

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:)
)
OFFICE OF FEDERAL CONTRACT) Case No. 2017-OFC-00006
COMPLIANCE PROGRAMS,)
U.S. DEPARTMENT OF LABOR,)
)
Plaintiff,)
)
vs.)
)
ORACLE AMERICA, INC.,)
)
Defendant.)
)

VOLUME II

Friday,
December 6, 2019

Dept of Labor Courtroom
90 Seventh Street
San Francisco, CA

The above-entitled matter came on for hearing,
pursuant to notice, at 9:00 o'clock a.m.

BEFORE: THE HONORABLE RICHARD M. CLARK,
Administrative Law Judge

APPEARANCES:On behalf of the Plaintiff:

LAURA BREMER, ESQ.
NORMAN E. GARCIA, ESQ.
JANET HEROLD, ESQ.
PAIGE B. PULLEY, ESQ.
DAVID EDELI, ESQ.
EDUARD MELESHINSKY, ESQ.
JENNIFER FLORES, ESQ.
IAN ELIASOPH, ESQ.
U.S. Department of Labor
Office of the Solicitor
90 7th Street, Suite 3-700
San Francisco, CA 94103
415-625-7740 415-625-7772 fax

M. ANA HERMOSILLO, ESQ.
U.S. Department of Labor
Office of the Solicitor
300 Fifth Street, Suite 1120
Seattle, WA 98104
206-757-6751 206-757-6761 fax

On behalf of the Defendant:

WARRINGTON S. PARKER III, ESQ.
ERIN M. CONNELL, ESQ.
Orrick, Herrington & Sutcliffe, LLP
The Orrick Building
405 Howard Street,
San Francisco, CA 94105-2669

I N D E XPROCEEDINGS: PAGE:Friday, December 6, 2019 250WITNESSES: DIRECT CROSS REDIRECT RECROSS ALJDiane L. Boross 259 286 296 ---Patricia Esteva 299 312 323 325Shauna Holman-Harries 330 368 389 ---Avinash Pandey 392 431 449 451EXHIBITS: IDENTIFIED RECEIVED REJECTEDJOINT

(None identified, nor received.)

PLAINTIFF

(None identified, nor received.)

DEFENDANT447 -- 252448 252ADMINISTRATIVE LAW JUDGE

(None identified, nor received.)

P R O C E E D I N G S

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(9:00 o'clock a.m.)

JUDGE CLARK: We'll go ahead and go on the record.

Good morning. We're on the record in the matter of OFCCP versus Oracle. Today is day two of our hearing, Case Number 2017-OFC-00006.

Today is December 6th, 2019.

Ms. Connell, there was an issue you wanted to take up before we get started with testimony this morning?

MS. CONNELL: Yes, Your Honor. We wanted to -- at the end of the day yesterday we had discussed Defendant's Exhibits 447 and 448, and you had asked if we wanted to move them into evidence and we would like to do that at this time.

JUDGE CLARK: Okay.

And Mr. Garcia, you're going to take this?

MR. GARCIA: Yes, Your Honor.

JUDGE CLARK: Go ahead.

MR. GARCIA: Your Honor, we would object. They initially put in the letters saying that they were impeachment, but there was nothing to impeach with the letters, nor did they, in fact, impeach with the letters. So, we object to them.

JUDGE CLARK: Okay.

MR. GARCIA: Because they were not used for the purpose that they were introduced.

1 JUDGE CLARK: Anything further, Ms. Connell?

2 MS. CONNELL: Yes, Your Honor. We think they do --
3 they were used for impeachment. The 447 was used with Ms.
4 Klagenberg and 448 was used with Ms. Ng. They both
5 acknowledged receiving those letters. We think it goes to
6 their bias and credibility as witnesses. The letter speaks
7 for itself, we didn't feel further follow-up questions were
8 needed, but they did acknowledge receipt of the letters, they
9 both did.

10 JUDGE CLARK: Anything further, Mr. Garcia?

11 MR. GARCIA: Your Honor, if they intended to do the
12 letters, they should have done them initially with their
13 exhibits. Mr. Warrington, when he was saying that, said,
14 well, he felt that they could enter exhibits on cross.
15 Simply entering exhibits on cross is not impeachment. They
16 didn't impeach with these documents. Therefore, the purpose
17 for which they said they were introducing them does not apply
18 and they could have done it initially with their exhibits.

19 JUDGE CLARK: Anything further, Ms. Connell? Last
20 argument, if any.

21 MS. CONNELL: The only thing I would add further is
22 that -- I mean it is OFCCP's letter, so they can't claim
23 surprise. We don't think there's any prejudice.

24 JUDGE CLARK: Okay. Regarding the two exhibits
25 then, 447 and 448, first off, I think Mr. Parker tried to

1 make this clear to me yesterday and I wasn't catching the
2 clue, but basically, when you showed 447 to the second
3 witness, you were really showing the same exhibit and I made
4 you mark a different one, correct?

5 MR. PARKER: That's essentially what happened, yes,
6 Your Honor.

7 JUDGE CLARK: Okay. Because I was clued in there.
8 So, 447 and 448 are the exact same letter. I would say
9 let's withdraw 448 and any reference that we made to it
10 yesterday will be covered by 447, so that we don't have the
11 same exhibit in.

12 Any objection to that, Ms. Connell?

13 MS. CONNELL: No.

14 JUDGE CLARK: Mr. Garcia?

15 MR. GARCIA: No, Your Honor.

16 JUDGE CLARK: Okay. Regarding the admissibility of
17 447, I'm going to overrule the objection and admit this into
18 evidence. I do think it has some relevance to the
19 proceedings and I will overrule the objection.

20 (Defendant Exhibit No.
21 447 was received in
22 evidence.)

23 (Defendant Exhibit No.
24 448 was withdrawn.)

25 JUDGE CLARK: One of the comments that Mr. Garcia

1 made was that introducing exhibits on cross, that is not how
2 I understood our prehearing conference or the prehearing
3 order in this case. That should be the exception, not the
4 rule, that new evidence is coming in on cross examination.
5 So, I just want to make that clear for both parties, not just
6 for Oracle, but also for OFCCP, when you're examining
7 witnesses, as well. We should know what the world of
8 exhibits are in this case and we shouldn't be just bringing
9 in new exhibits as sort of surprise at the end. Hopefully
10 that's the exception and not the rule here.

11 There was another exhibit, Ms. Connell, it was 446,
12 that was the declaration of Kirsten Hanson Garcia?

13 MS. CONNELL: That was just marked for
14 identification, Your Honor. We are not moving that into
15 evidence.

16 JUDGE CLARK: Okay. Anything else, Ms. Connell?

17 MS. CONNELL: No, Your Honor.

18 JUDGE CLARK: And Mr. Garcia?

19 MR. GARCIA: No, Your Honor. Thank you.

20 JUDGE CLARK: Okay.

21 Ms. Bremer, anything further

22 MS. BREMER: Yes, Your Honor, I have two issues.

23 One is that the parties have agreed that Oracle will prepare
24 a stipulation that will identify the names of individuals for
25 whom we use an alias during testimony. And after the

1 stipulation is finalized at the end of the hearing, the
2 parties will file it with the Court, with a request that it
3 be placed under seal.

4 The parties also agree to seal the name of the
5 individual accidentally identified by Ms. Klagenberg during
6 her testimony. A few times she used the individual's actual
7 name instead of saying Jane Doe.

8 JUDGE CLARK: I know what you're talking about,
9 yes.

10 MS. BREMER: Okay. And then the second --

11 JUDGE CLARK: Okay, that's --

12 MS. BREMER: There's also one other issue.

13 JUDGE CLARK: Go ahead.

14 MS. BREMER: We'd also like to discuss the
15 schedule. At the prehearing conference OFCCP requested
16 additional time for the trial, because we had approximately
17 20 witnesses that we expected to provide color to the
18 statistical evidence that's the heart of our case. The Court
19 expanded the time for the hearing and cut the number of the
20 witnesses that we're going to call in half. So, we've
21 distributed the witnesses between the five days allocated to
22 OFCCP, based on the witnesses' schedules. Yesterday did go a
23 bit faster than we anticipated, but be assured that we're
24 doing everything that we can to complete OFCCP's case as soon
25 as possible, but some scheduling conflicts are beyond our

1 control. One witness is out of the country. Our expert is
2 not local and is teaching until December 9th. Both adverse
3 witnesses are not local and only one was available today.
4 So, we are unable to adjust today's schedule, so it is
5 possible that we'll end early today. But we're working to
6 move the witnesses scheduled for next week to earlier days,
7 so that we might be able to end before, you know --

8 JUDGE CLARK: The full five days.

9 MS. BREMER: -- without using up our full five
10 days. It depends on how long the cross-examination of Dr.
11 Madden takes. In any event, we do expect to complete our
12 portion of the case within the five days allotted.

13 JUDGE CLARK: Thank you, Ms. Bremer.

14 Mr. Parker?

15 MR. PARKER: This is not to be fussy, I just want
16 to give the Court, we are scheduling our witnesses. If this
17 case -- if the OFCCP case ends a little bit early, we're
18 going to have to discuss that and we will let the Court know,
19 but we also have people traveling from out of town, we have
20 people canceling meetings and staying in town and so on. So,
21 again, I'm not complaining, I'm not fussing or anything, but
22 I don't want the Court to be surprised if I have to somehow
23 say something similar about the schedule, due to these
24 eventualities.

25 JUDGE CLARK: Okay.

1 MR. PARKER: Possible eventualities.

2 JUDGE CLARK: Okay.

3 Anything further about the scheduling, Ms. Bremer?

4 MS. BREMER: No, Your Honor.

5 JUDGE CLARK: Okay. I appreciate you sharing that
6 with me. I know it's difficult. I know you have witnesses
7 from out of town. And the same for you, Mr. Parker. The
8 idea here -- and it never, to me at least, it has never been
9 you should take a full five days OFCCP, and Oracle you should
10 take your full five days. It's take the amount of time you
11 need to get your case done. I don't see why it would take
12 more than five days for you to get your case done, and the
13 same for Oracle, considering the rulings in the case and the
14 witnesses that need to be called here, particularly since I
15 reduced quite a few.

16 So, when I came in yesterday, my anticipation was
17 we would go until 5:30 o'clock p.m. and we would potentially
18 end the case early, because there's less witnesses now and
19 everybody would sort of condense things. I wouldn't want to
20 expand, like I said yesterday, just to fill up the 10 days.
21 But I understand there is difficulty as people are out of
22 town and you're all trying to keep on task to finish this
23 case within the allotted time. And I'm onboard with that.
24 So, I appreciate you sharing that with me.

25 There is one scheduling item that I should have

1 brought up yesterday and I'll bring it up now. On December
2 17th -- that's Tuesday, December 17th -- we're going to take
3 an extended lunch. It will be a two-hour break that day, so
4 we'll probably break around 11:30, 11:45 o'clock a.m., that
5 day, start up again around 1:45 o'clock p.m. In fact, why
6 don't we just say that, we'll break at 11:45 o'clock a.m.
7 and we'll start at 1:45 o'clock p.m., on December 17th. So,
8 just bear that in mind as you schedule accordingly.

9 Okay. 447 has been admitted into evidence, 448 is
10 withdrawn, 446 is marked for identification, it is not
11 admitted at this point. It is just staying in the record for
12 identification.

13 Anything else before we get started, Ms. Bremer?

14 MS. BREMER: No, Your Honor.

15 JUDGE CLARK: And Ms. Connell?

16 MS. CONNELL: No, Your Honor.

17 JUDGE CLARK: All right. You may call your next
18 witness, Ms. Bremer.

19 JUDGE CLARK: OFCCP calls Diane Boross, and Ed
20 Meleshinsky will be conducting the examination.

21 JUDGE CLARK: Okay.

22 And counsel, why don't you go ahead and state your
23 appearance for the record?

24 MR. MELESHINSKY: Good morning, Your Honor. Eduard
25 Meleshinsky, for OFCCP. And that's M-e-l-e-s-h-i-n-s-k-y,

1 Meleshinsky.

2 JUDGE CLARK: Thank you.

3 Good morning. You can step right around here and
4 before you have a seat, if you would raise your right hand.
5 Whereupon,

6 DIANA BOROSS

7 having been first duly sworn by the Administrative Law Judge,
8 was examined and testified as follows:

9 JUDGE CLARK: Please, have a seat.

10 THE WITNESS: Okay.

11 JUDGE CLARK: Good morning. So, we're recording
12 everything that's said here, but we also have a pretty large
13 courtroom and I need you to keep your voice up so everybody
14 can hear you, okay?

15 THE WITNESS: Yes, I understand.

16 JUDGE CLARK: Okay. This is amplifying some, so
17 you can pull that closer, if you need to.

18 THE WITNESS: Sure.

19 JUDGE CLARK: Because we're recording everything
20 that's said here today, you have to be sure to let the
21 lawyers ask the complete question and then you give your
22 complete answer, that way we're not talking at the same time,
23 because we can't record two people at once, all right.

24 THE WITNESS: Okay.

25 JUDGE CLARK: And then also, because we're

1 recording, you have to say yes or no, not uh-uh or uh-huh,
2 because we can't take that down very well.

3 THE WITNESS: Yes.

4 JUDGE CLARK: If one of the lawyers makes an
5 objection, you just stop talking and I'll tell you whether
6 you can answer the question or not, okay?

7 THE WITNESS: Yes.

8 JUDGE CLARK: And if you don't understanding
9 something, let me know and we'll have the lawyers rephrase
10 it.

11 THE WITNESS: Okay.

12 JUDGE CLARK: All right.

13 Mr. Meleshinsky?

14 MR. MELESHINSKY: And before we begin, I just want
15 to know that Ms. Boross has a cold, so we may have to speak
16 up a little bit and just kind of bear with the proceedings.

17 JUDGE CLARK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. MELESHINSKY:

20 Q Good morning, Ms. Boross.

21 A Good morning.

22 Q Can you please identify -- do you identify as a
23 particular race and gender?

24 A Yes. I am a white Caucasian female.

25 JUDGE CLARK: Hang on. I don't think I had you

1 state your name and spell it for the record, I don't know if
2 I did or not. Why don't you go ahead and do that for us.

3 THE WITNESS: Okay.

4 JUDGE CLARK: I just want to get the spelling down.

5 THE WITNESS: Okay. My name is Diane Louise
6 Boross.

7 JUDGE CLARK: And can you spell your last name?

8 THE WITNESS: That's spelled B-o-r-o-s-s.

9 JUDGE CLARK: -o-s-s, thank you.

10 Mr. Meleshinsky, go ahead.

11 BY MR. MELESHINSKY:

12 Q Ms. Boross, can you please describe your
13 educational background?

14 A Yes. I have a Bachelor of Science with distinction
15 from San Jose State in 1989. I have an AA from West Valley
16 College in 1979, as well. I have a Master's of Science
17 degree in E-Business Management, from Notre Dame de Namur, in
18 2004.

19 Q And did you have a major from San Jose State?

20 A No.

21 Q Okay. Are you familiar with the tech industry?

22 A Yes, I am.

23 Q Were you ever employed in the tech industry?

24 A Yes.

25 Q What was the general nature of the work that you

1 did when you were employed in the tech industry?

2 A I was initially hired as an industrial designer in
3 about 1991. I started doing some work in Interaction Design,
4 and pretty much transferred to that 100 percent by '95.

5 Q And have you ever been employed by Oracle?

6 A Yes, I have. I was employed from 2006, September
7 2006, to April 2018.

8 Q And I should go back one question. You say that
9 you didn't have a major at San Jose State University. Did
10 your course work have a focus there?

11 A Oh, yes. I was an industrial designer. I have a
12 Bachelor of Science with distinction.

13 Q Thank you. How did you come to work for Oracle?

14 A I came to work for Oracle after applying. I
15 graduated with my E-Business Management, which made me an
16 interesting prospect to make a switch over to Enterprise
17 work. So, I was looking -- I was specifically looking for
18 companies nearby, because I had commuted for many, many
19 years, and Oracle was five miles away, so it was very
20 attractive for me. So, I saw several openings that they had
21 in design, and so I applied for those.

22 Q Okay. And you applied for more than one opening at
23 Oracle?

24 A Yes, I did.

25 Q And do you know where those position were to be

1 located at Oracle?

2 A One was with the Applications, Business
3 Applications User Experience Group. And the other was with
4 Enterprise Group.

5 Q Okay. And which facility were these positions
6 located at?

7 A Both of those positions were located at Redwood
8 Shores.

9 Q And after you applied for these positions, what
10 happened next in the process?

11 A I went through the interview process with them,
12 which generally included a phone interview with several
13 people. And then I came in for a full-day interview with
14 probably up to 20 people, about eight individuals and then a
15 group presentation.

16 Q And did you receive an offer at the end of that
17 day?

18 A Not at the end of the day, but over the next three
19 days I received a phone call from the hiring manager.

20 Q And who was the hiring manager?

21 A The hiring manager was Arin Bhowmick.

22 JUDGE CLARK: Can you spell that for us, if you
23 can?

24 THE WITNESS: Yes. It's A-r-i-n B-h-o-w-m-i-c-k.

25 JUDGE CLARK: Thank you.

1 BY MR. MELESHINSKY:

2 Q And who was on the phone call with you and Mr.
3 Bhowmick, if anybody else?

4 A Well, there was probably a recruiter involved.

5 MR. PARKER: Move to strike, lacks foundation.

6 MR. MELESHINSKY: Ms. Boross testified that Mr.
7 Bhowmick gave her a phone call. I'm merely asking if there
8 was anybody else on that same phone call.

9 JUDGE CLARK: Overruled.

10 You can answer the question.

11 BY MR. MELESHINSKY:

12 Q Ms. Boross, do you need the question repeated
13 before you testify?

14 A Well --

15 Q Let me re-ask the question. Was there anybody else
16 on the call with you and Mr. Bhowmick regarding your offer?

17 A To be honest with you, I don't recall if there was
18 another person on the line when that offer was made.

19 Q Okay. So, what was discussed between you and Mr.
20 Bhowmick during this call?

21 A Well, we discussed the hiring, the title, the job
22 title, and we also discussed the previous salaries of my
23 previous jobs.

24 Q And who brought up your previous salaries at your
25 previous jobs?

1 A Arin asked me what my last couple jobs were. He
2 was looking at my resume and he said, you know, okay, when
3 you worked at Bay Networks what did you get, when you worked
4 at Brocade what did you get. And as a consultant, which I
5 had been working as a consultant during the time I went to
6 school -- which I put myself through -- he asked what my
7 hourly rate was. He asked --

8 Q Oh, go ahead.

9 A I was going to say he also asked if I wanted to
10 consider either a full-time job or a contract job.

11 Q Okay. And did Mr. Bhowmick explain why he was
12 asking for your previous salary information?

13 A Well, he wanted to get an idea of what my
14 expectation might be. That's my assumption.

15 Q Okay. Did Mr. Bhowmick ultimately offer you a job
16 at Oracle?

17 A Yes, he did.

18 Q And did he specify the terms of that job offer to
19 you?

20 A You mean the pay, the compensation?

21 Q Yeah.

22 A Yes, he did.

23 Q And what were the terms that Mr. Bhowmick presented
24 to you?

25 A He presented me with what had been my annual salary

1 at the oldest job, which was \$100,000.00 at that time. My
2 hourly rate, as a contractor, had been \$100.00 to \$120.00 an
3 hour. I'd had two jobs since where I had received
4 \$125,000.00 and \$135,000.00 respectively. So, yeah, he came
5 with -- and I said can you raise it a little bit, and he did
6 raise it to \$105,000.00.

7 Q And to be clear, am I understanding correctly that
8 Mr. Bhowmick offered you the lowest salary of the three
9 previous salaries you presented him with?

10 A Yes. Yes, he did.

11 Q Did you think that was fair?

12 A No.

13 Q Why not?

14 A Well, I had completed a master's degree since that
15 job, but I was switching from industries and I had wanted to
16 get into more business applications versus network management
17 applications, so you know, I was willing to take some
18 concession for that.

19 Q What position were you hired for?

20 A I was hired as a senior interaction designer.

21 Q And are you familiar with levels at Oracle, in
22 terms of job?

23 A You know, at the time I was hired, I didn't really
24 know what all the levels were. So, I later learned, you
25 know, what the levels meant. And once I learned that, I felt

1 that I had been low-balled.

2 Q Why did you feel that you were low-balled when you
3 learned what your level was later on?

4 A Because of my years of experience as a designer, I
5 had over 25 years of experience as a designer, not only had I
6 received a lot of rate, but people at my level often had
7 maybe five years of experience.

8 Q And are you familiar with Product Development at
9 Oracle?

10 A Yes.

11 Q Was your role as a senior interaction designer a
12 part of Product Development at Oracle?

13 A Yes.

14 Q Okay. And we've been -- okay -- we've been
15 discussing your pay at the start of your time at Oracle. You
16 were there for 11 and a half years, during your 11 and a half
17 years at Oracle did you feel that you were paid fairly?

18 A No.

19 Q Why not?

20 A Because I did not get raises regularly. I was
21 promoted without getting a raise. I was promoted two years
22 after I was there. And I asked my manager when would I get
23 the raise to go with the promotion.

24 Q Okay. Let's break that down a little bit. When
25 you first arrived at Oracle did you continue to voice

1 concerns about your compensation?

2 A Yes.

3 Q And when did you do that?

4 A I did that a couple times.

5 Q When was the first time?

6 A Well, the first time was during, you know, since I
7 had accepted the compensation the first time was when the
8 promotion was -- had happened -- had occurred, because you
9 know, you assume with a promotion that you would also get a
10 raise.

11 Q And are you familiar with an individual named Mr.
12 Ashley, Jeremy Ashley?

13 A Yes, I am.

14 Q And who is Mr. Ashley?

15 A Jeremy Ashley was the VP of the entire Oracle
16 Applications, User Experience team, which was anywhere from
17 100 to 150 people at different points.

18 Q And did you ever speak to Mr. Ashley about your
19 under-compensation at Oracle?

20 A Yes, I did. I had one -- one -- kind of a lunch
21 with Jeremy, you know, with some little thing that we had
22 with our team. And I went to lunch with him and I got to
23 know who he was. I wanted to find out a little bit about his
24 philosophy as a manager and what tone he wanted for his
25 department. Which I did, I learned a little bit of that.

1 But then I expressed I thought I had compromised too much on
2 my salary, I had felt I had, you know, kind of come in at a
3 level that I probably shouldn't have. And I asked him, you
4 know, is there some way I can, you know, raise that or raise
5 my compensation. And he said to me that I would have to
6 leave Oracle and return.

7 Q And what was your reaction when you heard Mr.
8 Ashley tell you that?

9 A I was really upset, because I had only been there a
10 couple months and I had really wanted that job and, you know,
11 and I was prepared to do what it took to prove that I was
12 worthy of higher compensation. And that wasn't the answer I
13 expected, so I think I was in shock.

14 Q Did you have any expectations that Mr. Ashley would
15 take any steps to correct your underpayment?

16 A He did not indicate that there would be any other
17 way.

18 Q And one question I wanted to ask was, when you were
19 first hired at Oracle, which level were you hired at?

20 MR. PARKER: Lacks foundation, asked and answered.

21 JUDGE CLARK: Overruled.

22 You can answer the question.

23 THE WITNESS: I was -- when I was hired at Oracle,
24 I was hired as a senior interaction designer.

25 BY MR. MELESHINSKY:

1 Q Ms. Boross, my question was which level --

2 A Oh, which IC level? I was IC level 3, and then I
3 was promoted two years later to IC level 4.

4 Q And we'll get to that. Generally speaking, what
5 were your work duties as a senior interaction designer?

6 A As a senior interaction designer, I was assigned to
7 workflows.

8 Q What are workflows?

9 A Workflows are -- they are a cluster of high level
10 -- it's a high level task which is usually combined with a
11 cluster of smaller level tasks associated with it, so for
12 customers, users, to complete in the course of their work.

13 Q What is an example of something that's a commonly
14 used workflow?

15 A Would be to create an object.

16 Q Is that one that, you know, maybe attorneys use in
17 the workplace, so that we can get a sense of it?

18 A Well, let's see -- let me think. Add a customer to
19 your list, you know, this is for CRM applications, you know,
20 add customers to your list of customers or your opportunities
21 or whatever, you know.

22 Q And what is CRM, briefly?

23 A Customer Relationship Management, it's basically
24 used by sales people.

25 Q And was that a product at Oracle?

1 A That was one of the product lines or what they
2 called "pillars." For a business application there are
3 multiple pillars and one of them was CRM pillar.

4 Q Got it. And in addition to workflows, were there
5 any other job duties you had as a senior interaction
6 designer?

7 A There were some other things I did and I was
8 trusted with doing. And I hired interns, I basically did the
9 prescreening interviewing and the onboarding process for
10 interns that were graduate level students who were finishing
11 up their degrees.

12 Q And in addition to doing workflows, hiring interns,
13 were there any other components of your job that you
14 regularly did?

15 A There were -- well -- I worked on workflows, I went
16 to some of the acquisitions. There was one situation where I
17 went to Montana to an acquisition called "Right Now." And I
18 was sent there to evaluate the differences between what was
19 their product, which we had acquired, so they could -- so we
20 could update our product to reflect the latest standards and
21 guidelines for user interaction usability for the product.

22 Q Okay. And is there anything else that you can
23 recall of your regular job duties at Oracle as a senior
24 interaction designer?

25 A Oh, that's as a senior?

1 Q Um-hum.

2 A Okay. So, I did that as a principal. So, as a
3 senior it was primarily workflows.

4 Q Did you ever -- are you familiar with the term:
5 "Call Center," during your time at Oracle -- "Cost Center"?

6 A A Cost Center -- yes.

7 Q And where is that term used, as you understand it?

8 A That was budget, I think, you know, that we would
9 -- when we hired interns or if we had expenses, we always
10 billed against our Cost Center.

11 Q And did your Cost Center change at Oracle, as far
12 as you can recall?

13 A No. I was in the same Cost Center the entire time.

14 Q And we'll discuss this in more depth later, but did
15 you ever move products between products at Oracle?

16 A Did I switch products?

17 Q That's right.

18 A That I worked on? Yes, I did.

19 Q And even though -- when you switched products at
20 Oracle, did your Cost Center change?

21 A No, the Cost Center did not change.

22 Q And you mentioned this before, but did you hold the
23 same title throughout your career at Oracle?

24 A No. I was hired in as a senior interaction
25 designer and I was promoted to principal interaction designer

1 two years later.

2 Q And did your IC level change when you were promoted
3 to principal interaction designer?

4 A Yes. It went from three to four.

5 Q Was there any change in pay when your IC level went
6 from a three to four?

7 A No, there was none.

8 Q How did you feel when you learned you would not be
9 receiving a pay increase to go with your promotion?

10 A I was a little surprised, because it was the first
11 time I had actually been promoted without a raise. So, I
12 asked when would I see a raise and I was told -- by my
13 manager, Arin Bhowmick at the time -- that I would -- I
14 should see a rise over the next two years.

15 Q So, you mentioned that you asked this of Mr.
16 Bhowmick. When did you ask, approximately?

17 A I asked pretty close to after the promotion, yeah,
18 within a few weeks of the promotion or having received the
19 promotion.

20 Q And under what circumstances did you ask Mr.
21 Bhowmick?

22 A On my one-on-one meetings, we would have weekly
23 one-on-one meetings.

24 Q And was that in person?

25 A Yes.

1 Q Okay. Did you receive a pay increase two years
2 later?

3 A No.

4 Q Did you do anything as a result of that, not
5 receiving a pay increase two years later?

6 A Yeah, I did. I went and looked online with --
7 there's an application where there's a site online called
8 "Glass Door." And Glass Door is a site which people review
9 companies and also post their compensation publicly. So, you
10 have a pretty fair idea of what is out there in the industry.
11

12 Q And what did you do with the application Glass
13 Door?

14 A So, I went to that application to see where I stood
15 and discovered that I was at the bottom of the curve and my
16 compensation put me at the bottom of the curve. And I know
17 my performance did not reflect bottom of the curve, so you
18 know, I printed that out, I marked where I was and I handed
19 it, on my one-on-one, to Arin. And Arin looked at it and
20 then handed it back to me.

21 Q Did he say anything after he handed it back to you?

22 A Yeah. He said: "I can't do anything."

23 Q Did he explain why he couldn't do anything about
24 the underpayment?

25 A No.

1 Q Did you ever come to learn why Mr. Bhowmick
2 couldn't do anything about your underpayment?

3 A Well, I came to an understanding based on talking
4 with other individuals, you know, that the budget was very
5 limited and that they tried to focus on those employees with
6 the greatest need. They said there were some people that are
7 off the curve, totally off the curve. Even if you're at the
8 bottom of it, there are people that are completely off. And
9 they try and raise them at least up to the curve, so there
10 was only so much money to go around, basically.

11 Q Did you ever discuss compensation at Oracle with
12 your former co-workers?

13 A No.

14 Q Why is that?

15 A Well, a lot of people, they were hired under
16 different circumstances and I was told, specifically by my
17 manager Arin, that I shouldn't talk about my compensation
18 with anyone, because I might make them -- or they might feel
19 badly or it could create some bad feelings, because people
20 were getting different compensation.

21 MR. MELESHINSKY: Your Honor, may I approach the
22 witness, for a moment, to give her some tissues.

23 JUDGE CLARK: Yes.

24 THE WITNESS: Thank you.

25 I'm sorry, I sound pretty gravely.

1 JUDGE CLARK: You're doing fine, you're doing fine.

2 THE WITNESS: Oh, thank you.

3 BY MR. MELESHINSKY:

4 Q Did anybody at Oracle ever direct you not to
5 discuss compensation with other co-workers?

6 A Yes.

7 MR. PARKER: Objection, asked and answered.

8 JUDGE CLARK: Overruled.

9 THE WITNESS: Yes. My manager, Arin, basically
10 said that just not to talk about bonuses or compensation --
11 well -- compensation, no, but bonuses, you know, when the
12 bonuses came in he just said that: "Not everybody is getting
13 what you're getting, Diane, so don't talk with other people
14 about it."

15 MR. MELESHINSKY: Okay.

16 BY MR. MELESHINSKY:

17 Q Did you ever receive a pay raise at Oracle?

18 A Yes, I did.

19 Q When was that?

20 A I did finally get a raise. That was eight years
21 after I was hired and six years after I was promoted.

22 Q And approximately how much was the raise in 2014?

23 A It was a little over \$3,000.00.

24 Q Did you receive any other pay increases after 2014?

25 A No.

1 Q Did you receive performance evaluations at Oracle?

2 A Sometimes.

3 Q How often, approximately, did you receive
4 performance evaluations at Oracle?

5 A Of the 11 years I would have received a performance
6 appraisal, I received feedback on my performance probably,
7 approximately, four times, four or five times, yeah.

8 Q Did your manager -- can you briefly explain what
9 the performance review process is like at Oracle, for
10 yourself?

11 A Oh, it was very involved. It was probably about
12 two days work and just going back over the entire year. We
13 have focal performance appraisals and you had to go over your
14 year and create a list of, you know, what you had worked on
15 and pretty much attribute it to certain categories that were
16 part of the format of the template that we were filling out.

17 So, it was fairly involved. And then the managers had to do
18 about the same amount of work per employee, so it was pretty
19 intense.

20 Q And you mentioned that you estimate you received
21 about four performance evaluations during your approximately
22 11 and a half years at Oracle. Did you ever -- did your
23 managers ever fail to complete their portion of your
24 performance evaluation?

25 A Yes, they did.

1 Q And how did that make you feel?

2 A It was disheartening, it would be, because you
3 know, I wanted -- you know, I put the time in myself, and I
4 had wanted to get that feedback, because that would help
5 direct me as to what I needed to be looking at and focusing
6 on. So, I wanted that feedback and I wasn't getting it.

7 Q Okay. Did you have any expectation about what
8 might result after completing your performance review?

9 MR. PARKER: That's vague.

10 THE WITNESS: Could you repeat that?

11 MR. MELESHINSKY: Sure.

12 JUDGE CLARK: So, the objection is overruled.
13 Repeat the question, go ahead.

14 MR. MELESHINSKY: Sure.

15 BY MR. MELESHINSKY:

16 Q Did you have any expectations of what might happen
17 as a result of completing your performance review, your
18 portion of it?

19 A Did I have expectations?

20 Q Um-hum.

21 A Yes, yeah.

22 Q What were those?

23 A Well, that I would be given some direction and
24 support in terms of what I could do with my performance, to
25 be able to, you know, validate my -- you know, validate my

1 contributions. And also, you know, how I could improve my
2 performance so that I could be a better contributor, you
3 know, that was important to me.

4 Q How often would you complete your portion of your
5 performance evaluations during your 11 and a half years,
6 approximately?

7 A How often?

8 Q Um-hum.

9 A Whenever I was asked to, which was most of the
10 years. I wasn't asked every year, but most of the years,
11 yes, I always completed my portion.

12 Q Have you ever received any kind of negative
13 feedback at Oracle?

14 A Yes.

15 Q When was that?

16 A That was when I switched managers.

17 Q And what happened when you switched managers, such
18 that you received negative feedback?

19 A Well, okay. What happened? I did receive a PIP,
20 but the PIP was completely unexpected. And I had a response
21 to that, which I wrote to HR.

22 Q And how did HR respond, if at all, to your response
23 to the PIP.

24 A They investigated it, because they had no record,
25 and they later told me that the managers had really just --

1 they were new managers to me and they just simply wanted to
2 know what I could do and they had mistakenly used the word
3 "PIP." So, of course I assumed that it was official, and so
4 I respond by including HR in my response to them and that
5 pulled them into the thing. But they said it wasn't a true
6 PIP, it was just -- they just wanted to know what I could do.
7 And my response was why didn't you just ask me, you know,
8 you didn't have to go to that extreme.

9 Q Thank you. And you previously -- what year did
10 this happen?

11 A It was about 2014, it was after my mother passed
12 away.

13 Q I'm sorry. And what was the name of that manager?

14 A The manager who delivered the PIP was Kristin
15 Desmond.

16 Q And you testified previously that you received a
17 pay increase in 2014. Was that after HR fixed Ms. Desmond's
18 mistake and --

19 MR. PARKER: Misstates the testimony,
20 argumentative.

21 JUDGE CLARK: Rephrase your question.

22 MR. MELESHINSKY: Sure.

23 BY MR. MELESHINSKY:

24 Q Did you receive your pay increase before or after
25 Ms. Desmond -- the incident happened that you just described?

1 A I received the pay increase, finally, after, about
2 -- yeah -- about eight months after.

3 Q Thank you. And what position did you hold in 2014,
4 when you received the pay increase?

5 A I was a principal interaction designer.

6 Q Okay. Did you -- generally speaking, what were
7 your job duties as a principal interaction designer?

8 A Principal interaction designer worked on more -- as
9 a principal interaction designer I worked on more general --
10 (cough) sorry --

11 Q Take your time.

12 A I worked on more general types of tasks. That is
13 those -- they were similar to senior, but they were more
14 comprehensive. So, I would be covering, for example in the
15 Right Now activity, or task that I was doing, where I went
16 out to Right Now and did an assessment, I was able to
17 evaluate at a higher level, you know, what was going on,
18 completely understand the product and do a DIF, you know,
19 which is the difference between what Oracle has and what they
20 have, and what would need to happen to make them work
21 together. And so that was evaluative and it required more
22 seniority, experience and judgment.

23 I also, as a principal, I wrote a pattern and I
24 basically created a patent from that or created a patent
25 proposal from that, as well. So --

1 Q We'll get to that a little bit later.

2 A Okay.

3 Q Thank you for that. Are you familiar with
4 something called: "Architect level work"?

5 A Yes, yes.

6 Q What does that refer to?

7 A Okay. So, again, you know, you're looking at
8 software applications. Software applications are made of
9 pages with some kind of instruction on how to interact with
10 the application. And architect would look at what the
11 structure of the framework that holds those applications
12 together, pulls them together. And so in several instances I
13 worked on some architectural level applications, where I was
14 looking at the structure that the different applications
15 would fit together.

16 Q And before you mentioned that you worked on the CRM
17 product at Oracle. Were there any other products that you
18 worked on at Oracle?

19 A I worked on the security. I was initially hired
20 to work on the security applications. And then I switched
21 over to CRM and that was -- so I worked primarily on CRM
22 until my manager, who had left his job, and that's when I
23 started working for Christian Akilian (phonetic). And then
24 after I worked with them for a year, I was switched to
25 another manager, where I was working on the centralized

1 functions, which design functions or design patterns -- and
2 patterns would be, say, similar to a recipe for how to build
3 a particular interaction, like say a common one like "print"
4 or "create," or "edit." Users have certain expectations, so
5 we create patterns around them so we can reuse them.

6 Q When you moved from security to CRM, did your pay
7 change?

8 A No.

9 Q And when you moved from security to CRM, did you
10 need to go through any kind of training in terms of your
11 design skills, to do design work on CRM?

12 A There were little spot training things. So, they
13 weren't for design skills, necessarily, it was more like, you
14 know, an industry change. You're going to an industry
15 business sector and understand the customers in that sector,
16 necessitated an understanding of the different tasks they do,
17 which their training was more along the business lines, not
18 necessarily on the design lines. But there were some design
19 trainings, online training that Oracle provided, so.

20 Q Were those trainings required of you, were you free
21 to take them?

22 A Pretty much, if I wanted to do my work, I needed to
23 do the training.

24 Q And did anybody direct you to take those trainings?

25 A I think any manager that I was, you know, that I

1 had at any given time, where I necessitated some training,
2 gave me some direction as to what to do.

3 Q And how long were these trainings that we're
4 talking about, the ones that you mentioned online?

5 A Oh, gosh. The trainings could take, you know,
6 anywhere from a day or two to a week, usually.

7 Q And were there other -- going back to your time as
8 a senior interaction designer, were there other senior
9 interaction designers working with you at that time?

10 A Yes, yes.

11 Q About how many were there?

12 A In my group?

13 Q Let's start with your group?

14 A In my group, there were probably four or five. But
15 in the department, which under Jeremy there was, maybe, 50,
16 60.

17 Q And in your group, did you ever need to fill in for
18 the other senior draft designers?

19 A Yes, yes. We did that all the time, either we
20 covered for one another whenever somebody had a medical leave
21 or, you know, that was just kind of given, you know, that we
22 would fill in for one another.

23 Q And were you all working on the same products
24 during that time you were a senior interaction designer?

25 A No -- well -- we all had our own particular

1 projects and so we would apply our skills to be able to
2 support, you know, we were -- we would support one another,
3 you know. Like if they needed some more drawings done or if
4 they needed some more -- some particular step in the process
5 that needed to be done, we would fill in and just do it.

6 Q And you didn't need any -- or did you need any
7 particular training in order to fill in for a teammate when
8 you were a senior interactions designer?

9 A Not necessarily, because we were all using the same
10 tools.

11 Q And is the same true for when you were a principal
12 interaction designer?

13 A Pretty much, yes.

14 Q And before you mentioned that you helped create a
15 patent at Oracle. What was the patent for?

16 A Okay. The patent was for setting primarian tables.
17 It was a pattern which guaranteed that when a user or when a
18 customer needed to give a particular object priority, that it
19 would always be retained at the top of the list, no matter
20 what the circumstance was, you know, however it was presented
21 to a user. So, there were different versions.

22 Q And around when did -- well, let me ask you this.
23 Can you describe the process of creating the patents you were
24 part of at Oracle?

25 A Well, okay. So, to create a patent at Oracle you

1 have to do a proposal, to begin with. And so I had already
2 created a pattern -- what we call "pattern," which is kind of
3 like a recipe -- for this particular set primary interaction
4 under different circumstances. And so I was able to take
5 that, since I had written that, and adapt it for the
6 particular format that was necessary for a proposal to the
7 lawyers, at which point the lawyers would redraw it for
8 government purposes. It has to look a certain way and be
9 presented a certain way for a patent.

10 Q And when did you begin this process of drafting the
11 patent?

12 A It was around 2011-2012.

13 Q And do you know if the patent was eventually
14 awarded?

15 A Yes, it was.

16 Q When was that?

17 A That was 2017, yeah.

18 Q And are you listed on the patent?

19 A Yes, yes. I'm the first name.

20 Q Thank you. Is that significant?

21 A Yeah. It was very satisfying. I was really glad
22 to get that patent. I had done most of the work on it in the
23 proposal, and I had done the pattern that supported it. So,
24 I -- it was very satisfying to receive that, yes.

25 Q And when you're listed there, is it under the

1 heading of: "Inventor"?

2 A Yes.

3 MR. MELESHINSKY: Sorry -- one moment, Your Honor.

4

5 That's it for us.

6 JUDGE CLARK: Thank you, Mr. Meleshinsky.

7 Mr. Parker, go ahead.

8 MR. PARKER: Yes. May I approach, Your Honor?

9 JUDGE CLARK: Yes.

10 MR. PARKER: I'm going to make use, if you don't
11 mind, of that extra letter you have sitting there.

12 JUDGE CLARK: Okay.

13 MS. BREMER: Mr. Parker, if you're looking for the
14 exhibits that you had yesterday, they're in that grey folder.

15 MR. PARKER: That's very nice of you. Okay.

16 MS. BREMER: What number did you just put in front
17 of the Judge -- I mean in front of the witness?

18 MR. PARKER: I will do that in due course.

19 CROSS-EXAMINATION

20 BY MR. PARKER:

21 Q Ms. Boross, I've put in front of you what's been
22 previously marked as Exhibit 447. Have you seen that before?

23 A Yes.

24 Q And you received that in the mail from OFCCP,
25 correct?

1 A CCP? Can you --

2 Q The people over on the other side of the courtroom?

3 A I am assuming that's who sent it, yes.

4 Q Did that letter cause you to reach out to anyone,
5 did you make a phone call, did you e-mail?

6 A (No verbal response.)

7 Q I'll ask it differently. How did you get in touch
8 with the people who -- OFCCP -- the Department of Labor?

9 A I phoned them.

10 Q And you phoned them after receipt of this letter,
11 correct?

12 A Yes.

13 Q Now, when you were working at Oracle, you were not
14 responsible for setting compensation, correct?

15 A No, I was not.

16 Q And you weren't responsible for performance
17 reviews, correct?

18 A No.

19 Q And you weren't responsible for new hires, correct
20 -- setting compensation for new hires, correct?

21 A I did input, on the onboarding I did input the
22 numbers, but we had a set number, which we applied
23 universally to interns.

24 Q Great. So, what you just talked about was interns
25 and I actually want to talk about people who were hired just

1 like you were into Oracle. That was not your responsibility?

2 A No, that was not my responsibility.

3 Q Not even entering numbers, correct?

4 A No.

5 Q And you're not responsible for focal reviews,
6 correct?

7 MS. BREMER: Objection, there's nothing in the
8 record --

9 BY MR. PARKER:

10 Q Do you know what a focal review is?

11 A Yes, I do.

12 Q Were you responsible for focal reviews?

13 A No, I was not.

14 Q Now, as I understand it, you obtained the position
15 when you were first hired -- you were obtained the position
16 for which you interviewed, correct?

17 MR. MELESHINSKY: Objection, mis-characterizes
18 prior testimony.

19 JUDGE CLARK: Overruled.

20 If you can answer the question, you can answer
21 that.

22 THE WITNESS: Okay. Can you repeat it?

23 MR. PARKER: Absolutely.

24 BY MR. PARKER:

25 Q Is it true that when you interviewed for the job at

1 Oracle, that was the job that you were offered, correct?

2 A Correct.

3 Q And the person you spoke to about hiring was this
4 man named Arin Bhowmick, correct?

5 A Correct.

6 Q And he was your first-line manager, correct?

7 A Correct.

8 Q And I understand that Mr. Bhowmick offered you --
9 asked about prior pay, correct?

10 A Yes, he did.

11 Q And then Mr. Bhowmick offered you \$100,000.00,
12 correct?

13 A Correct.

14 Q And you responded: "Can you make it \$105,000.00,"
15 or words to that effect -- I'm not trying to
16 mis-characterize?

17 A Yes, close enough. I said: "Can you make it a
18 little more?"

19 Q And one of the reasons that you were looking for a
20 full-time job is you wanted the benefits, as well, correct?

21 A Correct.

22 MR. MELESHINSKY: Objection, mis-characterizes
23 prior testimony.

24 JUDGE CLARK: Overruled. The answer will stand.

25 BY MR. PARKER:

1 Q And then when you talked to -- when you were
2 negotiating the salary, you were talking to Mr. Bhowmick,
3 your front-line manager, correct?

4 A Correct.

5 Q And when you asked for raises -- when you were
6 discussing raises, you talked to your front-line manager, Mr.
7 Bhowmick, correct?

8 A correct.

9 Q And then when you were talking about Glass Door,
10 you were talking to Mr. Bhowmick about that, as well, you
11 handed him the document, correct?

12 A Correct.

13 Q Now, Glass Door -- strike that.

14 I'm interested in -- you were asked a question
15 about the people who do the user interface and you were asked
16 if you were working on the same products. And I think you
17 responded -- and correct me if I'm wrong -- you said: "We all
18 had the same projects" -- correct?

19 A Not the same projects, we had different projects,
20 but we were working kind of under the same umbrella.

21 Q Yes. And you can correct me if I'm wrong about
22 this, but it seemed to me that in your opinion , people who
23 worked in user interface are basically fungible, they can
24 move from one project to another just simple as could be, is
25 that true?

1 A Yes and no. It would depend on, you know, the
2 manager's discretion. He would evaluate the skill,
3 capabilities of the different employees.

4 Q Right. Some have some skills, some don't have
5 certain skills, correct?

6 A Correct.

7 Q And then I understand that when you were talking
8 about -- oh --

9 MR. PARKER: Your Honor, I believe that this
10 witness has waived confidentiality as to salary and,
11 therefore, I'd like to question her directly about that.

12 JUDGE CLARK: So, why don't you take it question by
13 question. If there's an objection, we'll take up the
14 objections as they come.

15 MR. PARKER: Absolutely.

16 BY MR. PARKER:

17 Q So, you've told us that you had a -- you told us
18 about your starting salary, correct?

19 A Correct.

20 Q And then you told us about when you received your
21 salary increase, correct?

22 A Correct.

23 Q And I don't want to blurt out the number, but I
24 think you told us what that number was -- yes, you did -- and
25 you told us that number was approximately \$3,000.00, correct?

1 A Over, yes, slightly over.

2 Q Yes. And do you recall, in addition to that, you
3 received an annual bonus of \$3,500.00 in 2007?

4 A I don't know what my actual annual bonuses were,
5 because they would vary.

6 Q All right. Very good. Do you have any reason to
7 dispute that between 2007 and 2017, you received -- oh -- you
8 received six bonuses, annual bonuses?

9 MS. BREMER: Objection.

10 MR. MELESHINSKY: Objection as to annual. There's
11 nothing to say that these are regular bonuses as opposed to
12 spot bonuses or anything else.

13 JUDGE CLARK: Overruled.

14 You can answer that question.

15 THE WITNESS: Around that number. I don't know
16 exactly, but around that number, yes.

17 BY MR. PARKER:

18 Q And do you recall that one of them was in the
19 amount of \$10,000.00?

20 A I don't recall the number, exactly. There was one
21 that may have been slightly more.

22 Q And there was one that was slightly more than
23 \$10,000.00, correct?

24 A No, there was nothing more than \$10,000.00.

25 Q Do you recall receiving, in 2011, a bonus of

1 \$11,550.00?

2 A I do not recall receiving.

3 Q And Ma'am, about patent bonuses, I think you sold
4 yourself a little short. Do you recall receiving two
5 different patent bonuses?

6 A No, I did not. I only received the one on
7 submission. And I did contact the lawyers about on patent
8 receipt -- if I should have gotten a patent bonus on receipt
9 of the patent. I did get a plaque, a beautiful plaque. But
10 I want to say that I contacted the lawyers and I said: "Where
11 is my bonus on receipt? I have not received it." And they
12 said that particular year no bonuses on receipt of patent
13 were given. The year before, the year after, they were, but
14 not that year.

15 Q So, you recall receiving a patent bonus in 2011,
16 correct?

17 A Yes, I received one for submission of the patent.

18 Q And the patent issued in 2017, correct?

19 A Correct.

20 Q And you recall receiving a \$1,500.00 patent bonus
21 that year, correct?

22 MR. MELESHINSKY: Objection, mis-characterizes the
23 testimony. She was explicitly clear that she does not recall
24 this.

25 JUDGE CLARK: That's sustained. That's not her

1 testimony. Rephrase your question, Mr. Parker, if you're
2 going to ask that.

3 BY MR. PARKER:

4 Q So, I'll say this, you don't recall receiving a
5 patent bonus in 2017, correct?

6 A I did not receive a patent bonus in 2017.

7 Q And you understand that Oracle actually does issue
8 patent bonuses, correct?

9 MR. MELESHINSKY: Objection, calls for speculation.

10 JUDGE CLARK: Overruled. You can answer the
11 question.

12 THE WITNESS: Yes.

13 BY MR. PARKER:

14 Q Now, let's talk about 2014. After Mr. Bhowmick you
15 moved to a Kristin Desmond, correct?

16 A Correct.

17 Q And Kristin Desmond's direct supervisor, in 2014,
18 was a woman named Killian Evers, correct, or Erin Evers,
19 correct?

20 A Yes. She went by Killian.

21 Q Okay. And these are -- Kristin Desmond identifies,
22 as far as you know, as a woman?

23 A Yes.

24 Q And Killian does, as well, correct?

25 A Yes.

1 Q And these are the people who mistakenly, or not,
2 put you on a PIP, correct?

3 A (No verbal response.)

4 Q Or what you believe was a PIP and you went to HR,
5 correct?

6 A Yes.

7 Q And in the year that you received that -- whatever
8 the status was, accidentally or not, that's the year you got
9 your promotion, correct -- I mean got your raise, correct?

10 A Yes.

11 Q It's also the year you got a bonus, correct?

12 A I don't know.

13 Q Okay. And that year there was an appraisal
14 process, correct?

15 MR. MELESHINSKY: Objection, lacks foundation.

16 JUDGE CLARK: Overruled.

17 You can answer the question. You can answer.

18 THE WITNESS: I don't remember exactly every year I
19 got one, because I did not get one every year. So, I didn't
20 keep tally of the exact years. But it is quite possible I
21 did receive one from Kristin.

22 MR. PARKER: One moment, Your Honor, I think I'm
23 done.

24 JUDGE CLARK: Thank you, Mr. Parker.

25 MR. PARKER: All set. No further questions at this

1 time. Thank you.

2 JUDGE CLARK: Thank you.

3 Anything further?

4 MR. MELESHINSKY: Brief redirect.

5 JUDGE CLARK: Go ahead.

6 REDIRECT EXAMINATION

7 BY MR. MELESHINSKY:

8 Q Ms. Boross, did you feel coerced to call OFCCP when
9 you received the letter in front of you?

10 A No, I didn't feel coerced, at all. I felt it was
11 an opportunity for me to voice my concerns about my situation
12 at Oracle.

13 MR. MELESHINSKY: Thank you.

14 One moment, Your Honor. That's it.

15 JUDGE CLARK: Thank you, Mr. Meleshinsky.

16 Anything further, Mr. Parker?

17 MR. PARKER: No, thank you, Your Honor.

18 JUDGE CLARK: Thank you so much for your time. You
19 are free to go.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 JUDGE CLARK: Okay. It's 10:10 o'clock a.m., why
23 don't we take a 10-minute break and then we'll do our next
24 witness after that. We'll be off the record until 10:20
25 o'clock a.m.

1 (Off the record at 10:10 o'clock a.m.)

2 JUDGE CLARK: Okay. We are back on the record.

3 All parties are present.

4 Ms. Bremer, do we have another witness?

5 MS. BREMER: Yes, Your Honor. OFCCP calls Patricia
6 Esteva. And Jessica Flores will be doing the examination.

7 JUDGE CLARK: Okay. Thank you.

8 So, why don't you go ahead and state your
9 appearance for the record?

10 MS. FLORES: Jessica Flores, for the Plaintiff,
11 OFCCP.

12 JUDGE CLARK: Good morning to you.

13 MS. FLORES: Good morning.

14 JUDGE CLARK: And Ms. Esteva, come right around,
15 right up here. Step right up there and before you have a
16 seat, turn and face me.

17 Raise your right hand.

18 Whereupon,

19 PATRICIA ESTEVA

20 having been first duly sworn by the Administrative Law Judge,
21 was examined and testified as follows:

22 JUDGE CLARK: Have a seat, please. And if you
23 would state your name and spell it for our record, please?

24 THE WITNESS: Patricia Esteva, P-a-t-r-i-c-i-a,
25 E-s-t-e-v-a.

1 JUDGE CLARK: Thank you. So, Ms. Esteva, have you
2 testified before?

3 THE WITNESS: No.

4 JUDGE CLARK: Okay. No reason to be nervous here,
5 even though it's hard coming into court, I know that. It's
6 much like you see on TV, the lawyers are going to ask you
7 questions. But we're recording everything that's said here,
8 so you need to make sure you speak out loud and you keep your
9 voice up so that everyone in the courtroom can hear you,
10 okay?

11 THE WITNESS: Yes.

12 JUDGE CLARK: Because we're recording, you have to
13 let the lawyers ask the complete question and then they'll
14 let you give a complete answer, because we can't record two
15 people at once -- understand?

16 THE WITNESS: Yes.

17 JUDGE CLARK: And also, because we're recording,
18 you have to say yes or no, not uh-huh or uh-uh, that doesn't
19 really record well for us. Got it?

20 THE WITNESS: Yes.

21 JUDGE CLARK: If the lawyers make an objection, you
22 just stop talking and I'll let you know whether or not you
23 can answer the question. Okay?

24 THE WITNESS: Yes.

25 JUDGE CLARK: And then if you don't understand

1 something, just let us know and we'll have the lawyers
2 rephrase it for you. Okay?

3 THE WITNESS: Okay.

4 JUDGE CLARK: All right, sounds good.

5 Ms. Flores?

6 MS. FLORES: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. FLORES:

9 Q Ms. Esteva, how do you identify in terms of race
10 and gender?

11 A Filipino-American, female.

12 Q How do you know Oracle America, Incorporated?

13 A I was employed by them from October 2011 to June
14 2019.

15 Q What is your educational background?

16 A I have a Bachelor of Science degree in Computer
17 Information Systems from San Francisco State University.

18 Q When did you obtain your degree?

19 A January 1987.

20 Q Did you get a job that used your degree in Computer
21 Information Systems?

22 A Yes.

23 Q Where?

24 A Nestle, USA.

25 Q And when was that?

- 1 A 1994.
- 2 Q What did you do for Nestle, USA?
- 3 A I was a systems analyst.
- 4 Q And what did you do as a systems analyst?
- 5 A I provided support for supply chain systems.
- 6 Q How long did you work at Nestle?
- 7 A Approximately 15 years.
- 8 Q Where did you work after Nestle?
- 9 A VISA.
- 10 Q And what were the basic skills required for your
11 job at Nestle?
- 12 A Systems support, systems design and implementation,
13 customer service, customer support, business process
14 knowledge.
- 15 Q When did you start working at VISA?
- 16 A January 2011.
- 17 Q And what job title did you have?
- 18 A I don't remember the exact job title. It would be
19 equivalent to, I think, a systems analyst.
- 20 Q What kind of work did you do for VISA?
- 21 A I built an access database for them.
- 22 Q And how long did you work at VISA?
- 23 A I had a nine-month contract with them.
- 24 Q What did you do after?
- 25 A I worked for Oracle.

1 Q And what was your job title when you started
2 working at Oracle?

3 A Business applications analyst.

4 Q What year was that?

5 A 2011.

6 Q And what did you do as a business applications
7 analyst?

8 A I provided support for their Inventory Management
9 and Product Release Group within the Manufacturing and
10 Distribution Group.

11 Q Did you work on any products?

12 A At that point Oracle E-Business Suite.

13 Q How long were you a business application analyst?

14 A Three years.

15 Q What happened after three years?

16 A I moved to HR.

17 Q And what job title did you have at HR?

18 A IT support analyst.

19 Q What year was this?

20 A 2014.

21 Q What were your responsibilities as the HR IT
22 support analyst?

23 A I supported the Oracle installation of Taleo.

24 Q What is Taleo?

25 A Taleo is the recruiting application for Oracle.

1 Q Was that a new product at the time?

2 A They had just implemented, I believe, in July of
3 2014.

4 Q And why did you move to another job within Oracle?

5 A I was beginning to feel stuck in Software
6 Manufacturing and Distribution, no job growth, really, in the
7 position. And at that point I had gone three years with no
8 pay increase.

9 Q Did your responsibilities change?

10 A In going to HR?

11 Q Yes.

12 A Yes. I was supporting a new application and my
13 user base grew a lot.

14 Q What application?

15 A I was supporting Taleo, so I was going from supply
16 chain applications to HR recruiting.

17 Q And how did your responsibilities change?

18 A So, I was still doing support, but my user base had
19 grown, I'd say exponentially.

20 Q What do you mean?

21 A In software M&D my user base, I'd say, was maybe 30
22 people, at most. And when I went to HR to support Taleo --
23 Taleo holds all the requisitions that people apply to in the
24 company, so I was supporting all the hiring managers and
25 recruiters that posted requisitions on Taleo, and I was

1 supporting all the applicants, both internal and external.
2 So, I went from 30 plus users to hundreds.

3 Q And what do you mean by users?

4 A People who were using the application, so anyone
5 who had an issue with the application, they would log a
6 ticket with our team. So, it was me and a team of maybe five
7 to six other analysts and we would handle all their support
8 issues.

9 Q Was it only for internal users for Oracle?

10 A No, external, as well. So, any applicant. If you
11 want a job at Oracle, you have to apply through Taleo, you
12 would have had to have applied through Taleo.

13 Q And so you also had external users?

14 A Yes.

15 Q When you moved to this position at HR as an IT
16 support analyst, did you get an increase in pay?

17 A No.

18 Q You mentioned you were looking for growth, career
19 growth, income growth?

20 A Yes.

21 Q So, why did you go to HR?

22 A When I spoke with the hiring manager and I
23 understood that there would be no pay increase because it was
24 a lateral move and on a lateral move there were no pay
25 increases, but in speaking with him I was made to understand

1 that there would be job growth -- and there was.

2 Q Who was the hiring manager?

3 A Lee Spallas.

4 JUDGE CLARK: Would you spell that for us?

5 THE WITNESS: L-e-e, last name S-p-a-l-l-a-s.

6 JUDGE CLARK: Thank you.

7 BY MS. FLORES:

8 Q Can you describe a little bit of any
9 responsibilities or new growth when you changed to your new
10 position?

11 A So, I started the position in November 2014, and by
12 about March 2015 I was made a lead of the group, one of two
13 leads for North America. I was made the lead for North
14 America. So, informally, I -- about three or four other
15 people would report to me. There was no pay or title change,
16 per se, in the system, but it was understood that those
17 people would report to me as an intermediary. And I would
18 oversee them, the day-to-day, as well as continue support.
19 And then in about -- I believe it was August or September, I
20 was made a manager, a formal manager, an M1.

21 Q So, before you became an M1, but you had these
22 supervisory duties, did your pay increase?

23 A No.

24 Q Did your job title change?

25 A No.

1 Q Were you given any kind of promotion?

2 A No.

3 Q And how did your work change when you became an M1?

4 A I formally began to oversee the members that were
5 assigned to me. I began to hold formal team meetings with
6 them. And I was put on special projects for recruiting.

7 Q What were the IC levels of the employees that
8 reported to you?

9 A At the time they were IC2s.

10 Q Did any of them get promoted?

11 A Eventually. I think one became an IC3.

12 Q Did you get a pay increase when you became a
13 manager?

14 A Yes.

15 Q What kind of pay increase?

16 A I remained a non-exempt employee and my pay was
17 increased from \$68,000.00 to \$85,000.00. I was told that was
18 all that the budget would allow my increase to be, because
19 the jump would have been too high and I was allowed overtime.

20 Q Who told you this?

21 A My manager, Lee Spallas.

22 Q What do you mean you were non-exempt?

23 A I was kept hourly.

24 Q And why is that an important distinction for you?

25 A I was allowed to charge overtime.

1 Q And why did overtime pay matter?

2 A I was working about an average of about 10 hours a
3 week overtime and given that they -- the increase was to only
4 85, the overtime definitely helped on a weekly basis being
5 able to charge that.

6 Q What do you mean the overtime helped?

7 A Because when he told me that I wasn't able to
8 increase my salary anymore than to 85, having that increase
9 buffer of the overtime just helped on a weekly, monthly
10 basis, having that extra income, especially in the Bay Area.

11 Q Did you feel that \$85,000.00 was low?

12 A Over time, based on the comments my various
13 managers made, I was -- it was understood that I was on the
14 low end of the band, whatever M1 band I was part of. No one
15 ever told me what the formal number was, but I was just made
16 aware that I was always low end of the band for a manger.

17 Q How long were you a manager?

18 A Four years.

19 Q And what happened after four years?

20 A I was made an IC3.

21 Q How did that happen?

22 A We were -- we had gone through a re-org within our
23 group and I had also been working on a project where my
24 duties had somewhat shifted and I had also requested, as
25 well, to move back to somewhat of an individual contributor

1 role. So, I had been moved to an IC3 -- back to an IC3, or
2 to an IC3.

3 Q You used the term "band," what did you mean by
4 that?

5 A That is the levels in which the salaries are
6 categorized, I would say. So, you have your IC3s, 4s, 5s,
7 and there's a high, a mid and a low band, per se, for each
8 IC. And you would have an employee salary sit within each
9 one of those bands and a manager is aware of where an
10 employee's salary would sit within one of those bands, per
11 se. And so I was told I was on the low end.

12 Q How did your job responsibilities change when you
13 were made into an IC3?

14 A Can you please repeat the question?

15 Q How did your job responsibilities change when you
16 were made an IC3, after you were already an M1?

17 A I think the only thing at that point that changed
18 was I did not have any direct employees. I was no longer
19 managing. But all the system responsibilities I had at the
20 time, I kept.

21 Q Based on your knowledge as supervising an IC3, did
22 you think that was fair?

23 A Not really, but at that point with the re-org and
24 everything that was going on, they cut my salary. I didn't
25 quite know how to respond to all of it. And I didn't say

1 anything.

2 Q What do you mean you had a pay cut?

3 A Being -- so the entire time that I was a manager, I
4 was non-exempt, I was hourly with overtime. When they
5 converted me to an IC3, it was only at that point in time
6 that they made me exempt, which meant I was set at a salary
7 of \$100,000.00 and I was no longer eligible for overtime.
8 And I had technically been making over \$100,000.00 with
9 overtime, given the amount of overtime I had had to work over
10 the past few years I was making over \$100,000.00. And so
11 being set at \$100,000.00 exempt meant, technically, I was
12 getting a pay cut.

13 Q When is it that Oracle changed you to be an IC3?

14 A I think it was March or April. I'm not quite sure
15 of the exact date, but it was earlier 2019.

16 Q Did you ever learn of salary bands for a specific
17 job?

18 A Yes.

19 Q How?

20 A Earlier in 2018 I -- there was a potential for me
21 to move to another position, an HR implementation analyst,
22 and I had reached out to someone in HR to ask what the salary
23 was for an IC3 for this position. And I was provided the
24 salary for that position.

25 Q What did you find out?

1 A I found out that my salary was -- that it pretty
2 much fell within the lower band of the IC3.

3 Q Your salary as a manager?

4 A Yes.

5 Q And how did this make you feel?

6 A Not good. Not surprised. Given my history of
7 everything, it wasn't a surprise. And knowing and being told
8 that my salary was always on the low end, on the low end,
9 finding out where I kind of fell, even against an IC3, yeah,
10 it was just another confirmation that I really was getting a
11 very -- my pay was low.

12 Q As a manager --

13 A My base pay was low.

14 Q Your base pay was low as a manager compared to an
15 IC3?

16 A At that point, yes.

17 Q Let's talk about when you first started working at
18 Oracle, how did that come about?

19 A I believe I found the position on Indeed.com.

20 JUDGE CLARK: What again?

21 THE WITNESS: Indeed.com.

22 JUDGE CLARK: Indeed?

23 THE WITNESS: Indeed.

24 JUDGE CLARK: Okay.

25 THE WITNESS: I think they just scraped Oracle's

1 website and so I applied to the position and I was contacted
2 by the hiring manager.

3 BY MS. FLORES:

4 Q Who was the hiring manager?

5 A Cheryl Manzer.

6 Q And what happened after the hiring manager
7 contacted you?

8 A We had one phone interview and then I was brought
9 in for an in-person interview at their offices.

10 Q And how did that go?

11 A I believe it went well. I met with Cheryl and her
12 director, and two team members.

13 Q Was there a second interview?

14 A Yes. Again, with Cheryl and then with the Supply
15 Chain director. And then the VP of the Software M&D
16 Division.

17 Q Who was the VP?

18 A Matthew Mayerson.

19 Q What happened after the phone interview and the two
20 in-person interviews?

21 A I was asked to provide references and I went
22 through a background check. And then I received a call from
23 Cheryl.

24 Q And what happened?

25 A I was told I was going to be receiving an offer and

1 she asked me what my contract rate at VISA was.

2 Q Do you know why she asked you for your contract
3 rate at VISA?

4 A No.

5 Q And that was your -- the prior employer before
6 Oracle?

7 A Correct.

8 Q Did you give her your rate from VISA?

9 A Yes.

10 Q How much?

11 A Thirty-three dollars an hour.

12 Q And did you get an offer from Oracle?

13 A Yes.

14 Q And how much was Oracle's offer?

15 A \$68,000.00.

16 Q Is that equivalent to \$33.00 an hour?

17 A Approximately, \$32.69.

18 Q Did you receive stock grants or RSUs?

19 A No.

20 Q When you were working at Oracle, did you work on
21 multiple products?

22 A Yes.

23 Q And did you work on multiple products
24 simultaneously?

25 A Sometimes, yes.

1 Q What were the different products you worked on?

2 A I worked on Oracle E-Business Suite, Taleo, which
3 is called Oracle Recruiting Cloud, Knowledge Management,
4 Oracle Service Cloud, Oracle HCM, which stands for Human
5 Capital Management.

6 Q Did your pay increase because you worked on
7 different products?

8 A No.

9 Q Did anyone at Oracle tell you that your pay would
10 be different if you worked on different products?

11 A No.

12 Q Which facility did you work at?

13 A Oracle HQ.

14 MS. FLORES: Thank you, Your Honor.

15 JUDGE CLARK: That's all you have, thank you.

16 Who has this witness?

17 MS. CONNELL: I do, Your Honor.

18 JUDGE CLARK: Ms. Connell, go ahead.

19 CROSS-EXAMINATION

20 BY MS. CONNELL:

21 Q Good morning, Ms. Esteva.

22 A Good morning.

23 Q There are a few follow-up questions for you. I'd
24 like to start by having you take a look at -- I think the
25 exhibit is still sitting right there in front of you --

1 JUDGE CLARK: In the corner, yes.

2 MS. CONNELL: -- that document right there. Yes,
3 please.

4 BY MS. CONNELL:

5 Q It's been marked as Defendant's 447 and I'm just
6 wondering if you recognize that document?

7 A I believe I received this letter.

8 Q And after receiving that letter, did you contact
9 the OFCCP?

10 A Yes.

11 Q Thank you.

12 I want to go back over your testimony and ask some
13 follow-up questions regarding the timeline. You testified
14 that you started with Oracle in October of 2011, correct?

15 A Yes.

16 Q And that was at the IC2 level, correct?

17 MS. FLORES: Objection, states facts not in
18 evidence. She didn't say what IC level she was in.

19 JUDGE CLARK: I don't recall her testifying that on
20 direct. But I think you can answer that question, if you
21 can. Do you know?

22 The objection is overruled.

23 THE WITNESS: I do not know.

24 BY MS. CONNELL:

25 Q You don't know what IC level you were at?

1 A No.

2 Q Okay. You testified that it was an hourly paid
3 position, correct?

4 A Yes.

5 Q And you testified that when you started you were
6 working in the Manufacturing organization, is that correct?

7 MS. FLORES: Objection, misstates testimony.

8 JUDGE CLARK: Overruled. She's asking her if
9 that's correct.

10 Is that where you started?

11 THE WITNESS: Software Manufacturing and
12 Distribution.

13 MS. CONNELL: Software Manufacturing and
14 Distribution, thank you.

15 BY MS. CONNELL:

16 Q And then, eventually, you said that you transferred
17 to Human Resources, correct?

18 A Yes.

19 Q And if I understood your testimony correctly, you
20 said that when you transferred to Human Resources, initially
21 you were supporting Oracle's installation of Taleo, correct?

22 A Yes.

23 Q And Taleo is an application that can be used for
24 recruiting, correct?

25 A Yes.

1 Q And I believe you had said that once you
2 transferred to supporting that application, you had hundreds
3 of users, correct -- you supported hundreds of users,
4 correct?

5 A Yes.

6 Q And those would be the hiring managers who post
7 jobs at Oracle, correct?

8 A That is one of the users, user groups that I
9 supported, yes.

10 Q Okay. And your estimate was that there were
11 hundreds of them, is that correct?

12 A Hundreds of users of Taleo in total.

13 Q Including hiring managers, correct?

14 A Including hiring managers.

15 JUDGE CLARK: Ms. Esteva, could I get you to speak
16 up, just a little bit for me.

17 THE WITNESS: Oh, I'm sorry.

18 JUDGE CLARK: Yeah, maybe pull that down, maybe
19 pull it toward you just a little bit more. I don't want you
20 to have to lean in, but just get a little closer to it as
21 best you can.

22 THE WITNESS: Okay.

23 JUDGE CLARK: Thank you very much. Okay.

24 BY MS. CONNELL:

25 Q And I believe you testified that you -- strike

1 that.

2 MS. CONNELL: Your Honor, I'd like to ask her -- I
3 think she's waived any privacy rights in specific dollar
4 amounts, given that she testified to what she was earning.

5 JUDGE CLARK: Well, let's just ask the questions
6 individually and if there's an objection we'll take it up.

7 MS. CONNELL: Okay.

8 BY MS. CONNELL:

9 Q You testified that when you started your hourly
10 rate was approximately -- it came to approximately -- strike
11 that -- that your salary -- your annual salary was
12 approximately \$68,000.00 a year, correct?

13 A Yes, I believe that's what the offer letter was
14 for.

15 Q Okay. And at that time, though, you were paid
16 hourly, correct?

17 A Yes.

18 Q So, you were also being paid for any overtime that
19 you worked, correct?

20 A Within Software Manufacturing and Distribution, I
21 was told there was to be no overtime charged.

22 Q Okay. So, if I understand your testimony
23 correctly, within Software Manufacturing and Distribution,
24 you were not working overtime, is that correct?

25 A Correct.

1 Q Okay. And then when you moved into the Human
2 Resources organization, you were working overtime, correct?

3 A Correct.

4 Q And you were still paid hourly at that time,
5 correct?

6 A Correct.

7 Q And in June of 2015, you were given a raise in
8 terms of your hourly rate, correct?

9 A I don't remember the timing of my raise.

10 Q Do you recall that on June 9th of 2015 your hourly
11 rate increased from \$32.70 an hour to \$38.47 an hour?

12 A If that's the date that my increase went into
13 effect, then I will agree. Your Honor, I don't remember the
14 exact date of my promotion.

15 JUDGE CLARK: I understand. You're not going to
16 dispute it if that's what the record shows.

17 BY MS. CONNELL:

18 Q You don't have any reason to believe that that date
19 is incorrect?

20 A Correct.

21 Q All right. And then in December of 2016, you were
22 given another increase to an hourly rate of \$40.87, correct?

23 A I cannot dispute. I'm not going to dispute that.

24 JUDGE CLARK: So, you agree that you had another
25 increase.

1 THE WITNESS: Yes.

2 JUDGE CLARK: You just don't know the date.

3 THE WITNESS: Correct.

4 JUDGE CLARK: Okay.

5 MS. CONNELL: Okay.

6 BY MS. CONNELL:

7 Q You don't have any reason to dispute that December
8 of 2016 was the date of the increase, correct?

9 A No.

10 Q And during this time period, from June of 2015
11 through December of 2016, you were working overtime, correct?

12 A Yes.

13 Q Okay.

14 JUDGE CLARK: So, Ms. Connell, I just --

15 So, Ms. Esteva, I heard you say: "No," correct,
16 when she asked you you're not disputing the date of the
17 increase, right?

18 THE WITNESS: Correct.

19 JUDGE CLARK: So, I just need you to keep your
20 voice up. Our court reporter, I think, is even starting to
21 have a little hard time picking you up, too. Okay?

22 THE WITNESS: My apologies.

23 JUDGE CLARK: No problem.

24 BY MS. CONNELL:

25 Q And then in January of 2018, you received another

1 raise, correct?

2 A I will not dispute that.

3 Q Do you have any reason to believe that as of
4 January 2018 --

5 MS. FLORES: Objection, Your Honor, this is facts
6 not in evidence. I don't have records of this 2018.

7 JUDGE CLARK: Okay.

8 Ms. Connell, what's your --

9 MS. CONNELL: It is in evidence. It's in evidence
10 at Joint Exhibit J-164, the Salary Window tab, and it's
11 columns B, E, F, N, W and Y.

12 JUDGE CLARK: Okay. Overruled. Thank you, Ms.
13 Connell, go ahead. Why don't you ask your question again.

14 BY MS. CONNELL:

15 Q My question was that in January of 2018, do you
16 have any reason to believe that you did not receive another
17 raised up to \$42.10 an hour?

18 A No.

19 Q And during that time, you were still working
20 overtime, as well, correct?

21 A Yes.

22 Q Do you have an estimate during this time of
23 approximately how many hours of overtime you were working?

24 A No.

25 Q How about during the earlier time periods that we

1 discussed, back in around June of 2015, do you have any
2 estimate of how many hours of overtime you were working?

3 A No.

4 Q And then you testified that in or around March of
5 2019, you converted from being a non-exempt employee, earning
6 overtime, to being an exempt employee not earning overtime,
7 correct, or words to that effect?

8 A Correct.

9 Q And at the time that you made that change, however,
10 you also moved out of the IT function and into the HR
11 function, correct?

12 MS. FLORES: Objection, Your Honor, facts not in
13 evidence. That's not what she testified to.

14 JUDGE CLARK: Overruled.

15 You can answer the question if that's accurate or
16 not. You can answer the question.

17 You can certainly clear it up on redirect, if need
18 be.

19 THE WITNESS: I -- my position that I moved to was
20 an HR IS analyst. So, I was still working as an IS analyst
21 for HR Systems.

22 BY MS. CONNELL:

23 Q Do you know if your job function switched at that
24 time, changed from IT to HR?

25 A I do not know.

1 Q Do you have any reason to believe that it did not?

2 A I do not, no.

3 Q You also testified about a time, I believe it was
4 -- and my dates may be a little bit off -- but I believe you
5 said it was after November of 2014, when you were made to be
6 a lead, do you recall that testimony?

7 A Yes.

8 Q And I think you said your system job title did not
9 change, correct?

10 A Correct.

11 Q So, was becoming a lead a discretionary job title,
12 if you know?

13 A I do not know.

14 Q Is that a term you're familiar with, "discretionary
15 job title"?

16 A I am familiar with it. Whether it was made in the
17 system, I do not recall.

18 Q You also gave testimony, you said that when you
19 were earning a salary of \$85,000.00 you were low in the band,
20 correct, do you recall that testimony?

21 A Yes.

22 Q But during that time, you were earning overtime, as
23 well, correct?

24 A Yes.

25 Q So, the money that you took home that year -- I

1 know you don't recall the number of overtime hours -- it was
2 more than \$85,000.00, correct?

3 A Correct.

4 Q I believe you testified it was around \$100,000.00,
5 correct?

6 A (No verbal response.)

7 Q Excuse me. I believe you testified it was more
8 than \$100,000.00, correct?

9 A All total, yes.

10 Q Do you know where \$100,000.00 would fall within the
11 band for the job that you held at that time?

12 A No.

13 Q You also testified regarding the time when you were
14 first hired at Oracle at the end of your testimony, and you
15 described that the hiring manager, Cheryl, asked you your
16 hourly rate during the time that you worked at VISA, do you
17 recall that testimony?

18 A Yes.

19 Q And you also testified that the starting offer,
20 that ultimately was made to you, was very closer to that
21 number, correct?

22 A Yes.

23 Q When you were working at VISA, did you receive
24 benefits?

25 A No.

1 A No.

2 Q And you actually didn't know what job function you
3 were part of when you were working at Oracle, is that
4 correct?

5 A When I moved to HR?

6 Q Yes.

7 A No.

8 Q Going back to a few questions about overtime, did
9 you have to work overtime to earn the money -- to basically
10 earn the money of the difference that you should have been
11 paid as a manager?

12 MS. CONNELL: Objection, lacks foundation.

13 JUDGE CLARK: Overruled.

14 You can answer that question.

15 THE WITNESS: I believe that because I was so low
16 on the band, there was an allowance by my managers to have me
17 work the overtime and charge the overtime to make up the
18 difference.

19 BY MS. FLORES:

20 Q Ms. Esteva, can you tell us why you're here today?

21 A I wanted to make a difference. I -- the last
22 couple of years at Oracle, I think I finally realized how
23 much I was worth, and when I received the letter I finally
24 decided to be someone that was going to do something that
25 could make a difference, instead of someone that just kind of

1 sat there and talked about it. I was going to stand up and
2 say something. So, here I am.

3 Q You mentioned the letter, is it the same letter
4 that counsel just showed you?

5 A Yes.

6 MS. FLORES: Thank you, Your Honor.

7 JUDGE CLARK: Ms. Connell, anything further?

8 MS. CONNELL: Just one final question.

9 RECROSS-EXAMINATION

10 BY MS. CONNELL:

11 Q You never made any complaints that you were
12 underpaid because of your race or gender while you were at
13 Oracle, correct?

14 A No.

15 Q Just so the record is clear, that is correct --

16 MS. FLORES: Objection, Your Honor, outside of the
17 scope of cross.

18 JUDGE CLARK: Overruled.

19 You can answer the question.

20 THE WITNESS: Can you please repeat?

21 MS. CONNELL: Sure.

22 BY MS. CONNELL:

23 Q I just want to make sure there's not a double
24 negative on the record.

25 A Okay.

1 Q So, I asked you, you did not make any complaints
2 that you were underpaid due to your race or gender, is that
3 correct?

4 A Correct.

5 Q Thank you.

6 MS. CONNELL: Thank you.

7 JUDGE CLARK: Okay. Anything further, Ms. Flores?

8 MS. FLORES: No, Your Honor, thank you.

9 JUDGE CLARK: All right. You're free to go. Thank
10 you so much for your time today.

11 THE WITNESS: Thank you.

12 JUDGE CLARK: Thank you for being here.

13 (Witness excused.)

14 JUDGE CLARK: Okay. Do we have another witness?

15 MS. BREMER: Ms. Bremer, regarding the scheduling
16 issues that we discussed earlier this morning, our next
17 witness is scheduled to arrive and to testify at 1:00 o'clock
18 p.m., traveling from the East Bay area. I believe he's
19 working --

20 JUDGE CLARK: Who is your next witness today?

21 I'm sorry, could you move the microphone down or
22 maybe get a little closer to the microphone.

23 MS. BREMER: Yes, I will scoot down.

24 JUDGE CLARK: Thank you.

25 MS. BREMER: Our next witness is Avinash Pandey,

1 and he's traveling from the East Bay and is prepared to
2 testify starting at 1:00 o'clock p.m.

3 JUDGE CLARK: Okay.

4 MR. PARKER: Your Honor, may I?

5 JUDGE CLARK: Mr. Parker?

6 MR. PARKER: Shauna Holman-Harries is here. As the
7 Court will recall during the pretrial conference I said that
8 she was not available this week. Nonetheless, I received an
9 e-mail on the Friday after Thanksgiving, saying that OFCCP
10 wanted her here this week. I got her here this week. She
11 had to change her schedule. I believe -- and I don't want to
12 misrepresent this fact, but I believe she had a medical
13 appointment. She's here in this building and ready to go,
14 and I'd like to get her home to Phoenix, so that she can go
15 back to her life.

16 JUDGE CLARK: So, you're proposing that we start
17 with Ms. Holman-Harries?

18 MR. PARKER: Let's keep going, let's keep going.

19 JUDGE CLARK: And how did you agree to do that
20 testimony, you would do the direct and then they would do the
21 cross, or how did you --

22 MR. PARKER: No. We didn't have -- I had always
23 imagined that they would take her as their witness and we
24 would follow.

25 JUDGE CLARK: Ms. Bremer, what was your --

1 MS. BREMER: Our understanding was that we would go
2 first, since we were calling her as a witness.

3 JUDGE CLARK: Okay.

4 MS. BREMER: We would prefer to keep our witnesses
5 in order, and during the pretrial conference Mr. Warrington
6 -- or Mr. Parker also indicated that they wanted to keep
7 their witnesses in order. So, if possible, we would like to
8 stick to just take maybe a longer lunch and start back at
9 1:00 o'clock p.m. with the witness we had planned.

10 JUDGE CLARK: So, unfortunately, I think we're
11 going to just keep going. It's still early, it's 11:10
12 o'clock a.m., it's a little early for our lunch break. And I
13 would rather start with the next witness.

14 So, Ms. Holman-Harries will go on the stand when
15 she's available. We'll do her until our lunch break. We can
16 certainly take Mr. Pandey out of order and then finish up
17 with Ms. Holman-Harries after that, if that's what your
18 preference is after the lunch break. But I don't want to
19 just take an early lunch today if we have a witness who is
20 here, ready to go.

21 So, we'll go off the record until
22 Ms. Holman-Harries is brought in, and then we'll get started
23 again.

24 We're off the record.

25 (Off the record at 11:10 o'clock a.m.)

1 JUDGE CLARK: Okay. We're back on the record. All
2 parties are present, we have a new witness.

3 If you'd stand and raise your right hand, please?
4 Whereupon,

5 SHAUNA HOLMAN-HARRIES

6 having been first duly sworn by the Administrative Law Judge,
7 was examined and testified as follows:

8 JUDGE CLARK: Have a seat, please. And if you
9 would state your name and spell it for our record, please?

10 THE WITNESS: My name is Shauna Holman-Harries, and
11 it's S-h-a-u-n-a, and then the last name is Holman,
12 H-o-l-m-a-n hyphen H-a-r-r-i-e-s.

13 Great, thank you.

14 And counsel, I don't think you've entered your
15 appearance yet. I know I've seen you in the courtroom, but
16 why don't you go ahead and state your appearance for the
17 record.

18 MR. ELIASOPH: Yes, Your Honor. My name is Ian
19 Eliasoph, that is I-a-n, E-l-i-a-s-o-p-h, and I'm appearing
20 on behalf of OFCCP.

21 JUDGE CLARK: Thank you, Mr. Eliasoph.

22 So, Ms. Holman-Harries, I know you've given
23 depositions and you've testified, it's much like that, the
24 same thing is going to happen here. We're recording
25 everything that's said here, so you need to speak out loud

1 and keep your voice up so everybody in the courtroom can hear
2 you, all right. Because we're recording, you have to use
3 words like yes or no, not uh-uh or uh-huh, or head nods,
4 because we can't take that down either. Understand?

5 THE WITNESS: Yes.

6 JUDGE CLARK: And also, we're recording, so let the
7 lawyer ask the full question and then they'll let you give a
8 complete answer, because we cannot record two people at once.

9 THE WITNESS: Okay.

10 JUDGE CLARK: And if somebody says something you
11 don't understand, or you need clarified, let us know, we'll
12 have the lawyers rephrase it for you. And if somebody makes
13 an objection, just stop talking and I'll let you know whether
14 or not you can answer the question.

15 THE WITNESS: Okay.

16 JUDGE CLARK: All right. Thank you.

17 Mr. Eliasoph?

18 MR. ELIASOPH: Yes.

19 DIRECT EXAMINATION

20 BY MR. ELIASOPH:

21 Q Ms. Holman-Harries, I'd like to start by thanking
22 you for traveling here today. I understand that your
23 appearance did require interstate travel at relatively short
24 notice. So, we appreciate your appearance.

25 JUDGE CLARK: And I think Mr. Parker did tell us

1 you changed some appointments to be here, as well. We do
2 appreciate that.

3 THE WITNESS: Yes

4 JUDGE CLARK: Thank you so much for accommodating
5 us.

6 BY MR. ELIASOPH:

7 Q Ms. Holman-Harries, you began working for Oracle as
8 the director of Diversity in October 2011, correct?

9 A Yes.

10 Q And approximately two and a half years ago, you
11 became senior director for Diversity?

12 A That's not totally correct. I became senior
13 director Diversity Compliance.

14 Q Thank you for the clarification. So, you were
15 promoted to senior director for Diversity Compliance while
16 this litigation was pending?

17 A I'd have to look at the exact date, but I believe
18 so.

19 Q And you were promoted after you oversaw Oracle's
20 response to the compliance review at Redwood Shores?

21 A I'd have to look back at the dates of everything to
22 be absolutely certain.

23 Q Approximately?

24 A It could be, I'd really want to look at the dates.

25 Q Vickie Thrasher is your supervisor?

1 A Yes.

2 Q And she has been your supervisor since 2015?

3 A Yes.

4 Q And Vickie Thrasher is one of the vice presidents
5 in Human Resources?

6 A Yes.

7 Q And Vickie Thrasher reports to Joyce Westerdahl,
8 correct?

9 A Yes.

10 Q And Joyce Westerdahl is an executive vice president
11 of Human Resources?

12 A Yes.

13 Q And Joyce Westerdahl reports to Safra Catz?

14 A Yes.

15 Q And Safra Catz is a CEO, correct?

16 A Yes.

17 Q I'm just going to -- unless you object -- I'm just
18 going to refer to your role as director of Diversity without
19 keep going back between senior director of Diversity and
20 director of Diversity?

21 A I'm perfectly fine with that.

22 Q Okay. In that role of director of Diversity
23 Compliance, and I'll just say director of Diversity, your
24 responsibilities include overseeing Oracle's OFCCP compliance
25 efforts, correct?

1 A My responsibilities are overseeing our Affirmative
2 Action Plan process.

3 MR. ELIASOPH: I'd like to put on the screen
4 Plaintiff's Exhibit P-43.

5 JUDGE CLARK: I'm not quite seeing it, yet. Is
6 anybody?

7 THE WITNESS: No, I'm not either. I see a little
8 corner.

9 JUDGE CLARK: I see something that says:
10 "Duplicates Notepad."

11 MR. ELIASOPH: If you will bear with us, we
12 typically do this on paper, Your Honor.

13 JUDGE CLARK: I understand. All of us moving
14 forward with technology here.

15 THE WITNESS: Yeah. No problem.

16 JUDGE CLARK: Okay.

17 MR. ELIASOPH: Okay. And if we can scroll to the
18 next page. Okay.

19 BY MR. ELIASOPH:

20 Q This is a declaration you signed?

21 A Yes.

22 Q And do you see in paragraph two it says:

23 "As senior director of Diversity Compliance my

24 responsibilities include overseeing

25 Oracle's Office of Federal Compliance

1 Program compliance efforts."

2 A Yes.

3 Q And you oversee Oracle's OFCCP audit?

4 A Yes.

5 Q And prior to joining Oracle, you also assisted at
6 least one other contractor with OFCCP Affirmative Action
7 compliance?

8 A Yes.

9 Q And that contractor was called United Space
10 Alliance?

11 A One of them. One of them was called United Space
12 Alliance, yes.

13 Q I understand. And your title in the position with
14 United Space Alliance was manager Diversity and Compliance?

15 A Yes.

16 JUDGE CLARK: Ms. Holman-Harries, you're doing
17 fine. But you're leaning into the microphone, you don't have
18 to. I just want to let you know, you don't have to, we'll
19 pick you up just fine.

20 THE WITNESS: Oh, thank you.

21 JUDGE CLARK: So, don't feel the need to go in,
22 just -- but if you like doing that, you go right ahead.

23 THE WITNESS: No, I don't like doing that.

24 JUDGE CLARK: Okay. There's no need to do that.
25 All right.

1 BY MR. ELIASOPH:

2 Q And you were assigned that job in 2009?

3 A Yes.

4 Q And in that position you were the contractor point
5 of contact for one or more OFCCP compliance reviews?

6 A Yes.

7 Q And at different times you have reviewed the
8 regulations implementing Executive Order 11246?

9 A Yes.

10 Q And you've reviewed those regulations that set
11 forth a contractor's Affirmative Action Program requirements
12 under Executive Order 11246?

13 A Yes.

14 Q What is your understanding of the types of things
15 Oracle is required to do to comply with OFCCP's Affirmative
16 Action Regulations?

17 A Well, there's a number of things. One is to
18 measure the progress of our plan and our efforts under
19 Affirmative Action, and we do that. We look at progress to
20 goals and how well we're doing with regard to that. We also
21 review our hires, promotions and terms. When we review our
22 hires, promotions and terms, the first review is done by HR,
23 and the managers, and also in the case of involuntary
24 terminations Legal would approve that. And then we also do a
25 second review in which we look at adverse impact and

1 indicators, and go in and look at some of the areas where a
2 person from the disfavored pool, when it's larger, could have
3 been not hired and a person from the favored pool was, so we
4 take a look at that. And we pull workflows to make sure
5 everything is correct there, and different things like that.

6 Q Okay. And each of those things you do, that you
7 just mentioned, relate to hiring and promotions?

8 A And terminations. We'll go in and look at
9 terminations to see, you know, what the reason was for the
10 termination, to see if we see any trends. We'll go in and
11 look where there indicators there, and look in the files, and
12 take a look at that. We also audit our hires for the week,
13 at least 75 hires a week. We go in and we take a look to
14 make sure that all jobs are posted and everything looks as
15 it's supposed to. We provide managers with feedback of their
16 group, we give them the demographics of their group. We give
17 them progress goals by location on some of our higher level
18 managers. And things like that.

19 Q Okay.

20 MR. ELIASOPH: I'm going to now put on the screen a
21 demonstrative exhibit that we shared with opposing counsel
22 last night. This demonstrative exhibit is the regulations at
23 41 CFR 2.17. And if I can't get it on the screen, I do have
24 copies.

25 JUDGE CLARK: I think we're working on it. My

1 computer appears to be working -- there it is --

2 MR. ELIASOPH: Here we go.

3 BY MR. ELIASOPH:

4 Q Okay. So, these are the regulations that related
5 to Affirmative Action Programs with OFCCP. You have stated
6 that you have reviewed these regulations previously.
7 Regulation Section A of this regulation I have highlighted
8 here, it's called: "Designation of Responsibility." And it
9 says:

10 "The contractor must provide for the
11 implementation of Equal Employment
12 Opportunity and the Affirmative Action
13 Program, by assigning responsibility and
14 accountability to an official of the
15 organization. Depending on the size of
16 the contractor, this may be the official
17 sole responsibility. He or she must have
18 the authority, resources, support of and
19 access to top management to ensure the
20 effective implementation of the
21 Affirmative Action Program."

22 With respect to Oracle's headquarters at Redwood
23 Shores, you are the person who was assigned that
24 responsibility, correct?

25 A I'm responsible for the Affirmative Action piece of

1 that. We have another director that oversees the Equal
2 Employment Opportunity piece of that.

3 Q And you're aware that Oracle created an Affirmative
4 Action Program for its Redwood Shores headquarters, dated
5 January 2014?

6 A Yes.

7 Q And it does so every year?

8 A Yes.

9 Q Okay. And the 2014 plan would be operative from
10 January 1st, 2014, to December 31st, 2014?

11 A Yes.

12 Q And Oracle's Redwood Shores 2014 AAP names two
13 people as, quote: "Individual responsible for plan
14 implementation," correct?

15 A I would have to see the exact verbiage. Are you
16 moving it to that?

17 Q That's fine.

18 MR. ELIASOPH: Can we pull up Plaintiff's Exhibit
19 195, page 2?

20 THE WITNESS: Yes.

21 MR. ELIASOPH: Okay.

22 JUDGE CLARK: So, we have 195, page 2. You see
23 that on your screen?

24 THE WITNESS: Yes.

25 JUDGE CLARK: And your answer is yes to that,

1 correct?

2 THE WITNESS: Well, he -- yes, I can see it.

3 JUDGE CLARK: Okay.

4 BY MR. ELIASOPH:

5 Q Okay. So, I'll repeat my question, just so the
6 record is clear. Oracle's Redwood Shores 2014 AAP -- and you
7 understand I'm using the term "AAP" for Affirmative Action
8 Program or Plan?

9 A Yes.

10 Q Okay. Oracle's Redwood Shores 2014 AAP names two
11 people as individual responsible for plan implementation,
12 correct?

13 A Yes.

14 Q And you are one of the two people named, correct?

15 A Yes.

16 Q Safra Catz is the other person named as individual
17 responsible for the 2014 Redwood Shores AAP?

18 A Yes.

19 Q And you have a team of direct reports that report
20 to you?

21 A Yes.

22 Q Okay. I'm going to ask if I ask you if you have
23 done something and you didn't personally do it, but you know
24 that your direct report has done it as part of their job
25 duties working on your team, that you include that in the

1 answer. So, I'll say "you" --

2 MR. PARKER: I'm going to object. I would like the
3 distinctions made, so that I have an opportunity to object to
4 the question or answer.

5 MR. ELIASOPH: We can double this by asking every
6 question twice -- you or your team -- I can do it each time.

7 JUDGE CLARK: So, at this point I think you should
8 just ask the question and let me see how it comes out for the
9 first question or two and see how that works.

10 MR. ELIASOPH: That's fine. It's actually not in
11 my next question.

12 JUDGE CLARK: Okay.

13 MR. ELIASOPH: I was just laying the ground.

14 JUDGE CLARK: Got it.

15 BY MR. ELIASOPH:

16 Q So, the 2014 Redwood Shores AAP lists your title as
17 the director of Diversity Compliance, correct?

18 A Yes.

19 Q And Safra Catz signed Oracle's Equal Employment
20 Opportunity Policy statement that is contained in that AAP?

21 A Yes.

22 Q And to your knowledge, Safra Catz's only
23 responsibility, with respect to the Affirmative Action Plan,
24 is signing off on this policy statement?

25 A Her only responsibility? In what way? Could you

1 be more specific?

2 Q If you can just answer the question as presented?

3 A I would appreciate just a little bit more
4 information. Her only responsibility? I don't know.

5 JUDGE CLARK: So, counsel, it sounds like she needs
6 you to clarify it.

7 THE WITNESS: Yes.

8 JUDGE CLARK: Or ask a different question. She
9 can't -- it's too vague for her to answer.

10 MR. ELIASOPH: Okay. I'm going to pull up her
11 deposition testimony on this subject. I know that the
12 depositions have not been admitted, the portion of the
13 deposition testimony will relate to this question.

14 JUDGE CLARK: Okay.

15 MR. ELIASOPH: P-16, page 74 of the deposition
16 transcript.

17 MR. PARKER: Your Honor, if I may, there are two
18 deposition transcripts and if I could have specification as
19 to which one?

20 MR. ELIASOPH: Yes.

21 JUDGE CLARK: Mr. Eliasoph, I heard you say P-16,
22 Plaintiff's 16, page 74.

23 MR. ELIASOPH: That's correct. And to be clear for
24 the record, this is the witness' May 2019 deposition.

25 JUDGE CLARK: Thank you.

1 MR. ELIASOPH: Okay. Starting -- we are looking at
2 page 74, starting with line 21, the question --

3 BY MR. ELIASOPH:

4 Q Do you recall being at this deposition?

5 MR. PARKER: Your Honor, I have an objection. She
6 actually -- this would be impeachment. She has not actually
7 said anything on this subject, at all.

8 JUDGE CLARK: Overruled. I believe he's refreshing
9 recollection or impeaching -- I'm not quite sure -- but
10 overruled. She can answer this question and this line of
11 questioning.

12 BY MR. ELIASOPH:

13 Q So, you were asked -- do you recall that -- I'm
14 sorry -- that deposition?

15 A Yes.

16 Q Okay. And Ms. Bremer, who is in the courtroom, was
17 at that deposition, asking you questions?

18 A Yes.

19 Q And she asked you, starting on line 21 of page 74:

20 "Question: What is your knowledge of
21 what Safra Catz's responsibilities are
22 with respect to Oracle's Affirmative
23 Action Plan?"

24 And you answered:

25 "Answer: She signs off on policies

1 and over -- and that Oracle -- that
2 ensure that Oracle is an Equal Employment
3 Opportunity employer, in compliance with
4 Oracle's Affirmative Action Plan. Her
5 communications are -- they go to all the
6 locations with regard to this."

7 The next question from Ms. Bremer was:

8 "Question: Are you aware of any other
9 responsibilities that Safra Catz has with
10 respect to Oracle's Affirmative Action
11 Plan?"

12 Counsel objected and then you answered:

13 "Answer: I don't -- I can't say that I know of
14 everything that she does, but this is
15 what I'm aware of that she does."

16 A Correct. May I say something for clarification?

17 Q Your counsel will have an opportunity to question
18 you.

19 A Okay.

20 Q On the monitor -- oh -- if we can now put on
21 Plaintiff's Exhibit 195, at page 6, again this is an excerpt
22 from the 2014 Affirmative Action Plan.

23 MR. PARKER: Your Honor, at this point I'm going to
24 object. This Court has these depositions, it can very well
25 read. She's here, presumably, to actually answer questions,

1 otherwise it is unnecessary to have her sit here while
2 deposition testimony is just simply read to her.

3 JUDGE CLARK: So, I appreciate that. But my
4 understanding was he was asking if the deposition is a
5 different number. I thought he was talking about the
6 Affirmative Action Plan, Plaintiff's 195. Is that what she
7 saw earlier?

8 MR. ELIASOPH: I assume that comment goes to the
9 last set of questions.

10 JUDGE CLARK: Mr. Parker?

11 MR. PARKER: Yes.

12 JUDGE CLARK: So, you're objecting to using the
13 deposition --

14 MR. PARKER: In the manner that it's being used --

15 JUDGE CLARK: -- earlier -- not currently.

16 MR. PARKER: Correct.

17 JUDGE CLARK: I see. Okay. The objection at this
18 time is overruled.

19 BY MR. ELIASOPH:

20 Q Okay. And we were talking about an Equal
21 Employment Opportunity Policy statement that Ms. Catz signs
22 off on?

23 A Yes.

24 Q And this is that statement, correct?

25 A Yes.

1 Q Okay. I'd like to direct your attention to the
2 last paragraph and it says that:

3 "Oracle has appointed the director of
4 Diversity Compliance to manage the Equal
5 Employment Opportunity function. These
6 responsibilities include monitoring all
7 Equal Employment Opportunity activities."

8 Is that correct?

9 A Yes.

10 Q "And reporting the effectiveness of
11 the AA Plan, as required by federal, state and
12 local agencies."

13 Correct?

14 A Yes.

15 Q And you are the director of Diversity Compliance,
16 correct?

17 A Yes.

18 Q Okay. I'd like to go to page 12 of this document.

19

20 JUDGE CLARK: I think we're there.

21 MR. ELIASOPH: Okay.

22 BY MR. ELIASOPH:

23 Q On this page it states that:

24 "Oracle develops and analyzes internal audit
25 reports."

1 Do you see where it says that?

2 A Yes.

3 Q And it says: "In at least the following areas" --
4 and then there's a list?

5 A Yeah.

6 Q And at the bottom of that list is: "Compensation,"
7 correct?

8 A Yes.

9 Q The same page, farther up, says that:

10 "The director of Diversity Compliance
11 is responsible for implementing an
12 effective auditing and reporting system."
13 Correct?

14 A Yes.

15 Q And again, that is you?

16 A Yes.

17 Q Okay. I'd like to go back to the demonstrative
18 exhibit. Now, if you look on the second page of this
19 exhibit, do you see where it says: "D"?

20 A Yes.

21 Q And where the OFCCP Affirmative Action Program
22 regulations require that the contractor must comply with this
23 provision that's captioned: "Internal Audit and Reporting
24 System," and it says:

25 "The contractor must develop and

1 implement an auditing system that
2 periodically measures the effectiveness
3 of its total Affirmative Action Program."

4

5 Correct?

6 A Yes.

7 Q This monitoring includes the monitor records of all
8 personnel activity including -- and I will skip some of the
9 words, but it says: "Compensation," correct?

10 A Yes.

11 Q It also, as part of this same regulation requires,
12 under number 2:

13 "Requires internal recording on a
14 scheduled basis as to the degree to which
15 Equal Employment Opportunity and
16 organizational objectives are attained."

17 A Yes.

18 Q It also provides, under 4, that as part of the
19 internal audit and reporting system there is -- it's required
20 that you would:

21 "Advise top management of program
22 effectiveness and submit recommendations
23 to improve unsatisfactory performance."

24 Correct?

25 A Yes.

1 Q But you and your team developed no internal audit
2 report to assess performance and compensation as part of its
3 regulatory -- as part of Oracle's regulatory compliance, did
4 it?

5 A And you're speaking with regard to the regulations?

6 Q Yes.

7 A Correct.

8 Q Okay. Can we look at -- on the same demonstrative,
9 let's look at Section B. It says:

10 "Identification of Problem Areas:"

11 "The contractor must perform in-depth analyses

12 of its total employment process to

13 determine whether and where impediments

14 to Equal Employment Opportunity exist.

15 At a minimum, the contractor must

16 evaluate:" --

17 And I'm going to skip down to:

18 "3. Compensation Systems, to determine whether

19 there are gender, race or ethnicity based

20 disparities."

21 You're familiar with this provision, correct?

22 A Yes.

23 Q With respect to complying -- and each time I'm
24 referring to -- and hopefully counsel will stipulate -- here
25 we are referring to Oracle's compliance at Redwood Shores.

1 With respect to Oracle's compliance with their
2 Affirmative Action Regulations, you're not aware of any
3 in-depth analyses of Oracle's compensation systems to
4 determine whether there are gender, race or ethnicity based
5 disparities among employees at Oracle, within the same job
6 title?

7 A Are you speaking about the regulation?

8 Q I am speaking about compliance with the
9 regulations?

10 A Each manager is responsible for evaluating the
11 equity as far as fairness in pay within your own
12 organization. So, that part is being done. However, it's
13 very much decentralized and it's done on a manager --
14 managers are responsible for that on their own.

15 Q So, are you aware of a specific in-depth analysis
16 of Oracle's compensation systems that determines whether
17 there are gender, race or ethnicity based disparities among
18 employees at Oracle within the same job title?

19 A Are you speaking in regards to the regulation?

20 Q Yes.

21 A The analysis that's done is done by managers and
22 they evaluate compensation within their groups to make sure
23 that people are being treated fairly with regard to the
24 quality of their work and contributions to their work. So,
25 they make sure pay -- people are paid according to how well

1 they're doing their job.

2 Q Okay.

3 A Among other things. That's not just limiting that,
4 I want to be clear.

5 MR. ELIASOPH: So, if we can pull up, again, Ms.
6 Holman-Harries' May 8th deposition, which is marked as
7 Plaintiff's Exhibit 16, I'd like to direct attention to page
8 243.

9 BY MR. ELIASOPH:

10 Q Starting on line 19 of that page, you were asked by
11 Ms. Bremer:

12 "Question: Are you -- has Oracle
13 conducted any in-depth analyses of
14 Oracle's compensation system to determine
15 whether there are gender, race or
16 ethnicity based disparities among
17 employees at Oracle with the same job
18 title?"

19 Your counsel objected. Then you answered:

20 "Answer: Not in relation to this
21 regulation. The only analyses that have
22 been done outside of this regulation,
23 have been done -- have been those done at
24 the request of our attorneys."

25 Correct?

1 A Yes.

2 Q Now, you contend that the compensation analyses
3 required by the regulations are performed by managers within
4 their work groups, correct?

5 A Yes. And I want to qualify that. For the purpose
6 of meeting the regulation, yes.

7 Q And you rely on managers consider equity in making
8 compensation decisions for purposes of the regulation?

9 A Yes.

10 Q And as far as you are aware, the only training
11 managers get is based on a slide in the compensation training
12 that talks about equity with regard to compensation?

13 A As far as I'm aware, that's what I've seen. I
14 can't attest to what kind of communication goes on between
15 leaders and the managers within their organization. But I do
16 know that managers are told that they are supposed to pay
17 people equitably without regards to any discriminatory
18 factor.

19 Q And that is the only training you are specifically
20 aware of?

21 A In regards to?

22 Q In regards to my last question?

23 A In regards to compensation?

24 Q Yes.

25 A Solely that, yes.

1 Q And you're not involved in preparing the slide
2 regarding equity and pay equity that is used in this
3 compensation training?

4 A Correct.

5 Q And at least as of the time of your deposition at
6 May 8th, 2019, you didn't know what the training was called?

7 A I didn't know what the title of the training was.
8 I knew that it was compensation training for managers, but
9 the exact title I did not know.

10 Q And you do not receive the results of the analyses
11 you state individual managers perform under the regulation,
12 correct?

13 A No.

14 Q And you have no official tracking system for
15 whether managers had found problem areas in Oracle's
16 compensation systems, based on gender or race or ethnicity?

17 A You're speaking about me, personally, or about each
18 manager?

19 Q Thank you. This is why I wanted that caveat. I'm
20 talking about you and your team?

21 A No.

22 Q So, just to restate the question, you and your team
23 have no official tracking system for whether managers had
24 found problem areas in Oracle's compensation systems based on
25 gender or race or ethnicity, and that here I am referring to

1 regulatory compliance?

2 A Yes, correct.

3 Q And your group doesn't do anything to ensure that
4 individual managers have conducted analyses to determine
5 whether there are gender, race and ethnicity based
6 disparities?

7 A Correct.

8 Q And you did not view it as your responsibility to
9 oversee Oracle's OFCCP compliance efforts with respect to
10 compensation?

11 A That is what has been put forth to me, yes.

12 Q And as such, you never studied Oracle's
13 compensation system as part of your AAP regulatory
14 compliance?

15 A Correct.

16 Q You and your team of direct reports did not do any
17 type of data analysis of compensation as part of your AAP
18 regulatory compliance?

19 A Correct.

20 Q And the reason OFCCP has not received any data
21 analysis during the compliance review, and in this
22 litigation, is because your office did not do any such
23 analyses for the purpose of regulatory compliance, correct?

24 A Correct.

25 Q Do you know what COMPA Ratio is?

1 A Yes.

2 Q And what is it?

3 A It's where people are generally paid in a
4 percentage. So, you may be like at -- and I vaguely
5 understand it -- but it's like 90 percent COMPA Ratio of
6 where they are in relationship to where somebody should be
7 paid.

8 Q Compared to what?

9 A Compared to an average or, you know, like a 100
10 percent COMPA Ratio a lot of times it would be like with the
11 market -- this is my understanding at the time -- I'm being
12 very honest with you, I'm very vague on this.

13 Q Okay.

14 A But yes, I am not a compensation person.

15 Q You did not ever -- did you -- or your team -- did
16 not ever do an analysis related to COMPA Ratio for pay to
17 look for disparities by gender or race, as related to your
18 AAP obligations?

19 A As related to the regulation, no.

20 Q Okay.

21 MR. ELIASOPH: I'd like to look, at -- go back to
22 the demonstrative. Okay.

23 BY MR. ELIASOPH:

24 Q Under "C" of this regulation:

25 "The contractor must develop and execute action

1 oriented program designed to correct any
2 problem areas identified to Section 60-
3 2.17(b) and to attain established goals
4 and objectives."

5 Do you see that?

6 A That's under "C"?

7 Q Yes.

8 A Yes.

9 Q That's the highlighted portion. Now, as part of
10 your regulatory compliance, you did not track problems areas
11 that were identified in the analyses done by Oracle's
12 managers to determine whether there were gender, race or
13 ethnicity based disparities, correct?

14 A I did not track them, but I do know that Oracle
15 managers keep different records on their own work group.

16 Q That's not my question. My question is, you and
17 your team did not track problem areas that were identified in
18 the analyses done by Oracle managers, to determine whether
19 there were gender, race or ethnicity based disparities?

20 A Not in relation to the regulation.

21 Q And you did not do this, because the individual
22 managers were not reporting the results of their compensation
23 decisions to you and your team?

24 A Correct.

25 Q As part of your regulatory compliance, you have not

1 studied whether Oracle relies on prior pay in setting
2 compensation?

3 A Correct.

4 Q And as part of your regulatory compliance, you've
5 not studied -- to the extent that Oracle does rely on prior
6 pay in setting compensation -- if that policy has an adverse
7 impact on women, correct?

8 A Not in regards to our regulation.

9 Q And as part of your regulatory compliance, you have
10 not studied -- to the extent Oracle relies on prior pay in
11 setting compensation -- if that policy has an adverse impact
12 on Asians, correct?

13 A Correct.

14 Q And as part of your regulatory compliance, you and
15 your team have not conducted a study, that analyzes adverse
16 impacts based on race or gender, of how base pay is
17 distributed?

18 A Correct.

19 Q And let me -- I think I missed a question there.
20 As part of your regulatory compliance, you have not studied
21 -- to the extent that Oracle relies on prior pay in setting
22 compensation -- if that policy has an adverse impact on
23 African-American employees, correct?

24 A Correct.

25 Q And as part of your regulatory compliance, you and

1 your team have not conducted a study that analyzes adverse
2 impacts, based on race or gender, of how bonuses are
3 distributed, correct?

4 A Correct.

5 Q And as part of your regulatory compliance, you and
6 your team have not conducted a study that analyzes adverse
7 impacts, based on race or gender, of how equity is
8 distributed?

9 A Do you mean -- by equity, do you mean stocks?

10 Q I mean RSUs and stock options.

11 A Correct.

12 Q And you were not provided a budget -- your or your
13 team were not provided a budget for studying compensation
14 disparities based on race or gender, for your regulatory
15 compliance?

16 A Correct.

17 Q And as far as you are aware, Oracle does not have a
18 specific budget for making pay corrections for disparities it
19 identifies as part of its AAP compliance -- and I'm
20 referring to disparities in pay?

21 A And you're referring to the regulation 2.17?

22 Q Yes, I am.

23 A Correct.

24 Q And you conduct no centralized review, during a
25 focal review, to determine if the implementation of each

1 focal review results in disparities based on race or gender,
2 correct?

3 A Correct.

4 Q And you have not attempted to itemize all factors
5 that go into individual pay determinations at Oracle
6 headquarters as part of your AAP regulatory compliance?

7 A Correct.

8 Q And you have not attempted to document all factors
9 that go into individual pay determinations at Oracle
10 headquarters, as part of your regulatory AAP compliance,
11 correct?

12 A Correct.

13 Q And you did not demand that managers maintain
14 records documenting all factors they used in making
15 compensation decisions?

16 A Correct.

17 Q Have you heard of Mythily Shah?

18 A No.

19 Q Okay. Do you get the results of exit interviews?

20 A No.

21 Q So, it was not brought to your attention that she
22 complained about her pay in her exit interview in October --
23 I'm sorry -- in 2018?

24 MR. PARKER: It assumes a fact, also hearsay.

25 JUDGE CLARK: Overruled. You can answer the

1 question.

2 THE WITNESS: No.

3 BY MR. ELIASOPH:

4 Q With respect to Oracle's AAP compliance, you had
5 not advised top management of the AAP program effectiveness,
6 correct -- with respect to compensation?

7 A Correct.

8 Q Nor have you submitted recommendations to top
9 management to improve unsatisfactory performance with respect
10 to compensation?

11 A With regard to the reg?

12 Q With regard to the regulatory compliance?

13 A Correct, yes.

14 Q It is your position that you are not responsible
15 for developing compensation practices at Oracle. I'm going
16 to strike that. I believe I've asked that.

17 JUDGE CLARK: Okay.

18 BY MR. ELIASOPH:

19 Q It is your position that you are not responsible
20 for implementing compensation practices at Oracle, correct?

21 A Correct.

22 Q And you and your team are not involved in
23 compensation decisions for job positions in Product
24 Development, Information Technology or Support, at Redwood
25 Shores?

1 A My team and I are not involved in that.

2 Q As part of Oracle's Affirmative Action requirement,
3 Oracle has not -- to your knowledge -- Oracle has not
4 implemented any specific policies with respect to ensuring
5 pay equity?

6 A As far as my knowledge with regard to the
7 regulation, you're speaking?

8 Q Just generally.

9 MR. PARKER: Objection, vague.

10 JUDGE CLARK: Restate your question, Mr. Eliasoph.

11 BY MR. ELIASOPH:

12 Q As part of Oracle's Affirmative Action requirements
13 -- so I will discuss this in terms of the regulation -- as
14 part of Oracle's Affirmative Action requirement, Oracle has
15 not implemented any specific policies with respect to
16 ensuring pay equity?

17 A With regard to the regulation, no.

18 Q And is your understanding that Oracle does not have
19 to this under the Affirmative Action regulations?

20 A It's my understanding that the regulations do not
21 specify exactly how the analysis is supposed to be done and
22 Oracle has chosen to delegate that responsibility to the
23 managers.

24 Q Have you studied Oracle's requisition process with
25 respect to hiring?

1 A Yes.

2 Q So, you're aware of the requisition process?

3 A Yes.

4 Q And it's true that not all requisitions are filled,
5 correct?

6 A Correct.

7 Q And it's also true that sometimes people are
8 invited to apply to a specific requisition?

9 A I can't speak to that, I don't know if people are
10 invited or not. In my internal audits, it's always been
11 looking at hired requisitions.

12 Q And before 2017, Oracle's HR Department did not
13 conduct a second level review of compensation decisions?

14 A You're talking about compensation decisions in
15 regard to the regulation? So, that's a question.

16 Q I do not know. I do not --

17 MR. PARKER: Objection, irrelevant.

18 JUDGE CLARK: Sustained. Rephrase your question or
19 ask something different.

20 BY MR. ELIASOPH:

21 Q I'm not asking about any privileged analysis. I'm
22 simply asking if before 2017 Oracle's HR Department conducted
23 a second level review of compensation decisions?

24 MR. PARKER: As phrased, it's still over broad and
25 irrelevant, as it does not relate specifically to the

1 regulations.

2 JUDGE CLARK: Mr. Eliasoph, what's your response?

3 MR. ELIASOPH: Let me ask --

4 JUDGE CLARK: I'll sustain the objection. You're
5 going to rephrase it?

6 MR. ELIASOPH: I'll withdraw the question.

7 JUDGE CLARK: Okay.

8 BY MR. ELIASOPH:

9 Q In describing your duties, you mentioned a review
10 that HR does of hiring decisions?

11 A Yes. HR is part of the process when someone is
12 hired. There's a document that's called the "Workflow," and
13 managers review that document and also HR reviews the hire,
14 to make sure there's a justification there as to why that
15 hire was made, and it goes through the approval process, yes.

16 Q And that's called a second level review?

17 A No. That is their initial review. We've been
18 doing that -- HR has been doing that for -- before I started
19 working for Oracle, which was 2011.

20 Q And at any point did Oracle begin a second level
21 review?

22 A Yes.

23 Q And that was in 2017, correct?

24 A Yes.

25 Q And a second level review, with respect to

1 promotions by HR, did not start until 2017, correct?

2 A Correct.

3 Q And before 2017, Oracle's HR Department did not
4 conduct a second level review with respect to compensation
5 decisions -- excuse me -- with respect to promotion
6 decisions?

7 A They -- from my understanding the HR Department
8 doesn't do the second level review, my department does.
9 Before 2017, the HR Department did the review of the workflow
10 that I discussed, to make sure everything was in place.

11 Q And do you receive pay discrimination complaints?

12 A No, I do not.

13 Q Do you recommend changes in practices based on in
14 information you gained in pay discrimination complaints?

15 A I don't oversee pay discrimination complaints.

16 Q Okay. You have been responsible for overseeing
17 OFCCP's audits of Oracle since 2011, correct?

18 A Yes.

19 Q In addition to overseeing Oracle's OFCCP's audits,
20 you also coordinate collecting data and providing it to
21 OFCCP, correct?

22 A yes.

23 Q On September 24th, 2014, OFCCP sent a letter to
24 Oracle scheduling a compliance review at Oracle's Redwood
25 Shores headquarters, correct?

1 A Yes.

2 Q The scheduling letter requested Oracle to provide
3 OFCCP with compensation data, correct?

4 A Yes.

5 Q And Oracle provided some compensation data to OFCCP
6 during the compliance review, correct?

7 A Yes.

8 Q The compensation data Oracle provided was data as
9 of January 1st, 2014?

10 A It was data as of 1/1/14, but it also included data
11 -- it also included compensation that employees earned
12 throughout 2013, from 1/1/13 through 12/31/13.

13 Q Okay. And that's what we call a "snapshot"?

14 A Yes.

15 Q So, during the compliance review, OFCCP requested
16 various fields of compensation data, correct?

17 A Yes.

18 Q OFCCP requested Oracle provide educational data to
19 it, during the compliance review, correct?

20 A Yes.

21 Q Oracle's initial response to the request for
22 education data was that Oracle doesn't maintain education
23 data in its database, correct?

24 A Yes.

25 Q One of the requests for education data was names of

1 schools attended, correct?

2 A I don't recall.

3 MR. ELIASOPH: I'd like to pull up Plaintiff's
4 Exhibit 61, page 1.

5 JUDGE CLARK: We're there.

6 MR. ELIASOPH: Okay.

7 BY MR. ELIASOPH:

8 Q Do you see the second request there?

9 A Yes.

10 Q Do you see that the first bullet point under "2,"
11 says: "Names of school attended"?

12 A Yes.

13 Q Does that refresh your recollection?

14 A Yes. Thank you.

15 Q Oracle's response was, quote: "We don't have this
16 data in any database," correct?

17 A Yes.

18 Q And another request was for the education degree
19 earned, correct?

20 A Yes.

21 Q And you can see that on the screen?

22 A Yes.

23 Q And Oracle's response to that request was also
24 that, quote: "We don't have this data in any database,"
25 correct?

1 A Yes.

2 Q But that response was not accurate, correct?

3 A Correct. Since then I've learned that there's
4 personal data kept in various databases, but at the time
5 there was not a specific single database that housed all of
6 that information.

7 Q Oracle did have education data in database format,
8 as you just indicated, correct?

9 MR. PARKER: Misstates the testimony.

10 JUDGE CLARK: Overruled.

11 MR. ELIASOPH: It's a new question.

12 JUDGE CLARK: Overruled.

13 You can answer the question.

14 THE WITNESS: Could you repeat it, again?

15 BY MR. ELIASOPH:

16 Q Oracle did have education data in database format,
17 correct?

18 A In some instances, yes.

19 Q Oracle received a Notice of Violation from OFCCP in
20 March 2016, correct?

21 A Yes.

22 Q Before the Notice of Violation, did Oracle provide
23 OFCCP with any education data?

24 A No.

25 Q Oracle received a letter from OFCCP ordering it to

1 show cause why enforcement proceedings should not occur, in
2 or around June 10th, 2016, correct?

3 A I believe so.

4 Q You're aware of the Show Cause Notice, just not
5 sure of the date?

6 A Correct.

7 Q Before Oracle received the Show Cause letter, did
8 you -- did Oracle provide OFCCP with any education data?

9 A I don't think so.

10 Q Are you aware of whether Oracle provided education
11 data to OFCCP during the course of this litigation?

12 A Yes.

13 Q As of August 2015, Oracle had provided a
14 compensation snapshot for 2014 to OFCCP, providing some
15 compensation data, correct?

16 A Yes.

17 Q And OFCCP requested the same data fields be
18 provided for 2013, correct?

19 A Yes.

20 Q Okay.

21 A Can I qualify that? I wanted to make -- you did
22 receive some information, again, on the 2013 data, with the
23 1/1/14 snapshot.

24 Q I understand.

25 A Okay. Thank you.

1 Q Okay.

2 MR. ELIASOPH: I'd like to pull up Exhibit D-55.

3 Okay. So, this is a Defense exhibit.

4 BY MR. ELIASOPH:

5 Q On August 26th, 2015, did OFCCP request that Oracle
6 provide snapshot data for 2013, like Oracle had provided for
7 2014?

8 A Yes.

9 Q Did Oracle provide a 2013 compensation snapshot to
10 OFCCP during the compliance review?

11 A No.

12 MR. ELIASOPH: I have no further questions at this
13 time.

14 JUDGE CLARK: Who's got this witness for cross?

15 Mr. Parker?

16 MR. PARKER: Right.

17 CROSS-EXAMINATION

18 BY MR. PARKER:

19 Q Let's go to Exhibit P-46, page 2.

20 Ms. Holman-Harries, Ms. Catz, Safra Catz, has a lot to
21 do in her life, doesn't she?

22 A She certainly does.

23 Q And I'd like you to read the word -- you mentioned
24 that there were two individuals responsible for the
25 Affirmative Action Plan, and you looked at this page,

1 correct?

2 A Yes.

3 Q Could you please look at where it says: "Individual
4 responsible," is that a pleural or a singular?

5 A It is actually a singular there.

6 Q And who is the person responsible?

7 A Me.

8 Q All right. Now, you were asked questions about
9 compensation and compliance with 2.17(d), do you recall that?

10 A Yes.

11 JUDGE CLARK: Hang on Mr. Parker. I just want to
12 make sure it's clear. So, they did their direct, you're now
13 doing cross. And then you're intending to do your own direct
14 or you're going to ask all your questions now?

15 MR. PARKER: I'm going to go right at it, and all
16 of it. I think actually I'm going to stay within the scope,
17 so I don't think we're going to have any difficulties, at
18 all. I don't think we're going to wander around very much.

19 JUDGE CLARK: Sounds good. Thank you.

20 Go ahead and move on.

21 BY MR. PARKER:

22 Q With regard to 2.17(d) -- hold on just a second and
23 let me find my copy of the reg -- as I understand, managers
24 are responsible for determining the equity and compensation,
25 correct?

1 A Yes.

2 MR. ELIASOPH: Objection -- I'll wait until my next
3 chance. I'd like to be able to object to leading questions
4 for this witness, this is not an adverse witness.

5 JUDGE CLARK: So, but is she not technically on
6 cross?

7 MR. ELIASOPH: She is on cross.

8 JUDGE CLARK: Okay.

9 Mr. Parker? So, I guess the confusion is normally
10 on direct you would not lead, on cross you would lead. But
11 because she's an adverse witness and you took her as an
12 adverse witness and you took her as an adverse witness you
13 are allowed to lead. But I don't know that there's a
14 difference in cross-examination with an adverse witness,
15 that's not coming to mind right away.

16 Mr. Parker, do you care to be heard?

17 MR. PARKER: I --

18 MR. ELIASOPH: Your Honor, she's not adverse under
19 611(c).

20 JUDGE CLARK: Okay. How is she otherwise adverse?
21 Why would you have called her?

22 MR. ELIASOPH: Oh, she is adverse to us, she's not
23 adverse to them.

24 JUDGE CLARK: Understood, understood.

25 MR. ELIASOPH: That's our position.

1 JUDGE CLARK: I understand, okay.

2 BY MR. PARKER:

3 Q And are you familiar with the term: "workflow"?

4 JUDGE CLARK: So, Mr. Parker, I'm sorry --

5 MR. PARKER: Oh, I'm sorry.

6 JUDGE CLARK: We're still -- I'm not quite sure --
7 they're objecting that you ask leading questions.

8 MR. PARKER: I believe that they're on a
9 foundational level, so I'm not really fussing about it overly
10 much.

11 JUDGE CLARK: Okay. Overruled at this point.

12 MR. ELIASOPH: Okay.

13 JUDGE CLARK: Go ahead, ask another question.

14 MR. PARKER: Thank you.

15 BY MR. PARKER:

16 Q Are you familiar with the term: "workflow"?

17 A Yes.

18 Q And what is workflow?

19 A We have different workflows that are put in place
20 when a person is hired, a manager sign-off on a -- HR signs
21 off on it and the hiring decision is reviewed. And as part
22 of that there is a justification there as to why the person
23 was hired. They talk about the person's skills. And then,
24 also, the proposed starting pay is also part of that.

25 Q And you were asked what other documents reflecting

1 the compensation analyses, do you recall that?

2 A Yes.

3 Q And do you know whether or not the workflows are
4 those documents?

5 A It could be, because compensation at Oracle is a
6 continuing process. It starts with when the person is hired.
7 It's very much decentralized and it starts when the person is
8 hired. And then it goes through the process of when people
9 have merit increases, when they get promotions. And so I
10 would -- in that context, I would say yes, that would be part
11 of the documentation process.

12 Q And do you know whether or not workflows were
13 provided to OFCCP in this case?

14 A I don't know.

15 Q Now, you also talked about there were a couple of
16 passages read to you from your deposition, one which was --
17 one of which was read -- excuse me for one moment -- where as
18 you -- do you recall where there was a question about
19 2.17(b)3, and then there was a privilege response, do you
20 recall that?

21 A Was (b)3 -- was that in regard to compensation?

22 Q Yes, Ma'am.

23 A Yes, I do.

24 Q Okay. And did you -- do you recall later in your
25 deposition -- let me show you this --

1 MR. PARKER: Do you mind if I approach?

2 JUDGE CLARK: No. Maybe you could refer us all to
3 where you're going to go?

4 MR. PARKER: I'm going to do that right now.

5 JUDGE CLARK: Thank you.

6 BY MR. PARKER:

7 Q I'm going to ask you, Ms. Holman-Harries, to turn
8 to page 241?

9 JUDGE CLARK: So, this would be Plaintiff 16, page
10 241?

11 MR. PARKER: Yes.

12 JUDGE CLARK: Okay.

13 MR. ELIASOPH: Can we put that on the screens, so
14 we can all see it?

15 JUDGE CLARK: That's okay with me, if you want to
16 put it up on the screen, but I think it's your exhibit, so.

17 MR. ELIASOPH: All right. I see it.

18 MR. PARKER: Okay.

19 THE WITNESS: Okay.

20 BY MR. PARKER:

21 Q And do you see, on page 241 -- I'm sorry, let's
22 start with on page 240, line 8, you were asked the question:

23 "Question: Okay. So, it says that in
24 addition to the elements required by
25 60-210 through 60-216, an acceptable

1 Affirmative Action Program must include
2 the following:

3 And B-3 says:

4 'The contractor must perform in-depth
5 analyses of a total compensation process
6 to determine whether and where
7 impediments of Equal Employment
8 Opportunity exist. At a minimum, the
9 contractor must evaluate compensation
10 systems to determine whether there are
11 'gender, race or ethnicity based
12 disparities.'

13 What does Oracle do to comply with this
14 section?"

15 Your answer:

16 MR. ELIASOPH: Your Honor, if I may object. Mr.
17 Parker objected that I was just reading the deposition
18 transcript, which he aptly noted could be done by the Court.

19 I read them because there was a pending question and the
20 witness either needed a refreshment of her recollection or
21 the statement was inconsistent. It seems Mr. Parker just
22 simply intends to read the transcript.

23 JUDGE CLARK: Mr. Parker?

24 MR. PARKER: For the rule of completeness and for
25 accuracy in the response, I am certainly entitled, I believe,

1 to then ask her: "Did you testify in this manner?"

2 JUDGE CLARK: Yeah, okay. I'm going to overrule
3 the objection. We shouldn't just be reading the transcript
4 for the sake of reading the transcript.

5 MR. PARKER: And I am not.

6 JUDGE CLARK: So, I assume that the lawyers have a
7 good faith basis for their question at this point.
8 Overruled.

9 You can answer. Are you reading it or is she going
10 to read it?

11 MR. PARKER: I'm going to read it. My question
12 will then be: "Did you say that?"

13 The witness answered:

14 "Answer: Oracle only -- for the Part
15 2 company with this, managers look at
16 starting pay, increases, bonuses or other
17 incentives with regard to preventing
18 discrimination and making sure that pay
19 -- that they look at equity with regard
20 to pay.

21 "Question: And the individual -- as
22 the individual responsible for
23 implementation of Oracle's Affirmative
24 Action Plan, what do you do to ensure
25 compliance with this section?

1 "Answer: You're talking about Section
2 3?

3 "Question: 41 CFR 60-2.17(a,b)3?

4 "Answer: (b)3.

5 "Question: I'm sorry, let me start
6 over. The section I'm talking about is"
7 --

8 MR. ELIASOPH: Your Honor, I'd like to restate my
9 objection.

10 JUDGE CLARK: So, Mr. Parker, you do just appear to
11 be going through --

12 MR. PARKER: Very good.

13 BY MR. PARKER:

14 Q Let me just say -- did you actually talk about, in
15 this deposition, what Oracle does to comply with (b)3?

16 A Yes.

17 Q Okay. Very good. Thank you. And that made it
18 much more simple. I appreciate it.

19 JUDGE CLARK: Thank you.

20 BY MR. PARKER:

21 Q One other question -- another question. Do
22 managers -- did Oracle have a policy where managers would
23 request prior pay, to your knowledge?

24 A I don't have any knowledge of that policy.

25 Q And isn't it true, as well, that compliance is -- I

1 mean managers' compliance with 2.17 -- sorry. Isn't it true,
2 also, that managers are responsible for ensuring compliance
3 with 2.17(d)?

4 MR. ELIASOPH: Objection, leading the witness. And
5 this is exactly why the Employer should not be able to lead
6 their own witness into providing answers.

7 JUDGE CLARK: I'm going to sustain the objection.
8 Rephrase your question, Mr. Parker.

9 MR. PARKER: That's fine.

10 BY MR. PARKER:

11 Q I understand that managers are required to do an
12 analysis of pay, correct -- is that what you said on direct?

13 A Yes.

14 Q Are they also -- does that have any relationship to
15 2.17(d)?

16 A Yes, it does.

17 Q Can you tell me what that is?

18 A 2.17 says that the contractor needs to evaluate pay
19 and managers evaluate pay to comply with 2.17 within their
20 own work group.

21 Q Thank you.

22 MR. PARKER: Sorry, there was some chitchat here.

23 BY MR. PARKER:

24 Q And then right before lunch, let me just ask this
25 question. On direct you were asked about whether or not

1 Oracle provided information on education, do you recall that?

2 A Yes.

3 Q And I believe you said you told OFCCP that was not
4 available to you, correct?

5 A Yes.

6 Q How did you get that -- I mean did you ask anyone
7 or did you just simply tell -- how did you come to that
8 understanding?

9 A In my job we try to -- in collecting data on
10 employees, at one point we were trying to develop a report
11 that included education. And when we did that, this was way
12 before this audit ever came up. And in that we were told
13 that they could attempt to pull, maybe, a few instances of
14 education out of the electronic personnel file, but the
15 majority of instances in that, they would not be able to pull
16 education there. And that's how I came up with that.

17 Q Well, you say that's how you came up with that, is
18 that what you were informed or did you --

19 A That's what I was informed with --

20 Q -- or did you make it up on your own?

21 A -- yeah, that's what I was told.

22 Q And were you -- did you have any intent to lie to
23 OFCCP?

24 A No.

25 Q And with regard to acquired employees, do you know

1 whether or not acquired employees that education information
2 would exist in any database?

3 A With acquired employees, often we don't even have a
4 resume for those employees. They're required and there is no
5 particular -- there is no work experience or background at
6 all for acquired employees. So, it's very -- we have so many
7 different types of employees at Oracle with acquired
8 employees, and then we have different systems that were in
9 place when people started that there were different amounts
10 of information collected. So, with acquired employees, often
11 there's no information like that, at all.

12 JUDGE CLARK: And Mr. Parker, if you can find a
13 good place to stop?

14 MR. PARKER: Perfect.

15 JUDGE CLARK: Okay. It is 12:30 o'clock p.m.,
16 we're going to take our lunch break. Are we intending to
17 complete Ms. Holman-Harries?

18 MR. ELIASOPH: Yes.

19 JUDGE CLARK: Okay. And then we'll put Ms. Pandey
20 on after.

21 MR. ELIASOPH: Correct.

22 JUDGE CLARK: Okay. And I assume you still have
23 more examination?

24 MR. PARKER: That's correct.

25 JUDGE CLARK: Okay. We'll be off the record until

1 1:30 o'clock p.m.

2 (Whereupon, at 12:30 o'clock p.m., the hearing was
3 recessed for lunch.)

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1 AFTERNOON SESSION

1:30 O'CLOCK P.M.

2 JUDGE CLARK: Okay. We are back on the record.

3 All parties are present. Our witness has re-taken
4 the stand. She is still under oath.

5 Whereupon,

6 SHAUNA HOLMAN-HARRIES

7 having been previously duly sworn by the Administrative Law
8 Judge, was examined and testified further as follows:

9 JUDGE CLARK: Mr. Parker, it's your examination,
10 but I want -- it looks like you want to say something, Mr.
11 Eliasoph?

12 MR. ELIASOPH: If you were going to comment on the
13 evidentiary -- on the leading question issue, we did find
14 authority that we'd be happy to discuss.

15 JUDGE CLARK: I did, as well. Why don't you go
16 ahead and make your record.

17 MR. ELIASOPH: Yes. I actually forgot to bring the
18 comments. I think somebody is getting the Federal Rules.
19 But in the comments of 611(c) they do explain why an attorney
20 should not be able to ask leading questions of their own
21 witness. I also have a case: Securities and Exchange
22 Commission v. Goldstone, 317 FRB 147, 2016.

23 JUDGE CLARK: Say that again? 317?

24 MR. ELIASOPH: FRB 147, 2016. The case appears to
25 be from the District of New Mexico. And it explains that the

1 reason a hostile witness may be cross-examined is because the
2 risks of suggestion are reduced where the witness has an
3 interest in promoting a version of the facts contrary to that
4 suggested.

5 JUDGE CLARK: I think that --

6 MR. ELIASOPH: I think the comments are clear.

7 JUDGE CLARK: Okay. Anything else, Mr. Eliasoph?

8 MR. ELIASOPH: No, Your Honor.

9 JUDGE CLARK: Mr. Parker?

10 MR. PARKER: I can live with that.

11 JUDGE CLARK: Okay. I found some authority,
12 myself. Under 611, the examination of the witness is
13 discretionary with the trial court. There's actually a case
14 that talks about when a witness is called as an adverse
15 witness and they are taken as friendly, it should be more of
16 a direct examination, even though it still is discretionary.

17 So, I would prefer, Mr. Parker, that you ask
18 open-ended questions, to the extent you can. Obviously, if
19 they're leading to get her to the point of something, that's
20 fine, but otherwise treat her more like a direct witness than
21 a cross-examining witness.

22 MR. PARKER: I will. Thank you.

23 JUDGE CLARK: Thank you, sir.

24 All right. Then you may begin.

25 Thank you, Mr. Eliasoph, for the citation.

1 MR. ELIASOPH: Thank you.

2 CROSS-EXAMINATION RESUMED

3 BY MR. PARKER:

4 Q My questions are going to relate to 2.17 and
5 compensation, okay?

6 A Okay.

7 Q Just that, understood?

8 A Okay.

9 Q What does Oracle do to analyze its employment
10 process to comply with 2.17(b)?

11 A What Oracle does to analyzes its compensation
12 process is done with many different instances of points in
13 time that occur in an employee's -- during an employee's
14 employment at Oracle. One of the first things that's done is
15 when a person is brought into Oracle an assessment is done of
16 starting pay in relation to the other employees in the group.
17 That's done by the manager. HR may chime in and help them,
18 but it's done with the manager.

19 MR. ELIASOPH: Objection. Your Honor, I can't tell
20 if this witness has foundation for what she's testifying to.
21 Is this based on personal knowledge?

22 THE WITNESS: Yes.

23 JUDGE CLARK: Well, she answered the question.
24 Go ahead, ask another question.

25 MR. PARKER: Continue with your answer?

1 THE WITNESS: Yes, it is.

2 JUDGE CLARK: Go ahead, finish your answer.

3 THE WITNESS: Also, there is something that is a
4 focal review that occurs, and that's an assessment of like
5 whether employees are going to get an increase for the year,
6 and when employees are -- they're assessed at that point, the
7 work group is assessed for equity. There are tools that
8 managers use to bring about pay equity. Some of those tools
9 -- RSUs. It used to be stock options. Now we're given RSUs.
10 Bonuses are given, and that's at the discretion of the
11 manager, which tools to use, what's available to them as far
12 as bonus and that type of thing, to make adjustments to pay
13 to where people are paid according to the work that they're
14 doing and without discrimination.

15 There are promotions that occur. There's other
16 assessments that occur then. Like if an employee is
17 promoted, you'll have a person -- you know, they'll come in
18 and evaluate the employee for promotion compared to other
19 people in the work group they're being promoted to, and they
20 look at experience and that type of thing. This is something
21 -- I mean I've promoted people in my work group, I'm a
22 manager there, I've participated in the focal review, I used
23 all these different compensation methods to bring about
24 equity in my group. I've done the same -- I've used RSUs,
25 I've used bonuses, and the entire process to take a look at

1 that, together with promotions. And when promoting people, I
2 always look at where they are in comparison to other people,
3 as specified in that training, on that particular slide that
4 you brought up.

5 So, it's entire process.

6 Q And do you have an understanding as to why Oracle
7 has adopted this process that you just described?

8 A Oracle is very decentralized. They want to give
9 managers as much responsibility for their group. Oracle has
10 a lot of different products in place and they want to create
11 a very entrepreneurial type of environment.

12 Q And has Oracle developed programs to correct
13 disparities in compensation based on gender, race or
14 ethnicity, to comply with 2.17?

15 A Oracle has developed programs to bring about
16 fairness in pay with regard to contributions. Oracle does
17 not consider paying somebody, because they're a specific
18 race, more than somebody else, or a specific gender more than
19 somebody else. What they want to do is they want to create
20 equity for all people within the organization, based on their
21 skills and responsibilities, without regard to race or
22 gender.

23 Q And specifically with regard to 2.17(c) -- and I
24 believe you have a copy of the regulation in front of you?

25 A Okay. Let me take a look, because I'm really bad

1 with these numbers.

2 Q What programs has Oracle developed to correct
3 disparities in compensation, based on gender, race or
4 ethnicity?

5 A What I've just talked about. I mean we -- the
6 programs that are put in place are the tools that are
7 available to managers to correct some of these problems with
8 regards to compensation. So, if I see a person that is a
9 really good performer and they're paid less, in my work
10 group, than somebody else, I can utilize any one of these
11 tools to bring about pay equity within the group.

12 Q Now, with regard to 2.17(d) and compensation, what
13 does Oracle do to measure the effectiveness of its
14 Affirmative Action Program?

15 A With regard to 2.17(d), it's -- to measure the
16 effectiveness, it's done by the managers and they take a look
17 at their work group. A lot of this is documented on
18 workflows and that type of thing.

19 Q Let me direct your attention -- you were asked,
20 before the break, about requests from OFCCP to produce
21 documents and information, correct?

22 A Yes.

23 Q And do you recall discussing the September 24th,
24 2014, letter from OFCCP?

25 A Yes.

1 Q And do you recall what it was that -- did Oracle
2 produce any information in response to that September 24th,
3 2014, letter?

4 A As far as the initial scheduling letter in
5 September, yes, we did.

6 Q Okay. And do you recall what was provided to
7 OFCCP?

8 A We provided the items they requested in the
9 scheduling letter. We provided the narrative. We provided
10 the workforce analysis, the job group analysis, the
11 availability analysis. We provided all transactions that
12 took place for a year and a half period. We provided all the
13 EEO documents for three years. We provided the Veterans'
14 reports for three years. Gosh, I'm trying to jot this off in
15 my head -- and any other of the information that was
16 requested.

17 MR. PARKER: Your Honor, I'm going to raise my
18 hand. I think I'm going to lead just a little bit, but it
19 prevents a lot of paper and it saves time.

20 JUDGE CLARK: Okay.

21 BY MR. PARKER:

22 Q Did you produce a 2014 snapshot, as well?

23 A Yes.

24 Q How many columns of information are contained in
25 that 2014 snapshot, if you know?

1 A The original one for 2014, it was much more
2 condensed. By the time we got done, I believe there were
3 over 100 columns of information that were requested, but that
4 played out over the period of time through the OFCCP request.

5 Q And when OFCCP requested the 2013 snapshot, did you
6 say no?

7 A No.

8 Q What did you do in response to that request?

9 A We told them that we were in the process of
10 compiling it.

11 Q Were you also, at that time -- yes or no --
12 involved in any other audits?

13 MR. ELIASOPH: Objection, leading.

14 JUDGE CLARK: Overruled.

15 THE WITNESS: Does that mean I can answer?

16 JUDGE CLARK: You can answer, yes, you can answer.

17 THE WITNESS: Okay. I'm a novice at this. Okay.

18 Yes, we were involved in a lot of other audits. We
19 were involved, at that point, at any given time we had
20 anywhere from 22 to like 35 open audits during that period,
21 at least that's my down and dirty rough overview of looking
22 at some of the documentation that I kept during that
23 time-frame.

24 BY MR. PARKER:

25 Q Do you know whether that fact had any impact on

1 your ability to provide the 2013 snapshot to OFCCP?

2 MR. ELIASOPH: Objection, leading the witness.

3 JUDGE CLARK: Overruled.

4 You can answer that question.

5 THE WITNESS: Well, yes, because we had limited
6 staffing. During that period we were staffing up.
7 Originally -- and just to kind of give you a perspective --
8 in 2013 we only had two people in the department, and we were
9 staffing up to handle all of these audits, and now we have 7
10 people. So, we were staffing up and as we staffed up we were
11 getting more and more requests, which slowed us down quite a
12 bit.

13 BY MR. PARKER:

14 Q And were you working on providing -- on gathering
15 -- I'm sorry. Why would it take you so long to gather
16 information for a 2013 snapshot?

17 A Well, we have to get it from a lot of different
18 databases. There's no, necessarily, just one database that
19 has the information that we're looking for. We might have to
20 get information if a request is made for hours of pay from
21 payroll. We might have to contact OAL to get different
22 compensation information. We might have to contact the
23 person that's in charge of Visa information, to get Visa
24 information, which is kept in a completely different
25 database. So, there's so many different databases involved.

1 Q And do you know whether or not -- well -- I'll just
2 say -- was Oracle working on gathering that 2013 snapshot
3 information, even at the time that the NOV issued?

4 A Yes.

5 MR. PARKER: No further questions.

6 JUDGE CLARK: No further questions.

7 Mr. Eliasoph, anything further?

8 REDIRECT EXAMINATION

9 BY MR. ELIASOPH:

10 Q You testified about your own activities as a
11 supervisor, correct?

12 A Yes, as an example.

13 Q And you're saying, as an example, that you provide
14 pay equity for your staff?

15 A Yes.

16 Q And your title is director of Diversity Compliance,
17 correct?

18 A Yes.

19 Q So, that makes you a little more aware of EEO
20 compliance issues than the average manager, correct?

21 A It makes me more aware of EEO compliance issues in
22 general, but all managers are given that particular training
23 that we've referred to so many times, and they're told that
24 that's part of their expected responsibility.

25 MR. ELIASOPH: No further questions, Your Honor.

1 JUDGE CLARK: Okay.

2 Anything further, Mr. Parker?

3 MR. PARKER: No, sir.

4 JUDGE CLARK: So, this witness is excused entirely
5 from the case, correct?

6 MR. PARKER: I hope so.

7 THE WITNESS: Thank god.

8 JUDGE CLARK: All right. So, you're free to go.
9 Thank you very much for your time.

10 THE WITNESS: Okay.

11 JUDGE CLARK: Again, thank you for arranging your
12 schedule to be here and you are free to go.

13 THE WITNESS: Thank you.

14 JUDGE CLARK: You're excused as a witness.

15 THE WITNESS: I appreciate it.

16 (Witness excused.)

17 JUDGE CLARK: Okay. We have another witness. Is
18 he upstairs, yet, or we need to go off the record while we
19 bring that witness up?

20 MR. ELIASOPH: He should be nearby.

21 JUDGE CLARK: Okay. We'll go off the record until
22 the witness comes in.

23 And as I understand it, this is the last witness
24 today, so don't feel the need to stretch it until 5:30
25 o'clock p.m.

1 MR. ELIASOPH: If you won't be upset, then we won't
2 do that.

3 JUDGE CLARK: I won't be.

4 (Off the record at 1:44 o'clock p.m.)

5 JUDGE CLARK: Back on the record.

6 All parties are present.

7 Go ahead and step right around here, sir. And if
8 you would turn and face me, raise your right hand.

9 Whereupon,

10 AVINASH PANDEY

11 having been first duly sworn by the Administrative Law Judge,
12 was examined and testified as follows:

13 JUDGE CLARK: Have a seat, please.

14 THE WITNESS: Thank you.

15 JUDGE CLARK: And if you would state your name and
16 spell it for the record, please?

17 THE WITNESS: My name is Avinash Pandey, first name
18 is A-v-i-n-a-s-h, last name Pandey, P-a-n-d-e-y.

19 JUDGE CLARK: Okay. So, it's A-v-i-n-a-s-h?

20 THE WITNESS: Yeah.

21 JUDGE CLARK: Okay.

22 Mr. Pandey, the lawyers are going to ask you
23 questions. We're recording everything that's said here
24 today, so I need you to keep your voice up and speak out loud
25 so we can all hear you in the courtroom, and our court

1 reporter can take it all down, okay?

2 THE WITNESS: Okay. Am I audible?

3 JUDGE CLARK: You're doing very well, yes.

4 THE WITNESS: Thank you.

5 JUDGE CLARK: So far, so good.

6 THE WITNESS: Okay.

7 JUDGE CLARK: Because we're recording everything,
8 let the lawyers ask their complete question and then you give
9 your complete answer, because we can't record two people
10 talking at the same time. Understand?

11 THE WITNESS: Okay.

12 JUDGE CLARK: If the lawyer asks you a question you
13 don't know the answer or you don't understand, tell us and
14 we'll let the lawyer rephrase the question for you. Okay?

15 THE WITNESS: Okay.

16 JUDGE CLARK: And if a lawyer makes an objection,
17 you just stop talking and I'll let you know whether you can
18 answer the question. All right?

19 THE WITNESS: Okay.

20 JUDGE CLARK: Okay. Thank you very much.

21 Mr. Eliasoph?

22 MR. ELIASOPH: Yes.

23 DIRECT EXAMINATION

24 BY MR. ELIASOPH:

25 Q Good afternoon, Mr. Pandey.

1 A Good afternoon.

2 Q What is your gender?

3 A I'm a male.

4 Q And what is your race?

5 A I am an Asian-Indian.

6 Q And are you testifying here today at the request of
7 the Department of Labor, Office of the Solicitor?

8 A Yes.

9 Q And what is your educational background?

10 A I received a bachelor's degree in Engineering, from
11 the Engineering Institute of Technology. And I have a
12 master's degree in Engineering, from the University of
13 Michigan, Ann Arbor.

14 Q And what dates did you receive those degrees?

15 A I received my bachelor's in 1994 and my master's in
16 1996.

17 Q And have you worked in the technology industry?

18 A Yes.

19 Q What was your first job in the technology industry?

20 A My first job was after my graduation from the
21 University of Michigan at a company called Engineering
22 Animation Incorporated, in the suburb Detroit area. I worked
23 there for two years.

24 Q And what year did you start there?

25 A I started January '97.

1 Q And what was your job title?

2 A I was a software engineer developing software for
3 3D visualization. Our clients were primarily automotive
4 companies.

5 Q And what were your specific job duties?

6 A So, I was a programmer. We were developing 3D
7 visualization software using, you know, mostly C++ language
8 that was prevalent at that time.

9 Q And you stated that you were there for two years.
10 Where did you work after that job?

11 A After that job I was hired at Oracle in June of
12 1999.

13 Q And what location at Oracle?

14 A I was hired at Redwood Shores.

15 Q And how long did you work for Oracle?

16 A So, I started in June of '99 and I was at Oracle
17 until August of 2004. And I left for a brief period from
18 August 2004 to March 2006, to be employed at Siebel Systems.

19 And I came back to Oracle, because Siebel was acquired by
20 Oracle, and since March 2006 I was there until May 2019.

21 Q Are you familiar with the term: "IC Level"?

22 A Yes.

23 Q And what does that mean?

24 A IC level -- I'm assuming this is in reference to
25 Oracle?

1 Q Yes. Thank you.

2 A An IC level typically refers to an individual
3 contributor role, and a non-manager role, if that helps.

4 Q And do you know what your IC level was when you
5 first began with Oracle?

6 A I started as an IC level 2, IC2.

7 Q And when you started with Oracle, what was your job
8 title?

9 A My job title was applications engineer.

10 Q And what were your job duties?

11 A So, I joined in a group called -- in Oracle --
12 Oracle Application Development, and the product was called
13 Oracle Application Implementation Reserve. It was a product,
14 software product to implement other Oracle applications, and
15 I was a software engineer in that group.

16 Q And when you started at Oracle in 1999, how much
17 did you earn?

18 A My starting salary at Oracle was \$64,000.00 U.S.
19 dollars annual.

20 Q Were you granted any stock options?

21 A I did not recollect having been granted any stock
22 options at starting.

23 Q Okay. Between 1999 and 2004, did you receive any
24 promotions?

25 A So, I was -- yes, I did -- I was promoted to a

1 senior applications engineer around August or September of
2 2000, and I received another promotion as project leader,
3 which was an IC4 role, in February of 2002.

4 Q And did your job title change with your promotions?

5 A Yes.

6 Q Did your IC level change?

7 A Yes. So, the IC level in the August or September
8 promotion, my IC level changed to IC3. And in February of
9 2002 my IC level changed to IC4.

10 Q And were there accompanying compensation changes
11 with your promotions?

12 A So, in the 2000 August-September promotion to IC3,
13 I did receive a very significant raise. My salary was
14 changed to \$85,000.00 U.S. dollars annual. And part of the
15 reason was because I had given a notice to quit Oracle and
16 they did it to retain me, and gave me some stock options, as
17 well. But in the promotion in 2002, I did not receive any
18 raise at all. And the significant raise that I received in
19 2000, my manager did inform me that because I was getting
20 such a significant raise I might not get raises in subsequent
21 ones because they have to take care of other people. And
22 that was true for my case, because until 2004, when I left,
23 there was no change in my compensation.

24 Q Okay. So, just so we can break that down a little
25 bit.

1 A Yeah.

2 Q Between 1999 and 2004, you had one change in your
3 salary?

4 A Between 1999 and 2004? I had two changes,
5 actually. So, my compensation was changed to \$72,000.00 and
6 then from \$72,000.00 to \$85,000.00 when I decided to quit
7 Oracle.

8 Q And the first change happened when?

9 A The first change happened in February of 2000.

10 Q And was that the product of any particular process?

11 A The process, my salary, starting salary, was very
12 low. See, I moved from Michigan to California, I did not
13 know the salary levels here, so kind of before I came, so
14 that was an adjustment to bring it to me, to bring me on par
15 with California salaries.

16 Q Okay. And in 2000 you said you received a
17 significant pay increase and you had given your notice. Were
18 you prepared to leave Oracle at that time?

19 A Yes.

20 Q Can you explain those circumstances?

21 A So, that was the dot.com boom era. I found a job
22 which was actually significantly higher paying than what my
23 salary at that time was. So, I decided, you know, to take
24 that offer and I -- I decided to take the offer and then I
25 gave a resignation notice to my manager. Since there was a

1 notice period, Oracle came back with a counter offer to
2 retain me and gave me a raise up to \$85,000.00, and some
3 stock options, and also a promotion to IC3.

4 Q And then two years later you received another
5 promotion to IC4?

6 A Yes.

7 Q As I understand your testimony, there was no
8 accompanying change in pay?

9 A There was no change.

10 Q And you indicated you left Oracle in 2004?

11 A Correct.

12 Q What prompted that?

13 A So, around the May of 2004 there was a
14 reorganization and the product -- I had been in the same team
15 since joining, the product that I was working on --

16 Q And I apologize, I meant to ask you that. Were you
17 in Product Development when you joined Oracle?

18 A Yes.

19 Q And have you been part of Product Development --
20 have there been any periods in which you worked at Oracle
21 that you were not in Product Development?

22 A Yeah, so that ties into that question. So, May of
23 2004 my team was transitioned to India. The product I was
24 working on was transitioned to India, and I was given a month
25 to find another opportunity, another job at Oracle, which I

1 did find. I found a job in the IT group, Applications IT
2 group of Oracle and I worked there just four to six weeks,
3 because I had started looking for other jobs when this
4 transition happened, reorganization happened at Oracle. So,
5 I just worked in the IT group for four to six weeks.

6 Q Okay. So, you were doing your job and you were
7 given notice that you had to find another job?

8 A Yeah.

9 Q And how did you move to IT, was that some type of
10 internal transfer?

11 A That was an internal transfer, but it was an
12 interview process. I had to -- there was an opening in the
13 IT group, it happened to be in the same building, they were
14 co-located, I applied to that position. I was interviewed
15 for that position and I got that role.

16 Q And did that position require different types of
17 work than what you were doing before?

18 A Yes.

19 Q And did you receive any compensation change when
20 you began working for IT?

21 A No.

22 Q Was it discussed?

23 A I was just asked, by the hiring group manager, what
24 my compensation was, but there was no discussion on changing
25 compensation.

1 Q And you had to learn the new skills for the new
2 position?

3 A There was no training provided to me for that
4 position. I was expected to start working on it.

5 Q Okay. And then you left in 2004?

6 A Yeah. I worked in that group about four to six
7 weeks, you know, and then I left for Siebel.

8 Q And when you left, did you -- did your new job --
9 was it at a roughly similar level or did it involve different
10 job duties than you had at Oracle?

11 A So, at Siebel I was hired as a manager for the
12 engineering. So, the job duties were significantly
13 different, because I was an individual contributor at Oracle.

14 JUDGE CLARK: Would you spell the name of the
15 company you were talking about, Siebel?

16 THE WITNESS: Siebel, S-i -- is it S-e-i-b-el or
17 S-i-e-b-e-l.

18 MR. ELIASOPH: I have been wondering that for
19 weeks.

20 JUDGE CLARK: Thank you. Thank you very much.
21 That's close enough for us.

22 MR. ELIASOPH: Go ahead.

23 BY MR. ELIASOPH:

24 Q Okay. And when you began working at Siebel, did
25 your pay increase from what you were receiving at Oracle?

1 A Yes.

2 Q And how long did you work there?

3 A I was employed from August 2004, to about March
4 2006, when Siebel, in that time, you know, there was an
5 acquisition from Oracle, so I came back to Oracle through the
6 acquisition.

7 Q Okay. And you were a manager at Siebel?

8 A Correct.

9 Q And how many people were reporting to you?

10 A So, when I took on the job duties as a manager of
11 Quality Engineering, I had a fairly significantly large team,
12 I had about 50 people reporting to me, largely in India.

13 Q Is that 5-0?

14 A Correct.

15 Q Proceed?

16 A Yeah. So, I had, you know, a significantly large
17 team. I handled multiple products. And I had some direct
18 reports here in the United States, as well.

19 Q Okay. And Siebel was acquired by Oracle?

20 A Yes.

21 Q And that happened in 2006?

22 A Yeah, the formal date of the acquisition was March
23 2006, yes, correct.

24 Q And when that happened, was there any type of
25 application process that you needed to go through to be

1 retained with Oracle?

2 A There was no application process.

3 Q For the people on your team, based on your personal
4 knowledge, did any of them need to go through an application
5 process to be retained at Oracle?

6 A No.

7 Q And your team at Siebel, were you aware of their
8 compensation?

9 A Of the people who reported to me, yes.

10 Q Okay. Were you aware of the compensation -- let me
11 ask -- did the -- did your entire team go over to Oracle?

12 A Yes.

13 Q And once they were at Oracle, were you still able
14 to see their compensation?

15 A Yes.

16 Q And did their compensation change, at all?

17 A No.

18 Q Have you heard of "mapping"?

19 A If this is in reference to the job codes within the
20 two companies?

21 Q Yes.

22 A Yes.

23 Q What is "mapping"?

24 A So, as I understand it, mapping is -- Siebel had
25 similar job codes as Oracle, not exactly the same, so it

1 would be to see how an employee on the Siebel side of the
2 fence would fall in to the Oracle. So, in my instance I was
3 a manager, first-line manager in Siebel Systems, and I came
4 in as a first-line manager, at M2 level, back at Oracle.

5 Q Okay. And did you personally map the people on
6 your team?

7 A No.

8 Q Who does the mapping?

9 MS. CONNELL: Objection, calls for speculation.

10 JUDGE CLARK: Lay a little foundation on how he
11 would know.

12 BY MR. ELIASOPH:

13 Q Do you know who does the mapping?

14 A I do not know.

15 Q And do you have any believe as to whether that
16 mapping is done above you or below you in the hierarchy?

17 A Definitely above me.

18 Q Do you have any -- is it done by your boss at the
19 time?

20 MS. CONNELL: Objection. He already said he
21 doesn't know, so it calls for speculation.

22 MR. ELIASOPH: Well, he doesn't know -- okay.

23 BY MR. ELIASOPH:

24 Q So, it's not done by your boss. Would you have
25 known if it was done by your boss?

1 JUDGE CLARK: So, the objection is sustained.

2 Rephrase your question, ask it again now.

3 BY MR. ELIASOPH:

4 Q Are you -- would you have known if your boss was
5 responsible for that mapping?

6 MS. CONNELL: Objection, calls for speculation.

7 JUDGE CLARK: As it's phrased, Mr. Eliasoph, it
8 somewhat does. I'm not quite sure how to help you with the
9 question. So, he said he didn't know how -- are you trying
10 to refresh his recollection? He said he doesn't know who did
11 the mapping above his level.

12 MR. ELIASOPH: I think I'll leave that where it is.

13 JUDGE CLARK: Okay.

14 BY MR. ELIASOPH:

15 Q Okay. And you indicated when you started your
16 second tenure at Oracle you were an M1?

17 A An M2.

18 Q Apologies, and M2?

19 A Correct.

20 Q And what does that mean?

21 A That's a manager title, so I was a manager of
22 Quality Engineering.

23 Q And at that time did you have any managers below
24 you?

25 A I did, but they were contractors in India, not in

1 the United States.

2 Q Okay. And at that time how many people were on
3 your team?

4 A Roughly the same team that I had at Siebel came
5 over, you know, because we were still part of the Siebel
6 product group, so.

7 Q So, about 50 people?

8 A Yeah. I mean there might have been changes a
9 little bit, but around that, yeah.

10 Q After you began working for Oracle again in 2006,
11 did you receive any job promotions?

12 A Yes.

13 Q When -- what was your first?

14 A Okay. Yeah, we can go by sequence. So, my first
15 promotion back at Oracle was in September, around September
16 of 2006. And I was promoted from an M2 to an M3, which is a
17 senior manager, so the job code and the job title changed.

18 Q Okay. And did you receive an adjustment in
19 compensation with respect to that promotion?

20 A So, there was what is called in Oracle parlance
21 "focal review," but there was no compensation change as such
22 tied to the promotion.

23 Q Okay. So, were you ever promoted again?

24 A So, around April of 2008 there was another change
25 -- there was a change in the description of the title, so my

1 title, which is considered a promotion in some sort, changed
2 from senior manager to a group manager, but my job code was
3 still an M3.

4 Q Did your responsibilities change?

5 A They kind of coincided with me joining another
6 group called CRM on Demand, so yes, it was again a very large
7 team that came under my --

8 JUDGE CLARK: And what did you say the name of the
9 group was?

10 THE WITNESS: It was called CRM on Demand.

11 JUDGE CLARK: Okay. CRM on Demand.

12 THE WITNESS: Yeah.

13 JUDGE CLARK: Okay.

14 BY MR. ELIASOPH:

15 Q And was there any compensation change at that time?

16 A No.

17 Q Did you receive any other promotions?

18 A Yeah. The next major promotion was in July of
19 2010, where I was promoted to a director level, which is a
20 job code of M4.

21 Q And when you received that promotion, was there a
22 change in your compensation?

23 A There was no change in compensation tied to the
24 promotion.

25 Q Did your job duties change?

1 A Not really. I was part of the same group and, in
2 fact, I had a smaller team as a director than I had as a
3 manager.

4 Q What about did you receive any other promotions?

5 A I remained as an M4 throughout my next years,
6 subsequent years of employment at Oracle.

7 JUDGE CLARK: So, you were an M4 when you left in
8 May of 2019?

9 THE WITNESS: Correct.

10 JUDGE CLARK: Thank you.

11 BY MR. ELIASOPH:

12 Q Now, over the years between 2006 and 2019, did you
13 work on different products?

14 A Yes.

15 Q And when you changed products, did your
16 compensation change?

17 A No.

18 Q What was your pay, if you recall, when you -- when
19 Oracle acquired Siebel, what was Oracle's -- when you were on
20 the Oracle side of that,, do you recall what your pay was in
21 2006?

22 A I don't recall the exact number. So, I did receive
23 a big jump, when I left Oracle in 2004 I was at \$85,000.00.
24 Siebel hired me at a starting salary of \$105,000.00. And I
25 did have a couple of increments, so maybe it was around

1 \$112,000.00, \$115,000.00, I don't recollect the exact number.

2 Q But around that amount?

3 A Around that amount, yeah.

4 Q And your only base pay increases -- did you receive
5 any base pay increases after that time that were outside the
6 focal review process?

7 A In the years from 2006 to 2019, no.

8 Q Do you think you should have received bigger
9 compensation increases between 2006 and 2019?

10 A Yes, especially, you know, I feel that I did not
11 get compensation raises which were commensurate, you know,
12 corresponding to the promotions, so those raises were just
13 cost of living adjustments and part of the focal cycles and
14 not tied to the promotions and job duties change.

15 Q And do you think -- you referred to cost of living
16 adjustments?

17 A Yeah.

18 Q Were they formally tied to cost of living
19 adjustments, do you think mathematically they met cost of
20 living adjustments in the Bay Area?

21 A I mean typically they were around three to five
22 percent raises, so.

23 Q So, in 2006, you're hired as an M2?

24 A Yeah.

25 Q In 2019 you're hired -- you're exiting Oracle as a

1 director?

2 A Yeah.

3 Q But to your estimation you never got more than a
4 three percent to five percent --

5 A Yeah, three, maximum, raise, yeah. I mean my
6 salary, my exiting salary was \$142,000.00 something, you
7 know, which is over a period of 2006 to -- you know, 14
8 years, it's just divided by 13, you know, it's like three
9 percent or less.

10 Q Did you ever bring up to anybody that you didn't
11 think this -- that you thought you were entitled to more?

12 A Yes, to all my managers, several times.

13 Q What would their reaction be?

14 A The typical answer was they didn't have much
15 freedom, they will look at it during the focal cycles, when
16 the focal review cycles came about. And then when they came
17 about the directive for raises was so small that they really
18 couldn't do much. So, it was a pretty -- and you couldn't
19 have the same conversation in every one-on-one, but that was
20 just the kind of message I got.

21 Q Okay. And did you have these conversations when
22 you were an M5 -- I'm sorry -- M4 director?

23 A Yeah.

24 Q So, what level is your manager when you're an M4
25 director?

1 A M5, senior director.

2 Q And the M5 senior director indicated that they
3 didn't have much for you?

4 A Yes.

5 Q When you did leave Oracle in 2019, what were the
6 circumstances?

7 A So, I exited Oracle as part of my -- my employment
8 was terminated by Oracle as part of a reduction in force,
9 that's what my manager told me, that the position that I'm in
10 has been eliminated. And so that is the condition of my
11 leaving Oracle.

12 Q And did you secure a new position?

13 A Yes.

14 Q And did your compensation change?

15 A Yes, by 19 percent. My base pay changed by 19
16 percent, and if I use the full gamut of bonus that I'm
17 entitled to in my position, if I factor that in it changes to
18 about 50 percent, 53-54 percent.

19 Q So, you're saying Oracle laid you off and you found
20 a position -- did you relocate?

21 A No.

22 Q Okay. And you found a position where, you know,
23 based on expected bonus, et cetera, you think you'll earn 50
24 percent more?

25 A Yeah.

1 Q Is the job more senior?

2 A The job code, it's the director job code level.

3 Q It's the same?

4 A Yeah.

5 Q And for the period from 2006 to 2019 -- oh --
6 sorry. From the period from 2006 to 2019, how do you think
7 your pay generally compared to persons in the technology
8 industry in the San Francisco Bay Area that were at a similar
9 level?

10 MS. CONNELL: Objection, calls for speculation.

11 JUDGE CLARK: Yeah. Lay a foundation as to how he
12 might know that.

13 MR. ELIASOPH: Sure.

14 BY MR. ELIASOPH:

15 Q Have you had any discussions with counterparts
16 outside of Oracle about pay, with people who are in the
17 technology industry?

18 A Yes.

19 Q Okay. And from those conversations, were you able
20 to gather anything about how your pay levels compared to
21 other pay areas?

22 A Yes.

23 Q And what did you learn?

24 A I learned what I said, especially when I was a
25 director level, and I would say in the last, you know, few

1 years I was significantly out of the base pay range for my
2 level. I can give you examples, if you like.

3 Q Yes, please?

4 A Okay. I mean so one is a very -- example -- we
5 have a family, a friend from India, who their son relocated
6 here, you know, he's just fresh out of college, maybe, you
7 know. He found a job as a software engineer at Uber. His
8 base pay was \$15,000.00 -- at least \$15,000.00 higher than
9 me, and I was -- it was such an embarrassing moment for me in
10 front of my family. My family of course supports me like
11 this, but you can imagine.

12 Q Did anybody indicate to you that you shouldn't
13 complain about your pain, because other people have it even
14 worse?

15 MS. CONNELL: Objection, leading.

16 JUDGE CLARK: Rephrase your question.

17 BY MR. ELIASOPH:

18 Q You indicated you had discussions with your
19 managers. Did those discussions ever involve a comparison of
20 your pay with other people's pay?

21 A So, my manager told me that I was paid very well in
22 his group.

23 Q Okay.

24 A And if I may add to it -- I mean this is just
25 confidential personal conversations with a couple of my

1 colleagues who reported to the same manager, and they were
2 both ladies of Indian origin, they indicated to me -- and
3 this is all friendly conversation -- that they were hired in
4 the '90s and because they were hired at a lower base pay at
5 that time, the subsequent raises were just so small that they
6 are still very much under the curve, underpaid. So, if I add
7 two and two --

8 Q You think those are examples of people who you were
9 being paid more than?

10 A Yes, could be.

11 Q So, when you became a manager at Oracle in 2006,
12 did Oracle ask you what type of management trainings you'd
13 received at Siebel?

14 A I don't remember. I don't think so.

15 Q Do you recall if you were given any training about
16 Oracle's Affirmative Action Policies?

17 A I do remember there were some trainings we had to
18 go to, I don't specifically remember which ones.

19 Q Do you know if they related to Affirmative Action
20 Policies?

21 A I do not remember.

22 Q You don't know?

23 A Yeah.

24 Q Do you recall if you were required to do Employment
25 Discrimination trainings?

1 A Oh, there were several legal compliance trainings
2 that we had to take, just as employees and managers. These
3 are mostly online trainings, because HR would send you
4 reminders if you didn't take it. But I took the trainings
5 and we're supposed to comply, of course, but beyond that
6 there was no really discussion with management that, you
7 know, that this is something that we need to keep in mind or
8 follow, or whatever. So, it was just something that, you
9 know, a checkmark, that's it.

10 Q And did anybody outside of -- were there any other
11 trainings or is that it?

12 A I mean there were several online trainings, I don't
13 remember which ones, because we just had to do it.

14 Q And do you remember if any of the trainings were
15 specifically focused on pay equity?

16 A I don't remember a training on pay equity at all,
17 actually.

18 Q Were you ever told that you were delegated a
19 specific responsibility with respect to Oracle's Affirmative
20 Action Program compliance?

21 A No.

22 Q Were you ever asked to make reports to anybody
23 about Oracle's Affirmative Action Program compliance?

24 A No.

25 JUDGE CLARK: I'm sorry, I didn't hear your answer.

1 THE WITNESS: No.

2 JUDGE CLARK: No. Thank you.

3 THE WITNESS: And when you say reports, is it like
4 e-mails or --

5 MR. ELIASOPH: You don't need to speculate if you
6 don't know what I'm talking about.

7 BY MR. ELIASOPH:

8 Q Okay. And just a reminder to say yes or no.

9 A Okay, sure.

10 Q Okay. So, you indicated as of 2006 you had about
11 50 employees reporting up to you?

12 A Yeah.

13 Q And at some point it become a little bit fewer when
14 you were a director. But was it generally in that
15 neighborhood, between 2006 and 2019?

16 A No.

17 Q What was the range?

18 A It was yes and no. So, firstly, as I said there
19 was a large contractor component to some of my reports, even
20 as a manager in 2006. So, they were largely in India. And
21 so I had around 50 people in that period from 2004 to say
22 2005, 2006. Then because there are different releases,
23 priorities change, so you know, of course as team players I
24 transition some resources to other peers of mine to work on
25 different projects. So, around -- between, I said 2006 to

1 2008, it might have been like 25 people. In 2008, again I
2 got a big project, so again back to 55 people. It lasted for
3 a couple of years and then it was back to, again, 20 people
4 say in 2012. And after 2012, I've had more smaller teams.
5 So, my last team that I managed was about six or seven
6 people.

7 Q Okay. And for your teams, were you always able to
8 see the compensation of the people below you?

9 A For employees, yes.

10 Q And what about managers beneath you that were
11 reporting to you?

12 A Yeah, as long -- anybody who was an employee --
13 they can see the composition.

14 Q Okay. But can you see the compensation of people
15 that are not below you?

16 A If they report in my hierarchy, however level deep
17 I can see their compensation.

18 Q I understand. So, by meaning if there's multiple
19 levels below you, you can still see them?

20 A Yeah -- excuse me.

21 Q But if they're not in your hierarchy, can you see
22 their compensation?

23 A No.

24 Q And how do you see this compensation?

25 A It's a tool we call: "Compensation Workbench."

1 Q Okay. And what can you see in Compensation
2 Workbench?

3 A Well, the name of the employee, their job code,
4 their title, their compensation, minimal, you know, what's
5 their salary band or salary range for this job code, their
6 location and what was their immediate manager, you know, if
7 they don't directly report to me, their location -- and there
8 are several other fields, which I, you know, I don't remember
9 off the top of my head.

10 Q Was race a field?

11 A No.

12 Q What about gender?

13 A No.

14 Q Okay. Did people join in your teams between 2006
15 and 2019?

16 A Yes.

17 Q Okay. And how did that come about?

18 A So, in my experience or in my teams it was mostly
19 through internal transfers, either people moving within
20 Oracle or my managers assigning me resources or team members.

21 Q Okay. So, when they were -- the people that joined
22 your team, did they -- were they doing the same exact work as
23 your team before they joined?

24 A No, not necessarily.

25 Q What was typical?

1 A So, an instance, there was an instance in 2008, I
2 had an opening for a position to hire, customer issues, it's
3 on the Product Development side of the fence. So, there was
4 a lady at Oracle, she was in the Server Technologies Database
5 Group --

6 Q I'll remind you just not to use names.

7 A Sure. Yeah, not to use names, yeah. So, she
8 applied for the role, she interviewed with our group.

9 JUDGE CLARK: And I'm sorry, can you step me back
10 -- what group did you say she was in?

11 THE WITNESS: She was in the Database or Server
12 Technologies.

13 MR. PARKER: Server Technologies.

14 THE WITNESS: Server Technologies Group, yeah.

15 She applied for that role. She was interviewed by
16 our team and we accepted her into the team and the transfer
17 was approved by the management on both sides.

18 MR. ELIASOPH: Okay.

19 BY MR. ELIASOPH:

20 Q So, she had to learn new skills in your team?

21 A Well, her job duties were definitely different.

22 Q Her job duties were different. And did her
23 compensation change?

24 A No. Generally, the policy at Oracle was for
25 internal transfers compensation does not change. That's what

1 I knew, so, no, that's not a question that ever was -- that
2 was not in question.

3 Q So, between 2006 and 2019, about how many people
4 joined one of your teams -- a team that was in your
5 hierarchy?

6 A Yeah, so in North America, I would say
7 (indiscernible) of this, because others had an India
8 component to my management role. In North America I would
9 say -- including Canada, as well -- so I would say about 20
10 people came through or transitioned in or out of my teams.

11 Q And of those 20 people, how many had their
12 compensation change when they joined your team?

13 A For internal transfers, none.

14 Q And what other types of new hire people joined your
15 team?

16 A Yeah, so in North America, I maybe did not hire
17 anybody from outside, generally Oracle processes took like
18 six months to get approved, so it was much easier if your
19 manager (indiscernible) in Oracle, so.

20 Q So, as a manager at Oracle, let's say somebody is
21 doing a great job, did you feel like you could just propose a
22 raise for them?

23 A I mean in all the years of my experience that was
24 not the case. You would have to wait for the focal cycle to
25 come around.

1 Q Okay. And let's describe this focal cycle. How
2 did that work in practice?

3 A So, again --

4 Q Your experience as a manager --

5 A Yeah -- so this is all my experience, yeah.
6 Typically, there would be a raise period, which is not
7 consistent, it did not happen every year and even in the
8 years it happened there was no specific month. It could
9 sometimes happen in the middle, sometimes towards the end,
10 sometimes in the fall. And this would be just a budget would
11 be allocated from the management. And the typical process
12 would involve a guideline being sent to my level, typically
13 an e-mail from HR would be sent, that would tell how the
14 typical raises should be allocated. So, I'm just giving a
15 hypothetical example, something like would be say 50 percent
16 of the North American employees would get a raise by up to
17 five percent, and say 70 percent of employees in India would
18 get a raise by 10 percent. And that would be a general
19 guideline. And if you had exceptions, you would have to work
20 with your management and HR to justify why somebody needed
21 more than what was stipulated in the guideline.

22 Q And do you know who generated the guidelines that
23 you were given for focal review?

24 A So, in my experience it always came as a forwarded
25 e-mail from HR, that's all that I was told, that it is coming

1 from HR.

2 Q And what was the highest level that these e-mails
3 might come from?

4 A So, typically it would be from the VP to, you know,
5 an M6 or above to my manager, M5, it would come to me. There
6 was one instance I remember in 2010 where the e-mail -- the
7 guideline itself came from Thomas Kurian, who was the EVP or
8 the head of Product Development at that time.

9 Q And why do you remember that?

10 A I remember that because it was very specific and it
11 kind of made the managers a mood and I was like, maybe being
12 sarcastic to my manager -- like why do they even move to
13 enter this, because it was such specific guidelines on how to
14 give the raise, this can be all automated, a computer can do
15 it. So, I remember discussing that with my immediate manager
16 at that time. And I also remember showing that e-mail over a
17 phone to another colleague of mine, while walking on the
18 Oracle campus, it was outside Building 500, so I just pulled
19 out my phone and I was like what is this, you know, this is
20 so specific, why do they even want us to enter the raises.

21 Q Okay. And you used the word "guidelines" --

22 A Yeah, that was the term used.

23 Q That was the term?

24 A Yes.

25 Q So, did you ever try to go outside the lines, so to

1 speak?

2 A Yeah. So, there was one instance in 2011, as far
3 as I remember, so the guidelines said that all the North
4 American employees on your team cannot be given a raise. And
5 I decided -- I had, I think, again, five or -- about five
6 direct reports in North America, and I decided to give a
7 raise to all of them. And I discussed it with my manager,
8 and he had the budget for it, and I discussed it with my
9 manager, I made the allocation in Compensation Workbench. My
10 manager was in agreement, he approved it. And the VP also --
11 my manager told me the VP is also okay. As far as I
12 remember, the VP also approved it in the Compensation
13 Workbench. But in the subsequent approval process, two of
14 the people were ranked, maybe, at number four and five, their
15 raises were pulled out and I was told that HR has taken it
16 off, their raise for that year.

17 Q And you had the budget -- was there a budget for
18 this raise?

19 A Yeah.

20 Q There was?

21 A My manager approved it, my VP approved it, that
22 tells me the budget is there, yes.

23 Q And again, your manager is what level?

24 A My manager was M5, the VP was M6.

25 Q So, presumably whoever took it out was higher on

1 the chain?

2 MS. CONNELL: Objection, calls for speculation.

3 JUDGE CLARK: Overruled.

4 You can answer the question.

5 THE WITNESS: So, as far as I remember my VP also
6 approved it, and I can see the approval level sin the
7 Compensation Workbench, and it was taken out after that. And
8 I was told HR has taken it out. I don't know who took it
9 out, but I was told HR has taken it out.

10 BY MR. ELIASOPH:

11 Q Did you feel you had business justification for
12 recommending that everybody got this --

13 A Yeah.

14 Q Let me just finish my question.

15 A Sure.

16 Q Did you have business justification for everybody
17 to receive the raise that you recommended?

18 A Yes.

19 Q What were those?

20 A I mean all the individuals were performing well in
21 their jobs. We had the budget. And beyond that, I mean we
22 were a good team, we were performing well, our product, you
23 know, we met our goals for that year, so, yeah.

24 Q And your direct supervisor thought that was a sane
25 recommendation?

1 A Yes.

2 Q And your supervisor actually agreed with your
3 recommendation?

4 A Yes, we discussed it on the phone, because he was
5 remote in Toronto, and he approved it. So, obviously he
6 agreed with it.

7 Q And was your supervisor sane at that time?

8 A Yes.

9 Q Tell me about the timing of the focal review, was
10 there any time pressure?

11 A Typically, yes. At my level the focal -- whenever
12 the budget was allocated, we would be given head's up that it
13 was going to come. Typically, on an average, I would say at
14 my level we have -- I would have 72 hours to turn it around.

15 So, people, managers below me, would have even less time.
16 That's an average. In some years it could be four days, five
17 days, but it would be a very short window for us to turn it
18 around. Typically, I would say 72 hours is kind of safe, you
19 know, to turn it around.

20 Q Did you perceive any risk that if you didn't follow
21 the guidelines the time window might close?

22 A Yes. So, for instance, if you want to give an
23 employee a higher raise than what's in the guideline, and you
24 would have to negotiate with your manager and the manger may
25 have to negotiate either with HR or the VP, you might lose

1 the time window. And if you have not paid the allocation,
2 the system is closed.

3 Q So, was that a disincentive to not follow the
4 guidelines?

5 MS. CONNELL: Objection, leading.

6 JUDGE CLARK: Overruled.

7 You can answer that question.

8 THE WITNESS: No, that was an incentive to stick to
9 the guidelines.

10 MR. ELIASOPH: I apologize. Okay.

11 THE WITNESS: Yeah. I mean if you're going to this
12 negotiation business, you might lose the time window and you
13 might not even allocate what you can at this time, so yeah,
14 it was a deterrent, you know, because the time window is so
15 small.

16 BY MR. ELIASOPH:

17 Q And for stock grants, RSUs, was it basically the
18 same process as the focal reviews?

19 A Yeah, the timing would be different, but yeah, the
20 same window and the similar guideline would be sent to us --
21 sent to me.

22 Q So, as a manager, even as a director, could you
23 just allocate stock at your discretion, if it was within your
24 budget?

25 A No.

1 Q It was the same process?

2 A It was the same process. I mean there was a
3 guideline and you would have to, you know, conform to it.
4 And if you wanted to discuss an allocation to significantly
5 defer from that, you have to discuss with your manager. And
6 if they agree, or they had the budget, then you have to talk
7 to the VP, and it can go even further levels up.

8 Q Are you familiar with the concept of a "Cost
9 Center"?

10 A A Cost Center was an ID in the accounting system,
11 but beyond that I don't really know.

12 Q So, as a director you didn't really have to deal
13 with what a Cost Center was?

14 A I mean beyond like if somebody -- if an employee is
15 moving a group and you had to change their Cost Center,
16 beyond that I didn't really see any reports or any other use
17 of Cost Center out there being used.

18 Q Was Cost Center, you know, somebody's Cost Center
19 related to their compensation?

20 MS. CONNELL: Objection, calls for speculation.

21 JUDGE CLARK: Lay a little more foundation, Mr.
22 Eliasoph, of how he might know that.

23 BY MR. ELIASOPH:

24 Q Based on your experience, was there a relationship
25 between a person's Cost Center and their rate of

1 compensation?

2 A Based on my experience -- so I wasn't part of
3 Product Development throughout, so the compensation was only
4 Product Development, you know, ranges, so. If there were
5 Cost Centers which are not in Product Development, I don't
6 know -- sales or consulting -- no, I don't know.

7 JUDGE CLARK: You didn't know.

8 THE WITNESS: No.

9 JUDGE CLARK: Okay.

10 BY MR. ELIASOPH:

11 Q Over time did people in your hierarchy below you
12 change the products that they worked on?

13 A Yes, engineers could be assigned to different
14 product groups, yeah, different products, yeah.

15 Q And did their compensation change with the change
16 in product?

17 A No.

18 Q Was there some type of appraisal system for the
19 employees below you?

20 A Yes.

21 Q And how does that system work?

22 A So, typically there's an appraisal system, it
23 wasn't very consistent, to be honest. The HR would ask us to
24 set goals for every year, and then the appraisal would be the
25 manager would review with the employee. The employee would

1 have a self-assessment and their manager would assess those
2 goals and then, you know, provide the manager's feedback and
3 then discuss that with the employee. But that did not happen
4 every year. They started not to enforce it every year, in
5 terms of having a formal appraisal done.

6 Q And to your knowledge, were the appraisals in the
7 system always accurate?

8 MS. CONNELL: Objection, calls for speculation.

9 JUDGE CLARK: Overruled. You can answer the
10 question.

11 THE WITNESS: So, the Compensation Workbench and
12 the appraisal system were two different systems. So, if an
13 employee could potentially have two different ratings in the
14 Compensation Workbench and the appraisal system.

15 BY MR. ELIASOPH:

16 Q And were you aware of -- are you personally aware
17 of people assigning ratings in the performance appraisal
18 system that they didn't have personal knowledge of?

19 MS. CONNELL: Objection, leading, lacks foundation.

20 JUDGE CLARK: Overruled.

21 You can answer the question.

22 THE WITNESS: Okay. So, yes, there was a couple of
23 instances. So, the year I left -- this year -- January of
24 2019, my manager, you know -- and I saw this later in the
25 system -- my manager had rated and ranked all the team

1 members below me without asking me. I just saw it in the
2 system because there was some buzz that this has happened.
3 And then I asked my co-peers, who also reported to my
4 manager, whether my manager had consulted them and at least a
5 couple of colleagues told me that they had not been
6 consulted.

7 And there's another instance around, I think, in
8 2015, which is in my declaration, where my manager personally
9 asked me to lower the rating of an employee. She was rated
10 as three, who meets objective, to two, which is does not meet
11 performance. And I tried to fathom why, because I did not
12 believe that was the right rating. And I asked him point
13 blank: "Are you under pressure from HR to have some people
14 ranked below a certain level?" And he didn't answer my
15 question, and I left to go, but I said: "Here, if you want to
16 change it -- change it. I'm not going to change it." So, he
17 left it.

18 So, that's a couple of instances.

19 JUDGE CLARK: I'm sorry -- you said he changed it
20 or he didn't change it?

21 THE WITNESS: Did not.

22 JUDGE CLARK: Did not change it.

23 THE WITNESS: Yeah.

24 JUDGE CLARK: Okay.

25 THE WITNESS: But he did, in 2019 there was -- of

1 my team -- he did the rating without asking me.

2 JUDGE CLARK: I understood. Thank you.

3 Any further questions, Mr. Eliasoph?

4 MR. ELIASOPH: If you'll give me one moment, Your
5 Honor.

6 JUDGE CLARK: Okay.

7 MR. ELIASOPH: I have no further questions at this
8 time.

9 JUDGE CLARK: Okay. Thank you.

10 We're going to take a 10-minute break and then
11 we'll do cross-examination.

12 We'll be off the record until 3:00 o'clock p.m.

13 You're free to step down.

14 THE WITNESS: Thank you.

15 JUDGE CLARK: Thank you.

16 We're off the record.

17 (Off the record at 2:48 o'clock p.m.)

18 JUDGE CLARK: You can be seated. Thank you.

19 It is significantly warmer in here, I think, than
20 it is in other parts of the building right now.

21 Okay. Mr. Eliasoph, we're back on the record. All
22 parties are present, the witness has retaken the stand.

23 You're still under oath.

24 Mr. Eliasoph, you've finished your questioning?

25 MR. ELIASOPH: Yes, Your Honor.

1 JUDGE CLARK: Ms. Connell?

2 MS. CONNELL: Thank you, Your Honor.

3 May I approach? I want to present to the witness
4 Defendant's 447.

5 JUDGE CLARK: Yes, you may approach.

6 MS. CONNELL: Do you need a copy?

7 JUDGE CLARK: I don't need another copy, no.

8 CROSS-EXAMINATION

9 BY MS. CONNELL:

10 Q Good afternoon, Mr. Pandey.

11 A Good afternoon.

12 Q I've placed before you what's been marked as
13 Defendant's Exhibit 447. Do you recognize this document?

14 A Let me have a look, one second.

15 Q Yes. Please, take your time.

16 A Yes.

17 Q Is this a document that you received from the OFCCP
18 about this case?

19 A Yes.

20 Q And after you received this letter, did you contact
21 OFCCP about this case?

22 A Yes.

23 Q Okay. And you spoke with OFCCP on or around May
24 14th of this year, correct?

25 A I do not remember the date, but that sounds about

1 right.

2 Q And then you spoke with them a second time on or
3 around June 3rd of this year, 2019?

4 A Yeah, around that time, yes.

5 Q Okay. You have no reason to believe those dates
6 are incorrect, right?

7 A Correct, yeah.

8 Q Okay. And shortly before you spoke --

9 MR. ELIASOPH: I'm going to object. I think she's
10 referring to discussions with counsel, not with OFCCP.

11 JUDGE CLARK: Overruled. The answer will stand.

12 Ask another question.

13 BY MS. CONNELL:

14 Q Shortly before you had these discussions with
15 OFCCP, you had learned that you were being let go from Oracle
16 in a reduction in force, correct?

17 A That is correct.

18 Q I'd like to ask you some questions about your
19 compensation.

20 MS. CONNELL: First, Your Honor, our position is
21 that because he has discussed numbers and details, we think
22 his privacy interest is waived. And we'd like to ask some
23 follow-up questions. I'd like to ask some follow-up
24 questions.

25 JUDGE CLARK: So, Mr. Eliasoph, would you care to

1 be heard?

2 MR. ELIASOPH: Your Honor, Mr. Pandey has testified
3 with respect to base pay. We agree that they can discuss his
4 base pay.

5 JUDGE CLARK: Okay. Overruled.

6 MS. CONNELL: Thank you.

7 JUDGE CLARK: I don't know that he's completely
8 waived, so ask your questions individually and I'll take them
9 as they come.

10 MS. CONNELL: Thank you, Your Honor. Okay.

11 BY MS. CONNELL:

12 Q Mr. Pandey, earlier you gave some testimony
13 regarding some focal increases that you had received during
14 the years of 2006 to 2019, do you recall that testimony?

15 A The one that I just gave?

16 Q Correct, yes.

17 A Yeah.

18 Q Okay. And isn't it true that during that time
19 period you received at least seven separate focal increases?

20 A Those are 13 years, so half of them.

21 Q Does that sound about right?

22 A Maybe, yeah.

23 Q You have no reason to believe it's incorrect?

24 A Yeah.

25 Q Okay. And during that time you also received a

1 number of bonuses, correct?

2 A I do not recollect how many. I might have.

3 Q You were promoted to director on or around July
4 16th of 2010, correct?

5 A Correct.

6 Q And then that same year, in 2010, you also received
7 a bonus of \$10,500.00, do you recall that?

8 A I may have, I do not recall it.

9 Q Do you have any reason to believe that you did not?

10 A No.

11 Q And then backing up a little bit, in 2006, you also
12 received a quarterly bonus for \$6,000.00, correct?

13 A Do you know what -- do you have the date on it?

14 Q I do.

15 JUDGE CLARK: She did say 2006, that doesn't
16 refresh your recollection?

17 THE WITNESS: No, the problem being, Your Honor, is
18 that in 2006 there was a transition from Siebel to Oracle, so
19 I'm trying to find out from which source is she talking
20 about.

21 JUDGE CLARK: I see. Thank you.

22 BY MS. CONNELL:

23 Q Yes. It was August 31st of 2006, a third quarter
24 quarterly bonus?

25 A That sounds okay, but it was not told to me as a

1 quarterly bonus.

2 Q Okay. But you recall receiving a bonus around that
3 time?

4 A Yeah.

5 Q Okay. And then you received an annual bonus of
6 \$5,000.00 in 2007, correct?

7 A Correct.

8 Q And then you received another annual bonus the next
9 year, in 2008, of \$10,500.00, correct?

10 A Yes.

11 Q You received, in 2009, another bonus of \$6,000.00,
12 correct?

13 A May I -- is that a yes or no answer or can I --

14 JUDGE CLARK: Just answer the best way you can. If
15 you have to ask for something, go ahead and we'll go from
16 there.

17 THE WITNESS: The answer is yes, but again that
18 does not, you know, fill the gap with my pay, my base pay.

19 BY MS. CONNELL:

20 Q I understand your testimony that you believe you
21 were underpaid. I just want to confirm that you received a
22 \$6,000.00 bonus in 2009?

23 A Yeah.

24 Q And in 2011, you received an annual bonus of
25 \$20,000.00, correct?

1 A That is the highest bonus I ever received from
2 Oracle.

3 Q And you received it in 2011, correct?

4 A Correct.

5 Q And then in September of 2014 you received another
6 bonus of just under \$2,000.00, correct?

7 A Yeah, if you can call that "bonus," yes.

8 Q And then in 2018 you received a bonus of \$3,000.00,
9 correct?

10 A Yeah. M4 and it's as high as \$3,000.00, yeah.

11 Q You also received equity grants from Oracle every
12 year from 2013 to 2017, correct?

13 A Yeah, I did receive equity grants, yes.

14 Q And you have exercised and sold stock options and
15 sold some shares of stock, correct?

16 A Yes.

17 Q Isn't it true that in total --

18 MR. ELIASOPH: Objection, Your Honor. There's no
19 need for him to -- the stock options will vary and an
20 individual may sell a large amount at one time, which will
21 have no bearing on their annual amounts.

22 JUDGE CLARK: Ms. Connell?

23 MS. CONNELL: The witness has testified that he
24 believes that he is underpaid. Both experts in this case --
25 although, the way that they value it is different -- have put

1 forth in their reports total compensation analyses. So, I
2 think it's fair game when assessing how much compensation he
3 received from Oracle.

4 JUDGE CLARK: Mr. Eliasoph?

5 MR. ELIASOPH: The numbers relate to privacy, he is
6 not self-published. Oracle has repeatedly stated that
7 employees' specific pay should not be on the record.

8 JUDGE CLARK: So, Ms. Connell, that is my concern.

9 It's not that -- I understand your point, so I'm not trying
10 to take away from what you're saying here, but his individual
11 pay and his stock transactions, I just don't see how that's
12 particularly relevant. So, asking questions about selling
13 large shares or generalized questions, I think are better
14 than getting into the specifics. I don't agree that he's,
15 necessarily, waived his right to that sort of privacy. So,
16 you can ask the questions in a general way.

17 Did he sell large amounts -- I think that's how we
18 did it with another witness.

19 MS. CONNELL: Okay. I would also, just for the
20 record -- I mean I'm going to respect Your Honor's order, but
21 this is in evidence in the case, so --

22 JUDGE CLARK: What exhibit is it?

23 MS. CONNELL: It is Exhibit -- bear with me for one
24 second -- it is Exhibit J-129, the "All Earnings" tab, column
25 A -- I've got filter column A and filter column F -- showing

1 columns A, C and F through T.

2 JUDGE CLARK: Okay. Thank you.

3 MR. ELIASOPH: Your Honor, if I may, I would argue
4 the fact that it's in the record indicates that it is not
5 necessary to go into these details in open court.

6 JUDGE CLARK: So, Mr. Eliasoph, I have overruled --
7 I have granted your objection and told her to ask -- so I'm
8 not sure what you're argument is.

9 MR. ELIASOPH: Oh.

10 JUDGE CLARK: I wanted to know where it is in the
11 record, so if you have something else?

12 MR. ELIASOPH: I will stand down.

13 JUDGE CLARK: All right.

14 Ms. Connell, you may ask your question.

15 BY MS. CONNELL:

16 Q So, is it true that you received a large amount of
17 money from exercising and selling stock options, and selling
18 shares of stock from Oracle?

19 A What is a large amount?

20 Q I'm not sure I'm allowed to answer that question.

21 JUDGE CLARK: So, maybe you can put it in
22 generalized terms -- over six figures, over seven figures?

23 BY MS. CONNELL:

24 Q It is well into the six figures, correct?

25 A Well, on a yearly basis, no.

1 Q I'm talking about in total?

2 A Yeah, over 20 years, so what's the big deal?

3 Q When you returned to Oracle in March of 2006, from
4 Siebel -- or let me rephrase. When you returned to Oracle
5 when Oracle acquired Siebel, you returned as a Quality
6 Assurance manager, correct?

7 A Correct.

8 Q And that was in the Product Development job
9 function, correct?

10 A Yes.

11 Q So, all of your time at Oracle, as a manager, has
12 been in the Product Development job function, correct?

13 A Yes.

14 Q So, you don't have any personal knowledge regarding
15 how pay decisions are made -- strike that.

16 During the time that you were in the Product
17 Development job function, was it your understanding that you
18 were also in the Product Development line of business?

19 A That was my understanding.

20 Q So, you don't have any personal knowledge as to how
21 compensation decisions were made for individuals that rolled
22 up to other lines of business, correct?

23 A You mean non-Product Development?

24 Q Correct.

25 A I would not know that.

1 Q Okay. And when you first returned to Oracle in
2 2006, you did not work at Oracle's headquarters, correct?

3 A I did.

4 Q Didn't you work in San Mateo when you first
5 returned?

6 A That was the Siebel office, which is two miles from
7 Oracle's office.

8 Q Okay. And then you eventually moved into the --

9 A To Oracle -- so upon the date of acquisition, my
10 employment transfer from Siebel to Oracle, I don't it was the
11 1st of March, 2006. And Oracle moved the real estate
12 facilities around May of 2006, so it was like a month or two
13 we had to vacate the Siebel premises and move to the Oracle
14 headquarters.

15 Q And that happened in August of 2008?

16 A No, that was in 2006, I was back at Oracle campus
17 in like May or something of 2006.

18 Q You were asked some questions regarding training,
19 do you recall that -- you answered some questions regarding
20 training, do you recall that testimony?

21 A Just now, yeah.

22 Q Yeah, just now?

23 A Um-hum.

24 Q And I know you testified about trainings that were
25 required, correct?

1 A Yeah.

2 Q Whatever trainings were required, you took them,
3 correct?

4 A Yes.

5 Q You also testified that when you returned to Oracle
6 as a manager, a number of the employees who reported up to
7 you were contractors, correct?

8 A Yeah, they were from Siebel. Siebel had a contract
9 going on, so it carried over.

10 Q And once at Oracle, you were not responsible for
11 making pay decisions regarding contractors, correct?

12 A No. No, I was not.

13 Q Okay. And then you said around the 2006-2008 time
14 period, you had about 25 people reporting up to you, is that
15 right?

16 A Yeah.

17 Q How many of those individuals were at the
18 headquarters location in Redwood Shores?

19 A Let's see -- it could be less than five.

20 Q Okay. And then you said that in 2019 your last
21 team had about six or seven people reporting up to you, is
22 that correct?

23 A Yeah. I had one senior manager in the U.S. and I
24 had another employee here, and the rest were in India, so,
25 yeah.

1 Q I'm sorry, just so I'm clear, how many of them were
2 actually at Redwood Shores?

3 A So, there was one senior manager who was at Redwood
4 Shores and he actually relocated to Texas, he was still in
5 North America. And there was another employee -- there were
6 two employees here in Redwood Shores.

7 Q Okay. So, two out of the six or seven were at
8 Redwood Shores?

9 A Correct.

10 Q Okay. You testified that you -- if I understood
11 your testimony correctly, you said that you could see the pay
12 of the people below you, but you could not see the pay of
13 anyone else who was not below you, correct?

14 A So, yeah, again, I'll stand by what I said.
15 Everybody in my hierarchy, so if there's a manager and that
16 manager has more people below them, I can see their pay, as
17 well.

18 Q Okay. But you don't know -- just so we're clear --
19 you don't have any personal knowledge regarding the pay of
20 those who don't report up to you, correct?

21 A Well, personal knowledge in the sense of seeing it
22 in the system or through conversations? So, yeah, of course
23 I cannot see in the system, but to talk I do have -- I kind
24 of indicated that in my testimony -- and I have also
25 recollect talking to two of my managers, or actually talking

1 to my manager and have some idea of his pay, one of my
2 managers. And another manager who shared an office with me,
3 I overheard his pay, so he was talking to HR.

4 Q Okay. So, you had conversations with two other
5 managers about their pay?

6 A Yeah. Well, I did not have a direct conversation,
7 but -- should I explain what I mean?

8 JUDGE CLARK: Well, I think you just answered her
9 question. If you think you've answered the question, just
10 let her know.

11 THE WITNESS: Yeah.

12 BY MS. CONNELL:

13 Q So, you had conversations with two managers,
14 correct?

15 A Yeah.

16 Q Okay. So, other than those two conversations with
17 those two managers, and the people who reported up to you, you
18 don't have any personal knowledge regarding the pay of anyone
19 else at Oracle, correct?

20 MR. ELIASOPH: Objection, misstates his testimony.

21 JUDGE CLARK: Overruled.

22 If you can answer the question, if not, just let us
23 know.

24 THE WITNESS: No.

25 BY MS. CONNELL:

1 Q That's correct?

2 A Yeah. So, a couple or three people I mentioned,
3 beyond that I would not have direct knowledge.

4 Q You also testified that in the tool that you used
5 to make focal allocations, you could not see the race or
6 gender of individuals, correct?

7 A Yeah, as far as I remember, no.

8 Q Okay. You did not make pay decisions based on race
9 or gender, correct?

10 A Yes, I did not.

11 Q You also testified about some guidelines you
12 received in connection with the focal reviews, do you recall
13 that testimony?

14 A Yes.

15 Q And you testified that those guidelines were sent
16 by someone in HR, correct?

17 A Well, I did not get it personally from HR. I would
18 typically get it forwarded by my manager. So, I just want to
19 be clear on that.

20 Q The e-mail originated from HR, is that correct?

21 MR. ELIASOPH: Objection, misstates prior
22 testimony.

23 MS. CONNELL: I'm not trying to misstate --

24 JUDGE CLARK: Overruled -- overruled.

25 Ask your question again, Ms. Connell.

1 MS. CONNELL: Sure.

2 BY MS. CONNELL:

3 Q So, I had thought that you said that you received
4 an e-mail that was forwarded from HR, is that correct --
5 containing guidelines for focal allocations?

6 A Yes.

7 Q Okay. And so even if the e-mail was sent by HR,
8 you don't know who actually developed those guidelines,
9 correct?

10 A So, yes, I do not know.

11 Q Okay. And I think you also said, at one point,
12 that there was a guideline that was sent by Thomas Kurian,
13 correct?

14 A Yes.

15 Q And he's the former president of Product
16 Development, correct?

17 A Correct.

18 Q Do you know Mr. Kurian's race?

19 MR. ELIASOPH: Objection, relevance.

20 JUDGE CLARK: Overruled.

21 If you know -- do you know his race?

22 THE WITNESS: He was of Eastern origin.

23 JUDGE CLARK: Sorry?

24 THE WITNESS: He was of Eastern origin.

25 JUDGE CLARK: East -- okay.

1 BY MS. CONNELL:

2 Q And you never complained to anyone, while you were
3 at Oracle, that you believed that you were paid less because
4 of your race, correct?

5 A Well, I took my -- you know, I thought I was
6 underpaid and I always discussed it with whoever my manager
7 at that point was. So, that was a discussion on my position
8 and my performance.

9 Q But you never made a complaint that you believed --
10 and I understand your testimony that you believed you were
11 underpaid and you made complaints about that, but you never
12 complained that you believed it was because of your race,
13 correct?

14 A Yeah, just hold on, let me think through that. At
15 one point I did.

16 Q To whom?

17 A To my manager.

18 Q What did you say?

19 A I cited an article which was -- which had, I think,
20 a lawsuit against Oracle for Oracle underpaying H-1B
21 employees, foreign, non-U.S. origin. And this was in 2017 or
22 something like that. Because I would continually bring my
23 pay discussion and I used this, as well, that, you know, so
24 my manager was also of Indian origin, and that there is a
25 talk like this that, you know, that is generally underpaid.

1 Q So, if I understand your testimony correctly, on
2 one occasion in 2017 you saw news of a lawsuit regarding
3 Oracle underpaying people on H-1Bs, and you brought that to
4 the attention of your manager, correct?

5 A Correct.

6 Q Did you say -- but you didn't say in that
7 discussion -- I believe I, personally, am underpaid, because
8 of my race -- correct?

9 MR. ELIASOPH: Objection. Is she asking him if he
10 did that direct quote?

11 JUDGE CLARK: Your objection is overruled.

12 You can answer that question.

13 THE WITNESS: Sorry, can you repeat the question?

14 MS. CONNELL: Yeah.

15 BY MS. CONNELL:

16 Q My question was, did you tell your manager that
17 you, personally, believed you were underpaid because of your
18 race?

19 A That was the intent of my discussion with my
20 manager, exactly that.

21 Q What did he say in response?

22 A The standard Oracle manager response -- there was
23 no response to this particular aspect, we'll look at your
24 compensation in the next cycle.

25 Q And you said that your manager also was Indian,

1 correct?

2 A Yeah.

3 Q And that was the only time you raised this
4 complaint?

5 A This particular article.

6 Q Do you recall, was the lawsuit you're referring to
7 this lawsuit?

8 A No, this was a couple of years ago. I mean -- I
9 e-mailed that article to him, but I don't have access to
10 e-mail, I e-mailed that link to him. If the article has
11 regards of that, you should be able to pull it out.

12 Q Okay. So, you don't recall who brought the
13 lawsuit?

14 A Yeah, I don't remember. But there was an internet
15 article and I sent him a link, followed up the conversation
16 with a link and I sent it to him.

17 JUDGE CLARK: Thank you.

18 BY MS. CONNELL:

19 Q You testified about the performance appraisals
20 system, do you recall that testimony?

21 A (No verbal response.)

22 Q And you said that HR didn't enforce conducting
23 performance appraisals every year, correct?

24 A So, there are two parts to this. So, yeah, the
25 appraisal as in you discuss the appraisal with an employee,

1 was not enforced. But in the Compensation Workbench,
2 typically we were required to enter rankings and ratings,
3 because, as I said, those two systems were not connected. I
4 said that earlier, as well.

5 Q But with regard to performance appraisals, even
6 though HR didn't enforce it every year, you, as a manager,
7 could have done it every year, if you chose to, correct?

8 A Yes.

9 Q You also talked about an instance in 2019, I
10 believe, when you said that your manager ranked your
11 subordinates for you, do you recall that testimony?

12 A Yeah.

13 Q And that happened only on one occasion, correct?

14 A Yes.

15 Q And only two of those individuals were at
16 headquarters in Redwood Shores, correct?

17 A Yes, correct.

18 MS. CONNELL: I have no further questions.

19 JUDGE CLARK: Mr. Eliasoph, anything further?

20 MR. ELIASOPH: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. ELIASOPH:

23 Q Was the focal review process a different process
24 for employees that were at Redwood Shores?

25 A So, as I mentioned in the example earlier, the

1 guidelines varied geographically, especially for employees in
2 North America, which includes Redwood Shores, the guidelines
3 were different in the amount of -- in how many people are
4 getting raises and the amount of raise, versus, for example,
5 those employees in India. And generally a larger percentage
6 of employees in India got raises and the raise was also
7 higher.

8 Q Okay. But in North America -- I'm talking about
9 the process?

10 A Yeah.

11 Q Was the process different for your employees in
12 different North America, or would -- let me just leave it
13 there.

14 A It was the same focal cycle and the same system, so
15 in terms of the process it was the same process.

16 Q And was the timing of the reviews the same?

17 A Yes.

18 MS. CONNELL: I have -- oh -- sorry.

19 BY MR. ELIASOPH:

20 Q And you received this letter from the Department of
21 Labor, you testified?

22 A Yeah.

23 Q Has anybody coerced you to testify today?

24 A No.

25 Q You're here of your own free will?

1 correct?

2 A Yeah.

3 Q That particular guideline did not apply in North
4 America, correct?

5 A It did apply.

6 Q Okay. Isn't it true that the guidelines for India
7 were stricter than the guidelines for North America?

8 A What do you mean by stricter?

9 Q That there were more guidelines that applied to
10 India than there were guidelines that applied in North
11 America?

12 A Well, my experience is the amount of raise in India
13 was higher because the market there is very competitive and
14 Oracle has to retain its employees. So, generally, people in
15 India, percentage wise, got a bigger raise, generally. And
16 North America the budgets -- percent, again, we are not
17 talking, because you know actual numbers are different
18 because of the currency conversion and all that -- the
19 percentage of raise, budget pool, was smaller in North
20 America. So, I don't know what your stricter means. I think
21 it's stricter in North America because you have less money
22 and you cannot give a raise to everybody. And that is my
23 personal experience, I already said in the testimony before.

24 I tried to give a raise to everyone in my team, in North
25 America it was not allowed. So, I don't know what strict

1 means.

2 Q Okay. So, setting aside how you want to
3 characterize it, the guidelines were different for India than
4 they were for North America, correct?

5 A Yes, I already said that.

6 Q And with regard to the employees who you said your
7 focal increases were removed, that was two employees,
8 correct?

9 A Yeah.

10 Q And that happened on one occasion, correct?

11 A Yes.

12 MS. CONNELL: No further questions.

13 JUDGE CLARK: Mr. Eliasoph, anything else? This is
14 the last round, so.

15 MR. ELIASOPH: I understand.

16 JUDGE CLARK: Okay.

17 MR. ELIASOPH: That's why I'm taking my time, Your
18 Honor. If you can indulge me for one more minute, or
19 hopefully less.

20 JUDGE CLARK: Okay.

21 MR. ELIASOPH: I think we'll leave it there, Your
22 Honor. Thank you.

23 JUDGE CLARK: All right. Thank you very much.

24 Mr. Pandey, thank you so much for your time today,
25 you are free to go.

1 THE WITNESS: Thank you, Your Honor.

2 JUDGE CLARK: All right. Thank you for your time.

3 (Witness excused.)

4 JUDGE CLARK: Okay. It's 3:30 o'clock p.m., any
5 further witnesses today, Mr. Eliasoph or Ms. Bremer?

6 MS. BREMER: No, Your Honor.

7 JUDGE CLARK: Okay.

8 Have we disclosed the witnesses for Tuesday,
9 already?

10 MR. ELIASOPH: We interpret 48 hours as 48 hours
11 and we were intending to do that by Sunday morning.

12 JUDGE CLARK: Okay. I was thinking business days,
13 so I would think that you would disclose them by the close of
14 business 48 hours before, so.

15 MR. ELIASOPH: We apologize. We're extremely
16 literal. I do think we can -- can we, at this point?

17 JUDGE CLARK: So, you don't have to tell me. I
18 would like to know who they are, but I can find that out
19 later. But you should disclose them to Oracle by the close
20 of business today, okay.

21 Anything further for the record today, Ms. Bremer?

22 MS. BREMER: No, Your Honor.

23 JUDGE CLARK: Mr. Eliasoph?

24 MR. ELIASOPH: No, Your Honor.

25 JUDGE CLARK: Mr. Garcia? I'm going to go through

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REPORTER'S CERTIFICATE

TITLE: Federal Contract Compliance Programs v. Oracle
America, Inc.

CASE NUMBER: 2017-OFC-00006

OWCP NUMBER: N/A

DATE: December 6, 2019

LOCATION: San Francisco, CA

This is to certify that the attached proceedings before the United States Department of Labor, were held according to the record and that this is the original, complete, true and accurate transcript which has been compared to the reporting or recording accomplished at the hearing.

SIGNATURE OF REPORTER DATE