IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHELSEA ZAHN,	)	Civil Action No. 2:26-cv-0063
	)	
Plaintiff,	)	HONORABLE J. NICHOLAS RANJAN
	)	
v.	)	
	)	
PITTSBURGH STEELERS, LLC,	)	
	)	
Defendant.	)	Electronically Filed.

PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS

COMES NOW, the Plaintiff, CHELSEA ZAHN, by and through her attorneys, LAW OFFICES OF JOEL SANSONE, JOEL S. SANSONE, ESQUIRE, ELIZABETH A. TUTTLE, ESQUIRE, AMANDA N. SHIELDS, ESQUIRE, and MASSIMO A. TERZIGNI, ESQUIRE, and hereby submits this Brief in Opposition to Defendant's Motion to Dismiss, as follows:

I. INTRODUCTION

Plaintiff, Chelsea Zahn, has filed a six (6) count Amended Complaint against her former employer, the Defendant, Pittsburgh Steelers, LLC, alleging federal claims pursuant to the Equal Pay Act, 29 U.S.C. §206, and Title VII, 42 U.S.C. §2000e, *et seq*.; as well as state law claims pursuant to the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951, *et seq*. 955, and the Pennsylvania Wage Payment and Collection Law ("WPCL"), 43 P.S. § 260.1, *et. al.* The Defendant filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) that only challenges the sufficiency of Plaintiff's WPCL claim. As argued herein, Plaintiff has set forth a plausible claim for relief pursuant to the WPCL that would allow this Honorable Court to draw the reasonable inference that the Defendant failed to pay her wages in the form of a bonus/commission that she earned during her employment.

Therefore, for the following reasons, Plaintiff respectfully requests that this Honorable Court deny Defendant's Motion to Dismiss.

II. STANDARD OF REVIEW

In deciding a motion under Fed.R.Civ.P. 12(b)(6), this Court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008).

> Under the "notice pleading" standard embodied in Rule 8 of the Federal Rules of Civil Procedure, a plaintiff must come forward with "a short and plain statement of the claim showing that the pleader is entitled to relief." As explicated in *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), a claimant must state a "plausible" claim for relief, and "[a] claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Although "[f]actual allegations must be enough to raise a right to relief above the speculative level," *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), a plaintiff "need only put forth allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary element." *Fowler*, 578 F.3d at 213 (quotation marks and citations omitted); *see also Covington v. Int'l Ass'n of Approved Basketball Officials*, 710 F.3d 114, 117-18 (3d Cir. 2013).

Thompson v. Real Estate Mortg. Network, 2014 U.S. App. LEXIS 6150, 6-7 (3d Cir. 2014).

"The Supreme Court clarified that this plausibility standard should not be conflated with a higher probability standard." *Chesher v. Allegheny Cnty.*, 2024 U.S. Dist. LEXIS 88175, *8(W.D. Pa. 2024), citing *Iqbal*, 556 U.S. at 678. Moreover, any reasonable inferences in this regard "should be considered in the light most favorable to the plaintiff." *Bloch v. United States HUD*, 2024 U.S. Dist. LEXIS 106830, *7 (W.D. Pa. 2024) citing *Lula v. Network Appliance*, 255 F. App'x 610, 611 (3d Cir. 2007) citing *Rocks v. City of Phila.*, 868 F.2d 644, 645 (3d Cir. 1989).

III. FACTS

Plaintiff was employed by Defendant from in or about July, 2013, until her resignation on or about September 13, 2024. At the time of her resignation, Plaintiff held the position of corporate sales manager. (Complaint, para. 9). Plaintiff pled that, during her employment with Defendant, she experienced multiple incidents of discrimination and a hostile work environment based on her sex, female; and that the incidents that she experienced were part of a plan, pattern, or practice of discrimination against female employees, as Defendant routinely treated male employees more favorably than female employees. (*Id*., paras 10-11). Plaintiff further pled that Defendant paid male employees more money than female employees, including the Plaintiff, for the same or substantially similar work. (*Id*., para. 12).

Plaintiff's employment with Defendant began in or about July, 2013, when she was hired as a part-time marketing intern and sponsorship assistant. (*Id*., para. 13). In or about August, 2014, Plaintiff was promoted to a full-time position as a partnership activation specialist. (*Id*., para. 14). In or about May, 2017, Plaintiff was promoted to partnership activation manager and was responsible for sales-related tasks. (*Id*., para. 15). In or about March, 2022, Plaintiff was promoted to corporate sales manager. (*Id*., para. 16).

When the Plaintiff was promoted to corporate sales manager, in or about March, 2022, Defendant initially offered Plaintiff a salary less than the starting salary that Defendant offered its male corporate sales managers. (*Id*., para. 20). As a result, Plaintiff was forced to negotiate a lower commission structure than what Defendant provided its male corporate sales managers in order to receive a salary that was equal to her male co-workers. (*Id*., para. 21). During the aforementioned negotiations, Plaintiff complained to Defendant that she was being treated less favorably than male employees by Defendant, and that she was being offered less money to

perform the same role as her male co-workers. (*Id*., para. 22). At that time, Defendant provided no explanation for this difference in treatment and pay. (*Id*., para. 23).

On or about September 2, 2024, Plaintiff submitted a letter of resignation to Defendant, after securing over $1.81 million dollars in new sponsorship business for the 2024 sales season, which was the highest amount of new sponsorship business secured by any corporate sales manager for the 2024 sales season. (*Id*., para. 34). Plaintiff's final day of employment with Defendant was September 13, 2024. (*Id*., para. 35). Prior to her last day, her supervisor, as well as Defendant's human resources department, assured the Plaintiff that she would be paid her bonuses/commissions payment for the sales that she secured for the 2024 sales season. (*Id*., para. 36). On or about January 27, 2025, Plaintiff received an email from Defendant's director of human resources informing her that bonuses/commissions would be paid by Defendant sometime in February, 2025. (*Id*., para. 37).

On February 13, 2025, Plaintiff was informed by her former supervisor that the bonuses/commissions owed to her was $100,625.00, but that Arthur J. Rooney, II ("Rooney"), the Defendant's team president and owner, decided not to pay her the entire bonuses/commissions amount owed. (*Id*., para. 38). The reason provided was that Mr. Rooney was "upset that [she] left the company." (*Id*., para. 39). Plaintiff pled that the reason provided by Defendant is pretextual and unworthy of belief, as heterosexual male employees of the Defendant were paid their full bonuses/commissions owed to them after they had left their employment with Defendant. (*Id*., para. 40). Instead, Plaintiff was provided a check for $50,000.00, which is less than half the amount owed to her. Plaintiff did not cash that check, as it was not the correct amount owed to her. (*Id*., para. 41). At the same time that she was told that she would not be paid her full bonuses/commissions owed to her, Plaintiff was informed that the

other corporate sales managers, who are all male and heterosexual, were provided with their full bonuses/commissions owed to them based on their sales for the 2024 sales season. (*Id*., para. 42).

Plaintiff believes, and therefore avers, that Defendant failed to pay her the full bonuses/commissions owed to her because of her sex, female, and/or the Plaintiff's nonconformity to the gender stereotypes of a heterosexual woman and/or in retaliation for her previous complaints of being treated less favorably than male employees and being paid less than her male co-workers for substantially similar work. (*Id*., paras. 43-44). To date, Plaintiff has not been paid the $100,625.00 owed to her in bonuses/commissions by Defendant. (*Id*., para. 46). As a result of Defendant's actions, Plaintiff has been adversely affected emotionally, financially, and professionally. (*Id*., para. 47).

IV. ARGUMENT

A. Plaintiff has Sufficiently Pled a WPCL Claim as the Defendant Failed to Pay her Money that she Earned.

The WPCL provides employees with a statutory remedy to collect wages that are due from their employers. *Fialla-Bertani v. Pennysaver Publ'ns of Pa., Inc*., 45 Pa. D. & C.4th 122, 124 (C.P. 2000); 43 P.S. § 260.3. "Wages" includes "all earnings of an employee, regardless of whether determined on time, task, piece, commission or other method of calculation." *Hartman v. Baker*, 2000 PA Super 140, ¶ 14, 766 A.2d 347, 352 (Pa. Super. 2000).

In making a WPCL claim, the employee must have a contractual entitlement "to compensation from wages" and the employer's failure to pay that compensation. *Sullivan v. Chartwell Inv. Partners, LP*, 2005 PA Super 124, 873 A.2d 710, 716 (Pa. Super. 2005). "[A]bsent a formal employment contract or collective bargaining agreement, an employee raising a WPCL claim would have to establish, at a minimum, an implied oral contract between the

employee and employer." *Braun v. Wal-Mart Stores, Inc.,* 2011 PA Super 121, 24 A.3d 875, 954 (Pa. Super. 2011)citing *De Asencio v. Tyson Foods, Inc*., 342 F.3d 301, 309 (3d Cir. 2003).

> Under Pennsylvania law, an implied contract arises when parties agree on the obligation to be incurred, but their intention, instead of being expressed in words, is inferred from the relationship between the parties and their conduct in light of the surrounding circumstances. *Oxner v. Cliveden Nursing & Rehab. Ctr. PA, L.P*., 132 F. Supp. 3d 645, 649 (E.D. Pa. 2015). The employee must show that he and the employer "intended to form a contract." *Tyson Foods*, 342 F.3d at 311 (quoting *Di Bonaventura v. Consolidated Rail Corp*., 372 Pa. Super. 420, 539 A.2d 865, 868 (Pa. Super. Ct. 1988)).

Elwell v. SAP Am., Inc., No. 18-cv-0489, 2019 U.S. Dist. LEXIS 38003, at *12 (E.D. Pa. Mar. 8, 2019).

Defendant argues that Plaintiff's WPCL claim fails because she did not plead a contractual obligation to pay Plaintiff her bonus/commission. (Defendant's brief, pp. 4-5). As highlighted in the previous section hereinbefore above, Plaintiff pled that she earned the commission that Defendant failed to pay her; and that, prior to her last day of employment, as well as in January, 2025, Defendant promised to pay her the specific commission she earned in February, 2025. Moreover, Plaintiff pled that Defendant paid other individuals, who held the same position as Plaintiff, the commissions that they had earned. Clearly, Plaintiff pled that the Defendant orally agreed to pay her the wages at issue, and that the Defendant had established a course of conduct of paying individuals in Plaintiff's position these wages. Accordingly, Plaintiff has adequately pled an oral and implied contractual obligation for the Defendant to pay her money that she earned pursuant to the WPCL.

Defendant further argues that it retained full discretion in the awarding of Plaintiff's bonus based on a 2015 offer letter to Plaintiff for a different position than what she held at the time of her resignation almost ten (10) years later. (*Id*., pp. 5-6; Ex. A). In light of the aforementioned oral and implied contractual obligation to pay Plaintiff, as well as the fact that

the offer letter is for a different position than what Plaintiff held at the time of her resignation, the Defendant's reliance on this offer letter should, respectfully, be unavailing. However, even if this Honorable Court were to find that the Defendant maintained discretion to pay Plaintiff her bonus/commission, the Defendant nevertheless had a contractual obligation to apply that discretion in good faith. *See Riseman v. Advanta Corp.,* 98-CV-6671, 2001 U.S. Dist. LEXIS 15760, at *14-16 (E.D. Pa. Sep. 7, 2001) (finding that Plaintiff enjoyed a reasonable expectation that his employer would exercise its discretion in awarding his bonus in good faith)[1]; *Gautney v. Amerigas Propane, Inc*., 107 F. Supp. 2d 634, 640, 646-47 (E.D. Pa. 2000) (contract could be formed even where corporate officer has "final discretion" to determine plaintiff's eligibility for bonus under Management Incentive Plan); *Kofsky v. Chemical Residential Mortg. Corp*., 1999 U.S. Dist. LEXIS 17386, 1999 WL 1016976 * 3 (E.D. Pa. 1999) (contract for commissions could arise, even where defendant retains discretion over commission program); *Goldstein v. Johnson & Johnson*, 251 F.3d 433, 444-46 & n.7 (3d Cir. 2001) (even where party has "sole authority" or "final and conclusive" authority to interpret agreement, discretion must be exercised in good faith); *Sterling Nat. Mortg. Co., Inc. v. Mortgage Corner, Inc*., 97 F.3d 39, 44 (3d Cir. 1996) (even where party has "total discretion" or "unbounded discretion" under contract, discretion must be exercised in good faith). "Under the covenant of good faith and fair dealing, 'every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.' This implied duty may be breached where there is 'interference with or failure to cooperate in the other party's performance.'" *Riseman*, 2001 U.S. Dist. LEXIS 15760, at *15-16

[1] This decision was confirmed by the Third Circuit in *Riseman v. Advanta Corp*., 39 F. App'x 761, 765 (3d Cir. 2002).

quoting RESTATEMENT (SECOND) OF CONTRACTS § 205 & Cmt. a.; *Somers v. Somers*, 418 Pa. Super. 131, 136-39, 613 A.2d 1211, 1213-15 (1992).

The offer letter relied on by the Defendant states that Defendant's discretion in awarding Plaintiff her bonus would be based on "Company, department, and individual performance." (Ex. A, p. 1). Plaintiff pled that she obtained the highest amount of new sponsorship business secured by any corporate sales manager for the 2024 sales season and that all other corporate sales managers received their full bonuses. The reason provided by the Defendant for not awarding Plaintiff her full bonus was not performance-based, but, rather, because Mr. Rooney was "upset that [she] left the company." The facts pled overwhelmingly suggest that the Defendant acted in bad faith, *i.e.*, with a discriminatory motive and not based on the Company's, department's, or Plaintiff's performance.

The Defendant also contends that it does not owe Plaintiff her bonus/commissions because the bonuses were paid by the Defendant after Plaintiff resigned. (Defendant's brief, p. 6). However, "[t]he mere fact that certain compensation is not payable until a future date is not necessarily fatal to a WPCL claim so long as the employee is deemed to have 'earned' it during his employment." *Riseman v. Advanta Corp*., 39 F. App'x 761, 765 (3d Cir. 2002) citing *Scully v. US WATS, Inc*., 238 F.3d 497, 516 (3d Cir. 2001).

> Whenever an employer separates an employee from the payroll, or whenever an employee quits or resigns his employment, the wages or compensation earned shall become due and payable not later than the next regular payday of his employer on which such wages would be otherwise due and payable.

43 P.S. § 260.5.

As aforementioned, the Defendant was contractually obligated to pay Plaintiff her bonus/commissions. According to the offer letter relied on by the Defendant, this "bonus" was due to be paid "after the end of the season." (Ex. A, p. 1). Prior to Plaintiff's last day of her

employment, the Defendant confirmed to Plaintiff that she would be paid her full bonus based on her sales numbers, and, in January, 2025, the Defendant notified Plaintiff that she would be paid her bonus sometime in February, 2025.[2] On February 13, 2025, the Defendant notified Plaintiff that it would be paying her a bonus of $50,000, less than half of what she earned. At this time, the Defendant informed Plaintiff of the precise amount that she was actually owed, $100,625.00. This number is a clear indication that Defendant's so-called "discretionary bonus" was actually a commission earned by Plaintiff based on her sales numbers and due to be paid to her at the same time all of the other corporate sales managers were paid their commissions based on their individual sales numbers. Moreover, the fact that the Defendant attempted to pay Plaintiff some bonus, albeit significantly less than what she earned, is an admission that the Defendant did not even believe that it was not obligated to pay Plaintiff anything simply because Plaintiff resigned prior to the bonus being due to be paid. Accordingly, the date of Plaintiff's resignation has no bearing on Defendant's obligation to pay Plaintiff the money that she earned.

For the reasons argued herein, Plaintiff respectfully requests that this Honorable Court deny Defendant's Motion to Dismiss.

V. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that this Honorable Court deny Defendant's Motion to Dismiss in its entirety.

[2] The NFL season ended on February 9, 2025. (https://www.nfl.com/news/2024-2025-national-football-league-important-dates).

Respectfully submitted,

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