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*Attorneys for Plaintiffs*

**FILED**  
**SAN MATEO COUNTY**  
FEB 09 2018

Clerk of the Superior Court  
By   
DEPUTY CLERK

CIV535490  
ACM1  
First Amended Complaint  
974203



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

MARYAM ABRISHAMCAR and KAVI KAPUR,

Plaintiffs,

vs.

ORACLE AMERICA, INC.,

Defendant.

Case No.: CIV 535490

Unlimited Civil Case

ASSIGNED TO THE HONORABLE  
MARIE S. WEINER FOR ALL  
PURPOSES

**FIRST AMENDED COMPLAINT**

1 Plaintiffs MARYAM ABRISHAMCAR and KAVI KAPUR ("Plaintiffs"), by THEIR  
2 attorneys, bring this action on behalf of themselves and similarly aggrieved employees of  
3 Defendants ORACLE AMERICA, INC. ("Oracle") and DOES 1 through 100. Plaintiffs hereby  
4 allege as follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiffs bring this action in their individual capacities and on behalf of all  
7 aggrieved former and current employees of Defendants pursuant to the California Labor Code  
8 Private Attorneys General Act of 2004 ("PAGA"). Plaintiffs allege Oracle engaged in violations  
9 of the Labor Code in its commission wage practices and policies as described below. These  
10 violations apply to Plaintiffs and other similarly aggrieved current and former Oracle employees,  
11 including individuals who held commissioned sales positions in California, (collectively, Oracle  
12 Employees). Plaintiffs further allege that such violations are ongoing and continuing.

13 2. By this action Plaintiffs seek penalties and attorneys' fees and costs.

14 **THE PARTIES**

15 3. Plaintiff Maryam Abrishamcar is a California resident and a natural person.

16 4. Plaintiff Kavi Kapur is a California resident and a natural person.

17 5. Plaintiffs are informed and believe and on that basis allege that ORACLE  
18 AMERICA, INC ("Defendant" or "Oracle") was and at all times herein mentioned was a  
19 corporation doing business in the State of California and within the County of San Mateo.

20 6. Oracle is, and at all relevant times was, an employer under applicable California  
21 Industrial Welfare Commission ("IWC") Orders, the California Labor Code, and California law.

22 7. Plaintiff Abrishamcar worked as a sales representative for Oracle from November  
23 11, 2014 to May 11, 2015. Plaintiff Abrishamcar worked at Oracle's headquarters in Redwood  
24 Shores, California. At all times mentioned in this complaint Plaintiff Abrishamcar was under the  
25 supervision and control of Oracle.

26 8. Plaintiff Kapur worked as a sales representative for Oracle from February 2013 to  
27 May 2017. Plaintiff Kapur worked at Oracle's headquarters in Redwood Shores, California. At all

1 times mentioned in this complaint Plaintiff Kapur was under the supervision and control of Oracle.

2 **FACTUAL ALLEGATIONS**

3 **Oracle's Commission Wage Policies and Practices Violate Labor Code Section 2751**

4 9. "Whenever an employer enters into a contract of employment with an employee for  
5 services to be rendered within this state and the contemplated method of payment of the employee  
6 involves commissions," Labor Code Section 2751 ("Section 2751") requires that "the contract  
7 shall be in writing and shall set forth the method by which the commissions shall be computed and  
8 paid" and that "the employer shall give a signed copy of the contract to every employee." Oracle  
9 violates Section 2751 in multiple ways.

10 10. First, Oracle failed to provide Plaintiffs and other aggrieved Oracle Employees a  
11 written commission contract at the commencement of employment and failed to provide a signed  
12 copy of a commission contract to employees. Plaintiff Abrishamcar's employment began in  
13 November 2014 (during Fiscal Year 2014). Oracle issued to Plaintiff Abrishamcar a purported  
14 commission contract, in writing, on or about January 6, 2015. The purported commission contract  
15 was not timely provided and signed as required by Section 2751. Plaintiffs are informed and  
16 believe and thereon allege that Oracle follows a similar practice with all Oracle Employees.  
17 Plaintiffs are informed and believe and thereon allege that Oracle treats purported commission  
18 agreements as effective irrespective of whether employees' actual or electronic signatures are  
19 received at the commencement of employment as required by Section 2751. Plaintiffs are informed  
20 and believe and thereon allege that Oracle implemented purported commission agreements even  
21 if employees declined to accept or sign them.

22 11. Second, Oracle's purported commission contract provided to Plaintiffs and Oracle  
23 Employees fails to set forth the method by which commissions shall be computed and paid.  
24 Oracle's purported commission contract states that Oracle possesses unilateral discretion to  
25 retroactively reduce commission payments and deviate from, modify, cancel and/or replace any  
26 term of a commission contract (disclosed or otherwise) with commission computation terms, other  
27 terms and/or methods or commission computation not specified in a written commission contract

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

6 12. Third, Plaintiffs are informed and believe and thereon allege that Oracle reduced  
7 commissions earned by Plaintiffs and Oracle Employee after sales were booked, based on  
8 undisclosed criteria, decisions, or methods not disclosed in Oracle Employees' commissions plans  
9 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 Plaintiffs and Oracle Employees with the effect of reducing and/or eliminating such earned  
14 commissions.

15 13. Fourth, Plaintiffs are informed and believe and thereon allege that Oracle failed to  
16 provide a signed copy of a written commission contract to employees as required by Labor Code  
17 section 2751. Oracle's purported commission contracts and changes to commission amounts failed  
18 to comply with the requirements of Section 2751.

19 14. Plaintiffs are informed and believe and thereon allege that Oracle applied new  
20 and/or modified compensation agreements and terms retroactively to Plaintiffs and Oracle  
21 Employees. Plaintiffs further allege that Oracle made subjective, undisclosed 'retroactive' changes  
22 to Plaintiffs' and Oracle Employees' commissions during the course of their employment.

23 **Oracle Unlawfully Deducted Earned Commission Wages**

24 15. Plaintiffs are informed and believe and thereon allege that Oracle reserved the right  
25 to itself to make illegal deductions from Oracle Employees' commission wages to shift the cost of  
26 doing business to Oracle Employees in violation of Labor Code Section 221.

27 16. Oracle reduces commissions to offset business costs which are beyond Oracle  
28

1 Employees' work and their control. Oracle illegally deducts ordinary costs of doing business from  
2 and thereby reduces payouts of earned commissions to Plaintiffs and Oracle Employees.

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

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

11 18. As a result of the aforementioned and below-described conduct, policies and  
12 practices, Oracle failed to pay Plaintiffs and Oracle Employees all earned commission wages due  
13 within the time required by law.

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

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

24 21. Even if Oracle does not change the timing of commission payments, its standard  
25 payment schedules unreasonably delays the timing of commission payments. For most  
26 transactions, Oracle releases commission payments no earlier than 45-days-in-arrears – meaning  
27 45 days after the month in which a deal is booked or has hit all the triggers that would enable the  
28

1 commission calculation to occur. For large or mega deals (particularly high value deals), Oracle  
2 follows a 75-days-in-arrears policy. Oracle purposely delays payment of commissions by several  
3 pay periods by operation of these standard schedules that are uniformly applicable to Oracle  
4 Employees, including Plaintiffs.

5 22. As a result of the above-described practices, policies, and conduct, Oracle failed to  
6 compensate Plaintiffs and other Oracle Employees who separated from employment wages due  
7 upon separation, as required by Labor Code Section 201, 202 and 203. Oracle further failed to  
8 make payment to separated Oracle Employees within the timeframes required by these laws.

9 23. As a result of the above-described practices, policies, and conduct, Oracle failed to  
10 pay earned commission wages to Plaintiffs and other Oracle Employees on designated, regular  
11 paydays and within the timeframes required by Labor Code Section 204.

12 **Oracle Provided Inaccurate Wage Statements**

13 24. As a result of the above-described practices and conduct, Oracle willfully failed to  
14 provide accurate itemized statements showing gross wages earned by Plaintiffs and Oracle  
15 Employees and rates of pay as required by Labor Code section 226.

16 **Oracle Imposed an Illegal Confidentiality Agreement**

17 25. Labor Code Section 232.5 prohibits employers from requiring “as a condition of  
18 employment, which an employee refrain from disclosing information about the employer's  
19 working conditions.” It also prohibits requiring an employee to sign a “document that purports to  
20 deny the employee the right to disclose information about the employer's working conditions.”

21 26. At all times relevant to this action, Oracle mandated that Plaintiffs and Oracle  
22 Employees keep confidential all of the terms and conditions of their incentive compensation plans  
23 and commission agreements. Oracle’s confidentiality agreement pertained to Plaintiffs’ and Oracle  
24 Employees’ working conditions. It is a condition of employment that Plaintiffs and Oracle  
25 Employees execute, accept and abide by said agreement and underlying policy.

26 27. At multiple times during their employment, Plaintiffs were informed by Oracle that  
27 if Plaintiffs failed to execute, accept and abide by the confidentiality agreement, Plaintiffs would  
28

1 be subject to termination of their jobs.

2 **Oracle Knowingly Imposed Illegal Conditions on Employees' Commission Plans**

3 28. Labor Code Section 432.5 prohibits employers from requiring employees or  
4 prospective employees to agree, in writing, to any term or condition that is known by such  
5 employer to be prohibited by law.

6 29. Plaintiffs are informed and believe and thereon allege that Oracle knew or ought to  
7 have known that the aforementioned confidentiality agreement imposed on Plaintiffs and Oracle  
8 Employees was in violation of Labor Code Section 232.5.

9 30. Plaintiffs are informed and believe and thereon allege that Oracle knew or ought to  
10 have known that the aforementioned purported commissions contract imposed on Plaintiffs and  
11 Oracle Employees was in violation of Labor Code Sections 2751 and 221.

12 **CAUSE OF ACTION**

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

14 **(Against All Defendants)**

15 31. Plaintiffs incorporate by reference the allegations contained in the foregoing  
16 paragraphs of this complaint as if fully set forth herein.

17 32. The policies, acts and practices heretofore described were and are unlawful acts in  
18 violation of applicable Labor Code sections and the applicable IWC Wage Orders. The unlawful  
19 policies, acts and practices include, but are not limited to:

- 20 a. failure to provide a timely, written, signed commission contract as required by  
21 Section 2751;
- 22 b. failure to provide a commission contract setting forth the method by which  
23 commission wages are calculated and paid as required by Section 2751;
- 24 c. unlawful deduction of expenses from earned wages in violation of Labor Code  
25 Section 221;
- 26 d. failure to pay wages when due in violation of Labor Code Sections 201 through  
27 204;

- e. failure to provide accurate wage statements to Plaintiffs and Oracle Employees in violation of Labor Code Section 226;
- f. imposition of an illegal confidentiality contract, policy and practice in violation of Labor Code Section 232.5; and
- g. imposition of confidentiality agreements and so-called commission contracts on Plaintiffs and Oracle Employees that Defendants knew or ought to have known were illegal, in violation of Labor Code Section 432.5.

33. The purported commission contract, policies, acts, and practices described in this Complaint violate applicable Labor Code sections, and the violations are ongoing and continuing.

34. Plaintiffs, as aggrieved employees, seek recovery of civil penalties as prescribed by PAGA on behalf of themselves and other current and former similarly aggrieved employees of Oracle against whom one or more of the violations of the Labor Code was committed.

35. In accordance with Labor Code Section 2699.3, Plaintiff Abrishamcar gave written notice by certified mail to the California Labor and Workforce Development Agency and Oracle of the Labor Code violations alleged herein on July 24, 2015. Plaintiff's notice is attached as Exhibit A hereto. Plaintiff Abrishamcar did not receive written notification from the LWDA of the State's intention to investigate the allegations set forth in Plaintiff's July 24, 2015 certified mail notice. Plaintiff Abrishamcar did not receive written notice of cure by Oracle.

36. In accordance with Labor Code Section 2699.3, on October 30, 2017 Plaintiffs gave written notice to the California Labor and Workforce Development Agency through online filing and Oracle through certified mail of their intention to add Plaintiff Kapur as an additional PAGA plaintiff with respect to the Labor Code violations already pled. Plaintiffs' October 30, 2017 notice to the LWDA is attached as Exhibit B hereto. Plaintiff Kapur did not receive written notification from the LWDA of the State's intention to investigate the allegations set forth in his October 30, 2017 certified mail notice. Plaintiff Kapur also did not receive written notice of cure by Oracle.

37. Plaintiffs have also incurred and continue to incur attorneys' fees and legal expenses to prosecute the Labor Code violations.



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Public - Redacts Materials from Conditionally Sealed Records

# Exhibit A



Xinying Valerian, Senior Litigation Counsel  
(415) 795-2015  
xvalerian@sanfordheisler.com

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Fax: (415) 795-2021  
www.sanfordheisler.com

Washington D.C. | New York | San Francisco | San Diego

July 24, 2015

**VIA CERTIFIED MAIL**

Labor and Workforce Development Agency  
Attn: PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102

**Re: Labor Code Private Attorney General Act of 2004 – Notice on behalf of Maryam Abrishamcar**

Dear Labor and Workforce Development Agency:

The letter provides notice on behalf of employee Maryam Abrishamcar and similarly situated aggrieved employees pursuant to Labor Code Private Attorney General Act of 2004, Labor Codes §2699.3. We request that the LWDA investigate the above-described Labor Code violations at Oracle America, Inc. ("Oracle"). We also request that the LWDA provide notice to Ms. Abrishamcar through the undersigned legal counsel if it chooses not to investigate the allegations.

Ms. Abrishamcar alleges that Oracle has engaged in violations of the Labor Code Sections described below. Ms. Abrishamcar worked as an Inside Sales Representative for Oracle from November 15, 2014 to May 11, 2015. She worked at Oracle's headquarters in Redwood Shores, California.

Ms. Abrishamcar provides notices of these violations on behalf of herself and all similarly aggrieved employees of Oracle in California. She believes that the unlawful corporate practices resulting in these violations apply to herself, other similarly aggrieved current and former Oracle Employees, including individuals who held commissioned sales positions in California, (collectively, Oracle Employees) :

**1. Labor Code § 2751 – Failure to Set Forth the Method of Commissions' Payment and to Furnish Signed Copy of Agreement to Employees**

Oracle fails to provide Oracle Employees a written commissions contract at the commencement of employment, does not provide a signed copy of a commissions contract to employees, and thus fails to provide a contract that abides by Labor Code §2751. Section 2751 further requires that a commission contract "shall set forth the method by which the commissions shall be computed and paid" and that "the employer shall give a signed copy of the contract to

every employee.” The documents the Oracle does issue to employees fail to set forth the method by which commission shall be computed and paid.

Oracle failed to provide Abrishamcar a commission contract at the commencement of her employment. Ms. Abrishamcar started working in November 2014. Oracle did not issue the Incentive Compensation Plan until January 6, 2015. The Plan consisted of an Individualized Compensation Plan and a 96-page FY15 Incentive Compensation Terms and Conditions document (hereafter the “T&C”). The Plan was issued two months after her start date. The purported commission contract was not timely provided and signed as required by Labor Code 2751. Oracle follows a similar practice with Oracle Employees for FY14 and FY15, issuing the same T&C to all.

The T&C for FY14 and FY15 grant Oracle unfettered discretion to change the Plan at any time in violation of Labor Code 2751(a) and, therefore, fails to set forth the method by which commissions shall be computed and paid. The T&C grants Oracle unilateral discretion to retroactively reduce commission payments and deviate from, modify, cancel and/or replace any term of the Plan with such computation terms with other terms and methods not specified in the T&C or elsewhere in a written commission contract. The T&C grants Oracle the unilateral right to retroactively determine the amount of commissions paid to be any amount (or no amount at all) and change commission rates based on any subjective, disclosed or undisclosed grounds retroactively applied as solely determined by Oracle at any time.

Oracle made repeated subjective ‘retroactive’ changes to Ms. Abrishamear’s Individualized Compensation Plan with respect to the amount of her earned commissions and required her to accept such changes or forfeit otherwise earned commissions. Oracle follows the same practice with respect to Oracle Employees.

Oracle has a policy and practice of securing documentation of commission agreements from Oracle Employees in a deceptive and coercive manner that disregards employee assent and consent in violation of Labor Code 2751. Oracle treats each commission agreement as effective irrespective of whether employees’ actual or electronic signatures are received. Oracle applies new and/or modified compensation agreements retroactively to all Oracle Employees. Oracle does not provide a signed copy of a written commission contract to employees or a contract with retroactively created terms.

Oracle also reduces earned commissions well after transactions are booked based on undisclosed criteria, decisions, or methods not disclosed in Oracle Employees’ commissions plans and not disclosed in advance to Oracle Employees. Oracle routinely audits commissions and reduces them retroactively based on retroactively applied grounds, criteria and or methods that are not defined in the T&C or in a signed commission contract. Oracle retroactively applies criteria, undisclosed methods, rationales and subjective decisions to earned commissions of Oracle Employees with the effect of reducing and/or eliminating such earned commissions.

For example, on January 28, 2015, Ms. Abrishamcar’s field sales counterpart booked two deals with a customer also mapped to Ms. Abrishamcar’s territory. Per her Plan, Ms.

Abrishamcar was to receive commissions on deals booked by her field counterpart. The sales credit and commissions for the two orders were posted to Ms. Abrishamcar's Compensation Dashboard shortly after booking. The Compensation Dashboard reported that the sales credit per order was \$383,875 and the total resulting commission was \$20,115.

Two weeks before the expected April 15 payout of her commission, Oracle's Compensation Department retroactively combined the two orders, drastically reducing Ms. Abrishamcar's commission and delaying her payout. The T&C failed to delineate the criteria or method upon which the Compensation Department relied to combine the orders. No agreement stated the criteria or method of computation upon which Oracle relied to make the downward adjustment of Ms. Abrishamcar's commission.

In sum, reductions in commissions are committed entirely to Oracle's unilateral retroactive undisclosed discretion, are not based on a method of computation and payment set forth in a written signed commission contract, and are not disclosed in a written commission contract provided prior to the commencement of work.

## **2. Labor Code § 2751 and 221 – Illegal Deductions And Failure To Pay Earned Commissions**

Oracle fails to set forth the method by which commissions shall be computed and reserves the right to itself to make illegal deductions from Oracle Employee commissions to shift the cost of doing business to Oracle Employees. Per Oracle's T&C, the Oracle

o account for an unlimited list of factors, which include

Thus, Oracle uses events causing ordinary costs of doing business to reduce commissions. The T&C definition of "Unanticipated Circumstances" includes events that constitute ordinary business costs, including:

- Business climate and market conditions
- Oracle strategy
- Product mapping
- Deal splits
- Product lines and product swaps
- Staffing issues and business reorganization or restructuring
- Revenue Recognition or other accounting policies and/or practices (p. 95).

Oracle's Compensation Department reduces Oracle Employee commissions to offset business costs, such as those mentioned above, which are wholly outside the ambit of Oracle Employees' work and their control.

To accommodate its scheme of reducing commissions at its discretion at any time, Oracle adopts a definition of earned commissions that is circular, illusory, and unlawful. The T&Cs

provide the following conditions for the [REDACTED]

[REDACTED] Employees who meet these conditions are nevertheless subject to retroactive, subjective commission deductions, not based on a disclosed method of computation. To facilitate these deductions, T&C provides that [REDACTED]

Through this provision, Oracle imposes an illegal conditions precedent dependent on Oracle's undisclosed discretionary decisions rather than an Oracle Employee's fulfillment of disclosed contractual obligations based on a method of computation resulting in an earned commission wage.

Furthermore, Oracle unlawfully withholds commission payments. Because [REDACTED]

### **3. Labor Code §§ 2751, 204 – Failure to Pay Wages Due**

Oracle's policy and practice of making adjustments to commissions violates Labor Code Sections 204 and 2751. Oracle systematically delays commission payments in order to audit, or scrub through, the commissions already calculated and posted on the Compensation Dashboard. Further, Oracle expressly declines to commit to a timeframe for making adjustments to adjustments, instead reserving the right to audit commissions at any time on any basis, disclosed or undisclosed, or subjectively devised and applied by Oracle. To facilitate its adjustments policy, Oracle provides that at its discretion commission/bonus payment may be subject to an undisclosed [REDACTED] Oracle frequently fails to pay out earned commissions within a normally scheduled pay period, and in fact has a policy in place to avoid doing so. This payment policy also violates Labor Code 2751 as Oracle fails to specify in commission contract the method by which commissions shall be computed or paid. Oracle willfully fails to timely pay the aggrieved employees all earned commission wages due within the time required by law. Oracle also fails to pay earned commission wages due as a result of Oracle's policy and practice of making unilateral retroactive changes to commission contract terms and unilateral retroactive adjustments to earned commissions in multiple violation of Labor Code Section 2751.

### **4. Labor Code §§ 201, 202, 203, 2751 – Failure to Timely Pay Wages Due at Separation**

As a result of the above-described practices, Oracle did not compensate the aggrieved employees for all wages due upon separation as required by Labor Code Section 203. Furthermore, Oracle's policies for the timing of commission payments systematically results in nonpayment of commission wages in the timeframe required by Labor Code Sections 201, 202, and the requirements of Labor Code Section 2751.

Ms. Abrishamcar ended her employment with Oracle on May 11, 2015. She had been subject to unlawful deductions and adjustments, such as the January 28, 2015 transactions, leading to unpaid commission wages. Furthermore, as to these and other commissions, Ms. Abrishamcar has not been timely paid. Oracle made her last commission payout on June 15, 2015, thirty-five (35) days after her resignation date.

Accordingly, Oracle does not timely pay all wages due and owing to Oracle Employees upon their separation from employment.

**5. Labor Code § 226 – Failure to Furnish Accurate Wage Statements**

As a result of the above-described practices for commission wages, Oracle willfully failed to provide accurate itemized statements showing commission gross wages earned by Oracle Employees.

**6. Labor Code §232.5 – Requiring Confidentiality as Condition of Employment**

Oracle mandates that employees keep confidential all of the terms and conditions of their incentive compensation plans. The T&C state:

This Plan constitutes highly restricted, privileged, confidential and proprietary information of the Oracle. Subject to legal rights to the contrary, all Employees must keep the Plan confidential in accordance with the terms of their Proprietary Information Agreement and are expressly prohibited from disclosing this Plan or any of its contents to any third party without the Oracle's advance written consent, unless compelled by local law (p. 6).

The T&C states that employees may be subject to legal action if they do not keep their incentive compensation plan confidential. This illegal confidentiality policy pertains to Oracle Employee working conditions and it is a condition of employment that the employee accept and abide by the policy.

**7. Labor Code § 432.5 – Intentional Violations of Foregoing California Labor Code Provisions**

Oracle America knowingly required employees to enter into a confidentiality agreement that it knew or ought to have known was in violation of Labor Code Sections 2751 and 232.5. Further, Oracle required Oracle Employees to agree to a so-called commission contract that Oracle knew or ought to have known was in violation of Labor Code Sections 2751 and 221.

\*\*\*\*\*

LWDA  
July 24, 2015  
Page 6 of 6

On behalf of our client Ms. Abrishamcar and similarly aggrieved former and current Oracle Employees, we request that the LWDA investigate the alleged violations, or provide timely notice to the undersigned if it chooses not to investigate the allegations.

Thank your for your attention to this matter.

Very truly yours,

Xinying Valerian, Esq.

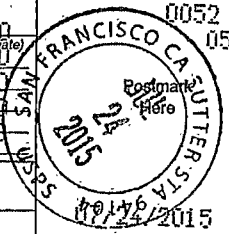
CC: Oracle America, Inc., via certified mail.

Oracle America, Inc.  
c/o Corporation Service Co. dba CSC-Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833



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For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a>	
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OFFICIAL USE	
Certified Mail Fee	\$3.45
Extra Services & Fees (check box, add fee as appropriate)	\$0.00
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
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<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$1.20
Total Postage and Fees	\$4.65
Sent To Labor & Workforce Development Agency Street and Apt. No., or PO Box No. 455 Golden Gate Avenue City, State, ZIP+4® San Francisco, CA 94102	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



Public - Redacts Materials from Conditionally Sealed Records

# Exhibit B

# VALERIAN LAW

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1300 Clay Street, Suite 600,  
Oakland, CA 94612

888-686-1918 • 510-982-4513 (F)  
xinying@valerian.law

October 30, 2017

## **VIA ONLINE FILING**

Labor and Workforce Development Agency

**Re: Labor Code Private Attorney General Act of 2004 – AMENDED Notice on behalf of Maryam Abrishamcar and Kavi Kapur**

Dear Labor and Workforce Development Agency:

This letter provides amended notice on behalf of Plaintiff Maryam Abrishamcar and prospective Plaintiff Kavi Kapur pursuant to the California Labor Code Private Attorney General Act of 2004, Labor Code § 2699.3. Plaintiff Abrishamcar's original notice to the LWDA dated July 24, 2015 ("Notice") is attached. Plaintiff Abrishamcar did not receive a response from the LWDA and pursuant to the PAGA statute she filed a representative PAGA action on September 18, 2017 against Oracle America, Inc. (*Abrishamcar v. Oracle America, Inc.*, Case No. 535490, San Mateo Superior Court.)

By this notice, Kavi Kapur, an employee aggrieved by the violations alleged in the July 24, 2015 Notice, notifies the LWDA and Oracle that he seeks to join the representative action as an additional PAGA plaintiff.

## **Incorporation of July 24, 2015 Notice**

Mr. Kapur and Ms. Abrishamcar ("Plaintiffs") hereby incorporate by reference Ms. Abrishamcar's Notice and the allegations contained therein.

Ms. Abrishamcar provided the Notice on behalf of herself and all aggrieved employees consisting of current and former employees in commissioned sales positions in California. Kavi Kapur was an aggrieved employee encompassed by all of the allegations of the July 24, 2015 Notice. Mr. Kapur is aggrieved by all of the practices alleged in the Notice. Mr. Kapur was a commissioned sales employee at Oracle from February 2012 to June 2017. He started as a Business Intelligence Account Manager, was promoted to Cloud Regional Manager in October 2014, and then to Sales Development Manager in January 2017. He remained in that position until his resignation on June 2017. He worked in Oracle's Redwood Shores, California office.

The Notice alleged several violations of the Labor Code related to Oracle's practices of computing and paying commissions to sales employees. In summary, the Notice alleged Oracle's commission contract, or Incentive Compensation Plan (the "Plan"), fails to "set forth the method by which the commissions shall be computed and paid" in violation of Labor Code § 2751, among other provisions. The Plan includes an Individualized Compensation Plan and an Incentive Compensation Terms and Conditions document ("T&C"). Oracle issued the same T&Cs in FY14 and FY15 to Mr. Kapur, Ms. Abrishamcar, and all similarly aggrieved employees. The T&C grants

Oracle complete discretion to retroactively reduce commission payments and deviate from, modify, cancel and/or replace any term of the Plan. Oracle routinely audits commissions and reduces them retroactively, well after transactions are booked, based on undisclosed criteria, decisions, or methods that are not defined in the T&C or in a signed commission contract and that are not disclosed in advance to employees. Oracle retroactively reduces commissions to offset business costs, such as those caused by “business climate and market conditions” or “Oracle strategy,” that are wholly outside the employees’ control in order to shift the costs of doing business onto its employees. The retroactive reductions in commissions often results in reduced or negative commissions balances, which Oracle requires employees to pay back, in violation of Labor Code § 221. The July 24, 2015 Notice also alleged several additional violations resulting from Oracle’s practices of computing and paying commissions, including failure to pay wages due, failure to timely pay wages due at separation, failure to furnish accurate wage statements, and requiring confidentiality as a condition of employment. The Notice further alleged that all charged violations were intentional, continuing and ongoing.

**For Many Years and Continuing Now in Fiscal Year 2018, Oracle Has Followed an Unlawful Chargeback Policy Whereby Commissions Are Recovered from Employees to Offset Business Costs Based on Unclear and Hidden Reasons**

As described above and in the July 24, 2015 Notice, Oracle’s Plan provides that it may retroactively reduce or eliminate employees’ earned commissions based on undisclosed methods and undefined criteria, including “business climate and market conditions” and “Oracle strategy.” Furthermore, Oracle illegally exercises unfettered discretion to reduce its employees’ commissions at any time for reasons unrelated to the employees’ work and outside of the employees’ control. Moreover, the commission reductions occur retroactively based on vague and unexplained circumstances, events, and decisions that arise at any time in the future.

One example of Oracle’s unlawful policies for retroactive commission reductions is Oracle’s policies for recovery of sales commissions and sales credit when Oracle’s accounts receivable is reduced for any number of unspecified reasons. The uniformly applicable T&C policies for Fiscal Years 2014 through 2018 provide that Oracle may recover an employee’s commissions from current or future commissions if a customer’s account receivable becomes greater than the local limit for days past due, if an account is adjusted via Credit Memo, or if an account is deemed uncollectible under the terms of the Company’s accounting policies and written off (p. 22 in FY15 T&C).<sup>1</sup> Credit Memo is defined as “removing a receivable from Oracle’s accounting records by recording a reversal to revenue.” (p. 88 in FY15 T&C). Oracle’s “accounting policies” are not described in the T&C documents. Oracle does not define or explain the range of situations and scenarios in which Oracle may apply these policies to claw back commissions from sales employees. Oracle does not state a time limit for its ability to recover sales commissions pursuant to these policies. These policies apply to all commissioned sales employees in California.

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<sup>1</sup> The same policies are stated in the T&C for FY14, FY15, FY16, FY17 and FY18, albeit on different pages.

Plaintiffs allege that Oracle's sales credit and commission recovery policies are facially unlawful charge-back policies that violation Labor Code 221. The policies are vague and overbroad, have no time limit, and result in an overly harsh allocation of risk to the sales employees. The policies allow for recovery of commissions from sales representatives at any time in the future for reasons that are unclear and hidden. These policies result in Oracle shifting the cost of doing business to employees in ways that have nothing to do with the employees' performance of sales work. As a result of the broad and open-ended nature of the commission charge-backs authorized under these policies, the policies are facially unconscionable and unenforceable. Furthermore, there is no enforceable "chargeback agreement" between Oracle and commissioned sales employees. Oracle's T&Cs are take-it-or-leave it, procedurally unconscionable terms and conditions imposed on all sales employees, not an agreement reached as the result of arms-length bargaining.

Hence, commission clawbacks and recoveries occurring as a result of these charge-back policies are violations of Labor Code 221.

**Oracle Retroactively Reduced Mr. Kapur's Commissions As A Result of What Appears to be a Customer Dispute**

Oracle retroactively recovered Mr. Kapur's earned commissions [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], and Mr. Kapur received just over \$16,000 in commissions for his work. Mr. Kapur did not hear about the deal again for over three years.

Upon information and belief, Oracle recovered Mr. Kapur's entire commission on the [REDACTED] deal from his April 15, 2017 commission payment, causing a loss to Mr. Kapur of over \$16,000. Mr. Kapur discovered the clawback in April 2017 after seeing a debit posted on his Sales Compensation Dashboard. This was before the payment of his first quarter commission compensation. Other than the debit on the Dashboard, Oracle did not notify Mr. Kapur of the clawback (as such losses are colloquially called) or the reasons for it. Mr. Kapur made inquiries within Oracle to try to track down information about the clawback. Upon information and belief based on his inquiries, Mr. Kapur came to the understanding that [REDACTED]  
[REDACTED]  
[REDACTED] Upon information and belief, [REDACTED]  
[REDACTED] No information was provided to Mr. Kapur in advance of his work on the deal or in connection with his Comp Plan or the T&Cs that explained the reversal of his entire commission payment that he experienced.

Plaintiffs allege that Mr. Kapur suffered a clawback pursuant to Oracle's uniform policies for recovery of sales commissions, i.e., the charge. Plaintiffs are informed and believe that other sales employees credited on the [REDACTED] deal also suffered a clawback of commissions

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as he did. Plaintiffs allege that in Fiscal Years 2014 to the present, other Oracle employees also suffered retroactive losses in commissions pursuant the same policies.

\*\*\*\*\*

On behalf of Plaintiffs, we request that the LWDA accept this amended PAGA notice.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Xinying Valerian', with a stylized, cursive script.

Xinying Valerian, Esq.

Enc: July 24, 2015 Notice to LWDA

Service List

*Via Certified Mail:*

Brendan Dolan  
Lucky Mainz  
Brittany Sachs  
Vedder Price LLP  
275 Battery Street, Suite 2464  
San Francisco, CA 94111

*Via Certified Mail:*

Oracle America, Inc.  
c/o Corporation Service Co. dba CSC-Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
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*Xinying Valerian*, Senior Litigation Counsel  
(415) 795-2015  
xvalerian@sanfordheisler.com

Washington D.C. | New York | San Francisco | San Diego

July 24, 2015

**VIA CERTIFIED MAIL**

Labor and Workforce Development Agency  
Attn: PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102

**Re: Labor Code Private Attorney General Act of 2004 – Notice on behalf of Maryam Abrishamcar**

Dear Labor and Workforce Development Agency:

The letter provides notice on behalf of employee Maryam Abrishamcar and similarly situated aggrieved employees pursuant to Labor Code Private Attorney General Act of 2004, Labor Codes §2699.3. We request that the LWDA investigate the above-described Labor Code violations at Oracle America, Inc. (“Oracle”). We also request that the LWDA provide notice to Ms. Abrishamcar through the undersigned legal counsel if it chooses not to investigate the allegations.

Ms. Abrishamcar alleges that Oracle has engaged in violations of the Labor Code Sections described below. Ms. Abrishamcar worked as an Inside Sales Representative for Oracle from November 15, 2014 to May 11, 2015. She worked at Oracle’s headquarters in Redwood Shores, California.

Ms. Abrishamcar provides notices of these violations on behalf of herself and all similarly aggrieved employees of Oracle in California. She believes that the unlawful corporate practices resulting in these violations apply to herself, other similarly aggrieved current and former Oracle Employees, including individuals who held commissioned sales positions in California, (collectively, Oracle Employees) :

**1. Labor Code § 2751 – Failure to Set Forth the Method of Commissions’ Payment and to Furnish Signed Copy of Agreement to Employees**

Oracle fails to provide Oracle Employees a written commissions contract at the commencement of employment, does not provide a signed copy of a commissions contract to employees, and thus fails to provide a contract that abides by Labor Code §2751. Section 2751 further requires that a commission contract “shall set forth the method by which the commissions shall be computed and paid” and that “the employer shall give a signed copy of the contract to

every employee.” The documents the Oracle does issue to employees fail to set forth the method by which commission shall be computed and paid.

Oracle failed to provide Abrishamcar a commission contract at the commencement of her employment. Ms. Abrishamcar started working in November 2014. Oracle did not issue the Incentive Compensation Plan until January 6, 2015. The Plan consisted of an Individualized Compensation Plan and a 96-page FY15 Incentive Compensation Terms and Conditions document (hereafter the “T&C”). The Plan was issued two months after her start date. The purported commission contract was not timely provided and signed as required by Labor Code 2751. Oracle follows a similar practice with Oracle Employees for FY14 and FY15, issuing the same T&C to all.

The T&C for FY14 and FY15 grant Oracle unfettered discretion to change the Plan at any time in violation of Labor Code 2751(a) and, therefore, fails to set forth the method by which commissions shall be computed and paid. The T&C grants Oracle unilateral discretion to retroactively reduce commission payments and deviate from, modify, cancel and/or replace any term of the Plan with such computation terms with other terms and methods not specified in the T&C or elsewhere in a written commission contract. The T&C grants Oracle the unilateral right to retroactively determine the amount of commissions paid to be any amount (or no amount at all) and change commission rates based on any subjective, disclosed or undisclosed grounds retroactively applied as solely determined by Oracle at any time.

Oracle made repeated subjective ‘retroactive’ changes to Ms. Abrishamear’s Individualized Compensation Plan with respect to the amount of her earned commissions and required her to accept such changes or forfeit otherwise earned commissions. Oracle follows the same practice with respect to Oracle Employees.

Oracle has a policy and practice of securing documentation of commission agreements from Oracle Employees in a deceptive and coercive manner that disregards employee assent and consent in violation of Labor Code 2751. Oracle treats each commission agreement as effective irrespective of whether employees’ actual or electronic signatures are received. Oracle applies new and/or modified compensation agreements retroactively to all Oracle Employees. Oracle does not provide a signed copy of a written commission contract to employees or a contract with retroactively created terms.

Oracle also reduces earned commissions well after transactions are booked based on undisclosed criteria, decisions, or methods not disclosed in Oracle Employees’ commissions plans and not disclosed in advance to Oracle Employees. Oracle routinely audits commissions and reduces them retroactively based on retroactively applied grounds, criteria and or methods that are not defined in the T&C or in a signed commission contract. Oracle retroactively applies criteria, undisclosed methods, rationales and subjective decisions to earned commissions of Oracle Employees with the effect of reducing and/or eliminating such earned commissions.

For example, on January 28, 2015, Ms. Abrishamcar’s field sales counterpart booked two deals with a customer also mapped to Ms. Abrishamcar’s territory. Per her Plan, Ms.



Abrishamcar was to receive commissions on deals booked by her field counterpart. The sales credit and commissions for the two orders were posted to Ms. Abrishamcar's Compensation Dashboard shortly after booking. The Compensation Dashboard reported that the sales credit per order was \$383,875 and the total resulting commission was \$20,115.

Two weeks before the expected April 15 payout of her commission, Oracle's Compensation Department retroactively combined the two orders, drastically reducing Ms. Abrishamcar's commission and delaying her payout. The T&C failed to delineate the criteria or method upon which the Compensation Department relied to combine the orders. No agreement stated the criteria or method of computation upon which Oracle relied to make the downward adjustment of Ms. Abrishamcar's commission.

In sum, reductions in commissions are committed entirely to Oracle's unilateral retroactive undisclosed discretion, are not based on a method of computation and payment set forth in a written signed commission contract, and are not disclosed in a written commission contract provided prior to the commencement of work.

## **2. Labor Code § 2751 and 221 – Illegal Deductions And Failure To Pay Earned Commissions**

Oracle fails to set forth the method by which commissions shall be computed and reserves the right to itself to make illegal deductions from Oracle Employee commissions to shift the cost of doing business to Oracle Employees. Per Oracle's T&C, the Oracle [REDACTED]

[REDACTED] to account for an unlimited list of factors, which include [REDACTED]

[REDACTED] Thus, Oracle uses events causing ordinary costs of doing business to reduce commissions. The T&C definition of "Unanticipated Circumstances" includes events that constitute ordinary business costs, including:

- Business climate and market conditions
- Oracle strategy
- Product mapping
- Deal splits
- Product lines and product swaps
- Staffing issues and business reorganization or restructuring
- Revenue Recognition or other accounting policies and/or practices (p. 95).

Oracle's Compensation Department reduces Oracle Employee commissions to offset business costs, such as those mentioned above, which are wholly outside the ambit of Oracle Employees' work and their control. [REDACTED]

To accommodate its scheme of reducing commissions at its discretion at any time, Oracle adopts a definition of earned commissions that is circular, illusory, and unlawful. The T&Cs

provide the following conditions for the [REDACTED]

[REDACTED] Employees who meet these conditions are nevertheless subject to retroactive, subjective commission deductions, not based on a disclosed method of computation. To facilitate these deductions, T&C provides that [REDACTED]

Through this provision, Oracle imposes an illegal conditions precedent dependent on Oracle's undisclosed discretionary decisions rather than an Oracle Employee's fulfillment of disclosed contractual obligations based on a method of computation resulting in an earned commission wage.

Furthermore, Oracle unlawfully withholds commission payments. Because [REDACTED]

### **3. Labor Code §§ 2751, 204 – Failure to Pay Wages Due**

Oracle's policy and practice of making adjustments to commissions violates Labor Code Sections 204 and 2751. Oracle systematically delays commission payments in order to audit, or scrub through, the commissions already calculated and posted on the Compensation Dashboard. Further, Oracle expressly declines to commit to a timeframe for making adjustments to adjustments, instead reserving the right to audit commissions at any time on any basis, disclosed or undisclosed, or subjectively devised and applied by Oracle. To facilitate its adjustments policy, Oracle provides that at its discretion commission/bonus payment may be subject to an undisclosed [REDACTED] Oracle frequently fails to pay out earned commissions within a normally scheduled pay period, and in fact has a policy in place to avoid doing so. This payment policy also violates Labor Code 2751 as Oracle fails to specify in commission contract the method by which commissions shall be computed or paid. Oracle willfully fails to timely pay the aggrieved employees all earned commission wages due within the time required by law. Oracle also fails to pay earned commission wages due as a result of Oracle's policy and practice of making unilateral retroactive changes to commission contract terms and unilateral retroactive adjustments to earned commissions in multiple violation of Labor Code Section 2751.

### **4. Labor Code §§ 201, 202, 203, 2751 – Failure to Timely Pay Wages Due at Separation**

As a result of the above-described practices, Oracle did not compensate the aggrieved employees for all wages due upon separation as required by Labor Code Section 203. Furthermore, Oracle's policies for the timing of commission payments systematically results in nonpayment of commission wages in the timeframe required by Labor Code Sections 201, 202, and the requirements of Labor Code Section 2751.

Ms. Abrishamcar ended her employment with Oracle on May 11, 2015. She had been subject to unlawful deductions and adjustments, such as the January 28, 2015 transactions, leading to unpaid commission wages. Furthermore, as to these and other commissions, Ms. Abrishamcar has not been timely paid. Oracle made her last commission payout on June 15, 2015, thirty-five (35) days after her resignation date.

Accordingly, Oracle does not timely pay all wages due and owing to Oracle Employees upon their separation from employment.

**5. Labor Code § 226 – Failure to Furnish Accurate Wage Statements**

As a result of the above-described practices for commission wages, Oracle willfully failed to provide accurate itemized statements showing commission gross wages earned by Oracle Employees.

**6. Labor Code §232.5 – Requiring Confidentiality as Condition of Employment**

Oracle mandates that employees keep confidential all of the terms and conditions of their incentive compensation plans. The T&C state:

This Plan constitutes highly restricted, privileged, confidential and proprietary information of the Oracle. Subject to legal rights to the contrary, all Employees must keep the Plan confidential in accordance with the terms of their Proprietary Information Agreement and are expressly prohibited from disclosing this Plan or any of its contents to any third party without the Oracle's advance written consent, unless compelled by local law (p. 6).

The T&C states that employees may be subject to legal action if they do not keep their incentive compensation plan confidential. This illegal confidentiality policy pertains to Oracle Employee working conditions and it is a condition of employment that the employee accept and abide by the policy.

**7. Labor Code § 432.5 – Intentional Violations of Foregoing California Labor Code Provisions**

Oracle America knowingly required employees to enter into a confidentiality agreement that it knew or ought to have known was in violation of Labor Code Sections 2751 and 232.5. Further, Oracle required Oracle Employees to agree to a so-called commission contract that Oracle knew or ought to have known was in violation of Labor Code Sections 2751 and 221.

\*\*\*\*\*

LWDA  
July 24, 2015  
Page 6 of 6

On behalf of our client Ms. Abrishamcar and similarly aggrieved former and current Oracle Employees, we request that the LWDA investigate the alleged violations, or provide timely notice to the undersigned if it chooses not to investigate the allegations.

Thank your for your attention to this matter.

Very truly yours,

Xinying Valerian, Esq.

CC: Oracle America, Inc., via certified mail.

Oracle America, Inc.  
c/o Corporation Service Co. dba CSC-Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

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