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FILED
SAN MATEO COUNTY

SEP 18 2015

Clerk of the Superior Court

By _____
DEPUTY CLERK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

CIV 535490

MARYAM ABRISHAMCAR,

Plaintiff,

vs

ORACLE AMERICA, INC and DOES 1 through
100, inclusive,

Defendants

Case No.:

Unlimited Civil Case

COMPLAINT

BY FAX

Plaintiff MARYAM ABRISHAMCAR ("Plaintiff"), by her attorneys, brings this action on behalf of herself and similarly aggrieved employees of Defendants ORACLE AMERICA, INC ("Oracle") and DOES 1 through 100 Plaintiff hereby alleges as follows

NATURE OF THE ACTION

1 Plaintiff brings this action in her individual capacity and on behalf of all aggrieved former and current employees of Defendants pursuant to the California Labor Code

1 Private Attorneys General Act of 2004 (“PAGA”) Plaintiff alleges Oracle engaged in violations
2 of the Labor Code in its commission wage practices and policies as described below These
3 violations apply to Plaintiff and other similarly aggrieved current and former Oracle employees,
4 including individuals who held commissioned sales positions in California, (collectively, Oracle
5 Employees) Plaintiff further alleges that such violations are ongoing and continuing

6 2. By this action Plaintiff seeks penalties and attorneys’ fees and costs.

7 **THE PARTIES**

8 3 Plaintiff is a California resident and a natural person.

9 4 Plaintiff is informed and believes and on that basis alleges that ORACLE
10 AMERICA, INC (“Defendant” or “Oracle”) was and at all times herein mentioned was a
11 corporation doing business in the State of California and within the County of San Mateo

12 5 The names and capacities of Defendants sued as Does 1 through 100 are presently
13 not known to Plaintiff. Plaintiff therefore sues said Defendants by such fictitious names pursuant
14 to § 474 of the California Code of Civil Procedure Plaintiff will seek to amend this Complaint to
15 allege the true names and capacities of these Doe Defendants when they are ascertained. Plaintiff
16 is informed and believes and thereupon alleges that the fictitiously named defendants are
17 responsible in some manner for the conduct alleged herein and for the injuries suffered by
18 Plaintiff and similarly aggrieved employees All named Defendants, and DOES 1 through 100,
19 will be collectively referred to as “Defendants ”

20 6 At all times mentioned in the cause of action alleged herein, each and every
21 defendant was an agent, joint venturer, and/or alter ego of each and every other Defendant. In
22 doing the things alleged in the cause of action stated herein, each and every Defendant was
23 acting within the course and scope of this agency or employment and was acting with the
24 consent, permission, authorization, and ratification of every other Defendant or their officers or
25 managing agents

26 7. Oracle is, and at all relevant times was, an employer under applicable California
27 Industrial Welfare Commission (“IWC”) Orders, the California Labor Code, and California law

1 contract signed by Oracle Employees Oracle's purported commission contract further states that
2 Oracle is permitted to unilaterally and retroactively determine the amount of commissions paid
3 to be any amount (or no amount at all) and to change commission rates based on any subjective,
4 disclosed or undisclosed grounds retroactively applied to Oracle Employees as solely determined
5 by Oracle at any time Said provisions violate Section 2751

6 12 Third, Plaintiff is informed and believes and thereon alleges that Oracle reduced
7 commissions earned by Plaintiff and Oracle Employee after sales were booked, based on
8 undisclosed criteria, decisions, or methods not disclosed in Oracle Employees' commissions
9 plans and not disclosed in advance to Oracle Employees Oracle illegally reduces commissions
10 retroactively based on retroactively applied grounds, criteria and or methods that are not defined
11 in a signed commission contract as required by Labor Code section 2751 Oracle retroactively
12 applied criteria, undisclosed methods, rationales and subjective decisions to earned commissions
13 of Plaintiff and Oracle Employees with the effect of reducing and/or eliminating such earned
14 commissions

15 13 Fourth, Plaintiff is informed and believes and thereon alleges that Oracle failed to
16 provide a signed copy of a written commission contract to employees or a contract with
17 retroactively created terms as required by Labor Code section 2751 Oracle's purported
18 commission contracts and changes to commission amounts failed to comply with the
19 requirements of Section 2751

20 14 Plaintiff is informed and believes and thereon alleges that Oracle applied new
21 and/or modified compensation agreements and terms retroactively to Plaintiff and Oracle
22 Employees Plaintiff further alleges that Oracle made subjective, undisclosed 'retroactive'
23 changes to Plaintiff's and Oracle Employees' commission agreements during the course of their
24 employment

25 **Oracle Unlawfully Deducted Earned Commission Wages**

26 15 Fifth, Plaintiff is informed and believes and thereon alleges that Oracle reserved
27 the right to itself to make illegal deductions from Oracle Employees' commission wages to shift

1 the cost of doing business to Oracle Employees in violation of Labor Code Section 221.

2 16 Oracle reduces commissions to offset business costs which are beyond Oracle
3 Employees' work and their control. Oracle illegally deducts ordinary costs of doing business
4 from and thereby reduces payouts of earned commissions to Plaintiff and Oracle Employees.

5 17. Plaintiff further alleges that Oracle's purported commission contracts contain a
6 definition of earned commission that is circular and illusory, for the purpose of facilitating illegal
7 deductions from earned commission wages Plaintiff and Oracle Employees who meet stated
8 conditions for payment of commission wages are nevertheless subject to retroactive, subjective
9 undisclosed commission deductions not based on a disclosed method of computation Oracle
10 imposes illegal conditions precedent to payment of earned wages that are dependent on Oracle's
11 undisclosed discretionary decisions.

12 **Oracle Failed to Pay All Earned Commission Wages Within the Time Required by Law**

13 18 As a result of the aforementioned conduct, policies and practices, Oracle failed to
14 pay Plaintiff and Oracle Employees all earned commission wages due within the time required
15 by law

16 19 Oracle's policy and practice of making adjustments to commissions violates
17 Labor Code Sections 201, 202, 203, 204, and 2751 Oracle's purported commission contract
18 provided to Plaintiff and Oracle Employees expressly declines to commit to a timeframe for
19 making adjustments to commissions and reserves the right to audit commissions at any time on
20 any basis, disclosed or undisclosed

21 20 To facilitate its commission adjustments practice, the purported commission
22 contract issued to Plaintiff and Oracle Employees provides that at Oracle's unilateral discretion,
23 commission/bonus payment may be subject to an undisclosed, non-standard vesting schedule. In
24 short, per Oracle's policy, the timing of commission payments may be changed at any time,
25 regardless of when a transaction has concluded or when revenue has been booked

26 21 As a result of the above-described practices, policies, and conduct, Oracle failed
27 to compensate Plaintiff and other Oracle Employees who separated from employment wages due

1 upon separation, as required by Labor Code Section 201, 202 and 203 Oracle further failed to
2 make payment to separated Oracle Employees within the timeframes required by these laws

3 22. As a result of the above-described practices, policies, and conduct, Oracle failed
4 to pay earned commission wages to Plaintiff and other Oracle Employees on designated, regular
5 paydays and within the timeframes required by Labor Code Section 204

6 **Oracle Provided Inaccurate Wage Statements**

7 23 As a result of the above-described practices and conduct, Oracle willfully failed to
8 provide accurate itemized statements showing gross wages earned by Plaintiff and Oracle
9 Employees and rates of pay as required by Labor Code section 226

10 **Oracle Imposed an Illegal Confidentiality Agreement**

11 24 Labor Code Section 232.5 prohibits employers from requiring “as a condition of
12 employment, which an employee refrain from disclosing information about the employer's
13 working conditions ” It also prohibits requiring an employee to sign a “document that purports
14 to deny the employee the right to disclose information about the employer's working conditions ”

15 25. At all times relevant to this action, Oracle mandated that Plaintiff and Oracle
16 Employees keep confidential all of the terms and conditions of their incentive compensation
17 plans and commission agreements Oracle’s confidentiality agreement pertained to Plaintiff’s
18 and Oracle Employees’ working conditions. It is a condition of employment that Plaintiff and
19 Oracle Employees execute, accept and abide by said agreement and underlying policy

20 26. At multiple times during her employment, Plaintiff was informed by Oracle that if
21 Plaintiff failed to execute, accept and abide by the confidentiality agreement, Plaintiff would be
22 subject to termination of her job

23 **Oracle Knowingly Imposed Illegal Conditions on Employees’ Commission Plans**

24 27 Labor Code Section 432.5 prohibits employers from requiring employees or
25 prospective employees to agree, in writing, to any term or condition that is known by such
26 employer to be prohibited by law.

27 28. Plaintiff is informed and believes and thereon alleges that Oracle knew or ought
28

1 to have known that the aforementioned confidentiality agreement imposed on Plaintiff and
2 Oracle Employees was in violation of Labor Code Section 232.5

3 29 Plaintiff is informed and believes and thereon alleges that Oracle knew or ought
4 to have known that the aforementioned purported commissions contract imposed on Plaintiff and
5 Oracle Employees was in violation of Labor Code Sections 2751 and 221

6 **CAUSE OF ACTION**

7 **Private Attorneys General Act of 2004: Labor Code §§ 2698 et seq.**

8 **(Against All Defendants)**

9 30 Plaintiff incorporates by reference the allegations contained in the foregoing
10 paragraphs of this complaint as if fully set forth herein

11 31 The policies, acts and practices heretofore described were and are unlawful acts in
12 violation of applicable Labor Code sections and the applicable IWC Wage Orders. The unlawful
13 policies, acts and practices include, but are not limited to

- 14 a. failure to provide a timely, written, signed commission contract as required by
15 Section 2751,
- 16 b. failure to provide a commission contract setting forth the method by which
17 commission wages are calculated and paid as required by Section 2751,
- 18 c. unlawful deduction of expenses from earned wages in violation of Labor Code
19 Section 221,
- 20 d. failure to pay wages when due in violation of Labor Code Sections 201
21 through 204;
- 22 e. failure to provide accurate wage statements to Plaintiff and Oracle Employees
23 in violation of Labor Code Section 226,
- 24 f. imposition of an illegal confidentiality contract, policy and practice in
25 violation of Labor Code Section 232.5, and
- 26 g. imposition of confidentiality agreements and so-called commission contracts
27 on Plaintiff and Oracle Employees that Defendants knew or ought to have
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PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for judgment and relief as follows:

1. For recovery of penalties and unpaid wages as provided by the Private Attorneys General Act of 2004;
2. Reasonable attorneys' fees pursuant to California Labor Code sections 2699(g);
3. Costs of this suit;
4. Pre- and post-judgment interest; and
5. Such other and further relief as the Court deems just and proper.

Date: September 17, 2015

~~KASTNER KIM LLP~~

By: _____
DANIEL H. QUALLS
Attorneys for Plaintiff
Maryam Abrishamcar