

**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 VICTORIA
THRASHER IN SUPPORT OF
ORACLE AMERICA, INC.'S
MOTION TO SEAL PORTIONS
OF PLAINTIFF'S MOTION TO
COMPEL ORACLE'S
COMPENSATION ANALYSES**

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JUL 02 2019

Office of Administrative Law Judges
San Francisco, Ca

DECLARATION OF VICTORIA THRASHER IN SUPPORT OF MOTION TO SEAL

I, Victoria Thrasher, declare as follows:

1. I make this declaration in support of Oracle America, Inc.'s ("Oracle") Motion to Seal limited portions of Plaintiff's Motion to Compel Oracle's Compensation Analyses (hereinafter "Motion"). 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 Group Vice President of Human Resources – Americas for Oracle, a position I have held since 2010. Beginning in 2010, I led the HR Business, Diversity Compliance and Inclusion and Employment Practices functions covering the more than 50,000 employees who work for Oracle or affiliates in the United States or elsewhere in the Americas. On January 2 of this year, I transitioned away from responsibility for the HR Business function and assumed new responsibility for HR Communications, Organization and Talent Development, and the Oracle Women's Leadership Program, while maintaining responsibility for Diversity Compliance and Inclusions and Employment Practices. I joined Oracle in 1996 as an HR Consultant and, in 2000, became a Vice President in Human Resources.

3. Given my current and former roles and long history with Oracle, I am familiar with the compensation and job architecture-related information that Oracle maintains as confidential and have knowledge of the business reasons for doing so. I have reviewed Exhibits 3 and 46 to the Declaration of Laura Bremer in Support of Plaintiff's Motion. I have also reviewed redacted versions of the same which are attached hereto as **Exhibit A** and **Exhibit B**. I describe the redacted material in the paragraphs that follow.

4. As explained 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.

5. Oracle is one of the world's leading technology companies. It has built a reputation for developing some of the best hardware and software in the world, capable of solving the most technologically complicated problems of our day. Becoming a leading technology company was no easy feat: it required strategic thinking about product development and company growth, as well as amassing a talented set of employees.

Portions of Plaintiff's Motion That Divulge Oracle's Confidential Affirmative Action Workforce Analysis Data

6. The redacted portions of Exhibit 3 to Plaintiff's Motion, which is attached hereto as **Exhibit A**, consists of Oracle's Affirmative Action Plan Workforce Analysis Data ("AAP Data"). Oracle's AAP Data provides competitively significant information about Oracle's workforce. The AAP Data provides a detailed accounting of the number of Oracle employees in specific job titles, and the corresponding salary codes for those job titles. This reflects commercially valuable and confidential information such as Oracle's strategic decisions regarding how many people it needs in various roles to effectively create, test, and sell its products, how many people it needs to support or manage its workforce, and how many people it should devote to marketing, finance and legal operations. The AAP Data also divulges the number of employees falling into each job title and their salary codes based on race and gender. Therefore, the AAP Data identifies the size, structure, and overall composition of Oracle's workforce.

7. The AAP Data conveys more than just the number of employees in each job title and those employees' salary codes; they communicate Oracle's experience and expertise in the field of how to structure the workforce to have a well-run, profitable, and efficient company. This conveys a detailed breakdown of how Oracle stratifies its workforce. With this guide, Oracle's competitors can easily consider the job titles in the context of the hardware and software industries and gain a detailed picture of the composition of Oracle's workforce.

8. The way that Oracle organizes its workforce is a direct result of its substantial

effort and innovation in devising ways to make the company run effectively in rapidly evolving economic times, and the organizational structure of Oracle's workforce is an important part of its entirely private plans to maintain competitiveness in the industry. Oracle has spent significant time and expended substantial resources to create the workforce that is on full display in the AAP. It took Oracle many years to refine the proper balance of its workforce in response to market conditions and customer feedback. If competitors can see how Oracle stratifies its workforce, it will cause Oracle competitive harm by providing insight into Oracle's successful strategy. Because release of this information would allow competitors to deduce various aspects of Oracle's business strategy, Oracle has never disclosed this information publicly. Because of the size, constituency, and competitive nature of its market, as well as the constituency of its own workforce, there is a very real threat to Oracle's competitive position created by disclosure of Oracle's AAP.

9. Allowing Oracle's competitors to grow and restructure with the aid of the AAP Data would give them a competitive advantage. The release of private commercial information which sheds lights on Oracle's workforce and business practices would allow Oracle's competitors to use that information without incurring any of the costs that Oracle bore in developing such practices. Oracle is a highly visible technology company in the very competitive computer hardware and software industries. Because these industries are constantly and quickly evolving, and the competition among the companies is fierce, any advantage that Oracle's competitors gain can potentially have a large effect in the competitive position of industry peers and may have a very significant and detrimental impact on Oracle's business.

10. Oracle also expends significant time and effort attracting and retaining talented minority or female employees. A significant component of Oracle's success has been its ability to cultivate and maintain a valuable, talented, and loyal workforce. Oracle spends substantial time and money developing its workforce to maintain its reputation an ability to innovate. As a large organization at the forefront of the technology revolution, it has been challenging to compete with the surge of emerging companies looking to recruit from Oracle's workforce, or

the pool of talent available to Oracle. Oracle has made every effort to protect its relationship with its employees because cultivating this trust is essential to maintaining a high level of retention among its employees.

11. If the AAP Data is disclosed, for those positions for which Oracle has a large number of minority or female employees, the information would be helpful to competitors because they know which areas they can specifically target to recruit talented minority or female employees with a particular skill set. If this information that could lead to identification and raiding of minority or female employees is released, and such a raid does occur, Oracle will suffer substantial competitive injury.

12. Maintaining a diverse workforce is not only important to Oracle—which has made significant efforts to recruit and retain talented minority and female employees—but also to many of Oracle’s clients and business associates. Losing highly talented diverse employees would be a costly and significant competitive disadvantage to Oracle. Public disclosure of the AAP Data analysis makes this result very likely given the level of talent of Oracle’s employees and the competitive nature of the high-technology industry.

13. Oracle does not require its employees to self-report the race and gender information contained in its AAP. Instead, each employee is afforded an opportunity to voluntarily self-report his or her race and gender. In collecting this information, Oracle assures each employee that it will maintain the information about an employee’s race and gender as confidential and will use it only in accordance with applicable government regulations. In turn, Oracle’s employees provide this information under the expectation of confidentiality. To my knowledge, Oracle has never publicly disclosed information concerning its employees’ race and gender.

14. The information contained in the AAP Data may reveal the identity of specific Oracle employees, and the data shows the salary codes into which those employees fit. Many job titles have few employees of the specified gender or races. It is my understanding that where numbers in the job titles are in the single digits, it is possible that individuals reviewing the AAP

Data may discern the identity of these employees and their salary codes since Oracle is such a highly visible company. Similarly, where there is only one person in a given category, especially where the person is an executive or manager, it is very easy to deduce the person's identity and salary code. It is my understanding that Oracle has a legal duty to protect this private information from public disclosure.

15. Oracle believes it is of the utmost importance to maintain the confidentiality and trust of its employees' decision to voluntarily provide this sensitive information under the expectation of privacy. Protecting its relationship with employees is one of the reasons Oracle is able to retain and recruit talented employees and damaging that relationship could cause Oracle substantial competitive harm by making these employees fertile targets for recruiting by its competitors.

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

16. The redacted portions of Exhibit 46 to Plaintiff's Motion, which is attached hereto as **Exhibit B**, contain confidential and proprietary information about Oracle's compensation structure, and more particularly, the specific premium percentages that Oracle will pay to attract candidates.

17. This information loses its competitive value if not maintained as confidential. The information concerning Oracle's compensation structure – the premiums Oracle deems appropriate to pay to attract certain talent – were developed through expending significant time and effort studying the labor market and continuously adjusting Oracle's recruiting strategies and competitive offers over the years. Oracle uses salaries and premium pay to compete for talent, and with knowledge of this information, Oracle's competitors could, without expending any cost or effort, adjust their offers to outbid Oracle for talent.

18. As explained in paragraph 10, a significant component of Oracle's success has been its ability to cultivate and maintain a valuable, talented, and loyal workforce to create and support the products and services Oracle provides to its customers. Oracle competes for talent in

an industry that is constantly and quickly evolving, and the competition among the companies is fierce. Oracle competes with both large and emerging companies. Public disclosure to Oracle's competitors of the premiums Oracle pays to attract talent would undermine its ability to attract talent, while empowering its competitors. Oracle's competitors would be able to use this information to develop salary offers to outbid Oracle in hiring or to poach Oracle's existing employees. That would cause Oracle substantial competitive harm because its business is entirely dependent upon its talented employees.

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

Executed in Washington, D.C., on July 1, 2019.

A handwritten signature in blue ink, appearing to read "Victoria Thrasher", is written over a horizontal line.

VICTORIA THRASHER