

**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

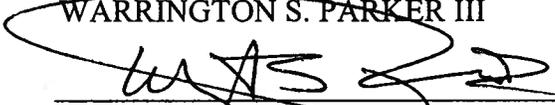
**DEPOSITION DESIGNATIONS
RE THE DEPOSITION OF JANE
SUHR – JUNE 26, 2019**

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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San Francisco, Ca

DEPOSITION DESIGNATIONS RE THE DEPOSITION OF JANE SUHR – JUNE 26, 2019

DEPOSITION OF JANE SUHR – JUNE 26, 2019

16:3-17:19

3. Can you state your full name, please?

4. . . . A. Jane Yoojin Suhr.

5. . . . Q. What is your current occupation?

6. . . . A. My current occupation, I'm an employee with

7. the federal government. I work for the Department

8. of Labor.

9. . . . Q. What is your current position with the

10. Department of Labor?

11. . . . A. My current position is Regional Director

12. for the Pacific region of the OFCCP.

13. . . . Q. Okay. When did you assume that position?

14. . . . A. About two, three months ago, officially.

15. . . . Q. Okay. Around March of this year?

16. . . . A. Yes -- yes.

17. . . . Q. Okay. How long have you worked for OFCCP?

18. . . . A. Since 2001.

19. . . . Q. Okay. Let the --

20. . . . A. November 2001.

21. . . . Q. Okay. If you could, could you please take

22. me through, in a chronological order, the positions

23. you've held with OFCCP since joining them in 2001?

24. . . . A. Okay. I started as a compliance officer in

25. 2001. Then I was promoted to Assistant District

17

1. Director about five years later and then promoted to

2. District Director another four or five years later.

3. Then promoted to the Deputy Regional Director

4. position another four or five years later, and now

5. in my current role.

6. . . . Q. Okay.

7. . . . A. After Deputy Region Director for -- since

8. 2015, so four years.

9. . . . Q. If -- just to touch on the relevant time

10. periods for what we're doing here --

11. . . . A. Okay.

12. . . . Q. -- when did you assume the position of

13. Deputy Regional Director?

14. . . . A. Sometime in 2015 officially I became the

15. Deputy Regional Director.

16. . . . Q. Okay. Reporting to Ms. Wipper?

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17. . . . A. Ms. Wipper, yes.
18. . . . Q. Who was the Regional Director?
19. . . . A. The Regional Director.

18:8-14

8. . . . Q. So all throughout 2014, which is a relevant
9. time period in this case –
10. . . . A. Yes.
11. . . . Q. --- you were Acting Regional Director?
12. . . . A. Deputy Regional Director.
13. . . . Q. Sorry. Acting Deputy Regional Director.
14. . . . A. Yes.

18:18-19:10

18. . . . Q. Can you please describe for me the duties
19. and responsibilities as the Deputy Regional
20. Director?
21. . . . A. As Deputy Regional Director, you support
22. the Regional Director in the enforcement, compliance
23. assistance, worker outreach activities of the
24. regional office.
25. . . . Q. When we speak about the region, we're

19

1. speaking of the Pacific region?
2. . . . A. The Pacific region.
3. . . . Q. Just, again, so we have it in the record,
4. what does the Pacific region encompass for OFCCP?
5. . . . A. It encompasses nine states and territories.
6. Do you want me to name them?
7. . . . Q. Yes, please.
8. . . . A. Okay. So we cover Alaska, Arizona,
9. California, Idaho, Nevada, Oregon, Washington,
10. Hawaii, and Guam.

20:23-21:6

23. . . . Q. Okay. From a reporting standpoint, do
24. the -- do the District Directors for the six
25. districts that you mentioned, did they report to you

21

1. during the time that you served as the Deputy
2. Regional Director?

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3 . . . A . Yes.

4 . . . Q . Not to Ms. Wipper, it was reporting to you?

5 . . . A . They would report to the Deputy Regional

6 . Director.

21:7-23

7 . . . Q . Okay . What role, if any, as Deputy

8 . Regional Director, would you have with respect to

9 . ongoing audits that were being conducted in the

10 . district offices?

11 . . . A . With -- with respect to the ongoing audits,

12 . the Deputy Regional Director, in supporting the

13 . Regional Director, oversees all the enforcement

14 . activities . So, for instance, if there are

15 . investigative plans, onsite documents to review, you

16 . would consult with the field office -- the field

17 . office will consult with the regional office, and I

18 . would have the role with the Regional Director to

19 . meet with the field offices in carrying out their

20 . enforcement actions.

21 . . . Q . Would you participate in the actual onsite

22 . audits that occur?

23 . . . A . Yes.

22:12-23:7

12 . . . Q . As Deputy Regional Director, where were you

13 . based out of?

14 . . . A . I was in Los Angeles when I was acting.

15 . . . Q . And when you became the -- officially in

16 . 2015, when you became the --

17 . . . A . Yes.

18 . . . Q . -- the Deputy Regional Director officially,

19 . where was your office based?

20 . . . A . In San Francisco, at the regional office.

21 . . . Q . During the time that you were the -- both

22 . the Acting and Deputy Regional Director, who was the

23 . District Director for the San Francisco Greater Bay

24 . office?

25 . . . A . If I recall correctly, I think it was Hea

23

1 . Jung Atkins at one point, Robert Doles at another

2 . point . I think those two were the District

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3. Directors of the San Francisco office.
4. . . .Q. So do you recall, was Ms. Atkins in that
5. position at the time that you became the Acting
6. Regional Director?
7. . . .A. Yes, she was in that position.

26:12-23

12. . . .Q. Ms. Suhr, I've placed before you what we've
13. marked as Deposition Exhibit 2. This is a document
14. entitled OFCCP's Objections and Answers to Defendant
15. Oracle America, Inc.'s Interrogatory Set One as
16. Amended.
17. If you would, could you look at page 75,
18. please. Does your signature appear there?
19. . . .A. Yes.
20. . . .Q. So you were the person who swore to the
21. truth of the answers that were given by the OFCCP in
22. this document?
23. . . .A. Yes.

27:10-29:7

10. . . .Q. Okay. If you could, if you can turn with
11. me to page 7.
12. . . .A. Okay.
13. . . .Q. Page 7 is -- contains the answer to
14. interrogatory one, which was asked to identify each
15. person by name, title, and role and last known
16. contact information who participated in the
17. compliance review that's referenced in the complaint
18. in this matter. And there's a listing of 13 people.
19. You see that?
20. . . .A. Uh-hm. Yes.
21. . . .Q. So what was Ms. Wipper's role in the
22. compliance review?
23. . . .A. She led the compliance evaluation.
24. . . .Q. Of Oracle?
25. . . .A. Of Oracle as the Regional Director.

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1. . . .Q. What was your role in the compliance
2. review?
3. . . .A. Assist the Regional Director in carrying

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4. out the enforcement actions.
5. . . .Q. What was Mr. Doles' role in the compliance
6. review?
7. . . .A. He was -- I guess at this time, he was the
8. District Director overseeing the compliance
9. evaluation conducted by the district office.
10. . . .Q. So it mentions Ms. Atkins. You were
11. answering this question as of -- was there a
12. particular time frame you had in mind when you were
13. answering this question or swearing to the accuracy
14. of this question?
15. . . .A. I believe at this time that was her title.
16. I mean, it didn't list her previous title, but she
17. also was the District Director prior to Mr. Doles.
18. . . .Q. So what was her role in the compliance
19. review, if any?
20. . . .A. Well, at the time, she was the District
21. Director. She was overseeing the compliance
22. evaluation and as Special Assistant, she continued
23. to assist with the compliance evaluation.
24. . . .Q. I'm going -- I believe his name was
25. pronounced Mr. Mikel, Brian Mikel.

29

1. . . .A. Yes.
2. . . .Q. What was his role in the compliance review?
3. . . .A. He was also a manager overseeing the
4. compliance evaluation.
5. . . .Q. Where was he based?
6. . . .A. He is based in Hawaii, reporting to the
7. San Jose district office.

29:15-30:6

15. . . .Q. Yes, Ms. Atkins testified that the March
16. 2015 onsite audit of Oracle, as part of the
17. compliance review, was led by Mr. Mikel; does that
18. comport with your recollection?
19. . . .A. For the onsite, I believe he was the lead.
20. . . .Q. Why?
21. . . .A. In coordinating all the reviews.
22. . . .Q. Why? Why did you bring someone in from
23. Hawaii to lead an onsite audit in the San Francisco

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24. district of one of its contractors?

25. . . . A. He also had an Oracle review open in his

30

1. office, that was assigned to his office, and he

2. was -- I believe his office was further along in the

3. review of Oracle. So because he had more

4. information on the case and based on his previous

5. experience, we assigned him to be the lead for the

6. onsite.

33:15-24

15. . . . Q. Looking back at -- on page 7, there's a

16. gentleman named Hoan Luong?

17. . . . A. Hoan Luong.

18. . . . Q. Hoan Luong?

19. . . . A. Yes.

20. . . . Q. What was his role in the compliance audit?

21. . . . A. He was a compliance officer assigned to the

22. case, so --

23. . . . Q. Was he at -- the lead compliance officer --

24. . . . A. Yes, he was the lead.

34:1-4

1. There's a reference to an Anna Liu. What

2. was her role?

3. . . . A. She was also a compliance officer

4. supporting Hoan Luong.

35:4-7

4. . . . Q. There's a reference to a Shirong,

5. S-h-i-r-o-n-g, Andy Leu, L-e-u. What was his role?

6. . . . A. He is the statistician and he was

7. conducting the statistical analysis on this case.

35:23-36:23

23. . . . Q. In your role as, at the time, Acting Deputy

24. Regional Director, did you have any exposure to the

25. desk audit that was conducted in 2014 of Oracle's

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1 · headquarters?

2 · · · · A · I did not have --

3 · Exposure meaning?

4 · · · · Q · Meaning were the -- were the results of the
5 · desk audit shared with you and reviewed with you?

6 · · · · A · Well, in a summary fashion, the desk audit
7 · was summarized and the results were reported to the
8 · regional office.

9 · · · · Q · Were there certain -- if I use the term
10 · “indicator,” do you know what that term means?

11 · · · · A · Yes.

12 · · · · Q · What does the term “indicator” mean in the
13 · context of a desk audit?

14 · · · · A · In a desk audit. · So when we begin the
15 · compliance evaluation and we receive information
16 · from the company, we analyze the information
17 · submitted pursuant to the scheduling letter, which
18 · includes personnel activity data, the company’s AAP
19 · compensation data, and so forth. · So with that data,
20 · we run a preliminary analysis, we call it the desk
21 · audit, and if the -- if that analysis shows that
22 · there’s adverse impact or certain issues that need
23 · further investigating, we call them indicators.

37:9-24

9 · · · · Q · Okay. · At any point, at any point prior to
10 · the issuance of the NOV, did -- was Oracle apprised
11 · of the indicators that were identified at the desk
12 · audit?

13 · · · · A · Yes.

14 · · · · Q · When were they identified of the indicators
15 · of the desk audit?

16 · · · · A · They were informed when the agency
17 · contacted Oracle to schedule the onsite, which is
18 · the next phase of the investigation.

19 · · · · Q · So you believe they were told at that time
20 · what the indicators were?

21 · · · · A · Yes.

22 · · · · Q · In what form were they told?

23 · · · · A · The onsite letter, conversations,
24 · scheduling the onsite.

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38:20-39:19

20. . . .Q. Going back to my question, then, with that
21. part of the objection withdrawn, what were the
22. indicators that OFCCP identified as a result of the
23. desk audit with respect to Oracle's headquarters?
24. . . .A. Okay. So I believe Oracle was informed
25. that there were hiring and compensation issues that

39

1. needed further investigation through an onsite.
2. . . .Q. Was OFCCP any more specific than that prior
3. to the onsite?
4. . . .A. Not that I am aware of.
5. . . .Q. All right. At any point, prior to the
6. issuance of the NOV, did OFCCP provide any more
7. detailed information about the nature of the
8. indicators, other than what you just testified to,
9. to Oracle?
10. . . .A. We discussed the indicators again at the
11. entrance conference at the onsite, and I believe
12. there was an exit conference held by the team that I
13. wasn't at, but I'm not sure what the detail
14. discussion was at that time.
15. . . .Q. Anything else, that you have any personal
16. knowledge of, in terms of advising Oracle of the
17. specific nature of the indicators prior to the
18. issuance of the NOV?
19. . . .A. No.

55:20-56:1

20. . . .Q. In general, what is the purpose of a desk
21. audit?
22. . . .A. To review and analyze the information
23. submitted by the contractor in response to the
24. scheduling letter for compliance with the executive
25. order and the other regulations enforced by the

56

1. agency.

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56:4-13

4 . . . Q . So, again, in general, what goes into the
5 . decision to proceed from a desk audit to the next
6 . phase, including an onsite visit?
7 . . . A . So, at the desk audit, you review analyzed
8 . information . If there are certain issues that are
9 . not resolved that the compliance officer determines
10 . does not fully address or he cannot make a
11 . determination whether the contractor is in
12 . compliance or not, then you would move to the next
13 . phase, which is the onsite.

61:19-62:4

19 . . . Q . Ms. Suhr, I've placed before you what we've
20 . marked as Exhibit 5 . Please take a look at it . Let
21 . me know when you're ready to proceed.
22 . . . A . Okay.
23 . . . Q . Have you seen Exhibit 5 before?
24 . . . A . Scheduling letter, yes.
25 . . . Q . Is this something you saw at the time or

62

1 . something you've seen subsequent?
2 . . . A . Subsequent -- this specific letter?
3 . . . Q . Yeah.
4 . . . A . Subsequently.

62:14-17

14 . Looking at the form of this letter, is this
15 . the kind of letter that is typically sent out to
16 . start the desk audit process?
17 . . . A . Yes.

66:17-67:21

17 . . . Q . Ms. Suhr, I've placed before you what we've
18 . marked as Exhibit 8, which is an e-mail chain
19 . between Shauna Holman-Harries of Oracle and Brian
20 . Mikel in -- on February 26th and 27th of 2015.
21 . I wanted to highlight some things and I
22 . have a question for you about it . In the e-mail at

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23· the bottom --

24· . . . A· Okay.

25· . . . Q· -- Mr. Mikel says to Ms. Holman-Harries,

67

1· “The issues that warrant further investigation
2· include areas of hiring, promotion, termination, and
3· compensation.”

4· Above that, in her response,

5· Ms. Holman-Harries says, “Well, we understand the
6· general areas you may want to cover. It would

7· really be helpful to know ASAP what you’re looking
8· at. Below” -- skipping a sentence. It says, “Below

9· you mentioned the onsite will include areas of
10· hiring, promotion, termination, and compensation;

11· however” --

12· . . . A· Okay.

13· . . . Q· -- “we’ve not been informed of any OFCCP

14· concerns in any of these areas. In order to

15· identify the right people and confirm availability,

16· we request that you provide specifics on any

17· identified concerns in these areas and identify

18· topics you want to cover.”

19· . . . Was Ms. Holman-Harries’ request of

20· Ms. (sic) Mikel a reasonable request for a

21· contractor to make in advance of an onsite?

67:22

22· . . . MR. MILLER:· Objection.· Lacks foundation.

67:24-68:6

24· . . . THE WITNESS:· Before the onsite

25· investigation, as Brian Mikel responded, “Informing

68

1· the contractor that these are the areas we’re going

2· to investigate -- investigate further, such as

3· hiring, promotion, termination, and compensation in

4· several lines of business,” that’s sufficient

5· information that we provide to the contractor. From

6· my experience, that’s sufficient.

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68:8-25

8 . . . Q . To be that -- to be that general?
9 . . . A . This is the general information we provide.
10 . At this stage of the investigation --
11 . . . Q . My question to you is different, though.
12 . My question to you was, was Ms. Holman-Harries'
13 . request to Mr. Mikel, for more specifics to help
14 . provide information that was requested, an
15 . unreasonable request?
16 . . . A . It's not unreasonable.
17 . . . Q . Okay . Is it the kind of request that
18 . someone in Mr. Mikel's position, meaning that this
19 . person that is leading the onsite should have
20 . responded to substantively?
21 . . . A . No.
22 . . . Q . So, despite the fact that a contractor has
23 . asked to be given more information, Mr. Mikel was
24 . under no obligation to provide additional
25 . information in advance of the onsite?

69:4

4 THE WITNESS: Right.

70:6-24

6 . . . Q . Prior to you -- do you recall -- do you
7 . recall how many days the -- this is in March of
8 . 2015. Do you recall how many days the audit was
9 . supposed to have lasted?
10 . . . A . I -- I think it was less than a week. I
11 . believe there was a scheduling issue from Oracle
12 . representatives, so we had to reduce the onsite
13 . dates.
14 . . . Q . And at the end, in advance of the audit,
15 . what was your understanding of what your role was
16 . going to be at the audit?
17 . . . A . In addition to providing guidance and
18 . support and more detail?
19 . . . Q . Yeah, the specifics in terms of --
20 . . . A . Participate in the entrance conference,
21 . participate in the worksite inspection, onsite
22 . inspection, assist with reviewing documents,
23 . conducting interviews, analyzing information, and
24 . address any issues that may come up.

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71:13-74:12

13. . . .Q. You've mentioned the entrance conference.

14. Did you attend the entrance conference?

15. . . .A. I was at the entrance conference.

16. . . .Q. Do you recall who else was present?

17. . . .A. There were representatives from Oracle and

18. the agency. From the agency, it was the Regional

19. Director, myself, managers, Brian Mikel. Hea Jung

20. Atkins, I'm not sure if she was there or not.

21. Compliance officers, Anna Liu, Hoan Luong. I can't

22. recall if Francisco Melara was there or not.

23. . . .Q. Do you recall --

24. . . .A. And then from Oracle.

25. . . .Q. -- do you recall who was present from

72

1. Oracle?

2. . . .A. President Thomas Kurian, Juana Schurman,

3. Harries -- Holman-Harries.

4. . . .Q. When you say Juana --

5. . . .A. Or Shauna -- I'm sorry, Shauna

6. Holman-Harries.

7. . . .Q. When you say Juana, you mean Ms. Schurman,

8. Juana Schurman?

9. . . .A. I can't recall if she was there or if she

10. was there briefly.

11. . . .Q. Okay.

12. . . .A. And Charles. I can't remember his last

13. name. And another person, but I can't recall her

14. name either. Elizabeth? I can't remember.

15. . . .Q. Was there a plan developed before going as

16. to who was going to do the talking from the OFCCP?

17. . . .A. Yes.

18. . . .Q. And who was going to do the talking?

19. . . .A. So the entrance conference is usually led

20. by the compliance officer, so compliance officer

21. Hoan Luong did some of the talking and I believe

22. Brian Mikel, the manager, interjected or added a few

23. more remarks. That's what I recall.

24. . . .Q. Did you or Ms. Wipper make any comments

25. during the entrance conference?

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1 · · · · A · I don't recall making any comments and I

2 · don't recall Janette Wipper making comments either.

3 · · · · Q · The -- did Mr. -- do you recall what

4 · Mr. Luong said to the Oracle representatives in the

5 · entrance conference as to -- about the substance of

6 · the audit and any issues that OFCCP had -- that they

7 · were going to be looking into during the course of

8 · the audit?

9 · · · · A · Yes, I do recall compliance officer Hoan

10 · Luong discussing the issues that we would be

11 · investigating further onsite.

12 · · · · Q · Aside from the high-level ones that

13 · Mr. Mikel referenced in his e-mail to

14 · Ms. Holman-Harries, meaning compensation, hiring,

15 · things of that nature, was Mr. Luong any more

16 · specific at the entrance conference?

17 · · · · A · He may have discussed which line of

18 · business or department we were looking into, but I

19 · can't recall.

20 · · · · Q · And to the extent you have a memory of him

21 · discussing a line of business, do you recall which

22 · one he said, if any?

23 · · · · A · Probably product development area. And I

24 · think that's why Thomas Kurian was there, because he

25 · was head of product development.

74

1 · · · · Q · Anything else besides mentioning that you

2 · were -- they were looking into product development?

3 · Anything more specific that you recall Mr. Luong

4 · stating about the areas that OFCCP would be looking

5 · into during the onsite?

6 · · · · A · No. That's the extent of my recollection.

7 · · · · Q · Okay. Do you recall whether or not

8 · Mr. Mikel made any statements fleshing out the areas

9 · of concern that OFCCP would be looking into, beyond

10 · both what he said in his e-mail to

11 · Ms. Holman-Harries and what Mr. Luong said?

12 · · · · A · No.

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78:5-80:16

5 · · · Q · Ms. Suhr, what is a standard compliance
6 · evaluation report, or S-C-E-R, SCER?

7 · · · A · SCER, it's the report that the compliance
8 · officer fills out when he or she conducts the
9 · compliance evaluation.

10 · · · Q · And more specifically, the results of an
11 · onsite review, correct?

12 · · · A · Results of the desk audit, so it's a case
13 · report on the case that is used from the initiation
14 · of the beginning of the investigation compliance
15 · evaluation to the completion. So it's a living
16 · document throughout the compliance evaluation.

17 · · · Q · So it -- it's something the compliance
18 · officer does --

19 · · · · · THE REPORTER: I'm sorry. So it's
20 · something --

21 · BY MR. SHWARTS:

22 · · · Q · -- something the compliance officer does,
23 · fills it out during the desk audit, continues to
24 · fill it out during the process of the onsite?

25 · · · A · Yes.

79

1 · · · Q · And it continues as additional information
2 · may be provided by the contractor thereafter?

3 · · · A · Yes.

4 · · · Q · Is there -- in each audit, is there one
5 · particular custodian of the SCER, or is it something
6 · that can be amended by multiple hands?

7 · · · A · So it is prepared by the compliance officer
8 · primarily, but it's reviewed by the supervisor.

9 · · · Q · And -- meaning the Assistant District
10 · Director or the District Director?

11 · · · A · Or District Director, yes.

12 · · · Q · Depending on the district?

13 · · · A · Yes, or the regional office.

14 · · · Q · In the case of the Oracle headquarters'
15 · audit, was that the responsibility of Mr. Luong?

16 · · · A · Yes.

17 · · · Q · So he had control over that document?

18 · · · A · Yes.

19 · · · Q · Now, you say it's reviewed. Is it reviewed
20 · at the -- at what point on a continuum -- and we can

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21 · start generally. What part in the continuum would
22 · the SCER be reviewed by the next level or levels
23 · above the compliance officer?
24 · · · A. · Generally, at the major investigative
25 · stage, the manager would review the document.

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1 · · · Q. · So, for example, if there was an onsite
2 · audit, the compliance officer would complete
3 · whatever relevant sections of the SCER relate to the
4 · onsite audit and at that point, the compliance
5 · officer would share the SCER?
6 · · · A. · Would share and review the SCER with the
7 · supervisor.
8 · · · Q. · To your understanding, and in general, what
9 · is the purpose of reviewing the SCER with the
10 · supervisor or multiple supervisors?
11 · · · A. · It's a quality control. Making sure that
12 · we're conducting our investigation accurately and
13 · efficiently. The supervisor may review the document
14 · to see if there's any issues that the compliance
15 · officer missed or there are issues that do not need
16 · further investigation.

86:23-87:10

23 · · · Q. · Okay. What is your -- again, your
24 · understanding as to what the requirements are for an
25 · exit conference at an onsite?

87

1 · · · A. · For the exit conference, we -- the agency
2 · meets with the top onsite official or his or her
3 · designee, discuss the status of the onsite, the
4 · compliance evaluation, what the next steps would be,
5 · if there's any information that needs to be, you
6 · know, collected, that is also discussed, and answer
7 · any questions that the contractor may have.
8 · · · Q. · Are you supposed to provide tentative
9 · findings?
10 · · · A. · If possible.

87:21-91:11

21 · · · Q. · Ms. Suhr, I've placed before you what is --
22 · and I'll say our excerpts, not every single page,

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23 · but excerpts --

24 · · · · A · Okay.

25 · · · · Q · -- from the FCCM, which I know runs, you

88

1 · know, over 500 pages and we tried not to kill too

2 · many trees.

3 · · · · A · Okay.

4 · · · · Q · But at least the front page reflects -- do

5 · you recall that the October 2014 is the most current

6 · version?

7 · · · · A · Yes.

8 · · · · Q · Or at least the version that was applicable

9 · in March 2015?

10 · · · · A · Yes.

11 · · · · Q · Okay · If you would look with me to

12 · page 107 in Section 2N.

13 · · · · A · Okay.

14 · · · · Q · Entitled Exit Conference.

15 · · · · · "The FCCM provides upon completion of the

16 · · · · · necessary onsite review and evaluation of

17 · · · · · all information obtained, COs will discuss

18 · · · · · the tentative findings of the compliance

19 · · · · · evaluation with the contractor at the

20 · · · · · onsite exit conference · The onsite exit

21 · · · · · conference should be held with the

22 · · · · · contractor CEO executive officer or

23 · · · · · designee at a mutually agreed-upon

24 · · · · · location."

25 · · · · A · Okay.

89

1 · · · · Q · And you mentioned earlier that you were not

2 · present at any exit conference that took place at

3 · the March onsite; is that correct?

4 · · · · A · Right.

5 · · · · Q · All right · Do you know who held an exit

6 · conference at the March onsite?

7 · · · · A · I believe it was Brian Mikel.

8 · · · · Q · Do you know who else was present from the

9 · OFCCP?

10 · · · · A · I don't recall.

11 · · · · Q · Ms. Atkins testified that she was not.

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12. . . .A. She was not, okay.

13. . . .Q. No. In fact, she was not aware of any exit

14. conference taking place in March.

15. . . .A. Okay.

16. . . .Q. So when you say that you believe Mr. Mikel

17. was, is that something you're guessing happened or

18. do you have a specific memory of him reporting

19. orally or in writing that he held one?

20. . . .A. So during the compliance evaluation, there

21. was an inquiry as to -- or a dispute as to whether

22. the exit conference occurred, so I confirmed with

23. Brian Mikel whether the exit conference took place

24. and he had confirmed that it did. So I have a

25. specific memory.

90

1. . . .Q. So this is sometime -- some -- sometime

2. later? Because --

3. . . .A. Sometime later, yes.

4. . . .Q. When -- when Oracle, through its counsel,

5. complained that there had been no exit conference,

6. you just called him and he told you that one

7. happened?

8. . . .A. I didn't call him. I think I may have

9. e-mailed him, but I asked him about it.

1. . . .Q. Okay. Well, I will -- I will represent to

11. you that no such e-mail has been produced, which

12. would have been responsive to any request we had

13. relating to this onsite. So to the extent -- so are

14. you --

15. . . .A. Well, I do remember asking him about it,

16. whether it's by call -- phone call or e-mail, I'm

17. not 100 percent sure.

18. . . .Q. And what did he tell you, other than

19. telling you that one took place? That --

20. . . .A. He did tell me that one took place and I do

21. remember asking who was there from Oracle, 'cause

22. there was a confusion whether it took place or not,

23. and he did tell me that either Shauna or Charles --

24. somebody had to leave early to catch a flight, so

25. they had somebody else participate at the exit

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91

1 · conference. · So I'm not sure if Shauna or Charles
2 · were there or not, but there was an issue with them
3 · catching an earlier flight.
4 · . . . Q. · Did Mr. Mikel tell you what was reported to
5 · Oracle at this alleged exit conference?
6 · . . . A. · Just -- he told me that he discussed
7 · additional information that needed to be analyzed
8 · and gathered from Oracle and that we may have to
9 · return onsite to conduct additional interviews.
10 · . . . Q. · Anything else?
11 · . . . A. · I don't recall.

91:12-92:1

12 · . . . Q. · Is there supposed to be some record made of
13 · the fact that an exit conference took place in the
14 · SCER?
15 · . . . A. · There's no section in the SCER that
16 · addresses exit conference.
17 · . . . Q. · Is there someplace that a record -- given
18 · that it specifically referenced and required in the
19 · FCCM, is there any place for the CO or the person
20 · running the onsite to make a written record of what
21 · the -- you know, just for -- to make a record that
22 · you've held it and that you've informed the
23 · contractor of certain things and certain
24 · requirements so --
25 · . . . A. · It's not required to record -- it's not a

92

1 · requirement to document that in the -- so --

92:9-14

9 · . . . Q. · In your experience, in overseeing audits,
10 · both as a CO and later as a District Director, has
11 · it been your practice or the practice of people that
12 · have been reporting to you, to make some record of
13 · the fact that an exit conference took place?
14 · . . . A. · No. · I don't think so.

93:11-18

11 · . . . Q. · Okay. · Do you recall Mr. Mikel telling you
12 · whether or not he provided Oracle with the tentative
13 · findings or were there no tentative findings at that

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14. time?

15. . . .A. I don't know what he disclosed, but there
16. were probably no tentative findings at that time
17. because of all the outstanding information that we
18. were still waiting to obtain from Oracle.

102:25-103:10

25. . . .Q. Again, do you know of any reason why -- I

103

1. used a word that I think that you objected to, so
2. I'll use a different word. Do you know the reason
3. why Mr. Mikel was simply no longer involved in the
4. audit after April or May of 2015, after serving as
5. the lead on the onsite?
6. . . .A. I think he was -- it was for his personal
7. reasons. He had a newborn. He -- for personal
8. reasons, he had to -- he had other matters that he
9. was handling for his office and it was just too
10. time-consuming.

104:13-15

13. . . .Q. Okay. Was there a second onsite that was
14. scheduled?
15. . . .A. I believe there was.

104:18-21

18. . . .Q. Okay. Do you know who led the second
19. onsite?
20. . . .A. I think Hea Jung Atkins was there. I can't
21. recall exactly who participated on the onsite.

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108:1-9

1 Was there an exit conference conducted
2 . following the July -- June, July onsite? Do you
3 . know?
4 A . I have been informed that there was.
5 Q . By whom?
6 A . By the manager that was at the onsite.
7 Q . Which was whom?
8 A . I believe it was Hea Jung Atkins, but I'm
9 . not 100 percent sure.

108:10-16

10 Q . So, again, at her deposition, she testified
11 . that she was not present for any onsite exit
12 . conference in July or June. Again, does that help
13 . refresh your memory as to who might have done some
14 . exit conference in June or July?
15 A . No, I mean, I can't remember, other than
16 . verifying that an exit conference did occur.

108:17-109:16

17 Q . Was any -- again, consistent with the
18 . direction of the FCCM, were any tentative findings
19 . at now this point, in June or July, provided to
20 . Oracle as to the tentative findings of the audit
21 . based on now two onsite reviews?
22 A . Uh-hm. I'm not sure what was provided to
23 . Oracle.
24 Q . At this point, again, as of the end of July
25 . or sometime in July of 2015, had Oracle been

109

1 . provided with any of OFCCP's findings or concerns,
2 . beyond just general concerns about compensation and
3 . hiring relating to product development?
4 A . I'm not sure.
5 Q . Is it possible that they were not?
6 A . Possible they were not. Possible they
7 . were. I mean, the communication is -- between
8 . Oracle and the agency is, I think, primarily between
9 . the lead CO or the manager of that office and Oracle
10 . representatives.

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11 · · · Q · Right · So unless we see it in an e-mail of
12 · some kind --
13 · · · A · Or phone call · I'm not sure what
14 · communication took place.
15 · · · Q · But you -- you personally are unaware?
16 · · · A · I'm not personally aware.

111:25-112:24

25 · · · Q · In a circumstance from which a Notice of

112

1 · Violation is issued, if we can work backwards from
2 · an onsite to a -- you know -- the -- you know, to
3 · then an NOV, what steps internally go on within the
4 · OFCCP, you know, in general, that get you from a
5 · second onsite to an NOV?
6 · · · · MR. MILLER: · So I'm going to instruct the
7 · witness not to answer this to the extent it reveals
8 · nonpublic investigative techniques employed by the
9 · agency or deliberative process --
10 · · · · THE REPORTER: · I'm sorry. I need you to
11 · slow down.
12 · · · · MR. MILLER: · Sure.
13 · · · · THE REPORTER: · To the extent it reveals
14 · nonpublic --
15 · · · · MR. MILLER: · Investigative processes from
16 · the agency or deliberative process discussions that
17 · were specific to this case, but to the extent that
18 · there's publicly available information on that
19 · process, you can answer.
20 · · · · THE WITNESS: · The public information is
21 · that after the onsite, there's an off-site phase
22 · where we conduct additional invest -- investigation
23 · analyzing the data we have. There are various
24 · reports and approval steps before the NOV is issued.

118:21-119:4

21 · · · Q · Do you recall, at some point, a decision
22 · coming to you, or something coming to you, a
23 · recommendation, that an NOV should issue as --
24 · · · A · At some point, yes, there was a
25 · recommendation for NOV that came to me.

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1. . . .Q. From the district office?
2. . . .A. From the DORO. The district office will
3. submit it to the DORO, and the DORO will ask for
4. review of the deputy and the RD.

123:7-124:7

7. . . .Q. At any time prior to the issuance of the
8. NOV, did the OFCCP ever advise Oracle that it
9. believed or had indicators that its pay practices
10. discriminated against women?
11. . . .A. Other than informing Oracle that we
12. identified compensation to be an issue.
13. . . .Q. Other than the general statement that it
14. believed that compensation was an issue and even
15. compensation was an issue within product
16. development, did it ever advise Oracle, prior to the
17. issuance of the NOV, that OFCCP was concerned that
18. Oracle's pay practices discriminated specifically
19. against women?
20. . . .A. I don't recall.
21. . . .Q. Do you -- same question with respect to
22. African-Americans. At any point prior to the
23. issuance of the NOV, did the OFCCP advise Oracle
24. that it had concerns that Oracle's compensation
25. practices discriminated against African-Americans?

124

1. . . .A. No, I'm not aware of that, personally.
2. . . .Q. At any time prior to the issuance of the
3. NOV, did the OFCCP advise Oracle that it had
4. concerns that its compensation practices
5. discriminated against Asians by paying them less
6. than comparable Whites?
7. . . .A. No, not that I'm aware of.

124:15-125:3

15. . . .Q. Placed before you what's been marked as
16. Exhibit 15. It is a letter dated March 11th, 2016,
17. from Robert Doles to Safra Catz and Mark Hurd.
18.I take it you've seen this before?
19. . . .A. Yes.
20. . . .Q. Is this what we're referring to as the NOV?

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21 . . . A . Yes.

22 . . . Q . Is this in the form an NOV should take, to

23 . your understanding?

24 . . . A . Yes.

25 . . . Q . Okay . Was this actual letter something

125

1 . that you reviewed before it was sent to Mr. Hurd and

2 . Ms. Catz?

3 . . . A . Yes.

125:15-127:6

15 . . . Q . If you look with me on page, at the bottom,

16 . 945, which is violation two.

17 . . . A . Okay.

18 Okay . In the second paragraph, it says:

19 “During the compliance review, OFCCP

20 reviewed employment policies, practices,

21 and records.”

22 Which employment policies, practices, and

23 . records are being referenced here in support of

24 . violation two?

25 . . . A . It will be the policies, practices, records

126

1 . pertaining to compensation.

2 . . . Q . Anything more specific than just saying in

3 . respect to compensation?

4 . . . A . I mean, I -- I would have to review all the

5 . documents in the case file . I mean, I don't have it

6 . to memory.

7 . . . Q . Well, again, if you don't know, you can say

8 . you don't know . I mean, that's fine . You didn't

9 . sign this letter . I'm just asking whether you know

10 . whether or not what -- which policies are being

11 . referred to here.

12 . . . A . Well, at this time, when I was reviewing

13 . the document, I knew which policies because it would

14 . have been submitted with the N -- Notice of

15 . Violation's recommendation.

16 . . . Q . Would the -- what role, if any, would the

17 . SCER have as a supporting document at this point?

18 . . . A . SCER would be part of the case file, but

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19. the SCER findings are already summarized in a case
20. report, which accompanies the violation
21. recommendation.
22. . . .Q. So the CO typically would take whatever was
23. in the SCER, prepare a summary report that would be,
24. you know, following the desk audit and the onsite
25. and the -- would that document contain the

127

1. recommendation of future action in general?
2. . . .A. It may, yes. But it's -- that report is
3. more extensive than the SCER.
4. . . .Q. Okay.
5. . . .A. So we rely on that document more than the
6. SCER at this point.

127:18-128:3

18. . . .Q. Well, let me -- let me do it this way, can
19. you pull out the FCCM excerpts that we have there,
20. please?
21. . . .A. Okay.
22. . . .Q. And then turn to page 264. This is a
23. section of the OFCCP and it relates to a Notice of
24. Violation, correct?
25. . . .A. Yes.

128

1. . . .Q. Which is what we're talking about with
2. Exhibit 15, correct?
3. . . .A. Yes.

128:12-130:15

12. . . .Q. "The NOV letter identifies the violations
13. and describes the recommended corrective actions.
14. COs issue an NOV when there is a pattern or practice
15. violation or if other violations are found."
16.So, again, I'm asking, with respect to at
17. least violation two, as the term is used here --
18. . . .A. Okay.
19. . . .Q. -- are we speaking of what is referred to
20. here as a pattern or practice violation or is it
21. another violation?
22. . . .A. It's a pattern or practice violation.

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23. . . . Q. Thank you. That's where I was going.
24. If you look down to the bottom page under
25. 8F 01, it says:

129

1. "NOVs issued by COs for pattern or practice
2. violation must, No. 1, restate the problem
3. with any modifications resulting from the
4. contractor's response, include specific
5. facts and where applicable, the results of
6. analysis that supports the violation, and,
7. No. 2, analyze the response. Analyze the
8. contractor's response, giving the reason
9. why it does not substantially alter OFCCP's
10. preliminary determination."

11. Looking at Exhibit 15, do we see any
12. analysis of any response by Oracle with respect to
13. the NO -- violation two?

14. . . . A. No.

15. . . . Q. That's because Oracle was never apprised of
16. the nature of the violation before the issuance of
17. the NOV and given an opportunity to respond; isn't
18. that correct?

19. . . . A. Well, in this one, the bullet two, "analyze
20. the response," that's in response to OFCCP's
21. preliminary determination, which is a PDN notice,
22. preliminary determination notice, which was not
23. issued in this situation, so there was no response
24. to analyze.

25. . . . Q. Because, again --

130

1. . . . A. We don't do the PDN.

2. . . . Q. Why not?

3. . . . A. It was not the practice to issue PDNs --

4. . . . Q. Not the practice of whom?

5. . . . A. -- at that time.

6. At the region.

7. . . . Q. And that would be the same with respect to

8. any of the other pattern and practice violations

9. listed in Exhibit 15, meaning that -- that no

10. predetermination -- predetermination notice was

11. issued, so there would have been no opportunity for

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12. Oracle to respond and for the OFCCP to provide any
13. analysis of their response?
14. A. Yes. No PDN was issued on the other
15. violations as well.

131:16-22

16. Q. Before the break, you made reference to
17. what you called the summary document that would have
18. been prepared following the completion -- following
19. the development of the SCER. Was that -- is it your
20. memory that such a document was prepared in the
21. Oracle headquarters' audit?
22. A. Yes.

133:5-20

5. Q. You know, what is the -- you know, in
6. general -- at a -- at a general level, what is the
7. content of this kind of document? You mentioned
8. what a SCER has and a SCER is referenced
9. specifically in the FCCM. This summary document,
10. what kind of information -- kind of information
11. would be in it?
12. MR. MILLER: Again, I'm going to issue the
13. same instruction to the witness to not answer these
14. questions to the extent it would reveal
15. attorney-client communications and/or it
16. would reveal the deliberative processes of the
17. agency prior to issuing the NOV.
18. THE WITNESS: So, generally, it has the
19. issues we investigated, the findings, and supporting
20. evidence.

138:2-18

2. MR. SHWARTS: If we could go back to
3. Exhibit 15, please, which is the NOV.
4. BY MR. SHWARTS:
5. Q. If we can look at violation three. Second
6. paragraph says, "During the compliance review, OFCCP
7. reviewed employment policies, practices, and
8. records."
9. Which employment policies, practices, and
10. records are being referenced here?
11. A. The policies, practices, and records
12. relating to compensation -- Oracle's compensation.

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13. . . .Q. Anything more specific than that, that
14. you're aware of? Just aside from just general
15. policies relating to compensation?
16. . . .A. I mean, there are lots of documents
17. produced that relate to Oracle's compensation. I
18. don't have it by memory, every piece of record.

139:6-14

6. . . .Q. Violation mentions that it refers to
7. interviews of management, human resources, and
8. nonmanagement employees.
9.Do you know which interviews are being
10. referenced here which led the agency to determine
11. there was a violation?
12. . . .A. These are referencing the interviews
13. conducted during the onsite and post onsite by the
14. investigative staff.

141:14-19

14. . . .Q. Are you aware of -- aside from the
15. statistical analysis and the regression analysis
16. that is referenced in Exhibit 15, was the decision
17. to -- are you aware, yes or no, as to whether the
18. decision to issue a violation against Oracle was
19. based on anything other than a statistical analysis?

141:20-142:2

20.MR. MILLER: I would object to that
21. question in that the document speaks for itself in
22. this NOV.
23.MR. SHWARTS: You may answer. He hasn't
24. instructed you.
25.MR. MILLER: If you can answer without

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1. revealing deliberative process or attorney-client
2. communications.

142:3

3.THE WITNESS: Yes.

142:13-20

13. BY MR. SHWARTS:

14. . . .Q. Is there -- you know, what else was the

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15· ·decision to issue, in this instance I'm focusing on
16· ·violation No. 3 --
17· ··A· Uh-hm.
18· ··Q· -- besides the statistical analysis, what
19· ·else was the basis for issuing violation No. 3,
20· ·aside from the statistical analysis?

142:21-22

21· ·· · · · · · MR. MILLER:· Okay· Well, objection· Asked
22· ·and answered, then.

142:24-143:4

24· ·· · · · · · THE WITNESS:· So it's listed on Paragraph 2
25· ·of the violation, our review of your policies --

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1· ·Oracle's policies, practices, records, interviews
2· ·conducted, complaints examined, information
3· ·reviewed· That's in addition to the statistical
4· ·analysis and regression results.

145:16-146:25

16· ··Q· With respect to violation four, if we can
17· ·look at that, please· Again, violation four says,
18· ·"During the compliance review, OFCCP reviewed
19· ·employment policies, practices, and records."· With
20· ·respect to violation four, can you identify for me
21· ·specific Oracle employment practices, policies, and
22· ·records that were used to -- in addition to
23· ·statistics, to form a basis for violation four?
24· ··A· These are the policies, practices, and
25· ·records, information that we received from Oracle

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1· ·pertaining to compensation.
2· ··Q· Can you be any more specific than that
3· ·other than a general statement of records that were
4· ·received?
5· ··A· They -- they were records produced by
6· ·Oracle· I don't have it by memory specifically what
7· ·each document was, but I did review the documents
8· ·when the recommendation was provided to me.
9· ··Q· When the recommendation was provided to
10· ·you, were the actual -- to the extent there's a

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11· reference to practices, policies, and procedures,
12· were those actually attached to what was provided to
13· you?

14· . . . A· Yes.

15· . . . Q· Okay· So you had the opportunity in making
16· your own determination about whether to approve a
17· violation against Oracle, you actually had the
18· opportunity to review certain practices and policies
19· to help you make a determination about whether to
20· approve or not?

21· . . . A· Yes.

22· . . . Q· And as you sit here today, you don't have
23· any memory of what those specific practices and
24· policies were?

25· . . . A· Not specifically.

147:18-148:2

18· . . . Q· No, again, you've testified here that, as
19· you sit here today, you don't recall what it is you
20· looked at· What it is you looked at was this draft
21· letter and a summary document and attachments,
22· correct?

23· . . . A· Yes.

24· . . . Q· And those contained the policies that you
25· say you had access to in order to help you make the

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1· decision, correct?

2· . . . A· Yes.

148:4-9

4· MR. MILLER: So I doubt this helps,
5· Counsel, but I will represent to you that you have
6· the entire file -- apart from the privileged
7· sections, which would include all of the policies
8· that OFCCP had available to review at the time they
9· produced the NOV.

148:11-149:2

11· . . . Q· With respect to, again, violation four,
12· with respect to the interviews of management, human
13· resource, and nonmanagement employees, as you sit
14· here today, do you recall any specific interviews
15· that were referenced in terms of supporting the

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16. decision to issue this violation?

17. . . .A. Not specifically, but it was part of the

18. report that was submitted.

19. . . .Q. Which you had access to in helping you

20. reach a determination to issue the NOV, correct?

21. . . .A. Yes.

22. . . .Q. And the same would be true for the other

23. items referenced in Paragraph 2 under violation

24. four?

25. . . .A. Yes. They would include -- they would have

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1. been included as part of the recommendation and the

2. summary report.