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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**
13 **UNLIMITED JURISDICTION**

14 MICHELLE JOHNSON, on behalf of
15 herself and other aggrieved employees,

16 Plaintiffs,

17 v.

18 ORACLE AMERICA, INC. and DOES 1
19 through 10, inclusive,

20 Defendants.

Case No. 23CV040532

**SECOND AMENDED PRIVATE
ATTORNEYS GENERAL ACT
COMPLAINT FOR VIOLATION OF
LABOR CODE SECTIONS 232, 232.5,
1197.5, AND 226**

1 **INTRODUCTION**

2 1. Plaintiff MICHELLE JOHNSON (“Plaintiff”) brings this action against Defendant
3 ORACLE AMERICA, INC. (“Oracle”) and DOES 1 through 10 on behalf of herself and other
4 current and former employees who have worked for Oracle in California at any time since April
5 1, 2021, and who have received compensation pursuant to an individualized compensation plan or
6 agreement (the “Aggrieved Employees”).

7 2. Plaintiff brings this action pursuant to the California Private Attorneys General Act
8 (“PAGA”), Labor Code § 2698 *et seq.* for violation of Labor Code sections 232, 232.5, 1197.5,
9 and 226.

10 3. By this action, Plaintiff seeks civil penalties and attorneys’ fees and costs.

11 **PARTIES**

12 4. Plaintiff is an individual residing in the city of San Leandro, California in Alameda
13 County. Plaintiff worked for Oracle from May 18, 2015, to April 16, 2021, in sales positions.

14 5. Defendant Oracle America, Inc. (“Oracle”) is a Delaware corporation whose
15 principal office is located at 500 Oracle Parkway, Redwood Shores, California 94065.

16 6. DOES 1 through 10, inclusive, are sued pursuant to California Code of Civil
17 Procedure section 474. Plaintiff is ignorant of the true names or capacities of these defendants,
18 and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint
19 to allege their true names and capacities when ascertained.

20 7. Each of the fictitiously named defendants is legally responsible in some manner
21 for the wrongs and injuries alleged herein. At all times mentioned herein each defendant was or is
22 the actual or ostensible agent or employee of each and all the other defendants and was or is
23 acting within the course and scope of said agency or employment. Defendants, and each of them,
24 were or are engaged in a joint venture and an integrated or joint enterprise and were or are acting
25 within the scope of and in pursuance of the joint venture and enterprise.

26 8. Plaintiff is informed and believes and thereon alleges that at all times herein
27 mentioned Defendant and each of the DOE defendants are Plaintiff’s and the Aggrieved
28 Employees’ employer(s), and/or agents, servants, employees, partners, joint venturers, alter egos,

1 aiders and abettors, and/or co-conspirators of one or more of their co-defendants, and, in
2 committing the acts alleged herein, were or are acting within the course and scope of said agency,
3 employment, partnership, joint venture, and/or conspiracy, or were or are aiding and abetting their
4 co-defendants. Plaintiff is informed and believes and thereon alleges Defendants and each of the
5 DOE defendants are legally responsible for all the unlawful conduct, policies, practices, acts and
6 omissions as described in this Complaint.

7 **JURISDICTION AND VENUE**

8 9. This court has jurisdiction over this action pursuant to Code of Civil Procedure
9 section 410.10. This action seeks relief exceeding the minimal jurisdiction limits of the Superior
10 Court of California. The penalties and other monetary relief will be established according to proof
11 at trial.

12 10. Venue is proper in Alameda County under Code of Civil Procedure sections 393,
13 subdivision (a), and 395.5. Plaintiff worked remotely from her place of residence in Alameda
14 County, Oracle employs some of the Aggrieved Employees in Alameda County, and Oracle
15 committed some of the Labor Code violations for which Plaintiff seeks penalties in Alameda
16 County. Accordingly, Oracle’s “liability” (§ 395.5), and “some part of the cause” (§ 393), arose
17 in San Mateo County. (*See Crestwood Behavioral Health, Inc. v. Sup.Ct. (Fragoza)* (2021) 60
18 Cal.App.5th 1069, 1075–1077.)

19 **PROCEDURAL POSTURE OF PLAINTIFF’S PAGA CASE**

20 11. Plaintiff provided Defendant Oracle with written notice of the factual and legal
21 bases for the Labor Code Section 232, 232.5 and 1197.5 violations alleged in this Complaint by
22 certified mail on April 1, 2022. *See* Plaintiff’s “PAGA Notice” in **Exhibit 1**. Plaintiff incorporates
23 the contents of Exhibit 1 by reference.

24 12. Plaintiff provided notice to the Labor & Workforce Development Agency
25 (“LWDA”) of the factual and legal bases for the Labor Code Section 232, 232.5 and 1197.5
26 violations alleged in this Complaint through online filing of the PAGA Notice on April 1, 2022.
27 The LWDA assigned case number LWDA-CM-876587-22 and did not provide notice of its
28 intention to investigate Defendant Oracle’s alleged violations within the requisite period.

1 **FIRST CAUSE OF ACTION**
2 **Civil Penalties Under PAGA for Violations of Labor Code Section 232**
3 **(On behalf of the Other Aggrieved Employees)**

4 18. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

5 19. California Labor Code section 232, subdivision (a), prohibits employers from
6 requiring, as a condition of employment, that employees refrain from disclosing the amounts of
7 their wages.

8 20. California Labor Code sections 232, subdivision (b), prohibits employers from
9 requiring employees to sign a waiver or other document that purports to deny the employees the
10 right to disclose the amount of their wages.

11 21. Oracle violated these Labor Code requirements through broad written mandates
12 requiring the Aggrieved Employees to keep their compensation confidential.

13 22. Oracle requires every Aggrieved Employee to sign and abide by a Proprietary
14 Information Agreement as a condition of employment. The obligations of this Agreement
15 continue past separation from employment such that former employees continue to be bound by
16 it. Oracle considers all information regarding its workforce, including employee compensation, to
17 be Proprietary Information.

18 23. Through the Proprietary Information Agreement, Oracle requires each Aggrieved
19 Employees to sign a waiver or other document that purports to deny the employee the right to
20 disclose information about the employer's own wages in violation of Labor Code section 232,
21 subdivision (b). Through the Proprietary Information Agreement Oracle requires, as a condition
22 of employment, that an Aggrieved Employee refrain from disclosing the amount of their own
23 wages in violation of Labor Code section 232, subdivision (a).

24 24. Oracle violates these code sections for the Aggrieved Employees through its
25 incentive compensation and sales compensation policies. Oracle mandates that its employees
26 keep confidential Oracle's incentive compensation policies, including written Terms and
27 Conditions ("incentive compensation T&Cs") and the individualized compensation plans and
28 agreements of each employee ("ICP" and "ICA"). For example, the written Terms & Conditions
of incentive compensation and individualized compensation plans are deemed confidential. For

1 every sales role covered by Oracle's incentive compensation T&Cs, it is a condition of
2 employment that the sales employee sign, accept and abide by Oracle's policies regarding the
3 confidentiality of the incentive compensation terms.

4 25. Therefore, as to the Aggrieved Employees subject to incentive compensation
5 T&Cs Oracle has imposed restrictions on disclosure of employee wages in violation of Labor
6 Code section 232, subdivisions (a) and (b). In the above-mentioned *Abrishamcar v. Oracle* case,
7 the trial court already found that an identical incentive compensation agreement with an identical
8 confidentiality restriction was a violation of section 232.

9 26. Plaintiff was one of the aggrieved employees subject to the court's section 232
10 liability determination in *Abrishamcar v. Oracle*.

11 27. These are continuing and ongoing violations affecting new employees, current
12 employees, and former employees.

13 28. By virtue of these violations, Oracle has incurred liability for the civil penalties set
14 forth in Labor Code section 2699, subdivision (f)(2), as well as attorneys' fees and costs.

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16 **SECOND CAUSE OF ACTION**
Civil Penalties Under PAGA for Violations of Labor Code Section 232.5
(On behalf of the Other Aggrieved Employees)

17 29. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

18 30. California Labor Code section 232.5, subdivision (a), prohibits employers from
19 requiring, as a condition of employment, that employees refrain from disclosing their working
20 conditions.

21 31. California Labor Code sections 232.5, subdivision (b), prohibits employers from
22 requiring employees to sign a waiver or other document that purports to deny the employees the
23 right to disclose their working conditions.

24 32. Oracle violated these Labor Code requirements through broad written mandates
25 requiring the Aggrieved Employees to keep their working conditions confidential.

26 33. Oracle requires every Aggrieved Employee to sign and abide by a Proprietary
27 Information Agreement as a condition of employment. The obligations of this Agreement
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1 continue past separation from employment such that former employees continue to be bound by
2 it. Oracle considers all information regarding its workforce, including working conditions, to be
3 Proprietary Information.

4 34. Through the Proprietary Information Agreement, Oracle requires the Aggrieved
5 Employees to sign a waiver or other document that purports to deny the employee the right to
6 disclose information about the employer's working conditions in violation of Labor Code section
7 232.5, subdivision (b). Through the Proprietary Information Agreement Oracle requires, as a
8 condition of employment, that an employee refrain from disclosing the employer's working
9 conditions in violation of Labor Code section 232.5, subdivision (a).

10 35. Oracle violates these code sections for the Aggrieved Employees through its
11 incentive compensation and sales compensation policies. Oracle mandates that the Aggrieved
12 Employees keep confidential Oracle's incentive compensation policies, including written Terms
13 and Conditions ("incentive compensation T&Cs") and the individualized compensation plans and
14 agreements of each employee. For example, the written Terms & Conditions of incentive
15 compensation and individualized compensation plans are deemed confidential. For every sales
16 role covered by Oracle's incentive compensation T&Cs, it is a condition of employment that the
17 sales employee sign, accept and abide by Oracle's policies regarding the confidentiality of the
18 incentive compensation terms.

19 36. Therefore, as to the Aggrieved Employees subject to incentive compensation
20 T&Cs Oracle has imposed restrictions on disclosure of employer working conditions in violation
21 of Labor Code section 232.5, subdivisions (a) and (b).

22 37. These are continuing and ongoing violations affecting new employees, current
23 employees, and former employees.

24 38. By virtue of these violations, Oracle has incurred liability for the civil penalties set
25 forth in Labor Code section 2699, subdivision (f)(2), as well as attorneys' fees and costs.

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1 **THIRD CAUSE OF ACTION**
2 **Civil Penalties Under PAGA for Violations of Labor Code Section 1197.5**
3 **(On behalf of the Other Aggrieved Employees)**

3 39. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

4 40. California Labor Code section 1197.5, subdivision (k), makes it illegal for an
5 employer to prohibit an employee from disclosing the employee's own wages, discussing the
6 wages of others, inquiring about another employee's wages, or aiding or encouraging any other
7 employee to exercise his or her rights under section 1197.5.

8 41. Oracle violated these Labor Code requirements through broad written mandates
9 requiring the Aggrieved Employees to keep compensation information confidential.

10 42. Oracle requires every Aggrieved Employee to sign and abide by a Proprietary
11 Information Agreement as a condition of employment. The obligations of this Agreement
12 continue past separation from employment, such that former employees continue to be bound by
13 it. Oracle considers all information regarding its workforce, including employee compensation, to
14 be Proprietary Information.

15 43. Through the Proprietary Information Agreement Oracle requires, as a condition of
16 employment, that an Aggrieved Employee refrain from disclosing their wages in violation of
17 Labor Code section 1197.5, subdivision (k).

18 44. Oracle violates this code section for Aggrieved Employees through its incentive
19 compensation and sales compensation policies. Oracle mandates that the Aggrieved Employees
20 keep confidential Oracle's incentive compensation policies, including written Terms and
21 Conditions ("incentive compensation T&Cs") and the individualized compensation plans and
22 agreements of each employee. For example, the written Terms & Conditions of incentive
23 compensation and individualized compensation plans are deemed confidential. For every sales
24 role covered by Oracle's incentive compensation T&Cs, it is a condition of employment that the
25 sales employee sign, accept and abide by Oracle's policies regarding the confidentiality of the
26 incentive compensation terms.

1 45. Therefore, as to the Aggrieved Employees subject to incentive compensation
2 T&Cs Oracle has imposed restrictions on disclosure of employee wages in violation of Labor
3 Code, section 1197.5, subdivision (k).

4 46. These are continuing and ongoing violations affecting new employees, current
5 employees, and former employees.

6 47. By virtue of these violations, Oracle has incurred liability for the civil penalties set
7 forth in Labor Code section 2699, subdivision (f)(2), as well as attorneys' fees and costs.

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9 **FOURTH CAUSE OF ACTION**
10 **Civil Penalties Under PAGA for Violations of Labor Code Section 226**
11 **(On behalf of herself and the Other Aggrieved Employees)**

12 48. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

13 49. California Labor Code section 226 requires employers to provide employees with
14 an accurate itemized wage statement every pay period or semimonthly. The statement must
15 accurately show gross wages earned, all deductions, net wages earned, and the inclusive dates of
16 the period for which the employee is paid, among other things.

17 50. At Oracle, many Aggrieved Employees earn incentive compensation in the form of
18 commissions and/or bonuses pursuant to Oracle's incentive compensation T&Cs and their
19 individual compensation plans.

20 51. Oracle has had a longstanding practice of issuing earnings statements (known at
21 times as payslips) that fail to accurately state earned gross and net wages with respect to earned
22 commission and bonus wages and fail to accurately state the wages earned within the pay period
23 indicated in each earnings statement.

24 52. Oracle has had a policy under which payments made as "Commission Pay" and
25 included in the gross wages and net wages are considered unearned for lengthy periods of time
26 after payment to the employees. Under Oracle policy, unearned incentive compensation is subject
27 to setoff and recovery in the future.

28 53. For many fiscal years going back to at least Fiscal Year 2015 if not earlier, Oracle
treated "Commission Pay" amounts as perpetual advances with no deadline for making or seeking

1 post-payment recoveries. Since Fiscal Year 2021, Oracle has acknowledged that the
2 “Commission Pay” on earnings statements is in fact an advance for 18 months after payment,
3 thereby adopting a deadline of 18 months for recovering previously paid “Commission Pay.”

4 54. Even though Oracle considers the payments to be advances at the time they were
5 paid, Oracle indicates the payments are earned wages on the semimonthly earnings statements
6 issued to sales employees, rather than advances.

7 55. The “Commission Pay” on Oracle’s wage statements may consist of all unearned
8 advances, or a mixture of both unearned advances and earned wages. “Commission Pay” amounts
9 on wage statements do not correspond to wages earned in the pay period covered by each wage
10 statement. Oracle’s wage statement does not allow Aggrieved Employees to discern what their
11 actual earned wages are in that pay period.

12 56. Furthermore, when Oracle makes an adjustment that affected the amount of earned
13 commissions after payment was made and the earnings statement was issued, it does not issue a
14 corrected statement and it does not indicate any adjustments or deductions to any amount that was
15 previously reported as an earned wage.

16 57. When Oracle needs to adjust a previous “Commission Pay” amount, such as
17 performing a post-payment recovery within the 18 months period, Oracle deducts from the new
18 “Commission Pay” without indicating on any earnings statement that such a deduction has
19 occurred. In effect, Oracle claws back an unspecified previously paid “advance” from the current
20 pay period’s “Commission Pay” amount, which is an unknown combination of earnings and
21 advances.

22 58. By failing to designate unearned advances as such on wage statements issued to
23 employees, Oracle has systematically failed to accurately state the gross earned wages, net earned
24 wages and the pay periods of the earnings.

25 59. By failing to itemize post-payment adjustments that affected the amount that was
26 earned, Oracle has systematically failed to accurately state the gross earned wages, net earned
27 wages, all deductions from wages, and the pay periods of the earnings.

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