

**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

**ORACLE AMERICA, INC.'S
MOTION TO SEAL LIMITED
PORTIONS OF EVIDENCE
SUBMITTED IN SUPPORT OF
PLAINTIFF OFCCP'S
OPPOSITION TO ORACLE'S
MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION
TO ORACLE AMERICA, INC.'S
MOTION TO EXCLUDE THE
EXPERT REPORT AND
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, "Protective Order"), Defendant Oracle America, Inc. ("Oracle") moves to seal limited portions of the materials submitted in support of Plaintiff OFCCP's Opposition to Oracle's Motion for Summary Judgment and Opposition to Oracle's Motion to Exclude the Expert Report and Testimony of Janice Fanning Madden, Ph.D. (collectively "Oppositions").

In accordance with this Court's November 12, 2019 Order, the parties met and conferred regarding the limited materials Oracle seeks to seal. To narrow the disputes between the parties Oracle de-designated various confidential materials though they are exempt from disclosure under FOIA. As detailed in the chart below, indicating areas of agreement and/or disagreement, OFCCP opposes sealing all material protected from disclosure under FOIA Exemption 4, and some materials protected from disclosure under FOIA Exemption 6—including information this Court previously ordered sealed, such as salary ranges and individual salary information.

The limited information in the material that Oracle seeks to seal consists of confidential commercial information and/or private information about Oracle employees and job candidates, which is exempt from Freedom of Information Act ("FOIA") disclosure. Much of the material 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 it is subject to a proper motion to seal and/or was provided 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 should be sealed under FOIA Exemption 6 because it contains personally identifying and confidential information about non-party current and/or former Oracle employees and/or Oracle job candidates that is derived from or stored in personnel 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 and job candidates.

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 former employees and job candidates private because disclosure would undermine those individuals' privacy rights and harm Oracle's relationship with those individuals. Oracle does not share its confidential commercial information or employee/candidate 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 OFCCP filed and that Oracle seeks to protect with this motion is subject to a motion to seal and/or 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." Oracle has gone to great lengths to ensure that the vast majority of the briefing and supporting evidence at issue 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 seeks to seal is entitled to protection against public disclosure.¹

Specifically, Oracle moves to seal the following portions of its Reply²:

Graham MTS Decl., Ex.:	Document Name	Confidential Material	Areas of Agreement and/or Disagreement and Other Locations on the Docket
A	Evidentiary Objections to Declaration of Kate Waggoner	Salary range information: p. 12 (FOIA 4)	OFCCP opposes all proposed redactions. No other location on the docket.

¹ Oracle does not move to seal any portions of the Declaration of Jane Suhr in Support of OFCCP's Opposition, though certain portions of the declaration and exhibits thereto contain personally identifying and discrete salary information. The materials were publicly-filed on April 24, 2017, with Oracle's Motion for Summary Judgment, or, in the Alternative, to Stay the Proceedings for Failure to Conciliate, when this litigation was in a nascent stage and before the proactive disclosure Order was in place. While publicly-filed, the materials do not divulge any of the materials Oracle otherwise seeks to seal through this Motion.

² Exhibit references are to the redacted documents filed as exhibits to the Declaration of Lara F. Graham in Support of Defendant Oracle America, Inc.'s Motion to Seal ("Graham MTS Decl."). The FOIA exemption under which Oracle proposes to seal each item of confidential material is included in parentheses.

Graham MTS Decl., Ex.:	Document Name	Confidential Material	Areas of Agreement and/or Disagreement and Other Locations on the Docket
B	OFCCP's Statement of Genuine Disputes of Material Fact	<p>Confidential information related to focal budgets, salaries, and bonuses: pp. 7, 46, 101, 114-115, 118 (FOIA 4)</p> <p>Confidential information regarding equity grants: pp. 35, 100, 118 (FOIA 4)</p> <p>Confidential compensation and offer information for non-party job candidates: pp. 37, 175 (FOIA 4 and 6)</p> <p>Confidential college recruit compensation structure information: <i>Id.</i> (FOIA 4)</p> <p>Compensation information of non-party employees: p. 115 (FOIA 4 and 6)</p> <p>Identifying information of non-party job candidates, including names: pp. 37, 43, 120, 174-176, 186 (FOIA 6)</p> <p>Identifying personnel information of non-party employee including name and job-related information: p. 106 (FOIA 6)</p>	<p>OFCCP opposes all compensation- and budget-related redactions, including individual salary and general salary information, and equity-related information.</p> <p>OFCCP does not oppose sealing names and job-related identifying information.</p> <p>No other location on the docket.</p>
C	OFCCP's Statement of Additional Uncontested Material Facts in Opposition to Oracle America, Inc.'s Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment	Identifying information of non-party job candidates, including names: p. 9 (FOIA 6)	<p>OFCCP does not oppose these proposed redactions.</p> <p>No other location on the docket.</p>

Graham MTS Decl., Ex.:	Document Name	Confidential Material	Areas of Agreement and/or Disagreement and Other Locations on the Docket
D	Declaration of Laura C. Bremer in Support of OFCCP's Opposition to Oracle America, Inc.'s Motion for Summary Judgment, or, in the Alternative, for Partial Summary Judgment and Exhibit List ("Bremer Decl.")	Identifying information of non-party job candidates: ¶ 32 and exhibit list p. 2 (FOIA 6)	OFCCP does not oppose these proposed redactions. No other location on the docket.
E	Bremer Decl., Ex. 8 ((30(b)(6) Deposition of Kate Waggoner taken on July 19, 2019)	Confidential information related to focal budgets: pp. 247:11-12, 24; 248:5; 263:16-18, 21; 308:4-5, 7-10, 20, 22, 24 (FOIA 4) Confidential information regarding equity grants: pp. 272:14-15; 273:9-11, 13; 274:2, 16, 18 (FOIA 4)	OFCCP opposes all proposed redactions. While Oracle has previously moved to seal portions of the 30(b)(6) Kate Waggoner deposition testimony, this excerpt differs from the excerpt Oracle previously moved to seal.
F	Bremer Decl., Ex. 10 (Declaration of Wilbur A. Colin McGregor)	Identifying personnel information, including names and job-related information, of non-party employees in paragraphs discussing sensitive compensation and performance-related information: ¶¶ 9, 13, 15 (FOIA 6)	OFCCP does not oppose these proposed redactions. No other location on the docket.

G	Bremer Decl., Ex. 11 (Deposition of Juan Loaiza taken June 14, 2019)	<p>Confidential race information about non-party employee: p. 27:2-4 (FOIA 6)</p> <p>Identifying personnel information of non-party employee: pp. 282:21, 290:24 (FOIA 6)</p> <p>Confidential information regarding focal salary increases: pp. 131:3, 7, 9, 11-12, 18 (FOIA 4)</p> <p>Confidential information related to compensation strategies, levels, and allocation: pp. 306:2, 8-9 (FOIA 4)</p>	<p>OFCCP does not oppose the proposed redactions at 27:2-4, 282:21, or 290:24.</p> <p>OFCCP opposes all other proposed redactions.</p> <p>While Oracle has previously moved to seal portions of Juan Loaiza deposition testimony, this excerpt differs from the excerpt Oracle previously moved to seal.</p>
H	Bremer Decl., Ex. 12 (Declaration of Avinash Pandey)	Identifying personnel information of non-party employee including name and job-related information: ¶ 12 (FOIA 6)	<p>OFCCP does not oppose these proposed redactions.</p> <p>No other location on the docket.</p>
I	Bremer Decl., Ex. 15 (Declaration of Donna Kit Yee Ng)	Identifying personnel information of non-party employee including name, along with confidential employee status: ¶ 12 (FOIA 6)	<p>OFCCP does not oppose these proposed redactions.</p> <p>No other location on the docket.</p>

J	Bremer Decl., Ex. 17 (Deposition of Kate Waggoner in her personal capacity taken May 1, 2019)	Confidential salary range information p. 88:17, 20 (FOIA 4)	OFCCP opposes all proposed redactions. While Oracle has previously moved to seal portions of the Kate Waggoner deposition testimony, this excerpt differs from the excerpt Oracle previously moved to seal.
K	Bremer Decl., Ex. 21 (Declaration of Lynn Snyder)	Identifying personnel information, including names and job-related information, of non-party employee with paragraphs discussing sensitive compensation and performance-related information: ¶¶ 9, 14, 16 (FOIA 6)	OFCCP does not oppose these proposed redactions. No other location on the docket.
L	Bremer Decl., Ex. 22 (ORACLE_HQCA_0000380453)	Confidential college recruit compensation structure information (FOIA 4)	OFCCP opposes all proposed redactions. No other location on the docket.
M	Bremer Decl., Ex. 23 (ORACLE_HQCA_0000012587)	Confidential college recruit compensation structure information (FOIA 4)	OFCCP opposes all proposed redactions. No other location on the docket.
N	Bremer Decl., Ex. 24 (ORACLE_HQCA_0000023717)	Confidential college recruit compensation structure information (FOIA 4)	OFCCP opposes all proposed redactions. No other location on the docket.

O	Bremer Decl., Ex. 25 (ORACLE_HQCA_00000380671_380673)	Confidential college recruit compensation structure information at ORACLE_HQCA_0000380671 (FOIA 4)	OFCCP opposes all proposed redactions. No other location on the docket.
P	Bremer Decl., Ex. 26 (ORACLE_HQCA_0000012204_12210)	Identifying personnel information, including name of non-party job candidate within email discussing confidential college recruit compensation structure information and confidential salary-offer information for non-party job candidate at ORACLE_HQCA_0000012204-12208 (FOIA 4 and 6)	OFCCP opposes all compensation- and salary-related redactions. OFCCP does not opposing sealing names. No other location on the docket.
Q	Bremer Decl., Ex. 27 (ORACLE_HQCA_0000011640_11645)	Identifying personnel information, including name of non-party job candidate within email discussing confidential compensation and offer information for non-party job candidate and confidential college hire compensation structure at ORACLE_HQCA_0000011640-11641 (FOIA 4 and 6)	OFCCP opposes all compensation- and salary-related redactions. OFCCP does not opposing sealing names or email address. No other location on the docket.

R	Bremer Decl., Ex. 28 (ORACLE_HQCA_000001 2173-12183)	Identifying personnel information, including name and address of non-party job candidate within email discussing confidential compensation and offer information for non-party job candidate and confidential college hire compensation structure at ORACLE_HQCA_0000012173 -12176 (FOIA 4 and 6)	OFCCP opposes all compensation- and salary-related redactions. OFCCP does not opposing sealing names, address, phone number, or email address. No other location on the docket.
S	Bremer Decl., Ex. 29 (ORACLE_HQCA_000003 6993 to 0000036994)	Identifying personnel information, including name and address of non-party job candidate at ORACLE_HQCA_0000036993 (FOIA 6)	OFCCP does not oppose these proposed redactions. No other location on the docket.
T	Bremer Decl., Ex. 30 (Declaration of Bhavana Sharma)	Identifying personnel information about non-party employees, including names: ¶¶ 8-10 (FOIA 6)	OFCCP does not oppose these proposed redactions. No other location on the docket.

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). “FOIA expressly recognizes that ‘important interests are served by its exemptions,’ and ‘those exemptions are as much a part of FOIA’s purposes and policies as the statute’s disclosure requirement.’” *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019) (internal citations and brackets omitted) (emphasis added). 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.” *Argus Leader Media*, 139 S. Ct. at 2366.³

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*

³ 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 with 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.

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 (1982). “[R]ecords containing information that applies to particular individuals satisfy the threshold [similar files] test of Exemption 6.” *Forest Serv. Emps. 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. Emps. v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989).

III. ARGUMENT

A. FOIA Exemption 4 Precludes Disclosure of the Confidential Commercial Information Filed in Support of OFCCP’s Opposition.

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. The compensation-related materials include: specific, detailed salary information, equity distribution strategies, bonus allocation strategies, employee retention strategies, strategies regarding initial offers to new employees and job candidates, focal reviews and focal budgets, and compensation information for specific, non-party employees. *See* Declaration of Kris Edwards in Support of Defendant Oracle America Inc.’s Motion to Seal Oracle’s Reply (“Edwards MTS Decl.”) ¶¶ 4-8.

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.

Compensation Structures. The salary information and ranges associated with various positions, and Oracle’s business reasons and strategies related to focal budget and compensation practices comprises commercial information, thus satisfying the first prong of FOIA Exemption 4. Oracle developed and refined its compensation strategies after substantial effort and investment, with the objective of advancing its interests and attracting and retaining employees. Edwards MTS Decl. ¶ 6. 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.* ¶ 7. As this Court explained in a prior Order granting a motion to seal compensation-related information:

Oracle’s ability to attract and retain the employees it seeks in the fluid labor market would likely be impaired if its competitors had knowledge of the details of the salary ranges it has used for particular positions and/or the actual compensation and proposed/negotiated salaries of particular employees. With particularized information about Oracle’s compensation structure, a competitor could out-bid/compete Oracle in the labor market by ascertaining the offers that Oracle will likely make and altering its offers and negotiating position accordingly in order to attract the top talent.

April 24, 2019 Order Granting Unopposed Motion to Seal at pp. 3-4.

The second requirement of FOIA 4 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, or it is subject to a motion to seal, pursuant to the Protective Order.⁴ Graham MTS Decl. ¶ 3.

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

⁴ 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 Exemption 4 was either previously produced in discovery and designated Confidential within the meaning of the Protective Order (or is derived from such information), was filed in this matter with a concurrent motion to seal, or was filed in this matter and Oracle has indicated to the Court and OFCCP, by letter, it will move to seal. *See* Graham MTS Decl. ¶ 3.

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. Edwards MTS Decl. ¶ 12. Oracle 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.* Oracle takes seriously the need to protect its commercially sensitive data and information related to its employees and business strategies, and, accordingly, this information is not public or outward facing, but rather is shared with a selective audience and 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. *Id.*

Likewise, as noted above, Oracle provided these materials to OFCCP and designated them confidential, filed the materials in this matter with a concurrent motion to seal, or indicated it will move to seal the materials pursuant to the Protective Order. Graham MTS Decl. ¶ 3. 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.⁵ 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

⁵ 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.

order).

Lastly, Oracle has proposed narrow redactions and is not attempting to seal general compensation structure information. 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, salary amounts for various positions, increase amounts and justifications, and the business reasons and strategies that drive its focal budgets.

B. FOIA Exemption 6 Precludes Disclosure of the Confidential and Private Employee and Candidate Information Submitted in Support of OFCCP's Opposition.

1. There Is a Privacy Interest in Protecting Confidential Information Related to Employee Compensation and Job Candidate Salary Offers.

The names and compensation information of employees and job candidates identified in the materials that Oracle seeks to seal was derived from confidential personnel and similar files and databases housing private employee or candidate information, *see* Edwards MTS Decl. ¶ 9; Declaration of Anje Dodson in Support of Oracle's Motion to Seal Oracle's Reply ("Dodson MTS Decl.") ¶¶ 4-5, and is exempted from disclosure pursuant to FOIA Exemption 6, because such a disclosure is unwarranted where the individual's privacy interests outweigh the public's interest in disclosure. *See U.S. Dep't of Def.*, 510 U.S. at 488. Disclosure of individual employees' and candidates' names and salaries does not contribute to the public's understanding of "what their government is up to" for purposes of understanding this litigation, 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 503, 512 (2d Cir. 1992) (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. F.B.I.*, 940 F. Supp. 323, 330 (D.D.C. 1996), *aff'd*, 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 at 3.

Oracle has undertaken substantial efforts to maintain confidentiality over the materials discussed above by limiting the access to, and distribution of, such information. *See* Edwards MTS Decl. ¶ 9; Dodson MTS Decl. ¶¶ 5-6. 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.* Oracle also controls and safeguards this information by entering into agreements with employees that prohibit them from sharing any confidential 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 personnel information related to the individuals identified in the materials sought to be redacted. *See* Graham MTS Decl. ¶ 3.

As explained above, there exists a substantial probability that the privacy interests of Oracle's employees and job candidates 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 at 3-4 (sealing information related to the identities and salaries of particular employees).

2. **There Is a Privacy Interest in Protecting Confidential Information Related to Employee and Job Candidate Information Contained in Salary Justifications.**

Oracle also seeks to seal information related to salary justifications which contain assessments of current or former employees or job candidates, who are non-parties to the litigation. *See, e.g.*, Graham MTS Decl., Ex. S; Dodson MTS Decl. ¶¶ 3-6; Edwards MTS Decl. ¶ 8-10. 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 and candidates 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 MTS Decl. ¶ 7. 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. 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 and Oracle Job Candidates.**

Oracle seeks to seal portions of evidence that identify current and/or former Oracle employees, as well as individuals who applied or were considered as candidates for jobs at Oracle. Dodson MTS Decl. ¶¶ 3-6. OFCCP does not oppose sealing this information. 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 or Oracle's secure systems for storing job candidate information, thus the first prong of FOIA Exemption 6 is satisfied because it is derived from personnel or similar files. Dodson MTS Decl. ¶ 4; *U.S. Forest Serv.*, 524 F.3d at 1024 (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 1025 (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. Supp. 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 or job candidate 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. In addition, the public release of identifying information for employees and job candidates could lead to embarrassment for those individuals and would erode employees' or job candidates' confidence in Oracle's commitment to safeguarding their privacy interests. Accordingly, there is a cognizable privacy interest in protecting the identities of these individuals. *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).

Oracle has carefully and narrowly tailored its redactions to ensure that only information that can be used to identify an individual is sealed. 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.

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IV. CONCLUSION

For the foregoing reasons, Oracle respectfully requests that the Court grant Oracle's Motion to Seal limited portions of Oracle's Reply.

November 18, 2019

Respectfully submitted,

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