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 RULE 30(b)(6) 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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10:14-12:3

14· · Q.· ·Ms. Suhr, I've placed before you an exhibit
15· ·marked as Exhibit 1.· Document is entitled Defendant
16· ·Oracle's Second Notice of Deposition of OFCCP
17· ·Pursuant to 41 C.F.R. 60-30.11 and Federal Rule
18· ·Civil Procedure 30(b)(6).
19· ·Take a look at what's numbered as page
20· ·No. 2, and written there are topics -- a topic with
21· ·subparts.
22· ·Please take a look at that and let me know
23· ·when you have read what is there under paragraph --
24· ·what is Paragraph 33 with Subparts (a), (b), and
25· ·(c).

11

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

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12 1· · ·what the whole entity knows. 2· · ·Do you understand that? 3· · · ·A.· ·Okay.
12:11-13:6 11· · · ·Q.· ·So with that, in preparing for – to 12· ·testify on behalf of OFCCP, did you speak to anyone, 13· ·other than lawyers, to gather facts or information 14· ·to assist you in answering on behalf of OFCCP today? 15· · · ·A.· ·No. 16· · · ·Q.· ·Did you need to review, yourself, documents 17· ·in order to -- that you didn't already have 18· ·knowledge of and look at documents to help you to 19· ·prepare yourself to give testimony today on behalf 20· ·of OFCCP? 21· · · ·A.· ·Yes. 22· · · ·Q.· ·Okay. As best as you can recall, what 23· ·documents did you have to review that you otherwise 24· ·didn't have knowledge of prior to preparing? 25· · · ·A.· ·So I knew they existed, but hadn't reviewed **13** 1· ·it recently, so I reviewed the amended – second 2· ·amended complaint that was filed, the notice, the 3· ·opposition to Oracle's motion for summary judgment, 4· ·declaration of Gary Siniscalco and Erin Connell in 5· ·support of Oracle's motion for summary judgment and 6· ·my previous declaration.
13:16-14:2 16· · Q.· ·Anything else you recall reviewing to 17· ·prepare to give your testimony today on behalf of 18· ·OFCCP? 19· · A.· ·No, those documents. 20· · Q.· ·Okay.· So you understood -- the general 21· ·discussion -- the topic we're discussing here is 22· ·conciliation, -- 23· · A.· ·Yes. 24· · Q.· ·-- and more specifically the conciliation 25· ·efforts with -- between OFCCP and Oracle after the

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14 1· · ·issuance of the NOV? 2· · · ·A.· ·Yes.
14:5-16:5 5· · ·In general, though, what is -- what is 6· · ·conciliation after the issuance of an NOV? 7· · · ·A.· ·Conciliation is the process where the 8· · ·agency engages with the contractor to resolve the 9· · ·outstanding violations. 10· · Q.· ·Okay.· Is it fair to say that it is the 11· ·goal of OFCCP to -- you know, to try to resolve 12· ·matters short of litigation? 13· · A.· ·Yes.· That is the agency's goal. 14· · Q.· ·And the purpose of which obviously is to 15· ·try to reach a resolution in which whatever 16· ·violations have been noted have been remedied either 17· ·in the terms of change of policies, or an issuance 18· ·of back pay, or other types of remedies? 19· · A.· ·Yes. 20· · Q.· ·With respect to the Oracle matter, after 21· ·the issuance of the NOV in March of 2016, who at 22· ·OFCCP was responsible for leading the conciliation 23· ·efforts with Oracle? 24· · A.· ·The regional director, Janette Wipper, at 25· · that time was leading the conciliation efforts. **15** 1· · · ·Q.· ·Besides Ms. Wipper, was anyone else 2· · ·involved in the process? 3· · · ·A.· ·Yes. 4· · · ·Q.· ·Who else was involved in the conciliation 5· · ·process? 6· · · ·A.· ·I was involved, the manager at the time was 7· · ·involved, the compliance officer was involved, our 8· · ·lawyers were involved from solicitor's office, and 9· · ·our statistician was involved from the agency. 10· · Q.· ·Aside -- aside from the statistician, 11· ·who -- sorry, let me rephrase.· Let me just do this 12· ·more specifically. 13· ·The manager, are you speaking about

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14· ·Ms. Atkins? 15· · A.· ·Yes, Ms. Atkins at the time. 16· · Q.· ·And the case officer -- compliance officer, 17· ·you are speaking about Mr. Luong? 18· · A.· ·Yes. 19· · Q.· ·Okay.· And with respect to the 20· ·statistician, are you speaking about 21· ·Mr. LaJeunesse -- Dr. LaJeunesse, or are you talking 22· ·about the local statistician? 23· · A.· ·Local -- well, he's locally housed here, 24· ·but he reports to the national office. 25· · Q.· ·Okay.· Aside from the statistician, was **16** 1· · · ·anyone else from the national office -- meaning 2· · · ·aside from the statistician and Dr. LaJeunesse, was 3· · ·anyone else from the national office involved in the 4· · ·conciliation efforts? 5· · · ·A.· ·No, not that I recall.
16:9-21 9· · · ·Q.· ·Okay.· After the issuance of the NOV, what 10· ·was the first -- the first step after the issuance 11· ·of the NOV with respect to Oracle directed towards 12· ·conciliation? 13· · A.· ·First step from the agency -- 14· · Q.· ·Correct. 15· · A.· ·-- towards Oracle? 16· ·So, after we issued the NOV -- the NOV 17· ·itself invites Oracle to respond and engage in 18· ·conciliation, but because the agency had not 19· ·received a response, I believe the local office 20· ·reached out to Oracle to again invite them to engage 21· ·in conciliation with the agency.
17:2-22 2· · · ·Q.· ·Exhibit 2, Ms. Suhr, is a letter from -- an 3· · ·e-mail from Robert Doles to Shauna Holman-Harries 4· · ·dated March 16th, 2016 -- responding to an e-mail 5· · ·from her. 6· · ·In this e-mail -- unlike in your prior

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7· · ·deposition, Ms. Suhr, I'm going to be asking you 8· · ·about documents that you may not have been -- seen 9· · ·or copied on since this is a corporate deposition. 10· ·In this Mr. Doles says, "Please let us know 11· ·when we could expect to receive Oracle's position 12· ·statement." 13· ·Do you know what he's referring to there? 14· ·What position statement is he referring to? 15· · A.· ·Oracle's response to the violation. 16· · Q.· ·Is that something that is typically 17· ·required in a conciliation effort, for the -- for 18· ·the contractor who has received a Notice of 19· ·Violation to provide a written position statement? 20· · A.· ·It is often requested by the agency. 21· · Q.· ·But it's not required? 22· · A.· ·It's not required.
18:3-19:11 3· · · ·Q.· ·I've placed before you what we've marked as 4· · ·Exhibit 3.· This is an e-mail from Shauna 5· · ·Holman-Harries to Mr. Doles dated March 18th, 2016. 6· · ·Ms. Holman-Harries states: 7· · ·"I have received your request for a 8· · ·position statement, but I'm afraid we don't 9· · ·understand the request or the timing." 10· ·And she makes reference to section 8G01 of 11· ·the FCCM.· It's true, is it not, that FCCM, in 12· ·general, states that the conciliation discussions 13· ·may take many forms, -- 14· · A.· ·Yes. 15· · Q.· ·-- including in-person discussions, 16· ·e-mails, telephone discussions, and the like, 17· ·correct? 18· · ·A.· ·Yes. 19· · Q.· ·Conciliation does not require the 20· ·contractor to put in a position statement, in order 21· ·to initiate conciliation, discussions or is a 22· ·precondition to conciliation discussions; is that 23· ·correct? 24· · A.· ·Right.· The FCCM doesn't require it. 25· · Q.· ·Ms. Holman-Harries notes that "The agency

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19 1· · ·failed to advise Oracle of any findings in advance 2· · ·of issuing the Notice of Violation." 3· · ·That's correct, isn't it; that it was -- 4· · ·that prior to the Notice of Violation there had not 5· · · ·been any predetermination notice or any other notice 6· · ·to Oracle? 7· · · ·A.· ·Findings notice to Oracle, -- 8· · · ·Q.· ·Yeah. 9· · · ·A.· ·-- no. 10· · Q.· ·"No," meaning her statement is correct? 11· · A.· ·Right.
20:25-22:10 25· · · ·Q.· ·Placed before you what we've marked as **21** 1· · ·Exhibit 5.· It is an e-mail from Robert Doles to 2· · ·Shauna Holman-Harries -- 3· · · ·A.· ·Okay. 4· · · ·Q.· ·-- dated March 29, 2016, responding to what 5· · ·was Exhibit 3. 6· · ·Please take a look at it.· Let me know when 7· · ·you're ready to proceed. 8· · · ·A.· ·Okay.· Okay. 9· · · ·Q.· ·In his letter, Mr. Doles states that the -- 10· ·"During the entrance conference, held on March 24th, 11· ·2015, OFCCP discussed with you" -- meaning 12· ·Ms. Holman-Harries and other Oracle representatives, 13· ·"the preliminary indicators and areas of concern." 14· ·My understanding is that there was a 15· ·general discussion of concern about compensation and 16· ·hiring practices, including that they may involve 17· ·the product development unit. 18· ·Was any other information provided at the 19· ·entrance conference about preliminary indicators, 20· ·other than those general areas of concern? 21· · A.· ·Not that I recall. 22· · Q.· ·Okay.· This says that: 23· ·"At the exit conference held on March 27th, 24· ·2015, OFCCP informed you," meaning

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25· · Ms. Holman-Harries and Neil Bourque, "that **22** 1· · ·the agency will conduct further analysis 2· · ·and the agency findings will be issued in a 3· · ·formal notice." 4· · · Is that -- is that accurate? 5· · · ·A.· ·That sounds right. 6· · · ·Q.· ·Again -- in at least this first paragraph, 7· · ·again, Mr. Doles does not indicate in his letter 8· · ·that any specific findings were provided to Oracle 9· · ·prior to the issuance of the NOV; is that correct? 10· · A.· ·Yes.
22:19-24:25 19· · Q.· ·Placed before you, Ms. Suhr, what's been 20· ·marked as Exhibit 6.· It is an e-mail from 21· ·Mr. Siniscalco to Mr. Doles with an attached -- an 22· ·attached letter with attachments. 23· · As of this time, in April of 2016, OFCCP 24· · understood that Mr. Siniscalco was Oracle's 25· · representative with respect to the NOV and **23** 1· · ·conciliation efforts? 2· · · ·A.· ·Am I -- 3· · · ·Q.· ·Yeah, -- 4· · · ·A.· ·-- confirming that? 5· · · ·Q.· ·-- I'm asking was the OFCCP aware, as of 6· · ·April of 2016, that Mr. Siniscalco was a legal 7· · ·representative of Oracle with respect to the NOV and 8· · ·conciliation efforts? 9· · · ·A.· ·I would have to review the representation 10· ·letter, but I believe so.· I can't recall exactly 11· · what date. 12· · Q.· ·Well, at least as of April of 2016? 13· · A.· ·Probably because we were receiving a letter 14· ·from him and it says -- 15· · Q.· ·Okay.· So to the extent that the OFCCP in 16· ·the ensuing weeks and months would be engaging with 17· ·Mr. Siniscalco, or people who worked with or for 18· ·Mr. Siniscalco, they were interacting for

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19· ·conciliation purposes with an Oracle representative? 20· · A.· ·Right, yes. 21· · Q.· ·It's noted on page 4 of the letter -- 22· · A.· ·Okay. 23· · Q.· ·-- of Mr. Siniscalco's letter -- in 24· ·Section IX of his letter he states: 25· ·"To move this along, we had hoped that **24** 1· · ·OFCCP would be forthcoming on our few 2· · ·initial questions as set forth in the 3· · ·letter.· We now ask the agency to address 4· · ·all the questions listed in Appendix A to 5· · ·this letter.· In addition, with respect to 6· · · specific reference to alleged refusals by 7· · ·Oracle, we ask that OFCCP answers the 8· · ·questions in Appendix B.· Once the agency 9· · ·provides these answers we hopefully will be 10· ·better able to understand its allegations 11· ·and findings." 12· ·Did the OFCCP understand, from 13· ·Mr. Siniscalco's letter, that it was requesting 14· ·additional information in order for it to be able to 15· ·subsequently respond to the NOV? 16· · A.· ·Yes, that was Oracle's position. 17· · Q.· ·Did OFCCP take any steps to try to respond 18· ·to Mr. Siniscalco's request on behalf of Oracle? 19· · A.· ·Yes. 20· · Q.· ·And what steps did it take to try to 21· ·respond to Mr. Siniscalco's requests for 22· ·information? 23· · A.· ·We believe -- I believe we responded to his 24· ·letter and the questions -- the 60 questions 25· ·attached to the letter.
25:4-20 4· · · ·Q.· Placed before you what's been marked as 5· ·Exhibit 7.· It is a letter -- it is an e-mail from 6· ·Ms. Atkins to Shauna Holman-Harries, Juana Schurman 7· ·at Oracle on April 22nd, 2016, attaching a letter 8· ·from Ms. Atkins to Mr. Siniscalco.

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9· ·Please take a look at it.· Let me know when 10· ·you are ready to proceed. 11· ·Okay. 12· · · ·Q.· There is a three- -- four- -- three-plus 13· ·page letter from Ms. Atkins, which by the way she 14· ·testified in her deposition was prepared by 15· ·Ms. Wipper for her.· Did you have any personal role 16· ·in preparation of the four-page letter? 17· ·Well, let me ask it from a -- let me ask 18· ·the question a different way. 19· ·Do you know who it is who prepared the 20· ·substance of the letter signed by Ms. Atkins?
25:25-26:13 25· ·THE WITNESS:· I believe it was drafted by **26** 1· ·Ms. Atkins and Ms. Wipper and I -- I reviewed the 2· ·letter as well. 3· ·BY MR. SHWARTS: 4· · · ·Q.· Okay.· If you look at -- Appendix A 5· ·responds to -- the Appendix A corresponds to the 6· ·Appendix A that Mr. Siniscalco put in his letter, 7· ·correct? 8· · · ·A.· Yes. 9· · · ·Q.· It is correct that aside -- other than 10· ·referring Oracle to the NOV and data provided -- 11· ·general data provided by Oracle, OFCCP did not 12· ·provide any substantive responses to Appendix -- the 13· ·questions that were set forth in Appendix A?
26:14-16 14· · · · · MR. MILLER:· Objection.· Vague as to 15· ·substantive. 16· · · · · MR. SHWARTS:· You may answer.
26:17-28:15 17· · · · · THE WITNESS:· So are you asking me if -- 18· ·did we provide anything other than referencing the 19· ·NOV? 20· ·BY MR. SHWARTS:

21· · · ·Q.· And -- and other data -- for example,
22· ·referencing the NOV or data, general -- a general
23· ·reference to data submitted by Oracle.
24· · · ·A.· In -- on some questions -- some questions
25· ·are addressed, such as No. 4, there's a response.

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

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1· ·e-mail that was previously sent.
2· ·And for 40 through 42 we offer technical
3· ·assistance to address those questions.
4· · · ·Q.· Okay.· With respect to Appendix B, other
5· ·than stating that Oracle -- that certain
6· ·compensation data was requested on specific dates in
7· ·response to Exhibit 1 -- Question 1, there was no
8· ·other substantive response provided to the questions

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9· ·put forth in Appendix B? 10· · · ·A.· Okay.· No. 1 -- let's see.· There's a 11· ·response to No. 11 through 17, "The agency is not 12· ·required to review all documents during onsite." 13· ·And for Question 18 we provided the 14· ·regulatory's basis for presuming data will be 15· ·unfavorable if not provided.
29:2-23 2· · · ·Q.· Exhibit 8 is a letter -- is an e-mail dated 3· ·April 25th, 2016 from Gary Siniscalco to Ms. Atkins 4· ·in which Mr. -- based on Mr. Siniscalco's letter you 5· ·understood it was Oracle's position as of April 2016 6· ·that it was willing to engage in conciliation 7· ·efforts but that a face-to-face meeting would at 8· ·that time be premature and that the parties should 9· ·continue to engage in written discussions. 10· ·Is that correct? 11· · · ·A.· Yes. 12· · · ·Q.· Now, as of April -- at this point, Oracle 13· ·had been provided the NOV? 14· · · ·A.· Uh-hm. 15· · · ·Q.· And it had been provided such information 16· ·that was included in Ms. Atkins' letter that we 17· ·referred to as Exhibit 6 -- I'm sorry, wrong, 18· ·Exhibit 7. 19· ·You're aware -- is there -- was there any 20· ·other substantive information underlying the NOV 21· ·that had been provided to Oracle as of April 25th, 22· ·2016? 23· · · ·A.· Not that I'm aware of.
30:4-21 4· · · ·Q.· Placed before you what's been marked as 5· ·Exhibit 9.· It is a letter from Gary Sinis- -- it is 6· ·an e-mail from Gary Siniscalco to Ms. Atkins 7· ·attaching a letter dated May 25th, 2016, to 8· ·Ms. Atkins from Mr. Siniscalco. 9· ·Please take a look at it.· Let me know when 10· ·you are ready to proceed. 11· · · ·A.· Okay.· Okay. 12· · · ·Q.· Mr. Siniscalco's May 25th, 2016, letter --

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13· ·at least based on his e-mail, is noted as what would 14· ·be Oracle's position statement in response to 15· ·Mr. Doles' Notice of Violation, correct? 16· · · ·A.· Yes. 17· · · ·Q.· And attached to that e-mail is a three-page 18· ·letter from Mr. Siniscalco, followed by an 18-page 19· ·itemization and analysis of the issues both 20· ·substantive and procedural, correct? 21· · · ·A.· Yes.
31:2-23 2· · · ·Q.· Placed before you what's been marked as 3· ·Exhibit 10.· It is a letter dated June 8th, 2016, 4· ·from Janette Wipper to Ms. Catz and Mr. Hurd at 5· ·Oracle. 6· ·Please take a look at it and let me know 7· ·when you are ready to proceed. 8· · · ·A.· Okay. 9· · · ·Q.· Is this what is known -- and for purposes 10· ·of OFCCP's policies and practices as a show-cause 11· ·notice? 12· · · ·A.· It's a show cause notice, but I think the 13· ·enclosure is missing.· It's part of the show cause 14· ·notice. 15· · · ·Q.· What is a show cause notice? 16· · · ·A.· It's a notice giving three days -- 30-day 17· ·notice provided to contractor to resolve the 18· ·violations before initiating enforcement 19· ·proceedings. 20· · · ·Q.· Who made the decision to issue a show cause 21· ·notice to Oracle as represented by Exhibit 10? 22· · · ·A.· Show cause notice -- it would have been the 23· ·regional director, at the time Janette Wipper.
31:24-33:524· · · ·Q.· ·Anyone else participate in that decision? 25· · · · · · And, again, I'm not -- if there's counsel **32** 1· ·you may state yes or no that there was counsel.· I'm 2· ·not going to get into any substantive 3· ·communications. 4· · · · · · MR. MILLER:· Then you're not going to get 5· ·an instruction from me not to answer that.

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6· · · · · · MR. SHWARTS:· Yeah, I just want names of 7· ·who, not of what at this point.· That's – my 8· ·question is who. 9· · · · · · MR. MILLER:· I will instruct the witness 10· ·not to answer to the extent that her answer reveals 11· ·predecisional deliberative process by the agency, 12· ·but to the extent you can answer it without 13· ·revealing that, please go ahead. 14· · · · · · THE WITNESS:· It would also be the team 15· ·that's conducting the investigation and the field 16· ·office. 17· ·BY MR. SHWARTS: 18· · · ·Q.· ·Once an NOV -- once an NOV – 19· · · · · · Well, when you say "the team," so in that 20· ·instance you mean district director, in this case 21· ·Ms. Atkins, and the compliance officer, in this case 22· ·Mr. Luong? 23· · · ·A.· ·Yes.· They would be -- I mean it would have 24· ·been discussed with the field office.· I'm not sure 25· ·if the compliance officer is included in that **33** 1· ·discussion, but generally with the field staff.· So 2· ·in this case Ms. Atkins would have been aware.· And 3· ·we also inform the national office -- OFCCP National 4· ·Office, that we are proceeding to the show cause 5· ·notice stage.
33:6-8 6· · · ·Q.· Why did OFCCP decide to issue a show cause 7· ·notice at this point following the receipt of 8· ·Mr. Siniscalco's letter two weeks earlier?
33:9-12 ·9· · · · · · MR. MILLER:· I'm going to instruct the 10· ·witness not to answer to the extent that the answer 11· ·would reveal predecisional deliberative process for 12· ·the agency or attorney-client communications.
33:13-21 13· ·THE WITNESS:· Mr. Siniscalco's last letter 14· ·I believe requested the agency withdraw the NOV and 15· ·issue a compliance notice, so from that it was an 16· ·indication that Oracle was not interested in

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17· ·resolving the violations. 18· ·And having not received a response from 19· ·Oracle, the agency moved to the next steps in the 20· ·investigative process, which is the show cause 21· ·notice.
33:23-34:21 23· · · ·Q.· In the -- in the second page of the 24· ·letter -- of Ms. Wipper's letter, she has three 25· ·bullet points. **34** 1· ·Do you see those? 2· · · ·A.· Yes. 3· · · ·Q.· That's the same information that was 4· ·contained in the NOV, correct? 5· · · ·A.· Yes. 6· · · ·Q.· At this time, as of the issuance of this 7· ·show cause notice, Oracle had no statistical 8· ·information upon which to evaluate how OFCCP reached 9· ·its conclusions, other than what is in the NOV and 10· ·repeated here in this letter, correct? 11· · · ·A.· Repeated in the letter and the NOV, which 12· ·was enclosed, which discusses -- which includes the 13· ·agency's statistical model which Oracle can use to 14· ·replicate the agency's analysis. 15· · · ·Q.· Again, all I'm asking for this purpose -- 16· · · ·A.· Is there anything more than that? 17· · · ·Q.· Yeah.· All they had at that point, with 18· ·respect to the statistics, was whatever was 19· ·contained in the NOV and repeated here in the 20· ·letter, correct? 21· · · ·A.· Right.
35:14-21 14· · · ·Q.· At this point -- as of June, OFCCP had not, 15· ·as of this point, made any proposal to Oracle about 16· ·back pay; is that correct? 17· · · ·A.· Correct. 18· · · ·Q.· And at this point, as of June of 2016, 19· ·OFCCP had not submitted to Oracle any draft

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20· ·conciliation agreement, correct? 21· · · ·A.· Correct.
35:22-36:5 22· · · ·Q.· ·And as of June of 2016, OFCCP had not made 23· ·any substantive proposals to Oracle, how to cure the 24· ·violations in the NOV, beyond -- separate and apart 25· ·from back pay; is that correct? **36** 1· · · ·A.· ·The NOV itself lists the corrective actions 2· ·that Oracle needs to take to remedy the 3· ·violations – 4· · · ·Q.· ·So – 5· · · ·A.· ·-- in addition to back pay.
36:20-38:1 20· ·BY MR. SHWARTS: 21· · · ·Q.· Placed before you what we've marked as 22· ·exhibit? 23· ·THE REPORTER:· 11. 24· ·BY MR. SHWARTS: 25· · · ·Q.· -- 11, which is a letter dated June 29, **37** 1· ·2016, from Mr. Siniscalco to Janette Wipper. 2· ·Please take a look at it and let me know 3· ·when you're ready to proceed. 4· · · ·A.· Okay. 5· · · ·Q.· This is -- this was a response letter 6· ·from -- received by the agency from Mr. Siniscalco 7· ·addressing this show cause notice? 8· · · ·A.· Yes. 9· · · ·Q.· You understand that at this point -- at 10· ·least certainly at the conclusion of his letter, 11· ·Mr. Siniscalco, on behalf of Oracle, asked that the 12· ·show cause notice be withdrawn and that reasonable 13· ·conciliation take place? 14· · · ·A.· Yes. 15· · · ·Q.· And you understood that to be -- at least 16· ·through his letter, that was Oracle's position as 17· ·stated by Mr. Siniscalco?

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18· · · ·A.· Yes. 19· · · ·Q.· Indeed, as a result -- indeed, no 20· ·enforcement proceeding was -- each was commenced at 21· ·this time, correct? 22· · · ·A.· No -- right, yes. 23· · · ·Q.· And it was -- at least at this time, in the 24· ·summer of 2016, OFCCP determined that it wanted to 25· ·continue a conciliation process? **38** 1· · · ·A.· Yes.
38:6-10 6· · · ·Q.· Exhibit 12 is a letter dated September 9, 7· ·2016, from Ms. Atkins to Mr. Siniscalco, and by its 8· ·terms responding to his June 29, 2016, letter, 9· ·correct? 10· · · ·A.· Yes.
38:18-39:19 18· · · ·Q.· Basically we'll conclude -- if you don't 19· ·get back to us by the 16th, we're going to conclude 20· ·that there's no -- you know, there's no interest in 21· ·conciliation. 22· ·Is that fair? 23· · · ·A.· Yes. 24· · · ·Q.· What was going -- why did it take 25· ·two-and-a-half months for OFCCP to respond to **39** 1· ·Mr. Siniscalco's July letter? 2· · · ·A.· I'm not sure what happened.· You mean the 3· ·lag? 4· · · ·Q.· Yes.· You received his letter -- it's 5· ·stamped on the front page of Exhibit 11, on 6· ·June 30th; the response is on September 9th.· Why 7· ·did it take OFCCP over two months to get back to him 8· ·after he indicated his desire to engage in 9· ·conciliation? 10· · · ·A.· I'm not sure why it took that long. 11· · · ·Q.· Are you aware of any other communications 12· ·between OFCCP and Oracle during that two-and-a-half

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13· ·month period relating to conciliation? 14· · · ·A.· I don't recall. 15· · · ·Q.· Was any substantive information provided to 16· ·Oracle, relating to the NOV, between June 30th and 17· ·September 6th relating to the NOV to assist in 18· ·conciliation? 19· · · ·A.· Not -- not that I recall.
39:24-40:7 24· · · ·Q.· Ms. Suhr, placed before you what we've 25· ·marked as Exhibit 13. **40** 1· · · ·A.· Okay. 2· · · ·Q.· It is a letter dated September 16th, 2016, 3· ·from Mr. Siniscalco to Ms. Atkins. 4· ·This is in fact a letter accepting a 5· ·proposal to meet in person for conciliation and 6· ·suggesting dates? 7· · · ·A.· Yes.
40:12-41:4 12· · · ·Q.· We placed before you what's been marked as 13· ·Exhibit 14.· It's a letter also dated September 16, 14· ·2016, from Ms. Atkins to Mr. Siniscalco. 15· ·Let me know when you're ready to proceed. 16· · · ·A.· Okay. 17· · · ·Q.· In her letter Ms. Atkins states: 18· ·"In order to engage in a good faith, mutual 19· ·conciliation process, and a productive 20· ·meeting, we again request that Oracle 21· ·provide a substantive rebuttal analysis in 22· ·five days, by September 21st, 2016." 23· ·Fair to say that Exhibit 14 represents that 24· ·OFCCP is making their receipt of a substantive 25· ·analysis a precondition to conciliation, correct? **41** 1· · · ·A.· You could interpret it that way. 2· · · ·Q.· On what -- what is the authority from FCCM, 3· ·or otherwise, that this kind of substantive analysis 4· ·was required in order to engage in conciliation?
41:5-6

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5· · · · · · MR. MILLER:· Objection to the extent it 6· ·calls for a legal conclusion.
41:8-42:6 8· ·THE WITNESS:· To have a productive dialogue 9· ·in conciliation you want to have the other party's 10· ·analysis so you can address. 11· ·BY MR. SHWARTS: 12· · · ·Q.· Is it fair to say that on several occasions 13· ·Oracle had requested that -- including earlier 14· ·letters from Mr. Siniscalco, that Oracle asked for 15· ·certain information in order for it to provide a 16· ·substantive analysis; is that correct? 17· · · ·A.· It's correct, but the agency felt that the 18· ·agency had already produced enough information for 19· ·Oracle to conduct its own analysis. 20· · · ·Q.· I understand, but my question to you was, 21· ·prior to September 16th, Oracle had asked -- between 22· ·receipt of the NOV and this date, that the agency 23· ·provide additional information to assist it in 24· ·providing a substantive analysis, correct? 25· · · ·A.· That's correct. **42** 1· · · ·Q.· And again, other than what is stated in the 2· ·NOV and certain information that was provided in one 3· ·of Ms. Atkins' letter, the agency had not provided 4· ·additional information to Oracle following the 5· ·issuance of the NOV? 6· · · ·A.· Correct.
42:11-43:3 11· · · ·Q.· Exhibit 15 is an e-mail from 12· ·Mr. Siniscalco's assistant, Ms. Swirky attaching an 13· ·e-mail that she says was dictated to her by 14· ·Mr. Siniscalco and sent to Ms. Atkins on 15· ·September 21, 2016. 16· ·Please take a look at it and let me know 17· ·how (sic) you're ready to proceed. 18· · · ·A.· Okay.· Okay. 19· · · ·Q.· Again, in this instance -- in this letter, 20· ·Mr. Siniscalco indicated that, again, while Oracle

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21· ·was willing to meet and discuss it, it was rejecting 22· ·the notion that it had to provide a rebuttal 23· ·analysis, as stated in the letter, correct? 24· · · ·A.· Yes. 25· · · ·Q.· And at least stating his position that **43** 1· ·prior letters from Mr. Siniscalco had provided such 2· ·an analysis, correct? 3· · · ·A.· Yes.
43:8-44:3 8· · · ·Q.· Placed before you what we've marked as 9· ·Exhibit 16.· It is a letter from Ms. Atkins -- 10· ·signed by somebody else, but from Ms. Atkins to 11· ·Mr. Siniscalco dated September 23rd, 2016. 12· ·Please take a look at it and let me know 13· ·when you're ready to proceed. 14· · · ·A.· Okay. 15· · · ·Q.· In her letter, in the second paragraph -- 16· ·third paragraph -- 17· ·Again, in the second paragraph there it 18· ·says: 19· ·"For over six months the agency has 20· ·repeatedly requested a substantive rebuttal 21· ·analysis based upon statistical evidence 22· ·from Oracle." 23· ·Now, I'm correct that again, as of this 24· ·point in time, the only statistical analysis that 25· ·Oracle had -- upon which the OFCCP was basing its **44** 1· ·Notice of Violation, was such information that was 2· ·attached in the NOV, correct? 3· · · ·A.· Yes.
45:25-46:19 25· · · ·Q.· Okay.· In fact, a conciliation conference **46** 1· ·was held in person, correct?

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2· · · ·A.· Yes. 3· · · ·Q.· That was held on or about October 6th of 4· ·2015? 5· · · ·A.· That sounds right. 6· · · ·Q.· Where did that meeting take place? 7· · · ·A.· In the San Francisco Federal Building, in 8· ·the conference room. 9· · · ·Q.· Okay.· Who was present from OFCCP? 10· · · ·A.· I was there.· The regional director was 11· ·there. 12· · · ·Q.· Ms. Wipper? 13· · · ·A.· Ms. Wipper was there. 14· ·Hea Jung Atkins was there. 15· ·The compliance officer was there, Hoan 16· ·Luong. 17· ·The solicitor's office -- from the 18· ·solicitor's office I believe Ian Eliasoph was there 19· ·and Laura Bremer.
47:8-16 8· · · ·Q.· Okay.· Who was present from representing 9· ·Oracle? 10· · · ·A.· Gary Siniscalco, counsel was there.· Erin 11· ·Connell was there.· Charles -- I can't remember his 12· ·last name, was there.· Shauna. 13· · · ·Q.· Ms. Holman-Harries? 14· · · ·A.· Holman-Harries. 15· · · ·Q.· Was Ms. -- was Juana Schurman present? 16· · · ·A.· Juana Schurman was there as well.
47:19-50:25 19· · · ·Q.· How long did the meeting last? 20· · · ·A.· A couple hours. 21· · · ·Q.· What was the -- as best as you can recall, 22· ·on behalf of OFCCP, how did the meeting on 23· ·October 6th progress? 24· · · ·A.· It was cordial.· We, again, indicated our 25· ·intent to conciliate the matter. **48** 1· ·I believe Ms. Wipper went through the

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

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1· ·information was provided with respect to the
2· ·violations by Ms. Wipper?
3· · · ·A.· We discussed the regression analysis that
4· ·was conducted as our statistical analysis.
5· · · ·Q.· No, that was -- that was attached as an
6· ·appendix to the NOV, correct?
7· · · ·A.· Right, but there was more explanation on
8· ·what the regression does; how it supports our
9· ·findings; how we develop the pay analysis grouping;
10· ·and there was a back-and-forth discussion on which
11· ·factors should be included and excluded.
12· · · ·Q.· as there dialogue between Ms. Wipper and
13· ·one of the Oracle representatives on that subject?
14· · · ·A.· Yes.· The -- I believe Oracle
15· ·representatives indicated what information was
16· ·maintained or not maintained by Oracle.

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17· · · ·Q.· Anything else? 18· · · ·A.· That was -- that was about it. 19· · · ·Q.· With respect to back pay -- 20· · · ·A.· Yes. 21· · · ·Q.· -- what was said to Oracle with respect to 22· ·back pay at the October 6th meeting? 23· · · ·A.· We provided the estimated back pay owed for 24· ·each violation; we provided the range, 'cause we 25· ·didn't have -- and we also let Oracle know that it **50** 1· ·was unmitigated because we didn't have all the 2· ·information from Oracle to mitigate the damages. 3· · · ·Q.· Did Oracle respond to that at the time? 4· · · ·A.· I don't think there was a response. 5· · · ·Q.· Was a draft conciliation agreement tendered 6· ·by OFCCP -- 7· · · ·A.· Provided. 8· · · ·Q.· -- to Oracle at this meeting? 9· · · ·A.· No.· We didn't discuss the conciliation 10· ·agreement itself.· It wasn't requested.· I don't 11· ·think it was discussed. 12· · · ·Q.· Was there any discussion about the -- and 13· ·beyond what was stated in the NOV, about other -- 14· ·besides payment of back pay, other remedial steps 15· ·that Oracle could or should take as part of a 16· ·conciliation? 17· · · ·A.· Other than what's in the NOV -- 18· · · ·Q.· Correct. 19· · · ·A.· -- and the corrective action? 20· · · ·Q.· Correct. 21· · · ·A.· I think most -- I think it was captured in 22· ·the corrective action piece. 23· · · ·Q.· Okay.· Did Oracle make any substantive 24· ·presentation during this meeting? 25· · · ·A.· Presentation, no.
51:22-58:3 22· · · ·Q· Okay, I'm returning to the October 6th 23· ·meeting. 24· ·Is it fair to say that a good portion of

25· ·the beginning of the meeting was devoted to the

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

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1· ·want to share information.· Did she say that to
2· ·Mr. Siniscalco?
3· · · ·A.· I don't remember that conversation.
4· · · ·Q.· Did Mr. -- with respect to compensation --
5· · · ·A.· Okay.
6· · · ·Q.· -- I'm not going to focus on -- at some
7· ·point after a discussion of the recruiting issues,
8· ·did a discussion then move on to issues relating to
9· ·compensation?
10· · · ·A.· Yes.
11· · · ·Q.· Okay.· Did Mr. Siniscalco make a
12· ·presentation or discussion about differences between

13· ·jobs --
14· · · ·A.· He did --
15· · · ·Q.· -- meaning, for example, if someone --
16· ·especially with respect to the products that people
17· ·worked on?
18· · · ·A.· He did mention the products mattered in
19· ·one's pay.
20· · · ·Q.· Did Mr. Siniscalco argue at this meeting
21· ·that Oracle would -- a different statistical
22· ·analysis would need to be done looking at cohorts?
23· · · ·A.· He argued for a cohort analysis, but I
24· ·don't recall him mentioning a statistical analysis
25· ·'cause you can't conduct a statistical analysis on

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

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

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1· · · ·A.· I recall --
2· · · ·Q.· -- at this meeting?
3· · · ·A.· I recall a discussion on the availability
4· ·statistics that we used --
5· · · ·Q.· Okay.
6· · · ·A.· -- in our analysis.
7· · · ·Q.· With respect to compensation, however,
8· ·there was no discussion of the statistics with
9· ·respect to compensation in that part of the
10· ·October 6th meeting?
11· · · ·A.· We -- no, there was some discussion because
12· ·we obviously discussed the -- the other factors that
13· ·Oracle argued should be taken into account of the
14· ·statistical model, so there was some discussion.
15· · · ·Q.· But not getting into the granularity of
16· ·what was in the NOV, correct?

17· · · ·A.· No.· We didn't have -- we didn't have the
18· ·experts present.· We didn't get into that level of
19· ·detail.
20· · · ·Q.· At the back end of the meeting Ms. Wipper
21· ·provided some -- sorry, Mr. Siniscalco asked for a
22· ·proposal and Ms. Wipper gave certain information on
23· ·compensation and hiring?
24· · · ·A.· Yes.
25· · · ·Q.· There was a proposal given in general -- 22

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

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1· · · ·A.· I don't recall that statement.· I do recall
2· ·OFCC- -- the agency indicating that we were
3· ·expecting a reasonable counteroffer from Oracle.

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58:8-14 8· · · ·Q.· ·Yeah. And did he state, in words or 9· ·substance, that if Oracle did not provide meaningful 10· ·information that OFCCP was prepared to go forward in 11· ·litigation? 12· · · ·A.· ·I believe so because we had already issued 13· ·the show cause so we were moving closer to the 14· ·litigation stage.
58:18-24 18· · · ·Q.· Was there -- shortly after the conciliation 19· ·meeting, an exchange of at least correspondence from 20· ·Oracle indicating that it believed that it was a 21· ·productive meeting at least from an attitude 22· ·standpoint and that Oracle was looking forward to 23· ·further conciliation discussions? 24· ·That sounds familiar.
59:18-60:10 18· · · ·Q.· Ms. Suhr, I'm going to place before you 19· ·what's been marked as Exhibit 17.· It is an e-mail 20· ·dated Monday, October 31, 2016, from Erin Connell to 21· ·Janette Wipper -- 22· · · ·A.· Okay. 23· · · ·Q.· -- attaching a letter from Ms. Connell to 24· ·Ms. Wipper.· It's -- the letter is 13 pages, with 25· ·attachments. **60** 1· · · ·A.· Okay.· Okay.· Oh, attachments, okay. 2· · · ·Q.· So Exhibit 17 is a further analysis 3· ·provided by Oracle as requested by OFCCP at the 4· ·October 6th meeting, correct? 5· · · ·A.· Yes. 6· · · ·Q.· And in that letter Oracle, through 7· ·Ms. Connell, attempts to provide a substantive 8· ·rebuttal with respect to both the hiring and the 9· ·compensation claims, correct? 10· · · ·A.· Yes.

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60:16-61:2 16· · · ·Q.· Exhibit 18, Ms. Suhr, is a letter dated 17· ·December 9th, 2016, from Janette Wipper to Erin 18· ·Connell. 19· · · ·A.· Okay.· Okay. 20· · · ·Q.· That -- what I've provided you in 21· ·Exhibit 16 is -- sorry, 18, is a response to 22· ·Exhibit 17, correct? 23· · · ·A.· Yes. 24· · · ·Q.· And you'll agree with me that about six 25· ·weeks has gone past between Ms. Connell's letter in **61** 1· ·Exhibit 17 and Ms. Wipper's response in Exhibit 18? 2· · · ·A.· ·Yes.
62:5-22 5· · · ·Q.· From an estimation, the bulk of the letter 6· ·is an analysis -- is a response by Ms. Wipper 7· ·relating to the hiring issues with only the 8· ·next-to-last page addressing the compensation 9· ·issues? 10· · · ·A.· Okay. 11· · · ·Q.· Is that correct? 12· · · ·A.· Yes. 13· · · ·Q.· And with respect to the compensation issues 14· ·her substantive response is that she criticizes 15· ·Oracle for not providing a rebuttal statistical 16· ·analysis, correct? 17· · · ·A.· Yes. 18· · · ·Q.· Okay.· And on that basis -- at least with 19· ·respect to the compensation issues, because Oracle 20· ·had not provided rebuttal statistical analysis, it 21· ·was going to be referring the matter to the 22· ·solicitor's office for litigation, correct?
62:23-24 23· · · · · · MR. MILLER:· Objection.· The document 24· ·speaks for it, but you can answer. 25· · · · · · MR. SHWARTS:· You may answer.

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63:1-2 1· ·THE WITNESS:· Yes.· It says, "The agency 2· ·will refer this matter for enforcement proceedings."
63:8-64:9 8· · · ·Q.· Now, in -- typically, in -- at least with 9· ·respect to the Pacific region, is there often more 10· ·than one conciliation meeting between the OFCCP and 11· ·a contractor? 12· · · ·A.· Conciliation communication? 13· · · ·Q.· Or at least a -- even a face-to-face 14· ·meeting.· Could it be more than one? 15· · · ·A.· It could be more than one.· It could be 16· ·just one.· It just varies. 17· · · ·Q.· Can negotiations stretch out over a long 18· ·period of time? 19· · · ·A.· It could, yes. 20· · · ·Q.· Okay.· In this instance, the sequence of 21· ·events -- if I have them correct, is that there was 22· ·a face-to-face meeting on October 9th, correct? 23· · · ·A.· Yes. 24· · · ·Q.· A response from Oracle through its legal 25· ·representative on October 31st, correct? **64** 1· · · ·A.· Yes. 2· · · ·Q.· And based on that, the next event was a 3· ·referral to litigation, correct? 4· · · ·A.· Yes. 5· · · ·Q.· I'm correct that again, aside from what is 6· ·contained in the NOV, no additional statistical 7· ·information was provided to Oracle from March of 8· ·2016 up until the date the matter was referred to 9· ·litigation; is that correct?
64:10-11 10· · · · · · MR. MILLER:· Objection.· Mischaracterizes 11· ·prior testimony.

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64:13-66:3

13· ·THE WITNESS:· There was some discussion on
14· ·statistics during the meeting.
15· ·BY MR. SHWARTS:
16· · · ·Q.· With respect to compensation, not to
17· ·hiring.
18· · · ·A.· There was some discussion on the
19· ·compensation as well.
20· · · ·Q.· All right.· Again, aside from --
21· · · ·A.· The meeting.
22· · · ·Q.· -- what was in the NOV and what you
23· ·mentioned in your testimony --
24· · · ·A.· Yes.
25· · · ·Q.· -- with respect to some discussion at the

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

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25· · · ·Q.· Again, other than what is stated in the **66** 1· ·NOV, did the OFCCP ever, in writing, describe to 2· ·Oracle what nonmonetary actions it needed to take to 3· ·come into compliance --
66:7-14 7· · · ·Q.· -- up and through the date of Exhibit 18? 8· · · ·A.· No. 9· · · ·Q.· Aside from the oral statements that were 10· ·made at the October 6th meeting, did the OFCCP ever, 11· ·in writing to Oracle, state what monetary 12· ·compensation would be required to remedy the NOV up 13· ·and through the date of the -- of Exhibit 18? 14· · · ·A.· No.
68:12-69:13 12· · · ·Q.· To the extent that Ms. Wipper, at the 13· ·October 6th meeting, provided compensation as back 14· ·pay as a propos- -- it wasn't meant as a specific 15· ·proposal, correct?· It was meant sort of as a 16· ·general, This is what we're thinking about? 17· · · ·A.· Yes. 18· · · ·Q.· All right.· And, again, there was any 19· ·follow-up that provided a specific number for 20· ·Oracle, besides what was said generally at the 21· ·October 6th meeting? 22· · · ·A.· No. 23· · · ·Q.· And there was no backup even for the 24· ·numbers that Ms. Wipper provided at the October 6th 25· ·meeting for how OFCCP came up with the proposal that **69** 1· ·Ms. Wipper made? 2· · · ·A.· Backup information? 3· · · ·Q.· Yeah.· How OFCCP arrived at the 22 million 4· ·number for one year and 66 for three? 5· · · ·A.· So at the meeting we discussed this is an 6· ·estimate based on information we had. 7· · · ·Q.· But it didn't provide that information to

8· ·Oracle to help --
9· · · ·A.· Back to Oracle, no.
10· · · ·Q.· -- to help it validate these numbers in
11· ·assessing whether a settlement of that magnitude was
12· ·appropriate?
13· · · ·A.· No.

69:14-71:5

14· · · ·Q.· ·In the Pacific region, to the extent that
15· ·notices of violation have been issued to
16· ·contractors, has the region required rebuttal
17· ·analysis before any conciliation agreement was
18· ·entered -- let me reask it a different way.
19· · · · · · Have there been instances in which a
20· ·conciliation agreement has been reached with
21· ·contractors where no rebuttal analysis was provided?
22· · · ·A.· ·I don't recall.· I don't think so.· I mean
23· ·it's -- that would be unusual for the contractor not
24· ·to rebut the NOV and just agree to the findings
25· ·without conducting its own analysis.

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

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22· · · · · · THE WITNESS:· So for compensation 23· ·analysis -- if I understand correctly, has there 24· ·been a situation where we entered into a 25· ·conciliation agreement without the contractor's **71** 1· ·rebuttal analysis? 2· · · · · · MR. SHWARTS:· With a rebuttal statistical 3· ·analysis. 4· · · · · · THE WITNESS:· Rebuttal statistical 5· ·analysis, no.