SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

COMPLEX CIVIL LITIGATION

MARYAM ABRISHAMCAR,

Plaintiffs,

vs.

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

Defendants.

_____/

Case No. CIV 535490
REPRESENTATIVE ACTION

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

CASE MANAGEMENT ORDER #16

On March 22, 2018, hearing on the cross-motions for summary adjudication of a stipulated issue was held in Department 2 of this Court before the Honorable Marie S. Weiner. XinYing Valerian of Valerian Law, and Laura Ho of Goldstein Borgen Dardarian & Ho appeared on behalf of Plaintiffs Maryam Abrishamcar and Kavi Kapur, and Brendan Dolan and Brittany Sachs of Vedder Price (CA) LLP appeared on behalf of Defendant Oracle America Inc.

Upon due consideration of the briefs and evidence presented, and the oral argument of counsel for the parties, and having taken the matter under submission for further legal research,

IT IS HEREBY ORDERED as follows:

Defendant Oracle America Inc.'s Motion for Summary Adjudication is DENIED.

Plaintiff Maryam Abrishamcar's Motion for Summary Adjudication is GRANTED.

Plaintiff Maryam Abrishamcar has proven on undisputed evidence that she is an "aggrieved employee" as to whom Defendant Oracle America Inc. violated California Labor Code Section 2751 by failing to provide Plaintiff with a signed commission agreement, and thus she may seek civil penalties under the California Private Attorneys General Act, Labor Code §§ 2698, *et seq.* ("PAGA").

Plaintiff's requests for judicial notice are GRANTED.

Plaintiff's Evidentiary Objections to the Lutz Declaration is GRANTED as to the last sentence of Paragraph 13, and are otherwise OVERRULED.

THE COURT FINDS as follows:

Labor Code Section 2751

The law provides that contracts may be formed and exist as oral, implied, or written. (Civil Code §§1619-1622.) The law requires that some contracts must be in writing in order to be enforceable. The most common recitation of such mandatory written contracts is called the Statute of Frauds, set forth in Civil Code Section 1624. It states in pertinent part: "The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent. . . . For purposes of this subdivision, the tangible written text produced by telex, telefacsimile, computer retrieval, or other process by which electronic signals are transmitted by telephone or otherwise shall constitute a writing, and any symbol executed

or adopted by a party with the present intention to authenticate a writing shall constitute a signing. . . ."

Plaintiffs have brought a representative action under PAGA seeking statutory penalties for multiple alleged violations of the Labor Code by Defendant Oracle in regard to commissioned sales employees. One of Plaintiffs' claims is that Defendant Oracle, their employer, violated Labor Code Section 2751, which mandates particular requirements for commission contracts.

Labor Code Section 2751 states as follows:

(a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, **the contract shall be in writing** and shall set forth the method by which the commissions shall be computed and paid.

(b) **The employer shall give a signed copy of the contract to every employee who is a party thereto** and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

(c) As used in this section, "commissions" has the meaning set forth in Section 204.1. For purposes of this section only, "commission" does *not* include any of the following:

(1) Short-term productivity bonuses such as are paid to retail clerks.

(2) Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.

(3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

(Emphasis added.)

It is basic contract law that you need at least two parties to have a contract. "It takes two to tango." Thus the clear, reasonable, and unambiguous requirement is that a commission contract must be in writing (not oral or implied), must be signed by all parties to that contract, and a copy of that fully signed contract must be given to the employee (and the employer must obtain an actual signed written receipt from the employee. Any argument by Defendant that Section 2751 does not require Oracle to sign the commission contracts with its commissioned sales employees is flatly rejected.

What is NOT in Dispute

It is undisputed that Plaintiff Abrishamcar was employed by Defendant Oracle as an Oracle Sales Representative from November 11, 2014 to May 11, 2015. Oracle's Fiscal Year 2015 was the time period June 1, 2014 to May 31, 2015. Plaintiff Abrishamcar was a commission-eligible sales employee, and participated in Oracle's FY15 Incentive Compensation Plan.

The Oracle Incentive Compensation Plan, as *one* commission contract with the sale employee, comes in two parts: (1) The Incentive Compensation Terms and

Condition document (which is the same standard document for all commissioned sales employees), and (2) The Individualized Compensation Plan (which is individual terms as to that particular employee).

As made clear upon the Court's inquiry at oral argument, Plaintiff and Defendant *do not dispute* that they entered into an employee commission agreement. Plaintiff does not dispute that she electronically "signed" the commission agreement (specifically the Individualized Compensation Plan document), and does not dispute that she received and had access to an electronic copy of the commission contract that she signed.

The Oracle FY15 Incentive Compensation Terms & Condition (for June 1, 2014 to May 31, 2015), part one of the operative document for Plaintiff Abrishamcar, is 96 pages long, and does not contain any signatures by either party. (Lutz Decl., ¶3-¶5., and Exhibit 1, ORA ABR104-199.) "The FY15 Terms and Conditions document was a standard document for all Oracle commission-eligible employees and described, among other thangs, how the commission process was administered, set forth the method and manner in which commissions and bonuses would be computed and paid, and described how a sales employee's territory, account and product assignments were made." (Lutz Decl. ¶5.)

Each commission-eligible employee also receives an Individualized Compensation Plan, which "set[s] forth among other things an individual employee's product responsibility, sales target, and the commission rates that would apply to sales for which the employee was given credit." (Lutz Decl. ¶7.)

Plaintiff Abrishamcar received an ICP dated January 6, 2015, "effective" November 15, 2014 (Lutz Decl. Ex. 2; Abrishamcar Decl. Ex. A), an ICP dated

February 17, 2015 (Lutz Ex. 3; Abrishamcar Ex. C), an ICP dated March 12, 2015 "effective" March 1, 2015 (Lutz Ex. 4; Abrishamcar Ex. D), and an ICP dated April 9, 2015 "effective" February 15, 2015 (Lutz Ex. 5; Abrishamcar Ex. E).

Issue of Whether the Commission Contracts Received by Plaintiff Abrishamcar Are "Signed" by Defendant Oracle

Basically, the factual evidence itself is undisputed. The key documents are undisputed. Even though there are responses to the parties' Separate Statements of Material Facts that initially say "disputed", upon reading them, they actually do not dispute the evidence, but only "dispute" the application of the evidence, i.e., the only dispute is whether or not something constitutes the "signature" if Oracle.

The issue is a question of law, and is based upon a statutory technical requirement under Labor Code Section 2751, that commission agreements be signed by the parties, and a copy of that signed documents must be given to the commissioned sales employee. The only dispute is whether Oracle "signed" the commission agreement, such that Plaintiff received was a "signed" copy.

All the parties agree, and the Court has confirmed, that there are no California state court reported decision directly on point. The parties have agreed to have this issue of first impression adjudicated early by the Court:

Did Defendant provide a "signed" copy of the "commission agreement" to Plaintiff Abrishamcar? More specifically, does the "commission agreement" that Plaintiffs received and signed *also contain the signature of Oracle*? It was stipulated by counsel for the parties that this "subissue" be adjudicated pursuant to Code of Civil

Procedure Section 437c(t) and the inherent authority of a Complex Civil judge, and a briefing schedule was stipulated and set.

As to Plaintiff Maryam Abrishamcar, Defendant Oracle American Inc. filed a Motion for Summary Adjudication of the following issue: "Plaintiff's claim for penalties under the California Private Attorneys General Act, Labor Code §§ 2698, *et seq.* ("PAGA") based upon Defendant's alleged violation of California Labor Code § 2751(b) by failing to provide a signed commission contract must be dismissed because the undisputed evidence demonstrates that defendant provided Plaintiff with a signed copy of the commission contract."

Plaintiff Maryam Abrishamcar filed a Motion for Summary Adjudication against Defendant Oracle, as to the following issue: "Oracle has a duty under Labor Code section 2751 to provide an employee with a "signed copy" of the employment agreement containing the terms of commissions, which means a copy bearing the signature of a person signing as a representative of Oracle, not merely a copy that includes Oracle's name somewhere within it. By providing Plaintiff Abrishamcar with a commission contract that was not signed, Oracle violated Labor Code section 2751."

Signature and Electronic Signature

The Signature Blocks

At the end of each ICP document given to Plaintiff Abrishamcar (and also Plaintiff Kapur) are two square boxes, outlined in black, parallel to each other – one on the left and one on the right. In the box on the left, there is a typed date, which is the date when Oracle generated and distributed the ICP to Plaintiff. (Lutz Decl. Ex. 8.) When Plaintiff "accepted" the ICP (by clicking on the "Accept" button, the document was

automatically "imprinted with her electronic signature at the bottom of the ICP" along with the date that she accepted. (Lutz Decl. ¶21, and Exhibits 2-5.) Specifically, the typed name of the employee and the date is placed in the signature box on the right. NO NAME AND NO TITLE APPEAR IN THE SIGNATURE BOX ON THE LEFT on behalf of Defendant Oracle.

Co-Plaintiff Kavi Kapur presented evidence of his ICPs while he worked as a commissioned sales employee at Oracle from 2013 to 2017. Kapur's ICP for March 2013 contains an electronic signature in the left-hand signature box on behalf of Oracle, specifically "Patrick Devine, Vice President Global Incentive Compensation". (Kapur Ex. A.) Kapur's ICP for June 2013 contains an electronic signature in the left-hand signature box on behalf of Oracle, specifically "Jody Terry, Vice President Finance NA". (Kapur Ex. B.) The Oracle signature box on Kapur's ICP for June 2014 is blank. (Kapur Ex. C.) The Oracle signature box on Kapur's ICP for April 2016 is blank. (Kapur Ex. D.) The Oracle signature box on Kapur's ICP for July 2016 contains an electronic signature in the left-hand signature box on behalf of Oracle, specifically "Greg Myers, Vice President, Global Incentive Compensation and Operations, Oracle". (Kapur Ex. E.)

Signature under the Labor Code

There is a common understanding of what is a "signature". It is a writing or mark personally placed on a document, typically at the end of the document, intended to represent the name of that person. *Webster's New World Dictionary* defines "signature" as "a person's name written by that person." We don't have that here.

California's Civil Code agrees with that general principle, but allows an illiterate person to "sign" with a "mark" as long as the mark is made next to the printed name of that person, and that the making of the mark is done so in front of a witness, and the

witness also signs the paper. Civil Code §14 ("signature or subscription includes mark, when the person cannot write, his name being written near it, by a person who writes his own name as a witness"). We don't have that here.

The issue presented in whether there is a "signed" written contract in conformity with the Labor Code. The Labor Code defines a "signature" under Section 17: "'Signature' or 'subscription' includes mark when the signer or subscriber can not write, such signer's or subscriber's name being written near the mark by a witness who write his own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto."

We don't' have that here. Obviously the statute contemplates the common understanding of a signature as being written by the person himself/herself on to the document. Indeed, even for the sake of argument, if the printed logo "ORACLE" constitutes the "mark", then it cannot also be the "name". If it is the "name" it cannot be the "mark" – you have to have both, not one.

We have an electronically delivered written agreement that could only be "signed" either "electronically" or not at all. (There was no option to print it out and physically sign and return a piece of paper – nor did that happen regardless.) No typed name or other "signature" on behalf of Oracle was pre-loaded into the document in the signature box – only the date.

This leads us to the issue of whether the subject commission contracts contain the "electronic signature" of Oracle under California's Uniform Electronic Transactions Act.

Electronic Signature Under California Statute

Now that we live in the age of computers and the Internet, California enacted the Uniform Electronic Transactions Act in 1999, Civil Code Section 1633.1 *et seq.* These laws facilitate doing business and transactions electronically, rather than on paper. (See C.C. §1633.6.) Electronic transactions and electronic signatures cannot be used (or be legally binding) unless both parties voluntarily *agree* to do so by electronic means. C.C.§1633.5. "Whether the parties agreed to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct." C.C. §1633.5(b).

"If the law requires a record to be in writing, an electronic record satisfies the law." C.C. §1633.7(c). "If a law requires a signature, an electronic signature satisfies the law." C.C. §1633.7(d). "'Electronic signature' means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. For purpose of this title, a "digital signature" as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature." C.C. §1633.2(h). [There is no evidence or assertion that Oracle complied with the "digital signature" requirements – which are far more specific.]

What Constitutes an Electronic Signature in Conformity with Labor Code Section 2751

In JBB Investment Partners Ltd v. Fair (2014) 232 Cal.App.4th 974, the First Appellate District most recently addressed, in a more comprehensive manner, what constitutes an "electronic signature", and that *compliance with a specific statute* requiring

signatures may require something more than simply meeting the standards under the Statute of Frauds.

In JBB v. Fair, the issue was whether the parties stipulated to a settlement "in a writing signed by the parties outside the presence of the court" such that the court could enforce the terms of the settlement and enter judgment thereon through the expedited process available under Code of Civil Procedure Section 664.6. The communications between the parties regarding settlement and its terms were via email, text message, and telephone. Indeed, Fair indicated repeatedly that he "agreed" and that he "accepted" and that they had "an agreement." The Court of Appeal did *not* disturb the trial court's finding that there was a "meeting of the minds" and that they had reached the terms of an agreement. But that was not enough. Whether or not there was a contract, the issue was whether the circumstances met the statutory standards for enforcement of a settlement (and entry of judgment thereon) pursuant to C.C.P. Section 664.6. JBB v. Fair, at p. 984.

Whether circumstances meet the standards set by statute, and whether something constitutes an "electronic signature" are issues of *law* for determination by the court:

> However, whether the granting of plaintiffs' motion satisfied the strict requirements of Code of Civil Procedure section 664.6, including the requirement that all parties sign the agreement, and whether Fair's printed name constituted an "electronic signature" within the meaning of UETA or under the law of contract, are legal issues, so that we conduct an independent or de novo review of those most crucial determinations.

Id., at p. 984.

The First Appellate District noted that Section 664.6 requires that the *parties sign* the written settlement document, not simply their attorney or authorized agent, and that the writing be signed by *all* parties. Id., at pp. 984-985.

The First Appellate District held that even if some writing might have been found in case law to constitute a "signed" "writing" under the Statute of Frauds, that does not mean that it is sufficient to meet the requirements of *other specific* statutes. JBB v. Fair, at pp. 991-992.

Defendant Oracle relies extensively upon common law cases pertaining to whether a document and its signatures meet the standards for the *Statute of Frauds*, and not for a specialized statute. Defendant relies upon multiple unpublished and published *federal* district court cases, which decisions and analysis are not binding upon this Court, and serve no precedential value. So too, the unpublished federal district court decision relied upon by Plaintiff. Accordingly, the Court will address the California cases and the one federal circuit court case relied upon by Defendant.

In the old case of Weiner v. Mullaney (1943) 59 Cal.App.2d 620, there was a dispute between siblings and a demand for an accounting in regard to the division of their mother's assets upon her death. The brother sent multiple letters to his sisters indicating the mother's wish that the assets be divided equally three-ways, and that he was undertaking to so do; and that the funds and real property titles given to his sisters constituted one-third – which was false. Brother admitted that he drafted and sent the letters to his sisters, and the sisters asserted that they constituted a "trust" agreement with the brother. In considering multiple letters typed by the brother, at the end of the letters the brother typed his initials, instead of his full name. Under the operative statute regarding creation of a trust in real property it required a writing "subscribed" by the

purported trustee. The Court of Appeal held that brother's *typewritten initials*, located at the end of the letters where a name signature might otherwise be placed, were sufficient to constitute "signing" the document, under that particular statute, and under Statute of Frauds and Statute of Wills cases. Obviously this case has no bearing upon the issue of what constitutes an "electronic signature" under the UETA. Further our case does not involved typewritten initials, but rather no name at all at the end of the document.

In Rubino v. Pray (1960) 187 Cal.App.2d 495, another old case, plaintiff sold her retail business to defendant, and they negotiated multiple draft agreements, before executing the final agreement. When defendant refused to comply with the terms of the deal, plaintiff sued for breach of contract. Defendant argued that there was no contract, because he had initialed changes to the document, and signed his name at the bottom of the first page, instead of signing his name on the last page of the document. The First Appellate District held that plaintiff had proven the existence of a contract and its terms, even though it was signed other than on the last page. Importantly, the Court of Appeal expressly held that *it didn't matter anyway whether the contract was signed* at all, because plaintiff had proven, at the very least, an *oral* contract. Obviously, this decision has nothing to do with the issue of "electronic signature" or involve a document that *must* be in writing *and must* be signed.

In Donovan v. RRL Corp. (2001) 26 Cal.4th 261, the Supreme Court dealt with the situation of whether an *offer* existed and whether a contract *existed*, where a published advertisement for sale of a used car had a significant typographical error in price, which lower price the customer "accepted" and attempted to purchase the car at that published price. This Supreme Court held that this was sufficient *for purposes of the Statute of Frauds*, but that the auto dealer could exercise rescission of that contract based

upon mistake, despite a Vehicle Code statute allowing a consumer to rely upon advertising. The subject transaction occurred before the enactment of UETA, and has nothing to do with the issue of "electronic signature". Further, our case does not involve a dispute as to the existence of an offer, or the existence of a contract, or whether an advertisement price must be accepted under the Vehicle Code.

In Donovan, the defendant dealer made the argument that there was no contract, even if there was an accepted "offer", "because there was no signed writing that satisfied the reuqirements of the statute of fraud for the sale of goods." Id., at p. 276. The Supreme Court considered whether the advertisement was "signed" by the dealer under Uniform Commercial Code. Id., at p. 277. "[T]he parties presented no evidence with regard to whether defendant intended that its name in the advertisement constitute a signature." Id., at p. 278. The Supreme Court held that the name of the dealer printed in the advertisement that it published was sufficient show "an intention to authenticate the advertisement as an offer" under the Statute of Frauds. Id. Our case does not deal with the sufficiency for a contract to exist – we are dealing with a technical statute that mandates a signature by both parties on a written commission contract and that the employee receive a contract with all signatures.

In Lamle v. Mattel Inc. (Fed.Cir. 2005) 394 F.3d 1355, the Federal Circuit reversed the granting of summary judgment, finding that there were material issues of disputed fact. The disputed material facts involved determination of whether the parties had entered into a contract, what were the terms of that contract, and whether the contract was in writing and "subscribed" such that it met the requirements of the Statute of Frauds. One issue left for determination by the trial of fact was whether an email with the name of Mattel's employee stated at the bottom -- "Best regards, Mike Bucher" –

constituted a written agreement subscribed by Oracle. The Federal Circuit held that if there was evidence that the employee was authorized by Mattel to enter into a contract on its behalf, and the signature was typed at the end of the email, *and the email itself contained all material terms of the alleged contract*, then it may meet the standards of the Statute of Frauds. Defendant Oracle cites to *dicta* in the Lamle case, wherein that non-California federal court considered that the email typed name to be an "electronic signature" under California law, yet the Federal Circuit explicitly acknowledged that the UETA statute *did not apply* because the transaction occurred before that law was enacted.

Finally, in Cruise v. Kroger Co. (2015) 233 Cal.App.4th 390, the plaintiff contested the *existence* of any arbitration agreement with her employer defendant. Defendant asserted that plaintiff signed a job application containing an arbitration clause, and that it referenced the company's "policy" -- a four-page, undated and unsigned form that plaintiff never saw or received. The Second Appellate District held that the defendant employer had make a prima facie showing of the existence of an arbitration agreement, and that the arbitration clause in the plaintiff's job application was sufficient to make that initial showing – regardless of the four-page unsigned, unseen "policy" document.

Plaintiff Cruise argued then that the arbitration agreement was not enforceable because it was only signed by *her* but not signed by the defendant employer. Cruise, at p. 397. The Court of Appeal held that mutuality of intent to enter into a contract was met by the language of the agreement itself expressly indicated that the defendant agreed to be bound, and that the document was printed on company letterhead. Id., at pp. 397-398. It held that this was sufficient to "authenticate" the agreement and reflect an intent to be bound by arbitration – citing to cases involving the question of whether the requirements

of the Statute of Frauds had been met. The Cruise decision does not – and does not purport to – have anything to do with "electronic signatures" or providing a fully "signed" copy of an agreement to an employee.

Our question here is *not* whether there was an agreement -- that is undisputed – rather our question is whether defendant met the special statutory requirement of provide a fully signed copy of the commission agreement to its employee.

The First Appellate District's decision in Ni v. Slocum (2011) 196 Cal.App.4th 1636, although not directly on point, is insightful on the interplay of specific statutes requirement of a personal signature versus the more casual standard for Statute of Frauds. In affirming the decision of the San Mateo County Superior Court, the First Appellate District held that under the Elections Code, one could not use an electronic signature to endorse an initiative petition. The plaintiff signed the petition by receiving an electronic image of the petition, and then "signing" the petition by using his finger on the screen of his smartphone. Plaintiff also happened to work for a company that sells electronic signature software.

The law required that the person "personally affix" their own signature, plus print (or type) himself/herself name and street address. Id., at pp. 1645-1646. The Court of Appeal held that the tracing of his name on his smartphone might well constitute a "signature" that is "affixed" "personally" to the petition. It also held that the oppose was a reasonable interpretation, and thus weighed the two party's position in light of legislative history to reach a result. Ni, at pp. 1650-1651. The First Appellate District considered the fact that bill was presented, but vetoed by the Governor, to conduct a study on the creation of using electronic signatures for voting and petitions – and held

that it was up to the Legislature to make a change in the law to allow electronic signatures for petition, not the courts. Id., at p. 1651.

Plaintiff Ni asserted that the law allows electronic signatures. Notably, the Elections Code is *not* one of the statutory transactions specifically exempt from UETA. Ni, at p. 1647; see also, Ni, at pp.1655-1656 and footnotes thereto, concurring opinion. The First Appellate District held that such was "immaterial", because the UETA contains a "prefatory phrase": "Notwithstanding any other provision of law . . ." Ni, at p. 1647. The Court of Appeal held that the specific requirements of the specific statute trumped the UETA if there was an inconsistency or any contrary requirement. Id.

A Corporate Logo is Not an "Electronic Signature"

Conceding that there is no actual "signature", in the conventional sense, by Oracle or any of its officers or authorized employees *on* the subject employment commission contract, Defendant Oracle asserts that the pre-printed logo of "ORACLE" on the letterhead of the contract constitutes an "electronic signature" under the law.

First, and foremost, there is no evidence that Defendant Oracle specifically intended its letterhead logo to constitute its official "signature" on the subject commission contract. The only "evidence" by a human at Oracle is the declaration by Si Lutz in the Global Incentive Compensation division. The only alleged "signature" that he talks about is that the cover instruction email that provides the hyperlinks to the employees for the two-part commission contract.

Second, as set forth above, there is no evidence that Oracle itself placed its logo on the contract with the intention that the logo itself specifically constitute its "signature" on a legal contract.

Third, absurdity is rejected. The legal maxim is applicable: "Interpretation must be reasonable." C.C. §3542. As the First Appellate District held in Rafael v. Superior Court (1969) 1 Cal.App.3d 457, the Court should not accept a party's legal argument that "could lead to unreasonable, perhaps absurd, result. Id., at p. 459. Further, a "statutory construction leading to [an] unreasonable or absurd results should be avoided. [Citations.]" Id., at p. 460.

Under Oracle's assertion, then every single document on Oracle letterhead or bearing the Oracle logo would constitute its "signature" and be considered part of a "contract." This would lead to absurd results. Every letter would be a signed contract if "accepted" by the receiver. Every billboard would be a contract. Every scratch pad or memo pad would be a contract signature. Etc. This is consistent with the very nature and understanding of a signature to the contract.

The Court hold that Oracle's logo appearing on the subject commission contract did *not* constitute its "electronic signature" on the commission contract.

Identification of the Oracle Website Address is Not an "Electronic Signature"

In the same vein, Defendant Oracle then asserts that the appearance of its website address in the commission contract, which bears the name of Oracle, specifically www.oracle.com, constitutes an "electronic signature" under the law.

Similar to the above analysis, there is no evidence that Defendant Oracle specifically intended its website address to constitute its official "signature" on the subject commission contract, there is no evidence that Oracle itself placed its website address on the contract with the intention that the website address itself specifically constitute its "signature" on a legal contract, and the proposition is unreasonable.

Oracle's website is not a signature on a contract. Oracle's website address at the end of any email by every employee does not *itself* constitute a contractual signature on behalf of Oracle. That it is a reference, not a signature, is simply common sense.

The Appearance of the Word "Oracle" in the Body of the Contract is Not an "Electronic Signature"

Alternatively, Defendant Oracle argues that the reference to "Oracle" within the body of the commission contract constitutes its "electronic signature" on a contract under the law. Under the same legal authorities and factual analysis set forth above, this assertion is rejected.

An Email by an Employee Enclosing the Commission Contract for Review and Approval by the Commissioned Employee is Not the "Electronic Signature" of Oracle on the Contract Itself

Defendant Oracle references an email from its employee to Plaintiff (and other commissioned employees) containing his typed name at the bottom of the email – which Oracle argues is a "signature" by defendant. This puts the cart before the horse.

The only "evidence" by a human at Oracle is the declaration by Si Lutz in the Global Incentive Compensation division. The only alleged "signature" that he talks about is that the cover instruction email that provides the hyperlinks to the employees for the two-part commission contract has the name of a GIC "authorized" employee (here, Reddy Sreenivasa) at the bottom of the email. Lutz declares: "Sreenivasa worked in the GIC group and was one of Oracle's authorized employees for purposes of releasing the Comp Plan for distribution to employees."

The only evidence is that the cover email is "electronically signed" by a GIC employee who is authorized by Oracle to *distribute* the individual commission agreements to the various employees. There is *no evidence* that Sreenivasa signs the actual contract – indeed the evidence is that no one did. There is *no evidence* that Sreenivasa was authorized to *actually enter into and sign the contract on behalf of Oracle*. There is *no evidence* that Oracle specifically intended that the "signature" of its employee on a cover email constituted the actual signature of Oracle to a separate contract – nor does that even make sense.

It is also inadequate to serve as a "signature" to the commission contract, because the email is *not* the commission agreement. The email does not contain any of the terms of the commission agreement. Rather it is basically a "cover letter" informing the commissioned employee of a new commission agreement, and providing the technical instructions of how to log in, review, and accept the commission agreement. This is *not* a signature on the commission agreement or its terms – it is simply an instruction sheet.

Further, obviously Mr. Sreenivasa did not intend to be personally bound by this agreement – he isn't a party to the agreement, and no one claims that he is! There is no evidence that he was personally and specifically authorized by Oracle to *sign contracts on its behalf.*

No one physically signed any piece of paper – so the only "signature" possibly by Oracle would have to meet the standards of an "electronic signature". Even if it might be sufficient for purposes of the *Statute of Frauds*, a printed name on an email does *not* constitute an "electronic signature" of a party to a proposed written agreement *for purposes of compliance with a specific statute* unless it meets the express requirements of the "electronic signature" statute UETA. JBB v. Fair, at pp. 988-989. That a person's

name is printed or typed into an email communication "is insufficient by itself to establish that it is an 'electronic signature.'" Id., at p. 989. "Subdivision (h) of section 1633.2 states that "electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and *executed or adopted by a person with the intent to sign the electronic record.* [Citation.]" Id., at p. 989, emphasis original. Even if there was an electronic communication that a party "agreed" to a proposed contract, it is not enough to constitute an "electronic signature" unless that sender "indicated that a printed name at the bottom of an e-mail would be an electronic signature" of him or her. Id., at p. 990. Indeed, the First Appellate District held that "a typed name at the end of an e-mail is not, by itself, signature under case law," and thus did not even constitute a "signature" under general contract law. Id., at p. 991.

The Actual Signature Line at the End of the Agreement

"The evidence must also demonstrate that the person printing his or her name intended to execute the document." JBB v. Fair, at p. 992. One consideration in regard to the existence of an "electronic signature" is whether the subject documents contains a signature line at the end. JBB v. Fair, at p. 991. Another is whether there is a signature block on the agreement. Id., at p. 989.

Here the ICP portion of the commission contract – which is the part of the contract that Plaintiff electronically signed – ***does*** have signature blocks at the end of the document. That is where Plaintiff's electronic signature is affixed. That is where the document is dated.

Importantly, Plaintiff presented evidence that -- *in the years before Abrishamcar worked for Oracle, and in the years after she left* -- Oracle placed an actual "electronic

signature" in the signature box (on the lower left hand side of the ICP) of the commission contracts, stating the name of the authorized employee and the date of execution on behalf of Oracle.

Co-Plaintiff Kavi Kapur presented evidence of his ICPs while he worked as a commissioned sales employee at Oracle, which reflect that Oracle provided an electronic signature in the signature box on the commission agreements dated March 2013, June 2013, and July 2016. (Kapur Ex. E.) This reality is not really explained by Oracle, but rather ignored. No evidence was presented by Oracle as to why they could provide a fully signed commission contract before 2014 and could provide a fully signed commission contract after 2015 – but couldn't give one to Abrishamcar during the 2014-2015 time period that she worked there.

Conclusion

What the Legislature demands is actually very simple and easy: the employer and the employee both have to sign any commission agreement, and the employee is to be provided with a copy of that fully-signed commission agreement. It does not place any real burden upon Oracle to simply add its "electronic signature" by typing in the name and position of an authorized personnel in the signature block at the bottom of *its own* form commission agreement – something which Oracle, *the computer software company*, can easily accomplish automatically, just like they automatically place a date at the end of the document.

Oracle demonstrated its understanding of what an "electronic signature" is suppose to be on a commission contract, because it complied in the past! Indeed, the

evidence is that Oracle did so prior to Plaintiff's employment, and did so again after Plaintiff left the company.

Defendant failed to comply with the technical requirements of the Labor Code Section 2751 in regard to Plaintiff Abrishamcar and her commission contracts.

DATED: April 4, 2018

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT