

**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 DEFENDANT  
ORACLE AMERICA, INC.'S  
MOTION TO EXCLUDE OR, IN  
THE ALTERNATIVE, MOTION  
TO SEAL LIMITED PORTIONS  
OF THE EVIDENCE  
SUBMITTED IN SUPPORT OF  
OFCCP'S OPPOSITION TO  
ORACLE'S MOTION FOR  
PROTECTIVE ORDER**

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ORACLE AMERICA, INC.'S MOTION TO EXCLUDE OR, IN  
THE ALTERNATIVE, MOTION TO SEAL

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## I. INTRODUCTION

Oracle America, Inc. (“Oracle”) moves to exclude, or in the alternative, to seal the expert materials submitted by OFCCP in support of its October 17, 2019 Opposition to Oracle’s Motion for Protective Order, or, in the Alternative, Motion to Strike OFCCP’s Expert Analyses (“OFCCP’s Opposition”).<sup>1</sup> In ruling on Oracle’s Motion and OFCCP’s Opposition, this Court stated that it did not consider the expert materials submitted by OFCCP. Oracle recognizes that in a different context *some* of the expert materials OFCCP submitted here properly will be before the Court and relevant, such as in connection to the parties’ cross motions for summary judgment and *Daubert* motions. In connection with those motions, Oracle will move to seal as appropriate. In this context however, as the Court acknowledged, the materials were irrelevant and the Court did not review them. As such, Oracle believes it is more appropriate to strike them all together (which also avoids asking the Court to go through the exercise of analyzing and ruling on a sealing motion at this time). If, however, this Court prefers to admit the materials as connected with OFCCP’s Opposition, Oracle moves in the alternative, to seal limited portions as explained below.

### *Motion to Exclude Exhibits A, D, E, G, and H to the Declaration of Laura Bremer.*

Pursuant to 41 C.F.R. § 60-30.19, Oracle objects to the admission of, and moves to exclude from the record Exhibits A, D, E, G, and H to the Declaration of Laura Bremer in support of OFCCP’s Opposition as irrelevant and thus inadmissible. Exhibits A, D, E, G, and H consist of the expert materials OFCCP filed in support of its Opposition, which the Court deemed irrelevant to resolving the parties’ dispute. More specifically, this Court, in ruling on the issue, explicitly stated it had “not reviewed the content of the expert reports submitted with OFCCP’s Opposition.” In light of the foregoing, they should be stricken from the record, which would entirely moot Oracle’s alternative motion to seal that follows below.

### *Motion to Seal in The Alternative, Limited Portions of the Exhibits A, D, E, G, and H to the Declaration of Laura Bremer.*

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<sup>1</sup> Oracle’s Motion for Protective Order, or, in the Alternative, Motion to Strike OFCCP’s Expert Analyses, hereinafter referred to as “Oracle’s Motion.”

If this Court admits the materials Oracle moves to exclude, Oracle also moves, in the alternative, to seal limited portions of those materials 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").

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 the vast majority of the supporting evidence at issue remains

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.

Specifically, Oracle moves to seal the following portions of the evidence submitted in support of OFCCP’s Opposition<sup>2</sup>:

<b>Exhibit</b>	<b>Document Name</b>	<b>Confidential Material</b>
<b>A</b>	Declaration of Laura C. Bremer in Support of OFCCP’s Opposition to Oracle’s Motion for a Protective Order (“Bremer Decl.”), Ex. A: Expert Report of Janice Madden, Ph.D., July 19, 2019	Information about bonus awards (FOIA 4): pp. 11, 26 (fn. 15) Information about stock awards (FOIA 4): pp. 11, 23-24, 36, 44
<b>B</b>	Bremer Decl., Ex. D: Expert Rebuttal Report of Janice Madden, Ph.D., August 16, 2019	Pay growth data (FOIA 4): p. 52 (Table R10)
<b>C</b>	Bremer Decl., Ex. E: Declaration of Janice F. Madden, October 11, 2019	Oracle compensation information (FOIA 4): Ex. C <sup>3</sup>
<b>D</b>	Bremer Decl., Ex. G: Expert Rebuttal Report of Ali Saad, Ph.D., August 2019	Oracle compensation information (FOIA 4): ¶¶ 38 (fn. 40), 39, 41 Personnel information of non-party employees (FOIA 6): ¶¶ 28-30 (including Examples 1-3) (fn. 23-24), 48, and p. B3 Compensation information for specific non-party employees

<sup>2</sup> Exhibit references are to the redacted documents filed as exhibits to the Declaration of Jonathan Riddell in Support of Defendant Oracle’s Motion to Seal Portions of the Evidence Submitted in Support of OFCCP’s Opposition to Oracle’s Motion for Protective Order (“Riddell MTS OFCCP Opp. Decl.”). The FOIA exemption under which Oracle proposes to seal each item of confidential material is included in parentheses. Although this Court noted that these particular materials were not considered in reaching its decision on Oracle’s Motion for Protective Order, *see* Order Denying Oracle’s Motion for a Protective Order, or, in the Alternative, to Strike Without Prejudice to Subsequent Motions and Objections Concerning the Disputed Expert Materials at 3 n.2, Oracle nonetheless moves that they be sealed to the extent they remain part of the record in this case. Oracle further notes that Bremer Decl. Ex. E (attached in redacted form as Riddell Decl. Ex. C) contains the only new material that Oracle seeks to seal in this motion, as Oracle previously moved to seal portions of the other four documents at issue in its October 21, 2019 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 Oracle’s Motion to Exclude the Testimony of Janice Fanning Madden, Ph.D. Accordingly, this memorandum relies on substantially the same arguments and authorities found in Oracle’s October 21 filing.

<sup>3</sup> The October 11, 2019 Declaration of Janice F. Madden (“Madden Decl.”) is attached to the Bremer Decl. as Exhibit E. Within that exhibit, the information found at Madden Decl. Exhibits A-B and D1-D5 includes expert regression analysis. This Motion does not seek to seal the portions amounting to regression analyses. Rather, Oracle only moves to seal the salary averages found at Madden Decl. Exhibit C which do not constitute expert analysis. Of course, this distinction is of no consequence if the Court excludes the material in its entirety as requested above. *See* section III(A) *infra*.

Exhibit	Document Name	Confidential Material
		(FOIA 6): ¶¶ 28-30 (including Examples 1-3), 37-38, 41, 48, 86 Identifying information of non-party employees (FOIA 6): ¶¶ 28-30 (fn. 23, 24), and p. B3
E	Bremer Decl., Ex. H: Expert Report of Ali Saad, Ph.D., July 19, 2019	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 teams of employees (FOIA 4): ¶ 115 (fn. 89, 91) Compensation information for specific non-party employees (FOIA 6): ¶¶ 51, 53-54, 68, 71-72, 85-89 (fn. 61), 106-107, 139, 141 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

## **II. LEGAL STANDARD**

### **A. MOTION TO EXCLUDE IRRELEVANT EVIDENCE**

“Evidence which is not relevant is not admissible.” 29 C.F.R. § 18.402. This Court is empowered to exclude irrelevant evidence pursuant to 41 C.F.R. § 60-30.15. Relevant evidence is that “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Powers v. Union Pacific RR. Co., No. 13-034*, 2015 WL 1959425, at \*16 (ARB Mar. 20, 2015). If a party objects to the admission of evidence, it shall state briefly the grounds for such objection. 41 C.F.R. § 60-30.19.

### **B. 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).<sup>4</sup>

## 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 Env’tl. 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.*

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<sup>4</sup> 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.

*Employees v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989)).

### III. ARGUMENT

#### A. The Court Did Not Treat the Expert Reports As Admissible Evidence Relevant to Its Decision on the Merits of Oracle's Motion, And They Should Therefore Be Excluded From the Record As Immaterial.

The initial and rebuttal expert reports, and OFCCP's sur-rebuttal report, submitted in support of OFCCP's Opposition as Exhibits A, D, E, G, and H to the Bremer Declaration were irrelevant to the parties' dispute and to this Court's analysis of, and subsequent Order on, the dispute, thus should be excluded from the record pursuant to 29 C.F.R. § 18.402. OFCCP cited the materials to support various assertions in its Opposition all of which amounted to irrelevant merits-based arguments concerning what the evidence shows and the experts' credibility.<sup>5</sup> As this Court stated in its October 18 Order, it ignored those portions of OFCCP's Opposition which "focus[ed] on assertions about the merits—which expert is more credible or what the evidence show[ed]" and did not review the content of the expert reports in support of those assertions, as those claims were "irrelevant to the pending dispute." Order at p. 3 fn. 2. Because this Court has already ruled that the content of the foregoing expert reports was entirely irrelevant to the parties' dispute, it should be excluded from the record.

#### B. If the Court Admits the Materials Which Oracle Moves to Exclude, Portions of Those Materials Should be Protected From Public Disclosure.

##### 1. 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, such as specific, detailed salary information and ranges for various positions, aggregate employee compensation figures, equity distribution strategies, bonus allocation strategies, focal reviews and focal budgets, and compensation information for specific, non-party

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<sup>5</sup> See e.g., Opposition at 6, 9, 12 (citing report to demonstrate what analysis was included in the experts' initial and rebuttal reports; *Id.* at 6 (citing reports to explain which variables were included in the new sur-rebuttal analysis); *Id.* at 6-9, 12 (citing reports to argue about the implication of the substance of the expert analysis on various issues in the case.).

employees. *See* Declaration of Kate Waggoner in Support of Defendant Oracle America Inc.’s Motion to Seal Portions of the Evidence Submitted in Support of OFCCP’s Opposition (“Waggoner MTS OFCCP Opp. Decl.”) ¶¶ 5-6.

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.

Oracle developed and refined the foregoing compensation information and strategies after substantial effort and investment, with the objective of advancing its interests and attracting and retaining employees. Waggoner MTS OFCCP Opp. Decl. ¶ 7. 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.* ¶ 8. Because this information reflects Oracle’s strategic decisions about how to structure and compensate its workforce, it qualifies as “commercial information” within the meaning of FOIA Exemption 4.

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 general information on how to evaluate compensation, the fundamentals and philosophy of compensation at Oracle, or 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 MTS OFCCP Opp. Decl. Ex. E (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.<sup>6</sup> Riddell MTS OFCCP Opp. Decl. ¶¶ 3-4.

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-related information discussed above by limiting distribution to only those with a legitimate business need to know. Waggoner MTS OFCCP Opp. Decl. ¶ 12. 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.* As noted above, Oracle provided these materials to OFCCP and designated them confidential, pursuant to the Protective Order. Riddell MTS OFCCP Opp. Decl. ¶¶ 3-4. 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.<sup>7</sup> Protective Order § 7.2. Because Oracle closely guards the

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<sup>6</sup> 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 MTS OFCCP Opp. Decl. ¶¶ 3-4; Waggoner MTS OFCCP Opp. Decl. ¶ 6.

<sup>7</sup> 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.

information and because it was given to OFCCP with an assurance that 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).

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

a. **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 were derived from confidential personnel files and similar files and databases housing private employee information (Waggoner MTS OFCCP Opp. Decl. ¶ 6), 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 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 MTS OFCCP Opp. Decl. ¶ 12. 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.* 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 MTS OFCCP Opp. 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).

**b. 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. Declaration of Anje Dodson in Support of Defendant Oracle America Inc.'s Motion to Seal Portions of the Evidence Submitted in Support of OFCCP's Opposition ¶ 4. The evidence that concerns these employees is based on data and information Oracle does not share with the public. *Id.* ¶ 7. 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. *Id.* ¶ 5; *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 MTS OFCCP Opp. Decl. Ex. D (Saad Rebuttal Report) at ¶ 29, Example 2, p. 25 (redacting employee's major and degree information) *with* Ex. D 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 Exclude, or in the Alternative, Motion to Seal limited portions of the evidence submitted in support of OFCCP's Opposition.

October 31, 2019

Respectfully submitted,

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