

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Anthony Staren, an individual,

Plaintiff,

v.

Clarivate Analytics (US), LLC, a Delaware
limited liability company,

Defendant.

No. CV-23-02091-PHX-DWL
ORDER

Anthony Staren (“Plaintiff”) contends that his former employer, Clarivate Analytics (“Defendant”), failed to pay him over \$500,000 in sales commissions to which he was entitled under Defendant’s “2022 Sales Incentive Plan” (hereinafter, the “Incentive Plan”). In this action, Plaintiff asserts claims under the Arizona Wage Act (“AWA”) and the covenant of good faith and fair dealing and also seeks declaratory relief concerning the validity of certain provisions in the Incentive Plan. (Doc. 14.) Now pending before the Court are Plaintiff’s motion for judgment on the pleadings as to his claim for declaratory relief and Defendant’s cross-motion for judgment on the pleadings as to all of Plaintiff’s claims. (Docs. 26, 31.) For the reasons that follow, Plaintiff’s motion is denied and Defendant’s motion is granted in part and denied in part.

BACKGROUND

The following facts are derived from the parties’ operative pleadings, the complaint (Doc. 14) and the answer (Doc. 18). For purposes of Plaintiff’s motion, the denials and affirmative allegations contained in Defendant’s answer are presumed true. For purposes

1 of Defendant’s cross-motion, the allegations contained in the complaint are presumed true.

2 I. Factual Allegations

3 Plaintiff was employed by Defendant from December 2021 through June 2023.
4 (Doc. 14 ¶ 7). During his employment, Plaintiff “participated in Clarivate’s 2022 Sales
5 Incentive Plan.” (*Id.* ¶ 8). “The Incentive Plan provides that commissions are deemed
6 fully earned and payable to a participant upon closure or invoicing of eligible sales during
7 the employee’s term of employment.” (*Id.* ¶ 9.)

8 Plaintiff alleges that “[i]n 2022 he began working on a sale with Diaceutics, Inc.,”
9 and “[t]hroughout 2022, [he] was personally involved in all aspects of the Diaceutics sales
10 and regularly exchanged emails and phone calls with various members of Diaceutics, as
11 well as other Clarivate employees to ensure that the sale could and would go through.” (*Id.*
12 ¶¶ 11-12.) Plaintiff also alleges that “[a]t the end of 2022, [he] successfully negotiated and
13 closed the Diaceutics deal, which totaled \$3.777 million.” (*Id.* ¶ 13.) Defendant denies
14 these allegations regarding Plaintiff’s involvement in closing the Diaceutics sale. (Doc. 18
15 ¶¶ 11-13.)

16 On December 30, 2022, after Plaintiff allegedly closed the Diaceutics deal,
17 Defendant published an internal report entitled “Daily Close Performance and Deals” that
18 contained a section entitled “Top Business Deals From the Previous Business Day.” (Doc.
19 14 ¶ 14-15.) It contained the following entry:

20 **\$ Top business deals from the previous business day(\$M)**

Account	Rep	Type	Business	Amount
01 Diaceutics Inc	Anthony Staren	New Business	LSHC	3.777

21
22
23
24 (*Id.* ¶ 16). According to Plaintiff, this entry states that he “closed the Diaceutics . . . sale
25 for \$3.777 million.” (*Id.*) Defendant admits the existence of this entry but alleges in its
26 answer that the entry was “auto-generated by a software platform based upon unverified
27 self-report data entered by sales and other non-management employees prior to review and
28 approval by Company management. Defendant denies any implication that the auto-

1 generated information reflects evidence that Plaintiff was the ‘Rep’ responsible for the
2 Diaceutics Inc. sale.” (Doc. 18 ¶ 16.)

3 On January 19, 2023, Plaintiff was invited to Defendant’s April 2023 “Winner’s
4 Circle” trip, which was a five-night company-paid trip to Hawaii. (Doc. 14 ¶ 17; Doc. 18
5 ¶ 17.) Plaintiff additionally alleges that this trip was given as a “reward . . . for those
6 commissioned employees, like [him], whose revenue for sales beyond the necessary target
7 amount qualified them for the trip” and that he “would not have qualified for the trip
8 without the Diaceutics sale.” (Doc. 14 ¶¶ 17-18.) Defendant denies these additional
9 allegations. (Doc. 18 ¶¶ 17-18.)

10 On January 31, 2023, Plaintiff had a phone call with Darren Tickle, a Clarivate
11 executive, regarding the Diaceutics sale. (Doc. 14 ¶ 20). Following this call, Plaintiff
12 emailed Tickle to express his belief that he was entitled to a \$528,944.95 commission
13 arising from the Diaceutics sale according to the terms of the Incentive Plan. (*Id.* ¶ 21.) In
14 response, Tickle stated that “the Diaceutics sale constituted a ‘Real World Data partner
15 deal’ that did not qualify as part of Mr. Staren’s 2022 territory and that ‘given the
16 misalignment of the deal to [his] Incentive Plan and the exceptional nature of the deal, any
17 compensation for this deal is within the sole discretion of Clarivate Management.’” (*Id.*
18 ¶ 22.) Plaintiff alleges, and Defendant admits, that the phrase “Real World” does not
19 appear in the Incentive Plan attached to the complaint. (*Id.* ¶ 23; Doc. 18 ¶ 23.) Plaintiff
20 alleges that Defendant’s regular practice is to quickly identify a deal as a “Real World Data
21 partner deal” and interject before the employee closes the deal, but in this case,
22 management “knew of and supported his efforts in the Diaceutics deal” and never
23 questioned whether it would qualify as an eligible sale. (Doc. 14 ¶¶ 24-26.) Defendant
24 denies these allegations. (Doc. 18 ¶¶ 24-26.)

25 Plaintiff alleges that, in refusing to pay him the commission, Defendant “relied on
26 various provisions in the Incentive . . . Plan that purport to give [Defendant] unilateral and
27 complete discretionary authority to reduce, even retroactively without warning, any sale
28 that [Defendant] chose to reduce.” (Doc. 14 ¶ 27.) Defendant “denies that said allegations

1 are a complete and accurate summary of the contents and/or relevant provisions of the
2 [Incentive Plan] or the parties' relevant communications on this topic, and Defendant
3 denies that Plaintiff is entitled to any additional unpaid compensation under the Plan."
4 (Doc. 18 ¶ 27.) The complained-of provisions are as follows:

5 **Achievement above Target.** The core Clarivate Sales Incentive Plan is an
6 uncapped Plan that aims to provide exceptional rewards for exceptional
7 performance. The plan components may generate unlimited commission
8 earnings in-line with target achievement %. However, there may be rare
9 scenarios where achievement is misaligned to the target that was set for a
10 territory. In such cases, Clarivate Management reserves the right to review
11 whether the target, territory size, pay-out rate and bonus objectives were
12 appropriately set, and, where applicable, adjust the levels and/or associated
13 commission earnings.

14 (Doc. 1-3 at 19.)¹

15 **Exceptional Orders .** Exceptionally large single orders that create payouts
16 greater than 50% of a Plan component OTC in any one pay period may be
17 rewarded as an exceptional commission payment outside the normal
18 commission plan calculation, as determined in Clarivate Management's sole
19 discretion to recognize the effort and deal size. Additionally, Clarivate
20 Management reserves the right, in its sole discretion, to designate any
21 account or sales opportunity as a "Redlined Account" at any point during the
22 Plan Period, to which a Participant's normal incentive compensation terms
23 will not apply. This may be done, for example, in the event of a merger or
24 acquisition, in the event of exceptional contractual/ payment terms, or in the
25 case of any unexpectedly large sales opportunity. The Company will notify
26 the Participant either in advance or retroactively, if a given account or sales
27 opportunity is designated as a Redline Account. Incentive compensation
28 payments, if any, on Redline Accounts are purely discretionary within
Clarivate, and will be determined by Clarivate Management, in its sole
discretion.

¹ The "Achievement above Target" section also contains a second paragraph that provides as follows: "For Sales Commission or Sales Bonus earnings generated from outside of the core Clarivate Sales Incentive Plan components (including but not limited to Sales Accelerators, SPIFFs, and Special Sales Commission/ Sales Bonus programs), a maximum of 25% of annual OTC can be earned in total, unless explicitly approved by Clarivate Management." (Doc. 1-3 at 19.) That paragraph is not at issue here and Plaintiff does not include it in the portion of the complaint setting forth the "Achievement above Target" section. (Doc. 14 ¶ 28.)

1
2 (Id. at 20.)

3 Despite the disagreement about whether Plaintiff was owed any additional
4 compensation, Defendant offered Plaintiff \$15,000, which Plaintiff refused. (Doc. 14 ¶ 30;
5 Doc. 18 ¶ 30.)

6 II. Procedural Background

7 On September 12, 2023, Plaintiff filed a complaint against Defendant in Maricopa
8 County Superior Court. (Docs. 1-3.)

9 On October 5, 2023, Defendant removed the action to this Court. (Doc. 1.)

10 On November 6, 2023, after some wrangling over sealing, Plaintiff filed a redacted
11 version of the complaint on the public docket. (Doc. 14.)

12 On December 8, 2023, Defendant filed an answer. (Doc. 18.)

13 On June 7, 2024, Plaintiff filed the pending motion for partial judgment on the
14 pleadings. (Doc. 26.)

15 On July 19, 2024, Defendant filed a response to Plaintiff's motion and a cross-
16 motion for judgment on the pleadings. (Doc. 31.)

17 On July 31, 2024, Plaintiff filed a combined reply to Defendant's response and
18 response to Defendant's cross-motion. (Doc. 32.)

19 On August 14, 2024, Defendant filed a reply to Plaintiff's response. (Doc. 35.)

20 On December 19, 2024, the Court issued a tentative ruling. (Doc. 45.)

21 On January 6, 2025, the parties stipulated to vacate oral argument and submit on the
22 tentative ruling. (Doc. 46.)

23 **DISCUSSION**

24 I. Legal Standard

25 “[T]o survive a motion to dismiss, a party must allege ‘sufficient factual matter,
26 accepted as true, to state a claim to relief that is plausible on its face.’” *In re Fitness*
27 *Holdings Int’l, Inc.*, 714 F.3d 1141, 1144 (9th Cir. 2013) (quoting *Ashcroft v. Iqbal*, 556
28 U.S. 662, 678 (2009)). “A claim has facial plausibility when the plaintiff pleads factual

1 content that allows the court to draw the reasonable inference that the defendant is liable
2 for the misconduct alleged.” *Id.* (quoting *Iqbal*, 556 U.S. at 678). “[A]ll well-pleaded
3 allegations of material fact in the Complaint are accepted as true and are construed in the
4 light most favorable to the non-moving party.” *Id.* at 1444-45 (citation omitted). However,
5 the court need not accept legal conclusions couched as factual allegations. *Iqbal*, 556 U.S.
6 at 678-80. Moreover, “[t]hreadbare recitals of the elements of a cause of action, supported
7 by mere conclusory statements, do not suffice.” *Id.* at 678. The court also may dismiss
8 due to “a lack of a cognizable legal theory.” *Mollett v. Netflix, Inc.*, 795 F.3d 1062, 1065
9 (9th Cir. 2015) (citation omitted).

10 Meanwhile, Federal Rule of Civil Procedure 12(c) provides that after the pleadings
11 are closed, any party may move for judgment on the pleadings. A Rule 12(c) motion for
12 judgment on the pleadings by a defendant is “functionally identical” to a Rule 12(b)(6)
13 motion to dismiss. *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047,
14 1055 n.4 (9th Cir. 2011) (citations omitted). *See also Harris v. Cnty. of Orange*, 682 F.3d
15 1126, 1131 (9th Cir. 2012) (“*Iqbal* applies to Rule 12(c) motions.”) (citation omitted).
16 Therefore, a motion for judgment on the pleadings “is properly granted when, taking all
17 the allegations in the non-moving party’s pleadings as true, the moving party is entitled to
18 judgment as a matter of law.” *Fajardo v. Cnty. of Los Angeles*, 179 F.3d 698, 699 (9th Cir.
19 1999). *See also Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 955 (9th Cir. 2004)
20 (when ruling on a Rule 12(c) motion, the court must “accept as true all allegations in [the
21 plaintiff’s] complaint and treat as false those allegations in the answer that contradict [the
22 plaintiff’s] allegations”). *See generally* 1 Steven S. Gensler, Federal Rules of Civil
23 Procedure, Rules and Commentary, Rule 12 (2024) (“For the court to grant judgment on
24 the pleadings for the plaintiff, the pleadings must show, even when construed in the light
25 most favorable to the defendant, that the plaintiff must prevail as a matter of law. This is
26 often a difficult burden since the plaintiff typically will hold the burden of proof for the
27 claims it is asserting. For the plaintiff to prevail on a Rule 12(c) motion, the pleadings
28 must conclusively establish all elements for which the plaintiff holds the burden and that

1 no defense is possible.”). Ordinarily, if a district court considers evidence outside the
2 pleadings in ruling on a motion to dismiss or motion for judgment on the pleadings, it must
3 convert the motion into a motion for summary judgment and give the nonmovant an
4 opportunity to respond. *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). A
5 district court may, however, consider “[c]ertain written instruments attached to pleadings”
6 in ruling on such a motion. *Id.* at 908.

7 II. Analysis

8 Before turning to the parties’ specific arguments, it is helpful to provide a summary
9 of the essential claims and theories in this action. Plaintiff contends that, under the
10 Incentive Plan, he was entitled to a \$528,944.95 commission for closing the Diaceutics
11 deal. Defendant, in turn, has provided three reasons why Plaintiff is not entitled to that
12 commission under the Incentive Plan: (1) the Incentive Plan only provides for commissions
13 for “eligible sales” and the Diaceutics deal was not an eligible sale because it constituted a
14 “Real World Data partner deal” that did not qualify as part of Plaintiff’s territory; (2)
15 alternatively, Defendant had discretion under the “Achievement above Target” section of
16 the Incentive Plan to reduce or eliminate commissions in “rare scenarios where
17 achievement was misaligned to the target that was set for a territory” and chose to exercise
18 that discretion in the case of the Diaceutics deal; and (3) further alternatively, Defendant
19 had discretion under the “Exceptional Orders” section of the Incentive Plan to deviate from
20 “the normal commission plan calculation” in cases of “[e]xceptionally large single orders
21 that create payouts greater than 50% of a Plan component OTC in any one pay period”
22 and/or “for example, in the event of a merger or acquisition, in the event of exceptional
23 contractual / payment terms, or in the case of any unexpectedly large sales opportunity”
24 and chose to exercise that discretion in the case of the Diaceutics deal.

25 A. **Count Three**

26 These details provide the backdrop for Count Three of the complaint, in which
27 Plaintiff seeks “a judicial declaration that [Defendant’s] contractual provisions which
28 authorize it to unilaterally reduce and/or revoke [Plaintiff’s] commissions are illusory and

1 void.” (Doc. 14 ¶ 53.) Both sides now move for the entry of judgment on the pleadings in
2 their favor on that claim. Plaintiff’s position is that the challenged provisions give
3 Defendant “the sole discretion and authority to adjust commission levels and ‘zero out’ an
4 employee’s commission for any reason and at any time Defendant chooses. This unfettered
5 discretion renders the commission component of Plaintiff’s employment illusory and is so
6 one-sided that it is substantively unconscionable.” (Doc. 26 at 1, emphasis omitted.)
7 Meanwhile, Defendant identifies various reasons why Plaintiff’s request for judgment on
8 the pleadings is procedurally improper and also argues that, on the merits, the challenged
9 provisions are not illusory or otherwise invalid. (Doc. 31 at 4-8, 13-17.)

10 Plaintiff is not entitled to the declaratory relief sought in Count Three. As an initial
11 matter, the Court questions whether this is even an appropriate situation in which to
12 consider a standalone request for declaratory relief. As noted, Defendant has proffered
13 three justifications for refusing to pay the \$528,944.95 commission to Plaintiff. The first
14 justification—that the Diaceutics deal was not an eligible sale because it constituted a “Real
15 World Data partner deal” and thus fell outside Plaintiff’s territory—has nothing to do with
16 Defendant’s discretionary power to reduce or refuse to pay commissions under the
17 “Achievement above Target” and “Exceptional Orders” sections of the Incentive Plan.
18 (Doc. 32 at 8 [“Plaintiff acknowledges that Defendant disputes whether the commission at
19 issue here is a qualifying sale”].) Thus, even if the Court were to declare those
20 provisions void and strike them, Defendant could still prevail. It follows that Plaintiff is
21 effectively seeking a preemptive declaration about the validity of those two contractual
22 provisions, even though the requested declaration may not have any effect on his bottom-
23 line right to recovery. Federal courts need not issue declaratory relief in this scenario. *See,*
24 *e.g., Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (a district court need not issue a
25 declaratory judgment if it “would not resolve the entire case or controversy as to any
26 [plaintiff] but would merely determine a collateral legal issue governing certain aspects of
27 their pending or future suits”); *Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1223 (9th Cir.
28 1998) (“This determination is discretionary, for the Declaratory Judgment Act is

1 deliberately cast in terms of permissive, rather than mandatory, authority. The Act gave
2 the federal courts competence to make a declaration of rights; it did not impose a duty to
3 do so.”) (cleaned up); *Aetna Cas. & Sur. Co. v. PPG Indus., Inc.*, 554 F. Supp. 290, 296
4 (D. Ariz. 1983) (“Declaratory judgment actions may not be based upon future controversies
5 that may never arise.”).

6 In a related vein, the validity of the “Achievement above Target” and “Exceptional
7 Orders” sections of the Incentive Plan is intertwined with the merits of Plaintiff’s claims
8 for recovery against Defendant in Counts One and Two of the complaint. *Cf. Schultz v.*
9 *BAC Home Loans Servicing, LP*, 2011 WL 3684481, *4 (D. Ariz. 2011) (“To the extent
10 that the Plaintiff’s complaint seeks to raise an independent cause of action for declaratory
11 relief [to resolve the construction or validity of a written contract], that claim also fails.
12 Declaratory relief is a remedy for underlying causes of action . . . not a separate cause of
13 action. Because Plaintiff has not sufficiently pled a breach of contract claim, she is not
14 entitled to a declaratory judgment regarding the meaning and enforcement of the note and
15 deed of trust.”). Some of the discretionary factors to consider when deciding whether to
16 issue declaratory relief include the need to “avoid needless determination of state law
17 issues”; “whether the declaratory action will settle all aspects of the controversy”; “whether
18 the declaratory action will serve a useful purpose in clarifying the legal relations at issue”;
19 and “whether the declaratory action is being sought merely for the purposes of procedural
20 fencing.” *Dizol*, 133 F.3d at 1225 & n.5 (cleaned up). Those considerations counsel
21 against issuing independent declaratory relief as to the narrow issues raised in Count Three.

22 Nevertheless, even assuming it is appropriate to reach the merits of Count Three,
23 the Court agrees with Defendant that the challenged provisions are not illusory, void, or
24 substantively unconscionable. The parties’ arguments as to this issue are as follows.
25 Plaintiff argues that “the Incentive Plan purports to allow Clarivate to alter the terms of Mr.
26 Staren’s commission payments on a commission-by-commission [basis] at any time and
27 for any reason. The Incentive Plan does not limit Clarivate to only those commissions
28 which have not been earned or to those commissions above a certain dollar threshold. In

1 fact, it does not limit Clarivate in any way at all.” (Doc. 26 at 6.) According to Plaintiff,
2 this “is precisely what Williston identifies as prohibited, illusory promise-making:
3 Clarivate can ‘decide later the nature or extent of [its] performance.’” (*Id.*) To support his
4 arguments, Plaintiff cites *Powanda v. Inteplast Group, Ltd.*, 2015 WL 1525737 (D. Conn.
5 2015). (*Id.* at 5.) Plaintiff also seeks to distinguish *Allen D. Shadron, Inc. v. Cole*, 416
6 P.2d 555 (Ariz. 1966). (*Id.* at 7-8).

7 Defendant responds that Plaintiff “fails to cite to a single case interpreting Arizona
8 law in which a Court has declared that the individual discretionary provisions of a
9 commission agreement shall be struck or ‘blue penciled’ individually as ‘illusory’ or ‘void’
10 in favor of the rest of the contract remaining enforceable.” (Doc. 31 at 13, emphases
11 omitted.) According to Defendant, “Plaintiff’s request to invalidate individual
12 discretionary provisions of the Incentive Plan is contrary to the law, and instead, if
13 Plaintiff’s claims are allowed to proceed at all, this Court must not strike individual
14 provisions but should hold Clarivate to the standard that it must act with sound judgment
15 in applying its discretion under the Incentive Plan.” (*Id.* at 14.) Defendant cites several
16 Arizona cases, including *Cole*, in support of this proposition. (*Id.* at 13-14.)

17 Plaintiff replies that “Arizona courts routinely and consistently apply severability
18 provisions to strike offending terms and enforce the remainder of the contract.” (Doc. 32
19 at 1.) Plaintiff also argues that Arizona courts are particularly inclined to sever offending
20 provisions and enforce the rest where, as here, the contract itself provides for severability.
21 (*Id.* at 3.)

22 Under Arizona law, which both sides agree is applicable here, “an illusory contract
23 is unenforceable for lack of mutuality.” *Shattuck v. Precision-Toyota, Inc.*, 566 P.2d 1332,
24 1334 (Ariz. 1977). However, Arizona courts have rejected the notion that a contractual
25 provision that grants one party “sole and absolute discretion . . . whether to perform”
26 necessarily “mak[es] its promise illusory,” holding instead that a “satisfaction clause . . .
27 of the subjective type” still requires the party “deciding whether to exercise its approval or
28 disapproval . . . to do so in good faith”—and, thus, such a promise is “not illusory.”

1 *Horizon Corp. v. Westcor, Inc.*, 688 P.2d 1021, 1026-27 (Ariz. Ct. App. 1984).

2 Arizona courts have also applied this principle in the sales-commission context. For
3 example, in *Cole*, the Arizona Supreme Court held that a contract that provided for
4 automatic employee commission payments for sales under \$75,000 but gave the employer
5 discretion whether to pay commissions for sales over \$75,000 was not illusory. *Cole*, 416
6 P.2d at 556-57. In reaching this conclusion, the court rejected the argument that “the word
7 ‘discretion’ gives an unlimited free choice,” explaining that “[w]hile the power of decision
8 was left entirely with Shadron . . . this does not mean there is an unlimited power to choose
9 arbitrarily. Discretion is the freedom to act according to one’s judgment. The use of the
10 word ‘discretion’ required Shadron to act on sound judgment since it excludes arbitrary,
11 unreasonable or oppressive acts. By the use of the word ‘discretion’, Shadron was
12 permitted to act without control but it could not exercise arbitrary or capricious judgment
13 or abuse its power. While a court would not control the exercise of Shadron’s discretion,
14 it would require the exercise of that discretion.” *Id.* at 557. Similarly, in *Marciniak v.*
15 *Veritas Techs., Inc.*, 2021 WL 1627250 (D. Ariz. 2021), the court held that a contract with
16 provisions that granted an employer the power “to modify all aspects of the [commission
17 payment plan]” was not illusory. *Id.* at *4. Emphasizing that “interpretations which render
18 contracts void are highly disfavored in Arizona law,” the court concluded that, for various
19 reasons, “the plan does not afford unfettered discretion as Defendant argues.” *Id.*

20 Although Plaintiff seeks to distinguish *Cole* and *Marciniak* by identifying various
21 factual differences between those cases and this one, the differences identified by Plaintiff
22 are immaterial. If anything, the provisions at issue here place more express limitations on
23 Defendant’s exercise of its discretion than the challenged provisions in *Cole* and
24 *Marciniak*. For example, in the “Achievement above Target” section, Defendant is only
25 authorized to limit commission payments in “rare scenarios where achievement is
26 misaligned to the target that was set for a territory.” (Doc. 1-3 at 19.) Similarly, in the
27 “Exceptional Orders” section, Defendant’s discretionary power to limit commission
28 payments only applies to “[e]xceptionally large single orders that create payouts greater

1 than 50% of a Plan component OTC in any one pay period.” (*Id.* at 20.) The presence of
2 these express limitations on Defendant’s exercise of its discretion negates any claim under
3 Arizona law that they create illusory obligations. *Cf. Marciniak*, 2021 WL 1627250 at *4
4 (“In light of Arizona’s disfavor of interpretations which render a contract void, Arizona’s
5 previous affirmation of the validity of a commission agreement modified by a discretionary
6 clause, and the limitations of the exercise of discretion present in the Plan, . . . [t]he
7 discretion afforded the company does not render the contract illusory.”).

8 The Court acknowledges that the second half of the “Exceptional Orders” section is
9 more broadly written than the provisions discussed above. It provides: “Additionally,
10 Clarivate Management reserves the right, in its sole discretion, to designate any account or
11 sales opportunity as a ‘Redlined Account’ at any point during the Plan Period, to which a
12 Participant’s normal incentive compensation terms will not apply. *This may be done, for*
13 *example, in the event of a merger or acquisition, in the event of exceptional contractual/*
14 *payment terms, or in the case of any unexpectedly large sales opportunity.* The Company
15 will notify the Participant either in advance or retroactively, if a given account or sales
16 opportunity is designated as a Redline Account. Incentive compensation payments, if any,
17 on Redline Accounts are purely discretionary within Clarivate, and will be determined by
18 Clarivate Management, in its sole discretion.” (Doc. 1-3 at 20, emphasis added.)
19 Nevertheless, this provision is not illusory under *Cole*. As an initial matter, the italicized
20 text of this provision provides concrete examples of when a particular sales opportunity
21 may permissibly be deemed a “Redlined Account.” Although Plaintiff may be correct that
22 the use of “for example” suggests a non-exhaustive list, that does not mean the contract
23 provides boundless discretion. At most, it would mean that only similar reasons would
24 justify the exercise of discretion. *Cf. United States v. Philip Morris USA Inc.*, 566 F.3d
25 1095, 1115 (D.C. Cir. 2009) (“Contrary to Defendants’ argument, nothing about this
26 interpretation renders the definition of ‘enterprise’ devoid of meaning. Although
27 encompassing non-enumerated enterprises, section 1961(4)’s list defines ‘enterprise,’ in
28 part, by listing the *kinds* of entities Congress had in mind. Indeed, the Supreme Court has

1 acknowledged this meaning by requiring enterprises to exhibit common purpose,
2 organization, and continuity.”). At any rate, under Arizona law, even when a contractual
3 clause purports to vest one party with subjective discretion about whether to perform, that
4 party still may not engage in an “arbitrary or capricious judgment or abuse its power.”
5 *Cole*, 416 P.2d at 557. *See also Horizon Corp.*, 688 P.2d at 1027 (a “satisfaction clause
6 . . . of the subjective type” is “not illusory” because it requires the party “deciding whether
7 to exercise its approval or disapproval . . . to do so in good faith”).

8 *Powanda* does not compel a different result. Most important, *Powanda* appeared to
9 apply Connecticut law, rather than Arizona law, when analyzing whether the “Defendant’s
10 interpretation permitting retroactive reductions of commissions already earned would
11 essentially render the contract illusory.” *Powanda*, 2015 WL 1525737 at *3. There is no
12 need to look to Connecticut law for guidance here, particularly where Arizona courts (and
13 courts applying Arizona law) have already analyzed similar contractual provisions.
14 *Powanda* is also factually distinguishable because that contract at issue there did not place
15 express limitations on, or otherwise identify illustrative guideposts concerning, the
16 circumstances in which the defendant could exercise its discretion to reduce a commission.
17 *Id.* (“Appendix C to the Employment Agreement outlined Mr. Powanda’s salary and
18 commission payments of 2% in Northeast region and provided that it ‘may be modified by
19 the Company, at the sole discretion of the Company, at any time in writing, dated and
20 signed by the Company, and promptly forwarded to the Key Account Sales Manager.’”).

21 For similar reasons, there is no merit to Plaintiff’s contention that the challenged
22 provisions are substantively unconscionable. Under Arizona law, “a claim of
23 unconscionability can be established with a showing of substantive unconscionability
24 alone.” *Maxwell v. Fid. Fin. Servs., Inc.*, 907 P.2d 51, 59 (Ariz. 1995). “Indicative of
25 substantive unconscionability are contract terms so one-sided as to oppress or unfairly
26 surprise an innocent party, an overall imbalance in the obligations and rights imposed by
27 the bargain, and significant cost-price disparity.” *Id.* at 58. *See also Clark v. Renaissance*
28 *W., LLC*, 307 P.3d 77, 79 (Ariz. Ct. App. 2013) (“A contract may be substantively

1 unconscionable when the terms of the contract are so one-sided as to be overly oppressive
2 or unduly harsh to one of the parties.”). Substantive unconscionability “requires a more
3 stringent test than mere unfairness.” *Meek v. Meek*, 539 P.3d 920, 928 (Ariz. Ct. App.
4 2023) (cleaned up). “Courts should not assume an overly paternalistic attitude toward the
5 parties to a contract by relieving one or another of them of the consequences of what is at
6 worst a bad bargain.” *Nelson v. Rice*, 12 P.3d 238, 243 (Ariz. Ct. App. 2000) (cleaned up).

7 Applying these standards, the Incentive Plan is not substantively unconscionable.
8 Plaintiff fails to cite a single case deeming a discretionary commission provision
9 unconscionable under Arizona law or even one supporting the possibility of that outcome.
10 Plaintiff cites only *McCollum v. XCare.net, Inc.*, 212 F. Supp. 2d 1142 (N.D. Cal. 2002), a
11 case from outside Arizona, and *McCollum* is also factually distinguishable. Although
12 Plaintiff contends that the provisions at issue here, as in *McCollum*, give Defendant the
13 power to “revoke any commission . . . for any reason and for any amount” (Doc. 32 at 13),
14 that argument lacks merit for the reasons discussed in earlier portions of this order. To
15 reiterate, the discretion created by the challenged provisions in the Incentive Plan is limited
16 by various textual guardrails as well as by the requirement, recognized in *Cole* and *Horizon*
17 *Corp.* and applied in *Marciniak*, that even textually unbounded grants of discretion be
18 exercised in a good-faith, non-arbitrary, and non-oppressive manner.

19 This outcome is consistent with *Nickerson v. Green Valley Recreation, Inc.*, 265
20 P.3d 1108 (Ariz. Ct. App. 2011), which Defendant cites in its motion papers. In *Nickerson*,
21 the court rejected a substantive-unconscionability challenge to an HOA contract that
22 seemed to give the HOA sole discretion to modify the terms of the agreement, holding that
23 other provisions within the contract—as well as principles of corporation law more
24 generally—meant that the HOA did “not have the unfettered ability to modify the rights of
25 the parties.” *Id.* at 1119. Here, too, various textual qualifiers and underlying principles of
26 Arizona law mean that Defendant lacks total, unfettered discretion under the provisions at
27 issue. This, in turn, means the challenged provisions do not satisfy Arizona’s exacting
28

1 standard for substantive unconscionability.²

2 **B. Counts One And Two**

3 Defendant also seeks judgment on the pleadings on Counts One and Two.
4 Defendant’s overarching argument is that because Plaintiff has taken the position that the
5 Incentive Plan is invalid, it follows that Plaintiff cannot prevail on a claim under the AWA
6 or for breach of the implied covenant of good faith and fair dealing, as both claims must
7 be premised on a valid contract. (Doc. 31 at 9 [“[G]iven the allegations in the Complaint
8 and the admissions in Plaintiff’s recent Motion, the Complaint fails to state cognizable
9 claims for relief to support the Arizona Wage and Breach of Covenant Claims, both of
10 which necessarily rely upon the existence of an enforceable agreement under the law.”].)
11 In response, Plaintiff clarifies that although some of his previous assertions may be
12 imprecise, he is not taking the position that the Incentive Plan itself is invalid—rather, he
13 is simply seeking to sever the “Achievement above Target” and “Exceptional Orders”
14 sections of that contract. (Doc. 32 at 4 [“Defendant appears to base its entire argument on
15 (admittedly) inartful pleadings and arguments that, when viewed in isolation from the
16 remainder of the pleading/motion in which they are found, appear to argue that the entire
17 Incentive Plan is void.”]; *id.* at 6 [“Defendant’s focus on that portion of the brief, to the
18 exclusion of the rest of the brief and the Complaint, reveals the folly of Defendant’s
19 position, as shown by the unmistakable relief Plaintiff seeks—to strike the two provisions
20 at issue”]; *id.* at 8-9 [“The two provisions at issue . . . are unlawful as they are illusory
21 and/or substantively unconscionable. But their inclusion in the Incentive Plan, while
22 problematic, does not doom the entire Incentive Plan nor the lawful promise between
23 Plaintiff and Defendant for commissions owed for qualifying sales”].) In reply,
24 Defendant argues that “Plaintiff’s allegations are not taken out of context, as he asserts in
25 his Response” because “quotations from the allegations in . . . Plaintiff’s Complaint” show
26 that Plaintiff is seeking to invalidate the Incentive Plan in its entirety, “and this is the

27 _____
28 ² Because the challenged provisions are not illusory or substantively unconscionable,
it is unnecessary to resolve the parties’ arguments regarding the severability of those
provisions.

1 Declaratory Relief he is seeking in both the Complaint and in his Motion for Judgment on
2 the Pleadings.” (Doc. 35 at 2.)

3 Although certain portions of the complaint can be read, in isolation, as suggesting
4 that Plaintiff’s theory is that the Incentive Plan itself is invalid and unenforceable—“The
5 provisions of the Incentive Sales Plan relied on by Clarivate, including those set forth
6 expressly in Paragraph 28 of this Complaint [*i.e.*, the ‘Achievement Above Target’ and
7 ‘Exceptional Orders’ sections], which allow Clarivate to unilaterally and in its sole
8 discretion and authority reduce or eliminate commissions that are otherwise owed *renders*
9 *the commission payment agreement* with Mr. Staren as illusory” (Doc. 14 ¶ 52, emphasis
10 added)—other portions of the complaint are consistent with the position Plaintiff takes in
11 his motion papers, which is that he simply seeks to sever the challenged provisions of the
12 Incentive Plan. (*See, e.g., id.* ¶ 53, emphasis added [“Mr. Staren is entitled to a judicial
13 declaration that Clarivate’s *contractual provisions* which authorize it to unilaterally reduce
14 and/or revoke Mr. Staren’s commissions are illusory and void.”].) Plaintiff also makes
15 clear in the complaint that he seeks to rely on the Incentive Plan as the contract giving rise
16 to his AWA and implied-covenant claims. (*Id.* ¶ 36 [AWA claim: “Under the terms of Mr.
17 Staren’s commission schedule, Mr. Staren is owed the following commission for the
18 Diaceutics sale: . . . \$528,944.95.”]; *id.* ¶ 41 [implied-covenant claim, alleging that “[e]very
19 contract, including employment contracts, contains the implied covenant of good faith and
20 fair dealing”].) Under these circumstances, the Court cannot conclude that Plaintiff has
21 pleaded himself out of asserting any contract-based claim.

22 Defendant’s remaining argument in relation to Counts One and Two is that because
23 Plaintiff has taken the position that the challenged provisions of the Incentive Plan vest
24 Defendant with unfettered discretion in deciding whether to pay commissions, it follows
25 that Plaintiff could not have harbored a “reasonable expectation” of payment, as required
26 under the AWA (Doc. 31 at 10-11) and to support an implied-covenant claim (*id.* at 12-
27 13). This “gotcha” argument fails because, as discussed in Part II.A above, Defendant has
28 now prevailed on its argument that the challenged provisions of the Incentive Plan do not

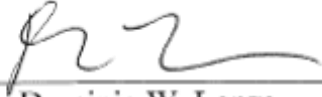
1 vest Defendant with unfettered discretion. Indeed, in making that argument, Defendant
2 conceded that “if Plaintiff’s claims are allowed to proceed at all, this Court must not strike
3 individual provisions but should hold Clarivate to the standard that it must act with sound
4 judgment in applying its discretion under the Incentive Plan.” (Doc. 31 at 14.) Plaintiff
5 has plausibly alleged why he had a reasonable expectation of payment under the provisions
6 at issue, such that dismissal at the pleading stage is not warranted.

7 Accordingly,

8 **IT IS ORDERED** that:

- 9 1. Plaintiff’s motion for partial judgment on the pleadings (Doc. 26) is **denied**.
- 10 2. Defendant’s cross-motion for judgment on the pleadings (Doc. 31) is
11 **granted in part and denied in part**.

12 Dated this 6th day of January, 2025.

13
14
15 
16 _____
17 Dominic W. Lanza
18 United States District Judge
19
20
21
22
23
24
25
26
27
28