment A to Exhibit 2 includes a**

16 **control for job title, correct?**

17 A. Which page?

18 **Q. Well, you said the model on 1404 and 1405**

19 **are the same.**

20 A. Oh, 1404, yeah.

21 **Q. The question is whether the model set forth**

22 **in Attachment A to Exhibit 2, specifically pages**

23 **1404 and 1405 --**

24 A. Uh-hm.

25 **Q. -- includes a control for job title.**

Page 144

1 A. I assume so, yeah. Because job title's

2 right here.

3 **Q. Okay. How -- I'm going to ask you a series**

4 **of questions and if the answer to the questions is**

5 **"I don't know," that's fine.**

6 A. Okay.

7 **Q. I just want to get your best knowledge.**

8 A. Uh-hm.

9 **Q. How is "job title" used at Oracle?**

10 A. I don't know.

11 **Q. Okay. Did you ever review any job**

12 **descriptions from Oracle?**

13 A. No.

14 **Q. Did you ever review any job postings from**

15 **Oracle?**

16 A. No.

17 **Q. Do you have any understanding of how the**

18 **work that a software developer at Oracle does might**

19 **differ from the work that an application developer**

20 **at Oracle does?**

21 A. I do in some extent, but not from the

22 Oracle. From -- like O*NET OnLine they talk about

23 occupational job and how much they're expected to

24 pay. I got -- I find out their different pay, so

25 supposed to be different, but I never heard from

Page 145

1 Oracle at all.

2 **Q. So the understanding you just testified to**

3 **is from O*NET, which is general labor market info?**

4 A. Yeah, yeah.

5 **Q. Okay. How many different products do**

6 **employees at Oracle's headquarters' location work**

7 **on?**

8 A. Headquarter?

9 **Q. Their -- the location that was the subject**

10 **of this compliance review we've referred to today as**

11 **Oracle's headquarters.**

12 A. Uh-hm.

13 **Q. My question is: How many different**

14 **products do employees, work (sic) at that**

15 **headquarters' location, work on?**

16 A. I don't know this one, no.

17 **Q. Okay. Your answer is "I don't know"?**

18 A. I don't know.

19 **Q. Okay. Do you know how the products that**

20 **Oracle employees work on differ from one another, or**

21 **are similar to one another?**

22 A. I assume so.

23 **Q. You assume which?**

24 A. Because, to my knowledge, in Oracle many --

25 many kind of the products, right, so there's

Page 146

1 supposed to people, you know -- no --

2 THE REPORTER: I'm sorry. So there's...

3 THE WITNESS: Because Oracle, they make a

4 lot of product, so some people may do this and some

5 people do another product. Right?

6 MS. MANTOAN: Okay.

7 THE REPORTER: I don't --

8 BY MS. MANTOAN:

9 **Q. Some people make one product and some**

10 **people make another product?**

11 A. Yeah.

12 **Q. Is that the testimony?**

13 A. Uh-hm. Uh-hm.

14 **Q. Okay. And how does the work needed to**

15 **develop those different Oracle products differ; do**

16 **you know?**

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

18 MR. ELIASOPH: Objection. Calls for

19 speculation.

20 BY MS. MANTOAN:

21 **Q. Does work on the different products that**

22 **Oracle makes require the same skill?**

23 MR. ELIASOPH: Objection. Calls for

24 speculation. Calls for legal conclusion.

25 ///

Page 147

1 MS. MANTOAN: I'm just asking what you

2 know.

3 THE WITNESS: I don't know.

4 BY MS. MANTOAN:

5 **Q. Does work on the different products that**

6 **Oracle makes require the same effort?**

7 MR. ELIASOPH: Objection. Calls for

8 speculation. Calls for legal conclusion.

9 THE WITNESS: It's -- it's vague. I don't

10 know.

11 BY MS. MANTOAN:

12 **Q. Okay. Do the different products that**

13 **Oracle makes differ in their importance to the**

14 **company; --**

15 MR. ELIASOPH: Objection. Calls for

16 speculation.

17 BY MS. MANTOAN:

18 **Q. -- if you know.**

19 A. I don't know.

20 **Q. Okay. Another question about the**

21 **statistical analysis whose results are presented in**

22 **Attachment A in Exhibit 2...**

23 **Does Attachment A contain any analysis of**

24 **whether any particular practice at Oracle caused the**

25 **salary differences that were observed?**

Page 148

1 MR. ELIASOPH: Objection. Vague. Calls

2 for legal conclusion.

3 THE WITNESS: Which page?

4 MS. MANTOAN: Let's start at 1404.

5 THE WITNESS: 1404.

6 And your question -- I forget your

7 question.

8 MS. MANTOAN: I'll ask it again.

9 BY MS. MANTOAN:

10 **Q. Does Attachment A at page 1404 contain any**

11 **analysis of whether any particular practice at**

12 **Oracle caused the salary differences that were**

13 **observed?**

14 MR. ELIASOPH: I'm going to object on the

15 basis that the document speaks for itself.

16 THE WITNESS: No.

17 BY MS. MANTOAN:

18 **Q. Did you conduct any statistical analysis of**

19 **whether any particular practice at Oracle caused any**

20 **of the salary differences that your models**

21 **generated?**

22 MR. ELIASOPH: To the extent this asks for

23 analyses that have not been disclosed, I'm

24 instructing the witness not to answer.

25 I do not know if this is part of the

Page 149

1 analysis that was disclosed, if so then he can go
 2 ahead and answer, but he can only talk about the
 3 analysis that's been disclosed.
 4 THE WITNESS: I don't -- I don't know --
 5 MS. MANTOAN: So let's --
 6 THE WITNESS: Unless I see, you know, my
 7 original report, you know, I --
 8 MS. MANTOAN: Well, let's look at
 9 Exhibit 4.
 10 THE WITNESS: Exhibit 4. Okay.
 11 BY MS. MANTOAN:
 12 **Q. So your counsel earlier conveyed his**
 13 **understanding that Exhibit 4 presents the results of**
 14 **the statistical model that you ran.**
 15 A. Uh-hm.
 16 **Q. Does Exhibit 4 contain any analysis of**
 17 **whether any particular practice at Oracle caused the**
 18 **salary differences that were observed?**
 19 MR. ELIASOPH: Objection. The document
 20 speaks for itself.
 21 THE WITNESS: I don't know.
 22 BY MS. MANTOAN:
 23 **Q. In conducting the analysis of Oracle's**
 24 **headquarters' location --**
 25 A. Uh-hm.

Page 150

1 **Q. -- set forth in Exhibit 4 --**
 2 A. Uh-hm.
 3 **Q. -- were you attempting to evaluate whether**
 4 **any particular practice at Oracle caused the salary**
 5 **differences that were observed?**
 6 MR. ELIASOPH: Ob- --
 7 THE WITNESS: No.
 8 BY MS. MANTOAN:
 9 **Q. Do you know what an onsite evaluation is in**
 10 **the context of OFCCP?**
 11 A. Uh-hm.
 12 **Q. What is an onsite --**
 13 MR. ELIASOPH: Ah, remember to --
 14 BY MS. MANTOAN:
 15 **Q. -- as you understand it?**
 16 MR. ELIASOPH: -- speak audibly and wait
 17 for her to -- say "yes" or "no," and wait for her to
 18 finish her question.
 19 THE WITNESS: Okay.
 20 MS. MANTOAN: Okay. So just so the record
 21 is clear, start that again.
 22 BY MS. MANTOAN:
 23 **Q. Do you know what an onsite evaluation is in**
 24 **the context of OFCCP?**
 25 A. Yeah.

Page 151

1 **Q. What is an onsite as you understand it?**
 2 A. Onsite means -- I cannot remember, you
 3 know. It's -- it's kind of our -- our CO, you know,
 4 interview of employees onsite.
 5 **Q. Have you ever participated in an onsite**
 6 **while at OFCCP as far as you remember?**
 7 A. Yes, I do.
 8 **Q. Okay. Did you participate in the onsite at**
 9 **Oracle's headquarters' location?**
 10 A. I cannot recall, you know. Maybe yes,
 11 maybe no. I don't know. I think -- hmm, --
 12 MR. ELIASOPH: If you don't know, please
 13 don't speculate.
 14 THE WITNESS: Yeah, I should say I don't
 15 know.
 16 THE REPORTER: Exhibit 5.
 17 (Exhibit 5 was marked for identification.)
 18 BY MS. MANTOAN:
 19 **Q. So for the record, Exhibit 5 is a document**
 20 **Bates-numbered DOL 38917.**
 21 **So this is an e-mail that was produced to**
 22 **us by OFCCP. It's from Brian Mikel. It's to Shauna**
 23 **Holman-Harries. And it says:**
 24 **"Shauna, Robert Doles will not be available**
 25 **for the onsite. In his place Shirong Andy**

Page 152

1 **Leu from our regional office."**
 2 **Do you see where it says that?**
 3 A. What is -- what is about?
 4 **Q. So I'll represent to you --**
 5 A. Onsite, yeah.
 6 **Q. -- this was produced to us by OFCCP. I**
 7 **believe it was produced as --**
 8 A. 92015.
 9 **Q. -- in connection with this case.**
 10 **So the question is: Does this --**
 11 A. I cannot recall, yeah.
 12 **Q. Okay.**
 13 A. I'm sorry.
 14 **Q. Okay. You don't -- as you sit here today,**
 15 **you don't recall if you participated in the Oracle**
 16 **onsite?**
 17 **Is that -- is my understanding correct?**
 18 A. Yeah. I cannot recall, you know.
 19 I -- I don't know that one is Oracle or not
 20 Oracle.
 21 MR. ELIASOPH: Just --
 22 THE WITNESS: Yeah, maybe --
 23 MR. ELIASOPH: Yeah, don't say the names of
 24 any other --
 25 THE WITNESS: Okay. Yeah, yeah, yeah.

Page 153

1 BY MS. MANTOAN:
2 **Q. Had you already begun your work on the**
3 **Oracle compliance review prior to March of 2015?**
4 A. I cannot recall. I don't know, yeah.
5 **Q. I'm trying to get a sense of -- from the**
6 **time you started working on the --**
7 A. Uh-hm.
8 **Q. -- Oracle headquarters' compliance review**
9 **to the time you stopped doing any work in connection**
10 **with Oracle's headquarters' location, like, how much**
11 **time was that?**
12 **Was it a year? Was it a month? How long**
13 **was it?**
14 A. Sorry, I cannot recall. Yeah.
15 **Q. Is your best estimate that you spent -- you**
16 **know, your work on this review, might have spent**
17 **more than a year or less than a year?**
18 A. Should be less than a year.
19 **Q. Do you have any better estimate of sort of**
20 **when you might have -- like, if you started in the**
21 **spring and you ended in the winter, or something**
22 **like that?**
23 A. No, I'm sorry. I cannot --
24 **Q. Okay.**
25 A. -- I cannot remember at all.

Page 154

1 **Q. This is also going to ask you to estimate**
2 **'cause I'm sure you don't remember to -- to the**
3 **number.**
4 A. Yeah.
5 **Q. Can you give me a sense of roughly the**
6 **amount of time you spent, in total, doing work on**
7 **evaluation of Oracle's headquarters' location?**
8 **Is it less than 20 hours? Less than**
9 **50 hours? More than 50 hours? More than a hundred**
10 **hours?**
11 **I'm trying to get the ballpark.**
12 A. I think it's more than probably -- I know
13 at least -- at least five hours.
14 **Q. At least five?**
15 A. Five hours at least.
16 **Q. Okay. Do you think it was probably less**
17 **than 10 hours?**
18 A. Okay, yeah.
19 **Q. Less than 10?**
20 A. Less than 10 hours.
21 **Q. Sorry. I want to make sure the record is**
22 **clear.**
23 A. Uh-hm.
24 **Q. Is it your best estimate, as you sit here**
25 **today, that in total you spent less than 10 hours in**

Page 155

1 **total working on analyses related to Oracle's**
2 **headquarters' location?**
3 A. That was estimate or --
4 **Q. Your best estimate.**
5 MR. ELIASOPH: If you have a clear enough
6 recollection.
7 THE WITNESS: Uh-hm.
8 To be honest with you, I don't have very
9 clear -- very clear, you know, the numbers in my
10 brain, you know.
11 BY MS. MANTOAN:
12 **Q. But you did say you thought it was at least**
13 **five hours, right?**
14 A. Yeah. I think it's five hours, yeah, but
15 ten, 20, I don't know, I really don't. Five -- five
16 should be reasonable -- you know, at least to five.
17 **Q. Okay. Are you pretty confident that it was**
18 **fewer than 20 hours?**
19 MR. ELIASOPH: Objection. Asked and
20 answered.
21 THE WITNESS: I -- I don't know, you know.
22 MR. ELIASOPH: The witness doesn't
23 remember.
24 THE WITNESS: Usually as a statistician,
25 right, if I don't have any impression or kind of

Page 156

1 concrete data I don't want to say anything, you
2 know. You know, so I don't want to estimate like
3 that, you know.
4 You have information, you estimate. Right
5 now I don't have any --
6 MR. ELIASOPH: She's entitled to your best
7 estimate --
8 THE WITNESS: Yeah.
9 MR. ELIASOPH: -- if you can give it, but
10 if you don't -- if you're just kind of guessing --
11 THE WITNESS: Yeah --
12 MR. ELIASOPH: Then --
13 THE WITNESS: Yeah, I don't want to guess,
14 you know.
15 BY MS. MANTOAN:
16 **Q. What's your best estimate of how long you**
17 **generally spend in connection with any given**
18 **compliance review doing statistical work?**
19 A. Any -- any kind of --
20 It depends. Some are like -- one time some
21 time they give me up to one month, then they come
22 back again do the -- you know, come back or
23 communications. So I cannot -- I cannot accurately,
24 you know, sum up, you know, that time.
25 **Q. And I appreciate you can't be precise here,**

Page 157

1 but I think I am entitled to some sense of the
2 range -- "The average compliance review I spend 500
3 to 600 hours on," or "The average compliance review
4 I might spend 20 hours on."
5 I want to get a sense of the range, the
6 ballpark.
7 A. And in addition each case is unique, so I
8 don't know, you know. This -- if I get -- the
9 numbers become kind of guessing, you know, right?
10 Q. Uh-hm.
11 A. Each case is unique. So for any case it
12 might be five hours, some may be seven hours and up.
13 Right now I cannot total how many case
14 total I work.
15 Q. Right.
16 A. So I'm trying to do average.
17 Q. No, I'm saying for each case -- I'm saying
18 for each case, on average, sort of how much you
19 spend per case.
20 A. Yeah, once I know the number I have to sum
21 up the total cases and divide it by total numbers,
22 then the average.
23 And right now I cannot help you. I don't
24 have that kind of number at all.
25 MR. ELIASOPH: He's a statistician through

Page 158

1 and through.
2 MS. MANTOAN: Right. Okay.
3 MR. ELIASOPH: Okay. I think that's asked
4 and answered.
5 BY MS. MANTOAN:
6 Q. As you sit here today, can you think of any
7 compliance review you've ever done where you've
8 spent 100 hours on a single compliance review?
9 A. Hundred hours?
10 Q. Yeah.
11 A. On a single?
12 Q. On a single compliance evaluation. Has
13 that ever happened, as best as you can recall?
14 A. 100 -- over 100 hours?
15 MR. ELIASOPH: Don't name it if there is
16 one. Just -- but you can tell her if there is --
17 THE WITNESS: Yes, there's one. A long
18 time ago there's one, yeah.
19 MS. MANTOAN: Okay.
20 THE WITNESS: It's --
21 MS. MANTOAN: Yeah, don't -- I don't need
22 to know anything about that evaluation.
23 BY MS. MANTOAN:
24 Q. So in general, you don't -- you don't
25 regularly spend a hundred hours on a compliance

Page 159

1 evaluation?
2 A. No. No.
3 MS. MANTOAN: Okay. Okay.
4 MR. ELIASOPH: What number are we on?
5 THE REPORTER: Six.
6 THE WITNESS: Thank you.
7 (Exhibit 6 was marked for identification.)
8 BY MS. MANTOAN:
9 Q. So Exhibit 6, for the record, is a document
10 Bates-numbered DOL 1362 to DOL 1364.
11 My first question is whether you ever
12 recall seeing this document before.
13 A. No. I never -- I never saw this document
14 before.
15 Q. Okay. Just a few questions about whether
16 you have any understanding of what's meant by some
17 things here.
18 A. Okay.
19 Q. In the second full paragraph, that's on the
20 first page, that starts with "The office" --
21 A. Uh-hm.
22 Q. -- it reads:
23 "The office completed a desk audit review
24 of the compensation data submitted. The
25 results of our analysis indicate

Page 160

1 differences in average compensation that
2 require further investigation of Oracle's
3 compensation practices."
4 Did I read that correctly?
5 A. Yes.
6 Q. So my question is whether you have any
7 understanding of what's meant by "our analysis"
8 here?
9 A. You know how many hours?
10 Q. No, what's meant -- what analysis is this
11 referring to? Do you have any idea?
12 A. Yeah.
13 Q. Okay. What analysis is that referring to?
14 A. This is just, like, in the morning I told
15 you before evaluations the district, they will
16 conduct this analysis. It's called desk audit
17 review.
18 Q. Desk audit review?
19 A. Uh-hm.
20 Q. Okay.
21 A. That's what they call before evaluations.
22 Q. Okay.
23 A. And they maybe used this report to continue
24 another -- whatever work -- whatever, you know, in
25 their side, but I don't know what they do.

Page 161

1 **Q. Okay. And then later -- down on this same**
2 **page continuing over to the next page, there's a**
3 **list of 34 items.**
4 A. Wow. That's a lot of factors here, yeah.
5 **Q. Do you -- my question is: Do you sort**
6 **of -- I know you haven't seen this document**
7 **before --**
8 A. No.
9 **Q. -- but does a list like this look familiar**
10 **to you requesting this much information?**
11 MR. ELIASOPH: Objection. Calls for
12 speculation.
13 THE WITNESS: Some term, I -- you know,
14 sometime I know, yeah. Some -- I saw somewhere some
15 term, you know, but all of them -- 34 put all
16 together like this -- 34 time, right here, right --
17 34 list?
18 MS. MANTOAN: Yes.
19 THE WITNESS: No, I never see this, 34 in
20 one list like this.
21 BY MS. MANTOAN:
22 **Q. Okay. And in connection with the**
23 **compliance review of Oracle's headquarters' location**
24 **were you ever asked "Dr. Leu, what factors" -- "what**
25 **data do you want us to get for you to do your**

Page 162

1 **analysis?"**
2 MR. ELIASOPH: Objection. Asked and
3 answered and goes to deliberative process privilege.
4 Please do not answer to the extent you
5 would disclose any communications you had
6 predecision on this case.
7 THE WITNESS: I don't know.
8 MS. MANTOAN: Okay.
9 THE WITNESS: Thank you.
10 THE REPORTER: Exhibit 7.
11 (Exhibit 7 was marked for identification.)
12 BY MS. MANTOAN:
13 **Q. Exhibit 7 for the record is a document**
14 **Bates-numbered DOL 1365 to DOL 1366.**
15 **It's an e-mail from Shauna Holman-Harries**
16 **to Hea Jung Atkins dated October 28th, 2014.**
17 **Do you know who Hea Jung Atkins is?**
18 A. I know.
19 **Q. Who is that?**
20 A. It's -- right now she runs -- district
21 director.
22 **Q. District director?**
23 A. Uh-hm.
24 **Q. Do you recall what position she held in**
25 **October of 2014?**

Page 163

1 A. Yeah, at that time she's a district
2 director I believe.
3 **Q. Okay. What district is she the director**
4 **of?**
5 A. It's --
6 MR. ELIASOPH: Objection. Vague.
7 BY MS. MANTOAN:
8 **Q. As of --**
9 MR. ELIASOPH: Are you asking now?
10 BY MS. MANTOAN:
11 **Q. As of October 2014, do you know what she's**
12 **the district director of?**
13 A. 2014 -- today is '19, right? '14, I cannot
14 remember so well. I can't remember so well, but I
15 know when I was in there it looked like -- I move
16 from Washington, D.C., to here seven years ago. At
17 that time I just know she is -- at that time she was
18 district director, then after that I never asked her
19 about her position at all.
20 **Q. Okay. You never asked her?**
21 A. But she changed the seat, but I don't know.
22 **Q. I see. Okay.**
23 **So the second paragraph in this e-mail**
24 **starts -- it's cut off, but I believe it says, "When**
25 **reviewing the item 11 data, please note," and it**

Page 164

1 **goes on.**
2 **My question is whether the information in**
3 **this paragraph -- whether you recall ever receiving**
4 **the information in this paragraph.**
5 MR. ELIASOPH: So take your time and read
6 the paragraph.
7 I'm going to object to the question to the
8 extent that it's compound. There's a lot of
9 information in this paragraph.
10 BY MS. MANTOAN:
11 **Q. So I'll ask a slightly different question,**
12 **while you're reviewing, which is: Do you recall**
13 **receiving any of the information in this paragraph**
14 **prior to conducting your statistical analysis?**
15 A. No, I don't receive any information.
16 **Q. Okay.**
17 A. Uh-hm. No -- yeah, no.
18 **Q. And there's a sentence in the middle that I**
19 **just want to ask about in particular. It starts**
20 **with the word "please"? It's four lines down.**
21 MR. ELIASOPH: Which one?
22 MS. MANTOAN: It starts with the word
23 "please." It's four lines down in that paragraph.
24 BY MS. MANTOAN:
25 **Q. It reads:**

Page 165

1 "Please also note that even for employees
2 appearing in the same job title and the
3 same job department, their work,
4 responsibilities and duties, and employee
5 respective skill and experience typically
6 can vary widely."
7 Did I read that correctly?
8 A. Yeah.
9 Q. Okay. As you sit here today, do you have
10 any reason to -- do you know of any -- strike that.
11 As you sit here today, are you aware of any
12 facts that contradict that statement?
13 MR. ELIASOPH: Objection. Calls for
14 speculation. May call for a legal conclusion.
15 THE WITNESS: I don't know. I don't know
16 what -- yeah.
17 BY MS. MANTOAN:
18 Q. So as you sit here today, you're not aware
19 of any facts that contradict or undermine that
20 statement; is that right?
21 A. That's right.
22 MR. ELIASOPH: Objection. Misstates prior
23 testimony.
24 THE REPORTER: Exhibit 8.
25 (Exhibit 8 was marked for identification.)

Page 166

1 THE WITNESS: Okay. Thank you.
2 BY MS. MANTOAN:
3 Q. So Exhibit 8 is a series of e-mails,
4 Bates-numbers are DOL 1356 to 1358. And my
5 questions only concern the most recent e-mail -- the
6 top e-mail on this string, the one on 1356, and the
7 paragraph that begins "Oracle sells many
8 products" -- I'm sorry, "Oracle sells many different
9 products."
10 Do you see the paragraph that starts there?
11 A. Uh-hm.
12 Q. Okay. So I'd like you to read that
13 paragraph and tell me if you recall receiving any of
14 the information from this paragraph prior to
15 conducting your statistical analysis of Oracle's
16 headquarters' location.
17 MR. ELIASOPH: Vague -- objection. Vague.
18 THE WITNESS: I don't know.
19 You should not ask me six and seven and
20 eight. I never received this kind of documents at
21 all.
22 BY MS. MANTOAN:
23 Q. Right. So my question -- so my question
24 isn't about the specific e-mail necessarily. I see
25 that you're not on the "to" or "from" or "cc"

Page 167

1 line --
2 A. Uh-hm.
3 Q. -- but the information that's in this
4 paragraph --
5 A. Uh-hm.
6 Q. -- whether it's from this e-mail or from
7 some other course, I'm trying to understand whether
8 you knew of any of this information at the time you
9 conducted your statistical analysis.
10 A. No.
11 MR. ELIASOPH: What -- what specific
12 information are you asking about?
13 MS. MANTOAN: I mean I can go sentence by
14 sentence in this paragraph, but I'm asking if any of
15 this information is information that he received
16 prior to conducting his statistical analysis.
17 MR. ELIASOPH: Well, it refers to job
18 group, job titles, same department, and it's in a
19 narrative form, but some of the information --
20 I mean it's just very vague. I think it's
21 a confusing question.
22 THE WITNESS: Yeah, I believe so, uh-hm.
23 BY MS. MANTOAN:
24 Q. Okay. Were you ever -- prior to completing
25 your statistical analysis in this case, were you

Page 168

1 ever --
2 MR. ELIASOPH: All right, he's answered
3 that he didn't receive this e-mail.
4 MS. MANTOAN: Okay.
5 BY MS. MANTOAN:
6 Q. So I'm going to ask it -- I'm just going to
7 ask if you were given certain information, which may
8 or may not have come through this e-mail.
9 A. Uh-hm.
10 Q. Prior to conducting your statistical
11 analysis in this case were you ever told words to
12 the effect that because of the diversity in products
13 sold at Oracle, job group or job title have little
14 bearing on an employee's pay?
15 MR. ELIASOPH: Objection. Calls for
16 speculation.
17 THE WITNESS: Nobody told me that.
18 BY MS. MANTOAN:
19 Q. Okay. Prior to conducting your statistical
20 analysis in this case were you ever told words to
21 the effect that even for employees appearing in the
22 same job group, job title, and/or the same
23 department, their work responsibilities and duties,
24 and employee's respective skill and experience
25 typically can vary widely?

Page 169

1 MR. ELIASOPH: Objection. Calls for
2 speculation.
3 THE WITNESS: No.
4 BY MS. MANTOAN:
5 **Q. Prior to conducting your statistical**
6 **analysis in this case were you ever told words to**
7 **the effect that working for a different supervisor**
8 **will typically denote the different line of business**
9 **or product the employee is working on?**
10 MR. ELIASOPH: Objection. Calls for
11 speculation.
12 THE WITNESS: No.
13 BY MS. MANTOAN:
14 **Q. Prior to conducting your statistical**
15 **analysis in this case were you ever told words to**
16 **the effect that different products or lines of**
17 **business typically require different skill sets?**
18 MR. ELIASOPH: Objection. Calls for
19 speculation.
20 THE WITNESS: No.
21 BY MS. MANTOAN:
22 **Q. Prior to conducting your statistical**
23 **analysis in this case were you ever informed that**
24 **Oracle does not maintain education or actual work**
25 **experience in its database?**

Page 170

1 MR. ELIASOPH: Objection. Calls for
2 speculation.
3 THE WITNESS: No.
4 BY MS. MANTOAN:
5 **Q. When conducting statistical analyses of pay**
6 **in your work at OFCCP --**
7 A. Uh-hm.
8 **Q. -- are there times when a factor that you**
9 **believe is relevant to pay is not in the data for**
10 **you to analyze?**
11 MR. ELIASOPH: Objection. Calls for
12 speculation. Calls for legal conclusion.
13 THE WITNESS: No. The management -- you
14 know, I told you in the morning, they send the
15 e-mail for these factors. So I would say no.
16 BY MS. MANTOAN:
17 **Q. Okay. Because you're defining factors that**
18 **are relevant to pay in that answer as the factors**
19 **that management tells you to evaluate, correct?**
20 A. Yeah, yeah, yeah -- for Oracle, yeah.
21 MS. MANTOAN: Okay.
22 THE VIDEOGRAPHER: Can you scoot over?
23 MR. ELIASOPH: Oh, am I getting into the --
24 THE VIDEOGRAPHER: Sort of.
25 ///

Page 171

1 BY MS. MANTOAN:
2 **Q. Do you know what a show cause notice is in**
3 **the context of OFCCP?**
4 A. No.
5 **Q. Okay. Do you know if any of your**
6 **statistical analyses have ever been included in a**
7 **show cause notice?**
8 MR. ELIASOPH: Objection. Confusing.
9 Calls for speculation.
10 THE WITNESS: I don't know any connection,
11 the show cause with an evaluation analysis.
12 BY MS. MANTOAN:
13 **Q. Okay. We talked earlier today about the**
14 **fact that one way to analyze a compensation is by**
15 **using cohort comparisons, correct?**
16 A. Yeah.
17 **Q. Okay. And one way to analyze pay is by**
18 **conducting a statistical analysis, right?**
19 A. (Witness nods head.)
20 **Q. So I have a question -- I just want your**
21 **opinion on this question based on your knowledge of**
22 **statistics and your training in statistics.**
23 **Do you think it's true that cohort --**
24 **cohort comparisons are insufficient to rebut**
25 **statistical evidence of discrimination?**

Page 172

1 MR. ELIASOPH: Objection. Vague. Calls
2 for speculation calls for legal conclusion.
3 THE WITNESS: To me, right, to my
4 knowledge, it depends on the case.
5 BY MS. MANTOAN:
6 **Q. Okay. What particularly -- when you say**
7 **"it depends on the case," what particularly do you**
8 **mean? On what would it depend?**
9 A. When I say it depends on cases that means
10 because each case is unique. They have their
11 different background, or whatever, the data, nature
12 of the data. So, you know, each company, they're --
13 the data -- the nature of data is unique, so we
14 cannot treat them just as one formula, one type of a
15 cohort analysis. You know.
16 **Q. And did you, yourself, reach any opinions**
17 **about whether a cohort analysis as opposed to a**
18 **statistical analysis was the appropriate way to**
19 **analyze pay at Oracle's headquarter location?**
20 A. You know, to my knowledge -- or to my
21 experience, I usually, by myself -- you know, I
22 don't encourage to do the cohort analysis. I
23 usually just do the evaluations, you know. That's
24 my opinion. But some people they do another review,
25 similar articles, you know, they -- some, they have

Page 173

1 the cons and they have the pro. Depending on the
2 case, I don't know. I cannot make one conclusion
3 for everything, no.

**4 Q. Okay. And specifically in connection with
5 the review of Oracle's headquarters' location am I
6 correct that you never formed an opinion as to
7 whether a statistical analysis as opposed to cohort
8 analysis would be the best way to analyze pay?**

9 A. No, I didn't say that, yeah. No, no, I'm
10 sorry, you're right, yeah. I agree with you, yes.

11 Q. Okay. What I said was correct?

12 A. Yeah, yeah, yeah; you said correct, yes.

13 MS. MANTOAN: Okay. Thank you.
14 So, Exhibit 9, I believe --
15 Is that the next in order?
16 THE WITNESS: Yes.
17 MS. MANTOAN: -- is a document Bates-number
18 DOL 940 to 954.
19 (Exhibit 9 was marked for identification.)
20 BY MS. MANTOAN:
**21 Q. And I'll represent to you -- since you said
22 you're not familiar with show cause notices, that
23 this is the show cause notice that was issued in
24 connection with the compliance review of Oracle's
25 headquarters' locations.**

Page 174

**1 And my question for you is just: Do you,
2 as a statistician, see any differences between
3 Attachment A to Exhibit 9, that's pages 952 to 954,
4 and Attachment A to Exhibit 2, we've talked quite a
5 bit about, which is page 1404 to 1406?**

6 MR. ELIASOPH: Objection. The documents
7 speak for themselves.
8 THE WITNESS: I don't know.
9 MR. ELIASOPH: I mean do you want him to do
10 a word-by-word review?
11 If you represent that they're the same,
12 we'll accept that representation.
13 MS. MANTOAN: Okay. That's fine, then.
14 BY MS. MANTOAN:
**15 Q. Do you know what a conciliation meeting is
16 in the context of OFCCP?**

17 A. So-so.

**18 Q. Okay. What's your understanding of what a
19 conciliation meeting is?**

20 A. Conciliation means, you know, between --
21 the conversation between contractor and the OFCCP,
22 and probably they want to find a better solution for
23 both the party.
**24 Q. Have you -- did you participate in any
25 conciliation discussions in connection with the**

Page 175

**1 compliance review of Oracle's headquarters'
2 location?**

3 A. No.

4 MR. ELIASOPH: Objection to the extent --
5 THE WITNESS: Oh, sorry.
6 MR. ELIASOPH: Let me --
7 Objection to the extent that you're asking
8 for internal deliberations.
9 BY MS. MANTOAN:
**10 Q. Did you attend any conciliation meeting
11 with Oracle?**

12 A. No.

**13 Q. Were you on any telephone conversations
14 with anyone from Oracle related to conciliation at
15 the headquarters' location?**

16 A. For conciliation?
17 Q. For conciliation?

18 A. No.

**19 Q. At any point in connection with the
20 compliance evaluation did you participate in any
21 communications with Oracle?
22 And by "participate" I mean you were a
23 direct person in the room or on the phone?**

24 MR. ELIASOPH: He testified that he
25 couldn't remember if he was at the compliance

Page 176

1 review. You had a document that suggested he was.
2 MS. MANTOAN: Okay.
3 MR. ELIASOPH: I just -- to the extent
4 you're asking him something he doesn't remember, --
5 MS. MANTOAN: Okay.
6 MR. ELIASOPH: -- I object.
7 MS. MANTOAN: That's a good point.
8 BY MS. MANTOAN:
**9 Q. We did talk about the entrance conference
10 for the onsite and we talked about, yeah, whether or
11 not you had attended the onsite. And I think your
12 testimony was that you didn't remember whether you
13 were at the onsite; is that correct?**

14 A. Yeah.
**15 Q. Setting that to one side, do you remember,
16 one way or another, whether you ever participated in
17 any communications with Oracle related to the
18 compliance evaluation of its headquarters' location?**

19 A. No.
**20 Q. You don't remember one way or the other,
21 correct?**

22 A. Yeah.
23 Q. Okay.

24 MR. ELIASOPH: Just to be clear for the
25 record, are you saying you didn't or you don't

Page 177

1 remember?

2 THE WITNESS: You mean participate any

3 conciliation meeting?

4 MS. MANTOAN: No, I'm sorry.

5 BY MS. MANTOAN:

6 **Q. So, I'm trying to get the extent of your**

7 **interactions with Oracle --**

8 A. Uh-hm.

9 **Q. -- in connection with this review. --**

10 A. Uh-hm.

11 **Q. We've said that you're not sure if you were**

12 **at the onsite, correct? You don't remember?**

13 A. I'm not sure. Yeah, I forgot already.

14 **Q. Okay. So leaving that to the side, are you**

15 **sure that you didn't have any other contacts with**

16 **Oracle or do you just not remember whether you had**

17 **any other contacts with Oracle?**

18 A. No, I don't contact with Oracle directly,

19 no.

20 **Q. Sorry, what? I didn't --**

21 A. I don't contact Oracle by myself, no.

22 **Q. With others.**

23 A. What do you mean "with others"?

24 **Q. So, okay -- were you ever on a phone**

25 **conversation with anyone at Oracle? There could**

Page 178

1 **have been other people from OFCCP, there might not**

2 **have been. Did you ever participate in any**

3 **conversation that you understood one or more of the**

4 **people on the call to be from Oracle?**

5 A. I -- I cannot recall, you know.

6 **Q. Okay. Have you ever been asked to attend a**

7 **conciliation meeting with a contractor?**

8 A. No.

9 **Q. Okay. Have you ever, in your work at**

10 **OFCCP, yourself, gone onsite and actually looked at**

11 **the data systems of the contractor?**

12 MR. ELIASOPH: Objection. Vague.

13 THE WITNESS: You mean look the company

14 system -- computer system?

15 BY MS. MANTOAN:

16 **Q. Right. To determine what data they store,**

17 **how they store it, et cetera?**

18 A. No.

19 **Q. Did you participate in any preparations for**

20 **a conciliation meeting in connection with Oracle's**

21 **headquarters' location?**

22 A. No.

23 **Q. So Exhibit 2, which we talked quite a bit**

24 **about, has a date in March of 2016, and Exhibit 9,**

25 **which was the last one you looked at, has a date in**

Page 179

1 **June of 2016; --**

2 A. Uh-hm.

3 **Q. -- do you see that?**

4 **I'm wonder if you -- as you sit here today,**

5 **recall whether you conducted any statistical**

6 **analysis related to Oracle's headquarter location**

7 **between March of 2016 and June of 2016?**

8 A. About?

9 **Q. So the question --**

10 A. I cannot recall, you know.

11 **Q. You just don't recall the timing of when**

12 **you conducted your analysis of Oracle's --**

13 A. Yeah, --

14 **Q. -- headquarters' location?**

15 A. -- I cannot recall the timings, --

16 **Q. Okay.**

17 A. -- but I -- yeah, I did some analysis for

18 Oracle, that's true. I did some analysis for

19 Oracle, that's true.

20 **Q. Right. And we -- we have talked about that**

21 **quite a bit, yes?**

22 A. Yes.

23 **Q. And so this question was just when that**

24 **analysis was conducted, and if I understand you**

25 **correctly, you don't recall if it was between March**

Page 180

1 **and June of 2016, correct?**

2 A. No, I cannot recall the date. You know,

3 I --

4 **Q. Okay.**

5 A. -- you know, the date, I really cannot.

6 MS. MANTOAN: Okay.

7 THE WITNESS: Thank you.

8 THE REPORTER: Exhibit 10.

9 (Exhibit 10 was marked for identification.)

10 BY MS. MANTOAN:

11 **Q. So for the record Exhibit 10 is a six-page**

12 **document entitled "Defendant Oracle's**

13 **Interrogatories, Set Two, and OFCCP's Response,**

14 **Interrogatory No. 27, Supplemented on May 31st,**

15 **2019."**

16 **I believe I know the answer, but I'll ask**

17 **Dr. Leu. Have you ever seen the document in**

18 **Exhibit 10 before?**

19 A. No.

20 **Q. Okay. So if you turn to the third page of**

21 **the document --**

22 A. Uh-hm.

23 **Q. -- Interrogatory No. 27 appears at the top**

24 **of that page.**

25 A. Uh-hm.

Page 181

1 Q. An interrogatory is a -- are you familiar
2 with that word?
3 A. Where?
4 Q. "Interrogatory" at the top of page 3.
5 MR. ELIASOPH: Here. Look at page 3.
6 THE WITNESS: Oh, this one. No.
7 BY MS. MANTOAN:
8 Q. It's a legal term for questions that the
9 parties to a case ask each other to get answers.
10 A. Like a request/ask?
11 Q. It's a request and then the other side
12 responds --
13 A. Okay.
14 Q. In writing.
15 A. Okay.
16 Q. So the interrogatory here says:
17 "With regard to OFCCP's allegations of
18 discrimination in the second amended
19 complaint" --
20 Appreciating that I haven't yet but am
21 about to show you the second amended complaint, this
22 says:
23 -- "identify by name and last known contact
24 information each person with knowledge of
25 the facts regarding the alleged

Page 182

1 discrimination, including the nature of the
2 facts of which the person identified has
3 knowledge."
4 Right?
5 A. Uh-hm.
6 Q. And if I turn over to page 4 --
7 A. Uh-hm.
8 Q. -- it says:
9 "The individuals identified listed below
10 had varying degrees of participation in the
11 compliance review of Oracle America and the
12 facts that they have regarding the alleged
13 discrimination described in the second
14 amended complaint are limited to the
15 information learned during the compliance
16 review that provided the basis for OFCCP's
17 issuance of the Notice of Violation in this
18 matter."
19 And then you see, if you flip to page 5,
20 that you're listed here, correct?
21 A. Uh-hm.
22 Q. Okay.
23 A. Uh-hm.
24 Q. So, I want to make sure that I'm getting
25 from you --

Page 183

1 A. Uh-hm.
2 Q. -- the full universe of facts of which
3 you're aware that relate to alleged
4 discrimination --
5 A. Uh-hm.
6 Q. -- allegedly discovered during the
7 compliance review of Oracle's headquarters'
8 location.
9 MR. ELIASOPH: I'm going to object to the
10 question. It's vague. It calls for a narrative.
11 It could invade the work-product privilege. It
12 could invoke deliberative process privilege.
13 MS. MANTOAN: Okay. So it was an --
14 MR. ELIASOPH: It's also asked and
15 answered.
16 MS. MANTOAN: It was an inartful preamble
17 to a question which I had intended to ask, which is
18 coming now. And I don't think facts are protected
19 by privilege, so my question here -- this question
20 is directed at facts regarding alleged
21 discrimination at Oracle's headquarters' location.
22 BY MS. MANTOAN:
23 Q. And you and I have talked, Dr. Leu, --
24 A. Uh-hm.
25 Q. -- about certain --

Page 184

1 A. Uh-hm.
2 Q. -- statistical analysis that you ran.
3 A. Uh-hm.
4 Q. Aside from what we have already discussed,
5 as you sit here today, --
6 A. Uh-hm.
7 Q. -- are you aware of any other facts that
8 suggest discrimination at Oracle's headquarters'
9 location?
10 A. You mean other locations?
11 Q. No. The headquarters' location.
12 A. Oh, okay.
13 Q. We talked about your statistical analysis.
14 A. Uh-hm.
15 Q. Are there any other facts of which you're
16 aware that you think, suggest, or indicate
17 discrimination at Oracle's headquarters' location?
18 A. Hmm, you mean you want me to suggest?
19 Q. I'm asking about facts that you know.
20 A. The factor?
21 Q. You did your statistical analysis.
22 A. Yeah, factor -- you mean factor or --
23 Q. No, facts.
24 A. Facts?
25 Q. Yes.

Page 185

1 A. Oh.
2 MR. ELIASOPH: Objection. Vague and
3 confusing.
4 THE WITNESS: And this is too -- too -- I
5 don't know facts -- what facts are? I really don't
6 know. It's too wide. I really don't know how to
7 answer this question.
8 BY MS. MANTOAN:
9 **Q. So I'll represent to you that OFCCP has**
10 **filed an administrative complaint alleging --**
11 A. Uh-hm.
12 **Q. -- discrimination in pay --**
13 A. Uh-hm.
14 **Q. -- at Oracle's headquarters' location.**
15 A. Uh-hm. Uh-hm.
16 **Q. Okay. And I'm trying to understand what**
17 **facts you're aware of that relate to whether or not**
18 **there was discrimination at Oracle's headquarters'**
19 **location.**
20 A. I don't know. I just simply performed the
21 evaluation and sent back to him -- to her.
22 **Q. In your opinion does the regression that**
23 **you performed suggest discrimination at Oracle's**
24 **headquarters' location?**
25 MR. ELIASOPH: Objection. Calls for legal

Page 186

1 conclusion. Calls for speculation.
2 THE WITNESS: I sent my result, right?
3 MS. MANTOAN: Yes.
4 THE WITNESS: And they -- they make
5 decision. I don't know.
6 BY MS. MANTOAN:
7 **Q. So you're a trained statistician, though,**
8 **correct?**
9 A. Yeah, I'm statistician, but sometimes
10 they -- some people, they feel comfortable to make
11 decisions, they don't have to come to me.
12 **Q. Right. So -- yeah, and I'm simply asking**
13 **your opinion: Do you believe that the statistical**
14 **models that you did in the statistical analysis of**
15 **Oracle's headquarters' location suggest**
16 **discrimination?**
17 MR. ELIASOPH: This is asked and answered.
18 It calls for a legal conclusion. It also requires
19 speculation.
20 THE WITNESS: I don't think I'm an
21 appropriate person to answer this question, you
22 know.
23 BY MS. MANTOAN:
24 **Q. Why is that?**
25 A. Because, you know, regression is a kind of

Page 187

1 systemic check sections but they have another kind
2 of -- you know, so I cannot just make one
3 conclusion, "I think you have" -- "you have
4 discriminations inside of Oracle." Maybe some
5 people -- some -- another -- like management, they
6 have to combine many, many pieces of -- to form
7 pictures. I'm just doing systemic. I don't believe
8 that the call only based on systemic regression.
9 It's based on something else. Okay?
10 THE WITNESS: Thank you.
11 THE REPORTER: Exhibit 11.
12 (Exhibit 11 was marked for identification.)
13 BY MS. MANTOAN:
14 **Q. And for the record Exhibit 11 is an 18-page**
15 **document titled "Second Amended Complaint."**
16 **My first question, Dr. Leu, will be if you**
17 **have ever seen this document before?**
18 A. No.
19 **Q. Okay. If you could turn to page 4 for me.**
20 A. Uh-hm.
21 **Q. You see some statistical results reported**
22 **there?**
23 A. Uh-hm.
24 **Q. Okay. The question is whether -- do you**
25 **believe that you did the analysis whose results are**

Page 188

1 **presented here?**
2 MR. ELIASOPH: Objection. Calls for
3 speculation.
4 THE WITNESS: Yeah --
5 MR. ELIASOPH: No, no, hold on.
6 THE WITNESS: Okay. Sorry.
7 MR. ELIASOPH: Can we go off record for a
8 minute?
9 MS. MANTOAN: Sure.
10 THE VIDEOGRAPHER: We are going off the
11 record.
12 The time is 2:43 p.m.
13 (Short recess was taken from 2:43 p.m.
14 until 2:57 p.m.)
15 THE VIDEOGRAPHER: We are back on the
16 record. The time is 2:57 p.m.
17 BY MS. MANTOAN:
18 **Q. Hi, again, Dr. Leu.**
19 A. Hi.
20 **Q. So we were looking at Exhibit 10 which is**
21 **the second amended complaint --**
22 **Or 11?**
23 MR. ELIASOPH: 11.
24 BY MS. MANTOAN:
25 **Q. -- 11, is the second amended complaint.**

Page 189

1 A. Uh-hm.
2 **Q. Okay. And we're looking at page 4 --**
3 A. Uh-hm.
4 **Q. -- before we went off the record.**
5 **My question is whether the statistical**
6 **results at the bottom of page 4 --**
7 A. Uh-hm.
8 **Q. -- do those appear to you to be results of**
9 **an analysis that you ran?**
10 MR. ELIASOPH: I'm going to object that
11 this requires the witness to speculate.
12 THE WITNESS: Doesn't look very familiar,
13 you know. I think it's kind of reorganized, mixes
14 some datas, so not directly from my report.
15 If I were to say there are some from my
16 report, I think maximum is a page percentage. That
17 (indicating) column may be from my report. Then
18 after that some people they kick in, like an annual
19 wage lost.
20 MR. ELIASOPH: And I'm going to object
21 because --
22 THE WITNESS: I don't know who.
23 MR. ELIASOPH: -- as counsel is aware, to
24 the extent this line of questions could reveal the
25 identities of outside experts it's protected, and

Page 190

1 communications with them.
2 BY MS. MANTOAN:
3 **Q. So did you, yourself, ever conduct an**
4 **analysis that had separate results year by year as**
5 **the analysis on page 4 does?**
6 A. Yeah, that's right.
7 **Q. Did you do an analysis that was year by**
8 **year?**
9 A. No.
10 **Q. Okay.**
11 A. Uh-huh, no.
12 **Q. Did you do an analysis of any years other**
13 **than 2014?**
14 A. I don't recall.
15 MR. ELIASOPH: I'm going to object. The
16 universe of all possible analyses is covered by the
17 deliberative process, the content of specific
18 analyses. You can ask questions with respect to the
19 analyses that were produced.
20 MS. MANTOAN: Right. This is an analysis
21 that was produced, so I'm trying to find out if this
22 is an analysis that he conducted.
23 THE WITNESS: No, I don't conduct this
24 analysis, period.
25 MS. MANTOAN: Okay.

Page 191

1 THE WITNESS: Thank you.
2 THE REPORTER: Exhibit 12.
3 (Exhibit 12 was marked for identification.)
4 BY MS. MANTOAN:
5 **Q. So Exhibit 12 is a multipage document. The**
6 **Bates-numbers are ORACLE_HQCA_405, 406, and then**
7 **407, which is the slip sheet to a native, and I'll**
8 **represent for the record that the PowerPoint that**
9 **follows the sheet with the No. 407 is the native**
10 **that was produced at that Bates-number, including**
11 **the notes of the PowerPoint with that Bates-number.**
12 **And my question actually does concern the**
13 **PowerPoint document.**
14 A. Uh-hm.
15 **Q. So starting at the, I guess, fourth page of**
16 **Exhibit 12, this "Global Compensation Training**
17 **Managing Pay Module."**
18 A. Uh-hm.
19 **Q. Have you ever seen -- does this document**
20 **look familiar to you?**
21 A. No.
22 **Q. Do you believe that you have ever seen this**
23 **document before?**
24 MR. ELIASOPH: Objection. Asked and
25 answered.

Page 192

1 THE WITNESS: Let me see the title.
2 I don't think so, no. "Global Compensation
3 Training," no. I do not see this one.
4 BY MS. MANTOAN:
5 **Q. What understanding, if any, do you have of**
6 **the factors that managers at Oracle consider when**
7 **they set pay?**
8 A. Hold on, one second.
9 MR. ELIASOPH: Objection. Vague as to
10 "time period."
11 THE WITNESS: You say at the Oracle, right?
12 MS. MANTOAN: Correct.
13 THE WITNESS: No, I don't know -- I don't
14 know any manager at Oracle.
15 BY MS. MANTOAN:
16 **Q. Okay. And specifically responding to the**
17 **question: Do you have any understanding of the**
18 **factors that any manager at Oracle considers when**
19 **they make pay decisions?**
20 MR. ELIASOPH: Objection. Vague.
21 THE WITNESS: No.
22 BY MS. MANTOAN:
23 **Q. Do you have any understanding of how**
24 **managers at Oracle make starting pay decisions?**
25 A. No.

Page 193

1 **Q. Do you have any understanding of the**
2 **different components of compensation that are given**
3 **to employees at Oracle, what those different**
4 **components are?**
5 A. I got this information from maybe another
6 company, but not Oracle.
7 **Q. Okay. Are you familiar with a document**
8 **called the "EEOC Compliance Manual"?**
9 A. I heard about it.
10 **Q. Do you refer to that document in your work**
11 **as a statistician for OFCCP?**
12 A. Do I refer to them?
13 **Q. Yes.**
14 A. No.
15 **Q. You said, though, you had heard of the EEOC**
16 **Compliance Manual. What do you understand that**
17 **manual to be?**
18 A. I -- basically I just -- sometime I went to
19 the website and I know they have this kind of stuff,
20 but I never go inside and read very detail so I
21 cannot recall anything.
22 MS. MANTOAN: Okay.
23 THE WITNESS: Thank you.
24 THE REPORTER: Exhibit 19 --
25 MS. MANTOAN: Oh, 13?

Page 194

1 THE WITNESS: 13.
2 THE REPORTER: 13.
3 THE WITNESS: I would like it, 19.
4 (Exhibit 13 was marked for identification.)
5 BY MS. MANTOAN:
6 **Q. Exhibit 13, for the record, is a printout**
7 **from a website:**
8 **Www.dol.gov/ofccp/regs/compliance/**
9 **directives/dir307.htm.**
10 A. Uh-hm.
11 **Q. Now, Dr. Leu, we referred quite a bit in**
12 **today's deposition to Directive 307.**
13 A. Uh-hm.
14 **Q. Does Exhibit 13 appear to you to be**
15 **Directive 307?**
16 A. You mean 13?
17 **Q. Correct.**
18 A. 2013, right?
19 **Q. Oh, I'm asking if Exhibit 13 is**
20 **Directive 307.**
21 A. Yeah. They have a 307 here (indicating).
22 That's right.
23 **Q. Okay. And is it your understanding that**
24 **Directive 307 --**
25 A. Uh-hm.

Page 195

1 **Q. -- governed compliance reviews as of 2014?**
2 MR. ELIASOPH: Objection. Calls for legal
3 conclusion.
4 THE WITNESS: Maybe just part, the part --
5 guidelines, you know, for the analysis.
6 (To the reporter) It's part, part,
7 p-a-r-t, part.
8 It's not, you know, you have to follow
9 something. We have internally -- or also have some,
10 like, directive, or whatever -- manual, manual.
11 BY MS. MANTOAN:
12 **Q. The Federal Contractor Compliance manual?**
13 A. Yeah, we still have that, too, yeah.
14 **Q. Okay.**
15 A. So this is one of the -- includes some of
16 the statistical factor in here, this one.
17 **Q. So you mentioned Directive 307, you**
18 **mentioned the Federal Contract Compliance manual.**
19 **Are those two sources that you understood to provide**
20 **guidance about how to conduct a compliance review**
21 **related to compensation?**
22 A. Basically, yes.
23 **Q. Okay. Are there any other documents**
24 **that --**
25 A. No.

Page 196

1 **Q. -- you understand to --**
2 **Okay. Let me finish the question.**
3 **Are there any other documents that you**
4 **understand to provide guidance about how to conduct**
5 **a compliance review related to compensation?**
6 MR. ELIASOPH: Objection to the extent it
7 calls for legal conclusion.
8 THE WITNESS: Not that I can recall.
9 BY MS. MANTOAN:
10 **Q. Okay. So earlier today, when we were**
11 **talking about Directive 307 --**
12 A. Uh-hm.
13 **Q. -- a few times you referred to 13 or 14**
14 **factors.**
15 A. Uh-hm.
16 **Q. And I believe you said that those factors**
17 **were in Directive 307.**
18 MR. ELIASOPH: Objective -- objection.
19 Misstates prior testimony.
20 BY MS. MANTOAN:
21 **Q. Is that what you -- is that what you said**
22 **earlier today?**
23 A. No, I didn't -- I didn't say that.
24 **Q. Okay.**
25 A. I said they will -- for example, they will

Page 197

1 talk about it a little bit, related factors. For
2 example, we collect the factor, right, maybe involve
3 about industrial or employee, --
4 **Q. Uh-huh.**
5 A. -- the industrial factors --
6 **Q. What do you mean by "industrial factors"?**
7 A. Like their pay structures, job functions.
8 You provide us job function, right? You
9 provide us job title, right? Right? That's called
10 industrial factor.
11 **Q. Okay.**
12 A. Employer -- employee factor means they are,
13 you know, the age.
14 **Q. Employee factors and industrial factors?**
15 A. Yeah. And the other one called an
16 observable factor. Okay?
17 **Q. Uh-hm.**
18 A. And observe means, the company, they
19 collect those information.
20 **Q. Uh-hm.**
21 A. And they use those to generate a lot of
22 informations, but didn't show in the database, --
23 **Q. Okay.**
24 A. -- so three types.
25 **Q. Okay.**

Page 198

1 A. In here -- they talk about here, so --
2 **Q. Can you show me where in Directive 307 --**
3 A. Ah.
4 **Q. -- it talks about those different kinds of**
5 **factors?**
6 MR. ELIASOPH: Take your time.
7 The directive is pretty long. I'm just
8 wondering if you need him to identify the specific
9 paragraph, which may require reading it line by
10 line.
11 MS. MANTOAN: I think he's given pretty
12 detailed testimony that he understands there to be
13 these three buckets of factors that are involved.
14 THE WITNESS: I think probably, though,
15 it's in 307 -- 307 training. When they're training
16 they introduce one and they also have a lot of -- a
17 lot of -- about -- I think it's a PowerPoint. You
18 know, they give us one PowerPoint.
19 Here they probably reveal that information,
20 but I cannot find here, but -- you know, I forgot
21 who present that training. He or she, you know, lay
22 out -- based on the 307, lay out the PowerPoint.
23 MS. MANTOAN: They laid it out in a
24 PowerPoint?
25 THE WITNESS: PowerPoint, yeah. The title

Page 199

1 also is 307, so maybe I read the 307 or
2 PowerPoint --
3 MS. MANTOAN: Okay.
4 THE WITNESS: -- slide by slide, but --
5 BY MS. MANTOAN:
6 **Q. And did that -- the training in that**
7 **PowerPoint inform your understanding of how to**
8 **conduct evaluations of compensation in your work at**
9 **OFCCP?**
10 A. Yes, outline -- yes, outline that, yeah.
11 MS. MANTOAN: Okay.
12 Counsel, is that something that's been
13 produced?
14 MR. ELIASOPH: Training materials?
15 MS. MANTOAN: Related to Directive 307
16 component.
17 MR. ELIASOPH: I -- I don't have the
18 information to tell you whether that was requested
19 or produced.
20 MS. MANTOAN: Okay. We can confer about
21 that post-deposition.
22 BY MS. MANTOAN:
23 **Q. So when you were talking about those 13 or**
24 **14 factors that you mentioned earlier, do you**
25 **think -- having now looked at Directive 307 do you**

Page 200

1 **think those 13 or 14 factors are something you're**
2 **remembering from that PowerPoint?**
3 A. I don't think they mention a 13 or 14
4 factor in there but they mention about -- like I
5 just told you, the industrial factors.
6 And the other one is -- what I just told
7 you? I forgot already.
8 **Q. You said earlier industrial factors,**
9 **employee factor, and unobservable (sic) factors.**
10 A. Yeah. Observable -- observable, that's
11 employee data and observable data is some maybe
12 factors -- contractor, that they have it, and they
13 use that to generate, you know, employee -- employee
14 data, or whatever, and then it effect --
15 For example, like the -- like, you know,
16 the -- before the employee come to interview, they
17 can negotiate with the employer about a salary.
18 **Q. Okay.**
19 A. I think the contractor, they have that
20 portion, and we never get that portion, so that's
21 what we call an observable. And they have quite a
22 few of that, but I cannot remember.
23 **Q. Okay.**
24 A. Okay.
25 **Q. But you -- you used this number 13, 14**

Page 201

1 **several times -- you referred to 13 or 14 factors.**
 2 A. Yeah.
 3 **Q. And I'm trying to understand what --**
 4 A. Okay.
 5 **Q. -- where you got that information.**
 6 A. Oh. 14 factor I believe come from the
 7 previous -- previous, but after that, you know, we
 8 don't -- we still follow that -- some -- because
 9 contractor sometime they give 14 or 15. They say
 10 they don't have, they give eight, and we also
 11 analyze because they don't have anything, you know,
 12 so -- but 14, I believe from either -- I cannot
 13 recall -- 289 -- Directive 289 or Directive 275 is
 14 the 14 factor at the time. But right now we
 15 don't -- we don't say "how many factors" as long as,
 16 you know, you say, you know, that's -- as a
 17 statistician, we have more factors is better, you
 18 know.
 19 For example, the one you just showed me,
 20 23 -- 33 on the list, you know, I say "I don't
 21 know," you don't remember? The paper you had about
 22 33 or 34 item there.
 23 **Q. Yes.**
 24 A. Those items can be a factor, too, right?
 25 Yeah, some of them can be a factor, too.

Page 202

1 **Q. Uh-hm.**
 2 A. So if you can have it, you can send
 3 everything to us we appreciate it, too.
 4 **Q. What, as a statistician, do you do if**
 5 **you're trying to analyze compensation in a company**
 6 **where one or more of the pay factors are**
 7 **unobservable in the sense that you just described**
 8 **unobservable.**
 9 A. Unobservable, right?
 10 **Q. Correct.**
 11 A. We cannot do because we don't have it.
 12 **Q. So what do you do? Do you just not do an**
 13 **analysis or do you just omit it from the analysis?**
 14 **What's your practice?**
 15 A. For example, if you don't have, like, a --
 16 like a prior set of negotiations, right, then we
 17 cannot fit those factor in. We don't have it.
 18 **Q. Okay.**
 19 A. Right?
 20 **Q. Right.**
 21 A. So we just base on what we have.
 22 **Q. For --**
 23 A. And if we -- we base on the contractor tell
 24 us.
 25 **Q. So what if the contractor tells you that**

Page 203

1 **something that matters for pay is not captured in a**
 2 **systematized, quantified form?**
 3 A. When I talk to -- I ask him -- not --
 4 not -- not tell me, maybe to other people. Like I
 5 say, I just receive the database and perform the
 6 regressions. I should not say this part. You know,
 7 this is another people's stuff. They ask them and
 8 after that they send to me.
 9 **Q. Okay. When you receive contractor data is**
 10 **it your -- is it your typical practice to ask any**
 11 **questions to try to understand the contractor's pay**
 12 **system before you run your analysis?**
 13 MR. ELIASOPH: Objection. Vague.
 14 THE WITNESS: It depends on the contractor.
 15 Case by case different, right?
 16 BY MS. MANTOAN:
 17 **Q. Okay. In connection with the compliance**
 18 **review of Oracle's headquarters' location, after you**
 19 **received Oracle's data, did you ask any questions to**
 20 **try to understand Oracle's pay system before you ran**
 21 **your analysis?**
 22 MR. ELIASOPH: I'm going to object. That
 23 is covered by the deliberative process privilege.
 24 You may not answer that question.
 25 ///

Page 204

1 BY MS. MANTOAN:
 2 **Q. What facts were you aware of before**
 3 **conducting your analysis of Oracle's headquarters'**
 4 **location that describe Oracle's pay system?**
 5 MR. ELIASOPH: Objection. Asked and
 6 answered.
 7 THE WITNESS: You're talking about
 8 location?
 9 BY MS. MANTOAN:
 10 **Q. I'm saying before conducting your analysis**
 11 **of Oracle's headquarters' location --**
 12 A. Uh-hm.
 13 **Q. -- what facts were you aware of that**
 14 **described Oracle's pay system?**
 15 MR. ELIASOPH: Objection. Vague. Asked
 16 and answered.
 17 THE WITNESS: No, I don't -- I don't hear.
 18 BY MS. MANTOAN:
 19 **Q. So the answer is no facts? None?**
 20 A. I don't know. I cannot recall.
 21 MR. ELIASOPH: Objection. Vague.
 22 THE WITNESS: I cannot recall that kind of
 23 issues, no, I don't --
 24 MR. ELIASOPH: You need to give -- let her
 25 finish.

Page 205

1 THE WITNESS: Okay.
2 MR. ELIASOPH: Give a moment, let me
3 finish.
4 THE WITNESS: Okay. Uh-hm.
5 MS. MANTOAN: I don't think the record is
6 clear. So I'm going to ask again.
7 BY MS. MANTOAN:
8 **Q. Before conducting your analysis of Oracle's**
9 **headquarters' location what facts were you aware of**
10 **that described Oracle's pay system?**
11 MR. ELIASOPH: Objection. Vague, and asked
12 and answered, and ambiguous.
13 THE WITNESS: I don't -- I'm not aware of
14 any of Oracle's pay system.
15 BY MS. MANTOAN:
16 **Q. So I'm -- I'd like us to look back at**
17 **Directive 307, Exhibit 13, and I'm going to go**
18 **through some portions of Directive 307 and my**
19 **questions are just going to be "What, if anything,**
20 **did you do to perform certain functions or make**
21 **certain determinations," and if the answer is**
22 **"nothing," then the answer is "nothing"; or if the**
23 **answer is "Someone else did it," the answer is**
24 **"Someone else did it," okay?**
25 **So let's go to page 2 of Exhibit 13. And**

Page 206

1 I'm looking under the "Policy" paragraph, starts
2 with No. 5. The second paragraph under there starts
3 with the words "OFCCP enforces Executive
4 Order 11246," okay? And then I guess it's the third
5 sentence in that paragraph starts with "COs."
6 **Do you see where I am there?**
7 A. (Witness nods head.)
8 **Q. So this sentence says:**
9 **"COs tailor the compensation investigation**
10 **and analytical procedures to the facts of**
11 **the case as appropriate under Title VII."**
12 **And I appreciate that you are not a CO,**
13 **meaning compliance officer, but leaving that to the**
14 **side, what, if anything, did you do to tailor the**
15 **compensation investigation analytical procedures you**
16 **used in your analysis of Oracle's headquarters'**
17 **location to tailor that work to the facts of the**
18 **case?**
19 MR. ELIASOPH: Objection. Assumes --
20 assumes facts. Requires speculation and is
21 confusing.
22 THE WITNESS: No, I don't do the tailor --
23 the tailor stuff, you know.
24 BY MS. MANTOAN:
25 **Q. Did you do anything to tailor your**

Page 207

1 **analytical procedures to any facts specific to**
2 **Oracle's headquarters' location?**
3 A. No.
4 MR. ELIASOPH: Objection. Vague.
5 BY MS. MANTOAN:
6 **Q. Will you turn to page 4. I'm looking at**
7 **the definition of "Factors" here on the top of**
8 **page 4. It's "Directive 307 defines factors as**
9 **elements which are proposed to explain**
10 **differences" --**
11 THE REPORTER: I need you to slow down.
12 Sorry.
13 MS. MANTOAN: Thank you for letting me
14 know.
15 Factors is defined as:
16 "Elements which are proposed to explain
17 differences in employee compensation under
18 a contractor's compensation system and
19 practices."
20 BY MS. MANTOAN:
21 **Q. And my question for you is: What facts**
22 **were you aware of, prior to conducting your**
23 **statistical analysis of Oracle's headquarters'**
24 **location, that relate to Oracle's compensation**
25 **practices?**

Page 208

1 MR. ELIASOPH: Objection. Vague. Calls
2 for legal conclusion and requires speculation.
3 THE WITNESS: I don't know how to answer
4 this. It's too wide for me. The question too wide.
5 BY MS. MANTOAN:
6 **Q. Do you have an understanding, as you read**
7 **Directive 307, of what is meant by a "contractor's**
8 **compensation system and practices"?**
9 A. Yes.
10 **Q. Okay. What does that mean?**
11 A. It's just, you know, this will be our
12 guidance, you know, to perform the regressions.
13 That's what I understand.
14 **Q. Okay. And at the time you conducted your**
15 **regression analysis of Oracle's headquarters'**
16 **location, did you have any factual information**
17 **available to you about Oracle's compensation**
18 **practices?**
19 MR. ELIASOPH: Objection. Vague. Asked
20 and answered.
21 THE WITNESS: Okay. Can you address the
22 question in -- from another angle? I really
23 cannot -- you know, maybe the language, you know,
24 gap. I don't know what you really want to know for
25 these questions, you know.

Page 209

1 MS. MANTOAN: Okay. I'll try to clarify.
2 BY MS. MANTOAN:
3 **Q. As you sit here today, do you know anything**
4 **about Oracle's compensation practices?**
5 A. No.
6 MR. ELIASOPH: Objection. Vague.
7 BY MS. MANTOAN:
8 **Q. Did you know anything about Oracle's**
9 **compensation practices at the time you conducted the**
10 **analysis of Oracle's headquarters' location?**
11 MR. ELIASOPH: Objection. Vague and
12 ambiguous.
13 THE WITNESS: No.
14 BY MS. MANTOAN:
15 **Q. So turning back to Directive 307, same**
16 **page, page 4. There's the definition of "Similarly**
17 **Situated Employees." And the first sentence after**
18 **that says, "The determination of which employees are**
19 **similarly situated" --**
20 A. Which page?
21 **Q. Oh, I'm on page 4.**
22 A. Oh, page 4, okay.
23 **Q. So the term is "Similarly Situated**
24 **Employees," and the first sentence is, "The**
25 **determination of which employees are similarly**

Page 210

1 **situated is case specific."**
2 **My first question is: Do you have an**
3 **understanding of what "similarly situated" means in**
4 **this Directive 307?**
5 A. Sort of, yeah.
6 **Q. Okay. What is your understanding?**
7 MR. ELIASOPH: Objection. Calls for legal
8 conclusion.
9 THE WITNESS: Like, the -- you know, work
10 in similar situations and assume similar
11 responsibility, with same or similar skills,
12 knowledge, or ability.
13 Something like that, yeah.
14 BY MS. MANTOAN:
15 **Q. And using that understanding of similarly**
16 **situated, what, if anything, did you do prior to**
17 **running your regression analysis of Oracle's**
18 **headquarters' location to determine which employees**
19 **at Oracle are similarly situated?**
20 MR. ELIASOPH: Objection. Asked and
21 answered. Calls for speculation.
22 THE WITNESS: I don't want to answer this
23 question because, like I say, I just follow the --
24 you know, model sent from Janette to me.
25 MS. MANTOAN: Okay.

Page 211

1 THE WITNESS: So because you --
2 specifically for Oracle, but for Oracle
3 specifically. Usually I just -- you know, receive
4 the orders from the management, and I have to
5 complete, and that's it.
6 BY MS. MANTOAN:
7 **Q. Okay. So since you use those orders from**
8 **management --**
9 A. Uh-hm.
10 **Q. -- to structure the statistical**
11 **analysis, --**
12 A. Uh-hm.
13 **Q. -- am I correct that you didn't do**
14 **anything, independent of that, to determine which**
15 **employees at Oracle were similarly situated; --**
16 A. Uh-hm.
17 **Q. -- is that correct?**
18 A. Pretty much, yes, uh-hm, at that time.
19 **Q. So you just said "at that time." Have you**
20 **done anything since that time to determine which**
21 **employees at Oracle are similarly situated?**
22 A. No -- not -- not for Oracle. For another
23 cases probably. You know, from a -- some of the
24 district CO, right, they probably knew. They don't
25 know about this kind of directive. They probably

Page 212

1 call me to discuss, you know, something like that.
2 **Q. Okay. But none of that happened in**
3 **connection with Oracle?**
4 A. Oracle, no.
5 **Q. Okay. Sorry, I asked a question with a**
6 **"none" in it, so then the "no" is confusing.**
7 **Did any of that discussion with a CO about**
8 **who is similarly situated occur in connection with**
9 **Oracle?**
10 A. No.
11 **Q. Then on the same page the term "Systemic**
12 **Discrimination" --**
13 A. Uh-hm.
14 **Q. I think you used that term in some of your**
15 **answers earlier today.**
16 A. Uh-hm. Uh-hm.
17 **Q. It says:**
18 **"A pattern or practice of discrimination or**
19 **an identified employment practice with**
20 **disparate impact."**
21 **My question is: Do you have any**
22 **understanding of what is meant by "pattern or**
23 **practice" in Directive 307?**
24 MR. ELIASOPH: Objection to the extent it
25 calls for a legal conclusion.

Page 213

1 THE WITNESS: So what your -- what your
 2 question exactly?
 3 BY MS. MANTOAN:
 4 **Q. So I'm trying to see what you understand**
 5 **the phrase "pattern or practice" to mean as used**
 6 **here in Directive 307?**
 7 A. Oh, okay. Pattern means do they have the
 8 kind of neutral -- they have a neutral and unneutral
 9 for this case in terms of pay. Do they have in
 10 between, or this is nonneutrals, you know.
 11 **Q. And what do you mean by neutral or**
 12 **nonneutral? Is that -- do you have a specific**
 13 **quantitative outcome in mind?**
 14 A. Neutral means because -- neutral means they
 15 don't against -- it's just -- not statistical
 16 significant basically is a neutral.
 17 **Q. And when you --**
 18 A. Against a female, they don't acts against a
 19 male or statistical significance standard deviation
 20 is a two, right?
 21 THE REPORTER: Statistical significant...
 22 THE WITNESS: Significance -- significance,
 23 yeah.
 24 BY MS. MANTOAN:
 25 **Q. And then standard, did you say?**

Page 214

1 A. Yeah.
 2 **Q. What was that?**
 3 A. Standard deviation is a two, right -- if
 4 less than two -- if standard deviation less than
 5 two, then it's neutral, it's neutral.
 6 If absolute value greater than two, then
 7 they are not --
 8 THE REPORTER: I -- I'm --
 9 THE WITNESS: Okay. This is statistician
 10 term. I'm sorry.
 11 MS. MANTOAN: Yeah, if the --
 12 BY MS. MANTOAN:
 13 **Q. Could you just say it again, please?**
 14 MR. ELIASOPH: Just say it slowly.
 15 THE WITNESS: Okay. If abso- abso- --
 16 absolute standard deviations --
 17 BY MS. MANTOAN:
 18 **Q. Absolute standard deviations.**
 19 A. A-b-s-o-l-o-u-t-e (sic).
 20 **Q. Yeah.**
 21 A. Absolute -- absolute.
 22 **Q. Uh-hm.**
 23 A. Standard deviation's greater than two.
 24 **Q. Within two?**
 25 A. Greater -- greater --

Page 215

1 **Q. Greater than two?**
 2 A. -- greater than two, --
 3 **Q. Okay.**
 4 A. That is nonsense -- nonneutral, okay?
 5 So the pattern means that we want to see
 6 they have nonneutral pattern or not, something like
 7 that, yeah.
 8 **Q. And as you apply Directive 307 in your work**
 9 **at OFCCP would you consider there to be a pattern or**
 10 **practice in the data if one analysis flagged as**
 11 **nonneutral but other analyses of the same company at**
 12 **the same location flagged as neutral?**
 13 MR. ELIASOPH: Objection. Calls for
 14 speculation. Calls for legal conclusions.
 15 THE WITNESS: Yeah, it occurs, you know.
 16 It occurs sometimes, yes.
 17 BY MS. MANTOAN:
 18 **Q. And in -- as you apply Directive 307 in**
 19 **your work at OFCCP would you consider that to be**
 20 **evidence of a pattern or practice of discrimination?**
 21 A. Oh --
 22 MR. ELIASOPH: Objection. Calls for legal
 23 conclusion. Calls for speculation.
 24 THE WITNESS: That's just only one
 25 indicator. We have to pursue another kind of

Page 216

1 evidence. The regression is only tool, yeah. It's
 2 kind of reference, you know. And standard deviation
 3 non-neutral doesn't say, "Oh there is a disparity in
 4 there or not," no.
 5 BY MS. MANTOAN:
 6 **Q. Why -- why is that?**
 7 A. It's systemic.
 8 **Q. What did you say? I'm sorry.**
 9 A. This is just a systemic, but then like I
 10 say, earlier we talk about "cohort," right?
 11 Sometime cohort -- you can use the cohort statistic
 12 analysis to find out, you know.
 13 So you have to check both, on systemic --
 14 which is a regression, right?
 15 **Q. Systemic, which is regression.**
 16 A. Which is regressions --
 17 **Q. Uh-hm.**
 18 A. And then another statistics to find
 19 something -- because systemic is talk about average,
 20 is talk about average. So average, that doesn't
 21 mean say is no distribution in whole organizations.
 22 Okay?
 23 **Q. Okay. So I don't know if you'll be happy**
 24 **or not happy, I did actually find your dissertation**
 25 **and I read it. I don't know when the last time you**

Page 217

1 **read your dissertation was.**
 2 A. Oh. You found my dissertation?
 3 **Q. I did.**
 4 A. You understand what I'm talking about?
 5 **Q. Yeah.**
 6 A. Really? What am I doing?
 7 **Q. Well, you're running different tests on**
 8 **small sample sizes to determine --**
 9 A. Yeah --
 10 **Q. -- which one is --**
 11 MR. ELIASOPH: Don't let the flattery --
 12 don't let the flattery get to you.
 13 MS. MANTOAN: So I -- I mean we can
 14 introduce it as an exhibit. I don't think I need
 15 to. I just -- I'll represent to you that I read a
 16 sentence in your dissertation and wanted to
 17 understand what you mean by it. So...
 18 BY MS. MANTOAN:
 19 **Q. I read a sentence that said, "Failure to**
 20 **reject the null hypothesis is not evidence that it**
 21 **is true."**
 22 A. Uh-hm.
 23 **Q. Do you agree with that sentence?**
 24 A. Say again. I just -- you know...
 25 **Q. "Failure to reject the null" n-u-l-l,**

Page 218

1 **"hypothesis is not evidence that it is true."**
 2 MR. ELIASOPH: Just objection. Vague.
 3 THE WITNESS: Uh-hm.
 4 BY MS. MANTOAN:
 5 **Q. What does that sentence mean?**
 6 A. Okay. You said "reject the null
 7 hypothesis"?
 8 **Q. "Failure to reject the null hypothesis" --**
 9 A. Yeah, this is something --
 10 **Q. -- "is not evidence that the null**
 11 **hypothesis is true."**
 12 MR. ELIASOPH: Objection. This is
 13 speculation.
 14 The -- if you remember exactly what you
 15 were saying and how that came you can answer that.
 16 THE WITNESS: No. I don't want to answer
 17 this --
 18 MR. ELIASOPH: Do you know the context?
 19 THE WITNESS: -- because, you know, the
 20 hypothesis, right, sometime they have negative
 21 negative.
 22 THE REPORTER: I need you to slow down.
 23 THE WITNESS: Okay.
 24 Hypothesis is testing. Sometime they have
 25 negative negatives still in there. And then my

Page 219

1 language -- you know, English is not my second
 2 language, you know. Sometimes you have to rewrite
 3 in another statement. You know, like the statistic
 4 statement sometime you can rewrite in a way, so
 5 I'm -- I'm not going to jump in to answer this
 6 question right away if I cannot make sure hundred
 7 percent accurate for you.
 8 BY MS. MANTOAN:
 9 **Q. Okay. Have you ever published any work in**
 10 **a peer-reviewed journal?**
 11 A. Peterson -- Peter -- just one time in ASA.
 12 It's kind of -- it's kind of -- I don't know. It's
 13 a public presentations in ASA. It's --
 14 Let's see, I don't know, I forgot.
 15 **Q. Are you thinking of a presentation on the**
 16 **use of the Peters-Belson method in a hiring**
 17 **discrimination --**
 18 A. Yeah. Yeah, yeah, yeah.
 19 **Q. What was that about?**
 20 A. Oh, well, that's just talk about the -- you
 21 know, that each company is unique so they have their
 22 own distributions, you know, the model, it's a
 23 company of their own. And I try to find out if the
 24 model should -- depends on the size of the sample or
 25 not.

Page 220

1 So, for example, if we -- these methods, if
 2 we use base on the 530 --
 3 **Q. Based on the 530, is that what you said?**
 4 A. -- 530, and different models and we do the
 5 simulations -- I cannot recall everything, you know,
 6 so that's long time ago, and try to find out what
 7 the best sample size we have to use, you know, for
 8 the analysis.
 9 MR. ELIASOPH: It's "sample" size.
 10 THE WITNESS: Yeah.
 11 BY MS. MANTOAN:
 12 **Q. Could we look back at Directive 307?**
 13 A. Sure, please.
 14 **Q. Okay. Page 10. I'm looking at the second**
 15 **full paragraph. Starts with "The CO should tailor."**
 16 A. Second paragraph?
 17 **Q. Second complete paragraph. So the one that**
 18 **begins "The CO should tailor."**
 19 A. Uh-hm.
 20 **Q. So the first sentence of that is:**
 21 **"The CO should tailor the approach and**
 22 **tools to be used based on the contractor's**
 23 **compensation practices."**
 24 **And my question is: Is that -- is that**
 25 **sentence consistent with the training you've been**

Page 221

1 provided about how to conduct compliance reviews for
 2 OFCCP?
 3 MR. ELIASOPH: Objection. Calls for
 4 speculation. Vague.
 5 THE WITNESS: I think this question
 6 should -- the CO answer the question, you know, not
 7 me.
 8 BY MS. MANTOAN:
 9 Q. Okay. Can you turn to page 14. So, my
 10 question concerns the paragraph beneath the graphic
 11 on page 14.
 12 A. Uh-hm.
 13 Q. That sentence reads:
 14 "The mere fact that there are pay
 15 differences between comparators without any
 16 other evidence of pretext or other indicia
 17 of possible discrimination generally is not
 18 sufficient to find a violation of Executive
 19 Order 11246."
 20 My question is: Is that statement
 21 consistent with the training you've received in
 22 connection with your work at OFCCP?
 23 MR. ELIASOPH: Objection to the extent it
 24 calls for a legal conclusion. Furthermore,
 25 objection, calls for speculation.

Page 222

1 THE WITNESS: Bless you.
 2 THE REPORTER: Thank you.
 3 THE WITNESS: What do you mean
 4 "comparators" right here?
 5 BY MS. MANTOAN:
 6 Q. Do you have an understanding of what's
 7 meant by comparators in that sentence?
 8 A. No, I don't know comparators indicated in
 9 this sentence -- "between comparators." It means
 10 the model? No, right?
 11 Q. Well, you said earlier that you looked to
 12 Directive 307 --
 13 A. Uh-hm.
 14 Q. -- to help understand how to do your work
 15 at OFCCP, correct?
 16 A. Uh-hm. Uh-hm.
 17 MR. ELIASOPH: Objection. Misstates prior
 18 testimony.
 19 BY MS. MANTOAN:
 20 Q. Is it correct that you look to
 21 Directive 307 to help you do your work at OFCCP?
 22 A. Yeah. I -- yeah. Basically I look at the
 23 PowerPoint version, you know, not this version
 24 (indicating), so...
 25 Q. Okay. Do you have any understanding of

Page 223

1 what the word "comparators" means in this section of
 2 Directive 307?
 3 MR. ELIASOPH: Objection. Vague and
 4 calls -- and object to the extent it calls for legal
 5 conclusion.
 6 MS. MANTOAN: Let me ask a slightly
 7 different question.
 8 BY MS. MANTOAN:
 9 Q. What is your understanding, if any, of the
 10 word comparators as used in this section of
 11 Directive 307?
 12 MR. ELIASOPH: I'm going to object that it
 13 calls for a legal conclusion.
 14 THE WITNESS: I need you probably to
 15 re-address the question.
 16 BY MS. MANTOAN:
 17 Q. So the question is just: Do you -- do you
 18 have an understanding of what that word means --
 19 A. Okay.
 20 Q. -- as used here in Directive 307?
 21 MR. ELIASOPH: Same objections.
 22 THE WITNESS: Okay. No, I know the
 23 comparators, but I still cannot -- hold on, the
 24 complete sentence, "without any other evidence or
 25 pretext, or other indicia" --

Page 224

1 What are indicia? The index approvals?
 2 "Other indicia," I don't know what indicia is.
 3 BY MS. MANTOAN:
 4 Q. Okay. I really wanted to understand if you
 5 had an understanding of that sentence as you applied
 6 Directive 307. It sound like you -- you don't have
 7 any particular understanding of it; is that right?
 8 A. I -- most of them, yeah -- I understand
 9 most -- most of them, but some specific sentence I
 10 don't know, yeah.
 11 MS. MANTOAN: Okay. Can we take a quick
 12 break?
 13 THE WITNESS: Okay.
 14 THE VIDEOGRAPHER: We are going off the
 15 record.
 16 The time is 3:44 p.m.
 17 (Short recess was taken from 3:44 p.m.
 18 until 3:57 p.m.)
 19 THE VIDEOGRAPHER: We are back on the
 20 record.
 21 The time is 3:57 p.m.
 22 BY MS. MANTOAN:
 23 Q. So, Dr. Leu, I wanted to --
 24 A. Yes.
 25 Q. Oh, did you have something to say?

Page 225

1 A. Oh, no.
2 **Q. Oh, okay. I wanted to look back at**
3 **Exhibit 4, please.**
4 A. Okay. Exhibit 4. 10, 12, one, three,
5 eight, six, five -- okay, four, here. Okay.
6 **Q. And Exhibit 4, as we've discussed**
7 **previously, contains some results of a statistical**
8 **analysis, right?**
9 A. Yeah.
10 **Q. Okay. I want to make sure I'm**
11 **understanding --**
12 A. Uh-hm.
13 **Q. -- the results of this analysis that I'm**
14 **seeing here.**
15 A. Uh-hm.
16 **Q. So let's turn first to the second page in**
17 **the document, which is Bates-number DOL 5299.**
18 A. This one (indicating)?
19 **Q. Correct. The number is --**
20 A. I think this is right.
21 **Q. If you hold it landscape orientation, it's**
22 **the number on the bottom right.**
23 A. Uh-hm.
24 **Q. Okay.**
25 A. What's the number? 5- --

Page 226

1 **Q. 5299.**
2 A. Okay.
3 **Q. Okay. So starting at the first row that's**
4 **not redacted or obscured --**
5 A. Uh-hm.
6 **Q. -- that row talks about the pay analysis**
7 **group Info Tech, correct?**
8 A. Uh-hm.
9 **Q. Okay. And the total count for females in**
10 **that row is 133, correct?**
11 A. Usually -- it looks like this is the race,
12 you know -- looks like race. 484, 351, 133 can
13 be -- can be the race because they have a dot, dot,
14 dot, dot, dot. They call it race, they have a five
15 different kind -- different type of race.
16 **Q. Uh-hm.**
17 A. And some race they don't meet the 35
18 (sic) --
19 **Q. 30/5?**
20 A. -- 30/5 for evaluations and that would
21 produce the dot, dot, dot, dot.
22 **Q. Okay. But this is a gender --**
23 MR. ELIASOPH: Where do you see the dot,
24 dot, dot, dot, dot?
25 ///

Page 227

1 BY MS. MANTOAN:
2 **Q. -- analysis, correct?**
3 A. I know, but you just cut it. You
4 have gender, I know but sometimes gender is right
5 here. They have something there.
6 **Q. So this is how this was produced to us by**
7 **OFCCP. So, --**
8 A. Yeah.
9 **Q. -- maybe this will help. Can we look at**
10 **Exhibit 2, Attachment A?**
11 A. Attachment A.
12 **Q. Page 1404.**
13 A. Yeah.
14 **Q. So the results there for females in**
15 **Information Technology indicates a count of women of**
16 **133, correct --**
17 A. Okay.
18 **Q. -- in Exhibit 2?**
19 A. Uh-hm.
20 **Q. And in Exhibit 4, on page 5299, the number**
21 **of women indicated is 133, correct?**
22 A. Yeah.
23 **Q. And in Exhibit 2, Attachment A, the**
24 **standard deviation for women in Info Tech is**
25 **negative 2.71, correct?**

Page 228

1 A. 2.7 -- yeah, correct.
2 **Q. And in Exhibit 4, page 5299, --**
3 A. Uh-hm. Right.
4 **Q. -- the standard deviation for woman in Info**
5 **Tech is negative 2.71, correct; if you round down?**
6 A. 2. -- 2.7?
7 **Q. For women in Information Technology --**
8 A. Yeah -- yeah, yeah.
9 **Q. Okay.**
10 A. 2.71, right?
11 **Q. Yeah.**
12 A. Okay.
13 **Q. So the pages we're comparing in Exhibit 2**
14 **are Bates-number 1404, --**
15 A. Uh-hm.
16 **Q. -- and in Exhibit 4 is Bates-number 5299?**
17 A. Okay.
18 **Q. Okay.**
19 A. All right. Looks like --
20 **Q. Does this look -- does Exhibit 4,**
21 **page 5299, appear to contain additional detail about**
22 **the analysis reported in Exhibit 2, page 1404?**
23 MR. ELIASOPH: Objection. Vague.
24 THE WITNESS: And how come they're empty
25 here?

Page 229

1 BY MS. MANTOAN:
2 **Q. So that's -- that's a strikeout that was**
3 **made before this document was provided to Oracle by**
4 **OFCCP and that was made by OFCCP I believe pursuant**
5 **to a claim of privilege.**
6 MR. ELIASOPH: Correct.
7 THE WITNESS: I really cannot explain it if
8 they're not complete. I really -- I don't want to
9 make a mistake because the CS report I produce is
10 kind of easy to understand, complete. You know,
11 this kind of take some part, cut here, take some
12 part here (indicating), so I cannot recognize
13 very -- even your numbers is -- match, right, but
14 I'm still, you know, kind of wondering.
15 You should put the complete. I don't
16 know --
17 MR. ELIASOPH: We -- we withheld that
18 because our claim is privilege.
19 THE WITNESS: Oh, okay.
20 So what's your question?
21 BY MS. MANTOAN:
22 **Q. I'm trying to establish whether or not you**
23 **believe that the results reported in Exhibit 2,**
24 **page 1404, are the same results that are reported in**
25 **Exhibit 4, page 5299, the same analysis, the same**

Page 230

1 **number of women, the same standard deviations, the**
2 **same job function.**
3 A. "Information Technology, Information
4 Technology, Product Development, Product
5 Development."
6 Okay, yeah, I think that's probably the
7 same thing because --
8 **Q. Okay.**
9 A. -- 133 is the same, 1,207, and then they
10 don't have 47 right here (indicating).
11 **Q. So if you turn to the next page in**
12 **Exhibit 4, 5300 --**
13 A. Ah -- oh, this 47 is right here.
14 Minus three -- okay, yeah.
15 **Q. Okay.**
16 A. They match with this Attachment A, that's
17 correct.
18 **Q. Okay.**
19 A. Yeah.
20 **Q. Thank you. So now a few questions about**
21 **some information in Exhibit 4.**
22 A. Uh-hm.
23 **Q. So, on the -- on page 5299 -- we're back in**
24 **Exhibit 4, we're looking at the line for pay**
25 **analysis group Info Tech, which has the 133 women in**

Page 231

1 **it.**
2 A. 133, okay.
3 **Q. Okay. And then there's a column where the**
4 **header at the top is "Female Model R Square" --**
5 A. Uh-hm.
6 **Q. -- and the number is 0.8450?**
7 A. That's correct.
8 **Q. What does that mean to you?**
9 A. It means the model can explain how they
10 evaluate the pay with about 84.5 percent.
11 **Q. The model explains 84.5 percent of vari- --**
12 A. Yeah, of --
13 **Q. Let me finish the question.**
14 A. Okay. Sorry.
15 **Q. You interpret that number to mean that the**
16 **model explains 84.5 percent of the variation in pay,**
17 **correct?**
18 A. Yeah, yeah. Or I can say another way is
19 about 6 -- 13.5 percent not explained, or
20 unexplained, by the model.
21 **Q. Wouldn't it be 15.5 percent?**
22 A. No, it's -- 15.5, yes -- 15.5, yes. 100 --
23 **Q. Okay.**
24 A. -- minus 84, yes.
25 **Q. And what does that mean for some percent of**

Page 232

1 **the pay to not be explained by the model?**
2 A. Well, just we -- we just don't have -- you
3 know, usually 84.5 is very high already, you know --
4 it's very high percentage here already, you know,
5 but the unexplained means some of the variation, you
6 know, the data cannot explain --
7 **Q. Okay.**
8 A. -- the factor cannot explain.
9 **Q. The factors included in the model cannot**
10 **explain that part?**
11 A. Cannot -- cannot -- yeah, cannot -- some
12 part --
13 So this is the whole, whole reason here is
14 100 percent, right?
15 **Q. Uh-huh?**
16 A. And only 84 percent the factor can explain,
17 the maximum the factor can explain is 84 with that
18 model --
19 **Q. Okay.**
20 A. -- with that specific model.
21 **Q. Okay.**
22 A. Yeah.
23 **Q. And what does it mean -- again, on**
24 **page 5299, Exhibit 4. There's a Female Model R**
25 **Square number in this Info Tech row of .8450, and**

Page 233

1 then there's a Model R Square number of .8430. What
2 is the difference between the Female Model R Square
3 and the Model R Square?
4 MR. ELIASOPH: Between this (indicating)
5 and this (indicating).
6 THE WITNESS: Okay. I don't know, they got
7 this one model, female R.
8 BY MS. MANTOAN:
9 **Q. So I guess the question is ambiguous.**
10 **On some level the difference between them**
11 **is just .002. I'm not asking what the numeric**
12 **difference is. I'm asking what do those concepts**
13 **connote or mean?**
14 A. Okay. Usually regression we have a two --
15 **Q. And can you answer slowly just so I can**
16 **make --**
17 A. Okay.
18 **Q. -- sure I understand.**
19 A. Usually we perform the regressions they
20 provide a tool Model R statistics. One is called an
21 overall. It's overall, including any factors; and
22 the other one is for the estimate, you know,
23 estimate, like that, but here I think probably they
24 talk about Adjust R Square.
25 **Q. Which one do you understand to be the**

Page 234

1 **Adjusted R Square?**
2 A. I think usually -- Adjust R square usually
3 is lower than the regular Model R Square, female
4 model will usually be lower because, you know, the
5 factor and the factor, probably they have
6 correlated.
7 **Q. Okay.**
8 A. And especially if you put more than
9 expected factors, then R -- just R Square will go
10 down a little bit.
11 **Q. Okay.**
12 A. So we don't want -- if you put too much --
13 too many other factors and you -- they cause R
14 Adjust Square to go down very lot --
15 **Q. Uh-hm.**
16 A. -- usually about 10 percent.
17 **Q. Uh-hm.**
18 A. Then you have to adjust which factor should
19 be in the model, which one should not be in the
20 model -- should in and should not be in the model.
21 **Q. And that's a concept known as**
22 **overspecification, correct?**
23 A. Over what?
24 **Q. Overspecification.**
25 A. Yeah, yeah. It's kind of

Page 235

1 overspecification. Yeah, it's model specification,
2 yeah.
3 **Q. Okay.**
4 A. Model specification.
5 **Q. Are there other statistical tests that you**
6 **can or do perform in your work at OFCCP to determine**
7 **whether the model you're using is well specified?**
8 A. Oh, okay. You know, they have -- the VIF.
9 **Q. What is that?**
10 A. VIF is --
11 **Q. Can you just say --**
12 A. Variance inflation factor.
13 **Q. Variance in what? Can you spell that for**
14 **me?**
15 A. Inflation -- inflat- -- like inflation,
16 like a tire inflation, right? So --
17 MR. ELIASOPH: Inflation?
18 THE WITNESS: Yeah -- inflation, yes.
19 BY MS. MANTOAN:
20 **Q. Variant inflation --**
21 A. Variance --
22 **Q. Variance inflation factor.**
23 A. -- inflation factor.
24 **Q. Factor, okay.**
25 A. This one will be -- make sure you don't put

Page 236

1 too many factor over -- over the factors in your
2 models. That indicate -- if you indicate over than
3 10, some, you know, this is some author say may be
4 over than 40. It depends how many of them over than
5 that, you know. If you over than 10, have several
6 of the factor, right, over than that, then you have
7 to -- probably have to withdraw. You have to decide
8 which factor to be in and which one to get out.
9 That's the statistician job.
10 **Q. Okay.**
11 A. Yeah.
12 **Q. And did you do any of that work in**
13 **connection with your evaluation of Oracle's**
14 **headquarters' location?**
15 A. Oh, yeah, yeah. It's a -- we have built
16 in -- we have built in --
17 I'm sorry.
18 MR. ELIASOPH: Okay. Just we're going to
19 talk about what's been produced and not everything
20 we ever did.
21 THE WITNESS: Oh, okay.
22 BY MS. MANTOAN:
23 **Q. This is a question about a test that you**
24 **did on the results that you did report out, right?**
25 A. Usually we don't produce, like, a VIF on a

Page 237

1 report, no. It's just ourselves diagnosis, we --
2 you know --
3 **Q. Okay.**
4 A. It automatically programmed, but we can see
5 the result, but we don't produce that.
6 THE REPORTER: I'm sorry. I need you to
7 slow down.
8 It just...
9 THE WITNESS: We just -- you know, it's
10 automatic program, right, and it produced the
11 statistics that the statistician to make sure -- to
12 verify if the model is good model or not good model,
13 but we don't produce any -- that type of statistic
14 in the paper.
15 BY MS. MANTOAN:
16 **Q. So you just referred to that variance**
17 **inflation factor look as a kind of self-diagnosis.**
18 **Are there other kinds of statistical self-diagnostic**
19 **tests that you typically run?**
20 A. Okay, we do the -- like a nomanity (sic)
21 check.
22 **Q. Nomanity?**
23 A. Nomanity check.
24 **Q. Normality?**
25 A. Normanity check.

Page 238

1 **Q. What does that entail?**
2 A. Usually everybody that knows statistic is
3 very interesting. We -- before we do, we assume
4 they meet our assumptions.
5 **Q. Right. There are assumption --**
6 A. Actually they're not.
7 **Q. Yes.**
8 A. So after that we do some diagnose. So
9 nomanity --
10 **Q. Normality.**
11 A. -- the plot will tell us -- we see if you
12 still have the trend. It means that your model is
13 not complete.
14 **Q. Okay. Is your normality test a plot of**
15 **residuals?**
16 A. Let's talk about -- you asked me earlier
17 you talk about trends -- systemic trend, right?
18 **Q. Yes.**
19 A. So our data cannot completely to explain
20 the trend, so those residuals will remain on the
21 data. That's what we call residuals.
22 **Q. Yes.**
23 A. And we can form a residual to find out the
24 model is a good model or not good model.
25 **Q. Okay.**

Page 239

1 A. So we use a normal plot.
2 **Q. And when you say "residuals" you're**
3 **plotting what the model --**
4 A. Residuals -- residuals.
5 **Q. Let me -- can I?**
6 A. I'm sorry, I'm sorry, I'm sorry.
7 **Q. -- finish the question?**
8 A. Sorry. Sorry. Sorry.
9 **Q. When you're analyzing residuals you're**
10 **plotting the pay that the model predicts for a given**
11 **person against their actual pay; is that right?**
12 A. That one also can do and then another test
13 or two. That one is another test, but it also can
14 make sure, you know, a good model or not good model,
15 but we use it with the normal plot.
16 **Q. Okay. And did you conduct a normality**
17 **check in connection with your analysis of the data**
18 **for Oracle's headquarters' location?**
19 MR. ELIASOPH: Objection. To the extent
20 such an analysis is not reported here, it would be
21 privileged.
22 MS. MANTOAN: And you would instruct not to
23 answer on that basis?
24 MR. ELIASOPH: Yes.
25 MS. MANTOAN: Okay.

Page 240

1 BY MS. MANTOAN:
2 **Q. Let's go back to page 5299 and look again**
3 **at that same row for Information Technology with the**
4 **133 women.**
5 A. Uh-hm.
6 **Q. There's a number here in the column with**
7 **the header "Female Impact," which is negative**
8 **2470.90.**
9 **Did I read that correctly?**
10 A. Yes.
11 **Q. Okay. What does that number mean?**
12 A. That means, you know, they have disparity
13 against the female. Okay. And average -- you know,
14 the average disparity against the female is
15 \$██████████ compared to the men.
16 **Q. You said that's an average number, correct?**
17 A. Average, yes -- average, yeah.
18 **Q. Does that number tell me anything about any**
19 **pay disparity impacting any particular woman in the**
20 **data?**
21 A. No.
22 **Q. On the same page, 5299, I want to look down**
23 **at the row where the pay analysis group is indicated**
24 **as "PRODEV."**
25 **Do you understand that to mean product**

Page 241

1 development?

2 A. Uh-hm.

3 Q. Okay. And here there were 1,207 females in

4 the analysis, correct?

5 A. Correct, yeah.

6 Q. And that's the same as indicated in the

7 NOV, Exhibit 2, correct?

8 A. Yes.

9 Q. Okay. And the standard deviations that the

10 model generated were negative 8.40 -- -41, if you

11 round up, correct?

12 A. Uh-hm, uh-hm.

13 Q. And that's the same number reported in the

14 NOV, Exhibit 2.

15 A. Uh-hm, uh-hm.

16 Q. Correct?

17 A. Yeah.

18 Q. Sorry, I just need you to answer audibly --

19 A. Uh-hm.

20 Q. -- instead of "uh-hm." I just need a "yes"

21 or "no."

22 I see the Female Model R Squared in this

23 row is 0.7759.

24 A. Uh-hm. Uh-hm.

25 MR. ELIASOPH: Remember to --

Page 242

1 BY MS. MANTOAN:

2 Q. Is that "yes"?

3 MR. ELIASOPH: -- say "yes."

4 THE WITNESS: Yes.

5 MS. MANTOAN: Okay. And is -- "yes" or

6 "no."

7 MR. ELIASOPH: Let her finish -- let her

8 finish before you make any sound.

9 MS. MANTOAN: Yeah, an audible answer --

10 THE WITNESS: Yes.

11 MS. MANTOAN: -- will be easier for the

12 reporter.

13 THE WITNESS: Okay.

14 MS. MANTOAN: Thank you.

15 BY MS. MANTOAN:

16 Q. So the Female Model R Square in this row

17 for product development --

18 A. Uh-hm.

19 Q. -- is less than the Female Model R Square

20 in the row for Information Technology, correct?

21 A. Yeah.

22 Q. What does that mean to you?

23 A. Means the same model, right, they only can

24 explain the product development 77 percent and --

25 but they can explain -- they can explain more for

Page 243

1 the Information Tech with 84.5 50 percent.

2 Q. Does that mean that the model doesn't fit

3 the product development data as well as it --

4 A. Well, --

5 Q. Oop, can I finish the question?

6 A. Oh, I'm sorry.

7 Q. Does that mean that the model does not fit

8 the data in product development as well as it fits

9 the data in IT?

10 A. This is difficult to answer. Let's see.

11 You can say that, too, you know, because same model,

12 so it can explain more in the Info Tech than the

13 product development. That's true, yes. Yes.

14 MS. MANTOAN: Okay. Can we go off the

15 record for one minute?

16 THE VIDEOGRAPHER: We are going off the

17 record.

18 The time is 4:17 p.m.

19 (Short recess was taken from 4:17 p.m.

20 until 4:23 p.m.)

21 THE VIDEOGRAPHER: We are back on the

22 record.

23 The time is 4:23 p.m.

24 BY MS. MANTOAN:

25 Q. So, Dr. Leu, turning over to page 5300 in

Page 244

1 Exhibit 4.

2 A. Yep, 5300, yes.

3 Q. Does this appear to contain information on

4 the results for the support job function?

5 A. Uh-hm.

6 Q. And there's 47 women indicated in

7 Exhibit 4, correct?

8 A. No, this -- yeah, okay, yeah, that's right,

9 yeah.

10 Q. And the standard deviations are negative

11 3.67 if you round up?

12 A. Yes.

13 Q. And those are the same as the NOV,

14 Exhibit 2, correct?

15 A. That's correct.

16 Q. Okay. Okay. Can we turn a bit further

17 past a number of blanked out pages to the page that

18 ends with 5308?

19 A. Okay.

20 Q. And can you confirm that the analysis on

21 page 5309 -- continuing over to 5309 is an analysis

22 of race and compensation in the products development

23 job function?

24 A. Uh-hm, yeah.

25 Q. Correct?

Page 245

1 A. Correct.

2 **Q. Okay.**

3 A. Uh-hm.

4 **Q. What is the -- I'm going to ask you what**

5 **these column headings mean. What is the**

6 **b-Coefficient?**

7 A. B-Coefficient will be the column right to

8 the label, this one (indicating), so this is the

9 coefficient.

10 **Q. But what is a b-Coefficient? Like what**

11 **does that statistical term mean?**

12 A. It's an estimate.

13 **Q. Estimate of what?**

14 A. For the female factor -- estimate for the

15 factor, coefficient for the factor.

16 **Q. Okay.**

17 A. Yeah.

18 **Q. So is it best understood as the -- the --**

19 **it's what the model estimates that an additional**

20 **unit of that factor means for pay, right?**

21 **So full-time status increases -- full-time**

22 **status is one versus zero since the b-Coefficient is**

23 **.48, the model is estimating an increase in pay?**

24 A. Yes.

25 **Q. Correct?**

Page 246

1 A. Yes.

2 **Q. Is that a 48 increase in pay?**

3 A. No. This one -- this one they used. It's

4 40 percent in -- yes, yes, okay, 48 percent.

5 If they are full-time status, average they

6 will get 48 percent more than the people who are not

7 in a full-time status.

8 **Q. Okay. And the "SD," that column heading,**

9 **means standard deviations, correct?**

10 A. That's right. In the last --

11 second-to-the-right column.

12 **Q. Second from the right is the standard**

13 **deviations?**

14 A. Yeah, is a standard deviation.

15 **Q. Okay. And what does the column all the way**

16 **to the right mean? I see the heading at the top of**

17 **the page, but I do not know what that means.**

18 A. That one usually the same as standard

19 deviation, but they just write in the probability

20 term.

21 **Q. "Probability"?**

22 A. Uh-hm.

23 **Q. Okay. So I've heard sometimes roughly**

24 **people describe two standard deviation as --**

25 A. .05.

Page 247

1 **Q. -- roughly equivalent to a probability**

2 **value of .05 --**

3 A. That's correct.

4 **Q. -- correct?**

5 A. Yeah.

6 **Q. So that's the relationship that's present**

7 **here, correct?**

8 A. Yeah. Yeah.

9 **Q. Okay. I see that the b-Coefficient on**

10 **"Years at Company" is negative?**

11 A. Which one?

12 **Q. Years at company?**

13 A. Uh-hm.

14 **Q. What does it mean that the b-Coefficient is**

15 **negative on years at company?**

16 A. Ah, that's a good question. Sometime, you

17 know -- sometime if we put too much of the -- for

18 example, the factor must be independent. We call

19 independent factor, right? So sometime we say "Have

20 to independent to each other."

21 **Q. Oh, sorry. Could you slow down so I could**

22 **understand.**

23 A. When we do the regressions that each factor

24 should be independent to each other, but for an

25 actual situation that never happened --

Page 248

1 **Q. Okay.**

2 A. Okay.

3 THE REPORTER: For a?

4 MS. MANTOAN: For that --

5 THE WITNESS: For a -- for a actual --

6 actual --

7 MS. MANTOAN: Actual situation --

8 THE WITNESS: -- situation that never

9 happened that way, so there is kind of -- you know,

10 there's the room to do like that.

11 And I have to go back to check what -- they

12 have a reason to become negative .01. They're very

13 close to that, you know. Is that usually

14 zero-point-something, you know, something a range,

15 you know. It's a -- usually, right, can be

16 tentative factors, but because the -- you know,

17 management they weren't in, I have to put in.

18 Sometime they're tentative. Sometime --

19 **Q. What is that word? Sorry.**

20 A. Tentative. Like, for example, not

21 complete.

22 **Q. Tentative?**

23 A. Tentative, yeah -- well, not complete,

24 later like that.

25 So usually -- this one, right, usually,

Page 249

1 like -- I have to go check, you know, to see what
2 factors cause that.
3 **Q. Okay. But the -- but the model in**
4 **Exhibit 2 --**
5 A. Uh-hm.
6 **Q. -- includes years at company --**
7 A. Uh-hm.
8 **Q. -- as a variable, correct?**
9 A. Yeah.
10 **Q. Okay.**
11 A. This EO Company -- let me see. Hold on a
12 second.
13 -- yes, it's in there, so...
14 **Q. Okay. So, I think this is right, but tell**
15 **me if not.**
16 A. Uh-hm.
17 **Q. So the model that you used to assess pay**
18 **differences by race --**
19 A. Uh-hm.
20 **Q. -- in the product development job**
21 **function --**
22 A. Uh-hm.
23 **Q. -- ended up predicting that people who had**
24 **worked at Oracle longer --**
25 A. Uh-hm.

Page 250

1 **Q. -- would earn less money than people --**
2 MR. ELIASOPH: Andy, --
3 BY MS. MANTOAN:
4 **Q. -- who had worked at Oracle less?**
5 MR. ELIASOPH: Andy, you need to stop
6 talking --
7 THE WITNESS: Okay.
8 MR. ELIASOPH: -- until she's done.
9 THE WITNESS: Okay.
10 MR. ELIASOPH: You don't need to agree
11 while she's talking.
12 THE WITNESS: Okay.
13 MS. MANTOAN: Right.
14 MR. ELIASOPH: Let her finish.
15 MS. MANTOAN: You can -- yeah, let me know
16 at the end of the question if you've understood or
17 not.
18 THE WITNESS: Okay.
19 BY MS. MANTOAN:
20 **Q. Okay. So the model that you used to assess**
21 **pay differences by race --**
22 A. Uh-hm.
23 **Q. -- in the product development job**
24 **function --**
25 A. Uh-hm.

Page 251

1 MR. ELIASOPH: Okay. You're doing it
2 again.
3 THE WITNESS: No -- oh.
4 MS. MANTOAN: Let me start again.
5 BY MS. MANTOAN:
6 **Q. The model that you used to assess pay**
7 **differences by race in the product development job**
8 **function ended up predicting that people who had**
9 **worked at Oracle longer would earn less money than**
10 **people who had worked at Oracle for less time,**
11 **correct?**
12 A. So average, yeah, average, yeah. That's --
13 you know.
14 **Q. On average that's correct, yes?**
15 A. On average, yeah -- yes.
16 **Q. Okay. Did you do anything, upon seeing**
17 **that result, to try to understand why you were**
18 **seeing that result?**
19 A. Yeah -- yeah, usually I would check, yeah.
20 **Q. What does a check entail?**
21 A. I checked the model, you know. Because for
22 most of the factor, right, still fit the model.
23 It's just only one factor small little bit datas,
24 usually if I say -- probably I say they also -- they
25 have some data, right? It's kind of -- it's

Page 252

1 tentative, you know, so they move the model
2 equations -- they move the model equations a little
3 bit, you know, but because in terms of whole model,
4 is still very strong, you know, as we are still very
5 high and they don't have the multicollinear
6 situation.
7 **Q. Multicollinearity.**
8 A. Yeah, multicollinear is too serious for
9 that.
10 **Q. Uh-hm.**
11 A. So I think this model still, you know, good
12 model, so that's why.
13 **Q. Did you do that check at that time or are**
14 **you saying that's something you could imagine**
15 **yourself having done?**
16 A. Yeah, I see -- we are not just only this
17 one negative. The negative too much. Maybe they
18 have tentative. They have tentative. Then we'll --
19 I will reconduct the -- the models.
20 This one just about 0.01, 0.01, 0.01 --
21 yeah, 0.01, yeah, 0.01.
22 **Q. Okay.**
23 A. Very -- very small, you know.
24 **Q. Is it surprising to you that the**
25 **coefficient is negative, though?**

Page 253

1 MR. ELIASOPH: Objection. Vague.
 2 THE WITNESS: Not really, no. Not really.
 3 Sometime we have that, too. Yeah, but -- yeah.
 4 The whole model is, like, a square we find
 5 and, you know, that the -- the multicollinearity,
 6 they're not a very serious violation.
 7 BY MS. MANTOAN:
 8 **Q. Multicollinearity?**
 9 A. Multicollinearity, yeah.
 10 **Q. Is not a serious violation?**
 11 A. Yeah, is not serious violations.
 12 **Q. Okay.**
 13 A. And residuals -- residuals probably is
 14 not -- is kind of mild a departure from a normal,
 15 so, you know, this is a practice -- this way is
 16 fine. If it's negative, that's fine, as long as not
 17 very big variable. "Oh, how come big variable
 18 supports" -- you know, like that.
 19 **Q. Okay.**
 20 A. Yeah.
 21 **Q. Let's turn over to page 5309.**
 22 A. Uh-hm.
 23 **Q. I want to ask about a row that's maybe --**
 24 A. Yeah.
 25 **Q. -- so, just again to take your counsel's**

Page 254

1 instruction, wait till the question is finished
 2 before you say "yes" or "no."
 3 So one, two, three, four, five, six --
 4 seven lines from the bottom do you see a row where
 5 the --
 6 A. From the bottom up?
 7 **Q. -- from the bottom up, it reads "Prior**
 8 **Proxy Adjust."**
 9 A. Oh, okay.
 10 **Q. What does that mean?**
 11 A. Oh, you mean the 0.00?
 12 **Q. No. What does prior proxy adjust mean?**
 13 **What -- what is it?**
 14 A. Oh, it's a -- prior proxy adjust. Let me
 15 see. I cannot remember. I have to go back to the
 16 original file to make sure.
 17 **Q. So I don't -- I don't see anywhere on 5308**
 18 **or 5309 any row for estimated work experience prior**
 19 **to Oracle.**
 20 A. Uh-huh.
 21 **Q. That was a factor included in your model,**
 22 **correct?**
 23 A. You mean a prior proxy adjust?
 24 **Q. I'm asking if that -- I was asking a series**
 25 **of questions designed to get to the question. Is**

Page 255

1 **prior proxy adjust the estimated work experience**
 2 **pre-Oracle? Is that that factor?**
 3 A. I cannot -- I cannot recall how to define
 4 that in the first place.
 5 **Q. Where would you look to understand that?**
 6 A. The prior proxy adjust?
 7 **Q. How you can -- what that means; where would**
 8 **you look?**
 9 A. I have to go back to see my documents see
 10 what my original --
 11 **Q. Yeah, I'm trying to --**
 12 A. I cannot recall, you know, but basically
 13 most time prior proxy adjust probably is the prior
 14 experience, you know, most of the time, but I cannot
 15 be sure.
 16 **Q. Okay. So what document would you need to**
 17 **go look at to answer my question about what this**
 18 **means?**
 19 A. My original database.
 20 **Q. Original database.**
 21 A. I put a note there.
 22 **Q. There would be a note in your original**
 23 **database?**
 24 A. I think so. I put note or I can -- if I
 25 see database, then I would know exactly what's going

Page 256

1 on.
 2 **Q. Okay. And just to confirm: If you could**
 3 **look at the exhibit -- I believe it was three. It**
 4 **has an e-mail on top.**
 5 A. Okay.
 6 **Q. And look at the -- look at the document**
 7 **behind the e-mail.**
 8 A. Uh-hm. No, no.
 9 **Q. Is that the database that you're talking**
 10 **about?**
 11 A. Where is it? Not this one.
 12 **Q. No, that's what I'm -- you're looking in**
 13 **the right place in Exhibit 3.**
 14 MR. ELIASOPH: That (indicating).
 15 THE WITNESS: That, okay. You don't have
 16 here.
 17 BY MS. MANTOAN:
 18 **Q. So Exhibit 3 contains, in four**
 19 **Bates-numbered pages, what was represented to us as**
 20 **the SAS code underlying the NOV model.**
 21 **Do you see in that document anything that**
 22 **let's us understand what this prior proxy adjust**
 23 **variable is?**
 24 A. Yeah, there's no explanation right here. I
 25 have to go back to the -- my database.

Page 257

1 Q. Okay.
2 A. Uh-hm.
3 Q. So even looking at Exhibit 2, Exhibit 3,
4 Exhibit 4 --
5 A. Uh-hm.
6 Q. -- you're unable to determine how that
7 prior proxy adjust factor was constructed, right?
8 A. No, I have to go see my stuff.
9 Q. So it's correct that you're not able to
10 determine it from what you have in front of you,
11 correct?
12 A. That's right.
13 MS. MANTOAN: Okay. So, Counsel, we could
14 have a discussion off the record, but I will just
15 put on the record that I think we've -- we've been
16 back and forth with respect to various statistical
17 analyses about seeing the backup to the statistical
18 analysis, or sort of how the sausage was made, and
19 it sounds like Dr. Leu is testifying that the
20 information produced today does not allow us to
21 understand exactly how the analysis underlined in
22 the NOV was constructed.
23 BY MS. MANTOAN:
24 Q. Moving down to the lines under prior proxy
25 adjust it says --

Page 258

1 A. Which exhibit? No. 4.
2 Q. I am in Exhibit 4, back at page 5309.
3 A. 5309, okay.
4 Q. The line -- two under "Prior Proxy Adjust"?
5 A. Okay.
6 Q. Says "Ethnicity-A."
7 A. Uh-hm.
8 Q. Do you understand that to mean Asian?
9 A. It's Asian, yes.
10 Q. Okay. And this shows standard deviations
11 of negative 6.55?
12 A. Uh-hm.
13 Q. And then the b-Coefficient is negative .04,
14 correct?
15 A. Uh-hm, uh-hm.
16 Q. That means that the model was finding, on
17 average, a four percent pay difference between
18 Asians and Whites, adverse to Asians, correct?
19 A. Yeah, that's correct.
20 Q. Okay. And when we were looking at the
21 R-squared before, for the product development job
22 function, we found that it was something around
23 77 percent, correct?
24 A. Uh-hm. Uh-hm.
25 Q. Okay. So am I right, then, in

Page 259

1 understanding that the model that you ran for
2 product development left 23 percent of pay
3 unexplained by factors in the model?
4 A. Uh-hm.
5 Q. And found a four percent pay difference
6 between Asians and Whites?
7 A. Uh-hm.
8 Q. Is that correct?
9 A. Looks like -- this explanation look very
10 strange, you know? Usually we don't explain that
11 way.
12 You connect the percentage at the Model R
13 Square and they have a 20 -- about 22 percent,
14 23 percent not explained, okay, because -- all
15 right, yeah. 22, 23 percent unexplained variations
16 and they have a 4 percent -- okay, yeah, sounds
17 fair.
18 Q. Okay. And looking down three more lines on
19 the same page 5309 I see "Ethnicity-B"?
20 A. Uh-hm.
21 Q. Do you understand that to mean Black or
22 African-American?
23 A. Yes.
24 Q. Okay. And this finds standard deviations
25 of negative 2.10?

Page 260

1 A. Uh-hm, uh-hm. Yes.
2 Q. And b-Coefficient of negative 0.06,
3 correct?
4 A. Uh-hm.
5 Q. So am I right in understanding that the
6 model you ran for product development left
7 23 percent of pay unexplained by factors in the
8 model and found a 6 percent pay difference between
9 African-American employees and White employees?
10 A. Yes.
11 Q. Could you flip through Exhibit 4 to
12 page 5314?
13 A. 5314?
14 Q. Correct.
15 A. Okay.
16 Q. Do pages 5314 and 5315 present the results
17 of your model for the Information Technology job
18 function to assess pay differences between men and
19 women?
20 A. That's correct.
21 Q. Okay. And would I -- I don't want to go
22 through "What does a b-Coefficient mean," "What does
23 SD mean" here if it means the same thing in the
24 pages that we just looked at.
25 A. Uh-hm.

Page 261

1 **Q. Do those terms have the same meaning on**
2 **page 5314 and 5315 that they have in the earlier**
3 **pages we were looking at?**
4 A. Yeah -- yes.
5 **Q. Okay. And the b-Coefficient on female, on**
6 **page 5314, is negative 0.04, correct?**
7 A. Yeah.
8 **Q. And that means a four percent pay**
9 **difference adverse to women?**
10 A. That's right.
11 **Q. And the R-squared for this model, for the**
12 **Information Technology job function, was around**
13 **84 percent, correct?**
14 A. That's correct.
15 **Q. Okay. And that means 16 percent of the**
16 **variation in pay is unexplained by factors in the**
17 **model, correct?**
18 A. That's correct.
19 **Q. Okay. Turning to pages 5317 through 5319,**
20 **do pages 5317 through 5319 present the results of**
21 **your model for the product development job function**
22 **to assess pay differences between men and women?**
23 A. Uh-hm.
24 **Q. And the b-Coefficient on female here is**
25 **negative 0.04, correct?**

Page 262

1 A. Uh-hm. Uh-hm.
2 **Q. And that means a four percent pay**
3 **difference adverse to women?**
4 A. Yes.
5 **Q. And the R squared of this model, again, is**
6 **something like 77 percent, correct?**
7 A. Yes.
8 **Q. Okay. And that means 23 percent of the**
9 **variation in pay is unexplained by factors in the**
10 **model?**
11 A. That's right.
12 **Q. Last but not least, in this exhibit,**
13 **turning to page 5320. Does page 5320 present the**
14 **results of your model for the support job function**
15 **to assess pay differences between men and women?**
16 A. Uh-hm. Between men and women, that's
17 right.
18 **Q. And the b-Coefficient on female here is**
19 **negative 0.08 percent, correct?**
20 A. Yes.
21 **Q. And that means on average an 8 percent pay**
22 **difference adverse to women?**
23 A. That's right.
24 **Q. And the R-squared of this model is around**
25 **85 percent, correct?**

Page 263

1 A. That's right.
2 **Q. And that means 58 percent of the variation**
3 **is unexplained by factors in the model, correct?**
4 A. That's right.
5 MS. MANTOAN: Would you like another copy
6 of the Federal Contractor Compliance manual?
7 (Exhibit 14 was marked for identification.)
8 BY MS. MANTOAN:
9 **Q. Dr. Leu, we've talked at various points**
10 **today about the Federal Contract Compliance manual,**
11 **and obviously without reading every word of the**
12 **lengthy document in front of you, does this look to**
13 **you like the Federal Contract Compliance manual?**
14 A. Yeah, looks like, yeah.
15 **Q. "Yes"?**
16 A. Uh-hm.
17 **Q. Okay.**
18 MR. ELIASOPH: I don't think I've ever seen
19 it printed out, just for the record.
20 MS. MANTOAN: Well, now you have your
21 own --
22 MR. ELIASOPH: There you go.
23 MS. MANTOAN: -- hard copy.
24 BY MS. MANTOAN:
25 **Q. So I have some questions about the section**

Page 264

1 **related to compensation, which is Section 2L, as in**
2 **lion, 03. And that starts on the page numbered 100**
3 **in the document.**
4 **Can you let me know when you have found**
5 **that page?**
6 A. Compensation, yeah, okay.
7 **Q. Have you read this section of the -- I'm**
8 **going to call it "the FCCM"; is that okay?**
9 A. Yeah.
10 **Q. Okay. Do you refer to it as the FCCM in**
11 **your work?**
12 A. I did read in the 2005, other than that, I
13 don't have time to --
14 **Q. I see, you read it in --**
15 A. I read in 2005 --
16 **Q. Okay.**
17 A. -- when I get into the job, you know?
18 **Q. I see.**
19 A. Yeah.
20 **Q. You can't -- can you recall reading the**
21 **FCCM at any point since 2005?**
22 A. 2005, yeah.
23 **Q. Have you read it since then?**
24 A. No. Just -- if I -- at one time I looked
25 like I want to see specific reference, right, --

Page 265

1 **Q. Okay.**
2 A. -- I open to the specific page and read
3 that. That's it.
4 **Q. I see.**
5 A. Yeah.
6 **Q. So you read it cover to cover in 2005, is**
7 **what you're saying?**
8 A. Yeah, yeah.
9 **Q. Okay. But not since?**
10 A. Uh-hm.
11 **Q. Have you looked at this Section 2L03 on**
12 **compensation at any time since that initial review?**
13 A. No. No, since that 2005 I don't see the
14 compensation right here, no.
15 **Q. Are there sections of the FCCM that you**
16 **have consulted since that initial review?**
17 A. FCCN (sic) -- what is FCCN?
18 **Q. If -- this document (indicating) --**
19 A. Uh-hm.
20 **Q. Let's call it "the Manual." Maybe that's**
21 **easier?**
22 A. Oh, manual. I call manual, okay.
23 **Q. Are there other specific sections of the**
24 **manual that you have consulted since your initial**
25 **review?**

Page 266

1 A. I think I checked the cohort analysis. I
2 don't know which page.
3 **Q. The cohort analysis?**
4 A. I checked -- yeah, I checked it one time
5 because we have a problem, you know, argue with one
6 of you cohort and then I just want to see the
7 definition of cohort at that time. I don't know
8 they have cohort right here. It should have -- it
9 should have cohort right here.
10 **Q. Are you talking about the definition of**
11 **cohort analysis --**
12 A. Yeah, I --
13 **Q. -- near the end of the manual where they**
14 **give definitions?**
15 A. No. They talk about -- I think in the
16 middle somewhere, they have a cohort analysis,
17 something like that, yeah.
18 Oh, I -- it's this one (indicating), let me
19 see.
20 **Q. What page?**
21 A. No, no, no. This one, it's overview of
22 resolution. No.
23 Yeah, this basically -- most of them is for
24 the onsite, for the CO, you know, job, you know,
25 analysis. Let me see.

Page 267

1 MR. ELIASOPH: Is there a specific reason
2 you need him to identify whatever passage he looked
3 at once?
4 MS. MANTOAN: Well, I don't think he
5 said --
6 MR. ELIASOPH: Do you have --
7 MS. MANTOAN: -- he only looked at it once,
8 but I was just trying to get a sense of particularly
9 where in this document he's looked.
10 MR. ELIASOPH: I think he identified that.
11 MS. MANTOAN: Okay.
12 BY MS. MANTOAN:
13 **Q. So, I do want to look back at the**
14 **Section 2L03 on compensation.**
15 A. Okay.
16 **Q. Appreciating that -- well, let me first**
17 **make sure I understood your testimony.**
18 **Your testimony is that Section 2L03 is not**
19 **something you've reviewed since your initial look**
20 **through the manual, correct?**
21 A. That's right.
22 **Q. Okay. I do want to ask you a question**
23 **about these three questions that are bullet**
24 **pointed --**
25 A. Uh-hm.

Page 268

1 **Q. -- here at the bottom of page 100.**
2 A. Uh-hm.
3 **Q. Before that the immediately preceding**
4 **sentence reads:**
5 **"In every case there are three key**
6 **questions to be answered (sic), an onsite**
7 **review may provide data or information**
8 **necessary to answer them."**
9 **Correct? That's what it says?**
10 MR. ELIASOPH: The document speaks for
11 itself.
12 BY MS. MANTOAN:
13 **Q. Do you see where I was reading, Dr. Leu?**
14 A. You read right here (indicating), right?
15 **Q. Right above the bullet points, correct.**
16 A. Oh, okay. "In every case," that's where
17 you start to read?
18 **Q. That's right.**
19 **"In every case there are three key**
20 **questions to be addressed, and the on" --**
21 **I'm sorry. -- "an onsite review may**
22 **provide data or information necessary to**
23 **answer them."**
24 A. Uh-hm. Okay, onsite, yeah, okay.
25 **Q. So I want to go through these questions and**

Page 269

1 I want to ask you whether in your view your
2 statistical model answers this question.
3 So, the first question:
4 "Is there a measurable difference in
5 compensation on the basis of sex, race, or
6 ethnicity?"
7 Do you believe that the statistical work
8 that you did in connection with the Oracle
9 headquarters' compliance review addresses that first
10 question?
11 MR. ELIASOPH: Objection to the extent it
12 calls for a legal conclusion or requires
13 speculation.
14 THE WITNESS: I think this part usually is
15 for the Oscar -- desk audit investigation, this
16 part.
17 BY MS. MANTOAN:
18 Q. So -- right, I'm not asking about whether
19 you've used this or who uses it.
20 A. Uh-hm.
21 Q. I'm just looking to this -- I'm just asking
22 you whether you believe that your statistical work
23 answers this question. Right?
24 So independent of whether you were asked to
25 answer that question or -- I'm asking whether it

Page 270

1 does, in your view, in fact answer the question.
2 So with that clarification let me ask
3 again.
4 A. I should say yes.
5 MR. ELIASOPH: Same objections.
6 THE WITNESS: Objection.
7 BY MS. MANTOAN:
8 Q. Okay. So the -- let me just ask again.
9 The first question:
10 "Is there a measurable difference in
11 compensation on the basis of sex, race, or
12 ethnicity?"
13 Do you believe that the statistical work
14 that you did in connection with the Oracle
15 headquarters' compliance review addresses that first
16 question?
17 MR. ELIASOPH: And objection to the extent
18 it calls for a legal conclusion or speculation.
19 THE WITNESS: So I don't need to answer
20 this question?
21 MR. ELIASOPH: You do need to.
22 THE WITNESS: Okay.
23 I will say yes.
24 MS. MANTOAN: Okay.
25 ///

Page 271

1 BY MS. MANTOAN:
2 Q. The second question listed here:
3 "Is the difference in compensation between
4 comparative employees under the
5 contractor's wage or salary system?"
6 Do you believe that the statistical work
7 that you did in connection with the Oracle
8 headquarters' compliance review addresses that
9 second question?
10 MR. ELIASOPH: Objection to the extent it
11 calls for a legal conclusion or requires
12 speculation.
13 THE WITNESS: This involved -- it depends
14 on how you define, you know, because comparative
15 employee -- how you define comparable.
16 Comparative is a male compared to the
17 female, that's why -- yeah, they say comparative
18 employee? Or because they both compare the group
19 based on the same years they work in the company,
20 and then after that we compare their pay, this or --
21 everything is similar, right? Comparative means
22 compared to a similar.
23 I don't quite understand here compare
24 employee here.
25 MS. MANTOAN: Okay.

Page 272

1 THE WITNESS: It could indicate many
2 things, you know.
3 MS. MANTOAN: Okay. That's fine.
4 BY MS. MANTOAN:
5 Q. The third question here on page 100 reads:
6 "Is there a legitimate explanation for the
7 difference?"
8 Do you believe that the statistical work
9 that you did in connection with the Oracle
10 headquarters' compliance review addresses the third
11 question?
12 MR. ELIASOPH: Objection to the extent it
13 calls for a legal conclusion or requires
14 speculation.
15 THE WITNESS: If -- okay, if the data is
16 accurate and the assumption is not serious
17 violations I would say there is a legitimate
18 explanation for the difference.
19 BY MS. MANTOAN:
20 Q. What do you mean "if the assumption is not
21 seriously violated"?
22 A. Like, you know, in the beginning I talk
23 about, like the constant variance, you know, within
24 the pool --
25 Q. Yes.

Page 273

1 A. -- appearance group.
2 **Q. Uh-hm.**
3 A. And also they don't have the data, the
4 observation independent.
5 **Q. Yes.**
6 A. Okay. And there why is -- their
7 distribution is kind of normal -- normal
8 distribution. These the three main assumptions --
9 if they meet or are not serious violations, right,
10 usually we can say that the result can be a
11 legitimate explanation for the difference. Right?
12 **Q. What are you understanding the word**
13 **"legitimate" to mean there?**
14 A. Yeah, okay. This is a legal name, right?
15 Legitimate is a legal name?
16 **Q. I don't know how you're using it. You're**
17 **answering the question and so I presume you're**
18 **answering it with some understanding --**
19 A. Legitimate is -- okay, is it reasonable?
20 MR. ELIASOPH: I'm going to object that
21 it's vague and the witness is not clear as to what's
22 being asked.
23 THE WITNESS: It's not very clear for me,
24 you know.
25 Legitimate is reasonable, is not logically

Page 274

1 set up, or is it related -- I don't know legitimate.
2 So is legally, or whatever? So it's kind of vague
3 for me, you know, here. Yeah, it's kind of vague
4 for me to answer this legitimate explanation.
5 I just know, you know, based on those
6 assumptions are not seriously violated, right, then
7 I know they have 70 percent, 75 percent explanation
8 of the model, right, but sometime, you know -- in
9 some article they say "Oh, 75 probably not enough to
10 say it's not legitimate."
11 So I don't know how you define for
12 legitimate right here, how -- you know, how they
13 define legitimate explanation right here. It could
14 be wild, it could be narrow, it can be -- that can
15 be this, you know. It's not -- it's not easy -- I
16 cannot explain this one.
17 BY MS. MANTOAN:
18 **Q. Okay. Let's turn over to page 102, please.**
19 A. Uh-hm.
20 **Q. So the first full paragraph there starts**
21 **with the words "For purposes." Do you see that?**
22 A. Uh-hm.
23 **Q. Okay. And it reads:**
24 **"For purposes of evaluating compensation**
25 **differences, employees are similarly**

Page 275

1 **situated where it is reasonable to expect**
2 **that they should be receiving equivalent**
3 **compensation absent discrimination."**
4 **Have you ever received any training or**
5 **direction from anyone at the department of labor on**
6 **the circumstances in which it is reasonable to**
7 **expect that two employees should be receiving**
8 **equivalent compensation absent discrimination?**
9 A. I have that similar type of training, but I
10 cannot recall exactly what time, you know. That's
11 long time ago, maybe ten years ago, when I get
12 into -- first time I get into the OFCCP.
13 Okay, so "where it is reasonable to expect
14 that they should be receiving" ...
15 No, this question is too vague -- you know,
16 it's vague for me.
17 MR. ELIASOPH: Do you want to take --
18 Can we take a short break?
19 MS. MANTOAN: Sure.
20 THE VIDEOGRAPHER: We are going off the
21 record.
22 The time is 4:58 p.m.
23 (Short recess was taken from 4:58 p.m.
24 until 5:00 p.m.)
25 THE VIDEOGRAPHER: We are back on the

Page 276

1 record.
2 The time is 5:00 p.m.
3 THE WITNESS: Yes.
4 BY MS. MANTOAN:
5 **Q. So, Dr. Leu, we're still on page 102,**
6 **Exhibit --**
7 A. Okay.
8 **Q. -- 14. And we were looking at the**
9 **paragraph that starts "For purposes of evaluating**
10 **compensation differences"...**
11 **And the second sentence there says,**
12 **"Relevant factors in determining similarity may**
13 **include," and my question for you is just going to**
14 **be whether or not you evaluated each of these -- the**
15 **extent to which each of these factors were the same**
16 **or differed among employees at Oracle, okay?**
17 **So, did you evaluate whether the tasks**
18 **performed by different employees at Oracle were --**
19 **strike.**
20 **Did you evaluate the extent of similarity**
21 **of the tasks performed by different employees at**
22 **Oracle?**
23 A. No.
24 **Q. Did you evaluate the extent of similarity**
25 **of the skills of different employees at Oracle?**

Page 277

1 A. No.

2 **Q. Did you evaluate the extent of similarity**

3 **of the effort exerted by different employees at**

4 **Oracle?**

5 MR. ELIASOPH: I'm just going to object for

6 the record that -- that Mr. Leu has already given

7 detailed testimony that this was not part of his

8 function; that these questions have been asked and

9 answered.

10 MS. MANTOAN: So I think related questions

11 have been, but it shouldn't take too long to go

12 through this list, and I do think that I'm entitled

13 to go through this list.

14 BY MS. MANTOAN:

15 **Q. So did you evaluate the extent of**

16 **similarity of the effort exerted by different**

17 **employees at Oracle?**

18 MR. ELIASOPH: I'll just have a standing

19 objection.

20 MS. MANTOAN: That's fine.

21 THE WITNESS: No.

22 BY MS. MANTOAN:

23 **Q. Did you evaluate the extent of similarity**

24 **of the level of responsibility held by different**

25 **employees at Oracle?**

Page 278

1 A. No.

2 **Q. Did you evaluate the extent of similarity**

3 **of the working conditions of different employees at**

4 **Oracle?**

5 A. No.

6 **Q. Did you evaluate the extent of similarity**

7 **of job difficulty for different employees at Oracle?**

8 A. No.

9 **Q. Did you evaluate the minimum qualifications**

10 **required for any specific position at Oracle?**

11 A. No.

12 **Q. Okay. Did your statistical models of**

13 **Oracle's headquarters' location include any controls**

14 **for performance?**

15 MR. ELIASOPH: Objection to the extent

16 you're discussing models that have not been

17 produced. Those would be deliberative.

18 So don't answer -- I don't believe it's on

19 this report.

20 BY MS. MANTOAN:

21 **Q. So did the statistical analysis reflected**

22 **in Exhibit 2 contain any controls to differentiate**

23 **employees based on performance?**

24 A. Exhibit 2?

25 **Q. Exhibit 2, Attachment A, correct, which I**

Page 279

1 **think we've established is the same analysis as is**

2 **in Exhibit 4.**

3 A. And what's your questions?

4 **Q. Did the statistical analysis reflected in**

5 **Exhibit 2, Attachment A, contain any controls to**

6 **differentiate employees based on performance?**

7 A. None that I know.

8 MS. MANTOAN: Short break?

9 MR. ELIASOPH: Sure.

10 THE VIDEOGRAPHER: We are going off the

11 record.

12 The time is 5:04 p.m.

13 (Short recess was taken from 5:04 p.m.

14 until 5:09 p.m.)

15 THE VIDEOGRAPHER: We are back on the

16 record.

17 The time is 5:09 p.m.

18 BY MS. MANTOAN:

19 **Q. So, Dr. Leu, I did want to have the**

20 **reporter mark as Exhibit 15 the diagram that you**

21 **drew when you were explaining work experience prior**

22 **to Oracle.**

23 I'm just going to take a pause here and ask

24 her to mark that and then I'll have you confirm so

25 the record is clear that that is what that is.

Page 280

1 (Exhibit 15 marked for identification.)

2 BY MS. MANTOAN:

3 **Q. So you've been handed what's been marked as**

4 **Exhibit 15, Dr. Leu. Is that a diagram that you**

5 **drew earlier today when you were explaining how you**

6 **constructed the work experience prior to Oracle**

7 **variable in your statistical model?**

8 A. Yes.

9 MS. MANTOAN: Okay. So I do not have any

10 further questions at this time.

11 We've discussed a couple of different

12 issues on the record, things we were going to confer

13 about, and there were a number of privileged

14 instructions so I'm going to leave the deposition

15 open pending discussion of -- and any resolution of

16 those issues, but other than that, I don't have

17 further questions today.

18 MR. ELIASOPH: I have no questions.

19 THE VIDEOGRAPHER: This concludes the

20 deposition for today.

21 We are now off the record. The time is

22 5:10 p.m.

23 THE REPORTER: Mr. Eliasoph, this has been

24 expedited, would you like your copy at the same

25 time?

Page 281

1 MR. ELIASOPH: I don't feel sufficiently
 2 protected to order it expedited, so whatever the
 3 standard has been.
 4 Do I have your card?
 5 THE REPORTER: I'll give you one.
 6 MS. JAMES: And just to confirm, you will
 7 send us the rough tonight?
 8 THE REPORTER: Yes. You saw it. It's
 9 rough, but I will send it.
 10 MS. JAMES: That's fine. And the final
 11 will be expedited --
 12 THE REPORTER: Yes, expedited for Friday.
 13 MS. JAMES: Great. Thank you.
 14 (The deposition of SHIRONG "ANDY" LEU was
 15 concluded at 5:10 p.m.)
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Page 282

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 5th, 2019
 23
 24 
 25 _____
 MONICA LEPE-GEORG, No. 11976

Page 283

1 DECLARATION UNDER PENALTY OF PERJURY
 2 Case Name: OFCCP vs. Oracle America, Inc.
 3 Date of Deposition: 07/01/2019
 4 Job No.: 10057521
 5
 6 I, SHIRONG ANDY LEU, 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 SHIRONG ANDY LEU
 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

Page 284

1 DEPOSITION ERRATA SHEET
 2 Case Name: OFCCP vs. Oracle America, Inc.
 3 Name of Witness: Shirong Andy Leu
 4 Date of Deposition: 07/01/2019
 5 Job No.: 10057521
 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 ____
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 22 From ____ to ____
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 24 From ____ to ____
 25 Page ____ Line ____ Reason ____
 26 From ____ to ____

1 DEPOSITION ERRATA SHEET

2 Page ____ Line ____ Reason ____

3 From _____ to _____

4 Page ____ Line ____ Reason ____

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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 SHIRONG ANDY LEU

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