

1 XINYING VALERIAN (SBN 254890)
2 DAN GILDOR (SBN 223027)
3 VALERIAN LAW, P.C.
4 1530 Solano Ave.
5 Albany, CA 94707
6 Tel: 510.567.4630
7 xinying@valerian.law
8 dan@valerian.law

9 *Attorneys for Plaintiff*
10 *and the aggrieved employees*

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
09/06/2023

Chad Finke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

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

Plaintiffs,

v.

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

Defendants.

Case No. 23CV040532

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

**AMENDED AS OF RIGHT
(CODE CIV. PROC., § 472.)**

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5

6
7
8

9

O

- 1
- 2
- 3

4
5

6
7
8
9

- 0
- 1
- 2
- 3
- 4
- 5

6
7
8

1 abettors, and/or co-conspirators of one or more of their co-defendants, and, in committing the
2 acts alleged herein, were or are acting within the course and scope of said agency, employment,
3 partnership, joint venture, and/or conspiracy, or were or are aiding and abetting their co-
4 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
6 and 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
11 proof 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 A**. Plaintiff
23 incorporates the contents of Exhibit A 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 13. On April 18, 2022, by certified mail, Plaintiff provided Oracle written notice of
2 the factual and legal bases for the Labor Code Section 226 violations alleged in this Complaint.
3 See Plaintiff's "Second PAGA Notice" in **Exhibit B**. Plaintiff incorporates the contents of
4 Exhibit B by reference.

5 14. Also on April 18, 2022, Plaintiff filed the Second PAGA Notice on the LWDA's
6 online filing portal and thereby provided notice to the LWDA of Oracle's violations of Section
7 226. The LWDA did not provide notice of its intention to investigate the allegations in the
8 Second PAGA Notice within the requisite period.

9 15. After Plaintiff served and filed the PAGA Notice and Second PAGA Notices,
10 Plaintiff and Oracle executed a series of tolling agreements applicable to the claims she alleged.
11 The final agreement tolled the limitations period for Plaintiff's claims alleged in the PAGA
12 Notice and Second PAGA Notice for a period that ended thirty (30) days after the California
13 Supreme Court published its opinion in *Adolph v. Uber Technologies, Inc.*, No. S274671. That
14 opinion was issued on July 17, 2023. (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th
15 1104.)

16 **PLAINTIFF'S AGGRIEVED EMPLOYEE STATUS**

17 16. Plaintiff is an aggrieved employee. The Superior Court in San Mateo County
18 held in *Abrishamcar v. Oracle America, Inc.*, Case No. CIV 535490, that Oracle has violated
19 the Labor Code between July 24, 2014 and May 31, 2018, and that Plaintiff was subjected to
20 those violations. Among its findings and conclusions, the trial court found that Oracle violated
21 Labor Code section 232 and held that "all Oracle employees in California subject to Incentive
22 Compensation Plans (ICP or ICA) at any time during the time period July 24, 2014 through
23 May 31, 2018, are 'aggrieved employees' under PAGA, for this violation." (August 7, 2019
24 Tentative Statement of Decision After Phase One Court Trial.)

25 17. Plaintiff Michelle Johnson was one of the third party aggrieved employees in
26 *Abrishamcar* because she was employed by Oracle during the relevant time period and
27 subjected to the unlawful confidentiality clauses in incentive compensation plans.
28

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

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

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

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

21. Oracle violated these Labor Code requirements through broad written mandates requiring employees to keep their compensation confidential.

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

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

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

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

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

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

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

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

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

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

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

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

32. Oracle violated these Labor Code requirements through broad written mandates requiring employees to keep their working conditions confidential.

33. Oracle requires every employee to sign and abide by a Proprietary Information Agreement as a condition of employment. The obligations of this Agreement continue past

1 separation from employment such that former employees continue to be bound by it. Oracle
2 considers all information regarding its workforce, including working conditions, to be
3 Proprietary Information.

4 34. Through the Proprietary Information Agreement, Oracle requires all California
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
7 section 232.5, subdivision (b). Through the Proprietary Information Agreement Oracle requires,
8 as a 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 sales employees through its incentive
11 compensation and sales compensation policies. Oracle mandates that its employees keep
12 confidential Oracle's incentive compensation policies, including written Terms and Conditions
13 ("incentive compensation T&Cs") and the individualized compensation plans and agreements
14 of each employee. For example, the written Terms & Conditions of incentive compensation and
15 individualized compensation plans are deemed confidential. For every sales role covered by
16 Oracle's incentive compensation T&Cs, it is a condition of employment that the sales employee
17 sign, accept and abide by Oracle's policies regarding the confidentiality of the incentive
18 compensation terms.

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

22 37.

23 38. These are continuing and ongoing violations affecting new employees, current
24 employees, and former employees.

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

27
28 **THIRD CAUSE OF ACTION**
Civil Penalties Under PAGA for Violations of Labor Code Section 1197.5
(On behalf of the Other Aggrieved Employees)

1 40. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

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

6 42. Oracle violated these Labor Code requirements through broad written mandates
7 requiring employees to keep compensation information confidential.

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

13 44. Through the Proprietary Information Agreement Oracle requires, as a condition
14 of employment, that an employee refrain from disclosing their wages in violation of Labor
15 Code section 1197.5, subdivision (k).

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

25 46. Therefore, as to employees subject to incentive compensation T&Cs Oracle has
26 imposed restrictions on disclosure of employee wages in violation of Labor Code, section
27 1197.5, subdivision (k).

28

1 47. These are continuing and ongoing violations affecting new employees, current
2 employees, and former employees.

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

5
6 **FOURTH CAUSE OF ACTION**
7 **Civil Penalties Under PAGA for Violations of Labor Code Section 226**
8 **(On behalf of herself and the Other Aggrieved Employees)**

9 49. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

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

14 51. At Oracle, many sales employees earn incentive compensation in the form of
15 commissions and/or bonuses pursuant to Oracle's incentive compensation T&Cs and their
16 individual compensation plans.

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

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

25 54. For many fiscal years going back to at least Fiscal Year 2015 if not earlier,
26 Oracle treated "Commission Pay" amounts as perpetual advances with no deadline for making
27 or seeking post-payment recoveries. Since Fiscal Year 2021, Oracle has acknowledged that the
28 "Commission Pay" on earnings statements is in fact an advance for 18 months after payment,
thereby adopting a deadline of 18 months for recovering previously paid "Commission Pay."

1 55. Even though Oracle considers the payments to be advances at the time they were
2 paid, Oracle indicates the payments are earned wages on the semimonthly earnings statements
3 issued to sales employees, rather than advances.

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

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

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

19 59. By failing to designate unearned advances as such on wage statements issued to
20 employees, Oracle has systematically failed to accurately state the gross earned wages, net
21 earned wages and the pay periods of the earnings.

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

25 61. Plaintiff personally sustained at least one of the Labor Code Section 226
26 violations described herein.

27 62. By virtue of these violations, Oracle has incurred liability for the civil penalties
28 set forth in Labor Code section 226.3, as well as attorneys’ fees and costs. In the alternative,

1 Oracle is liable for civil penalties under Labor Code section 2699, subdivision (f)(2), as well as
2 attorneys' fees and costs.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for the following relief against Defendants, jointly and
5 severally as follows:

- 6 a. For an award of civil penalties in an amount according to proof;
- 7
- 8 b. For an award of attorneys' fees as provided by California Labor Code section
9 2699, subdivision (g), Code of Civil Procedure section 1021.5, and all other
10 applicable statutes and law;
- 11 c. For all costs of suit as provided by the Labor Code, Code of Civil Procedure, and
12 all other applicable law; and
- 13
- 14 d. For any other relief the Court deems just and proper.

15
16 Dated: September 5, 2023.

VALERIAN LAW, P.C.

17
18 By: 
19 Xinying Valerian

20 Attorneys for Plaintiff MICHELLE
21 JOHNSON
22
23
24
25
26
27
28