

**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

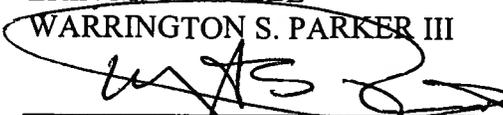
**DEPOSITION DESIGNATIONS
RE THE DEPOSITION OF
MICHAEL BRUNETTI – JULY
17, 2019**

Pursuant to the Court's Order on December 9, 2019, Oracle hereby submits the following deposition designations, including any errata and/or objections to such testimony by either party.

Respectfully submitted,

December 20, 2019

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Office of Administrative Law Judges
San Francisco, Ca

DEPOSITION DESIGNATIONS RE THE DEPOSITION OF MICHAEL BRUNETTI – JULY 17, 2019

CASE NO. 2017-OFC-00006

DEPOSITION OF MICHAEL BRUNETTI – JULY 17, 2019

21:15-19

15 · · · Q · Could you please state your name for the
16 · record?

17 · · · A · Michael Brunetti.

18 · · · Q · And you're Dr. Brunetti, correct?

19 · · · A · Yes.

24:24-25:15

24 · · · Q · Dr. Brunetti, have you seen Exhibit 1
25 · before?

25

1 · · · A · I believe · This appears to be the
2 · deposition notice.

3 · · · Q · That's correct.

4 · · · A · So, yes, I've seen this.

5 · · · Q · Okay · And do you understand that you've
6 · been designated to testify on behalf of OFCCP with
7 · respect to topics one through 21 in this deposition
8 · notice?

9 · · · A · Yes.

10 · MR. MILLER: · Just to put something on the
11 · record · Katie, we had a discussion, before this
12 · came in, that Dr. Brunetti was here to testify about
13 · the regression analysis, the statistical parts.

14 · There are other pieces to these topics that he is
15 · not currently designated to testify on.

25:16-17

16 · · · · · MS. MANTOAN: · Okay · That's -- that's --
17 · that's consistent with my understanding as well.

25:20-24

20 · · · Q · Did you, yourself, Dr. Brunetti, perform
21 · the statistical analysis that -- whose results are
22 · reported in the second amended complaint in this
23 · case?

24 · · · A · Yes.

33:9-34:1

9 · · · Q · So just to get that full question out,

DEPOSITION OF MICHAEL BRUNETTI – JULY 17, 2019

10· ·if -- if I asked you, sitting here today, to tell me
11· ·the names of every Excel data file you received to
12· ·analyze for purposes of generating the second
13· ·amended complaint, I presume that you would not be
14· ·able to provide a comprehensive list; am I correct
15· ·in that assumption?
16· ··A· I -- I can't give you the names of the
17· ·files because they have names that are hard to
18· ·remember.
19· ··Q· Uh-hm.
20· ··A· I can tell you the types of files that I
21· ·received.
22· ··Q· Okay· And before you do that, do you
23· ·have -- do you have an estimate of how many files
24· ·you received?
25· ··A· My estimate is I received three Excel

34

1· ·files.

36:17-38:5

17· ··Q· Okay· So you said your best recollection,
18· ·Dr. Brunetti, is that you received three Excel
19· ·files· Did you receive any other documents at the
20· ·time you received those Excel files?
21· ··A· I believe, yes, but I -- I'm having a hard
22· ·time remembering.
23· ··Q· Okay· So I want to first get -- before we
24· ·get into some specifics about what those Excel files
25· ·were, I want to make sure I'm capturing the universe

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1· ·of materials -- documentary materials that you were
2· ·provided before you did the statistical analysis
3· ·whose results are reported in the second amended
4· ·complaint.
5· ·So, you've told me about three, to the best
6· ·of your recollection, Excel files· What other
7· ·documents did you receive prior to conducting your
8· ·statistical analysis?
9· ··A· I received some PowerPoints that were like
10· ·pay policy documents.

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11. . . .Q. And were you provided any instruction about
12. .how -- how, if at all, to -- to integrate those pay
13. .documents into your statistical analysis or -- or
14. .construct your statistical analysis in light of
15. .them?

16. . . .A. I recall I was -- I was asked to review
17. .them.

18. . . .Q. Do you recall anything else about the
19. .instruction you were given with respect to those
20. .documents?

21. . . .A. Not -- no. Sorry.

22. . . .Q. Okay. So we've talked about some Excel
23. .files, some PowerPoints. Any other types of
24. .documents that, as you sit here, you recall
25. .receiving prior to -- prior to conducting your

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1. .statistical analysis?

2. . . .A. I -- I believe that's all, but I --

3. . . .Q. Okay.

4. . . .A. It's possible that I received something
5. .else, but I just don't recall.

38:13-41:16

13. . . .Q. Clarify it, if needed.

14. .So, with respect to those three Excel
15. .files, what can you tell me that you remember about
16. .the contents or format of those files?

17. . . .A. The three Excel files, you said?

18. . . .Q. Correct.

19. . . .A. So there -- there was one file. It started
20. .with EM -- EMP personnel and it had some long name.
21. .And that had -- I believe had five tabs. And so I
22. .used -- there was one tab that had -- I think it's,
23. .like, called EMP personnel or something. It
24. .talked -- it had information like gender, race, hire
25. .dates, some other information like that.

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1. .And then there's another tab that had --
2. .well, what I would call, you know, transactional
3. .data, so it had information on where people were

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4. ·working for a given date range. · So it would have
5. ·their job -- you know, basically their job and I
6. ·think it had some term -- it had like -- it told you
7. ·if this record was for termination or -- yeah,
8. ·things like that.

9. · · · Q. · Okay. · Anything else you remember from that
10. ·first E -- let's call it the EMP file?

11. · · · A. · Okay.

12. · · · Q. · Anything else you remember from that EMP
13. ·file?

14. · · · A. · Yeah. · There were three other tabs that I
15. ·didn't use and one appeared to be education
16. ·background, the other appeared to be, like, prior
17. ·work experience, and the other one -- I think it
18. ·was, like, acquisitions tab.

19. · · · Q. · Why didn't you use the information in the
20. ·education tab?

21. · · · A. · I -- I wasn't asked to use education in the
22. ·analysis that I did.

23. · · · Q. · Why didn't you use the prior work
24. ·experience tab?

25. · · · A. · I wasn't asked to use that.

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1. · · · Q. · Okay. · And why didn't you use the M&A,
2. ·mergers and acquisitions tab?

3. · · · A. · I wasn't asked to.

4. · · · Q. · Okay. · Okay. · So we have the -- that first
5. ·file is the EMP file. · What, if anything, do you
6. ·remember about the other two Excel files that you
7. ·received?

8. · · · A. · One file was a location file and my
9. ·understanding is that lists the locations that are
10. ·in this class.

11. · · · Q. · Was it -- do you believe that was an AAP
12. ·location file? · Is that what you recall?

13. · · · A. · I -- I don't know.

14. · · · Q. · Okay. · Fair enough.

15. ·And then what about the third Excel file?

16. · · · A. · The third Excel file had -- is where I -- I
17. ·used it for base pay.

18. · · · Q. · There was one file produced in this case
19. ·that's name started with merged salary admin. · Does

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20. that sound like a file you received?
21. . . .A. A merged salary admin? No. I just
22. remembered, there was actually -- I guess there
23. was -- there's one other Excel file.
24. . . .Q. Okay.
25. . . .A. I think it was called all earnings.

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1. . . .Q. Okay. And what did --
2. . . .A. That had -- I'm sorry.
3. . . .Q. What -- what did you use the all-earnings
4. file for?
5. . . .A. I used that for compensation -- total
6. compensation.
7. . . .Q. And what specifically in the all-earnings
8. file did you use as a measure of total compensation?
9. . . .A. I -- I might misstate this, but I believe
10. it was Medicare/EE taxable. That's the measure that
11. I was asked to use for total compensation.
12. . . .Q. When you say it's the measure you were
13. asked to use, did you, Dr. Brunetti, form any
14. independent opinion as to whether that was the
15. appropriate measure to use for total compensation?
16. . . .A. No.

42:20-43:15

20. . . .Q. Okay. Did you -- did you ever receive any
21. Excel or other data files that contained information
22. about -- about equity that specified what equity was
23. awarded and in what time period it was awarded?
24. . . .A. Not that I recall. I -- I -- I do know
25. that what I'm referring to as that base pay file --

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1. . . .Q. Uh-hm.
2. . . .A. -- I believe that had other measures of pay
3. in it.
4. . . .Q. Uh-hm.
5. . . .A. And I'm -- I'm not sure what you mean by
6. equity --
7. . . .Q. Okay.
8. . . .A. -- but...

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9. . . .Q. Did you use any of the -- of the
10. information in that -- that GSI comp history file
11. other than the base pay tab?
12. . . .A. No.
13. . . .Q. Okay. And why -- why didn't you use any of
14. that other information?
15. . . .A. I was not asked to do so.

43:24-44:8

24. . . .Q. So, I'm -- I'm -- we have the second
25. amended complaint. There's a series of analyses

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1. there and what I want to understand is whether any
2. of those analyses were ones that you, Dr. Brunetti,
3. personally, sort of, decided how to construct, what
4. variables to include, how to group employees, or
5. whether all of those analyses are such that you,
6. Dr. Brunetti, were given instructions about exactly
7. how to construct them and -- and constructed the
8. analyses pursuant to those instructions.

44:9-20

9. MR. MILLER: So I'm going to give the same
10. instruction not to answer this question in a way
11. that would reveal either attorney --
12. THE REPORTER: I need -- when you object, I
13. need you to slow down, please.
14. MR. MILLER: Oh, okay. Sorry.
15. I'm going to give the same instruction that
16. Dr. Brunetti is not to answer this question to the
17. extent it would reveal attorney-client
18. communications or contain attorney work product.
19. There may be an answer he can give that does not
20. reveal either of those.

44:22-47:1

22. . . .Q. So the question is simply whether the
23. analyses are ones that you designed or whether the
24. analyses are ones that you were instructed on how to
25. design?

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1. . . .A. Well, there's a lot of analyses in this
2. second amended complaint and, you know, the
3. solicitor is not an economist. So, to the extent
4. that they provided me with what they wanted me to
5. do, I did that, but, you know, for determining
6. what's the appropriate statistical approach, that's
7. something I would do.
8. . . .Q. Okay. And when you say the appropriate
9. statistical approach, what do you mean by that?
10. . . .A. You know, I mean, I think we can -- I can
11. give an example from -- well -- the --
12. MS. MANTOAN: Yeah, let's -- let's get the
13. complaint in front of us. Maybe that would be
14. helpful.
15. THE WITNESS: Okay.
16. THE REPORTER: Exhibit 2.
17. (Exhibit 2 was marked for identification.)
18. THE WITNESS: All right. Just -- I -- I
19. think what I would say is, you know, I might be
20. asked to run a regression, but through different
21. types of -- there's different types of regressions
22. you would run, depending on the -- the data and
23. the -- the analysis you're trying to estimate.
24. BY MS. MANTOAN:
25. . . .Q. But were the instructions you received that

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1. it needed to be some type of regression-based
2. analysis where you then might decide technical
3. details, or were you given an instruction to do some
4. kind of an analysis more broadly which might have
5. taken a nonregression form?
6. . . .A. I think -- do -- I think the easiest thing
7. be if I show an example.
8. . . .Q. So, let's -- yeah, let's look at Exhibit 2
9. and just so that the record is clear, does Exhibit 2
10. appear, to you, to be the second amended complaint
11. in this matter?
12. . . .A. Yes, it appears to be.
13. . . .Q. Okay. So regarding my question about sort
14. of who it was that determined how to structure the
15. analyses, I believe you said that you thought giving

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16. ·an example would be helpful.
17. ·So, can you --
18. ···A. ·Okay. ·So --
19. ···Q. ·-- looking -- sorry -- looking at
20. ·Exhibit 2, give one of those examples?
21. ···A. ·Yeah. ·All right. ·So if you look at
22. ·Paragraph 18.
23. ···Q. ·Yes.
24. ···A. ·And it's the third sentence, where it says,
25. ·"OFCCP evaluated the likelihood that a given

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1. ·employee would be assigned to a" --

47:4-51:24

4. ·THE WITNESS: ·"That a given employee would
5. ·be assigned to a higher level within Oracle's global
6. ·career framework, where lower levels correspond to
7. ·less responsibility and pay, controlling for the
8. ·year and previous experience."
9. ·Okay. ·So to do that methodology, you can
10. ·run just a regular OLS regression, which is what
11. ·most people mean when they say regression, ordinary
12. ·least squared. ·So -- in fact, I -- initially,
13. ·that's what I did for this analysis. ·But the
14. ·problem -- and so let me -- let me -- I think it
15. ·will be easier for me if I just tell you what I did
16. ·here and it will become evident why I can't just
17. ·rely on the solicitor.
18. ·MS. MANTOAN: ·Sure. ·Okay.
19. ·THE WITNESS: ·So what I did here was I took
20. ·the global career level variable, and there's --
21. ·there's two sets of global career level. ·One is the
22. ·Ms, or managers, I assume, and the other one is IC,
23. ·individual contributor. ·So I ran the analysis
24. ·separate between those two.
25. ·So for Ms, if it was M1, I assumed that --

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

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4. Okay. So then initially what I did, then,
5. is I ran regression of this manager global career
6. level on year -- well, gender, year, prior
7. experience, okay.
8. BY MS. MANTOAN:
9. . . .Q. And by "prior experience," you mean what?
10. . . .A. That's age, as a proxy, for prior
11. experience.
12. . . .Q. Just straight out age or age minus 18,
13. minus years at Oracle?
14. . . .A. It's -- it's age at hire. So it would be
15. age minus the time in company, minus 18.
16. . . .Q. Okay.
17. . . .A. Okay. Okay. So initially I ran an OLS
18. regression, okay, and I found that for females --
19. females were less likely to be assigned to the
20. higher levels for manager and for individual
21. contributor, okay.
22. . . .Q. When you say "assigned" there -- sorry
23. to -- sorry to interrupt.
24. . . .A. Yeah.
25. . . .Q. I just want to make sure I'm understanding

49

1. as you go.
2. When you used the word "assigned" there,
3. what do you mean by that?
4. . . .A. So, yeah, I should say this is the
5. population of people who were hired at Oracle during
6. the class period. So I looked at people who were
7. hired and -- and then looked at which global career
8. level they ended up at.
9. . . .Q. Okay.
10. . . .A. Okay.
11. . . .Q. Thank you.
12. . . .A. Okay. So -- so, as I was saying, I ran an
13. OLS regression and I found that the results were
14. statistically significant for females for both the
15. manager and individual contributor, okay. And then
16. I think -- and then Asians, for individual
17. contributor, were statistically significantly
18. different. So Asians were being assigned to lower
19. levels than -- than whites.

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20. . . .Q. And again, by "assigned" there, you just
21. mean that hire -- joined that the company at lower
22. levels?

23. . . .A. Yep. Yep.

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

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

50

1. lower levels than whites, for individual
2. contributor, and then for managers, there was not
3. one black employee assigned to a manage -- there was
4. no blacks hired as a manager during the class period
5. at Oracle. So that's actually a stronger result --
6. you can't run a regression on that because if you're
7. black, you didn't get assigned to a management --
8. manager level. So that's actually a stronger result
9. than statistically significant.

10. So -- okay. So I ran all of that analysis
11. using OLS, but the problem with that -- potential
12. problem with OLS is that this data that I -- that I
13. have is the dependent variable, the global career
14. level, is -- it's called ordinal data, okay. So,
15. what that means is that if you're going from the
16. distance between a one and a two, and a two and a
17. three, and a three and a four, and so forth might
18. not be the same, okay. So it might be easy to be
19. assigned -- to go from a two to three, but then
20. going from a five to a six can be harder, okay.
21. It's possible. And if that's true in the data, then
22. ordinary least squares would be -- it would violate
23. the IID, which is independent and identically
24. distributed assumption.
25. So, because of that possibility, I then ran

51

1. what's called ordered logistic regression, okay, and
2. this is where I'm saying that the SOL would not know
3. to tell me to do that, okay. I had to rely on my
4. own knowledge or background.

5. . . .Q. Okay. I think that explanation was
6. helpful.

7. . . .A. Okay.

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

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9. judgment that an order logistic regression rather
10. than an OLS regression might be the appropriate type
11. of regression, given the type of data at issue,
12. correct?

13. . . . A. Yes.

14. . . . Q. Okay. But with respect to the fact that
15. the dependent variable was the global career level
16. and the independent variables were gender, year, and
17. prior experience defined as you described, was --
18. was that a decision you made or were those
19. decisions -- like instructions you were given?

20. . . . A. Those were instructions that I was given.

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

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

24. . . . A. Those are instructions that I was given.

51:25-52:8

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

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1. judgment as to whether those were the appropriate
2. control variables to use?

3. MR. MILLER: Objection. Again, this is
4. outside the scope of the 30(b)(6). You're asking
5. about his personal knowledge.

6. THE WITNESS: Did I -- sorry, could you
7. repeat the question?

8. BY MS. MANTOAN:

52:9-54:14

9. . . . Q. So you were instructed to use those three
10. control variables that you mentioned. Did you form
11. any independent opinion as to whether those were
12. appropriate control variables to use?

13. . . . A. I believe they were appropriate.

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

15. . . . A. Well, people, you know, all us being equal,
16. people with more prior experience will probably be
17. assigned to a higher global career level, all us
18. being equal. And then the same -- and year -- you
19. know, there could be years where -- you know, there
20. could be something about the -- if you're in a good

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21. ·economy or the demands of the company need more, you
22. ·know, M5s than a previous year, then year could have
23. ·an impact.
24. · · ·Q. · Okay. · And just so I don't have to keep
25. · asking the same question over and over, when you use

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

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1. · · ·A. · I'm sorry. · Can you --
2. · · ·Q. · So you described a general economic
3. ·principle, as I understood it, that, in general,
4. ·individuals who are older, when using age as a proxy
5. ·for prior experience, might tend to work at higher
6. ·levels, correct?
7. · · ·A. · People with more experience are -- are
8. ·probably more likely to be assigned to the higher
9. ·global career levels.

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10. . . .Q. Okay. And did you review any information
11. that helped you assess whether that general sort of
12. theoretic economic principle held true of this
13. specific group of employee at this specific company?
14. . . .A. No, not that I recall.

54:25-55:20

25. MS. MANTOAN: So -- so, for the record,

55

1. counsel for OFCCP and I conferred off the record.
2. It seems like we have some disagreements about what
3. the order compelling this deposition, in fact,
4. requires and what privileged objections have or have
5. not been waived. So I -- I believe that we're --
6. you were contemplating sort of a truncated
7. privileged objection that you will continue to make
8. where you think appropriate?

9. MR. MILLER: That's right. So I will stick
10. with an instruction not to answer on the basis of
11. attorney-client privilege or work product document
12. and that's all the same, was the context, I think,
13. requires me to give a better explanation about why I
14. think that's the case.

15. MS. MANTOAN: Okay. And I -- we will be
16. leaving the deposition open at the end with the --
17. with the understanding that we may well pursue
18. motion practice and if -- if the Court so orders,
19. come back and -- and pursue answers to those -- to
20. those questions.

56:4-57:24

4. . . .Q. Several times in our discussion so far,
5. you've mentioned instructions that you were given
6. about how to construct the statistical models
7. reported in the second amended complaint. Who did
8. you receive those instructions from?

9. . . .A. Jeremiah Miller.

10. . . .Q. Is there any other person that you received
11. those instructions from?

12. . . .A. I don't believe so.

13. . . .Q. Is there anyone else at the Solicitor of
14. Labor with whom you discussed the statistical models
15. whose results are reported in the second amended

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16. complaint?

17. . . . A. I may have discussed them with Laura

18. Bremer.

19. . . . Q. Okay.

20. . . . A. I think that's -- that's all.

21. . . . Q. Okay. Is there -- are there any other

22. statisticians with whom you've discussed the

23. statistical analyses whose results are reported in

24. the second amended complaint?

25. . . . A. No.

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1. . . . Q. Are there any other individuals who --

2. employed by or working under contract for OFCCP with

3. whom you discussed the statistical analysis whose

4. results are reported in the second amended

5. complaint?

6. . . . Q. Sorry, could you repeat the first part?

7. Are there any other what?

8. . . . Q. Oh, people who either are employees of

9. OFCCP or contractors for OFCCP, so OFCCP personnel

10. with whom you discussed the statistical analyses

11. whose results are reported in the second amended

12. complaint.

13. . . . A. My boss, Jane Suhr.

14. . . . Q. Okay.

15. . . . Q. And just to clarify, I -- I -- you know, I

16. had -- I talked to her, but I haven't gone into

17. detail about the statistical results. I just kind

18. of generally talked about what I'm doing.

19. . . . Q. Okay.

20. . . . A. I guess -- I guess, you know, the

21. statistical results, I don't know if you mean, like,

22. oh, here, this one has 2.7 standard deviations or if

23. you mean just in general there was a disparity. So

24. I'm not sure.

58:23-59:10

23. . . . Q. Did you review the notice of -- well,

24. are -- are you aware that there was a Notice of

25. Violation issued prior to litigation commencing in

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1. ·this case?
2. ···A. · Yes.
3. ···Q. · Did you review that NOV prior to doing your
4. ·statistical work?
5. ···A. · I -- I don't think so. · I -- I think
6. ·possibly I received a copy of it, but I don't recall
7. ·looking at the NOV.
8. ···Q. · Did you receive a copy of any show cause
9. ·notice that was issued in this matter?
10. ···A. · I -- I don't think so.

60:13-18

13. ···Q. · Okay. · Do you know who Shirong Andy Leu is?
14. ···A. · Yes.
15. ···Q. · Did he have any input into any of the
16. ·statistical analyses that are reflected in the
17. ·second amended complaint?
18. ···A. · No.

68:21-70:4

21. ···Q. · So, Dr. Brunetti, I've put in front of you
22. ·a document that is an e-mail, two pages, a string of
23. ·e-mails that are two pages, Bates-number
24. ·ORACLE_HQCA_405 to 406 and then a cover sheet for a
25. ·native file ORACLE_HQCA_407. · I'll represent to you

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1. ·that the printout that follows is a printout of that
2. ·native file.
3. ·And my question for you is whether that --
4. ·that PowerPoint that appears behind the cover page
5. ·with the Bates-number that ends in 407, if this is
6. ·one of those PowerPoints that you recall receiving
7. ·before you -- to -- to review before you completed
8. ·your statistical analysis?
9. ···A. · I can't say with 100 percent certainty that
10. ·this is what I reviewed, but the title, Global
11. ·Compensation Training, I think that was the title of
12. ·a document that I looked at and some of these
13. ·PowerPoints look similar to what I -- I looked at.
14. ·So I think it probably is, but I...

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15. . . .Q. Okay. I -- I will state for the record,
16. and I think opposing counsel would agree with me,
17. that there have been a lot of PowerPoints exchanged
18. in this case.

19. . . .A. Yeah.

20. . . .Q. So I understand that you may not be
21. positive that this is the exact, same one that you
22. reviewed -- you reviewed, but I understand that
23. your -- your testimony to be that this looks
24. similar, at least, to what you reviewed, correct?

25. . . .A. Correct.

70

1. . . .Q. Okay. What, if any, impact did your review
2. of this PowerPoint have on the statistical analysis
3. that you performed, whose results are reported in
4. the second amended complaint?

70:5-9

5. MR. MILLER: So I'm going to instruct him
6. not to answer to the extent it would reveal
7. attorney-client communications or work product.
8. There may well be answers he can give you that do
9. not have to do with discussions with counsel.

70:10-71:1

10. THE WITNESS: Okay. There was -- I'm --
11. I'm not sure. It's possible that there was
12. something in here that I used and -- doing my
13. analysis, but if you can give me a couple minutes, I
14. can look through here and see.

15. MS. MANTOAN: Sure. Thank you.

16. THE WITNESS: So, one thing I recall is
17. when I was doing that assignment analysis that we
18. discussed previously, so initially I -- I -- I
19. looked at the data and, you know, I -- I mentioned
20. that I separated the ICs and the Ms, and part of the
21. reason I did that looking at the data is because I
22. had no way of linking like if an IC4 is the same as
23. an M3 or something like that, and so I decided,
24. based on the data, that I would separate it. And
25. then in reviewing this, I had noticed that they said

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1· ·there's no link between IC-level and M-level roles.

71:3-72:22

3· · · ·Q· Can you tell me what the title of the slide

4· ·that you're on is? Like the --

5· · · ·A· Promotions, more difficult issues. I

6· ·remember seeing that, although now that I look at

7· ·it, it's under promotions, so it's not really...

8· · · ·Q· I see. So it looks like you're on the

9· ·slide with the -- there's very tiny numbers on the

10· ·slides, but it looks like 15?

11· · · ·A· Yeah. So -- so I remember reading that

12· ·point and -- and again, it -- I don't know if it's

13· ·from this PowerPoint or it might have been another

14· ·one, but I just remember thinking, okay, I was

15· ·already -- I decided I'm going to separate the

16· ·analysis based on the data that I had, separate IC

17· ·and M, that is.

18· · · ·Q· Uh-hm.

19· · · ·A· And I remember reading that and I said

20· ·okay, that -- there's more of a justification to do

21· ·that.

22· · · ·Q· Did your review of this PowerPoint have any

23· ·impact on the factors that you decided to control

24· ·for in any of the analyses that you ran?

25· · · ·A· No.

72

1· · · ·Q· Okay.

2· · · ·A· For -- sorry, for which analyses?

3· · · ·Q· Any of the analyses in the second amended

4· ·complaint.

5· · · ·A· Okay. I'll have to take some time and look

6· ·it over. I -- 'cause I don't remember.

7· · · ·Q· Well, I guess -- so you received data files

8· ·and as I understood it, you received instructions as

9· ·to which factors to control for in those files,

10· ·correct?

11· · · ·A· Uh-hm. Uh-hm. Yes.

12· · · ·Q· After reviewing this, did you change any of

13· ·those factors from what had been instructed?

14· · · ·A· No.

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15. . . .Q. Okay. So the -- the factors that are
16. controlled for in the different analyses in the
17. second amended complaint, all of those factors
18. were -- were selected solely by counsel instructing
19. you what factors to use, correct?
20. . . .A. Yes.
21. . . .Q. Okay.
22. . . .A. Yeah.

73:8-75:24

8. . . .Q. Did you add any factors to the ones that
9. counsel had told you to use?
10. . . .A. Yes. I believe in one of these analyses, I
11. added -- let's see.
12. I believe in the -- sorry, I'm look -- I'm
13. trying to find where this analyses is.
14. . . .Q. That's fine.
15. . . .A. All right. So I can't -- I can't find it,
16. but this -- basically we did an analysis on growth
17. and wages, and I believe that I was initially
18. instructed to include a set of factors, which, I
19. believe, are in here, if I can find the paragraph,
20. but I added an additional two factors to that
21. because I -- the way it was instructed, to me, it
22. did not make sense -- the way I was instructed
23. didn't make sense.
24. . . .Q. Is it the analysis starting at
25. Paragraph 29, by chance?

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1. . . .A. Okay. The growth and base pay -- actually,
2. I -- I'm mistaken, actually. So -- yeah, so if we
3. look at 29.
4. . . .Q. And we're on Exhibit 2, just for the
5. record.
6. . . .A. Yeah, and I'm on page 10, just looking at
7. where they talk about the control variables. The
8. change in those employees' global career levels, the
9. change in employees' job title, previous experience.
10. It actually -- it actually -- I'm mistaken. The
11. factors I was talking about were previous experience
12. and time at Oracle, but it is in there.
13. . . .Q. Okay.

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14. . . .A. So I think I'm mistaken. What I -- I
15. recall I thought that I was not instructed to use
16. those, but apparently I was, so...
17. . . .Q. Okay. So, let's go through a few
18. paragraphs in particular, in Exhibit 2, which is the
19. second amended complaint, and I just want to make
20. sure that I'm clear about who made decisions about
21. how to structure various analyses and what facts
22. were considered when making those decisions.
23. So, Paragraph 13 of the second amended
24. complaint sets out -- describes a methodology for
25. analyzing total compensation, correct?

75

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

76:7-77:4

7. . . .Q. And these regressions have seven control
8. variables in them, correct?

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9. . . .A. Well, no, not correct. Technically,
10. there's a lot more than that because for job title
11. and global career level, I had to create what's
12. called dummy variables. So for every job title,
13. it's a -- if it's that specific job title, it takes
14. on a value of one. Otherwise, it takes on a value
15. of zero and the same for global career level. So
16. for all the MIs, ICs, it's a value of one, if it's a
17. particular global career level, and zero otherwise.

18. . . .Q. Fair enough.

19. . . .A. There was -- I don't know how many
20. variables. A lot more variables.

21. . . .Q. But those variables are intended to control
22. for seven factors; is that right?

23. . . .A. Yeah, that's fair. Yeah.

24. . . .Q. Okay. Who made the decision as to which
25. factors would be included?

77

1. . . .A. The solicitor.

2. . . .Q. And when you say the solicitor, you're
3. talking about Mr. Miller, correct?

4. . . .A. Yes.

77:7-23

7. If you're going to control for something
8. like previous experience, there are multiple
9. different ways an analyst can do that, correct?

10. . . .A. Correct.

11. . . .Q. Okay. Who made the decision about how
12. exactly to construct the previous experience
13. variables in this model?

14. . . .A. I believe it's a combination. I believe he
15. told me to use age -- age as a proxy for prior
16. experience. But then, you know, I was responsible
17. for creating that variable.

18. . . .Q. When you say "age as a proxy for prior
19. experience," that means that any two employees with
20. the same age are going to be treated by the model as
21. having equivalent previous experience, correct?

22. . . .A. The same age -- it's -- well, it's age at

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23· the time of hire.

78:1-17

1· . . . Q· So the -- am I correct, then, that the
2· models, whose results are reported in Paragraphs 14
3· and 15, those are going to treat any two employees
4· who are the same age when they were hired at Oracle
5· as having equivalent prior experience, correct?
6· . . . A· If -- if they were the same age at the date
7· of hire -- the same date of hire, then they would
8· have the same prior experience.
9· . . . Q· Okay· Is there anything in that variable
10· that controls the type of prior experience that the
11· employee had?
12· . . . A· No.
13· . . . Q· Is there anything that controls for the
14· amount of time that an employee actually spent
15· working as opposed to out of the workforce or on a
16· leave?
17· . . . A· No.

80:8-15

8· . . . Q· So in a -- your models are run by job
9· function and year, correct?
10· . . . A· Uh-hm· Yes.
11· . . . Q· So there's a model for, say, product
12· development in 2014, and within that model, there
13· are seven factors that you're controlling for,
14· correct?
15· . . . A· Correct.

80:25-81:5

25· . . . Q· And there's one coefficient for time in

81

1· company?
2· . . . A· For time in company· There's several for
3· job title· Several for global career level.
4· There's one for exempt status and one for part-time
5· or full-time status.

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81:18-82:5

18. . . .Q. How is that time in company measured?
19. . . .A. So, I constructed this variable in two
20. ways. The first way I constructed it was I -- so
21. some employees have more than one spell of
22. employment at Oracle, so what I did was calculate
23. those spells for each employee and then I summed
24. them all up.
25. So, for example, if you started at Oracle

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1. in 2004 and then in 2007, you left for another job,
2. that would be three years. And then let's say you
3. stayed at another job until 2010 and then you were
4. terminated in 2012, that would be two more years.
5. So that would be five years of time in company.

85:10-87:17

10. . . .Q. Okay. So time in company is really
11. cumulative number of years worked for Oracle America
12. at one of the locations on the location list?
13. . . .A. I -- I -- I believe so. I'd have to -- I
14. mean -- I guess I don't know -- I don't know what is
15. put in the transactional data. If -- if the
16. transactional data -- and I'm talking about the EMP
17. assignment file, if that includes all your time at
18. Oracle, then what I did was identified just those --
19. those periods when you were in the class and then
20. it -- it's going to sum up the total time in
21. company.
22. . . .Q. Do you recall seeing in that file a
23. continuous service date variable?
24. . . .A. I don't recall that.
25. . . .Q. Okay.

86

1. . . .A. It's possible it's there, but I did receive
2. transactional data.
3. . . .Q. Okay. But in that -- fair to say that if
4. there is a continuous service date field in that --
5. in that data file, you did not use that continuous
6. service date field, correct?

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

87

1. affiliate, say Oracle India or Oracle Ireland?
2. . . .A. If it -- if it wasn't in the location file
3. that I was provided, then it would not be in there.
4. . . .Q. Does your time-in-company variable account
5. for leaves of absence that an employee might have
6. taken, you know, during a period of employment at
7. Oracle America?
8. . . .A. No.
9. . . .Q. Does your previous experience variable
10. account period of -- leaves of absence that an
11. employee might have taken historically during their
12. employment history?
13. . . .A. No.
14. . . .Q. Does your previous experience variable
15. account for periods of unemployment that an employee
16. may have had in their history?
17. . . .A. No.

88:10-24

10. . . .Q. Okay. So, fair to say that your previous
11. experience variable would treat two employees who

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12. were the same age when they were hired at Oracle as
13. having the same prior experience, even if one of
14. them had been working as a retail store clerk and
15. one of them had been at a technology startup working
16. on AI?
17. . . . A. Yes, but I don't think that's a realistic
18. example. This is --
19. . . . Q. Well, you didn't look at any --
20. . . . A. Yeah, I did not look at any.
21. . . . Q. Okay. Did you look at any résumés that
22. were available for any of the employees that you
23. were studying?
24. . . . A. No.

88:25-89:7

25. . . . Q. Do you know if anyone at OFCCP considered

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1. the résumés of any employee, who -- who -- whose
2. information is in the data you reviewed, when making
3. decisions about the statistical model in the second
4. amended complaint?
5. MR. MILLER: Instruct the witness not to
6. answer, to the extent it reveals attorney-client
7. communications or work product.

89:10-18

10. . . . Q. And if there were two individuals who were
11. the same age when they were hired at Oracle, one of
12. them had previously been working at a technology
13. startup on cutting-edge artificial intelligence
14. technology and the other one had been working at,
15. say, in the IT department of a bank maintaining
16. legacy systems, your prior experience variable would
17. treat those two employees the same, correct?
18. . . . A. Yes.

98:14-100-18

14. MR. MILLER: Again, Mr. Brunetti or
15. Dr. Brunetti has not been offered for discussing all
16. facts. He's here to discuss the statistical
17. analysis/regression analysis.

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18 · MS. MANTOAN: So, Counsel, that's -- that's
19 · not an objection because the -- this is an intro to
20 · a paragraph that talks about the statistical
21 · analysis that was conducted. So I believe the
22 · question is proper. Are you instructing him not to
23 · answer?
24 · MR. MILLER: Well, he's not -- he has not
25 · been prepared to answer that kind of a question

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

100

1 · and data that was -- that underlies this paragraph,
2 · we've offered another deponent for that. If you
3 · want to ask about how the statistical analysis was
4 · done, that's what Dr. Brunetti is here for.
5 · MS. MANTOAN: So your second witness will
6 · be prepared to talk about how compensation policies
7 · impacted the -- the choices made about the
8 · statistical model and what groupings to use and what

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9· controls to use. Is that what you're saying?
10· MR. MILLER: Well, again, the second
11· witness will be able to talk about the compensation
12· policies, but they're not going to be able to tell
13· you how they were selected because that, again, is
14· privileged.
15· MS. MANTOAN: So I disagree completely with
16· you about what the Court has already ordered OFCCP
17· to provide, but I suppose we will -- we will hash
18· that out in another form.

100:24-101:23

24· . . . Q. It says, "OFCCP's regression analysis for
25· female employees based on the data and information

101

1· obtained thus far."
2· What data is being referred to here?
3· MR. MILLER: I mean, Counsel, this is the
4· same problem that we had in the last paragraph, so,
5· I mean, I'll reiterate my position, is that he
6· cannot answer questions about the universe of data
7· and compensation policies. He can answer your
8· questions about, you know, data that was provided to
9· him and the instructions given to him about doing
10· this, but the universe is not within anything he was
11· prepared for and the selections inside of that
12· universe are attorney work product.
13· MS. MANTOAN: Okay. So my question is
14· where it says the regression analysis based on the
15· data and information obtained so far, I've asked
16· what data that's referring to. And am I -- are you
17· instructing the witness not to answer that question?
18· MR. MILLER: To the extent he can answer it
19· without getting into the areas I just talked about,
20· he certainly can.
21· MS. MANTOAN: Okay.
22· THE WITNESS: So can you just ask the
23· question again?

101:25-102:14

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

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

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2· based on the data and information obtained thus far,
3· reveals" and then it continues. My question is,
4· when it says based on the data and information
5· obtained so far, what data is being referred to
6· there?
7· . . . A. I believe that's referring to the four
8· Excel files that we discussed earlier. The
9· all-earnings file, the one that starts with EMP, the
10· one locations, and the one that had base pay.
11· . . . Q. Okay.
12· . . . A. Although, this is -- sorry. If this is
13· total compensation, then base pay is not one of
14· those.

102:15-103:3

15· . . . Q. And in this same sentence, where it says,
16· "based on the data and information obtained thus
17· far," what information is being referred to there?
18· . . . MR. MILLER: Again, it's the same
19· instruction. Dr. Brunetti can testify about the
20· information he was provided in connection with his
21· assignment to do this, but not about other facts.
22· . . . THE WITNESS: So do I answer or --
23· . . . MR. MILLER: Yeah. I'm sorry, I should be
24· clear. I'm instructing you not to answer about
25· anything beyond what you were provided to do and

103

1· asked to do or provided with and asked to do.
2· . . . THE WITNESS: So your question -- sorry,
3· could you just please repeat it?

103:5-12

5· . . . Q. In the same sentence in Paragraph 14, it
6· reads: "Based on the data and information obtained
7· thus far." I've already asked you what the word
8· "data" is referring to there and now I'm asking what
9· the word "information" is referring to there.
10· . . . A. Yeah, so the information would be the
11· PowerPoints, the pay policy PowerPoints that are
12· similar to the Exhibit 3 that you had me go over.

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104:19-105:6

19. . . .Q. There's a column here on that chart
20. following Paragraph 14 that says, "Example, Annual
21. Wages Lost."
22. . . .A. Uh-hm.
23. . . .Q. What does the word "Example" mean there?
24. . . .A. I suppose that means that this is an
25. estimate of how much each individual female employee

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1. lost because of the pay disparity.
2. . . .Q. Is it an average?
3. . . .A. Yes -- it's -- well, it's -- what it is, is
4. you take the average pay for all employees and you
5. multiply it by 7.26 percent for -- this is for IT
6. 2013.

108:7-11

7. . . .Q. So did -- do these results, in your view,
8. show that every woman who worked at Oracle, in any
9. of these functions, in any of these years, was
10. underpaid by the amounts -- each of them was
11. underpaid by the amounts that you set forth here?

108:12-15

12. MR. MILLER: Just to clarify, Counsel, when
13. you say "you," you're asking in his testifying
14. capacity on behalf of OFCCP?
15. MS. MANTOAN: Correct.

108:16-109:14

16. THE WITNESS: I don't know if there are any
17. women that lost exactly this amount.
18. BY MS. MANTOAN:
19. . . .Q. Okay. So the numbers in the annual wages
20. lost should not be understood as the amount lost by
21. every woman or even any particular woman, correct?
22. . . .A. That is how much -- well, that's the -- the
23. average -- okay. There's a couple things that are
24. different than the 165 million here. So, again,

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

109

1 · includes males and females.

2 · · · · Q · Right.

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

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

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

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

7 · interest.

8 · · · · Q · Does that 7.26 percent mean -- what --

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

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

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

12 · less than she should have been?

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

14 · some that are more, some that are less.

109:21-24

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

22 · particular woman was --

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

24 · particular women was underpaid.

110:16-111:18

16 · · · · Q · We've talked at length now about

17 · Paragraph 13, about the model that was constructed

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

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

20 · about some more specific information that's

21 · presented for women in Paragraph 14.

22 · Am I right that the information presented

23 · in Paragraph 15 is basically an analog of the

24 · information presented in Paragraph 14, just for

25 · Asian employees and limited to the product

111

1 · development function?

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

3 · relative to white employees.

4 · · · · Q · So are the methodologies that we discussed

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

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6. are those the same methodologies that were used to
7. generate the information in Paragraph 15?

8. . . .A. Yes.

9. . . .Q. Okay. That saves us time, then, because I
10. don't need to ask you about all the methodologies
11. underlying Paragraph 15.

12. . . .A. I mean, just to be clear, Paragraph 14 is
13. females relative to males.

14. . . .Q. Uh-hm.

15. . . .A. Relative to male pay.

16. . . .Q. Okay.

17. . . .A. And this one is Asian relative to white
18. pay.

112:20-113:12

20. . . .Q. Okay. I guess I do have a question I
21. should have asked about Paragraph 14, so let me jump
22. back there.
23. With respect to the way that you described
24. that you generated the damages estimate in Paragraph
25. 14 –

113

1. . . .A. Uh-hm. Uh-hm.
2. . . .Q. -- who made the decision about how to
3. structure that damages estimate? Was it you or were
4. you instructed by the solicitor?
5. . . .A. I did.
6. . . .Q. Okay.
7. . . .A. I mean, for -- for the -- for the most
8. part, I -- I was.
9. . . .Q. What do you mean, for the most part?
10. . . .A. I mean, I think he -- I was instructed to
11. calculate damages and I was the one to figure out
12. how to go about doing that.

114:14-115:12

14. . . .Q. When you said in Paragraph 14, if I
15. understood you correctly, you basically said you
16. used a different way of computing the average pay of
17. employees when you found the average pay that you
18. were going to use to then generate damages than was

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19. used to -- to generate the average wage loss that's
20. in -- actually in the table, correct?
21. . . .A. This average wage loss combines male and
22. female pay.
23. . . .Q. Right.
24. . . .A. So it's -- the average wage loss that I did
25. to calculate the 165 million was based on male pay.

115

1. . . .Q. Uh-hm. Right.
2. . . .A. So if it's -- if females were underpaid on
3. average 7.26 percent, I multiplied that by the
4. average male pay. So it's -- this example, annual
5. wages lost, and the table is going to understate the
6. damages, if you do it that way.
7. . . .Q. So were -- were you instructed to compute
8. the average annual wage losses -- loss in one way
9. and then made a decision for yourself to compute the
10. damages in a different way?
11. . . .A. No, I was not instructed to do that. This
12. is just not the way I would normally do it.

116:2-117:21

2. . . .Q. So how does it end up in here? Who decided
3. to generate that column at all?
4. . . .A. I believe the solicitor did that.
5. . . .Q. Okay. I see. So you did not actually
6. compute the average annual wages lost?
7. . . .A. I did not, yeah, actually compute that
8. amount in that table.
9. . . .Q. Okay.
10. . . .A. I computed the 165 million and the 234
11. million.
12. . . .Q. Okay. But the solicitor computed this last
13. column of the chart --
14. . . .A. Yes.
15. . . .Q. Sorry, let me just finish the question.
16. . . .A. I'm sorry.
17. . . .Q. The solicitor computed the last column in
18. the chart following Paragraph 14, correct?
19. . . .A. Yes.
20. . . .Q. And the solicitor computed the last column

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21 · in the chart following Paragraph 15?

22 · · · · A · Yes.

23 · · · · Q · Okay · And you had -- you played no role in

24 · computing either of those columns and the

25 · information in them, correct?

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1 · · · · A · Correct.

2 · · · · Q · Let's move to Paragraph 16 · My

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

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

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

6 · African-American employees to white employees, but

7 · with the sole change that the dependent variable is

8 · now base compensation rather than total

9 · compensation; is that correct?

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

11 · comparing black employees to white employees.

12 · · · · Q · Okay · Who made the decision to substitute

13 · base compensation for total compensation?

14 · · · · A · I believe that the solicitor asked me to

15 · compute both.

16 · · · · Q · To compute both?

17 · · · · A · Yeah.

18 · · · · Q · Okay · Who made the decision to report the

19 · results in the second amended complaint only for

20 · base compensation rather than total compensation?

21 · · · · A · The solicitor.

118:16-119:22

16 · BY MS. MANTOAN:

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

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

19 · instructed to -- to generate results for

20 · African-American employees only for years 2015 and

21 · 2016?

22 · · · · A · No.

23 · · · · Q · Did you generate results for other years?

24 · · · · A · Yes.

25 · · · · Q · Okay · And with respect to the chart

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1. following Paragraph 16, am I correct that you
2. generated the information that's in the columns,
3. number of black employees, number of employees, and
4. takeout percentage, but the solicitor generated the
5. information in the Example Annual Wages Lost column?

6. . . .A. Yeah, correct.

7. . . .Q. Okay. But you generated the 1.3 million
8. figure that's in the body of Paragraph 16; is that
9. correct?

10. . . .A. Yes.

11. . . .Q. Is that using the same methodology that you
12. described with respect to your total damages
13. compensations for Asian employees and for female
14. employees?

15. . . .A. Yes.

16. . . .Q. Who made the decision to evaluate the Asian
17. employees only in product development, but not in IT
18. or support?

19. . . .A. I -- I believe the solicitor.

20. . . .Q. Okay. Who made the decision to evaluate
21. the pay outcomes for African-American employees
22. only --

119:25-120:12

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

120

1. African-American employees only in product
2. development, but not in support or IT?
3. . . .A. The solicitor.
4. . . .Q. Moving to Paragraph 17, there's a
5. \$401 million loss total compensation estimate there.
6. You see that?

7. . . .A. Yes.

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

9. . . .A. Yes.

10. . . .Q. Is that result simply summing the results
11. in the other paragraphs?

12. . . .A. Yes.

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124:9-126:13

9. . . .Q. So, Dr. Brunetti, the question I posed
10. before break, which I'll ask again, is: Does OFCCP
11. contend that any statistical work supports the --
12. the second sentence of Paragraph 17, which I read
13. into the record right before the break?
14. . . .A. Does any statistical evidence support
15. which -- which part of this?
16. . . .Q. The -- the claim that the total cost of
17. Oracle's discrimination is much higher than the 401
18. million reported earlier. Is that a conclusion
19. formed by some statistical work that was done or
20. not?
21. . . .A. Well, okay, so let me just -- I don't know
22. if I added this when I was describing how I
23. calculated the damages.
24. So, the damage calculation that I did goes
25. through December 31st of 2018. The class period

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1. goes --
2. . . .Q. 2018?
3. . . .A. The damage calculations that are in here,
4. yes, December 31st, 2018. That's -- it's -- I
5. assume that present value was December 31st, 2018.
6. I mean, when you do these things, you can assume
7. whatever date you want, but that's what -- that's
8. what I did at the time.
9. . . .Q. Are you just saying you ran interest on
10. amounts owed for, say, the year 2016 through 2018?
11. . . .A. Yeah. Yeah. Let me explain. So, the
12. interest goes through December 31st, 2018, and since
13. I didn't have -- I don't have any data and I don't
14. have any evidence that the pay disparity was
15. resolved and no pay adjustments have been made, I
16. assume the nominal damages in 2016 continued in 2017
17. and '18.
18. . . .Q. Did you add that into your \$400 million
19. number?
20. . . .A. So that's -- that's part of the 400
21. million, yeah.
22. . . .Q. So the 400 million is estimating the same

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23. ·wages lost in 2017 and 2018?
24. ···A. ·Yeah. ·So it's assuming, like, for example,
25. ·and I'm just throwing this out there, if it's 10

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1. ·million in product development, that's the nominal
2. ·damages, let's say, in 2016.
3. ···Q. ·Uh-hm.
4. ···A. ·Then I would assume it's 10 million in
5. ·2017, 10 million in 2018.
6. ···Q. ·I see. ·And all of that is already captured
7. ·in this \$400 million number?
8. ···A. ·That's in the 400 million. ·Yeah.
9. ···Q. ·Okay. ·So it sounds like the statistical
10. ·work is actually -- the statistical work of the 400
11. ·million already was supposed to account for damages
12. ·through the end of 2018?
13. ···A. ·Yes.

126:15-21

15. ·When computing the damages figure, did you
16. ·factor in -- did you -- did you consider any facts
17. ·or make any adjustments related to mitigation?
18. ···A. ·No.
19. ···Q. ·Okay. ·Did you consider any facts relevant
20. ·to any particular employee?
21. ···A. ·No.

141:10-142:1

10. ···Q. ·Have you received any training from the
11. ·OFCCP related to statistical analysis of
12. ·discrimination claims?
13. ···A. ·No.
14. ···Q. ·Have you received any training -- well, do
15. ·you know what Directive 307 is?
16. ···A. ·I've -- I've heard it, but I'm not very
17. ·familiar with it.
18. ···Q. ·Do you know what Directive 2018-5 is?
19. ···A. ·No.
20. ···Q. ·Do you know what the Federal Contract
21. ·Compliance Manual is?
22. ···A. ·I've heard of it, but I'm not familiar with

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23· it.

24· · · · Q· Do you know what the EEOC Compliance Manual

25· is?

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1· · · · A· No.

142:25-143:12

25· · · · Q· Some more questions about the second

143

1· amended complaint. If you could come back to that,

2· please.

3· I wanted to -- to back up a little bit and

4· go back to Paragraph 12. So the first -- first

5· sentence in Paragraph 12 reads: "Since at least

6· January 1st, 2013, Oracle discriminated against

7· qualified female employees in its product

8· development, information technology, and support job

9· functions at HQCA based upon sex by paying them less

10· than comparable males employed in similar roles."

11· Did I read that correctly?

12· · · · A· I believe so.

143:21-144:8

21· · · · Q· What facts did OFCCP consider in

22· determining which females were qualified, within the

23· meaning of this paragraph, for purposes of its

24· statistical analysis?

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

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1· witness not to answer on the ground that it would

2· reveal attorney-client communication and work

3· product information, but I do think I should clarify

4· that all of those things actually considered show up

5· in that do file or are part of his testimony today.

6· The instruction I'm giving is related to other

7· things that may have been considered and discarded

8· and were not included.

144:10-145:6

10· · · · Q· So what, in the analysis that you ran,

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11· ·distinguishes qualified from not qualified
12· ·employees?
13· ··A· ·Prior experience, time in company, the --
14· ·yeah, that's -- that's it.
15· ··Q· ·And both of those, in different ways, just
16· ·come down to counts of time?
17· ··A· ·Experience, yeah.
18· ··Q· ·Experience defined by time spent either at
19· ·Oracle or time spent on planet earth prior to coming
20· ·to work at Oracle, correct?
21· ··A· ·Yeah -- yes.
22· ··Q· ·So they're -- they're quantitative
23· ·measures, they're not qualitative measures of the --
24· ·of the nature of the experience, correct?
25· ··A· ·True.

145

1· ··Q· ·Okay· ·So, later in that same sentence,
2· ·the -- the complaint uses the phrase "comparable
3· ·males employed in similar roles."· ·And so my first
4· ·question is:· ·What, in the analysis you ran,
5· ·determines which male employees are comparable to
6· ·which female employees?

145:7-10

7· ·· · · · · ·MR. MILLER:· ·I'm objecting that that's
8· ·calling for a legal conclusion about what comparable
9· ·means, but he can obviously answer if he's got an
10· ·answer.

145:11-15

11· ·THE WITNESS:· ·Yeah, I -- I don't -- I -- if
12· ·that's a legal question, I don't know the answer,
13· ·but I can tell you that I controlled for job title,
14· ·global career level, specialty, and then I ran it by
15· ·the three job functions that are listed here.

145:17-24

17· ··Q· ·And the decision to use those controls was
18· ·one that was made by Mr. Miller, not by you,
19· ·correct?
20· ··A· ·Correct.

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21. . . .Q. And the decision to run the analyses by job
22. function was made by Mr. Miller, not by you,
23. correct?
24. . . .A. Yes.

146:6-12

6. . . .Q. So counsel objected to the use of the word
7. comparable, to the extent that it was having a legal
8. meaning, and I guess what I'm trying to understand
9. is whether the word comparable has some nonlegal,
10. analytical, or statistical meaning to you when
11. you're thinking about conducting statistical
12. analyses to test alleged discrimination.

146:13-15

13. MR. MILLER: So, I'm going to object. The
14. question is not relevant to the extent that this is
15. a legal document, but you can answer.

146:16-21

16. THE WITNESS: Okay. I -- I believe, you
17. know, adding controls for the -- the job title is --
18. I'm not sure if this is the answer, but that's --
19. that's making it -- when you're running the
20. regression, controlling for job title, you're
21. essentially making it so that they're comparable.

146:23-24

23. . . .Q. So comparable, in the regression model that
24. you ran, is defined by having the same job title?

147:2-5

2. THE WITNESS: Well, it's the -- we're
3. running it by job function, so distinguishing based
4. on job function, job title, specialty, and global
5. career level.

147:7-9

7. . . .Q. What are the differences between these
8. three job functions at Oracle?

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9. . . .A. I don't know.

147:18-148:4

18. . . .Q. I see later, in the same sentence, back in
19. Paragraph 12, it says, "Paying them less than
20. comparable males employed in similar roles," so I
21. have a similar question here.
22. For purposes of your model, does similar
23. just mean having the same job title?
24. . . .A. Same job title, job function, specialty.
25. . . .Q. But anyone who shares a job title and a --

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1. is going to also share a specialty --
2. . . .A. Yes.
3. . . .Q. -- and a career level, correct?
4. . . .A. Yes.

148:5-149:9

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

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1. . . . MR. MILLER: Same objection.

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2 · THE WITNESS: Can I -- can I answer?
3 · MR. MILLER: Yeah, sorry.
4 · THE WITNESS: To me, that means you can
5 · actually run one regression, controlling for job
6 · title, in a statistical sense.
7 · MS. MANTOAN: Sorry, I -- maybe I'm -- I'm
8 · obviously not asking a question that's clear.
9 · BY MS. MANTOAN:

149:10-14

10 · . . . Q. So, in your -- in your regression models in
11 · the second amended complaint, two employees are
12 · deemed similar if they have the same standard job
13 · title, correct?
14 · . . . A. Yes.

149:15-16

15 · MR. MILLER: Objection. Asked and answered
16 · and also mischaracterizes prior testimony.

149:21-25

21 · Do the statistical models that you ran,
22 · whose results are reported in the second amended
23 · complaint, include any control for different
24 · educational attainment among different employees?
25 · . . . A. No.

150:10-151:16

10 · . . . Q. Do the statistical models that you ran
11 · contain any controls for differences in particular
12 · skill sets among employees? By that, I mean whether
13 · an employee has skills in, say, artificial
14 · intelligence or machine learning. That's an
15 · example, I guess. Would something like that be
16 · captured in your model?
17 · . . . A. I don't know.
18 · . . . Q. Why do you say "I don't know"?
19 · . . . A. It may be the case that it's captured in
20 · the job title.
21 · . . . Q. But you don't know one way or another?
22 · . . . A. No.
23 · . . . Q. Okay. What is omitted variable bias?

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24. . . .A. Omitted variable bias is when there is a
25. factor that can explain -- in the context of just

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1. gender discrimination, it's a factor that could --
2. that explains variation pay and is correlated with
3. gender. So if you omit it, the gender variable will
4. be biased, the estimate will be biased. So like
5. the -- for example, on these tables, the pay gap
6. percentage could be higher or lower.
7. . . .Q. Okay. Did OFCCP do any work to test for
8. omitted variable bias in the models that are
9. presented in the second amended complaint?
10. . . .A. To test for omitted variable bias?
11. . . .Q. Right.
12. . . .A. No. And I'll just say that, you know, in
13. order -- I'm not sure how you would test for that,
14. other than you can put an additional variable in and
15. see if it's significant or not, but, no, I did not
16. do that.

151:17-152:6

17. . . .Q. Okay. When you're conducting statistical
18. analysis related to alleged pay discrimination, do
19. you always have available to you all of the factors
20. that might influence pay in a numeric regressible
21. form?
22. . . . MR. MILLER: Objection. That's outside the
23. scope of this 30(b)(6). You're asking about his
24. general practices.
25. . . . THE WITNESS: Do I answer?

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1. . . . MR. MILLER: I -- yeah, I'm sorry. Just to
2. clarify for the witness, unless I say I'm
3. instructing you not to answer, you can answer.
4. . . . THE WITNESS: Okay. Sorry. Could you
5. please ask it again?
6. BY MS. MANTOAN:

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152:7-154:1

7. . . .Q. Yeah, I don't know if regressible is a
8. word, but hopefully you'll indulge me with what I'm
9. trying to say. When you're conducting statistical
10. analysis related to alleged pay discrimination, do
11. you always have available to you all of the factors
12. that might influence pay in a -- a numeric form or
13. some other form that you can put into a regression
14. model?

15. . . .A. Okay. So I don't always know if -- what
16. the important factors are, right?

17. . . .Q. Uh-hm.

18. . . .A. So, I mean, are you asking in general at
19. the OFCCP or in general -- what -- what is --

20. . . .Q. Yeah. I mean, I'm asking generally if that
21. is sort of an issue that can arise when you're
22. conducting statistical analysis related to alleged
23. pay discrimination.

24. . . .A. So if I don't have outside information,
25. then I may not know that there's a factor that's

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1. important.

2. . . .Q. Uh-hm.

3. And the information that you had when you
4. conducted the statistical analysis underlying in the
5. second amended complaint, were just the materials
6. that Mr. Miller provided to you, correct?

7. . . .A. Yes.

8. And then, I -- sorry, I'm confused -- I
9. think the second part of the question, you asked
10. something about not having data in a numerical form?

11. Is that what you were --

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

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

15. . . .Q. Right.

16. . . .A. So I create dummy variables.

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

18. What about, you know, something like
19. evaluations of performance, right? There might be

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

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21· ·might be companies in which it comes in a narrative
22· ·form· So have you had experience before conducting
23· ·analyses of alleged pay discrimination where
24· ·information about employees is provided, not in a
25· ·numeric form, but in narrative information about

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1· ·different employees?

154:2-3

2· · MR. MILLER: Objection· This is well
3· ·outside the scope of the 30(b)(6).

154:4-6

4· ·THE WITNESS:· I think the answer is yes and
5· ·I'm trying to remember back to when I was at ERS
6· ·Group· I think, yes, but I --

154:8-156:10

8· · . . . Q· Did any of the Excel files that you were
9· ·provided in this case contain any narrative
10· ·information about either the work that particular
11· ·employees were performing or the performance of any
12· ·particular employees with respect to that work?
13· · . . . A· I -- there was some fields that were
14· ·narrative, I think, that explained why the person
15· ·left the job· I didn't review those very closely,
16· ·other than I noticed that they were there.
17· · . . . Q· If we could turn in the second amended
18· ·complaint to Paragraph 19· We talked earlier about
19· ·Paragraph 18 and about the -- the approach that you
20· ·took to evaluating what you deem assignment to
21· ·career level, correct?
22· · . . . A· Uh-hm.
23· · . . . Q· Do you recall that discussion earlier?
24· · . . . A· Yes.
25· · . . . Q· Okay· And then in Paragraph 19, it says,

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1· ·"Using the methodology described in Paragraph 18,
2· ·OFCCP's regression analysis based on the data and
3· ·information obtained thus far."

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4. ·So my question here is, what data is being
5. ·referred to as the basis for the analysis in
6. ·Paragraph 19?
7. ···A.· Well, that would be -- so -- so, again,
8. ·that would be data from that EMP file and I -- I
9. ·think that's the only file that is relevant here.
10. ·And it's limited to people who were hired during the
11. ·class period.
12. ···Q.· And by class period, you mean?
13. ···A.· 2003 to '16.
14. ···Q.· 2003?
15. ···A.· '13, 2013 to '16.
16. ···Q.· Okay.· I think the answer to these next
17. ·handful of questions is -- is implied by earlier
18. ·answers you've given, but I just want to be clear.
19. ···A.· Okay.
20. ···Q.· Were you provided any files from
21. ·iRecruitment to review in connection with this
22. ·analysis?
23. ···A.· No.
24. ···Q.· Do you know what iRecruitment is?
25. ···A.· No.

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1. ···Q.· Were you provided any files from Taleo to
2. ·review in connection with this analysis?
3. ···A.· No.
4. ···Q.· Do you know what Taleo is?
5. ···A.· I think it's an HR IS system of some sort.
6. ···Q.· Do you know --
7. ···A.· I -- that's the extent.· That's a guess.
8. ·That's the extent to my knowledge.
9. ···Q.· Do you know if or how Taleo is used by
10. ·Oracle?

156:11-14

11. ······ MR. MILLER:· Object -- well, I'm going to
12. ·instruct him not to answer to the extent it may
13. ·reveal attorney-client communications or work
14. ·product.

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156:15

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

156:17-158:12

17 Q. Okay. Do you -- is it your understanding
18 that applicants to Oracle apply just to Oracle
19 generally or is it your understanding that they
20 apply to specific posted requisitions?

21 A. I don't know.

22 Q. So I take it, then, the analysis you've set
23 forth in Paragraph 19 does not take into account
24 what employees applied for which particular
25 requisitions; is that correct?

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1 A. That's correct.

2 Q. Okay. The percentages that are set forth
3 here in Paragraph 19, are those the results of one
4 of those .do files, one of those programs that you
5 ran?

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

7 Q. Sorry.

8 A. They're -- it's actually -- you know,
9 again, the solicitor wrote the amended complaint,
10 not me. It's actually an odds ratio, so the
11 conclusion is still the same, but it's not really
12 70 percent. It's -- it's that females were -- the
13 odds of a female being in a higher level is .7
14 relative to men, so...

15 Q. Okay.

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

17 Q. Is there a -- help me understand the
18 difference between saying women were only 70 percent
19 as likely versus the odds ratio for women was .7.
20 Is there a difference between those?

21 A. There's a difference. The 70 percent of
22 likely is -- sounds like a probability, but the odds
23 ratio is defined. It's --

24 Q. I'm asking you -- you get the leads here,
25 what's the difference between the probability and

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1. ·the odds ratio?
2. ···A. The odds ratio is more, like, you know, you
3. ·could be -- like, for example, if you were three
4. ·time -- well, it's difficult -- I'm -- I'm -- I'm
5. ·sorry.
6. ···Q. Yes.
7. ···A. I'm concerned that I'm going to misstate
8. ·this because it's hard to explain this in a
9. ·simple --
10. ···Q. Understood.
11. ···A. But it's -- I just wanted to point out that
12. ·it's actually an odds ratio, not a probability.

158:20-159:7

20. ···Q. And is that looking across all career
21. ·levels or is that an average of the odds ratio for
22. ·each career level, or how are you --
23. ···A. Yeah, that's -- that's kind of a summary --
24. ·summary, like -- like an average over all of the
25. ·career levels.

159

1. ···Q. Okay. So it might be that in some career
2. ·levels, according to your analysis, women were
3. ·actually more likely than men to -- to start at that
4. ·career levels. There might be some other career
5. ·levels where it goes the other way and this is an
6. ·average?
7. ···A. That's true. That's correct.

160:7-11

7. ···Q. Is every -- there's also another percentage
8. ·later in this paragraph, 42 percent. Was that
9. ·calculated in the same way that you just described
10. ·for the 70?
11. ···A. Yes.

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161:8-24

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

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

10. Paragraph 20, there's an analysis of

11. African-Americans versus white employees?

12. . . .A. Uh-hm.

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

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

15. Paragraph 20 as it was for Paragraph 19?

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

17. compares whites and blacks only.

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

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

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

21. generating the results reported in Paragraph 21 as

22. you did with respect to Paragraph 19?

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

24. whites.

163:18-164:9

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

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

20. the second amended complaint, that controls for the

21. line of business in which an employee works?

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

23. Is there any what?

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

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

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1. whose results are reported in the second amended

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

3. which an employee works?

4. . . .A. No.

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

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

7. amended complaint, that controls for the manager to

8. which an employee reported?

9. . . .A. No.

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164:10-17

10. . . . Q. . The analysis that we were discussion just a
11. . few minutes ago that's described in Paragraph 18 and
12. . whose results are in Paragraph 19, 20, and 21 --
13. . . . A. . Uh-hm.
14. . . . Q. . -- who made the decision about how to group
15. . employees for purposes of that analysis?
16. MR. MILLER: . Objection. . Vague as to group.
17. . BY MS. MANTOAN:

164:18-166:12

18. . . . Q. . Well, so, for example, these analyses are
19. . not run by function, correct? . They're run across
20. . the whole population?
21. . . . A. . You know, that's -- I was just trying to
22. . remember that. . For blacks and Asians, it's only
23. . product development. . That's the only job function.
24. . For females, I -- I can't remember, but I
25. . could tell if I looked at the .do file.

165

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

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23. . . .A. I -- yeah, I was instructed to do a
24. starting salary analysis, yes.

25. . . .Q. And who were you instructed by?

166

1. . . .A. Mr. Miller.

2. . . .Q. Okay. And who decided how to group
3. employees in that analysis?

4. . . .A. Mr. Miller.

5. . . .Q. And who decided what factors to control for
6. in that analysis?

7. . . .A. Mr. Miller.

8. . . .Q. Am I correct that the previous experience
9. control in this analysis is computed the same way as
10. the prior previous experience control, namely, age
11. at the time of hire at Oracle minus 18?

12. . . .A. Yes.

168:5-169:20

5. . . .Q. So I just want to make sure I've got this
6. right by way of an example. So same example I was
7. just talking about. Employee first joins Oracle
8. when they're 20, they stay at Oracle for two years.

9. . . .A. Uh-hm.

10. . . .Q. They leave Oracle for five years.

11. . . .A. Uh-hm.

12. . . .Q. They come back when they're 27 and as of
13. the snapshot date, they're 30.

14. . . .A. Uh-hm. Yeah.

15. . . .Q. So the -- so you're going to count the two
16. years at Oracle and then three years at Oracle as
17. time in company, correct?

18. . . .A. Yes.

19. . . .Q. Okay. The five-year window in between,
20. you're going to put in previous experience?

21. . . .A. Yeah. If I understand your example, I -- I
22. believe so.

23. . . .Q. Okay.

24. . . .A. Yeah.

25. . . .Q. And you're going to put those five years in

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

172:9-173:5

9· . . . Q· Okay· If we could go back to Paragraph 22,
10· Dr. Brunetti· So this is an analysis of starting
11· pay, I believe you said, correct?
12· . . . A· Yes.
13· . . . Q· And it's describing a starting -- an
14· analysis of starting pay, meaning starting base
15· salary, correct?
16· . . . A· Yes.
17· . . . Q· Okay· Is there a control for job title in
18· this starting pay model?
19· . . . A· No.
20· . . . Q· Okay· And were you instructed by
21· Mr. Miller on the set of factors to use with that
22· set not including job title?
23· . . . A· He was the one who determined what I should
24· control for in the regression.
25· . . . Q· And so then implicitly, he was deciding

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1. what you should not control for, correct?
2. . . . A. Yep.
3. . . . Q. Okay. So he decided you should not control
4. for job title in this regression, correct?
5. . . . A. Yes.

174:3-175:14

3. . . . Q. Paragraph 22 describes a model by which you
4. tested starting pay outcomes for Asians and for
5. women; is that correct?
6. . . . A. Yes.
7. . . . Q. Okay. Were you instructed to look only at
8. starting pay outcomes for women and Asians and not
9. for African-Americans?
10. . . . A. I don't -- no, I don't believe so.
11. . . . Q. Okay.
12. . . . A. I can -- I can look in the .do file and say
13. for -- for sure.
14. . . . Q. Okay.
15. . . . A. But...
16. . . . Q. Okay. So your best recollection is that
17. do file does contain results for African-Americans,
18. 'cause you ran it for African-Americans?
19. . . . A. That's my best recollection.
20. . . . Q. Okay. And the -- let's focus on
21. Paragraph 23. The claim here is that the analysis
22. "reveals that female employees are paid less than
23. male employees on hire at Oracle."
24. Did I read that correctly?
25. . . . A. Yes. It's -- it's -- yeah, their starting

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1. salary.
2. . . . Q. Okay. And because of the structure of the
3. model, this is just comparing females, within a
4. given global career level, to males within that same
5. global career level, correct?
6. . . . A. Yes.
7. . . . Q. Okay. So if there's an employee -- if
8. there's a female employee who is in an IC4 position

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9. who is doing testing or quality assurance work and
10. if there's a male who is in an IC4 position who is
11. designing software, the model, whose results are
12. presented here, is comparing those employees,
13. treating them as comparators, correct?
14. . . .A. Yes.

176:12-17

12. . . .Q. Okay. And in the model described in
13. Paragraph 22, whose results are presented in
14. paragraphs 23 and 24, is previous experience
15. computed in the same way that you described
16. previously?
17. . . .A. Yes.

181:11-17

11. . . .Q. Okay. So I see that the analysis that is
12. described in Paragraph 25 is an analysis of base
13. pay; is that right?
14. . . .A. Yes.
15. . . .Q. When we say base compensation, you mean
16. base salary, correct?
17. . . .A. Base salary, yeah.

181:24-184:8

24. . . .Q. Did you determine -- were you instructed to
25. construct this analysis using base salary as the

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1. dependent variable as opposed to total compensation?
2. . . .A. I don't recall.
3. . . .Q. How would you figure that out if you had to
4. figure that out, whether you were instructed or not?
5. . . .A. I don't know.
6. . . .Q. Do you think you'd have an e-mail that
7. would indicate that?
8. . . .A. I -- I don't know.
9. . . .Q. I guess that's a more general question when
10. we've been talking about -- we've talked about
11. several instructions that you received from
12. Mr. Miller regarding the statistical analysis. Were
13. those instructions relayed in writing, relayed

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14· orally, or both?

15· . . . A· We had phone conversations and an e-mail
16· exchange.

17· . . . Q· Okay· Could you find that e-mail exchange
18· if you had to?

19· . . . A· Probably.

20· . . . Q· Okay· So the -- it may be that you don't
21· recall some of these other questions about who made
22· certain decisions about this analysis, but I'd like
23· to ask them to see if you do· I see that this was
24· an analysis of employees limited to the product
25· development job function· Were you instructed to

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1· limit your analysis to the product development job
2· function?

3· . . . A· For females?

4· . . . Q· Well, it looks like this is -- yeah, for
5· females, correct· I mean, it looks like the -- the
6· analysis is limited to product development for all
7· of these three groups of employees, right?

8· . . . A· Yeah, that would have been a decision that
9· the solicitor made.

10· . . . Q· Okay· And then, in that same sentence that
11· starts with "OFCCP analyzed base compensation," says
12· "grouping them into clades with varying amounts of
13· experience," is clades a statistical term?

14· . . . A· That's -- no, not as far as I know.

15· . . . Q· Okay· And then there's a number of factors
16· here listed that -- that were controlled for in the
17· model· Who made the decision about which factors to
18· control for in this analysis?

19· . . . A· The solicitor.

20· . . . Q· Is previous experience here defined in the
21· same way as previous experience is defined in other
22· analyses?

23· . . . A· Yes.

24· . . . Q· Is that true for all the analyses you ran,
25· so I don't have to keep bugging you with that

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1· question?

2· . . . A· Yes.

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3. . . .Q. Okay. Is there any control in this
4. analysis for job title?
5. . . .A. No.
6. . . .Q. Is there any control in this analysis for
7. career level?
8. . . .A. No.

185:21-186:18

21. . . .Q. What controls are in this model that
22. describe the type of work that different employees
23. perform?
24. . . .A. Well -- well, it's by product development.
25. I think that's -- that's it.

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1. . . .Q. Anything other than the job function,
2. product development?
3. . . .A. No.
4. . . .Q. Are there any model -- controls in this
5. model that differentiate between the work that
6. different employees perform within that job
7. function, product development?
8. . . .A. No, I -- except for -- I mean, you can say
9. maybe exempt status, but...
10. . . .Q. But that would be it, right?
11. . . .A. Yeah.
12. . . .Q. Okay. Who made the decision to construct
13. these clades, if that's what we're going to call
14. them, or these groups by -- on the way they were
15. constructed, namely, one to less than three, three
16. to less than five, five to less than seven, seven to
17. less than nine?
18. . . .A. The solicitor.

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189:2-190:1

2. . . .Q. And looking at the chart that's underneath
3. Paragraph 26. We saw similar charts earlier in the
4. complaint with respect to a -- a different type of
5. analysis, but where your testimony was that you
6. generated the first several columns of results, but
7. that the final column, which, in that -- in that
8. instance, was Example Annual Wages Lost, was one
9. that Mr. Miller, rather than you, generated, right?
10. . . .A. Yes.
11. . . .Q. Okay. I guess I want to know if the same
12. thing is true here.
13. . . .A. Yes.
14. . . .Q. Okay. How did Mr. Miller compute the
15. example for employee numbers?
16. . . .A. I don't know.
17. . . .Q. Okay. Did you undertake any efforts before
18. the deposition to figure that information out or
19. learn that information?
20. . . .A. On this particular table -- well, I put
21. forth the effort, but, apparently, I did not look at
22. that.
23. . . .Q. Okay. That's not something I'd see in your
24. do files or your log files because it's not an
25. analysis you ran, correct?

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1. . . .A. That would not be in my .do files.

190:19-191:4

19. BY MS. MANTOAN:
20. . . .Q. If we could flip over to paragraph -- well,
21. I guess I should make clear on the record. So we
22. just talked about how certain information was
23. generated and where backup can be found for
24. Paragraph 26. Would those answers be the same for
25. Paragraphs 27 and Paragraph 28?

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1. . . .A. Yeah. It's just -- for 27, it's white and
2. Asian employees -- sorry, yeah, white and Asian
3. employees and then for 28, it's black and white

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4 employees.

192:2-194:3

2 Q. Okay. If we could turn to Paragraph 29.

3 Does this -- does this describe a

4 statistical analysis that's intended to study wage

5 growth?

6 A. Yes.

7 Q. And I see on the second line up from the

8 bottom of the page 9, so we're in the middle of

9 Paragraph 29, you see that same phrase, same

10 positions.

11 What controls are included in the model

12 described in Paragraph 29 to group employees in the

13 same positions?

14 A. So the controls are change in the

15 employee's global career level, change in job title,

16 prior experience, and time at Oracle and year.

17 Q. So are you only comparing employees who,

18 between year one and year two, moved from the same

19 job title and career level to the same, you know,

20 next highest job title and career level?

21 A. No. No, it's including all employees that

22 were in product development.

23 Q. Who -- were you instructed to run this wage

24 growth analysis?

25 A. Yes, I was instructed to run wage growth

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1 analysis.

2 Q. By who?

3 A. The solicitor.

4 Q. And who decided to focus that wage growth

5 analysis on the product development job function as

6 opposed to other job functions?

7 A. The solicitor.

8 Q. And who decided what controls to include in

9 the model?

10 A. The solicitor.

11 Q. Okay. Who decided to analyze base salary

12 as opposed to total compensation?

13 A. I believe the solicitor, but I -- I -- I

14 think that's something I probably would have

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15· suggested because if you'd look at the Medicare
16· wages or total compensation, you have things like
17· bonuses. So that the year-to-year variation
18· could -- if you had -- the company had a great year,
19· everybody gets a bonus and then the next year, it's
20· a bad year and so the change would be negative, so
21· it's -- it's hard to do it on total comp. If you --
22· I think you need to do it on base pay.
23· . . . Q. Is that true, even if you control for a
24· year in the model?
25· . . . A. Year would help, but it's -- you're still

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1· going to -- well, you're still going to -- going to
2· get the -- this effect, that it's jumping all over
3· place.

197:8-199:17

8· . . . Q. How does that -- how does the model treat
9· employees who might have moved from an IC to an M
10· role?
11· . . . A. That would be captured by the change in
12· global career level.
13· . . . Q. What if they moved from an IC4 to an M2?
14· Is that going to treat it different than if they
15· moved from an IC4 to an M4?
16· . . . A. It's going -- the variable only identifies
17· if a person changed.
18· . . . Q. And it wouldn't -- oh, okay.
19· . . . A. Yeah.
20· . . . Q. And it identifies in the same way a change
21· from IC4 to IC3, as it would from IC4 to IC5?
22· . . . A. Yep.
23· . . . Q. Okay. And it treats, in the same way, a
24· move from IC4 to IC5, as it would treat a move from
25· IC4 to M2?

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1· . . . A. Yes.
2· . . . Q. And who made the decision to -- so I
3· earlier asked about who made the decision about
4· which factors to control for.

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5. . . .A. Uh-hm.

6. . . .Q. Who made the decision about how to control
7. for, for example, change in career level? Was that
8. you or was that directed by Mr. Miller?

9. . . .A. Yeah. What I recall is that he told me the
10. factors to control for, but then when I am putting
11. this as I've described, you know, it's a -- it's a
12. change in log wage, that gives you the percentage
13. change, that -- I constructed it that way.

14. . . .Q. So on this specific example we were just
15. talking about, right, that the model would treat a
16. move from IC3 to IC4 --

17. . . .A. Uh-hm.

18. . . .Q. -- the same way it would treat a move from
19. an IC career level to a manager career level --

20. . . .A. Uh-hm.

21. . . .Q. -- is the decision to sort of treat those
22. the same way, is that a decision you made or is that
23. a decision that Mr. Miller made, where he said any
24. change, just treat it the same way?

25. . . .A. I don't think that specific thing was

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1. discussed.

2. . . .Q. Okay.

3. . . .A. But the model would treat all those
4. changes -- if it's like IC3 to IC5 or M2 to M6, they
5. would treat them the same. It's a change.

6. . . .Q. Okay. Is there any control in this model
7. that controls for the -- the reason why a given
8. employee may have changed job title?

9. . . .A. No.

10. . . .Q. Is there anything that controls for the
11. reason why a given employee may have changed career
12. level?

13. . . .A. No.

14. . . .Q. Are you just using the M personnel
15. experience file and the base pay file for this
16. analysis?

17. . . .A. Well, the location file.

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201:2-203:18

2. . . .Q. So the model is saying that the wage growth
3. is different for men and women after I've controlled
4. for X, Y, and Z, correct?

5. . . .A. Yeah. As I mentioned, it -- it -- it
6. controls for job title, okay, but when you
7. difference the regression equations, they will --
8. that -- that factor doesn't -- if nobody switches
9. job title --

10. . . .Q. Uh-hm.

11. . . .A. -- that factor doesn't matter, okay. So --

12. . . .Q. But if some people do, it does?

13. . . .A. If some people do, then it -- there's an
14. indicator that it switched.

15. . . .Q. And is that, again, just -- there's been
16. some switch, there's -- independent of what kind it
17. is?

18. . . .A. Yep.

19. . . .Q. Okay. And then what is that change -- I
20. guess what I'm trying to understand is like -- so
21. there's an indicator that says that and so if there
22. are two employees, both of whom switched job --
23. changed job title between year one and year two,
24. they're going to get the same, sort of, coefficient
25. in a -- what's going to be true that's the same

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1. about them in the model?

2. . . .A. If -- say it again.

3. . . .Q. Other things being equal. So if there's
4. two employees, who between year one and year two
5. both changed job title.

6. . . .A. Uh-hm.

7. . . .Q. Let's say they changed -- they started
8. in -- they started in different job titles and they
9. end in different job titles. Is the model somehow
10. predicting that the wage growth would be similar for
11. them? Or what is the model -- how is the model
12. treating those people vis-à-vis each other?

13. . . .A. Yeah, they -- they -- both of them would --
14. it would indicate they both changed.

15. . . .Q. Okay.

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16. . . .A. That's what it would do. Yeah.
17. . . .Q. And it would expect people who had both had
18. that change to have similar outcomes, all other
19. things being equal, to any two people who didn't
20. have that change, right, or one person who had the
21. change and one who didn't?
22. . . .A. Yeah, ultimately that's -- that's --
23. . . .Q. Okay.
24. . . .A. -- it's -- it's -- it's -- you know, it's
25. set up to identify people that were promoted, okay.

203

1. So --
2. . . .Q. Uh-hm.
3. . . .A. But, you know, it's possible that some
4. people were demoted. I -- I don't know. But -- so
5. those two people would be treated -- treated as --
6. that they changed.
7. . . .Q. Do you have any understanding of whether
8. there are -- there's such a thing as like a
9. half-step promotion at Oracle, so if you stay in the
10. same job and -- but you, say, take on additional
11. responsibilities?
12. . . .A. I don't know about that.
13. . . .Q. Okay. So I'm correct, then, that the model
14. described in Paragraph 29, it doesn't have any
15. control for whether an employee, who stayed in the
16. same job title, assumed increased responsibilities,
17. correct?
18. . . .A. I -- I don't know.

203:19-25

19. . . .Q. Well, is there anything -- why are you
20. saying you don't know? You made the model.
21. . . .A. Well, can you tell me what you mean by
22. increased responsibilities? Because --
23. . . .Q. Well, is there anything that distinguishes
24. between employees within the same job title in the
25. same year -- scratch that. I'll move on.

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204:22-205:2

22. . . .Q. So going back to -- I don't know whether to
23. call them the main analyses, but the analyses in
24. Paragraphs 13 through 17. Is there -- is there
25. anything in those analyses that identifies or

205

1. studies the cause of this pay gap in that specific
2. analysis?

205:3-7

3. MR. MILLER: Objection. Vague as to cause.
4. and also if you're asking for a legal conclusion,
5. obviously he can't testify as to that.
6. THE WITNESS: So I can answer?
7. MR. MILLER: Yes.

205:8-19

8. THE WITNESS: Okay.
9. Well, I think -- I mean, the regression,
10. what a regression does is look at average
11. differences in pay by gender. And then when we --
12. when we're controlling for variables, such as the
13. ones listed here, time in company, prior experience,
14. and so forth, we're effectively indicating that
15. those factors are not explaining why there's a pay
16. disparity.
17. So the underlying cause, I mean, you know,
18. one possibility is that there's discrimination, but
19. there could be other possibilities.

205:20-23

20. MS. MANTOAN: Okay. I guess --
21. THE WITNESS: And it's not any of those
22. controls.
23. MS. MANTOAN: Okay.

205:25-206:3

25. . . .Q. Does the model, whose results are presented

206

1. in Paragraphs 13 through 17, does it study the
2. impact of any particular practice of Oracle's on
3. pay?

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206:4-17

4 · MR. MILLER: Objection. · Again, as to -- I ·
5 · guess vague or --
6 · I mean -- I'm sorry, Counsel. The reason
7 · I'm -- I'm raising this objection is that if you're
8 · asking him to come to a legal conclusion, I don't
9 · think that's appropriate. I guess I'm not sure if
10 · that's what you're asking.
11 · MS. MANTOAN: Yeah, I'm not intending to
12 · ask about a legal conclusion. I'm just asking if
13 · there's any, like, specific practice or specific
14 · type of behavior, specific conduct of Oracle that
15 · this model is testing to determine whether or not
16 · it -- it generates different outcomes for men and
17 · women, or Asians or whites.

206:18-207:15

18 · THE WITNESS: · It could be discrimination.
19 · It could be something else.
20 · BY MS. MANTOAN:
21 · . . . Q · When you say discrimination, are you --
22 · it's not -- it's not --
23 · . . . A · Well, I guess I -- I want to understand
24 · what you mean by practice. · Like, let's say that
25 · Oracle is discriminating.

207

1 · . . . Q · Uh-hm.
2 · . . . A · I -- I'm not saying that they are, but --
3 · . . . Q · Uh-hm.
4 · . . . A · -- then that would be captured in the fact
5 · that we have a statistically significant pay
6 · disparity.
7 · . . . Q · But this model isn't telling you why that
8 · disparity -- what's generating that disparity,
9 · correct? · It's telling you it's not these seven
10 · things you controlled for, but it's not telling you
11 · what is generating?
12 · . . . A · Well, it could be discrimination.
13 · . . . Q · Right. · But it could be other things, as
14 · you said?
15 · . . . A · Yes.

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208:17-209:12

17 · · · ·Q· So keeping in mind that you're here as a
18 · designee as a 30(b)(6) witness for the OFCCP, my
19 · question is: Did OFCCP attempt to follow the --
20 · attempt to follow Directive 307 in constructing the
21 · statistical model in the second amended complaint?
22 · · · ·A· I don't know. I -- I think I said earlier
23 · that I said I'm not familiar with the 307. I've
24 · heard it mentioned, but I don't exactly know what's
25 · in it.

209

1 · · · ·Q· Okay. Did OFCCP attempt to follow
2 · Directive 2018-05 in constructing the statistical
3 · model in the second amended complaint?
4 · MR. MILLER: So I'm going to instruct the
5 · witness not to answer that question as it would
6 · reveal attorney work product or attorney work
7 · product -- or attorney-client communications.
8 · MS. MANTOAN: Okay. So what -- you're
9 · instructing the witness not to answer whether the
10 · agency attempted to follow its own directives in
11 · constructing the complaint?
12 · MR. MILLER: That's right. That's right.