



Demand for Arbitration Form

Instructions for Submittal of Arbitration to JAMS

INSTRUCTIONS

Please submit this form to your local JAMS Resolution Center. Once the below items are received, a JAMS professional will contact all parties to commence and coordinate the arbitration process, including the appointment of an arbitrator and scheduling a hearing date.

☎ 1-800-352-JAMS
🌐 www.jamsadr.com

If you wish to proceed with an arbitration by executing and serving a Demand for Arbitration on the appropriate party, please submit the following items to JAMS with the requested number of copies:

A. Demand for Arbitration (2 copies)

B. Proof of service of the Demand on the appropriate party (2 copies)

C. Entire contract containing the arbitration clause (2 copies)

- To the extent there are any court orders or stipulations relevant to this arbitration demand, e.g. an order compelling arbitration, please also include two copies.

D. Administrative Fees

- For two-party matters, the Filing Fee is \$1,500. For matters involving three or more parties, the filing fee is \$2,000. The entire Filing Fee must be paid in full to expedite the commencement of the proceedings. Thereafter, a Case Management Fee of 12% will be assessed against all Professional Fees, including time spent for hearings, pre- and post-hearing reading and research and award preparation. JAMS also charges a \$1,500 filing fee for counterclaims. For matters involving consumers, the consumer is only required to pay \$250. See JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses. For matters based on a clause or agreement that is required as a condition of employment, the employee is only required to pay \$400. See JAMS Policy on Employment Arbitrations, Minimum Standards of Fairness.
- A refund of \$600 will be issued if the matter is withdrawn within five days of filing. After five days, the filing fee is non-refundable.

Once completed, please submit to your local JAMS Resolution Center.

Resolution Center locations can be found on the JAMS website at: <http://www.jamsadr.com/locations/>.



Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

TO RESPONDENT (PARTY ON WHOM DEMAND FOR ARBITRATION IS MADE)

Add more respondents on page 6.

RESPONDENT NAME	Oracle America, Inc.				
ADDRESS	500 Oracle Parkway				
CITY	Redwood Shores	STATE	CA	ZIP	94065
PHONE	650-506-7000	FAX		EMAIL	

RESPONDENT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY	Brendan Dolan				
FIRM/COMPANY	Vedder Price (CA), LLP				
ADDRESS	275 Battery Street, Suite 2464				
CITY	San Francisco	STATE	CA	ZIP	94111
PHONE	415-749-9500	FAX	415-749-9502	EMAIL	bdolan@vedderprice.com

FROM CLAIMANT

Add more claimants on page 7.

CLAIMANT NAME	Marcella Johnson				
ADDRESS	c/o Claimant's Attorney, below				
CITY		STATE		ZIP	
PHONE		FAX		EMAIL	

CLAIMANT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY	Danielle Fuschetti				
FIRM/COMPANY	Sanford Heisler Sharp, LLP				
ADDRESS	111 Sutter Street, Suite 975				
CITY	San Francisco	STATE	CA	ZIP	94104
PHONE	415-795-2022	FAX	415-795-2021	EMAIL	dfuschetti@sanfordheisler.com



Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

MEDIATION IN ADVANCE OF THE ARBITRATION

If mediation in advance of the arbitration is desired, please check here and a JAMS Case Manager will assist the parties in coordinating a mediation session.

NATURE OF DISPUTE / CLAIMS & RELIEF SOUGHT BY CLAIMANT

CLAIMANT HEREBY DEMANDS THAT YOU SUBMIT THE FOLLOWING DISPUTE TO FINAL AND BINDING ARBITRATION.
A MORE DETAILED STATEMENT OF CLAIMS MAY BE ATTACHED IF NEEDED.

Claimant was a sales representative at Respondent Oracle America, Inc. Claimant brings this action to recover earned but unpaid commissions that Oracle wrongfully withheld from her and other similarly situated sales representatives in breach of Oracle's contracts with its sales representatives and in violation of the California Labor Code.

Claimant further brings this action on behalf of the general public to seek all injunctive and preventive relief authorized by California Business and Professions Code § 17200 et seq. resulting from Respondent's willful failure to pay its sales employees all earned commissions, Respondent's failure to pay wages timely, and Respondent's failure to maintain and issue accurate wage statements and records of commission earnings and deductions.

For a more detailed statement of claims, please see the attached Demand for Class Arbitration.

Claimant requests that this matter be related to Johnson v. Oracle, JAMS Ref. No. 1100087724. Claimant takes the position that this case and the claims that it contains are properly part of JAMS Ref. No. 1100087724, and Claimant reserves all rights regarding that issue.

AMOUNT IN CONTROVERSY (US DOLLARS)

\$150,000,000.00



Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

ARBITRATION AGREEMENT

This demand is made pursuant to the arbitration agreement which the parties made as follows. *Please cite location of arbitration provision and attach two copies of entire agreement.*

ARBITRATION PROVISION LOCATION

Please see Exhibit A to Claimant's Demand for Class Arbitration, entitled "Employment Agreement & Mutual Agreement to Arbitrate," pages 2-3.

RESPONSE

The respondent may file a response and counter-claim to the above-stated claim according to the applicable arbitration rules. *Send the original response and counter-claim to the claimant at the address stated above with two copies to JAMS.*

REQUEST FOR HEARING

REQUESTED LOCATION San Francisco, CA

ELECTION FOR EXPEDITED PROCEDURES (IF COMPREHENSIVE RULES APPLY)

See: *Comprehensive Rule 16.1*

By checking the box to the left, Claimant requests that the Expedited Procedures described in JAMS Comprehensive Rules 16.1 and 16.2 be applied in this matter. Respondent shall indicate not later than seven (7) days from the date this Demand is served whether it agrees to the Expedited Procedures.

SUBMISSION INFORMATION

SIGNATURE

DATE June 29, 2018

NAME
(PRINT/TYPED)

Danielle Fuschetti, Attorney for Claimant



Demand for Arbitration Form (continued)

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Completion of this section is required for all consumer or employment claims.

CONSUMER AND EMPLOYMENT ARBITRATION

Please indicate if this is a CONSUMER ARBITRATION. For purposes of this designation, and whether this case will be administered in California or elsewhere, JAMS is guided by *California Rules of Court Ethics Standards for Neutral Arbitrators, Standard 2(d) and (e)*, as defined below, and the JAMS Consumer and Employment Minimum Standards of Procedural Fairness:

- YES**, this is a CONSUMER ARBITRATION.
- NO**, this is **not** a CONSUMER ARBITRATION.

"Consumer arbitration" means an arbitration conducted under a pre-dispute arbitration provision contained in a contract that meets the criteria listed in paragraphs (1) through (3) below. "Consumer arbitration" excludes arbitration proceedings conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

1. The contract is with a consumer party, as defined in these standards;
2. The contract was drafted by or on behalf of the non-consumer party; and
3. The consumer party was required to accept the arbitration provision in the contract.

"Consumer party" is a party to an arbitration agreement who, in the context of that arbitration agreement, is any of the following:

1. An individual who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, insurance, and other goods and services as defined in section 1761 of the Civil Code;
2. An individual who is an enrollee, a subscriber, or insured in a health-care service plan within the meaning of section 1345 of the Health and Safety Code or health-care insurance plan within the meaning of section 106 of the Insurance Code;
3. An individual with a medical malpractice claim that is subject to the arbitration agreement; or
4. An employee or an applicant for employment in a dispute arising out of or relating to the employee's employment or the applicant's prospective employment that is subject to the arbitration agreement.

In addition, JAMS is guided by its Consumer Minimum Standards and Employment Minimum Standards when determining whether a matter is a consumer matter.

If Respondent disagrees with the assertion of Claimant regarding whether this IS or IS NOT a CONSUMER ARBITRATION, Respondent should communicate this objection in writing to the JAMS Case Manager and Claimant within seven (7) calendar days of service of the Demand for Arbitration.

EMPLOYMENT MATTERS

If this is an EMPLOYMENT matter, Claimant must complete the following information:

Private arbitration companies are required to collect and publish certain information at least quarterly, and make it available to the public in a computer-searchable format. In employment cases, this includes the amount of the employee's annual wage. The employee's name will not appear in the database, but the employer's name will be published. Please check the applicable box below:

- Less than \$100,000 \$100,000 to \$250,000 More than \$250,000 Decline to State

WAIVER OF ARBITRATION FEES

In certain states (e.g. California), the law provides that consumers (as defined above) with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of the arbitration fees. In those cases, the respondent must pay 100% of the fees. Consumers must submit a declaration under oath stating the consumer's monthly income and the number of persons living in his or her household. Please contact JAMS at 1-800-352-5267 for further information. Note: this requirement is not applicable in all states.

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Attorneys for Claimant Marcella Johnson and the Proposed Class

In JAMS

MARCELLA JOHNSON,
On Behalf of Herself and All Others
Similarly Situated,

CLAIMANT,

v.

ORACLE AMERICA, INC.,

RESPONDENT.

JAMS Ref. No. _____

**DEMAND FOR CLASS
ARBITRATION**

1 Claimant Marcella Johnson was a sales representative at Respondent Oracle
2 America, Inc. Claimant brings this Demand for Class Arbitration to recover earned but
3 unpaid commissions that Oracle wrongfully withheld from her and other similarly situated
4 sales representatives, and to seek injunctive relief to end Oracle’s policy and practice of
5 failing to pay commissions within the time prescribed by the California Labor Code. As
6 set forth below, Oracle engages in deceptive and unlawful maneuvers to avoid paying
7 representatives their rightful commission wages.

8 Further, Oracle arbitrarily and retroactively changed Claimant’s commissions after
9 they had been earned and paid – to the point that Oracle claimed that Claimant actually
10 owed the Company twenty thousand dollars. Oracle then unlawfully compelled Claimant
11 to continue to work without receiving commissions until she paid off her so-called “debt.”
12 Thus, Oracle engaged in illegal peonage (debt servitude) and forced labor practices – a
13 twenty-first century tech analog of sharecropping and the company store – prohibited by
14 federal law.

15 **INTRODUCTION**

16 1. Claimant Johnson, a former sales representative at Oracle, brings class
17 claims against Oracle on behalf of herself and all others similarly situated. Claimant seeks
18 to recover commission wages unlawfully withheld by Oracle in breach of Oracle’s
19 contracts with its sales representatives and in violation of the California Labor Code, and
20 to remedy Oracle’s systemic failure to pay wages timely.

21 2. Respondent Oracle is a Fortune 100 technology giant. Oracle attracts
22 employees by offering them the opportunity to “make a difference” and help “make the
23 world a better place for everyone.” But the reality does not live up to this lofty rhetoric.
24 Oracle reaps its profits on the backs of its workers by failing to honor its legal and
25 contractual obligations to compensate them fairly.

26 3. For many years, Oracle has routinely and systematically shortchanged its
27 salesforce of their earned commission wages. Oracle does so by retroactively changing the
28 terms and conditions for calculating commissions after those commissions are earned and

1 due and sometimes even after they have been paid. As a matter of policy and practice,
2 Oracle retrospectively cancels the contractual plans and formulas under which salespeople
3 have made their sales and earned associated commissions. Oracle then replaces the
4 operative contractual terms with back-dated, less favorable provisions in order to pay the
5 employees substantially less than what they are entitled to. In essence, if the compensation
6 arising under a commissions contract is more than what Oracle decides it wants to pay –
7 even well after the fact – it unilaterally disregards the contract and refuses to pay.

8 4. Accordingly, Oracle engages in a classic bait-and-switch, under which the
9 system is rigged. Oracle incentivizes its employees to make sales through promises of
10 potentially lucrative commissions. But if they are successful in making sales on Oracle’s
11 behalf, the company might simply opt not to pay.

12 5. In some instances, Oracle coerces employees into accepting retroactive
13 adjustments to earned commissions by threatening that if they fail to accept the new
14 commission plans within 24 hours, they will not be paid pending commissions at all. If an
15 employee is intrepid enough to decline, Oracle barrels ahead anyway and applies the new
16 terms to completed past sales.

17 6. As a result of these practices, Oracle frequently “claws back” previously
18 paid commissions. If employees cannot afford to pay back their earned commission wages,
19 they are left with a Hobson’s choice: continue to work for Oracle without commissions
20 until the supposed “debt” is paid off or leave the company and face a collections lawsuit.

21 7. Oracle has a term for retroactive changes to a commission plan: “re-plans.”
22 Re-plans are rooted in compensation policies which unlawfully provide that Oracle can
23 reduce commissions based on opaque and secret criteria. Oracle is not transparent or
24 upfront about the circumstances and reasons for “re-plans.”

25 8. Although seemingly arbitrary to the sales employees, Oracle’s practices are
26 anything but haphazard. Led by the finance department and supported by sales operations
27 and compensation department employees, Oracle’s re-plans are about one thing:
28 retroactively defraying the company’s incurred labor costs to align with its corporate

1 financial goals. Oracle adopts systematic processes that enable it to regularly overpromise
2 and underdeliver to its workers; over the years, Oracle has padded its bottom line with
3 many millions of dollars in workers' earned commission wages.

4 9. Oracle's practices breach its contractual arrangements with sales
5 employees. These practices further violate the California Labor Code's prohibitions on
6 untimely payment of wage, on taking deductions from employees' wages to defray
7 ordinary business costs, and on secretly paying a lower wage than the one designated by
8 contract. In addition, Oracle's practices contradict the Labor Code's requirement that
9 commission contracts be transparent about the methods for computing and paying
10 commissions and enable workers to fairly anticipate their actual compensation. Finally, by
11 systematically promising employees certain commissions and using unlawful re-plans to
12 avoid paying these commissions, Oracle engages in unfair business practices under
13 California's Unfair Competition Law.

14 10. Through this class arbitration, Claimant challenges Oracle's practices of
15 imposing retroactive changes in commission plans that result in loss of pay and failing to
16 pay commissioned sales employees within the time set forth by the Labor Code. Claimant
17 also pursues individual peonage and forced labor claims under 18 U.S.C. §§ 1581 and
18 1589. Claimant seeks to recover unpaid wages, waiting time penalties, reasonable
19 attorneys' fees and costs, and all other appropriate relief to which Claimant and class
20 members are entitled.

21 **THE PARTIES**

22 11. Claimant Marcella Johnson resides in Modesto, California. She worked for
23 Oracle in 2013 and 2014 in Oracle's offices in Redwood City, California.

24 12. Respondent Oracle is a Delaware Corporation with its corporate
25 headquarters in Redwood City, San Mateo County, California.

26 13. Oracle was and is an employer under the California Labor Code and
27 common law.

28 14. Oracle employed Claimant and other employees to perform sales work for

1 Oracle in California. Oracle regularly failed to pay Claimant and other sales employees the
2 earned commission wages they were entitled to under their commission contracts.

3 **JURISDICTION AND VENUE**

4 15. Ms. Johnson originally filed this action on February 14, 2017 in federal
5 district court in the Northern District of California.

6 16. Oracle filed a motion to dismiss the federal action on the ground that the
7 court lacked subject matter jurisdiction under the Class Action Fairness Act.

8 17. After Ms. Johnson filed the federal action, Oracle produced Ms. Johnson's
9 personnel file. The personnel file contained an arbitration agreement.

10 18. Judicial Arbitration and Mediation Services ("JAMS") of San Francisco has
11 jurisdiction over this class action arbitration pursuant to the Parties' written arbitration
12 agreement known as "Employment Agreement & Mutual Agreement to Arbitrate" (the
13 "Arbitration Agreement"), a copy of which is attached to this Class Action Demand as
14 Exhibit "A." By invoking arbitration, Claimant does not waive any rights and expressly
15 reserves all rights to challenge any term or provision of the Arbitration Agreement.

16 19. The Arbitration Agreement was a non-negotiable form contract which
17 Oracle imposed on Claimant and other workers as a condition of employment.

18 20. JAMS of San Francisco also has jurisdiction over this class arbitration and
19 Respondent Oracle pursuant to the JAMS Class Action Procedures, JAMS Employment
20 Arbitration Rules and Procedures, and JAMS Policy on Employment Arbitration Minimum
21 Standards of Procedural Fairness.

22 21. Pursuant to the Parties' Arbitration Agreement, Claimant selects San
23 Francisco, California, as the venue where the arbitration shall be conducted.

24 **CLASS ACTION ALLEGATIONS**

25 22. Claimant brings this action pursuant to Rule 3 of the JAMS Class Action
26 Procedures and Fed. R. Civ. P. 23. Claimant seeks injunctive and monetary relief for
27 Oracle's systematic refusal to pay the full commissions earned by sales employees.
28 Claimant additionally seeks injunctive relief for Oracle's untimely payment of earned

1 commissions.

2 **A. Class Definitions**

3 23. The Class consists of all commissioned sales employees who have been or
4 will be employed by Oracle in California at any time from February 14, 2013 to the present.

5 24. The “Re-plan Subclass” consists of all commissioned sales employees who
6 have been or will be employed by Oracle in California at any time from February 14, 2013
7 to the present, to whom Oracle has issued a commission plan which is subsequently
8 replaced by another commission plan containing both a retroactive effective date and a
9 commission formula less favorable to the employee, i.e. one which results in lower
10 commission earnings, (through changes such as higher quotas and lower commission rates)
11 in comparison to the plan that is being replaced. Class members had pending commissions
12 payments and/or prior commission payments reduced or clawed back as a result of
13 retroactive re-plans.

14 25. Claimant is a member of the Class and Subclass she seeks to represent.

15 26. Claimant reserves the right to amend the class definitions based on
16 discovery or legal developments.

17 **B. Requirements of Federal Rule 23(a)**

18 **i. Numerosity and Impracticability of Joinder**

19 27. The proposed Class is so numerous that joinder of all members is
20 impracticable.

21 28. Upon information and belief, there are more than 1,000 members of the
22 proposed Class.

23 29. The Class members are readily ascertainable through Oracle’s centralized
24 and electronically maintained records.

25 **ii. Common Questions of Law and Fact**

26 30. The prosecution of Claimant’s claims will require the adjudication of
27 numerous questions of law and fact common to the Class. The common questions include:

28 a. Whether Respondent Oracle retroactively reduced Claimant’s and the

1 Class members' commission wages by applying revised, less favorable
2 terms to prior completed sales;

3 b. Whether the terms of Oracle standardized commission contracts comply
4 with California law governing earned commission wages;

5 c. Whether terms within Oracle's standardized commission contracts
6 comply with California Labor Code Section 2751;

7 d. Whether Oracle's commission policies and practices relating to the
8 timing of commission payments comply with California Labor Code
9 Section 204 and 204c;

10 e. Whether Oracle's commission policies and practices comply with
11 California Labor Code Section 221; and

12 f. Whether Oracle's commission policies and practices comply with
13 California Labor Code Section 223.

14 **iii. Typicality of Claims and Relief Sought**

15 31. Claimant has suffered the same violations and similar injuries as other Class
16 members; these violations and injuries were caused by Respondent Oracle's common
17 course of conduct.

18 32. All Class members were subject to the same so-called "arrear" policy of
19 paying employees late.

20 33. All Re-plan Subclass members were subject to the same corporate policies
21 and practices, as alleged herein, of reducing commission payments on an *ex post facto*
22 basis.

23 34. Claimant possesses and asserts each of the claims she asserts on behalf of
24 the proposed Class and Re-plan Subclass. She seeks similar relief as other Class and
25 Subclass members.

26 **iv. Adequacy of Representation**

27 35. Claimant is willing and able to represent the proposed Class and Re-plan
28 Subclass fairly and vigorously as she pursues her similar individual claims in this action.

1 36. Claimant has retained counsel sufficiently qualified, experienced, and able
2 to conduct this arbitration and to meet the time and fiscal demands required to pursue a
3 class action of this size and complexity.

4 **C. Requirements of Rule 23(b)(2)**

5 37. Oracle has acted on grounds generally applicable to Claimant and the
6 proposed Class by adopting and following systemic policies, practices, and procedures that
7 deprive sales employees of earned commission wages and unreasonably and unlawfully
8 delaying the payment of commission wages. Refusal to pay all commission wages and
9 failure to pay on time are Oracle's standard operating procedures rather than sporadic
10 occurrences.

11 38. Oracle has acted or refused to act on grounds generally applicable to
12 Claimant and the proposed Class. Oracle's class-wide conduct justifies the requested
13 injunctive and declaratory relief with respect to the Class as a whole.

14 39. Injunctive, declaratory, and affirmative relief are significant forms of relief
15 sought in this case. Entitlement to declaratory, injunctive, and affirmative relief flows
16 directly and automatically from proof of Oracle's ongoing refusal to pay all commission
17 wages in the timeframes required by California law. In turn, entitlement to declaratory,
18 injunctive, and affirmative relief forms the factual and legal predicate for the monetary and
19 non-monetary remedies for individual losses caused by Oracle's systemic refusal to pay
20 full commissions and systemic failure to timely pay commissions.

21 **D. Requirements of Rule 23(b)(3)**

22 40. The common questions of law and fact predominate over any questions
23 affecting only individual Class members. Resolution of these common questions for the
24 Class as a whole will greatly advance the efficiency purposes of class actions.

25 41. A class arbitration is superior to other available means for the fair and
26 efficient adjudication of this controversy. In particular, individual Class members lack the
27 financial resources to vigorously prosecute an action against a large corporation such as
28 Oracle and would not be able to pursue their claims independently.

1 50. For Class members, Oracle uniformly issues written job offers promising
2 that they would be compensated through a combination of base salary and commissions,
3 often with the target commissions comprising half of their total compensation. Class
4 members accept these job offers in order to be employed in a commissioned sales position.

5 51. Oracle provides each sales employee with an Individualized Compensation
6 Plan (“ICP”) containing commission rates, sales targets (i.e., quotas) and other numeric
7 terms, along with written Terms and Conditions of Incentive Compensation (“T&C”). The
8 ICP sets forth the formula by which commissions are to be calculated.

9 52. Oracle considers the ICP, the T&C, and associated appendices to comprise
10 the commission contract required by California Labor Code Section 2751.

11 53. The T&C is identical for all Class members.

12 54. After an employee – such as Claimant Johnson – starts work in a sales
13 position, Oracle distributes the T&C and the ICP to her electronically and obtains her
14 acceptance to these provisions.

15 55. Oracle first requires employees to click “accept” on the T&C, after which
16 Oracle then provides the ICP to the employees. Next, employees are asked to click “accept”
17 for the ICPs. Compliance with this acceptance process is required for employees to be
18 eligible to receive commission payments for their work. Indeed, Oracle commonly issues
19 the instruction to Class members and sales employees nationwide that failure to accept
20 ICPs within 24 hours will result in nonpayment of commissions.

21 56. At various points after an initial ICP is in place, Oracle issues revised ICPs
22 to some employees through this same procedure. Typically, Oracle issues revised ICPs to
23 employees soon after the start of each fiscal year – usually sometime in mid-to-late June.
24 Oracle also issues revised ICPs at other times. Class members uniformly receive the same
25 draconian instruction that acceptance of the ICPs as mandatory. Oracle issues uniform
26 messages to sales employees that it will not be paying commissions unless the re-plans are
27 accepted.

28 57. Revised ICPs that have back-dated effective dates and therefore affect

1 previous sales are known as “re-plans.” Re-plans apply retroactively to sales transactions
2 completed by Re-plan Subclass members under the prior operative ICP. Re-plans affect
3 past sales going back to a date of Oracle’s choosing, sometimes to the beginning of the
4 same fiscal year and sometimes to a date in a previous fiscal year. Re-plans are typically
5 used to alter – either by reducing or altogether eliminating – commissions generated and
6 due under the original ICP.

7 58. Oracle’s commission contracts set forth conditions precedent to the
8 payment of commissions. Generally, commissions are calculated and paid after
9 transactions are booked or revenue is recognized. The T&C sets forth the commission
10 calculation triggers and payment triggers for the different products sold by Oracle.
11 However, Oracle’s re-plans frequently demand retroactive adjustment of earned
12 commissions even after the conditions are fully satisfied.

13 59. Oracle’s commission contracts contain uniform clauses authorizing
14 reductions to commissions. These standard clauses state that Oracle has discretion to: (a)
15 retroactively reduce commission payments and to otherwise determine the amount of
16 commissions paid; and (b) to deviate from, modify, cancel and/or replace any term of a
17 commission contract (*e.g.*, ICP), such as the commission rates and quotas.

18 60. When sales employees press for explanations for retroactive reductions to
19 the commissions they have earned, Oracle cites to terms in its standardized commission
20 contracts that give the company discretion to adjust commissions at any time.

21 61. The criteria Oracle uses to cut salespeople’s commissions are not set forth
22 in Oracle’s T&C or compensation plans. Nor does Oracle make clear that it will exercise
23 its discretion not only to change Oracle’s commissions terms on an across-the-board basis
24 but also to retrospectively slash the commissions due to an individual salesperson.

25 62. By the terms of the commission contract, and in practice, Oracle possesses
26 total, unilateral discretion to change the terms by which commissions are calculated and to
27 reduce commission payments due under the contract. Oracle does so at any time of its
28 choosing, based on undisclosed criteria.

1 63. These contractual terms are unlawful, void and unenforceable under
2 California law. The law prohibits the use of such discretionary power to deny employees
3 the benefits of their commission contracts. An unfettered prerogative to eliminate
4 employees' compensation and refuse to pay them would render these contracts illusory.

5 64. Moreover, Oracle fails to exercise its discretion reasonably and in good faith
6 in accordance with the parties' expectations. Oracle commonly uses re-plans to
7 retroactively reduce employees' earned compensation. Employees would not anticipate
8 that Oracle would systematically abuse its position to appropriate the contractual fruits of
9 their labor.

10 65. Typically, Oracle imposes re-plans that retroactively lower the employee's
11 commission rate and/or increase her sales quota on transactions that sales representatives
12 have already completed. The new calculation results in a significantly lower commission
13 or no commission at all.

14 66. Thus, the re-plan is a mechanism to change an employee's commission
15 contract in a way that cuts back commissions already earned. Oracle does not impose these
16 forfeitures because the sales have fallen through, but merely because it does not want to
17 actually pay the commission in effect at the time the sale was consummated.

18 67. Oracle's commission policies and procedures are based on the overriding
19 goal of aligning the company's financial performance with its financial forecasts. In
20 response to corporate demands that Oracle meet or exceed its profit targets, Oracle turns to
21 employees' earned sales commissions as low-hanging fruit – ripe for the plucking. Oracle
22 engages in a continual process of scrutinizing and adjusting existing ICPs in order to garner
23 for itself monies due to its salesforce in connection with finalized transactions.

24 66. In so doing, Oracle routinely reduces salespeople's commissions to offset
25 business costs which are beyond class members' control. Through the use of re-plans,
26 Oracle effectively deducts its ordinary costs of doing business from the earned
27 commissions of sales employees.

28 67. The re-plans can occur at any time, including after commissions have

1 already been paid to the employees. For example, Oracle sometimes issues a re-plan for an
2 already-concluded fiscal year, months after the end of a fiscal year, with the effect of
3 reducing the commissions for the prior year.

4 68. After the re-plans, Oracle changes the underlying commission
5 compensation records to reflect lowered commissions. If the commissions have not yet
6 been paid to the employee, the amount of commissions in the payment pipeline is reduced.
7 If commissions have already been paid to the employee, but are retroactively cut, Oracle
8 “claws back” the commissions.

9 69. Oracle treats the claw-back amount as a debt to be paid off. Often, this is
10 reflected in a “negative commission balance.” Oracle then takes newly earned commission
11 wages as a set-off for the negative balance, for employees who continue working at Oracle,
12 or demands cash repayment from former employees.

13 70. Current employees must either continue working for Oracle without any
14 commissions payments – as newly-earned commissions are forfeited to the Company to
15 pay off the “negative commissions balance” – or face the prospect of a collection demand
16 and suit from Oracle. Oracle threatens to sic its team of lawyers and debt collectors on
17 employees who leave the Company with an outstanding “debt.”

18 71. Where retroactive re-plans reduce previously paid commissions, Oracle
19 misrepresents that the previous payments were merely a loan, or merely an advance, and
20 converts previously paid commissions into debt owed by the employees.

21 72. However, Oracle records employees’ commission payments on itemized
22 wage statements (paystubs) and on W-2 forms as commission wages, not as loans or
23 advances. Oracle treats the commission wages of California employees, at the time they
24 are paid, as W-2 income subject to customary taxes and withholdings. Oracle does not
25 later amend any wage statements or tax statements to reflect a reduction in previously
26 reported commissions.

27 73. Further, Oracle fails to pay sales employees all earned commission wages
28 due within the time required by California law.

1 74. Oracle's policy and practice of making retroactive commission reductions
2 through re-plans violates Labor Code Sections 201, 202, 203, 204, and 204c because Oracle
3 refuses to commit to a timeframe for making reductions and reserves the right to impose
4 re-plans at any time.

5 75. In addition, Oracle's standard commission processing schedules
6 unreasonably delay the payment of commission payments. For most transactions, Oracle
7 releases commission payments no earlier than 45-days-in-arrears – meaning 45 days after
8 the end of the month in which a deal is booked or has hit all the triggers that would enable
9 the commission calculation to occur. For large or mega deals (particularly high value
10 deals), Oracle follows a 75-days-in-arrears policy.

11 76. Furthermore, pursuant to its standard payment schedules Oracle fails to pay
12 earned commission wages on designated, regular paydays at least twice a month as required
13 by California law. Instead, Oracle schedules commission payments for once per month or
14 once per quarter.

15 77. Oracle thereby purposely delays payment of commissions by at least several
16 pay periods through the operation of its standardized schedules that are uniformly
17 applicable to sales employees, including Claimant Johnson.

18 78. Because Oracle treats commission payments as advances on future
19 commissions, it does not inform Class members or maintain records of when commissions
20 are actually earned, nor of when it considers their commission wages earned. Oracle's wage
21 statements do not indicate the amounts of gross and net commissions earned, or deductions
22 from commissions in the form of clawbacks. Wage statements do not identify the
23 commissionable events, such as deals, for which Class members are being paid.

24 79. Upon information and belief, Oracle does not maintain written records of
25 deductions showing the month, day, and year, and a copy of the statement and the record
26 of the deductions it effectuates when it re-plans Class members retroactively. Nor, upon
27 information and belief, does it maintain payroll records showing the hours worked daily by
28 and the wages paid to, commission rates for commission payments made to, and number

1 of commissionable events completed by, Class members.

2 80. Oracle's failure to issue and to maintain wage statements and records that
3 properly reflect the nature and amount of gross and net commission wages and deductions
4 from commissions, as well as centralized records showing the hours worked daily by and
5 the wages paid to Class members, commission rates for commission payments made to
6 Class members, and the number of commission eligible tasks completed by Class members,
7 violates Labor Code Section 226(a) and 1174(d).

8 81. The sales commission practices described herein have been and are
9 continuing in nature.

10 **B. Claimant Marcella Johnson**

11 82. Claimant Marcella Johnson's experience is typical and illustrative of sales
12 representatives in general.

13 83. Claimant joined Oracle in March 2013. Claimant worked in a division
14 called Human Capital Management, in which she sold Oracle personnel management
15 software to other employers.

16 84. Oracle issued the T&C and an ICP to Claimant in accordance with the
17 standard procedures described above.

18 85. In November 2013 and December 2013, Oracle paid Claimant commission
19 wages for numerous completed sales transactions in accordance with the terms of the ICP
20 then in effect. These commission wages were documented as earnings in Claimant's
21 paystubs and subject to customary tax and withholdings.

22 86. After these payments were made, Claimant was unexpectedly "re-planned"
23 and given a lower commission rate. Oracle applied this new rate retroactively to the
24 beginning of the fiscal year, June 2013.

25 87. This re-plan significantly reduced Claimant's earned commissions on past
26 sales transactions. As a result, Oracle's previous payments to Claimant under the operative
27 commissions contract were greater than the total commissions resulting from the new,
28 lower rate. Accordingly, after the re-plan, Claimant suddenly had a "negative commission

1 balance” of approximately \$20,000.

2 88. According to Oracle, after the re-plan, the previous payments caused an
3 overpayment and now Oracle could claw back the “negative commission balance.”

4 89. Claimant complained to her second-line supervisor Director of Sales Vanja
5 Temim, who stated that all commissions are “interest free loans.” Claimant understood
6 this to mean that she was legally required to pay approximately \$20,000 back to Oracle.
7 Oracle’s Compensation Department confirmed that Claimant owed a “debt” to Oracle.

8 90. When Claimant inquired as to what would happen if she left the company,
9 Oracle informed her that if she stopped working for Oracle, it would have the right to
10 collect the negative balance from her, including through a lawsuit. Oracle indicated that it
11 would in fact pursue a collections process if Claimant left the Company without paying her
12 “debt.” Thus, Oracle made clear that it would resort to legal process against Claimant if
13 she stopped working for Oracle before she had paid off the supposed “debt.”

14 91. Oracle’s threat of a potential collections action against Claimant was
15 credible. Claimant had been informed and believed that Oracle had actually filed
16 collections actions against other former employees in her division to recover bonuses that
17 had been paid to them. In numerous instances, Oracle has pursued or threatened collection
18 lawsuits against its former sales employees to claw back commission payments.

19 92. Oracle’s threat acted as a hammer that compelled Claimant to work without
20 commissions for several months. Claimant desperately wanted to resign from her job and
21 leave Oracle, but could not. Claimant could not afford to “repay” Oracle out of her pocket.
22 She was a new parent and the primary earner in her household. She had only recently
23 resolved her personal debts and was rebuilding her credit to purchase a home for her family.
24 A collections lawsuit against Claimant would not only have required her to expend
25 substantial time and resources but would have irrevocably damaged her credit.

26 93. Consequently, Ms. Johnson felt she had no choice but to remain at Oracle
27 and work off her “debt” to the company.

28 94. Additional commissions that Claimant earned for the remainder of her

1 employment with Oracle were not paid to her but were confiscated by Oracle to offset the
2 \$20,000 “negative commission balance.”

3 95. Claimant was subject to Oracle’s standardized policies relating to the timing
4 of commission payments. Her commission payments were delayed by Oracle’s policy of
5 paying at least 45-days-in-arrears and by Oracle’s policy of not paying commission wages
6 twice per month. Claimant was subject to the policy of once-per-month commission
7 payouts, if she had a positive commission balance.

8 96. As a consequence of Oracle’s policies relating to the timing of commission
9 payments, Claimant was forced to wait several pay periods or more after the completion of
10 sales before the compensation department was able to confirm for her whether
11 commissions would be credited to her. Therefore, Claimant was forced to prolong her
12 employment at Oracle as she waited for confirmation that she had cleared the negative
13 commission balance.

14 97. Claimant resigned from her position at Oracle effective July 2014, as soon
15 as she received confirmation from Oracle that she had earned sufficient additional
16 commissions to get “out of the hole” with Oracle and avoid a threatened collections action.

17 98. Thus, Claimant worked for several months without commissions, which
18 formed a substantial part of Oracle’s compensation package and to which she was
19 contractually and legally entitled.

20 99. Likewise, other sales employees in Human Capital Management suffered
21 the effects of Oracle’s retroactive “re-planning” practices during the same fiscal year.

22 100. Throughout the relevant period, sales employees company-wide have been
23 routinely deprived of earned commission payments because of similar re-plans. Like
24 Claimant, Re-plan Subclass members have regularly suffered retroactive changes to their
25 contractual commissions criteria resulting in a substantial loss of earned compensation.

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FIRST CLAIM FOR RELIEF
FAILURE TO PAY EARNED COMMISSION WAGES AND UNLAWFUL
DEDUCTIONS FROM EARNED COMMISSION WAGES
IN BREACH OF CALIFORNIA LABOR CODE AND CONTRACT
(On Behalf of Claimant and the Re-plan Subclass)

101. Claimant re-alleges and incorporates by reference all previous paragraphs.

102. Claimant and Re-plan Subclass members earned commission wages within the meaning of California Labor Code Sections 200 and 204.1.

103. Oracle has knowingly, intentionally, and willfully failed and refused to pay Claimant and Re-plan Subclass members the entire amount of the commissions they earned under their respective commissions plans. Oracle has operated under and continues to operate under a common policy and plan of failing and refusing to pay salespeople their full compensation by systematically implementing retroactive forfeitures of commissions earned.

104. Claimant and Re-plan Subclass members entered into written commission contracts with Respondent Oracle. These contracts provided that Oracle would pay commissions based on sales credited to Claimant and Re-plan Subclass members in accordance with the commission rates set forth in their Compensation Plans (ICPs).

105. Claimant and Re-plan Subclass members have performed all of the express contractual duties and obligations that would entitle them to receive commissions under those ICPs. Claimant and Re-plan Subclass members have met all lawful and express conditions precedent to the earning of commissions. Oracle has credited Claimant and Re-plan Subclass members for sales that are encompassed by their commission contracts and calculated the commissions that they are entitled to on those sales based on their ICPs.

106. But, Oracle has failed to pay Claimant and Re-plan Subclass members the commissions due under the contracts. Oracle relies on provisions that allow it to retroactively change commission terms at any time and thereby deprive salespeople of commissions earned and due for completed sales. These provisions are void and unenforceable exculpatory clauses under California Civil Code Section 1668.

1 107. Furthermore, these provisions are unlawful, void and unenforceable under
2 California Labor Code Sections 221, 223, and 2751. These terms, if enforced, would render
3 Oracle’s contractual bargain and obligation to pay commissions a nullity that the company
4 can disregard at whim.

5 108. Labor Code Section 221 states: “It shall be unlawful for any employer to
6 collect or receive from an employee any part of wages theretofore paid by said employer
7 to said employee.” Labor Code Section 221 prohibits an employer from deducting from
8 wages as a set-off for debts. Furthermore, California’s Industrial Welfare Commission
9 Wage Orders prohibit an employer from using employees’ earned wages to offset its
10 ordinary business costs.

11 109. Oracle’s use of re-plans to avoid paying earned commissions, including by
12 clawing back previously paid compensation, constitutes the unlawful withholding and
13 deduction of earned wages in violation of Section 221.

14 110. Labor Code Section 223 states: “Where any statute or contract requires an
15 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower
16 wage while purporting to pay the wage designated by statute or by contract.”

17 111. In violation of Section 223, Oracle secretly underpays salespeople’s
18 commission wages while purporting to follow the commission rates designated by contract.
19 Oracle clandestinely recalculates the commissions owed and due to employees and pays
20 them amounts lower than those to which they are contractually entitled.

21 112. Labor Code Section 2751 states, in pertinent part: “Whenever an employer
22 enters into a contract of employment with an employee for services to be rendered within
23 this state and the contemplated method of payment of the employee involves commissions,
24 the contract shall be in writing and shall set forth the method by which the commissions
25 shall be computed and paid.” Section 2751 does not permit employers to unilaterally and
26 retroactively set the terms and conditions for commissions payments; employees must
27 agree to the applicable terms and conditions in advance and be able to anticipate their actual
28 compensation as they are performing the work and making applicable sales.

1 113. In violation of Section 2751, Oracle routinely deviates from the specified
2 contractual methods for the computation and payment of commissions. Stated otherwise,
3 Oracle improperly relies on undisclosed methods not set forth in the commissions contract.

4 114. Individually and collectively, Labor Code Sections 221, 223, and 2751 and
5 Civil Code Section 1668 invalidate Oracle's illegal contract provisions and give rise to
6 Claimant and Re-plan Subclass members' claims for unpaid wages under the valid and
7 enforceable terms of their written commission contracts.

8 115. As part of the retroactive re-plan practices and related compensation
9 practices detailed in this Demand, Oracle deducted from Claimant's and Re-plan Subclass
10 members' earned commissions and either withheld wages due or confiscated back
11 previously paid wages including by taking deductions from additional earned wages.

12 116. Labor Code Section 221 prohibits an employer from deducting amounts
13 from an employee's wages, even as a set-off for amounts clearly owed by the employee.
14 Here, Claimant and Re-plan Subclass members did not lawfully owe to Oracle any
15 commissions they had earned. The commission wages that were paid to Claimant and Re-
16 plan Subclass members or designated as due to them were not loans or advances. Because
17 the lawful and express contractual conditions to earning commissions were satisfied, the
18 commissions are considered wages. Therefore, under Section 221, Oracle cannot lawfully
19 recoup the commission whether or not it has been paid.

20 117. Nonetheless, Oracle engaged in self-help and deducted commission wages
21 to set-off commission amounts that it wanted to take back following a retroactive re-plan.
22 Such withholding and diversion of wages is not authorized under Labor Code Section 224
23 and constitutes unlawful wage deductions under Section 221.

24 118. Pursuant to California Labor Code §§ 200 et seq., Claimant and Re-plan
25 Subclass members are entitled to recover unpaid wages, with interest, attorney's fees, and
26 costs, all in an amount to be proven at trial.

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1 127. Oracle is its industry's market leader. The 2015 *PwC's Global 100 Software*
2 *Leaders* ranks Oracle at #2.

3 128. Business & Professions Code Section 17200 defines unfair competition, in
4 relevant part, as an unfair or unlawful business act or practice. This law seeks to safeguard
5 the public against unfair, dishonest, deceptive, destructive, fraudulent and discriminatory
6 business practices. It proscribes unfair anti-competitive practices even when those practice
7 are not unlawful under existing law.

8 129. Oracle has engaged and continues to engage in business practices which
9 violate California law, including but not limited to California Labor Code Sections 200,
10 201, 202, 204, 204c, 221, 223, 226(a), 1174(d), and 2751 and the applicable Industrial
11 Welfare Commission Wage Orders.

12 130. Oracle's willful failure to pay all earned commission wages, failure to pay
13 wages timely, and failure to maintain and issue accurate wage statement and records of
14 commission earnings and deductions constitute unlawful business activity prohibited by
15 California Business and Professions Code Section 17200. These practices arise from fraud
16 and result in unfair competition.

17 131. Oracle has deceptively and oppressively forced its employees, like
18 Claimant, to accept "re-plans" that retroactively reduce earned commissions.

19 132. Moreover, since June 1, 2014, Oracle has deviously forced its employees,
20 like Claimant, to forfeit rights that are nonwaivable under the law; it has done this by
21 conditioning commission payments on acceptance of a modified arbitration clause buried
22 in Appendix 9 of its Fiscal Year 2015 Terms & Conditions of Incentive Compensation.
23 This arbitration clause purports to waive employees' right to seek public, permanent
24 injunctive relief in any fora and is therefore contrary to California law.

25 133. Likewise, Oracle's policies, practices, and procedures alleged herein
26 constitute unfair business practices under Section 17200. Oracle's commission wage
27 policies, practices, and procedures deceive employees about when, how, and what they will
28 be paid and oppress employees who have inherently less bargaining power than their

1 employers and possess inferior information.

2 134. By continually shifting the goal posts after the fact and reclaiming earned
3 wages on which its salespeople rely, Oracle leaves these workers acutely vulnerable to
4 economic privation – in contravention of California public policy.

5 135. Furthermore, any failure to pay wages is, by definition, an unfair business
6 practice under Section 17200.

7 136. The general public is in danger of being victimized by the deceptive
8 practices that injured Claimant and Re-plan Subclass members.

9 137. Oracle’s deceptive practices that injured Claimant and Class members
10 continue to endanger the general public. Members of the general public include consumers,
11 competitors, customers, and stakeholders in Oracle or its affiliates. Other members of the
12 public include businesses located, operated, or incorporated in California, or whose
13 stakeholders are California residents. As one example, Oracle has acquired ownership,
14 licenses, and rights to products and services developed in California, by California
15 residents,¹ and at institutions funded in part by California taxpayers.²

16 138. Oracle represents to the general public, including California residents, that
17 it offers sales personnel commissions that are fair, lawful and more favorable than its
18 competitors. Consequently, it reaps the benefits of favorable press and lures talented sales
19 personnel through false promises of high commissions. As one example, *Forbes* has ranked
20 Oracle sixth out of its “10 Companies That Pay Salespeople Really Well.” It is reasonable
21 to presume that past, current, and future sales reps would look elsewhere for employment
22 if Respondent’s practices were known to the public.

23

24 ¹ These businesses include but are not limited to Sun Microsystems, NetSuite (previously
25 headquartered in California); Bluekai (a startup originally based out of California); Agile
26 Software Corporation (based out of California); Hyperion Solutions Corporation (a
27 California based Company and now subsidiary of Oracle); Taleo (database vendor
28 headquartered in California).

² As one example, Oracle acquired in 2006 Sleepycat Software, Inc. a formerly private
company that maintained a database software system developed at the University of
California, Berkeley.

1 139. By attracting more talented sales personnel through false promises of higher
2 wages, Oracle also increases its market power.

3 140. In the course of dealings with prospective employees and business dealings
4 with other California business entities, including companies that Oracle seeks to acquire,
5 Oracle misrepresents that it complies with California labor laws. In recent years Oracle has
6 acquired and continues to acquire or engage in business transactions with numerous
7 businesses located or incorporated in California, or whose stakeholders are California
8 residents. As an additional example, Oracle has acquired ownership, licenses, and rights to
9 products and services developed in California, by California residents³, or at institutions
10 located in California and subsidized with public funds.⁴ In some cases, Oracle's sales
11 personnel—subject to Oracle's illegal and unfair compensation practices—worked on
12 these transactions.

13 141. Oracle's practice of underpaying commission wages contrary to sales
14 employees' compensation plans is unethical, unscrupulous, and injurious not only to
15 employees but to third parties who are not employed by the Company—including
16 customers, consumers, and other businesses and their stakeholders—who transact with
17 Oracle on the reasonable belief that Oracle pays its workers the commissions they earned.

18 142. Oracle diverts to its own bottom line monies due to its employees but
19 represents that its profit margins were legitimately earned. Had consumers, investors,
20 acquisition targets, and entities with which Oracle otherwise engages in collaborative
21 business endeavors known of Respondent's malfeasance, they may not have transacted
22 business with Oracle.

23 143. Oracle thus deceives members of the public and gains unfair leverage and
24 advantages from violations of state labor law. Other companies that do not cheat are
25 disadvantaged competitively, making them easier and cheaper acquisition targets, to
26 Oracle's benefit and to the detriment of the stakeholders and employees in those

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³ See *supra* note 1.

28 ⁴ See *supra* note 2.

1 companies. When a major market actor consistently reaps benefits from breaking the law,
2 it structures the market around that illegal practice. Likewise, it interferes with consumer
3 relationships among the public. Consequently, Oracle's illegal employment practices
4 injure both its employees and the competitive marketplace.

5 144. Firms that compete with Oracle to hire its employees are marketplace
6 competitors even when those companies provide different products or services. As a
7 competitive market place provides consumers higher quality products, more variety, and
8 greater innovation, "competition among employers helps actual and potential employees
9 through higher wages, better benefits, or other terms of employment. Consumers can also
10 gain from competition among employers because a more competitive workforce may create
11 more or better goods and services."⁵

12 145. Oracle's compensation practices function as disincentives for employees to
13 voluntarily terminate employment for (justifiable) fear that Oracle will pursue legal action
14 to recover monies from the commissioned employee. In this way, Oracle's practices and
15 its Incentive Compensation Plan effectively function as a non-compete or similar
16 agreement to restrict a competitive labor market for employers and employees. As Oracle
17 commissioned employees are deterred from exiting employment with Oracle, competitors
18 cannot recruit or hire skilled sales personnel on a level playing field.

19 146. Not only do firms compete for employees in a competitive marketplace but
20 employees are entitled to reap the benefits of a competitive market for the skills and
21 services they provide.

22 147. As a result of Oracle's unlawful, unfair, and fraudulent business acts and
23 practices, competitors, investors, consumers and the general public suffer harm. Market
24 participants suffer loss of business, loss of goodwill, and risk the loss of enterprises
25 themselves as a result of impaired competition.

26 148. Oracle's violations of California's Unfair Competition Law are ongoing and

27 ⁵ https://www.ftc.gov/system/files/documents/public_statements/992623/ftc-
28 [doj_hr_guidance_final_10-20-16.pdf](https://www.ftc.gov/system/files/documents/public_statements/992623/ftc-doj_hr_guidance_final_10-20-16.pdf)

1 pose a continuing threat to employees and the general public—all participants in the
2 marketplace.

3 149. As a result of its unlawful and unfair acts, Oracle has reaped and continues
4 to reap unfair benefits and illegal profits at the expense of Claimant, Re-plan Subclass
5 members, and the general public.

6 150. Oracle should be made to disgorge these ill-gotten gains and restore to
7 Claimant and the Re-plan Subclass members the wrongfully withheld wages to which they
8 are entitled, as well as interest on these wages.

9 151. Claimant and Re-plan Subclass members seek, on behalf of the general
10 public, all injunctive and preventive relief authorized by Business and Professions Code
11 Sections 17202 and 17203.

12 152. The benefits of injunctive relief extend well beyond the individual Re-plan
13 Subclass members. Monetary relief alone will not redress irreparable harm Oracle
14 perpetrates through its practices. Public injunctive relief is necessary to remedy Oracle’s
15 systemic wrongs and benefit the public at large. Consequently, Claimant seeks injunctive
16 relief on behalf of the general public as well as the Re-plan Subclass.

17 153. This action is designed to ensure the enforcement of an important right
18 affecting the public interest and a large number of employees. The necessity and financial
19 burden of private enforcement is great, and the risks to the named Claimant for stepping
20 forward are also significant. Accordingly, Claimant would be entitled to attorneys’ fees
21 should she prevail, separate and apart from any recovery of unpaid wages and penalties.

22 **FOURTH CLAIM FOR RELIEF**
23 **UNFAIR COMPETITION (ARREARS POLICY**
24 **& INFREQUENT PAYMENT OF COMMISSIONS)**
25 **California Business & Professions Code §§ 17200 *et seq.***
26 **(On Behalf of Claimant and the Class)**

27 154. Claimant re-alleges and incorporates by reference all previous paragraphs.

28 155. Respondent Oracle is a “person” as defined under California Business &
Professions Code Section 17021.

1 156. Respondent Oracle is a multinational computer technology corporation that
2 develops and sells the public a myriad of sophisticated software programs. Oracle's
3 products include database management systems like customer relationship management
4 programs, supply chain management programs, and enterprise resource planning. Oracle's
5 products and services are intended to turn information and data into competitive advantages
6 for its customers.

7 157. Oracle is its industry's market leader. The 2015 *PwC's Global 100 Software*
8 *Leaders* ranks Oracle at #2.

9 158. Business & Professions Code Section 17200 defines unfair competition, in
10 relevant part, as an unfair or unlawful business act or practice. This law intends to safeguard
11 the public against unfair, dishonest, deceptive, destructive, fraudulent and discriminatory
12 business practices. Its language proscribes unfair anti-competitive practices even when
13 those practice are not unlawful under existing law.

14 159. Oracle has engaged and continues to engage in business practices which
15 violate California law, including but not limited to California Labor Code Section 204,
16 204c, 226(a), Section 1174(d), and the applicable Industrial Welfare Commission Wage
17 Orders.

18 160. Oracle's willful failure to pay all earned commission wages on time by
19 operation of the arrears policy, its failure to maintain and issue accurate wage statements
20 and records of commission earnings and deductions, and its payment of commission wages
21 on a monthly or quarterly schedule constitute unlawful business activity prohibited by
22 California Business and Professions Code Section 17200. These practices arise from fraud
23 and result in unfair competition.

24 161. Moreover, since June 1, 2014, Oracle has deviously forced its employees,
25 like Claimant, to forfeit rights that are nonwaivable under the law; it has done this by
26 conditioning commission payments on acceptance of a modified arbitration clause buried
27 in Appendix 9 of its Fiscal Year 2015 Terms & Conditions of Incentive Compensation.
28 This arbitration clause purports to waive employees' right to seek public, permanent

1 injunctive relief in any fora and is therefore contrary to California law.

2 162. Likewise, Oracle’s policies, practices, and procedures alleged herein – in
3 particular, the arrears policy – constitute unfair business practices under Section 17200.
4 Oracle’s commission wage policies, practices, and procedures deceive employees about
5 when, how, and what they will be paid and oppress employees who have inherently less
6 bargaining power than their employers and possess inferior information.

7 163. By paying commission wages monthly or quarterly and withholding wages
8 for anywhere from 30 to upwards of 75 days following the month in which a deal was
9 booked or hit the required triggers for calculation of commissions, Oracle leaves workers
10 acutely vulnerable to economic privation – in contravention of California public policy.

11 164. Furthermore, any failure to pay wages timely is, by definition, an unfair
12 business practice under Section 17200.

13 165. The general public is in danger of being victimized by the deceptive
14 practices that injured Claimant and Class members.

15 166. Oracle’s deceptive practices that injured Claimant and Class members
16 continue to endanger the general public. Members of the general public include consumers,
17 competitors, customers, and stakeholders in Oracle or its affiliates. Other members of the
18 public include businesses located, operated, or incorporated in California, or whose
19 stakeholders are California residents. As one example, Oracle has acquired ownership,
20 licenses, and rights to products and services developed in California, by California
21 residents,⁶ and at institutions funded in part by California taxpayers.⁷

22 167. Oracle represents to the general public, including California residents, that
23

24 ⁶ These businesses include but are not limited to Sun Microsystems, NetSuite (previously
25 headquartered in California); Bluekai (a startup originally based out of California); Agile
26 Software Corporation (based out of California); Hyperion Solutions Corporation (a
California based Company and now subsidiary of Oracle); Taleo (database vendor
headquartered in California).

27 ⁷ As one example, Oracle acquired in 2006 Sleepycat Software, Inc. a formerly private
28 company that maintained a database software system developed at the University of
California, Berkeley.

1 it offers sales personnel commissions that are fair, lawful and more favorable than its
2 competitors. Consequently, it reaps the benefits of favorable press and lures talented sales
3 personnel through false promises of high commissions. As one example, Forbes has ranked
4 Oracle sixth out of its “10 Companies That Pay Salespeople Really Well.” It is reasonable
5 to presume that past, current, and future sales reps would look elsewhere for employment
6 if Respondent’s practices were known to the public.

7 168. Oracle’s promises to pay commissioned employees higher wages, including
8 implicitly, the promise to tender this payment in the time prescribed by law, put anti-
9 competitive pressure on competitors who pay lesser wages in a timely manner. By
10 attracting more talented sales personnel through false promises of higher wages Oracle also
11 increases its market power.

12 169. In the course of dealings with prospective employees and business dealings
13 with other California business entities, including companies that Oracle seeks to acquire,
14 Oracle misrepresents that it complies with California labor laws. In recent years Oracle has
15 acquired and continues to acquire or engage in business transactions with numerous
16 businesses located or incorporated in California, or whose stakeholders are California
17 residents. As an additional example, Oracle has acquired ownership, licenses, and rights to
18 products and services developed in California, by California residents,⁸ or at institutions
19 located in California and subsidized with public funds.⁹ In some cases, Oracle’s sales
20 personnel—subject to Oracle’s illegal and unfair compensation practices—worked on
21 these transactions.

22 170. Oracle’s practice of underpaying commission wages contrary to sales
23 employees’ compensation plans is unethical, unscrupulous, and injurious not only to
24 employees but to third parties who are not employed by the Company—including
25 customers, consumers, and other businesses and their stakeholders—who transact with
26 Oracle on the reasonable belief that Oracle pays its workers their commissions within the

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⁸ See *supra* note 6.

28 ⁹ See *supra* note 7.

1 time required by law.

2 171. Furthermore, Oracle retains monies due to its employees well beyond the
3 time it is legally permitted to do so. It uses this delay in payment to “calculate”
4 compensation in a manner that minimizes commissions paid out. To the extent that that
5 this illegal policy results in a profit for the Company, Oracle’s profits depend in part on its
6 continued illegal conduct, despite the Company’s representation that its profit margins
7 were legitimately earned. Had consumers, investors, acquisition targets, and entities with
8 which Oracle otherwise engages in collaborative business endeavors known of
9 Respondent’s malfeasance, they may not have transacted business with Oracle.

10 172. Oracle thus deceives members of the public and gains unfair leverage and
11 advantages from violations of state labor law. Other companies that do not cheat are
12 disadvantaged competitively, making them easier and cheaper acquisition targets, to
13 Oracle’s benefit and to the detriment of the stakeholders and employees in those
14 companies. When a major market actor consistently reaps benefits from breaking the law,
15 it structures the market around that illegal practice. Likewise, it interferes with consumer
16 relationships among the public. Consequently, Oracle’s illegal employment practices
17 injure both its employees and the competitive marketplace.

18 173. Firms that compete with Oracle to hire its employees are marketplace
19 competitors even when those companies provide different products or services. As a
20 competitive market place provides consumers higher quality products, more variety, and
21 greater innovation, “competition among employers helps actual and potential employees
22 through higher wages, better benefits, or other terms of employment. Consumers can also
23 gain from competition among employers because a more competitive workforce may create
24 more or better goods and services.”¹⁰

25 174. Oracle’s compensation practices function as disincentives for employees to
26 voluntarily terminate employment for (justifiable) fear because they are waiting on

27 _____
28 ¹⁰ https://www.ftc.gov/system/files/documents/public_statements/992623/ftc-doj_hr_guidance_final_10-20-16.pdf

1 payments due to the arrears policy. In this way, Oracle's practices and its Incentive
2 Compensation Plan effectively function as a non-compete or similar agreement to restrict
3 a competitive labor market for employers and employees. As Oracle commissioned
4 employees are deterred from exiting employment with Oracle, competitors cannot recruit
5 or hire skilled sales personnel on a level playing field.

6 175. Not only do firms compete for employees in a competitive marketplace but
7 employees are entitled to reap the benefits of a competitive market for the skills and
8 services they provide.

9 176. As a result of Oracle's unlawful, unfair, and fraudulent business acts and
10 practices, competitors, investors, consumers and the general public suffer harm. Market
11 participants suffer loss of business, loss of goodwill, and risk the loss of enterprises
12 themselves as a result of impaired competition.

13 177. Oracle's violations of California's Unfair Competition Law are ongoing and
14 pose a continuing threat to employees and the general public. Oracle's practices harm the
15 general public—all participants in the marketplace.

16 178. As a result of its unlawful and unfair acts, Oracle has reaped and continues
17 to reap unfair benefits and illegal profits at the expense of Claimant, Class members, and
18 the general public.

19 179. Oracle should be made to disgorge these ill-gotten gains and restore to
20 Claimant and the Class members the wrongfully withheld wages to which they are entitled,
21 as well as interest on these wages.

22 180. Claimant and Class members seek, on behalf of the general public, all
23 injunctive and preventive relief authorized by Business and Professions Code Sections
24 17202 and 17203.

25 181. The benefits of injunctive relief extend well beyond the individual Class
26 members. Monetary relief alone will not redress irreparable harm Oracle perpetrates
27 through its practices. Public injunctive relief is necessary to remedy Oracle's systemic
28 wrongs and benefit the public at large. Consequently, Claimant seeks injunctive relief on

1 behalf of the general public as well as the Class.

2 182. This action is designed to ensure the enforcement of an important right
3 affecting the public interest and a large number of employees. The necessity and financial
4 burden of private enforcement is great, and the risks to the named Claimant for stepping
5 forward are also significant. Accordingly, Claimant would be entitled to attorneys' fees
6 should she prevail, separate and apart from any recovery of unpaid wages and penalties.

7
8 **FIFTH CLAIM FOR RELIEF**
9 **PEONAGE (DEBT SERVITUDE)**
10 **18 U.S.C. §§ 1581, 1595**
11 **(On Behalf of Claimant)**

12 183. Claimant re-alleges and incorporates by reference all previous paragraphs.

13 184. Under federal law, 18 U.S.C. § 1581, it is unlawful to hold any person to a
14 condition of “peonage” – i.e. debt servitude. Peonage is a status of compulsory or
15 involuntary service based upon an actual or alleged indebtedness of the worker.

16 185. Oracle held Claimant in a condition of peonage by compelling her to work
17 for the Company in order to pay off an alleged “debt.” Oracle engaged in improper and
18 wrongful behavior that led Claimant to believe that she had no alternative but to perform
19 the labor. Oracle threatened serious legal action against Claimant if she did not comply.

20 186. Oracle engaged in impermissible threats and intimidation to compel
21 Claimant to work against her will. When Oracle unlawfully manufactured an alleged “debt”
22 of \$20,000, Claimant faced an intolerable choice. If she left Oracle, she would be forced
23 to defend against a baseless legal action and would face immeasurable financial harm. She
24 could not afford to pay the “debt” payments or to hire a lawyer to defend her. Claimant
25 knew she could not pay the amount in full, and she reasonably feared that Oracle would
26 file a collections action and obtain a judgment against her. Claimant did not know the full
27 consequences of defaulting in a collections action. At minimum, a judgment would cause
28 almost irreparable long-term harm to her credit, substantially impacting her and her
family’s future ability to obtain credit and future employment. Hence, the mere credible

1 threat of a collections action was paralyzing to Claimant.

2 187. In the face of a credible threat of a collections action and judgment against
3 her, and the prospect of devastating long-term financial and other harm to her and her
4 family, Claimant felt compelled to continue working at Oracle. Oracle's use of
5 intimidation tactics and threats caused Claimant to continue performing services for the
6 Company.

7 188. As a result of Oracle's violation of 18 U.S.C. § 1581, and pursuant to 18
8 U.S.C. § 1595, Claimant is entitled to economic damages, non-economic damages, and
9 attorneys' fees.

10 **SIXTH CLAIM FOR RELIEF**
11 **FORCED LABOR**
12 **18 U.S.C. §§ 1589, 1595**
(On Behalf of Claimant)

13 189. Claimant re-alleges and incorporates by reference all previous paragraphs.

14 190. Under federal law, 18 U.S.C. § 1589, it is unlawful to “knowingly...obtain[]
15 the labor or services of a person...by means of serious harm or threats of serious harm to
16 that person or another person; by means of the abuse or threatened abuse of law or legal
17 process; or by means of any scheme, plan, or pattern intended to cause the person to believe
18 that, if that person did not perform such labor or services, that person or another person
19 would suffer serious harm or physical restraint...”

20 191. Oracle knowingly obtained Claimant's labor and services by threatening
21 serious harm to Claimant, including by threatening abuse of the legal process. Oracle
22 knowingly obtained Claimant's labor and services through a scheme intended to cause
23 Claimant to believe that she would suffer serious harm if she stopped working for Oracle.

24 192. In particular, Oracle fabricated approximately \$20,000 in alleged “debt”
25 through an unlawful retroactive re-plan. Oracle then threatened Claimant that she had to
26 work off the debt, pay it back out of her pocket, or face a costly and burdensome collections
27 lawsuit.

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- E. Statutory penalties under state law;
- F. Restitution under state law;
- G. Pre-judgment and post-judgment interest, as provided by law;
- H. Attorneys' fees and costs under applicable law, including expert fees and costs.
- I. Such additional and further relief as this Tribunal may deem just and proper.

Dated: June 29, 2018

Respectfully submitted,

By: 
Danielle Fuschetti
Michael D. Palmer
SANFORD HEISLER SHARP, LLP

Counsel for Claimant and the Proposed Class

Exhibit A

EMPLOYMENT AGREEMENT & MUTUAL AGREEMENT TO ARBITRATE

Please read this Agreement carefully before you agree to its terms by signing it. You may wish to consult an attorney prior to signing the Agreement. The Agreement sets forth certain important benefits, terms and conditions related to your employment with Oracle. It also sets forth the mutual agreement between you and Oracle to arbitrate any dispute or claim arising out of or related to your Oracle employment and to waive all rights to a trial or hearing before a court or jury, except as provided below.

Proprietary Information

Oracle's proprietary rights and confidential information are among the company's most important assets. In addition to signing this Agreement as a condition of employment, you also must sign the Proprietary Information Agreement included in the New Hire Offer Packet.

Oracle Policies

Your adherence to the Oracle Code of Ethics and Business Conduct, set forth in a booklet that is mailed to you within two weeks of your first date of employment at Oracle, is vital to Oracle and to your success at Oracle. When you sign this Agreement, you are agreeing to thoroughly familiarize yourself with the Oracle Code of Ethics and Business Conduct and you are agreeing to abide by it. You also agree to take Oracle's Ethics and Business Conduct course, available on-line through Oracle's intranet. In addition, when you sign this Agreement, you are acknowledging that you have read the letter addressing Oracle's Safety Program highlights included in the New Hire Offer Packet. Oracle maintains an Internal Privacy Policy, which describes Oracle's privacy practices for employment-related information, including personal information that may be collected, how and where personal information is processed, to whom personal information may be provided, and how you may access and rectify personal information about you. You agree to abide by the terms of Oracle's Internal Privacy Policy in effect during your employment; a current copy of such policy is also included in the New Hire Offer Packet. The Oracle Code of Ethics and Business Conduct, the Oracle Employee Handbook, and Oracle's Internal Privacy Policy are all on the Oracle intranet and accessible to all employees. You agree, after beginning employment, to access the Employee Handbook and thoroughly familiarize yourself with Oracle policies and to abide by them. Additionally, from time to time, Oracle will communicate important information about its policies by way of electronic mail notification and/or the Oracle intranet. By signing this agreement, you agree to thoroughly review these policy communications and to abide by them.

Oracle is a government contractor, and, as such, certain federal, state, and local laws may place prohibitions or other restrictions on the ability of former government workers, and/or relatives of current or former government workers, to be employed by or to perform certain work on behalf of Oracle. By signing below, you are affirming that your employment with Oracle, and any work you perform while employed by Oracle, will not conflict with any such prohibitions or restrictions.

Employment Eligibility

In order to comply with the Immigration Reform and Control Act of 1986, the federal government requires the company to examine documents which prove your legal right to work in the United States. Please see the Verification of Eligibility for Employment information which also is a part of the New Hire Offer Packet.

Benefits

Oracle offers its employees a comprehensive medical, dental, vision, life and disability insurance package through Oracleflex, a flexible benefits program. Oracleflex may require employee contributions. The company also offers benefits including a 401(k) Savings and Retirement Plan, an Employee Stock Purchase Plan, a Dependent Care Reimbursement Plan and an Educational Reimbursement Plan. The details of these plans are included in the New Hire Offer Packet and/or are available on the Oracle intranet. You understand that you must make your Oracleflex benefits elections within the limited time periods set forth in the communication accompanying your personal identification number that you will receive after beginning employment.

By signing this Agreement, you authorize Oracle to deduct from your compensation any and all contributions associated with your elections under Oracleflex, the Oracle 401(k) Savings and Investment Plan, the Oracle Employee Stock Purchase Plan, or any other benefit offered by Oracle in which you participate and for which an employee contribution is required.

Your starting compensation, position and other terms and conditions related to your employment are set forth in the offer letter you received. By signing this Agreement, you also are agreeing to the terms and conditions set forth in

the offer letter, which are incorporated herein. Oral or written representations contradicting or supplementing the terms of the offer letter are not valid.

At-Will Employment¹

Employment at Oracle is at-will. The company makes no express or implied commitment that your employment will have a minimum or fixed term, that Oracle may take any adverse employment action only for cause or that your employment is terminable only for cause. Either you or Oracle may terminate the employment relationship at any time for any reason. Additionally, Oracle may take any other employment action at any time for any reason. No one at Oracle may make, unless specifically authorized in writing by Oracle's Board of Directors, any promise, express or implied, that employment is for any fixed term or that cause is required for the termination of or change in the employment relationship.

Equal Employment Opportunity and Escalation Process

Oracle believes that all employees should be treated fairly and equitably in conformance with its Equal Employment Opportunity policy. We take personnel action without regard to race, color, national origin, sex, marital status, sexual orientation, gender identity, age, religion, disability, veteran status, or any other characteristic prohibited by federal, state or local law. Our commitment to this policy applies to every phase of the employment relationship, and we make every effort to comply with this policy. If, however, you feel you have not been treated fairly in some way in your Oracle employment, you agree, before taking any other action, to make a written complaint to a Director of the Human Resources Department and to allow individuals within the Department a reasonable period of time in which to investigate and informally attempt to resolve your issues.

Mutual Agreement to Arbitrate

You and Oracle understand and agree that any existing or future dispute or claim arising out of or related to your Oracle employment, or the termination of that employment, will be resolved by final and binding arbitration and that no other forum for dispute resolution will be available to either party, except as to those claims identified below. The decision of the arbitrator shall be final and binding on both you and Oracle and it shall be enforceable by any court having proper jurisdiction.

The arbitration proceedings shall be conducted pursuant to the Federal Arbitration Act, and in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association or the Employment Arbitration Rules and Procedures adopted by Judicial Arbitration & Mediation Services ("JAMS"). The arbitrator will have all the powers a judge would have in dealing with any question or dispute that may arise before, during and after the arbitration.

Claims Not Covered

Claims not covered by this Arbitration Agreement are:

1. Claims under Title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention,
2. Claims for benefits under the workers' compensation, unemployment insurance and state disability insurance laws, and
3. Claims by you or by Oracle for temporary restraining orders or preliminary injunctions ("temporary equitable relief") in cases in which such temporary equitable relief would be otherwise authorized by law. In such cases where temporary equitable relief is sought, the trial on the merits of the action will occur in front of, and will be decided by, the arbitrator, who will have the same ability to order legal or equitable remedies as could a court of general jurisdiction.

Costs

Oracle agrees to bear the costs of the arbitrator's fee and all other costs related to the arbitration, assuming such costs are not expenses that you would be required to bear if you were bringing the action in a court of law. You and Oracle shall each bear your own attorneys' fees incurred in connection with the arbitration, and the arbitrator will not have authority to award attorneys' fees unless a statute at issue in the dispute or other appropriate law authorizes the award of attorneys' fees to the prevailing party, in which case the arbitrator shall have the authority to make an award of attorneys' fees as permitted by the applicable statute or law.

¹ Note: This at-will employment provision is not applicable to employees located in the state of Montana.

Consideration

You understand and acknowledge that you are offered employment in consideration of your promise to arbitrate claims. In addition, the promises by Oracle and by you to resolve claims by arbitration in accordance with the provisions of this Arbitration Agreement, rather than through the courts, provide consideration for each other.

Employment Agreement & Mutual Agreement to Arbitrate

Page 3 of 3

Knowing and Voluntary Agreement; Complete Agreement

You understand and agree that you have been advised to consult with an attorney of your own choosing before signing this Employment Agreement & Mutual Agreement to Arbitrate, and you have had an opportunity to do so.

YOU FURTHER UNDERSTAND AND AGREE THAT YOU HAVE READ THIS EMPLOYMENT AGREEMENT & MUTUAL AGREEMENT TO ARBITRATE CAREFULLY. BY SIGNING IT, YOU ARE EXPRESSLY WAIVING ANY AND ALL RIGHTS TO A TRIAL OR HEARING BEFORE A COURT OR JURY OF ANY AND ALL DISPUTES AND CLAIMS SUBJECT TO ARBITRATION UNDER THIS ARBITRATION AGREEMENT WHICH CLAIMS YOU MAY NOW OR IN THE FUTURE HAVE.

This Arbitration Agreement contains the complete agreement between Oracle and you regarding the subject of arbitration and alternate dispute resolution, and supersedes any and all prior written, oral, or other types of representations and agreements between Oracle and you, if any.

Severability

If any portion of this Employment Agreement & Mutual Agreement to Arbitrate shall, for any reason, be held invalid or unenforceable, or contrary to public policy or any law, the remainder of the Agreement shall not be affected by such invalidity or unenforceability, but shall remain in full force and effect, as if the invalid or unenforceable term or portion thereof had not existed within this Agreement.

Modification

This Employment Agreement & Mutual Agreement to Arbitrate may be modified only in a writing, expressly referencing this Agreement and you by full name, signed by you and Oracle's Board of Directors.

By pressing the 'Acknowledge and Accept' button below you are agreeing that you have read and that you understand every provision of this Agreement and that, in consideration for your employment at Oracle, you agree to abide by its terms.

You may return to the previous page without taking action by pressing the Return button below.

1 **PROOF OF SERVICE**

2 I am over eighteen years old, not a party in this action, and my business address is 111
3 Sutter Street, Suite 975, San Francisco, California, 94104. On June 29, 2018, I caused to be
4 served a true copy of the attached on the parties in said action as follows:

5 **JAMS DEMAND FOR ARBITRATION FORM**

6 **DEMAND FOR CLASS ARBITRATION AND EXHIBIT A THERETO**

7
8 (BY REGULAR MAIL) by placing a true copy thereof enclosed in a sealed envelope
9 with postage thereon fully prepaid, for collection and mailing at my place of business
10 following ordinary business practices. Said documents will be depicted with the United
11 States Post Office Mailbox at San Francisco, California, addressed as follows:

12 (BY OVERNIGHT DELIVERY/FEDERAL EXPRESS) by placing a true copy thereof
13 enclosed in a sealed envelope, with delivery fees prepaid, deposited with the authorized
14 overnight/Federal Express carrier/box at San Francisco, California, addressed as follows:

15 (BY PERSONAL SERVICE) by causing to be personally delivered by hand and leaving
16 a true copy with the person(s) named below and/or a person having charge of the office at
17 the address shown below:

18 (BY FACSIMILE) by transmitting the foregoing document(s) by facsimile to the
19 party(ies) identified below by using the facsimile number(s) indicated. Said
20 transmission(s) were verified as complete and without error.

21 (BY ELECTRONIC TRANSMISSION) by transmitting the foregoing document(s) by
22 electronic transmission to the party(ies) identified below by using the email addresses as
23 indicated. Said transmission(s) were verified as complete and without error.

24
25 Brendan Dolan
26 bdolan@vedderprice.com
27 Lucky Mainz
28 lmeinz@vedderprice.com
Brittany A. Sachs
bsachs@vedderprice.com
Vedder Price (CA), LLP
275 Battery Street, Suite 2464
San Francisco, CA 94111

29 I declare under penalty of perjury under the laws of the State of California that the
30 foregoing is true and correct. Executed in San Francisco on June 29, 2018.

31
32 
33 F. Cody Kahoe