

FILED
SAN MATEO COUNTY

JUN 13 2022

Clerk of the Superior Court

By

DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

COMPLEX CIVIL LITIGATION

MARYAM ABRISHAMCAR and
KAVI KAPUT,

Plaintiffs,

vs.

ORACLE AMERICA, INC., and Does 1
through 100, inclusive,

Defendants.

Case No. CIV 535490
PAGA REPRESENTATIVE ACTION

Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

**ORDER ON MOTIONS FOR
SUMMARY ADJUDICATION OF
ISSUES**

On March 15, 2022, hearing was held on multiple motions for summary adjudication of issues in Department 2 of this Court before the Honorable Marie S. Weiner. Michael Palmer, Meredith Firetog and Danielle Fuschetti of Sanford Heisler Sharp LLP, and Laura Ho, James Kan and Ginger Grimes of Goldstein Borgen Dardarian & Ho appeared on behalf of Plaintiffs Maryam Abrishamcar and Kavi Kapur; and Brendan Dolan, Lucky Mainz, Lowell Ritter, and Harrison Thorne of Sheppard Mullin Richter & Hampton LLP appeared on behalf of Defendant Oracle America Inc.

Subsequently, counsel requested the opportunity to present supplemental briefing, which was granted per CMC Order #26. Supplemental briefing was filed, concluding on April 22, 2022, and the matter under submission.

Upon due consideration of the briefs and evidence presented, and the oral argument of counsel for the parties, and having permitted supplemental briefing, and having taken the matter under submission,

IT IS HEREBY ORDERED as follows:

The parties stipulated to certain issues being adjudicated as motions for summary adjudication of issues, pursuant to Code of Civil Procedure Section 437c(t), even if it does not completely dispose of a cause of action, as set forth in this Court's Order filed October 6, 2021.

The Private Attorney General Act allowing enforcement of the Labor Code by private citizens on behalf of the State is set forth in Labor Code Sections 2698 *et seq.* In regard to the present motions by the parties, Section 2699(f)(2) states "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, **the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.**" (Bold added.)

Plaintiffs' Motion for Summary Adjudication of the following issue: "Civil penalties are available under the Private Attorneys General Act for each aggrieved employee for *each pay period* in which the employee is employed before Oracle issues a

written commission contract; and, separately, in which the employee is employed pursuant to an unsigned commission contract.” is GRANTED IN PART.

Defendant Oracle’s Motion for Summary Adjudication of the following issue:

“Plaintiffs may recover, at most, a single penalty under the Private Attorneys General Act in circumstances in which it is proven that Oracle violated Labor Code section 2751 by (1) failure to provide employees with a commission agreement signed by Oracle, and (2) failure to provide newly hired employees with a commission agreement before they began working for Oracle. These violations are one time initial violations of section 2751 that do not continue to accrue PAGA penalties on a per pay period basis.” is DENIED.

The Court holds that civil penalties under PAGA are available for failure to issue a written commission contract per aggrieved employee per pay period until Oracle issues a written commission contract for that aggrieved employee. The Court finds that the express provision of the statute that civil penalties are “per pay period” applies to the Labor Code Section 2751 violations alleged by Plaintiffs against Defendant Oracle. Defendant’s argument that the Court should ignore that express statutory language, and instead find only a single violation for a single one-time penalty, is rejected.

Civil penalties under PAGA are available for failure of Oracle to provide a signed commission contract per aggrieved employee per pay period until Oracle provides a signed written commission contract. This must be taken in the proper context, in that Oracle issues annual commission contracts, and thus upon the expiration of that commission contract, the violation as to that contract would end upon the issuance of the new commission contract.

Oracle argues that the failure to provide a signed commission contract should be treated as single violation only for the first pay period that it occurs. Whether or not that is good policy is irrelevant – the Legislature has stated in PAGA that civil penalties are per pay period for the violation. The parties point to multiple examples in the Labor Code where the Legislature has provided a single penalty for a single violation, and Defendant points to case law regarding single penalty situations – none of which are PAGA civil penalties. That is *not* the language used in the subject civil penalty provision of PAGA. Oracle could “fix” the problem, i.e., stop the violation, by providing a signed written commission contract.


Rather, Oracle’s argument actually goes to the issue of this Court’s statutory authority under PAGA to exercise its discretion, under Section 2699(e), to reduce the total amount of civil penalties under the circumstances. *That* is not an issue for adjudication on motion for summary adjudication.

Lurking in the subtext is the determination as to whether the failure to timely provide a written commission contract and the failure to provide a signed written commission contract should be treated as *one* violation of Labor Code Section 2751 (i.e. failure to provide a signed written commission contract upon commencing services) *or* should be treated as *two* violations of Labor Code Section (i.e., violation of Section 2751(a) and violation of Section 2851(b)) for purposes of calculating civil penalties. Again, *that* is not the issue for determination on this motion – which Plaintiffs explicitly admit, i.e., that the issue of “stacking” of penalties is not presented by their motion.

Defendant Oracle’s Motion for Summary Adjudication of the following issue:
“Oracle cannot be assessed heightened PAGA penalties for ‘subsequent’ violations of Labor Code sections 204, 221, 232, or 2751 unless Plaintiffs prove that a court or the

Labor Commissioner previously found that Oracle committed the same initial Labor Code violations on which subsequent penalties are sought.” is DENIED. Defendant has over-stated its position and the statements in case law – and therefore has not precisely stated the standard under law. In regard to what is the meaning and effect of the undefined term “subsequent” – for purposes of PAGA penalties -- the threshold question is not whether a court or the State made a prior formal finding or adjudication of a Labor Code violation by that employer; but – at most – that the employer had **notice** that its conduct was in violation of the Labor Code.

DATED: June 13, 2022



HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT