

**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

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF ORACLE
AMERICA, INC.'S MOTION TO
SEAL PORTIONS OF THE
EVIDENCE SUBMITTED IN
SUPPORT OF ORACLE'S
MOTION FOR SUMMARY
JUDGMENT, OR, IN THE
ALTERNATIVE, FOR PARTIAL
SUMMARY JUDGMENT AND
MOTION TO EXCLUDE THE
TESTIMONY OF JANICE
FANNING MADDEN, PH.D.**

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**Office of Administrative Law Judges
San Francisco, Ca**

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I. INTRODUCTION

Pursuant to 29 C.F.R. § 18.85(b)(1) and this Court's May 22, 2019 order adopting and amending Judge Larsen's May 26, 2017 Protective Order (collectively, the "Protective Order"), Defendant Oracle America, Inc. ("Oracle") moves to seal limited portions of the evidence submitted in support of Oracle's Motion for Summary Judgment, or, in the alternative, for Partial Summary Judgment, and Oracle's Motion to Exclude the Testimony of Janice Fanning Madden, Ph.D. (collectively "Motions").

The limited information in the exhibits that Oracle seeks to seal consists of confidential commercial information and/or private information about Oracle employees, which is exempt from Freedom of Information Act ("FOIA") disclosure. Much of the material in these exhibits should be sealed pursuant to FOIA Exemption 4 because it constitutes "commercial information, obtained from a person, that is confidential." Oracle treats the information as private and has provided it to OFCCP during this litigation with a confidential designation based on OFCCP's assurances that it would be treated as sensitive and confidential pursuant to the Protective Order. In addition, much of the material in these exhibits should be sealed under FOIA Exemption 6 because it contains personally identifying and confidential information about non-party current and/or former Oracle employees that is derived from or stored in personnel files and similar files in which Oracle stores private information.

Oracle has a compelling interest in precluding disclosure of confidential commercial information and information about its current and/or former employees. Oracle keeps its commercial information private so it can retain its commercial value. It is also essential that Oracle keep information about its current and/or former employees private because disclosure would undermine those individuals' privacy rights and harm Oracle's relationship with its employees. Oracle does not share its confidential commercial information or employee information externally and only disseminates it internally to a limited group of individuals on a need-to-know basis. Here, the confidential commercial information that Oracle seeks to protect with this motion was produced to the government based on assurances of privacy.

Oracle is mindful that 29 C.F.R. § 18.85(b)(1) requires parties to “propose the fewest redactions possible that will protect the interest offered as the basis for the motion,” and has gone to great lengths to ensure that its moving papers and the vast majority of its supporting evidence remain unredacted and open to the public. Oracle’s narrowly-tailored proposed redactions thus meet the applicable legal standards for sealing. Accordingly, the information Oracle’s seeks to seal is entitled to protection against public disclosure.

Specifically, Oracle moves to seal the following portions of the evidence submitted in support of its Motions¹:

Exhibit	Document Name	Document Location	Confidential Material
A	Declaration of Farouk Abushaban in Support of Defendant Oracle America, Inc.’s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment	N/A	Identifying information of non-party employee (FOIA 6): ¶¶ 10-13, 18 Compensation and performance information of non-party employees (FOIA 6): ¶18
B	Declaration of Balaji Bashyam in Support of Defendant Oracle America, Inc.’s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment	N/A	Personally-identifying information about non-party employee including compensation and performance information (FOIA 6): ¶ 13
C	Declaration of Janet Chan in Support of Defendant Oracle America, Inc.’s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment	N/A	Equity distribution strategy that likely divulges the identities of individuals and their compensation (FOIA 6): ¶ 12

¹ Exhibit references are to the redacted documents filed as exhibits to the Declaration of Jonathan Riddell in Support of Defendant Oracle America, Inc.’s Motion to Seal Portions of the Evidence Submitted in Support of Oracle’s Motion for Summary Judgment, or, in the Alternative, for Partial Summary Judgment and Motion to Exclude the Testimony of Janice Fanning Madden, Ph.D. (“Riddell Decl.”). Where appropriate, “Document Location” indicates where a document is attached as an exhibit to one of Oracle’s supporting declarations to its Motions. The FOIA exemption under which Oracle proposes to seal each item of confidential material is included in parentheses.

Exhibit	Document Name	Document Location	Confidential Material
			Identifying information of non-party employee (FOIA 6): ¶ 8
D	Declaration of Jon Tyler Eckard in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment	N/A	Identifying information of non-party employees (FOIA 6): ¶¶ 8-10
E	Declaration of Barbara Fox in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment	N/A	Identifying information of non-party employees (FOIA 6): ¶¶ 10-13, 15 Performance information of non-party employees (FOIA 6): ¶¶ 11, 15 Compensation information of non-party employee (FOIA 6): ¶ 15
F	Declaration of Sachin Shah in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment	N/A	Identifying information of non-party employees (FOIA 6): ¶¶ 8-10, 17-18 Performance information about non-party employee (FOIA 6): ¶ 18
G	Declaration of Harmohan Suri in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment	N/A	Bonus and equity allocation strategy, the details of which personally identify non-parties and reveal their compensation (FOIA 6): ¶ 21 Identifying information of non-party employees (FOIA 6): ¶¶ 10-15 Compensation information of non-party employees (FOIA 6): ¶ 20

Exhibit	Document Name	Document Location	Confidential Material
H	Declaration of Chandna Talluri in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment	N/A	Identifying information of non-party employees (FOIA 6): ¶¶ 12-13
I	Declaration of Nachiketa Yakkundi in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment	N/A	Identifying information of non-party employees (FOIA 6): ¶¶ 14-15, 18
J	Declaration of Kate Waggoner in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment ("Waggoner MSJ Decl.")	N/A	Salary range information (FOIA 4): ¶ 23
K	Annual Focal Program (Sales & Non-sales) and Workforce Compensation (ORACLE_HQCA_0000380438)	Waggoner MSJ Decl., Ex. A	Salary increase strategy (FOIA 4): pp. 12-13 Internal Oracle network access instructions and images (FOIA 4 and FOIA 6): pp. 18-22, 27-32, 34, 36-37, 40-44, 46, 48, 50-54, 56-61, 64-65, 67-68
L	Global Compensation Training: Managing Pay Module (ORACLE_HQCA_0000364183)	Waggoner MSJ Decl., Ex. B	Compensation strategies regarding offers to new hires (FOIA 4): p. 9
M	Global Compensation Training: Salary Ranges at Oracle (ORACLE_HQCA_0000364272)	Waggoner MSJ Decl., Ex. C	Salary Ranges (FOIA 4): p. 9 Pay structure and grade level exemplar (FOIA 4): p. 10
N	Global Compensation Training: Job Classification and Global Job Table Module (ORACLE_HQCA_0000364276)	Waggoner MSJ Decl., Ex. D	Internal job structure from Oracle internal network (FOIA 4): p. 6

Exhibit	Document Name	Document Location	Confidential Material
O	Managing Compensation, July 2016 (ORACLE_HQCA_0000056234)	Waggoner MSJ Decl., Ex. E	Internal job structure, responsibilities, and organization (FOIA 4): pp. 4, 6-7 Salary, salary range and compa-ratio information (FOIA 4): pp. 17-18, 20
P	Transcript of the Deposition of Kate Waggoner, July 19, 2019	Declaration of Erin Connell in Support of Defendant Oracle America, Inc.'s Motion for Summary Judgment or, in the Alternative, For Partial Summary Judgment ("Connell Decl."), Ex. C	Strategies regarding application of salary ranges (FOIA 4): 174:15, 174:19, 178:4-5, 178:7-9, 178:12, 178:15-18 Confidential information regarding focal budgets (FOIA 4): 192:8-10, 192:13, 192:23-25, 193:6-7, 193:24-25, 252:1-4, 266:13, 266:17-18
Q	Oracle Compensation & Mapping (ORACLE_HQCA_0000399991)	Connell Decl., Ex. I:	Internal job structure, functions, and organization as they appear on Oracle's internal network (FOIA 4): ORACLE_HQCA_000039999 8-400001
R	Expert Report of Ali Saad, Ph.D., July 19, 2019	Connell Decl., Ex M Declaration of Kathryn G. Mantoan in Support of Oracle America, Inc.'s Motion to Exclude the	Oracle salary, bonus, and equity information (FOIA 4): ¶¶ 14, 38-40, 43-44, 46, 51, 53-54, 57-58, 68-69, 71-72, 82, 85-89 (fn. 61), 118, 126, 136-137, 139-41, 162-163, 166 (fn. 129), 186, 190, and pp. C2-C3, C8, E6-E9 Compensation and promotion strategies that relate to specific

Exhibit	Document Name	Document Location	Confidential Material
		Expert Report and Testimony of Janice Fanning Madden, Ph.D. (“Mantoan Decl.”), Ex. A-23	<p>teams of employees (FOIA 4): ¶ 115 (fn. 89, 91)</p> <p>Compensation information for specific non-party employees (FOIA 6): ¶¶ 51, 53-54, 68, 71-72, 85-89 (fn. 61), 106-107, 139, 141</p> <p>Identifying information of non-party employees (FOIA 6): ¶¶ 87, 103 (fn. 70), 106-107, 110 (fn. 79), 111, 115 (fn. 89), and pp. B6-B7</p>
S	Expert Report of Janice Madden, PhD, July 19, 2019	Connell Decl., Ex. N Mantoan Decl., Ex. A-2	<p>Information about bonus awards (FOIA 4): pp. 11, 26 (fn. 15)</p> <p>Information about stock awards (FOIA 4): pp. 11, 23-24, 36, 44</p>
T	Expert Rebuttal Report of Ali Saad, Ph.D., August 2019	Connell Decl., Ex. O Mantoan Decl., Ex. A-5	<p>Oracle compensation information (FOIA 4): ¶¶ 38 (fn. 40), 39, 41</p> <p>Personnel information of non-party employees (FOIA 6): ¶¶ 28-30 (including Examples 1-3) (fn. 23-24), 48, and p. B3</p> <p>Compensation information for specific non-party employees (FOIA 6): ¶¶ 28-30 (including Examples 1-3), 37-38, 41, 48, 86</p> <p>Identifying information of non-party employees (FOIA 6): ¶ 28-30 (fn. 23, 24), B3</p>
U	Expert Rebuttal Report of Janice Madden, PhD, August 16, 2019	Connell Decl., Ex. P	Pay growth data (FOIA 4): p. 52 (Table R10)

Exhibit	Document Name	Document Location	Confidential Material
		Mantoan Decl., Ex. A-3	
V	Transcript of the Deposition of Janice Madden, Ph.D., October 10, 2019	Mantoan Decl., Ex. A	Salary range information (FOIA 4): 55:5, 121:23

II. LEGAL STANDARD

A. MOTION TO SEAL

“FOIA contemplates that some information may legitimately be kept from the public.” *Lahr v. NTSB*, 569 F.3d 964, 973 (9th Cir. 2009). In enacting FOIA, Congress sought “to reach a workable balance between the right of the public to know and the need of the Government to keep information in confidence to the extent necessary without permitting indiscriminate secrecy.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) *citing* H.R. Rep. No. 1497, 89th Cong., 2d Sess., 6 (1966), U.S. Code Cong. & Admin. News 1966, pp. 2418, 2423. This includes protecting from disclosure, *inter alia*, “trade secrets and commercial or financial information obtained from a person and privileged or confidential” as well as material from “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C.A. § 552 (West). Redaction of FOIA-exempted information from agency filings is expressly authorized. *See* 29 C.F.R. § 18.85. *See also U.S. Dep’t of State v. Ray*, 502 U.S. 164, 174 (1991). Furthermore, the Protective Order contemplates protecting Confidential Information that may be subject to FOIA Exemptions 4 or 6 through the filing of a motion to seal. Protective Order ¶¶ 2.2 and 12.3.

1. FOIA EXEMPTION 4

Certain confidential materials are properly exempted from disclosure pursuant to FOIA Exemption 4 if the party seeking to seal the information demonstrates the information is a trade secret or is “(1) commercial and financial information, (2) obtained from a person or by the government, (3) that is privileged or confidential.” *Watkins v. U.S. Bureau of Customs & Border*

Prot., 643 F.3d 1189, 1194 (9th Cir. 2011). “The terms ‘commercial or financial’ are given their ordinary meanings.” *Id.* Commercial material is “confidential” under exemption 4 if “it is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy.” *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366, 204 L. Ed. 2d 742 (2019).²

2. FOIA EXEMPTION 6

FOIA Exemption 6 prohibits disclosure of information from personnel or similar files that would amount to an unwarranted invasion of privacy. *U.S. Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 494-5 (1994). The phrase “similar files” has a broad meaning. *U.S. Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 600, 102 S.Ct. 1957, 72 L.Ed.2d 358 (1982). “...[R]ecords containing information that applies to particular individuals satisfy the threshold [similar files] test of Exemption 6.” *Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1024 (9th Cir. 2008). Disclosure of such information is unwarranted when privacy interests outweigh the public’s interest in disclosure. *U.S. Dep’t of Def.*, 510 U.S. at 494-495. The public’s interest in information from personnel files is limited to “contribut[ing] significantly to public understanding of the operations or activities of the government.” *Id.* (citing *Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773, 775 (1989)) (emphasis omitted). “That purpose [] is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency’s own conduct.” *Id.* Where there is no public interest in the information, even a modest privacy interest “outweighs nothing every time.” *Kowack v. U.S. Forest Serv.*, 766 F.3d 1130, 1136 (9th Cir. 2014) quoting *Nat’l Ass’n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989).

² Because, as is the case here, both conditions were met in *Argus*, the Court did not address whether to be considered confidential the material must both be treated confidentially and be provided on an assurance of privacy. Thus, even though both conditions are met here, arguably only one condition is necessary to satisfy the “confidential” prong under FOIA Exemption 4.

III. ARGUMENT

A. FOIA Exemption 4 Precludes Disclosure of Confidential Commercial Information Attached in Support of Oracle's Motions

FOIA Exemption 4 excepts from public disclosure the material Oracle seeks to seal which includes Oracle's confidential and proprietary information about Oracle's compensation structures, job architecture, and internal networks. The compensation-related materials include: specific, detailed salary information and ranges for various positions, aggregate employee compensation figures, equity distribution strategies, bonus allocation strategies, employee retention strategies, strategies regarding initial offers to new employees, focal reviews and focal budgets, and compensation information for specific, non-party employees. *See* Declaration of Kate Waggoner in Support of Defendant Oracle America Inc.'s Motion to Seal ("Waggoner Decl.") ¶¶ 4-6. The job architecture-related materials include product and team organization information. *Id.* The internal network-related information that Oracle seeks to seal provides a roadmap regarding the configuration, structure, architecture, and accessibility of Oracle's internal networks, as well as applications related to Human Resources and other "Self-Service" applications. Declaration of Vickie Thrasher in Support of Defendant Oracle America Inc.'s Motion to Seal ("Thrasher Decl.") ¶¶ 3-5.

The materials described above are exempt from disclosure under FOIA Exemption 4 as they are "(1) commercial and financial information, (2) obtained from a person or by the government, (3) that is privileged or confidential." *Watkins*, 643 F.3d at 1194. The salary information and ranges associated with various positions comprises commercial information, thus satisfying the first prong of FOIA Exemption 4.

Compensation Structures. Oracle developed and refined its compensation strategies after substantial effort and investment, with the objective of advancing its interests and attracting and retaining employees. Waggoner Decl. ¶ 8. Disclosure of the information would eliminate its competitive, and thus commercial value because if Oracle's competitors gained free access to this information, they would be able to leverage Oracle's own market research and recruiting strategies to outbid Oracle at the hiring stage or entice Oracle employees to leave. *Id.* ¶ 9.

Job Architecture. The job architecture-related materials contain proprietary information about Oracle's confidential human resources strategies for structuring job positions and promotions. *Id.* ¶ 13. Public disclosure would give Oracle's competitors unfettered, accurate information about Oracle's business strategies, the reasoning behind those strategies, and a glimpse into the evolution of those strategies based on past successes and improvements where needed. *Id.* The way Oracle organizes its workforce is a direct result of its substantial effort and innovation in devising ways to make the company run effectively in a rapidly evolving technology market, and the organizational structure of Oracle's workforce is an important part of its confidential and proprietary plans to maintain competitiveness in the industry. *Id.*

Internal Networks. The internal network-related information Oracle seeks to seal reflects the way in which Oracle has configured its network, and the applications discussed in these materials, is confidential and reflects the proprietary manner in which Oracle has integrated the network and applications into its internal operations. Thrasher Decl. ¶ 4. Oracle also maintains as confidential the manner in which it instructs its employees to access and navigate these electronic systems. Thrasher Decl. ¶ 5.

Because the information described above reflects Oracle's strategic decisions about how to structure and compensate its workforce and Oracle's proprietary network configurations, it qualifies as "commercial" information within the meaning of FOIA Exemption 4. *Id.* Notably, Oracle is not attempting to seal any analyses—i.e. coefficients, standard deviations, disparity percentages, t-tests, etc.—and has narrowly tailored its proposed redactions to instances where Oracle's confidential compensation information or data would be revealed. Nor does Oracle seek to seal trainings and presentations on how to evaluate compensation; trainings, presentations, and communications about the fundamentals and philosophy of compensation at Oracle; or general information about how compensation budgets are allocated. To the contrary, Oracle has narrowly tailored the information it seeks to seal and has left the vast bulk of the materials public. It seeks to seal only highly-specific compensation information, which is at the heart of its strategy to compete in the labor marketplace. This includes, for example, aggregation

or averages of salary information which reflects simple arithmetic such as addition or division, but which does not reflect any regression or other expert analysis, and that inherently reveals competitive information about what Oracle pays for certain jobs. *See, e.g.*, Riddell Decl. Ex. R (Saad Expert Report) at C2-C3.

The second requirement is satisfied because the information was “obtained . . . by the government” when Oracle provided the information to OFCCP and designated it confidential at the time of provision, pursuant to the Protective Order.³ Riddell Decl. ¶¶ 3-6.

Finally, the third requirement is satisfied because Oracle undertakes substantial efforts to maintain confidentiality over the materials discussed above by limiting the access to, and distribution of, such information and because Oracle provided it to OFCCP here under an assurance of privacy. Oracle restricts internal access to the compensation- and job architecture-related information discussed above by limiting distribution to only those with a legitimate business need to know. Waggoner Decl. ¶ 14; Thrasher Decl. ¶ 7. When the information is disseminated internally, Oracle’s general practice is to mark it Confidential, Oracle Internal, and/or Highly Restricted. *Id.* 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. *Id.* For internal-network-related information, Oracle takes seriously the need to protect sensitive data and information from threats and vulnerabilities, especially information related to its employees, and, accordingly, this information is not public or outward facing, but rather is shared with a

³ All of the material that Oracle seeks to seal in this Motion was historically treated as confidential at Oracle, and all of the confidential commercial information that Oracle seeks to seal under FOIA Exception 4 was either previously produced in discovery and designated Confidential within the meaning of the Protective Order or is derived from such information. *See* Riddell Decl. ¶¶ 3-6; Waggoner Decl. ¶¶ 6-8, 14. For example, the testimony related to salary ranges in Waggoner Decl. Ex. J (Declaration of Kate Waggoner in Support of Defendant Oracle America, Inc.’s Motion for Summary Judgment ¶ 23) was not previously produced in discovery to OFCCP, but if not sealed, might reveal confidential material from a document previously produced to OFCCP and marked confidential pursuant to the Protective Order. Waggoner Decl. ¶ 6; Riddell Decl. ¶ 6. Such testimony is itself covered by the Protective Order in this case, *see* May 26, 2017 Protective Order ¶ 3 (“This Order covers . . . any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.”), and is thus offered with the same assurance of privacy provided by the Protective Order to confidential documents that were produced in discovery.

selective audience and/or exists within a secure environment that facilitates access only by employees possessing the requisite login and password credentials; with the requisite credentials, these employees are granted access to materials ranging from Oracle's confidential business strategies to its employee personnel files. Thrasher Decl. ¶¶ 5-7. Likewise, as noted above, Oracle provided these materials to OFCCP and designated them confidential, pursuant to the Protective Order. Riddell Decl. ¶ 3-6. Therefore, Oracle provided the information under the assurance of privacy, pursuant to the Protective Order in this case to which the parties' agreed and are bound not to share confidentially-designated information except in limited, enumerated circumstances.⁴ Protective Order § 7.2. Because Oracle closely guards the information and because it was given to OFCCP with an assurance it would be treated as private information, it is exempted from disclosure under FOIA 4. *See Argus Leader Media*, 139 S. Ct. at 2366; *see also* Order Granting Motion to Seal, dated August 9, 2019 at 4-6 (granting motion to seal commercial/financial information that was treated as confidential and produced to OFCCP as confidential pursuant to the protective order).

B. FOIA Exemption 6 Precludes Disclosure of Confidential and Private Employee Information Attached in Support of Oracle's Motions.

1. There is a Privacy Interest in Protecting Confidential Information Related to Employee Compensation.

The names and compensation information of employees identified in the materials that Oracle seeks to seal was derived from confidential personnel files and similar files and databases housing private employee information (Waggoner Decl. ¶ 7) and is exempted from disclosure pursuant to FOIA Exemption 6, because such a disclosure is unwarranted where the employees' privacy interests outweigh the public's interest in disclosure. *U.S. Dep't of Def.*, 510 U.S. at 495. Disclosure of individual employees' names and salaries does not contribute to the public's understanding of "what the government is up to" for purposes of understanding this litigation on

⁴ Section 7.2 of the Protective Order permits dissemination only to those to whom disclosure is reasonably necessary for the litigation, who are either, the ALJ, court reporters, experts, or witnesses that have signed an agreement not to disclose the information, or to custodians of the information or those with pre-existing knowledge of the information and recipients to whom disclosure is required by law.

the whole, let alone the merits of Oracle's present Motions to which this sealing motion relates, and thus is properly exempt under the statute because the public has no interest in the information. *See, e.g., Long v. Office of Pers. Mgmt.*, 692 F.3d 185, 193 (2d Cir. 2012) (names, salary, and job classification information of various government employees exempted from disclosure because there was little to no public interest in learning the information and a cognizable privacy interest favoring protection); *Fed. Labor Relations Auth. v. U.S. Dep't of Veterans Affairs*, 958 F.2d at 512 (precluding disclosure of employee names and home addresses); *Schwarz v. U.S. Dep't of Treasury*, 131 F.Supp.2d 142, 150 (D.D.C.2000) (disclosure of names does not contribute to public's understanding of government functions); *Voinche v. FBI*, 940 F.Supp. 323, 330 (D.D.C. 1996) *aff'd*, No. 95CV01944, 1997 WL 411685 (D.C. Cir. June 19, 1997) (same); *Painting & Drywall Work Pres. Fund, Inc. v. Dep't of Hous. & Urban Dev.*, 936 F.2d 1300, 1303 (D.C. Cir. 1991) (same). As this Court has recognized in a prior order granting a motion to seal the same types of information while the public has no meaningful interest in employee names and salaries, there is a compelling privacy interest in the information:

Individual salary information is the sort of information that is found in personnel files and the individuals in question have a legitimate and compelling privacy interest in their actual and prospective earnings at Oracle. Moreover, disclosure of this particular information would not serve the 'core purpose of FOIA' because it provides no information on the operations or activities of the government. The...[information is] irrelevant to any determination that might be reached...in this litigation.

April 24, 2019 Order Granting Unopposed Motion to Seal.

Oracle has undertaken substantial efforts to maintain confidentiality over the materials discussed above by limiting the access to, and distribution of, such information. Waggoner Decl. ¶ 11, 14. Even internally Oracle restricts access to the information it has designated as confidential and limits distribution to those who have a legitimate business need-to-know. *Id.* In fact, when the information was broadcast to a wider internal audience, Oracle often designated such information as Confidential, Oracle Internal, and/or Highly Restricted. *Id.* ¶ 14. Oracle also controls and safeguards this information by entering into agreements with employees that

prohibit them from sharing any proprietary information externally or internally in the absence of a legitimate business need. *Id.* For purposes of this lawsuit, all such information is either the subject of a protective order and is covered by Oracle's confidential designations or is the proper subject of a motion to seal under 29 C.F.R. § 18.85, including data and personnel information related to the individuals identified in the materials sought to be redacted. *See* Riddell Decl. ¶¶ 3-6.

As explained above, there exists a substantial probability that the privacy interests of Oracle's employees would be placed in significant jeopardy if the materials Oracle seeks to seal were made publicly available, and this Court has already determined that such information should be protected. *See* April 24, 2019 Order Granting Unopposed Motion to Seal (sealing information related to the identities and salaries of particular employees).

2. There is a Privacy Interest in Protecting Confidential Information Related to Employee Performance Evaluations.

Oracle also seeks to seal information related to performance evaluations covering certain current and former employees who are non-parties to the litigation. Dodson Decl. ¶ 3-5. Similar to their individual compensation information, employees have a cognizable privacy interest in information related to assessments of their skills and/or work performance. There is no countervailing public interest to override this concern. *See Kowack*, 766 F.3d at 1136 (where there is no public interest in the information, even a modest privacy interest “outweighs nothing every time.”). The personal privacy interests of the Oracle employees who are identified by name, or whose identities could be easily discerned if the materials Oracle seeks to seal were to be disclosed, are multifold and would be directly compromised if the material became public. Dodson Decl. ¶ 6. Not only would the disclosure of these materials amount to an intrusion on their privacy interests, it could also lead to embarrassment because it would reveal candid assessments of their skills and performance that were undertaken in confidence. *Id.* Beyond embarrassment, disclosure could damage these individuals' professional reputations. Furthermore, if the Court permits these materials to become part of the public record, doing so

could compromise the candor with which employee reviews are made in the future, thus compromising the integrity of the system and the employees' ability to build upon feedback necessary to develop and advance in their careers. Likewise, public disclosure would serve to erode employee confidence in Oracle's commitment to safeguarding their privacy interests—thereby potentially undermining these employees' job satisfaction. *Id.*

3. There is a Privacy Interest in Protecting Personally-Identifying Details About Current and Former Oracle Employees.

Oracle seeks to seal portions of evidence that identify current and/or former Oracle employees. Dodson Decl. ¶ 3. The evidence that concerns these employees is based on data and information Oracle does not share with the public. The information comes from Oracle's personnel data, thus the first prong of FOIA Exemption 6 is satisfied, because it is derived from personnel or similar files. Dodson Decl. ¶ 4; *U.S. Forest Serv.*, 524 F.3d at 1023 (employee names in report are “similar files”). The second prong of FOIA 6 is satisfied because release of the information would constitute an unwarranted invasion of personal privacy. The public has no interest in access to the information. *Id.* at 25 (redacting names noting “information about private citizens . . . that reveals little or nothing about an agency's own conduct” is not the type of information to which FOIA permits access.”). As such, “release of the names . . . would serve no articulable public interest” thus sealing under FOIA Exemption 6 is correct. *Voinche*, 940 F. at 330 (withholding names). *See also Lakin Law Firm, P.C. v. F.T.C.*, 352 F.3d 1122, 1124 (7th Cir. 2003). Especially here, in a case that has garnered so much media attention, public release of current and/or former employee names or identifying information could lead to harassment by the media and/or aggregation of their personal information for any other purpose once their information and connection with this suit hits the internet. Accordingly, there is a cognizable privacy interest in their identities. *See U.S. Forest Serv.*, 524 F.3d at 1026 (“the potential for harassment that drew the district court's attention was that which would be presented by the media [and] curious neighbors . . .” if names were released).

In addition, Oracle has carefully and narrowly tailored its redactions to ensure that only

information that can be used to identify an individual is sealed. Oracle recognizes that based on the context, not all information of a similar kind needs to be sealed. For example, Oracle only seeks to seal certain degree information because some employee degrees render that individual more likely to be identified than others. *Compare* Riddell Decl. Ex. T (Saad Rebuttal Report) at ¶ 29, Example 2, p. 25 (redacting employee's major and degree information) *with* Ex. T at ¶ 30, Example 3, p. 29 (no redactions to employee's degrees in computer science because computer science degrees are common at Oracle, thus non-identifying by themselves, but redacting other identifying education-related information).

Because there is a cognizable privacy interest in the identifying information found in these materials, but no cognizable interest in public access, they should be sealed under FOIA exemption 6.

IV. CONCLUSION

For the foregoing reasons, Oracle respectfully requests that the court grant Oracle's Motion to Seal limited portions of the evidence submitted in support of Oracle's Motions.

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Respectfully submitted,

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