

OFCCP vs. Oracle America, Inc.

Videotaped Deposition of

JANE SUHR - 30(B)(6)

June 26, 2019

Volume I



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Page 1

1 UNITED STATES DEPARTMENT OF LABOR
2 OFFICE OF ADMINISTRATIVE LAW JUDGES
3 OFFICE OF FEDERAL CONTRACT)
4 COMPLIANCE PROGRAMS, UNITED)
5 STATES DEPARTMENT OF LABOR,)
6)
7 Plaintiff,)OALJ No. 2017-OFC-00006
8)OFCCP No. R00192699
9 vs.)
10)
11)
12 ORACLE AMERICA, INC.,)
13)
14)
15 Defendant.)
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18)
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20)
21)
22)
23)
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25)

12 VIDEOTAPED DEPOSITION OF 30(b)(6) - JANE Y. SUHR
13 Volume I
14 San Francisco, California
15 Wednesday, June 26th, 2019

21 REPORTED BY:
22 MONICA LEPE-GEORG
23 CSR No. 11976
24 Job No. 10057767
25

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2
3 VIDEOTAPED DEPOSITION OF 30(b)(6) - JANE Y.
4 SUHR, VOLUME NO. I, taken on behalf of DEFENDANT, at
5 405 Howard Street, 10th Floor, San Francisco,
6 California, beginning at 2:22 p.m. and ending at
7 4:17 p.m., on Wednesday, June 26th, 2019, before
8 Monica Lepe-Georg, Certified Shorthand Reporter No.
9 11976.
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1 APPEARANCES (Continued):
2
3 Also Present:
4 Marisa Ramos, Videographer
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1 San Francisco, California
2 Wednesday, June 26th, 2019
3 2:22 p.m. - 4:17 p.m.
4 THE VIDEOGRAPHER: Good afternoon. We are
5 on the record. The time is 2:22 p.m. on June 26th,
6 2019. This begins the videotaped deposition of
7 person most knowledgeable Jane Yoojin Suhr taken in
8 the matter Office of Federal Contract Compliance
9 Programs, United States Department of Labor versus
10 Oracle America, Inc., filed in the United States
11 Department of Labor Office of Administrative Law
12 Judges, case number of which is 2017-OFC-00006.
13 This deposition is being held at Orrick
14 located at 405 Howard Street, 10th Floor,
15 San Francisco, California.
16 My name is Marisa Ramos. I am your
17 videographer. The court reporter today is Monica
18 Lepe-Georg and we are both here representing Aptus.
19 Counsel, would you please state your
20 appearance and affiliations for the record, after
21 which the court reporter will swear in the witness.
22 MR. MILLER: Jeremiah Miller for the Office
23 of Solicitor representing OFCCP.
24 MR. SHWARTS: Robert Shwarts and Toni
25 Lambert representing Oracle.

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1 (Witness sworn.)
2 Let's mark exhibit, please.
3 THE REPORTER: Continuing or Exhibit 1?
4 MR. SHWARTS: No. This is a new Exhibit 1,
5 please.
6 THE WITNESS: Thank you.
7 (Exhibit 1 was marked for identification.)
8 ---oOo---
9 30(b)(6) - JANE Y. SUHR,
10 having been administered an oath, was examined and
11 testified as follows:
12 EXAMINATION
13 BY MR. SHWARTS:
14 Q. Ms. Suhr, I've placed before you an exhibit
15 marked as Exhibit 1. Document is entitled Defendant
16 Oracle's Second Notice of Deposition of OFCCP
17 Pursuant to 41 C.F.R. 60-30.11 and Federal Rule
18 Civil Procedure 30(b)(6).
19 Take a look at what's numbered as page
20 No. 2, and written there are topics -- a topic with
21 subparts.
22 Please take a look at that and let me know
23 when you have read what is there under paragraph --
24 what is Paragraph 33 with Subparts (a), (b), and
25 (c).

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1 A. Okay.
2 Q. Okay. Are you the person that OFCCP has
3 designated as the person most knowledgeable to
4 answer questions in this matter on the topic that's
5 set forth in Exhibit 1?
6 A. Yes.
7 Q. Okay. So, Ms. Suhr, unlike what we did
8 this morning, we are doing it a little bit --
9 something a little different.
10 A. Okay.
11 Q. Okay. This morning I took a deposition of
12 you, Jane Suhr, on your personal knowledge, so you
13 were answering based on what Jane Suhr knew, what
14 Jane Suhr experienced, what Jane Suhr saw, read, or
15 did. This deposition is the deposition of an
16 entity, which in this instance is the OFCCP.
17 A. Okay.
18 Q. So when an entity is a party, like Oracle
19 is or like OFCCP is, the rules allow each opposing
20 party to ask their counterparty to produce a witness
21 that is the most knowledgeable person to testify on
22 a topic or topics and then that person needs to be
23 designated and that person is testifying on behalf
24 of the whole entity, and not just what that
25 individual knows personally, but is testifying as to

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1 what the whole entity knows.
2 Do you understand that?
3 A. Okay.
4 Q. Okay. So while you are -- while
5 oftentimes -- and I -- and it's certainly true in
6 this case, the matters -- that is the subject of
7 testimony, might be within your personal knowledge,
8 it is not only within your personal knowledge.
9 Do you understand that?
10 A. Okay.
11 Q. So with that, in preparing for -- to
12 testify on behalf of OFCCP, did you speak to anyone,
13 other than lawyers, to gather facts or information
14 to assist you in answering on behalf of OFCCP today?
15 A. No.
16 Q. Did you need to review, yourself, documents
17 in order to -- that you didn't already have
18 knowledge of and look at documents to help you to
19 prepare yourself to give testimony today on behalf
20 of OFCCP?
21 A. Yes.
22 Q. Okay. As best as you can recall, what
23 documents did you have to review that you otherwise
24 didn't have knowledge of prior to preparing?
25 A. So I knew they existed, but hadn't reviewed

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1 it recently, so I reviewed the amended -- second
2 amended complaint that was filed, the notice, the
3 opposition to Oracle's motion for summary judgment,
4 declaration of Gary Siniscalco and Erin Connell in
5 support of Oracle's motion for summary judgment and
6 my previous declaration.
7 MR. MILLER: And, Counsel, just to clarify
8 for the record -- and, you know, I can provide this
9 to you in writing if you'd like, when she's talking
10 about the opposition she's talking about the
11 affirmative motion for summary judgment that Oracle
12 filed in 2017, the supporting declarations and our
13 opposition, so --
14 MR. SHWARTS: Understood.
15 BY MR. SHWARTS:
16 **Q. Anything else you recall reviewing to**
17 **prepare to give your testimony today on behalf of**
18 **OFCCP?**
19 A. No, those documents.
20 **Q. Okay. So you understood -- the general**
21 **discussion -- the topic we're discussing here is**
22 **conciliation, --**
23 A. Yes.
24 **Q. -- and more specifically the conciliation**
25 **efforts with -- between OFCCP and Oracle after the**

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1 **issuance of the NOV?**
2 A. Yes.
3 **Q. Okay. Just some preliminary matters so we**
4 **have a framework.**
5 **In general, though, what is -- what is**
6 **conciliation after the issuance of an NOV?**
7 A. Conciliation is the process where the
8 agency engages with the contractor to resolve the
9 outstanding violations.
10 **Q. Okay. Is it fair to say that it is the**
11 **goal of OFCCP to -- you know, to try to resolve**
12 **matters short of litigation?**
13 A. Yes. That is the agency's goal.
14 **Q. And the purpose of which obviously is to**
15 **try to reach a resolution in which whatever**
16 **violations have been noted have been remedied either**
17 **in the terms of change of policies, or an issuance**
18 **of back pay, or other types of remedies?**
19 A. Yes.
20 **Q. With respect to the Oracle matter, after**
21 **the issuance of the NOV in March of 2016, who at**
22 **OFCCP was responsible for leading the conciliation**
23 **efforts with Oracle?**
24 A. The regional director, Janette Wipper, at
25 that time was leading the conciliation efforts.

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1 **Q. Besides Ms. Wipper, was anyone else**
2 **involved in the process?**
3 A. Yes.
4 **Q. Who else was involved in the conciliation**
5 **process?**
6 A. I was involved, the manager at the time was
7 involved, the compliance officer was involved, our
8 lawyers were involved from solicitor's office, and
9 our statistician was involved from the agency.
10 **Q. Aside -- aside from the statistician,**
11 **who -- sorry, let me rephrase. Let me just do this**
12 **more specifically.**
13 **The manager, are you speaking about**
14 **Ms. Atkins?**
15 A. Yes, Ms. Atkins at the time.
16 **Q. And the case officer -- compliance officer,**
17 **you are speaking about Mr. Luong?**
18 A. Yes.
19 **Q. Okay. And with respect to the**
20 **statistician, are you speaking about**
21 **Mr. LaJeunesse -- Dr. LaJeunesse, or are you talking**
22 **about the local statistician?**
23 A. Local -- well, he's locally housed here,
24 but he reports to the national office.
25 **Q. Okay. Aside from the statistician, was**

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1 **anyone else from the national office -- meaning**
2 **aside from the statistician and Dr. LaJeunesse, was**
3 **anyone else from the national office involved in the**
4 **conciliation efforts?**
5 A. No, not that I recall.
6 **Q. Okay. Meaning anyone above Ms. Wipper from**
7 **a reporting standpoint.**
8 A. No one above Ms. Wipper.
9 **Q. Okay. After the issuance of the NOV, what**
10 **was the first -- the first step after the issuance**
11 **of the NOV with respect to Oracle directed towards**
12 **conciliation?**
13 A. First step from the agency --
14 **Q. Correct.**
15 A. -- towards Oracle?
16 So, after we issued the NOV -- the NOV
17 itself invites Oracle to respond and engage in
18 conciliation, but because the agency had not
19 received a response, I believe the local office
20 reached out to Oracle to again invite them to engage
21 in conciliation with the agency.
22 MR. SHWARTS: Okay. See 43, please.
23 (Exhibit 2 was marked for identification.)
24 THE REPORTER: Thank you. Exhibit 2.
25 ///

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1 BY MR. SHWARTS:
2 Q. Exhibit 2, Ms. Suhr, is a letter from -- an
3 e-mail from Robert Doles to Shauna Holman-Harries
4 dated March 16th, 2016 -- responding to an e-mail
5 from her.
6 In this e-mail -- unlike in your prior
7 deposition, Ms. Suhr, I'm going to be asking you
8 about documents that you may not have been -- seen
9 or copied on since this is a corporate deposition.
10 In this Mr. Doles says, "Please let us know
11 when we could expect to receive Oracle's position
12 statement."
13 Do you know what he's referring to there?
14 What position statement is he referring to?
15 A. Oracle's response to the violation.
16 Q. Is that something that is typically
17 required in a conciliation effort, for the -- for
18 the contractor who has received a Notice of
19 Violation to provide a written position statement?
20 A. It is often requested by the agency.
21 Q. But it's not required?
22 A. It's not required.
23 MR. SHWARTS: Can I have 44, please.
24 (Exhibit 3 was marked for identification.)
25 THE REPORTER: Exhibit 3.

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1 THE WITNESS: Okay. Thank you.
2 BY MR. SHWARTS:
3 Q. I've placed before you what we've marked as
4 Exhibit 3. This is an e-mail from Shauna
5 Holman-Harries to Mr. Doles dated March 18th, 2016.
6 Ms. Holman-Harries states:
7 "I have received your request for a
8 position statement, but I'm afraid we don't
9 understand the request or the timing."
10 And she makes reference to section 8G01 of
11 the FCCM. It's true, is it not, that FCCM, in
12 general, states that the conciliation discussions
13 may take many forms, --
14 A. Yes.
15 Q. -- including in-person discussions,
16 e-mails, telephone discussions, and the like,
17 correct?
18 A. Yes.
19 Q. Conciliation does not require the
20 contractor to put in a position statement, in order
21 to initiate conciliation, discussions or is a
22 precondition to conciliation discussions; is that
23 correct?
24 A. Right. The FCCM doesn't require it.
25 Q. Ms. Holman-Harries notes that "The agency

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1 failed to advise Oracle of any findings in advance
2 of issuing the Notice of Violation."
3 That's correct, isn't it; that it was --
4 that prior to the Notice of Violation there had not
5 been any predetermination notice or any other notice
6 to Oracle?
7 A. Findings notice to Oracle, --
8 Q. Yeah.
9 A. -- no.
10 Q. "No," meaning her statement is correct?
11 A. Right.
12 MR. SHWARTS: Can I see 45, please. I'm
13 sorry, it's not here? It's all right. I'll mark it
14 myself.
15 I'm about to hand you -- I only have one
16 copy --
17 THE WITNESS: Okay.
18 MR. SHWARTS: -- and we'll make copies at
19 the break, Exhibit 4, which is a e-mail from Gary
20 Siniscalco to Janette Wipper and Jan -- Jane Suhr
21 dated March 25th, 2016. Please take a look at it.
22 THE WITNESS: Okay.
23 (Exhibit 4 was marked for identification.)
24 BY MR. SHWARTS:
25 Q. Have you had a chance to look at Exhibit 4?

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1 A. Yes.
2 Q. Okay. In Exhibit 4 Mr. Siniscalco -- no
3 it's for you.
4 A. Oh, okay.
5 Q. In Exhibit 4 Mr. Siniscalco makes reference
6 to a telephone conference that was -- at least you
7 and Ms. Wipper listened in on.
8 A. Yes.
9 Q. Now, specifically -- was this relating
10 specifically to the Oracle headquarters' audit or
11 was it relating to a different audit?
12 A. It was -- I believe it was regarding an
13 audit that Ms. -- that was open in Ms. Maid --
14 Mr. Maiden's region.
15 Q. Which region is that?
16 A. Southeast.
17 Q. Okay. Was there any discussion on that
18 phone call at all about the headquarters' audit; if
19 you recall?
20 A. I don't recall.
21 MR. SHWARTS: Okay. 46, please.
22 (Exhibit 5 was marked for identification.)
23 THE REPORTER: Exhibit 5.
24 BY MR. SHWARTS:
25 Q. Placed before you what we've marked as

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1 Exhibit 5. It is an e-mail from Robert Doles to
2 Shauna Holman-Harries --
3 A. Okay.
4 Q. -- dated March 29, 2016, responding to what
5 was Exhibit 3.
6 Please take a look at it. Let me know when
7 you're ready to proceed.
8 A. Okay. Okay.
9 Q. In his letter, Mr. Doles states that the --
10 "During the entrance conference, held on March 24th,
11 2015, OFCCP discussed with you" -- meaning
12 Ms. Holman-Harries and other Oracle representatives,
13 "the preliminary indicators and areas of concern."
14 My understanding is that there was a
15 general discussion of concern about compensation and
16 hiring practices, including that they may involve
17 the product development unit.
18 Was any other information provided at the
19 entrance conference about preliminary indicators,
20 other than those general areas of concern?
21 A. Not that I recall.
22 Q. Okay. This says that:
23 "At the exit conference held on March 27th,
24 2015, OFCCP informed you," meaning
25 Ms. Holman-Harries and Neil Bourque, "that

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1 the agency will conduct further analysis
2 and the agency findings will be issued in a
3 formal notice."
4 Is that -- is that accurate?
5 A. That sounds right.
6 Q. Again -- in at least this first paragraph,
7 again, Mr. Doles does not indicate in his letter
8 that any specific findings were provided to Oracle
9 prior to the issuance of the NOV; is that correct?
10 A. Yes.
11 MR. SHWARTS: 47, please.
12 You can put that aside.
13 THE WITNESS: Okay.
14 (Exhibit 6 was marked for identification.)
15 MR. MILLER: Thanks.
16 THE REPORTER: Exhibit 6.
17 THE WITNESS: Okay. Thank you.
18 BY MR. SHWARTS:
19 Q. Placed before you, Ms. Suhr, what's been
20 marked as Exhibit 6. It is an e-mail from
21 Mr. Siniscalco to Mr. Doles with an attached -- an
22 attached letter with attachments.
23 As of this time, in April of 2016, OFCCP
24 understood that Mr. Siniscalco was Oracle's
25 representative with respect to the NOV and

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1 conciliation efforts?
2 A. Am I --
3 Q. Yeah, --
4 A. -- confirming that?
5 Q. -- I'm asking was the OFCCP aware, as of
6 April of 2016, that Mr. Siniscalco was a legal
7 representative of Oracle with respect to the NOV and
8 conciliation efforts?
9 A. I would have to review the representation
10 letter, but I believe so. I can't recall exactly
11 what date.
12 Q. Well, at least as of April of 2016?
13 A. Probably because we were receiving a letter
14 from him and it says --
15 Q. Okay. So to the extent that the OFCCP in
16 the ensuing weeks and months would be engaging with
17 Mr. Siniscalco, or people who worked with or for
18 Mr. Siniscalco, they were interacting for
19 conciliation purposes with an Oracle representative?
20 A. Right, yes.
21 Q. It's noted on page 4 of the letter --
22 A. Okay.
23 Q. -- of Mr. Siniscalco's letter -- in
24 Section IX of his letter he states:
25 "To move this along, we had hoped that

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1 OFCCP would be forthcoming on our few
2 initial questions as set forth in the
3 letter. We now ask the agency to address
4 all the questions listed in Appendix A to
5 this letter. In addition, with respect to
6 specific reference to alleged refusals by
7 Oracle, we ask that OFCCP answers the
8 questions in Appendix B. Once the agency
9 provides these answers we hopefully will be
10 better able to understand its allegations
11 and findings."
12 Did the OFCCP understand, from
13 Mr. Siniscalco's letter, that it was requesting
14 additional information in order for it to be able to
15 subsequently respond to the NOV?
16 A. Yes, that was Oracle's position.
17 Q. Did OFCCP take any steps to try to respond
18 to Mr. Siniscalco's request on behalf of Oracle?
19 A. Yes.
20 Q. And what steps did it take to try to
21 respond to Mr. Siniscalco's requests for
22 information?
23 A. We believe -- I believe we responded to his
24 letter and the questions -- the 60 questions
25 attached to the letter.

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1 THE REPORTER: Exhibit 7.
2 (Exhibit 7 was marked for identification.)
3 BY MR. SHWARTS:
4 **Q. Placed before you what's been marked as**
5 **Exhibit 7. It is a letter -- it is an e-mail from**
6 **Ms. Atkins to Shauna Holman-Harries, Juana Schurman**
7 **at Oracle on April 22nd, 2016, attaching a letter**
8 **from Ms. Atkins to Mr. Siniscalco.**
9 Please take a look at it. Let me know when
10 you are ready to proceed.
11 A. Okay.
12 **Q. There is a three- -- four- -- three-plus**
13 **page letter from Ms. Atkins, which by the way she**
14 **testified in her deposition was prepared by**
15 **Ms. Wipper for her. Did you have any personal role**
16 **in preparation of the four-page letter?**
17 Well, let me ask it from a -- let me ask
18 the question a different way.
19 Do you know who it is who prepared the
20 substance of the letter signed by Ms. Atkins?
21 MR. MILLER: So I'm going to instruct her
22 not to answer to the extent that it will reveal an
23 attorney-client communication, but I assume there's
24 an answer she can give that won't delve into that.
25 THE WITNESS: I believe it was drafted by

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1 Ms. Atkins and Ms. Wipper and I -- I reviewed the
2 letter as well.
3 BY MR. SHWARTS:
4 **Q. Okay. If you look at -- Appendix A**
5 **responds to -- the Appendix A corresponds to the**
6 **Appendix A that Mr. Siniscalco put in his letter,**
7 **correct?**
8 A. Yes.
9 **Q. It is correct that aside -- other than**
10 **referring Oracle to the NOV and data provided --**
11 **general data provided by Oracle, OFCCP did not**
12 **provide any substantive responses to Appendix -- the**
13 **questions that were set forth in Appendix A?**
14 MR. MILLER: Objection. Vague as to
15 substantive.
16 MR. SHWARTS: You may answer.
17 THE WITNESS: So are you asking me if --
18 did we provide anything other than referencing the
19 NOV?
20 BY MR. SHWARTS:
21 **Q. And -- and other data -- for example,**
22 **referencing the NOV or data, general -- a general**
23 **reference to data submitted by Oracle.**
24 A. In -- on some questions -- some questions
25 are addressed, such as No. 4, there's a response.

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1 **Q. Without providing substantive information,**
2 **correct?**
3 A. The response is that Oracle denied access
4 to relevant information for us to provide a
5 substantive --
6 **Q. Right, but it didn't answer the question,**
7 **other than stating that you couldn't answer the**
8 **question?**
9 A. That was our response, yes.
10 **Q. Okay.**
11 A. There was the response to No. 8, how we
12 identify Asian Indians.
13 **Q. Anything else -- that is besides the answer**
14 **to No. 8, any other substantive answers provided**
15 **other than referring to the NOV or to a general**
16 **reference to information Oracle provided?**
17 A. On No. 10 we explained why we didn't
18 provide -- or we didn't request application review
19 onsite.
20 And Questions 12 through 24 and 28 through
21 31, they were questions we couldn't answer because
22 they were privileged.
23 **Q. Okay.**
24 A. There's a response to 25, 26, 27.
25 And for 32 through 39 we referenced the

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1 e-mail that was previously sent.
2 And for 40 through 42 we offer technical
3 assistance to address those questions.
4 **Q. Okay. With respect to Appendix B, other**
5 **than stating that Oracle -- that certain**
6 **compensation data was requested on specific dates in**
7 **response to Exhibit 1 -- Question 1, there was no**
8 **other substantive response provided to the questions**
9 **put forth in Appendix B?**
10 A. Okay. No. 1 -- let's see. There's a
11 response to No. 11 through 17, "The agency is not
12 required to review all documents during onsite."
13 And for Question 18 we provided the
14 regulatory's basis for presuming data will be
15 unfavorable if not provided.
16 **Q. Okay. You can put that aside.**
17 A. Okay.
18 MR. SHWARTS: Let me have 50, please.
19 MS. LAMBERT: 50?
20 MR. SHWARTS: 50, then 51 -- sorry 51, then
21 52, I'm sorry.
22 MR. MILLER: Thanks.
23 THE WITNESS: Thanks.
24 THE REPORTER: Exhibit 8.
25 (Exhibit 8 was marked for identification.)

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1 BY MR. SHWARTS:
2 Q. Exhibit 8 is a letter -- is an e-mail dated
3 April 25th, 2016 from Gary Siniscalco to Ms. Atkins
4 in which Mr. -- based on Mr. Siniscalco's letter you
5 understood it was Oracle's position as of April 2016
6 that it was willing to engage in conciliation
7 efforts but that a face-to-face meeting would at
8 that time be premature and that the parties should
9 continue to engage in written discussions.
10 Is that correct?
11 A. Yes.
12 Q. Now, as of April -- at this point, Oracle
13 had been provided the NOV?
14 A. Uh-hm.
15 Q. And it had been provided such information
16 that was included in Ms. Atkins' letter that we
17 referred to as Exhibit 6 -- I'm sorry, wrong,
18 Exhibit 7.
19 You're aware -- is there -- was there any
20 other substantive information underlying the NOV
21 that had been provided to Oracle as of April 25th,
22 2016?
23 A. Not that I'm aware of.
24 MR. SHWARTS: Okay.
25 THE WITNESS: Thank you.

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1 THE REPORTER: Exhibit 9.
2 (Exhibit 9 was marked for identification.)
3 BY MR. SHWARTS:
4 Q. Placed before you what's been marked as
5 Exhibit 9. It is a letter from Gary Sinis- -- it is
6 an e-mail from Gary Siniscalco to Ms. Atkins
7 attaching a letter dated May 25th, 2016, to
8 Ms. Atkins from Mr. Siniscalco.
9 Please take a look at it. Let me know when
10 you are ready to proceed.
11 A. Okay. Okay.
12 Q. Mr. Siniscalco's May 25th, 2016, letter --
13 at least based on his e-mail, is noted as what would
14 be Oracle's position statement in response to
15 Mr. Doles' Notice of Violation, correct?
16 A. Yes.
17 Q. And attached to that e-mail is a three-page
18 letter from Mr. Siniscalco, followed by an 18-page
19 itemization and analysis of the issues both
20 substantive and procedural, correct?
21 A. Yes.
22 MR. SHWARTS: 53, please.
23 (Exhibit 10 was marked for identification.)
24 THE REPORTER: Exhibit 10.
25 ///

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1 BY MR. SHWARTS:
2 Q. Placed before you what's been marked as
3 Exhibit 10. It is a letter dated June 8th, 2016,
4 from Janette Wipper to Ms. Catz and Mr. Hurd at
5 Oracle.
6 Please take a look at it and let me know
7 when you are ready to proceed.
8 A. Okay.
9 Q. Is this what is known -- and for purposes
10 of OFCCP's policies and practices as a show-cause
11 notice?
12 A. It's a show cause notice, but I think the
13 enclosure is missing. It's part of the show cause
14 notice.
15 Q. What is a show cause notice?
16 A. It's a notice giving three days -- 30-day
17 notice provided to contractor to resolve the
18 violations before initiating enforcement
19 proceedings.
20 Q. Who made the decision to issue a show cause
21 notice to Oracle as represented by Exhibit 10?
22 A. Show cause notice -- it would have been the
23 regional director, at the time Janette Wipper.
24 Q. Anyone else participate in that decision?
25 And, again, I'm not -- if there's counsel

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1 you may state yes or no that there was counsel. I'm
2 not going to get into any substantive
3 communications.
4 MR. MILLER: Then you're not going to get
5 an instruction from me not to answer that.
6 MR. SHWARTS: Yeah, I just want names of
7 who, not of what at this point. That's -- my
8 question is who.
9 MR. MILLER: I will instruct the witness
10 not to answer to the extent that her answer reveals
11 predecisional deliberative process by the agency,
12 but to the extent you can answer it without
13 revealing that, please go ahead.
14 THE WITNESS: It would also be the team
15 that's conducting the investigation and the field
16 office.
17 BY MR. SHWARTS:
18 Q. Once an NOV -- once an NOV --
19 Well, when you say "the team," so in that
20 instance you mean district director, in this case
21 Ms. Atkins, and the compliance officer, in this case
22 Mr. Luong?
23 A. Yes. They would be -- I mean it would have
24 been discussed with the field office. I'm not sure
25 if the compliance officer is included in that

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1 discussion, but generally with the field staff. So
2 in this case Ms. Atkins would have been aware. And
3 we also inform the national office -- OFCCP National
4 Office, that we are proceeding to the show cause
5 notice stage.
6 **Q. Why did OFCCP decide to issue a show cause**
7 **notice at this point following the receipt of**
8 **Mr. Siniscalco's letter two weeks earlier?**
9 MR. MILLER: I'm going to instruct the
10 witness not to answer to the extent that the answer
11 would reveal predecisional deliberative process for
12 the agency or attorney-client communications.
13 THE WITNESS: Mr. Siniscalco's last letter
14 I believe requested the agency withdraw the NOV and
15 issue a compliance notice, so from that it was an
16 indication that Oracle was not interested in
17 resolving the violations.
18 And having not received a response from
19 Oracle, the agency moved to the next steps in the
20 investigative process, which is the show cause
21 notice.
22 BY MR. SHWARTS:
23 **Q. In the -- in the second page of the**
24 **letter -- of Ms. Wipper's letter, she has three**
25 **bullet points.**

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1 **Do you see those?**
2 A. Yes.
3 **Q. That's the same information that was**
4 **contained in the NOV, correct?**
5 A. Yes.
6 **Q. At this time, as of the issuance of this**
7 **show cause notice, Oracle had no statistical**
8 **information upon which to evaluate how OFCCP reached**
9 **its conclusions, other than what is in the NOV and**
10 **repeated here in this letter, correct?**
11 A. Repeated in the letter and the NOV, which
12 was enclosed, which discusses -- which includes the
13 agency's statistical model which Oracle can use to
14 replicate the agency's analysis.
15 **Q. Again, all I'm asking for this purpose --**
16 A. Is there anything more than that?
17 **Q. Yeah. All they had at that point, with**
18 **respect to the statistics, was whatever was**
19 **contained in the NOV and repeated here in the**
20 **letter, correct?**
21 A. Right.
22 **Q. Was there any consideration at this point**
23 **of simply making a conciliation proposal -- a**
24 **substantive conciliation proposal to Oracle in the**
25 **form of a request for back pay or a draft**

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1 **conciliation agreement that would itemize ways for**
2 **Oracle to -- from a policy standpoint amend its**
3 **practices?**
4 MR. MILLER: So I'm going to instruct the
5 witness not to answer this to the extent that it
6 would reveal predecisional agency deliberations or
7 attorney-client communications, but to the extent
8 that you -- I mean, there may be other things to --
9 MR. SHWARTS: You know what, I can ask it a
10 different way to avoid the objection. Let me cure
11 that.
12 THE WITNESS: Okay.
13 BY MR. SHWARTS:
14 **Q. At this point -- as of June, OFCCP had not,**
15 **as of this point, made any proposal to Oracle about**
16 **back pay; is that correct?**
17 A. Correct.
18 **Q. And at this point, as of June of 2016,**
19 **OFCCP had not submitted to Oracle any draft**
20 **conciliation agreement, correct?**
21 A. Correct.
22 **Q. And as of June of 2016, OFCCP had not made**
23 **any substantive proposals to Oracle, how to cure the**
24 **violations in the NOV, beyond -- separate and apart**
25 **from back pay; is that correct?**

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1 A. The NOV itself lists the corrective actions
2 that Oracle needs to take to remedy the
3 violations --
4 **Q. So --**
5 A. -- in addition to back pay.
6 MR. SHWARTS: Let me have 54, please.
7 BY MR. SHWARTS:
8 **Q. Now, you said that the show cause notice**
9 **typically is a 30-day notice before --**
10 A. This period --
11 **Q. -- enforcement proceedings?**
12 A. Typically, but in practice, if parties
13 engage in conciliation, we don't initiate
14 enforcement proceedings at the 31st day.
15 **Q. Okay.**
16 A. We delay that.
17 MR. SHWARTS: Next document, please.
18 THE WITNESS: Thank you.
19 (Exhibit 11 was marked for identification.)
20 BY MR. SHWARTS:
21 **Q. Placed before you what we've marked as**
22 **exhibit?**
23 THE REPORTER: 11.
24 BY MR. SHWARTS:
25 **Q. -- 11, which is a letter dated June 29,**

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1 2016, from Mr. Siniscalco to Janette Wipper.
2 Please take a look at it and let me know
3 when you're ready to proceed.
4 A. Okay.
5 Q. This is -- this was a response letter
6 from -- received by the agency from Mr. Siniscalco
7 addressing this show cause notice?
8 A. Yes.
9 Q. You understand that at this point -- at
10 least certainly at the conclusion of his letter,
11 Mr. Siniscalco, on behalf of Oracle, asked that the
12 show cause notice be withdrawn and that reasonable
13 conciliation take place?
14 A. Yes.
15 Q. And you understood that to be -- at least
16 through his letter, that was Oracle's position as
17 stated by Mr. Siniscalco?
18 A. Yes.
19 Q. Indeed, as a result -- indeed, no
20 enforcement proceeding was -- each was commenced at
21 this time, correct?
22 A. No -- right, yes.
23 Q. And it was -- at least at this time, in the
24 summer of 2016, OFCCP determined that it wanted to
25 continue a conciliation process?

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1 A. Yes.
2 MR. SHWARTS: 57, please.
3 THE REPORTER: Exhibit 12.
4 (Exhibit 12 was marked for identification.)
5 BY MR. SHWARTS:
6 Q. Exhibit 12 is a letter dated September 9,
7 2016, from Ms. Atkins to Mr. Siniscalco, and by its
8 terms responding to his June 29, 2016, letter,
9 correct?
10 A. Yes.
11 Q. In essence Ms. Atkins is saying that she
12 wants to hear back by the -- September 16th, or
13 else --
14 MR. MILLER: Objection. The document says
15 what it says.
16 MR. SHWARTS: Right.
17 BY MR. SHWARTS:
18 Q. Basically we'll conclude -- if you don't
19 get back to us by the 16th, we're going to conclude
20 that there's no -- you know, there's no interest in
21 conciliation.
22 Is that fair?
23 A. Yes.
24 Q. What was going -- why did it take
25 two-and-a-half months for OFCCP to respond to

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1 Mr. Siniscalco's July letter?
2 A. I'm not sure what happened. You mean the
3 lag?
4 Q. Yes. You received his letter -- it's
5 stamped on the front page of Exhibit 11, on
6 June 30th; the response is on September 9th. Why
7 did it take OFCCP over two months to get back to him
8 after he indicated his desire to engage in
9 conciliation?
10 A. I'm not sure why it took that long.
11 Q. Are you aware of any other communications
12 between OFCCP and Oracle during that two-and-a-half
13 month period relating to conciliation?
14 A. I don't recall.
15 Q. Was any substantive information provided to
16 Oracle, relating to the NOV, between June 30th and
17 September 6th relating to the NOV to assist in
18 conciliation?
19 A. Not -- not that I recall.
20 MR. SHWARTS: Okay. 59, please.
21 (Exhibit 13 was marked for identification.)
22 THE REPORTER: Exhibit 13.
23 BY MR. SHWARTS:
24 Q. Ms. Suhr, placed before you what we've
25 marked as Exhibit 13.

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1 A. Okay.
2 Q. It is a letter dated September 16th, 2016,
3 from Mr. Siniscalco to Ms. Atkins.
4 This is in fact a letter accepting a
5 proposal to meet in person for conciliation and
6 suggesting dates?
7 A. Yes.
8 MR. SHWARTS: Okay. 58, please.
9 (Exhibit 14 was marked for identification.)
10 THE REPORTER: Exhibit 14.
11 BY MR. SHWARTS:
12 Q. We placed before you what's been marked as
13 Exhibit 14. It's a letter also dated September 16,
14 2016, from Ms. Atkins to Mr. Siniscalco.
15 Let me know when you're ready to proceed.
16 A. Okay.
17 Q. In her letter Ms. Atkins states:
18 "In order to engage in a good faith, mutual
19 conciliation process, and a productive
20 meeting, we again request that Oracle
21 provide a substantive rebuttal analysis in
22 five days, by September 21st, 2016."
23 Fair to say that Exhibit 14 represents that
24 OFCCP is making their receipt of a substantive
25 analysis a precondition to conciliation, correct?

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1 A. You could interpret it that way.
2 **Q. On what -- what is the authority from FCCM,
3 or otherwise, that this kind of substantive analysis
4 was required in order to engage in conciliation?**
5 MR. MILLER: Objection to the extent it
6 calls for a legal conclusion.
7 MR. SHWARTS: You may answer.
8 THE WITNESS: To have a productive dialogue
9 in conciliation you want to have the other party's
10 analysis so you can address.
11 BY MR. SHWARTS:
12 **Q. Is it fair to say that on several occasions
13 Oracle had requested that -- including earlier
14 letters from Mr. Siniscalco, that Oracle asked for
15 certain information in order for it to provide a
16 substantive analysis; is that correct?**
17 A. It's correct, but the agency felt that the
18 agency had already produced enough information for
19 Oracle to conduct its own analysis.
20 **Q. I understand, but my question to you was,
21 prior to September 16th, Oracle had asked -- between
22 receipt of the NOV and this date, that the agency
23 provide additional information to assist it in
24 providing a substantive analysis, correct?**
25 A. That's correct.

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1 **Q. And again, other than what is stated in the
2 NOV and certain information that was provided in one
3 of Ms. Atkins' letter, the agency had not provided
4 additional information to Oracle following the
5 issuance of the NOV?**
6 A. Correct.
7 MR. SHWARTS: Can I have 60, please.
8 (Exhibit 15 was marked for identification.)
9 THE REPORTER: Exhibit 15.
10 BY MR. SHWARTS:
11 **Q. Exhibit 15 is an e-mail from
12 Mr. Siniscalco's assistant, Ms. Swirky attaching an
13 e-mail that she says was dictated to her by
14 Mr. Siniscalco and sent to Ms. Atkins on
15 September 21, 2016.**
16 **Please take a look at it and let me know
17 how (sic) you're ready to proceed.**
18 A. Okay. Okay.
19 **Q. Again, in this instance -- in this letter,
20 Mr. Siniscalco indicated that, again, while Oracle
21 was willing to meet and discuss it, it was rejecting
22 the notion that it had to provide a rebuttal
23 analysis, as stated in the letter, correct?**
24 A. Yes.
25 **Q. And at least stating his position that**

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1 **prior letters from Mr. Siniscalco had provided such
2 an analysis, correct?**
3 A. Yes.
4 MR. SHWARTS: 61, please.
5 (Exhibit 16 was marked for identification.)
6 THE REPORTER: Exhibit 16.
7 BY MR. SHWARTS:
8 **Q. Placed before you what we've marked as
9 Exhibit 16. It is a letter from Ms. Atkins --
10 signed by somebody else, but from Ms. Atkins to
11 Mr. Siniscalco dated September 23rd, 2016.**
12 **Please take a look at it and let me know
13 when you're ready to proceed.**
14 A. Okay.
15 **Q. In her letter, in the second paragraph --
16 third paragraph --**
17 **Again, in the second paragraph there it
18 says:**
19 **"For over six months the agency has
20 repeatedly requested a substantive rebuttal
21 analysis based upon statistical evidence
22 from Oracle."**
23 **Now, I'm correct that again, as of this
24 point in time, the only statistical analysis that
25 Oracle had -- upon which the OFCCP was basing its**

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1 **Notice of Violation, was such information that was
2 attached in the NOV, correct?**
3 A. Yes.
4 **Q. The next paragraph states, "Such a rebuttal
5 analysis is required."
6 What is the basis for that, that it's
7 required?**
8 MR. MILLER: Again, I'm going to instruct
9 the witness not to answer to the extent that it
10 would require revealing attorney-client
11 communications or predecisional deliberative process
12 as used by the agency.
13 BY MR. SHWARTS:
14 **Q. While you're contemplating that answer, let
15 me lay a little foundation here.**
16 A. Okay.
17 **Q. Do you know who wrote this for Ms. Atkins,
18 'cause she didn't write it herself, as she testified
19 at her deposition.**
20 **Do you know who prepared the substance of
21 this letter?**
22 A. I may have reviewed it. Janette Wipper
23 probably reviewed it as well.
24 **Q. All right. Again, I'm not going by who
25 reviewed it. I'm asking who wrote it.**

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1 A. I reviewed it. I don't know exactly who
2 wrote it. I don't want to guess who wrote it.
3 **Q. Given that there's -- Ms. Atkins --**
4 A. There's a lot of --
5 **Q. Given the footnotes and given that there's**
6 **citations to legal sources here, would it suggest**
7 **that Ms. Wipper had a hand in writing this given her**
8 **background?**
9 MR. MILLER: Same instruction regarding not
10 testifying to the extent it reveals attorney-client
11 communications.
12 MR. SHWARTS: Yeah, I asked --
13 THE WITNESS: There may be attorney-client
14 communication.
15 BY MR. SHWARTS:
16 **Q. If a lawyer wrote it, that's fine and I**
17 **don't need to know who or what. You can simply**
18 **state that it was written by -- it was drafted by**
19 **counsel/it was prepared by counsel, if you know.**
20 A. I don't know exactly.
21 **Q. Okay. All right.**
22 **How is everyone doing? Okay?**
23 **Are you doing okay?**
24 A. I'm good.
25 **Q. Okay. In fact, a conciliation conference**

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1 **was held in person, correct?**
2 A. Yes.
3 **Q. That was held on or about October 6th of**
4 **2015?**
5 A. That sounds right.
6 **Q. Where did that meeting take place?**
7 A. In the San Francisco Federal Building, in
8 the conference room.
9 **Q. Okay. Who was present from OFCCP?**
10 A. I was there. The regional director was
11 there.
12 **Q. Ms. Wipper?**
13 A. Ms. Wipper was there.
14 Hea Jung Atkins was there.
15 The compliance officer was there, Hoan
16 Luong.
17 The solicitor's office -- from the
18 solicitor's office I believe Ian Eliasoph was there
19 and Laura Bremer.
20 **Q. Can you spell Mr. Eliasoph -- spell his**
21 **name, Ian's last name, please.**
22 A. Ian, I-a-n, Eliasoph, E-l-i-a-s-o-p-h.
23 MR. MILLER: Nice.
24 BY MR. SHWARTS:
25 **Q. All right. You said Mr. Eliasoph and then**

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1 **who else?**
2 A. Laura Bremer.
3 **Q. Laura Bremer.**
4 A. B-r-e-m-m-e-r.
5 MR. MILLER: One M -- just one M.
6 THE WITNESS: Oh, one. Sorry.
7 BY MR. SHWARTS:
8 **Q. Okay. Who was present from representing**
9 **Oracle?**
10 A. Gary Siniscalco, counsel was there. Erin
11 Connell was there. Charles -- I can't remember his
12 last name, was there. Shauna.
13 **Q. Ms. Holman-Harries?**
14 A. Holman-Harries.
15 **Q. Was Ms. -- was Juana Schurman present?**
16 A. Juana Schurman was there as well.
17 **Q. Anyone else from Oracle?**
18 A. I think that was it.
19 **Q. How long did the meeting last?**
20 A. A couple hours.
21 **Q. What was the -- as best as you can recall,**
22 **on behalf of OFCCP, how did the meeting on**
23 **October 6th progress?**
24 A. It was cordial. We, again, indicated our
25 intent to conciliate the matter.

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1 I believe Ms. Wipper went through the
2 violations from the NOV in detail. We had a
3 discussion on the statistical model, what factors
4 were used in the regression. And there were
5 questions from Oracle that we addressed.
6 We went over the back pay estimates and
7 injunctive relief that would be required to remedy
8 the violations, and the next steps.
9 **Q. With respect to -- when you said that**
10 **Ms. Wipper -- did she do the talking at this meeting**
11 **on behalf of OFCCP?**
12 A. She did most of the talking.
13 **Q. When you said that Ms. Wipper went over the**
14 **NOV --**
15 A. Yes.
16 **Q. -- did she provide information beyond what**
17 **is stated in the NOV?**
18 A. She went over in more detail each
19 violation, the disparities, the statistical results,
20 the standard deviations.
21 **Q. Did she provide more statistical**
22 **information that was already provided in the NOV?**
23 A. Yes.
24 **Q. And do you recall specifically, on behalf**
25 **of the -- on behalf of OFCCP, what statistical**

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1 information was provided with respect to the
2 violations by Ms. Wipper?
3 A. We discussed the regression analysis that
4 was conducted as our statistical analysis.
5 **Q. No, that was -- that was attached as an
6 appendix to the NOV, correct?**
7 A. Right, but there was more explanation on
8 what the regression does; how it supports our
9 findings; how we develop the pay analysis grouping;
10 and there was a back-and-forth discussion on which
11 factors should be included and excluded.
12 **Q. Was there dialogue between Ms. Wipper and
13 one of the Oracle representatives on that subject?**
14 A. Yes. The -- I believe Oracle
15 representatives indicated what information was
16 maintained or not maintained by Oracle.
17 **Q. Anything else?**
18 A. That was -- that was about it.
19 **Q. With respect to back pay --**
20 A. Yes.
21 **Q. -- what was said to Oracle with respect to
22 back pay at the October 6th meeting?**
23 A. We provided the estimated back pay owed for
24 each violation; we provided the range, 'cause we
25 didn't have -- and we also let Oracle know that it

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1 was unmitigated because we didn't have all the
2 information from Oracle to mitigate the damages.
3 **Q. Did Oracle respond to that at the time?**
4 A. I don't think there was a response.
5 **Q. Was a draft conciliation agreement tendered
6 by OFCCP --**
7 A. Provided.
8 **Q. -- to Oracle at this meeting?**
9 A. No. We didn't discuss the conciliation
10 agreement itself. It wasn't requested. I don't
11 think it was discussed.
12 **Q. Was there any discussion about the -- and
13 beyond what was stated in the NOV, about other --
14 besides payment of back pay, other remedial steps
15 that Oracle could or should take as part of a
16 conciliation?**
17 A. Other than what's in the NOV --
18 **Q. Correct.**
19 A. -- and the corrective action?
20 **Q. Correct.**
21 A. I think most -- I think it was captured in
22 the corrective action piece.
23 **Q. Okay. Did Oracle make any substantive
24 presentation during this meeting?**
25 A. Presentation, no.

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1 MR. SHWARTS: I'm going to -- we're making
2 good progress here.
3 THE WITNESS: Okay.
4 MR. SHWARTS: I'd like to take a short
5 break, if we can.
6 THE WITNESS: Okay.
7 MR. SHWARTS: Give everyone a stretch
8 and --
9 We're moving along here.
10 THE WITNESS: Did you want this page that
11 you needed to copy?
12 MR. SHWARTS: Yeah. We'll make a copy.
13 THE VIDEOGRAPHER: We are going off the
14 record.
15 The time is 3:27 p.m.
16 (Short recess was taken from 3:27 p.m.
17 until 3:42 p.m.)
18 THE VIDEOGRAPHER: We are back on the
19 record.
20 The time is 3:42 p.m.
21 BY MR. SHWARTS:
22 **Q. Okay, I'm returning to the October 6th
23 meeting.**
24 **Is it fair to say that a good portion of
25 the beginning of the meeting was devoted to the**

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1 recruiting issues that have been settled in this
2 case?
3 A. We talked about -- yes.
4 **Q. That was -- in fact, that was the first
5 substantive issue --**
6 **After introductory pleasantries --**
7 A. Yes.
8 **Q. -- the first substantive issue that was
9 discussed covered the recruiting issues?**
10 A. Yes.
11 **Q. Now, in that discussion, on the recruiting
12 issues, did Ms. Wipper say that she was not
13 interested in any kind of a cohort analysis?**
14 A. On the recruiting issue?
15 **Q. Correct.**
16 A. I don't believe so.
17 **Q. Did Ms. Wipper tell Mr. Siniscalco that she
18 wanted Oracle to provide an analysis and an expert
19 report at this meeting on October 6th?**
20 A. As a rebuttal analysis?
21 **Q. Yeah.**
22 A. Yes.
23 **Q. And that, you know, she was not interested
24 in sharing their own information because if they
25 were going to end up in litigation why would you**

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1 want to share information. Did she say that to
2 Mr. Siniscalco?
3 A. I don't remember that conversation.
4 Q. Did Mr. -- with respect to compensation --
5 A. Okay.
6 Q. -- I'm not going to focus on -- at some
7 point after a discussion of the recruiting issues,
8 did a discussion then move on to issues relating to
9 compensation?
10 A. Yes.
11 Q. Okay. Did Mr. Siniscalco make a
12 presentation or discussion about differences between
13 jobs --
14 A. He did --
15 Q. -- meaning, for example, if someone --
16 especially with respect to the products that people
17 worked on?
18 A. He did mention the products mattered in
19 one's pay.
20 Q. Did Mr. Siniscalco argue at this meeting
21 that Oracle would -- a different statistical
22 analysis would need to be done looking at cohorts?
23 A. He argued for a cohort analysis, but I
24 don't recall him mentioning a statistical analysis
25 'cause you can't conduct a statistical analysis on

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1 an individual cohort level analysis.
2 Q. Did Mr. Siniscalco argue, in this meeting,
3 that during the audit process that there was no
4 inquiry made about specific jobs? Did he at least
5 argue that at the October 6th meeting?
6 A. I don't recall if he mentioned that or not.
7 Q. Did Ms. Wipper, at all, indicate that she
8 was concerned that Oracle has not done a
9 documentation of a required self-audit?
10 A. Yes, I do recall a discussion on the
11 self-audit analysis required by Oracle.
12 Q. And Ms. Wipper raising that issue?
13 A. She raised that issue; that that's
14 information that we requested and Oracle did not
15 provide.
16 Q. Did Mr. Siniscalco indicate that no one had
17 ever asked to come in and see Oracle's databases and
18 that he invited people to come onsite and look at
19 the data at CA SF?
20 MR. MILLER: Counsel, can I just ask for a
21 clarification? CA SF, it's not the same as the
22 Redwood Shores facility?
23 MR. SHWARTS: No.
24 MR. MILLER: Okay.
25 THE WITNESS: The San Francisco location?

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1 MR. SHWARTS: Yeah.
2 THE WITNESS: I do -- I do recall him
3 mentioning that.
4 BY MR. SHWARTS:
5 Q. And do you recall that at least at this
6 meeting either Mr. Siniscalco or Ms. Connell were
7 arguing on behalf of Oracle that there were
8 differences based on what product people were
9 working on?
10 A. Yes.
11 Q. And did Mr. -- Ian --
12 I'm going to mess his last name up.
13 A. Eliasoph.
14 Q. -- Eliasoph, did he argue that -- that --
15 or at least state that they agreed that -- that at
16 least the government agreed that job title was not a
17 determining factor with respect to its pay analysis?
18 A. Yes.
19 Q. Now, with respect to the discussion on
20 compensation -- well, let me step back.
21 During the discussion on recruiting --
22 A. Okay.
23 Q. -- do you recall that there was a specific
24 discussion about statistics and standard deviations
25 with respect to statistics on recruiting --

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1 A. I recall --
2 Q. -- at this meeting?
3 A. I recall a discussion on the availability
4 statistics that we used --
5 Q. Okay.
6 A. -- in our analysis.
7 Q. With respect to compensation, however,
8 there was no discussion of the statistics with
9 respect to compensation in that part of the
10 October 6th meeting?
11 A. We -- no, there was some discussion because
12 we obviously discussed the -- the other factors that
13 Oracle argued should be taken into account of the
14 statistical model, so there was some discussion.
15 Q. But not getting into the granularity of
16 what was in the NOV, correct?
17 A. No. We didn't have -- we didn't have the
18 experts present. We didn't get into that level of
19 detail.
20 Q. At the back end of the meeting Ms. Wipper
21 provided some -- sorry, Mr. Siniscalco asked for a
22 proposal and Ms. Wipper gave certain information on
23 compensation and hiring?
24 A. Yes.
25 Q. There was a proposal given in general -- 22

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1 million for one year, 66 for three, for all
2 violations; do you recall that?
3 A. Can you repeat that?
4 **Q. Yes.**
5 A. 22 million --
6 **Q. That she proposed 22 million for all**
7 **violations for one year, 66 million for three.**
8 A. Yes.
9 **Q. With women and Asians not counting twice?**
10 A. Yes. 22 million per year for base pay
11 alone, yes.
12 **Q. And she broke it down: 7.7 for women in**
13 **product; African-Americans, 250,000; Asians, 13-**
14 **14 million; info tech, 670,000 for females and**
15 **487,000 for females in support.**
16 **Does that sound familiar?**
17 A. That -- that sound about right.
18 **Q. There was a request, if there were any**
19 **nonmonetary requests?**
20 A. Yes. There was discussion on the
21 nonmonetary remedies.
22 **Q. Did the -- in the ensuing ending of the**
23 **discussion did Mr. Eliasoph say that at -- you know,**
24 **if there was any contesting of liability there was**
25 **going to be a movement onto litigation?**

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1 A. I don't recall that statement. I do recall
2 OFCC- -- the agency indicating that we were
3 expecting a reasonable counteroffer from Oracle.
4 **Q. Yeah, did Mr. Eliasoph say, in words or**
5 **substance, that this was a big case for the OFCCP?**
6 A. He may have mentioned it. It was a big
7 case -- it is a big case.
8 **Q. Yeah. And did he state, in words or**
9 **substance, that if Oracle did not provide meaningful**
10 **information that OFCCP was prepared to go forward in**
11 **litigation?**
12 A. I believe so because we had already issued
13 the show cause so we were moving closer to the
14 litigation stage.
15 MR. SHWARTS: Can I see 64, please? No?
16 Never mind.
17 BY MR. SHWARTS:
18 **Q. Was there -- shortly after the conciliation**
19 **meeting, an exchange of at least correspondence from**
20 **Oracle indicating that it believed that it was a**
21 **productive meeting at least from an attitude**
22 **standpoint and that Oracle was looking forward to**
23 **further conciliation discussions?**
24 A. That sounds familiar.
25 MR. SHWARTS: Let me have 66 please.

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1 MS. LAMBERT: Nothing before 69.
2 MR. SHWARTS: What?
3 MS. LAMBERT: Nothing before 69.
4 MR. SHWARTS: No, I'm just going to give it
5 to her.
6 Let's mark the next document, please.
7 MR. MILLER: Oh, and, Counsel, do you have
8 the copy of the Exhibit 4? Sorry, I forgot when we
9 were off the record.
10 Thank you so much.
11 THE REPORTER: Exhibit 17.
12 MR. SHWARTS: I'm going to identify it and
13 then I'll hand it to you. We'll make copies of this
14 too.
15 MR. MILLER: Sure.
16 (Exhibit 17 was marked for identification.)
17 BY MR. SHWARTS:
18 **Q. Ms. Suhr, I'm going to place before you**
19 **what's been marked as Exhibit 17. It is an e-mail**
20 **dated Monday, October 31, 2016, from Erin Connell to**
21 **Janette Wipper --**
22 A. Okay.
23 **Q. -- attaching a letter from Ms. Connell to**
24 **Ms. Wipper. It's -- the letter is 13 pages, with**
25 **attachments.**

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1 A. Okay. Okay. Oh, attachments, okay.
2 **Q. So Exhibit 17 is a further analysis**
3 **provided by Oracle as requested by OFCCP at the**
4 **October 6th meeting, correct?**
5 A. Yes.
6 **Q. And in that letter Oracle, through**
7 **Ms. Connell, attempts to provide a substantive**
8 **rebuttal with respect to both the hiring and the**
9 **compensation claims, correct?**
10 A. Yes.
11 MR. SHWARTS: Okay. We'll mark the next
12 document, please.
13 (Exhibit 18 was marked for identification.)
14 THE REPORTER: 18.
15 BY MR. SHWARTS:
16 **Q. Exhibit 18, Ms. Suhr, is a letter dated**
17 **December 9th, 2016, from Janette Wipper to Erin**
18 **Connell.**
19 A. Okay. Okay.
20 **Q. That -- what I've provided you in**
21 **Exhibit 16 is -- sorry, 18, is a response to**
22 **Exhibit 17, correct?**
23 A. Yes.
24 **Q. And you'll agree with me that about six**
25 **weeks has gone past between Ms. Connell's letter in**

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1 Exhibit 17 and Ms. Wipper's response in Exhibit 18?
2 A. Yes.
3 Q. There was another significant event that
4 took place in between there, correct?
5 A. What is that event?
6 Q. The presidential election had occurred,
7 correct?
8 A. Oh.
9 MR. MILLER: Objection. Relevance.
10 THE WITNESS: Okay.
11 MR. SHWARTS: Yeah, I'll get there.
12 BY MR. SHWARTS:
13 Q. Between the two letters, --
14 A. November.
15 Q. -- there was a presidential election which
16 indicated there was going to be a change in
17 administration from a democratic administration to a
18 republican administration, correct?
19 A. Yes.
20 Q. In Exhibit 18, most of the letter was --
21 well, at least over 50 percent of the letter
22 addresses hiring issues, correct, the balance -- the
23 last page dealing with compensation issues?
24 MR. MILLER: I would say objection,
25 Counsel -- I'm not sure it's an objection. I'm not

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1 sure that the witness can really estimate the --
2 MR. SHWARTS: Fine. If she can --
3 THE WITNESS: Recruiting --
4 BY MR. SHWARTS:
5 Q. From an estimation, the bulk of the letter
6 is an analysis -- is a response by Ms. Wipper
7 relating to the hiring issues with only the
8 next-to-last page addressing the compensation
9 issues?
10 A. Okay.
11 Q. Is that correct?
12 A. Yes.
13 Q. And with respect to the compensation issues
14 her substantive response is that she criticizes
15 Oracle for not providing a rebuttal statistical
16 analysis, correct?
17 A. Yes.
18 Q. Okay. And on that basis -- at least with
19 respect to the compensation issues, because Oracle
20 had not provided rebuttal statistical analysis, it
21 was going to be referring the matter to the
22 solicitor's office for litigation, correct?
23 MR. MILLER: Objection. The document
24 speaks for it, but you can answer.
25 MR. SHWARTS: You may answer.

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1 THE WITNESS: Yes. It says, "The agency
2 will refer this matter for enforcement proceedings."
3 BY MR. SHWARTS:
4 Q. Did the OFCCP engage in any evaluation of
5 the fact that it wanted to get this case referred to
6 litigation and on file before January 20th of 2017?
7 A. No.
8 Q. Now, in -- typically, in -- at least with
9 respect to the Pacific region, is there often more
10 than one conciliation meeting between the OFCCP and
11 a contractor?
12 A. Conciliation communication?
13 Q. Or at least a -- even a face-to-face
14 meeting. Could it be more than one?
15 A. It could be more than one. It could be
16 just one. It just varies.
17 Q. Can negotiations stretch out over a long
18 period of time?
19 A. It could, yes.
20 Q. Okay. In this instance, the sequence of
21 events -- if I have them correct, is that there was
22 a face-to-face meeting on October 9th, correct?
23 A. Yes.
24 Q. A response from Oracle through its legal
25 representative on October 31st, correct?

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1 A. Yes.
2 Q. And based on that, the next event was a
3 referral to litigation, correct?
4 A. Yes.
5 Q. I'm correct that again, aside from what is
6 contained in the NOV, no additional statistical
7 information was provided to Oracle from March of
8 2016 up until the date the matter was referred to
9 litigation; is that correct?
10 MR. MILLER: Objection. Mischaracterizes
11 prior testimony.
12 MR. SHWARTS: You may answer.
13 THE WITNESS: There was some discussion on
14 statistics during the meeting.
15 BY MR. SHWARTS:
16 Q. With respect to compensation, not to
17 hiring.
18 A. There was some discussion on the
19 compensation as well.
20 Q. All right. Again, aside from --
21 A. The meeting.
22 Q. -- what was in the NOV and what you
23 mentioned in your testimony --
24 A. Yes.
25 Q. -- with respect to some discussion at the

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1 **October 6th meeting, --**
2 A. Okay.
3 **Q. -- was any further -- well, was there any**
4 **hard copy information provided in writing to Oracle,**
5 **besides what's in the NOV?**
6 A. I don't think so.
7 **Q. Okay. Now, with respect to the OFCCP,**
8 **would it -- would it deem this letter, Exhibit 18,**
9 **the end of the conciliation process?**
10 A. Which letter?
11 **Q. The October 18th letter.**
12 A. Exhibit 18?
13 **Q. Yeah.**
14 A. The December --
15 **Q. I'm sorry, the Exhibit 18, the December**
16 **letter.**
17 A. Yes.
18 **Q. So at that point, from OFCCP's perspective,**
19 **conciliation had concluded?**
20 A. Yes.
21 **Q. At any point, prior to Exhibit 18, had**
22 **OFCCP provided Oracle with a draft conciliation**
23 **agreement?**
24 A. I believe no.
25 **Q. Again, other than what is stated in the**

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1 **NOV, did the OFCCP ever, in writing, describe to**
2 **Oracle what nonmonetary actions it needed to take to**
3 **come into compliance --**
4 MR. MILLER: Objection. Asked and
5 answered.
6 BY MR. SHWARTS:
7 **Q. -- up and through the date of Exhibit 18?**
8 A. No.
9 **Q. Aside from the oral statements that were**
10 **made at the October 6th meeting, did the OFCCP ever,**
11 **in writing to Oracle, state what monetary**
12 **compensation would be required to remedy the NOV up**
13 **and through the date of the -- of Exhibit 18?**
14 A. No.
15 **Q. At -- following the Exhibit 18 and up and**
16 **through the date that the complaint was filed, in**
17 **mid-January of 2017, was OFCCP made aware that**
18 **Oracle was complaining that conciliation should have**
19 **continued and that litigation was premature?**
20 MR. MILLER: I'm going to instruct the
21 witness not to answer to the extent her answer would
22 reveal attorney-client communications.
23 THE WITNESS: Well, from the letters there
24 was indication -- I mean during this process that,
25 you know, the agency withdraw the Notice of

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1 Violation --
2 MR. SHWARTS: I'm sorry, you're
3 misunderstanding my question.
4 THE WITNESS: Okay.
5 MR. SHWARTS: I'm sorry.
6 BY MR. SHWARTS:
7 **Q. After Exhibit 18, --**
8 A. Oh, after.
9 **Q. -- but before -- there's about a five-week,**
10 **six-week period between the date of Ms. Wipper's**
11 **letter, Exhibit 18, and the filing of the complaint**
12 **on or around January 18th or 19th of 2017 --**
13 MR. MILLER: And again --
14 Sorry.
15 BY MR. SHWARTS:
16 **Q. -- during that period of time, was OFCCP**
17 **aware, or made aware, of written communications that**
18 **Oracle had sent to the Office of the Solicitor**
19 **arguing that the conciliation process was not**
20 **completed and that litigation was premature?**
21 A. I think I was made aware of that.
22 **Q. Did OFCCP take any further action relating**
23 **to conciliation as a result of Oracle's**
24 **communications with the officer of solicitor?**
25 A. I don't think so.

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1 **Q. Okay. Let me take a short break --**
2 A. Okay.
3 **Q. -- and I may be done.**
4 THE VIDEOGRAPHER: We are going off the
5 record.
6 The time is 4:06 p.m.
7 (Short recess was taken from 4:06 p.m.
8 until 4:11 p.m.)
9 THE VIDEOGRAPHER: We are back on the
10 record. The time is 4:11 p.m.
11 BY MR. SHWARTS:
12 **Q. To the extent that Ms. Wipper, at the**
13 **October 6th meeting, provided compensation as back**
14 **pay as a propos- -- it wasn't meant as a specific**
15 **proposal, correct? It was meant sort of as a**
16 **general, This is what we're thinking about?**
17 A. Yes.
18 **Q. All right. And, again, there was any**
19 **follow-up that provided a specific number for**
20 **Oracle, besides what was said generally at the**
21 **October 6th meeting?**
22 A. No.
23 **Q. And there was no backup even for the**
24 **numbers that Ms. Wipper provided at the October 6th**
25 **meeting for how OFCCP came up with the proposal that**

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1 Ms. Wipper made?
2 A. Backup information?
3 Q. Yeah. How OFCCP arrived at the 22 million
4 number for one year and 66 for three?
5 A. So at the meeting we discussed this is an
6 estimate based on information we had.
7 Q. But it didn't provide that information to
8 Oracle to help --
9 A. Back to Oracle, no.
10 Q. -- to help it validate these numbers in
11 assessing whether a settlement of that magnitude was
12 appropriate?
13 A. No.
14 Q. In the Pacific region, to the extent that
15 notices of violation have been issued to
16 contractors, has the region required rebuttal
17 analysis before any conciliation agreement was
18 entered -- let me reask it a different way.
19 Have there been instances in which a
20 conciliation agreement has been reached with
21 contractors where no rebuttal analysis was provided?
22 A. I don't recall. I don't think so. I mean
23 it's -- that would be unusual for the contractor not
24 to rebut the NOV and just agree to the findings
25 without conducting its own analysis.

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1 You're talking about discrimination
2 violations?
3 Q. I'm talking about -- let's do it a
4 different way.
5 A. Okay.
6 Q. In instances of discrimination where
7 statistical analysis was the basis for the OFCCP's
8 actions, --
9 A. Yes.
10 Q. -- have you resolved any NOVs in such
11 circumstances without the contractor providing its
12 own rebuttal statistical analysis?
13 MR. MILLER: I'm just going to object to
14 the extent that this is outside the topic, but you
15 know, if you're answering in your -- you know, your
16 personal capacity, that's fine, just it's outside
17 the topic.
18 THE WITNESS: Are you -- for compensation
19 cases?
20 MR. SHWARTS: Yeah. For compensation,
21 yeah.
22 THE WITNESS: So for compensation
23 analysis -- if I understand correctly, has there
24 been a situation where we entered into a
25 conciliation agreement without the contractor's

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1 rebuttal analysis?
2 MR. SHWARTS: With a rebuttal statistical
3 analysis.
4 THE WITNESS: Rebuttal statistical
5 analysis, no.
6 BY MR. SHWARTS:
7 Q. Okay. The FCCM, with respect to
8 conciliation, makes reference to the compliance
9 officer being the individual who drives the
10 conciliation process. I'd be happy to show it to
11 you, but does that comport with your recollection?
12 A. Sounds right, yeah.
13 Q. Okay. It appears in this particular case
14 that the conciliation efforts were being driven by
15 the regional director; is that correct?
16 A. Yes.
17 Q. Why was that the case here? Instead of --
18 why was Ms. Wipper the one driving the conciliation
19 process versus Mr. Luong?
20 A. That was her decision.
21 Q. Did she ever explain to -- was an
22 explanation ever given by Ms. Wipper as to why she
23 decided to handle the conciliation efforts in the
24 case of the Oracle's headquarters' audit and NOV
25 versus having Mr. Luong do it?

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1 A. She didn't explain that to me.
2 Q. Or did she explain it to anybody?
3 Was there ever any memo or statement in a
4 meeting, or otherwise, as to why she was assuming
5 this responsibility herself?
6 A. No.
7 MR. SHWARTS: Okay. That's all I have.
8 THE WITNESS: Thank you.
9 MR. MILLER: All right.
10 THE VIDEOGRAPHER: This concludes the
11 deposition for today. We are now off the record.
12 The time is 4:17 p.m.
13 MR. MILLER: Thank you.
14 THE WITNESS: Thank you very much.
15 THE REPORTER: And I'll have the final to
16 you by Friday, Mr. Shwartz.
17 MR. SHWARTS: Thank you. I appreciate it.
18 THE REPORTER: Mr. Miller, you will let me
19 know if you need a copy later?
20 MR. MILLER: Yeah. That sticker has enough
21 information for my support people to reach out and
22 be sure we can -- yes.
23 THE REPORTER: Okay. Thank you.
24 MR. MILLER: Thank you.
25 (The videotaped deposition of 30(b)(6) -

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1 JANE Y. SUHR was concluded at 4:17 p.m.)
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1 DECLARATION UNDER PENALTY OF PERJURY
 2 Case Name: OFCCP vs. Oracle America, Inc.
 3 Date of Deposition: 06/26/2019
 4 Job No.: 10057767
 5
 6 I, JANE SUHR - 30(B)(6), hereby certify
 7 under penalty of perjury under the laws of the State of
 8 _____ that the foregoing is true and correct.
 9 Executed this ____ day of
 10 _____, 2019, at _____.
 11
 12
 13 _____
 14 JANE SUHR - 30(B)(6)
 15
 16 NOTARIZATION (If Required)
 17 State of _____
 18 County of _____
 19 Subscribed and sworn to (or affirmed) before me on
 20 this ____ day of _____, 20____,
 21 by _____, proved to me on the
 22 basis of satisfactory evidence to be the person
 23 who appeared before me.
 24 Signature: _____ (Seal)
 25

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1 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 Further, that if the foregoing pertains to
 13 the original transcript of a deposition in a federal
 14 case, before completion of the proceedings, review of
 15 the transcript [] was [X] was not requested.
 16 I further certify that I am neither
 17 financially interested in the action nor a relative
 18 or employee of any attorney of any of the parties.
 19 IN WITNESS WHEREOF, I have this date
 20 subscribed my name.
 21
 22 Dated: June 27th, 2019
 23
 24 
 25 _____
 MONICA LEPE-GEORG, No. 11976

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1 DEPOSITION ERRATA SHEET
 2 Case Name: OFCCP vs. Oracle America, Inc.
 3 Name of Witness: Jane Suhr - 30(b)(6)
 4 Date of Deposition: 06/26/2019
 5 Job No.: 10057767
 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 ____
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1 DEPOSITION ERRATA SHEET
2 Page ____ Line ____ Reason ____
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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 _____
JANE SUHR - 30(B)(6)

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