

opening and rebuttal briefs were submitted, and oral Closing Arguments were held on May 9, 2019.

Upon due consideration of the evidence presented, and the oral arguments of counsel for the parties, and having taken the matter under submission,

IT IS *TENTATIVELY* DECIDED as follows:

1. Plaintiffs have proven by a preponderance of the evidence that Defendant Oracle violated Labor Code Section 2751(b), in that Defendant employer -- as a consistent business practice -- failed to give the commissioned employee “a signed copy of the contract” during the time period June 1, 2014 through May 31, 2016. Thus all Oracle employees in California subject to Incentive Compensation Plans at any time during the time period June 1, 2014 through May 31, 2016, are “aggrieved employees” under PAGA, for this violation. Evidence was presented and facts stipulated demonstrating that Defendant Oracle did not sign any Comp Plans during FY15 and FY16, which is the time period June 1, 2014 through May 31, 2016. The evidence is undisputed that Defendant Oracle *did* electronically sign the ICPs/ICAs for FY17 and FY18, and thus Defendant did not violate Section 2751 during those time periods.

2. Defendant Oracle did not violate Labor Code Section 2751(a) -- which requires a written contract of employment where “the contemplated method of payment of the employee involves commissions,” and that the written contract “set forth the method by which the commissions shall be computed and paid” – simply because its Comp Plans included vague provisions for the exercise of discretion. If commissions were *actually* calculated and paid using the *specific* methods, terms, components, percentages, multipliers, accelerators, and mathematics stated in the Comp Plan, there is no violation of Section 2751. On the other hand, Plaintiffs have proven by a

preponderance of the evidence that the calculation and payment of commissions, in some individual and discrete circumstances, was done pursuant to vague verbiage in the T&C involving the exercise of “discretion,” and/or was done pursuant to internal policies, procedures, or methods *not* specifically stated in the Comp Plan itself (i.e., the ICP and the T&C). As to those employees whose commission compensation was calculated and paid (or not paid) based upon the exercise of discretion or based up internal policies, practices or procedures not contained within the Comp Plan itself, Plaintiffs have made a prima facie showing by the preponderance of the evidence that those constitute a violation of Section 2751(a); and that such particular employees are aggrieved employees under PAGA.

3. Plaintiffs failed to prove by a preponderance of the evidence that Defendant violated Section 2751(b) on the basis that Defendant allegedly failed to provide a written “receipt” to commissioned employees of their signed Comp Plans. Evidence was presented that Defendant has an established electronic system whereby an employee has an electronic record (which can constitute a “receipt”) of his/her “signed” Comp Plan, including the date and time.

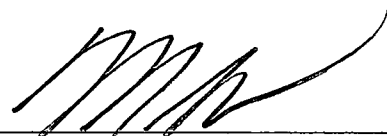
4. It is undisputed that the Comp Plans include a confidentiality clause. Plaintiffs have failed to prove that the terms of the Comp Plan constitute “working conditions”, and thus have failed to prove by a preponderance of the evidence a violation by Defendant of Labor Code Section 232.5 specifically. On the other hand, Plaintiffs have proven by a preponderance of the evidence that these identical facts and claims violate the Labor Code, specifically Section 232, as the terms of the Comp Plan pertain to “wages,” including commissions. That law prohibits an employer from barring employees from disclosing their wages and pay structure, which Defendant Oracle

violated by requiring that its Comp Plans, including the ICPs and T&Cs be deemed highly confidential and requiring in writing that employees agree to keep it confidential. Thus all Oracle employees in California subject to Incentive Compensation Plans (ICP or ICA) at any time during the time period July 24, 2014 through May 31, 2018,¹ are “aggrieved employees” under PAGA, for this violation.

5. Defendant’s request for judicial notice of legislative history is

GRANTED.

DATED: August 7, 2019



HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

¹ Subject to the particularized temporal scope decided upon pretrial as set forth in CMC Order #17.

SERVICE LIST
Abrishamcar v. Oracle, Class Action CIV 535490
as of June 2019

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