

FILED
SAN MATEO COUNTY

APR 26 2021

By  Clerk of the Superior Court
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

RONG JEWETT, SOPHY WANG, and XIAN MURRAY, on behalf of themselves, and ELIZABETH SUE PETERSEN, MARILYN CLARK, and MANJARI KANT, individually and on behalf of the Class,

Plaintiffs,

v.

ORACLE AMERICA, INC.,

Defendant.

) Case No.: 17CIV02669
)
) **ORDER DENYING DEFENDANT'S**
) **MOTIONS FOR SUMMARY**
) **JUDGMENT OR, IN THE**
) **ALTERNATIVE, SUMMARY**
) **ADJUDICATION OF ISSUES**
) **AGAINST PLAINTIFFS CLARK,**
) **KANT, AND PETERSEN**
)
) Assigned for all purposes to the
) Honorable V. Raymond Swope
)
) Complaint Filed: June 16, 2017
)
) Trial Date: No date set

1 On December 18, 2020, in Department 23, the Court heard argument on Defendant
2 Oracle America, Inc.'s ("Defendant" or "Oracle") three Motions for Summary Judgment or, in
3 the Alternative, Summary Adjudication against Plaintiffs Marilyn Clark, Manjari Kant, and
4 Elizabeth Sue Petersen, respectively (collectively, "motions"), with all parties appearing through
5 their counsel of record.¹ At that hearing, the Court ordered supplemental briefing on its
6 Tentative Ruling denying the motions, which the parties subsequently submitted as ordered.
7 Having considered all memoranda and evidence submitted in support of or in opposition to the
8 motions, including the supplemental briefs, the complete record, oral argument of counsel, and
9 the relevant law, and for the reasons set forth below, the Court DENIES the motions in their
10 entirety.

11 BACKGROUND

12 Representative Plaintiffs Clark, Kant, and Petersen (collectively "Plaintiffs") brought this
13 action against Oracle, alleging Oracle paid them, and other female employees in Oracle's
14 Product Development, Support, and Information Technology ("IT") functions in California,
15 thousands of dollars less per year than it paid men who performed substantially similar or equal
16 work, with no legitimate reason for the lower pay, in violation of California's Equal Pay Act,
17 Labor Code § 1197.5 ("EPA"). In addition to their claim under the EPA, Plaintiffs also brought
18 claims for unlawful and unfair business practices under Business and Professions Code § 17200,
19 claims for declaratory judgment pursuant to Code of Civil Procedure § 1060, claims for past
20 wages due under Labor Code §§ 201-203, and a Private Attorney General Act claim under Labor
21 Code §§ 2698-2699.5.

22 On April 30, 2020, this Court granted Plaintiffs' motion for class certification and
23 appointed Plaintiffs Clark, Kant, and Petersen as class representatives.² The certified class
24

25
26 ¹ By the agreement of the parties, the individual claims of former Plaintiffs Rong Jewett,
27 Xian Murray, and Xiang "Sophy" Wang were dismissed on March 27, 2019, after Oracle had
28 filed its motions for summary judgment but before it had filed its reply.

² Oracle sought a writ of mandate with respect to the Class Certification Order, which the
Court of Appeal denied on June 2, 2020. On August 20, 2020, the California Supreme Court
denied Oracle's petition for review.

1 includes “[a]ll women employed by Oracle in California in its Information Technology, Product
2 Development, or Support job functions, excluding campus hires and managerial positions, at any
3 time during the time period beginning June 16, 2013 through the date of trial in this action.”

4 Class Cert. Order at 25:16-19. Class notice has been sent, and the deadline for opting out has
5 passed. The class includes over 3,000 women.

6 On the same date that Plaintiffs filed their motion for class certification, Oracle chose to
7 file the subject early motions for summary judgment, or in the alternative for summary
8 adjudication, against Plaintiffs Clark, Kant, and Petersen. Oracle seeks summary adjudication on
9 seven issues: (1) Plaintiffs’ EPA claim, on the ground that Plaintiffs cannot establish a *prima*
10 *facie* case under the EPA; (2) Plaintiffs’ EPA claim, on the ground that the undisputed evidence
11 shows that bona fide factors other than sex explain why Plaintiffs were paid less than their male
12 comparators; (3) Plaintiffs’ claim for failure to pay all wages due, on the ground that the claim
13 fails because the underlying EPA claim fails; (4) Plaintiffs’ UCL claim, on the ground that the
14 claim fails because the underlying EPA claim fails; (5) Plaintiffs’ UCL claim for injunctive
15 relief, on the ground that Plaintiffs lack standing to seek injunctive relief because they are former
16 employees; (6) Plaintiffs’ claim for declaratory relief, on the ground that the claim fails because
17 the underlying EPA claim fails; and (7) Plaintiffs’ claim for declaratory relief, on the ground that
18 Plaintiffs lack standing as former employees. Issues 3, 4, and 6, as framed by Oracle, are
19 entirely derivative of Issues 1 and 2.

20 Oracle’s motions for summary judgment argue that Plaintiffs cannot prove that their male
21 comparators were paid more for substantially similar work, and alternatively, that bona fide
22 factors justify any pay differentials. Oracle’s opening brief and Separate Statements address
23 only four purported male comparators for Plaintiff Clark, three purported male comparators for
24 Plaintiff Kant, and four purported comparators for Plaintiff Petersen. *See* Memo. of Points &
25 Authorities in Support of Oracle’s Motions for Summary Judgment or, in the Alternative,
26 Summary Adjudication (“MPA”) at 47:23-71:2; Clark UMF Nos. 1-43; Kant UMF Nos. 1-37;
27 Petersen UMF Nos. 1-51. Oracle contends that these specific individuals are the only relevant
28 male comparators for purposes of Plaintiffs’ EPA claim.

1 In opposition, each Plaintiff argues that her alleged comparators are not simply the
2 specific individuals identified by Oracle in its motion, but rather all men in California having the
3 same job code as her. *See* Plaintiffs’ Fourth Amended Class Action Complaint, ¶15. Plaintiffs
4 contend that Oracle uses an extremely detailed job classification system, such that all employees
5 assigned to a job code perform substantially equal or similar work. In support of their
6 contention, Plaintiffs submitted substantial evidence, including Oracle’s own documents,
7 testimony from persons designated by Oracle as Persons Most Qualified (“PMQ”), and expert
8 testimony. With respect to their EPA claim, Plaintiffs submitted evidence regarding the
9 centralized and systematized manner in which Oracle classifies employees and determines
10 employee pay through the use of a detailed company-wide system of job codes, in which Oracle
11 groups employees by job function, job specialty, job family and responsibility level, and assigns
12 each job code a specific salary range. Plaintiffs’ Separate Statements, Additional Material Facts
13 (“AMF”)³ No. 103; Declaration of Kate Waggoner in Support of Oracle’s Motion (“Waggoner
14 Decl.”), Exh. D at 653, 655-58. Plaintiffs’ evidence includes deposition testimony from Oracle’s
15 PMQ designee that individuals within job code share “basic skills, knowledge, and abilities,” and
16 “similar” “levels of responsibility and impact.” Declaration of John T. Mullan in Opposition to
17 Oracle’s Motion (“Mullan Decl.”), Exh. I (Deposition Excerpts of Oracle PMQ Kate Waggoner
18 (“Waggoner”)) at 221:1-8; 223:16-224:17; 225:11-19; 229:7-9.

19 Plaintiffs’ evidence also includes detailed reports and expert analyses and opinions from
20 two experts—Professor David Neumark, Ph.D., a Labor Economist, and Leaetta Hough, Ph.D.,
21 an Industrial Organization Psychologist. In her report, Dr. Hough analyzed Oracle’s job
22 classification system and concluded that jobs within Oracle’s specific job codes are substantially
23 similar or equal with respect to skills, effort, and responsibilities. Mullan Decl., Exh. R
24 (Declaration of Leaetta Hough in Support of Motion for Class Certification, Exh. A (“Hough
25 Report”)) ¶¶10, 18, 48; Exh. H (Deposition Excerpts of Hough (“Hough”)) at 181:22-182:6,

26
27 ³ All three Plaintiffs’ additional material facts are identical save for a few references to
28 tables in the Declaration of David Neumark Re: Summary Judgment (“Neumark Decl.”), Exh. A,
that are specific to them, so “AMF” cites refer to each Plaintiffs’ additional material facts.
“UMF” cites will identify the specific Plaintiff by name.

1 185:11-188:7, 188:25-190:9, 198:19-199:6, 20:17-21:15, 53:11-23, 212:5-21, 131:24-132:6,
2 132:21-134:4; *see also* Neumark Decl., Exh. B, (“Neumark January 2019 Report”) ¶8.b (“...I
3 have treated persons in the same job code and grade as performing substantially equal or similar
4 work, which is how Oracle treats such persons...”).

5 In his report, Professor Neumark analyzed Oracle’s pay records and found disparities in
6 pay and bonus between men and women within the same job code, including the three named
7 Plaintiffs. Neumark Decl., Exh. A, (“Neumark March 2019 Report”).⁴ He found that the overall
8 estimated base pay shortfall for Plaintiff Clark was approximately 14 percent. *Id.* ¶25, Table 1.
9 He noted, “Her estimated sex gap in base pay is 10.68 standard deviations, which is so large that
10 the probability of observing a difference this large in the data if in fact there was no gender gap
11 in pay with the control variables described above is less than 1 in 1 billion.” *Id.* Professor
12 Neumark’s estimated base pay shortfall for Plaintiff Kant was 12.7 percent, with an estimated
13 sex gap in base pay of 8.79 standard deviations. *Id.* ¶26, Table 2. According to Professor
14 Neumark, again, the probability of observing a gap this large if there was no gender gap in pay is
15 also less than 1 in 1 billion. *Id.* The estimated bonus shortfall for Plaintiff Kant was
16 approximately 152 percent, with an estimated sex gap in bonus pay of 9.46 standard deviations.
17 *Id.* ¶27, Table 3. Finally, Professor Neumark’s overall estimated base pay shortfall for Plaintiff
18 Petersen was approximately 22.6 percent, with an estimated sex gap in base pay of 27.46
19 standard deviations. He again concluded that this gap was “so large that the probability of
20 observing a difference this large in the data if in fact there was no gender gap in pay with the
21 control variables described above is less than 1 in 1 billion.” *Id.* ¶28, Table 4. In addition,
22 Professor Neumark extracted from Oracle’s payroll data, separately for each Plaintiff, lists of
23 men in her job code who were paid more than she was. *Id.* Tables 15 (Clark), 16 (Kant), 17
24 (Petersen).

25 In support of their UCL claim, Plaintiffs submitted Oracle’s own documents and
26 testimony from Oracle’s PMQ designees supporting their allegation Oracle’s earlier use of prior

27
28 ⁴ Oracle initially moved to strike Professor Neumark’s March 2019 Report but subsequently withdrew the motion to strike.

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