

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

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

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**DECLARATION OF KATE
WAGGONER IN SUPPORT OF
DEFENDANT ORACLE
AMERICA, INC.'S MOTION TO
SEAL PLAINTIFF'S MOTION TO
COMPEL HISTORICAL DATA
OF COMPARATOR
EMPLOYEES**

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APR 16 2019

Office of Administrative Law Judges
San Francisco, Ca

I, Kate Waggoner, declare as follows:

1. I make this declaration in support of Oracle America, Inc.'s ("Oracle") Motion to Seal Portions of Plaintiff's Motion to Compel Historical Data of Comparator Employees. I have personal knowledge of the matters discussed in this declaration or, where stated, base my statements on my review of records kept in the regular course of business by Oracle. If called to testify to the information in this declaration, I could do so competently. Before signing this declaration, I read it carefully to make sure it was accurate, and it is. I was not pressured or required to sign this declaration. I am providing this declaration voluntarily.

2. I am currently Senior Director, Global Compensation at Oracle, and have been since approximately January 2018. Prior to that I worked at Oracle as Director, Compensation (from approximately November 2014 to December 2017); Senior Manager, Compensation (from approximately March 2012 to October 2014); and Compensation Analyst (from approximately March 2005 to February 2012). I joined Oracle following its acquisition of PeopleSoft, Inc. in 2005; previously I had worked at Time Warner Telecom, J.D. Edwards, and PeopleSoft, all in compensation-related roles. I hold a B.A. in psychology with a minor in statistics from the University of Northern Colorado and an M.A. in human resources and industrial relations from the University of Minnesota-Twin Cities.

3. In my current role, I am responsible for Oracle's global compensation programs; the administration, setup, and rollout of annual focal review, corporate bonus, and equity programs (when offered); overseeing maintenance of and updates to Oracle's global job table; and supervising merger and acquisition (M&A) activities related to compensation, which involves the transition of acquired employees into Oracle's jobs, pay programs and plans. I report to Phil Jenish, Oracle's VP of Compensation and Workforce Intelligence.

4. Given my current and former roles and long history with Oracle, I am familiar with compensation and job architecture related information that Oracle maintains as confidential and have knowledge of the business reasons for doing so. I have reviewed the page of Exhibit 6 to Plaintiff's Motion to Compel Historical Data of Comparator Employees ("Motion")

containing the number 4163-0046-7227.3 at the bottom-left of the page. I have also reviewed a redacted version of the same page which is attached hereto as **Exhibit A**. I describe the redacted material in the paragraphs that follow. As described in more detail below, the redacted portions of Plaintiff's Motion contain confidential, proprietary information which if publicly disclosed would damage Oracle's competitive standing and give Oracle's competitors an unfair advantage, and/or violate the privacy of Oracle employees.

Portions of Plaintiff's Motion That Contain Confidential and Proprietary Compensation-Related Material.

5. The redacted portions of Exhibit 6 to Plaintiff's Motion contain confidential and proprietary information about Oracle's compensation structure, and more particularly, specific numbers for salary ranges for various positions and private information regarding certain employees, including their current salary, their salary offers for new positions, their current compa ratios, and the justifications for their salary offers based on their particular employee assets.

6. The value of both types of information described in paragraph five above, hinges entirely on its remaining confidential. The information concerning Oracle's compensation structure – the salary ranges Oracle has determined are appropriate for certain employee positions and the premiums Oracle deems appropriate to pay to attract certain talent – are the result of work-product, developing an understanding of the labor markets in which Oracle competes, and refinement through trial and error. Oracle uses salaries and premium pay to compete for talent, and so the value of this work product is necessarily dependent upon keeping it confidential within Oracle. To that end, Oracle has expended significant resources over many years to develop, adjust, and refine its compensation strategies, both to advance its business interests, and to attract and retain its workforce.

7. The ability to attract and retain talent drives Oracle's business success because its talented workforce is the lifeblood that drives all the services, products, and support Oracle

provides to its customers. Oracle is keenly aware that competition for talent is fierce within the technology industry; Oracle competes not only against major technology companies, but it often competes for talent with emerging companies – this is especially true within California. As a result, disclosing detailed salary information to Oracle’s competitors would undermine its ability to attract talent, while empowering its competitors. In other words, Oracle’s competitors would be able to leverage Oracle’s information to develop compensation structures designed to outbid Oracle in hiring or enticing Oracle employees to leave. That, of course, would undermine Oracle’s business which as noted above is dependent upon its talented employees.

Portions of Plaintiff’s Motion That Contain Confidential Compensation Information Derived From Employee Personnel Files and Secured Databases.

8. The redacted portions of Exhibit 6 to Plaintiff’s Motion also contain the specific compensation amounts for various Oracle employees.

9. Employees’ specific compensation information is derived from their personnel files and Oracle databases to which Oracle limits access. Oracle limits access to personnel files and data, because the information relates to personal, private, and highly sensitive information Oracle has about its employees. Oracle respects its employees’ privacy interests and maintains strict internal confidentiality policies to limit dissemination of the information found within personnel files. Safeguards Oracle employs to maintain the confidentiality of personal compensation information includes limiting access by assigning access rights to only certain persons. For example, managers can view compensation information regarding employees who report up to them, but they generally do not have access to other employees within the broader line of business or organization. Similarly, certain individuals responsible for matters related to compensation (e.g., me), HR, payroll, etc., have access to a broader set of employees’ compensation information based on business needs. In the absence of access rights such as those described above, personal compensation information is completely restricted.

10. The personal privacy interests of the Oracle employees whose compensation information is identified in the redacted portions of materials described above, would be compromised if their salaries or salary histories became public.

11. Oracle undertakes substantial efforts to maintain confidentiality over the materials discussed above by limiting the access to, and distribution of, such information. Oracle restricts internal access to the information, limiting distribution to only those with a legitimate business need to know. When the information is disseminated internally, Oracle's general practice is to mark it Confidential, Oracle Internal, and/or Highly Restricted. Oracle also controls and safeguards this information by entering into agreements with employees that prohibit them from sharing or using any proprietary information externally or internally in the absence of a legitimate business need—and explicitly prohibiting the unnecessary use or sharing of the types of information discussed above, such as the compensation of other Oracle employees and non-public financial information.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on April 14, 2019 in Parker, Colorado.


KATE WAGGONER

EXHIBIT A



Laura C. Bremer
March 14, 2019
Page 4

managers in the iRecruitment approval workflow for new hires, which OFCCP can readily review to identify where a hiring and/or HR manager referenced the individual's compa-ratio at an international affiliate. *See, e.g.*, ORACLE_HQCA_0000070747 (HQCA_IREC_DATA.xlsx), tab "OFFER APPROVAL COMM HISTORY," column H ("COMMENTS") at VACANCY_NAME IRC1971522 (emphasis added) ("We are requesting approval to relocate ██████████ to the US. ... ██████████ is currently at Sr. Manager level and we are requesting to transfer him at the same level. We have discussed the management opportunity here at HQ with ██████████ and he is interest in moving to Headquarters. He has a *current comparatio ██████████ with a salary of ██████████* We have discussed compensation with ██████████ and he believes he cannot accept a salary of less than ██████████ Hence, we are requesting approval for a salary of ██████████ which maps to the ██████████ of the M3 range."); *id.* at VACANCY_NAME IRC2351658 (emphasis added) ("This request is for approval to facilitate an international transfer from IDC to US-HQ for our ██████████ as a Software Developer 3 in IDM Development for Identity Governance team. ... *Currently ██████████ salary is ██████████ INR (IDC IC3 software developer range- ██████████ for a comparatio of ██████████* Proposing an annual salary of ██████████ as an Senior Software Developer (US IC3 software developer range ██████████) for a comparatio of ██████████ Within ██████████ benchmark for IC3(HQ only) of Ave: ██████████). OFCCP has not articulated any reason that it also needs Oracle to separately pull each individual's pre-transfer compa-ratio at an Oracle affiliate when it already has such extensive information.

Moreover, the request as framed clearly seeks information that is not in Oracle America, Inc.'s possession, custody or control. *See* Fed. R. Civ. P. 34(a)(1) (party only obligated to produce only those records that are in its "possession, custody, or control"). OFCCP suggests in its February 15 and March 6 letters that it is entitled to international compa-ratio data because "Oracle has access to this information and it would have been reviewed by managers." But that claim is wrong both factually and legally. While it is true that some hiring managers may have obtained information regarding an individual's compa-ratio at an international affiliate as part of processing a particular transfer into Oracle America, Inc., this information is not available to those managers as a matter of course. Rather, if an individual was employed at an international affiliate, a hiring manager or HR representative or manager would have to request the international compa-ratio data specifically for that individual. Such requests are often oral and are not directly reflected or recorded in any central HRIS data source (*e.g.*, Workforce Compensation; iRecruitment). Moreover, the Ninth Circuit has expressly rejected the argument that merely because a party has access to information means that it has possession, custody or control over it. *See In re Citric Acid Litig.*, 191 F.3d 1090, 1107 (9th Cir. 1999) (refusing to