

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA**  
*Alexandria Division*

**Michelle Jabeur,**

*Plaintiff,*

v.

**Diamond Resorts International Marketing,  
Inc.,**

*Defendant.*

Case No:1:22-cv-340

**FIRST AMENDED COMPLAINT**

1. Plaintiff Michelle Jabeur, represented by counsel, brings this First Amended Complaint for money damages against her former employer, Defendant Diamond Resorts International Marketing, Inc. (“Diamond”) seeking:

- a. A judgment in her favor, together with an award of money damages, because Diamond unlawfully constructively dismissed her from employment in violation of the public policy of the Commonwealth of Virginia, as set forth herein;
- b. A judgment in her favor, together with an award of money damages, because Diamond unlawfully refused to hire her in violation of the public policy of the Commonwealth of Virginia, as set forth herein;
- c. A Judicial determination pursuant to the Federal Arbitration Act, 9 U.S.C. § 4, as well as 28 U.S. Code § 2201, and Va. Code. § 8.01-184 that the Mutual Binding Arbitration Agreements (the “Arbitration Agreement”, attached hereto ) asserted by Diamond as relating to and controlling these matters is voidable at Ms.

Jabeur's option because of duress, undue influence, and unconscionability, as set forth herein; and

- d. Judicial determination that Diamond be estopped from enforcing that arbitration agreement because it prevented its employees from exercising the opt-out provision included therein.

2. Ms. Jabeur brings these claims because while employed, Diamond's management required her to lie to customers and potential customers about the nature of the products it sold and, after she complained, constructively discharged her from employment. Thereafter, when a Diamond recruiter reached out to her and recruited her for a new position, Diamond ended that recruitment, determining her to be ineligible for rehire based on her complaints.

#### **PARTIES**

3. Ms. Jabeur is a resident of Harrisonburg, Virginia who worked for Defendant from January 2018 until January 20, 2020. Ms. Jabeur also interacted with Defendant in Spring 2021 when its agent began recruiting her for a sales position. Diamond ended that recruitment because it had placed Ms. Jabeur on a no-rehire list following her employment.

4. Diamond is a stock corporation and timeshare company incorporated in California with a principal office address of 10600 W Charleston Boulevard, Las Vegas, Nevada, 89135.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over Plaintiff's Virginia state law claims pursuant to 28 U.S.C. § 1332(a)(1) because

- a. the Plaintiff is a citizen of the Commonwealth of Virginia,

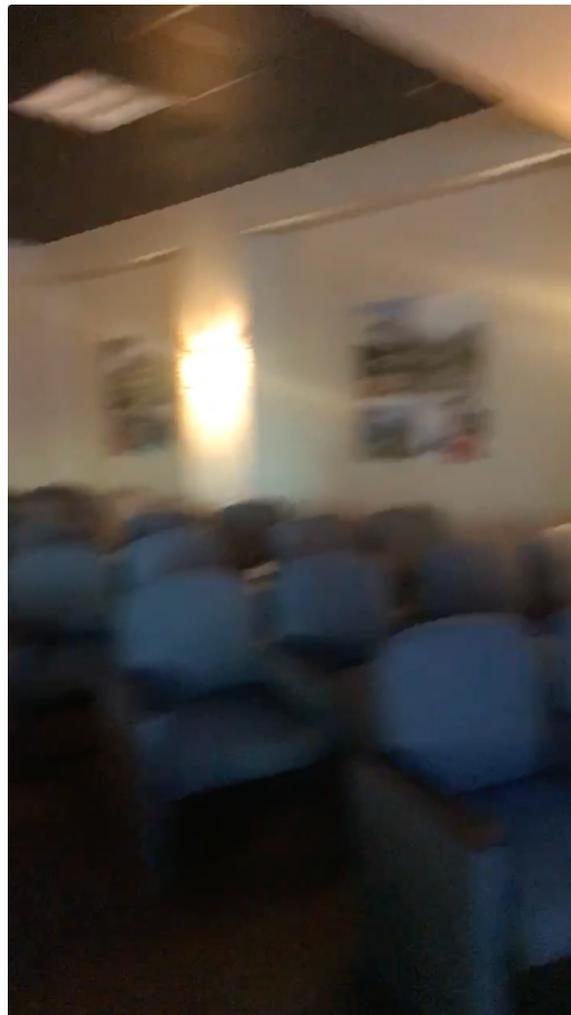
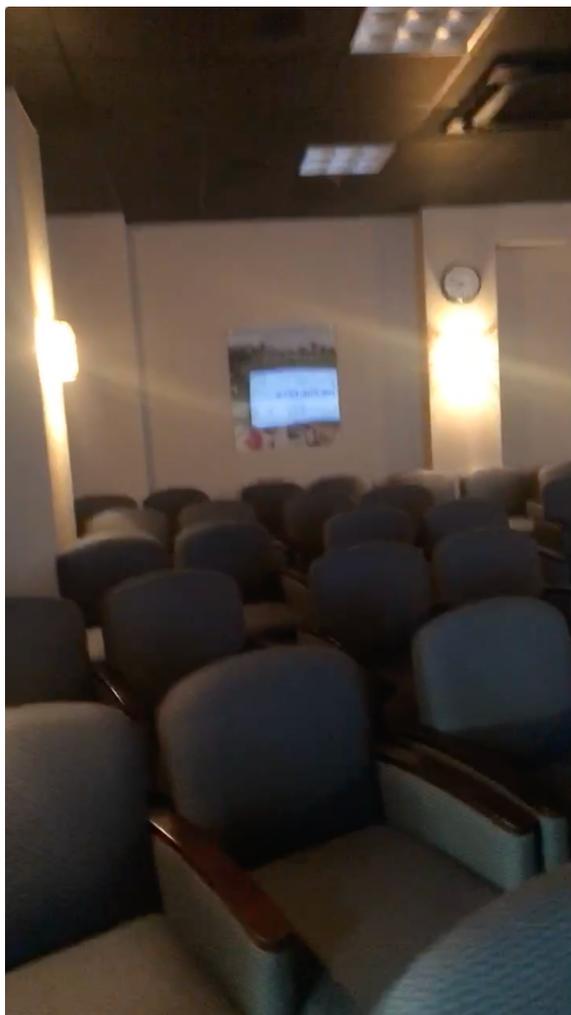
- b. the Defendant is incorporated in California with a principal place of doing business in Nevada, and
- c. Plaintiff's pecuniary damages alone, including lost wages, exceed \$75,000, and Plaintiff is also pursuing non-economic compensatory and punitive damages.

6. Venue is appropriate within the Alexandria Division of this Court pursuant to 28 U.S.C. § 1391(b)(2) and Local Civil Rule 3(C) because the events giving rise to Plaintiff's claims occurred primarily within this district, and a substantial part of those events occurred within Alexandria, Virginia.

#### **FACTUAL ALLEGATIONS**

- 7. Diamond hired Ms. Jabeur as a sales representative on January 18, 2018.
- 8. In April 2018, Diamond promoted Ms. Jabeur to be a "Gold Line" sales manager.
- 9. On August 13, 2018, during a managers meeting meeting, Ms. Jabeur and other managers were instructed to disperse unsigned Arbitration Agreements to the approximately 25 sales representatives who would be attending the then-imminent morning meeting and to collect the signed agreements.
- 10. Then-Director of "Front Line" sales Dustin Armstrong informed Ms. Jabeur and other managers that they only had a short time to get the agreements signed, and that managers (like Jabeur) should themselves sign quickly to make their subordinate team members more comfortable signing and to avoid questions.
- 11. Diamond had not informed Ms. Jabeur or, on information and belief, any of her other colleagues about the arbitration agreements beforehand.

12. The morning meeting, like many similar morning meetings, occurred in a “podium room” at Diamond’s “Discovery Center” in Virginia Beach, as shown in the following images:



*The Left and Right Sides of the Podium Room*

13. During the morning meeting, which was attended by as many as thirty individuals in the above cramped space, Vice President of Sales and Marketing Ryan Mottl informed everyone present that they were required to sign the Arbitration Agreement.

14. According to Mr. Mottl, sales representatives could not “haul a tour,” (meaning they could not sell) and managers could not close sales for their team members, until they had each signed the Arbitration Agreement.

15. The contents of the Arbitration Agreement Diamond presented that day, however, did not match Mr. Mottl’s representations in important ways.

16. First, the Arbitration Agreement states that “This Agreement is not a mandatory condition of employment.”

17. But Ms. Jabeur and Front Line Sales Representatives Tiquerra Roberts and Amber Henyecz all recall that they had no choice in whether to sign it. *See* Ex. B, Decl. of Michelle Jabeur, ¶ 6; Ex. C, Decl. of Amber Henyecz, ¶¶ 2-4; Ex. D, Decl. of Tiquerra Roberts, ¶ 5. Their signatures were required before they left the room to begin selling for the day.

18. Second, the Arbitration Agreement provided a 30-day opt-out window, as follows: “If I do not wish to be bound by this Agreement after signing it, I must send an email to the following email address: ArbitrationOptOut@DiamondResorts.com, within thirty (30) days of receiving the terms of this Agreement.” Ex. A p. 3.

19. But there was no mention of an opt-out provision that day. Ex. B ¶ 14; Ex. C ¶ 5.

20. Instead, Diamond’s employees were orally presented with an ultimatum: sign the Arbitration Agreements or they could no longer work for Diamond. Ex. B ¶ 6; Ex. C ¶¶ 2-4; Ex. D ¶ 5.

21. The Arbitration Agreement was offered in a take-it-or-leave-it fashion; employees had no opportunity to propose or consider amendments or revisions.

22. Ms. Jabeur recalls that all but one of the several Diamond employees in that cramped room signed the Arbitration Agreements without reading them first, Ms. Jabeur included. Ex. B ¶ 10.

23. That one employee declined to turn it in until after he had read it and Mr. Armstrong asked him words to the effect, “why do you need to read it?” Mr. Armstrong pressured him to sign it. Ex. B ¶ 10.

24. Ms. Jabeur signed it because she had no choice and needed her job and it was presented as a condition of her continued employment. Ex. B ¶¶ 16-17.

25. Ms. Henyecz signed it because she had a child, her husband is in the military, and money is tight. She could not afford to be jobless. Ex. C ¶ 3.

26. The entire episode, through disbursement of the documents, Mr. Mottl’s ultimatum, signing, and collection, took up no more than twenty minutes.

27. And the Arbitration Agreements were presented by Diamond to its staff right before their sales day was to begin, further working to decrease employees’ willingness to examine the Arbitration Agreements more quickly.

28. And after Diamond collected the signed Arbitration Agreements, it retained the only copy.

29. Neither Ms. Jabeur, Ms. Roberts, nor Ms. Henyecz recall Diamond ever returning to them a copy of the Arbitration Agreement. Ex. B ¶ 18; Ex. C ¶ 6; Ex. D ¶¶ 8-9.

30. Ms. Roberts, particularly notes that she believes she would have saved a copy of the Arbitration Agreement if it had been provided to her. Ex. D ¶ 8.

31. Until Diamond raised the existence of the Arbitration Agreement in this suite, its existence had slipped Ms. Jabeur's mind.

32. After August 13, 2018, she never saw it again, and Diamond did not provide her with any further communications regarding the availability of an opt-out procedure or disclosing the opt-out email address.

33. Because Diamond did not provide her or its other staff with a copy of the Arbitration Agreement, Ms. Jabeur did not have access to the opt-out procedure.

34. On January 1, 2019, Diamond promoted Ms. Jabeur to be a "Front Line" Sales Manager.

35. On August 15, 2019, Diamond transferred Ms. Jabeur to its in-house member sales line.

36. In that role, Ms. Jabeur would travel from Diamond's Virginia Beach, Virginia location on what Diamond called a "roadshow" and meet *current* clients at events designed to sell them upgrades to their membership packages.

37. Diamond first instructed Ms. Jabeur to make misrepresentations to a client in order to accomplish a sale on September 10, 2019.

38. On that day, Sales Manager Anne Fuller, one of Ms. Jabeur's superiors, directed Ms. Jabeur to provide a worksheet to a client that represented the client would receive "CCOM points" if they completed the sale that Ms. Jabeur was negotiating with them.

39. Ms. Jabeur knew that worksheet was false because CCOM points were only available for clients that owned a timeshare that they could deposit with Diamond in exchange for CCOM points, and this client had no such timeshare.

40. Ms. Jabeur complained to Ms. Fuller that the worksheet was false, but Ms. Fuller told Ms. Jabeur that it was common practice to misrepresent CCOM points in order to secure a sale, and that Ms. Jabeur should do as she was told.

41. Ms. Jabeur complained to Diamond's director of in-house sales, Norbert Landin, about Ms. Fuller's instruction.

42. Then, on September 26, 2019, while in Marietta, Georgia, Mr. Landin expressed to Ms. Jabeur his frustration with her unwillingness to use deception to close deals, saying it was her responsibility to figure out what the client did not know in order to use their ignorance against them and close deals.

43. On October 7, 2019 in Alexandria, Virginia, Ms. Jabeur met with a current client ("FB") to sell him an upgrade to his current Diamond membership, which was a "silver membership" to a "gold" or "platinum" membership.

44. Ms. Jabeur was joined by Senior Sales Representative Steven Chandler.

45. Mr. Chandler made multiple false statements to FB in order to secure the sale, including

- a. lying to FB about the current interest rate that FB was paying on the loan he took out to purchase a Diamond timeshare;
- b. lying to FB about the new interest rate FB would pay if he upgraded;
- c. lying to FB about the current benefits he enjoyed under his silver membership; and

- d. lying to FB about the consequences of an anticipated (and now, on information and belief, completed) merger between Diamond and Hilton Grand Vacations.

46. During the sales pitch to FB, Ms. Jabeur resisted Mr. Chandler's efforts to lie to FB, and Mr. Chandler responded by snatching the paperwork from Ms. Jabeur's hands and telling her to just nod her head in agreement.

47. When she returned to Diamond's Virginia Beach office, Ms. Jabeur complained to Mr. Landin, and asked not to be involved with the contract further because of the dishonesty.

48. Mr. Landin responded that he would "handle" it.

49. On November 2, 2019 in Portsmouth, Virginia, Ms. Jabeur was assigned to attempt to "upgrade" another client "AB" who had already purchased Diamond's "Platinum" membership.

50. AB had already made 9 purchases with Diamond totaling over \$200,000 and was paying over \$12,000 per year in maintenance fees.

51. AB already had *every* benefit Diamond offered, and the only potential sales approach Ms. Jabeur identified as being viable was proposing to AB that they purchase additional "points" that they could use to support more travel during the year, which would have been a relatively small sale.

52. When she proposed this to Mr. Landin, he was unhappy.

53. He instead wanted her to lie to AB and try to sell them a "club" membership based on the untrue claim that they had no "points" when in fact they had points left remaining in their account.

54. Ms. Jabeur would not lie to AB.

55. In front of Ms. Jabeur's colleagues, he snatched the paperwork from her hand, told her she was incompetent, said he would have to do her job for her, and stormed away to (presumably) sell the fraudulent package to AB.

56. The next day, also in Portsmouth, Virginia, Ms. Jabeur was assigned another client, "LM."

57. When speaking with LM, LM told Ms. Jabeur that her original purchase of 2,500 "points" had been sold to her by a Diamond representative as 7,500 "points."

58. While there with Ms. Jabeur, LM wrote a letter to Diamond corporate, complaining of the false sale and asking that Diamond's original promises be honored.

59. Mr. Landin would later tell Ms. Jabeur to throw it out instead of forwarding it to someone within Diamond management who could do something about it.

60. Mr. Landin then told Ms. Jabeur that, by now, she should know how to use Diamond's database printouts (which Diamond called "lookups") to look past clients' concerns and just get the sale.

61. Mr. Landin told Ms. Jabeur to look in the lookup and tell him "where the sale is."

62. Ms. Jabeur replied that there was no sale for this client until her concerns related to false promises were resolved.

63. Mr. Landin took the lookup from Ms. Jabeur, told her this would be the last and final time he showed her how to use the lookup to her benefit, and told Ms. Jabeur to shut up and follow him.

64. Mr. Landin then took Ms. Jabeur over to LM, where he told LM that she was in a club that he called the “value” club, which was false and fabricated by him on the spot.

65. Mr. Landin said that Diamond would meet her half way and fix that, but it would require a new contract (and more money).

66. Mr. Landin thereby persuaded LM to sign a new contract.

67. Then, on November 9, 2021, in Alexandria, Virginia, Mr. Landin became hostile with Ms. Jabeur, saying she was incapable of doing her job, throwing his hands in the air, and storming off in front of her colleagues.

68. On November 16, 2019, Ms. Jabeur met with a client in Virginia Beach, Virginia.

69. That client complained that she was suffering from heart failure, awaiting a heart transplant, and that she had been instructed by her physicians not to travel more than four hours from the hospital where she was to receive a transplant in North Carolina.

70. The client told Ms. Jabeur that when Diamond’s marketing representative had called the client on the phone and told her about the roadshow event, the client had told the representative that she could not travel that far because of her physician’s orders.

71. According to the client, the marketing representative falsely told the client that it would be “detrimental” to the client’s membership if the client did not attend the roadshow event in Virginia Beach.

72. Ms. Jabeur complained about this dangerous disregard for a client’s health and life to Mr. Landin, but he told her that the information was not relevant to closing a sale.

73. Mr. Landin then told Ms. Jabeur to do her job.

74. Ms. Jabeur spoke with the client again, who did not want to make a decision without her son present, who was to be the beneficiary of the client's account upon the client's passing.

75. Ms. Jabeur attempted to release the client, sending her home to discuss her account with her son, as the client wished.

76. Mr. Landin then assigned two additional Diamond staff to try to sell the client additional services, and the client stayed at the roadshow event an additional five hours, all of which was under pressure from two aggressive salespersons.

77. Also on November 16, 2019 in Virginia Beach, Virginia, Ms. Jabeur was assigned to sell an upgrade to a military family.

78. They told Ms. Jabeur about their financial difficulties, explaining that the husband was in the military and the wife was a homemaker.

79. They explained that they were saving money for needed home repairs.

80. Mr. Landin directed Ms. Jabeur to tell the family that they could use their points to pay for the home repairs.

81. Ms. Jabeur knew that Diamond clients could use portions of their points to help pay for appliances and other expenses perhaps associated with a home repair.

82. But Mr. Landin wanted Ms. Jabeur to tell the family a lie, that they could fully redeem their points for any home repair expenses.

83. Mr. Landin also wanted Ms. Jabeur to sell them a package that would increase the size of their monthly payment.

84. Ms. Jabeur refused to lie, and once more Mr. Landin stepped in to complete the sale.

85. During his pitch, Mr. Landin shamed the family for not buying what he called the complete package, and the wife went to the restroom in tears.

86. Afterward, Mr. Landin was furious with Ms. Jabeur, refusing to speak with her.

87. So the next day, still at the Virginia Beach roadshow, Ms. Jabeur told Mr. Landin that he was embarrassing her in front of her peers and asked him to stop treating her unprofessionally.

88. Mr. Landin replied with a single word: “interesting.” Then he walked away.

89. Later that same day, Mr. Landin told Ms. Jabeur to pitch to a client that they would be able to fully redeem their points toward their annual maintenance fees, which Ms. Jabeur knew was false.

90. Ms. Jabeur told Mr. Landin that he was incorrect.

91. Mr. Landin crumpled up some of Ms. Jabeur’s paperwork, threw it in her face, and told her that “50,000 points does what we say it does.”

92. He further told Ms. Jabeur that she was the only thing standing in the way of making a lot of money.

93. Then, Mr. Landin went to sell more lies to Diamond’s clients because Ms. Jabeur would not.

94. Ms. Jabeur went to the bathroom and cried.

95. Later that same day, Ms. Jabeur met with another military family, “DB” and “TB”.

96. They complained that Diamond representatives had been dishonest with them in the past.

97. Mr. Landin told Ms. Jabeur to tell them that their maintenance fee would be lower if they added points, which was false because the more points they purchased the higher their maintenance fees would be.

98. Ms. Jabeur had a practice of writing out, for clients considering an upgrade, both their current maintenance fee as well as the additional maintenance fee if they upgraded.

99. Mr. Landin told her to, instead, be “vague.”

100. Ms. Jabeur again refused.

101. Mr. Landin then grabbed the lookup from her hand, told her again that she was the only thing standing in her way, that she was incompetent, and that he would have to do her job for her.

102. Ms. Jabeur heard him tell DB and TB that their new maintenance fee would *only* be the additional portion attributable to the sale he was pitching, which was false.

103. Mr. Landin initially convinced the family to move forward with a new deal, then told Ms. Jabeur to go “handle” the paperwork for the deal.

104. When Ms. Jabeur collected the paperwork, Mr. Landin, out of earshot of the clients, told Ms. Jabeur: It’s a good thing, right? If you get a sale it’s a good thing, right?

105. Ms. Jabeur collected the paperwork, and as she always did, wrote out both the current maintenance fee as well as the additional.

106. When the clients saw this, TB dropped the pen from her hand and said the deal was “over.”

107. TB told Ms. Jabeur that Mr. Landin had told TB and DB that the maintenance fee would *only* be the additional portion.

108. Ms. Jabeur then told the clients the truth: If you add points obviously the maintenance fees will go up, not down.

109. TB became upset and began to cry.

110. TB explained that the family's current payments for their timeshare were all they could afford.

111. On November 20, 2019 in Virginia Beach, Virginia, Ms. Jabeur was working with a client alongside Mr. Chandler.

112. Mr. Chandler misrepresented that client's current maintenance fees to them in an attempt to close a sale.

113. Ms. Jabeur again refused to engage in fraudulent sales tactics.

114. Mr. Chandler then violently yelled at her to "Get the fuck out of the office."

115. On November 20, 2019, Ms. Jabeur wrote a letter to Diamond's human resources.

116. In that letter she complained about being required to misrepresent facts and to provide clients with false information in order to close deals.

117. In that letter, she complained about being heckled and yelled at by her superiors for struggling to follow Mr. Landin and Mr. Chandler's false tactics.

118. On November 24, 2019, Ms. Jabeur met with Diamond's Director of Human Resources for Sales and Marketing, Katherine Benzen as well as VP Mottl.

119. Ms. Jabeur told them that she could not continue to work for Mr. Landin and Mr. Chandler, who were requiring her to tell clients lies in order to pitch sales.

120. She also told them that being unable to work was costing her pay.

121. Ms. Jabeur told them that “Customers of Diamond are being ripped off.”

122. In that meeting, Mr. Mottl admitted to some knowledge of fraudulent tactics, saying: Fake ccom weeks are a challenge all across the company.

123. Ms. Benzen then told Ms. Jabeur that it was time for her to make “personal decisions” regarding her future with the company.

124. Ms. Jabeur explained that any transfer she might make within the company would result in a pay cut.

125. Ms. Benzen then put Ms. Jabeur on leave pending the completion of an investigation.

126. On November 26, 2019, Ms. Benzen called Ms. Jabeur and told her that the investigation into Ms. Jabeur’s complaint was completed and she had found that Ms. Jabeur’s complaint was uncorroborated and unsubstantiated.

127. Ms. Benzen then told Ms. Jabeur to return to work.

128. Ms. Jabeur said she could not continue at Virginia Beach without changes.

129. Ms. Benzen then told Ms. Jabeur that she could either continue there or work in a Williamsburg, Virginia Diamond location.

130. Ms. Jabeur explained that because her only other choice was unemployment, she would move to Williamsburg.

131. The transfer was effective November 29, 2019.

132. On Ms. Jabeur’s first day in Williamsburg, Diamond’s Director of Sales—whose first name is Andy but whose last name Ms. Jabeur does not recall—sat down with Ms. Jabeur.

133. He told her that he was familiar with the circumstances surrounding her transfer, but that he wanted to hear why from her directly.

134. Ms. Jabeur told him that she refused to lie to clients at the Virginia Beach location, and that she would not do it in Williamsburg, either.

135. Andy then talked to Ms. Jabeur about minding her own business, and that she should keep her mouth shut if she heard another team member “pitching heat.”

136. Andy asked if Ms. Jabeur to overlook what was happening around her.

137. Ms. Jabeur worked for Diamond in Williamsburg until January 17, 2020.

138. She submitted her resignation to Diamond on January 20, 2020.

139. Before then, she continued to observe her colleagues around her at the Williamsburg office make misrepresentations to clients in order to close sales.

140. Ms. Jabeur made multiple complaints to Diamond’s Human Resources about these misrepresentations, but Diamond took no action.

141. Ms. Jabeur resigned because she could no longer participate in fraudulent sales tactics.

142. On or about May 23, 2021, Ms. Jabeur was contacted by a friend of hers and former coworker (at a company other than Diamond), Jorge Muñoz.

143. Mr. Muñoz was now working for Diamond and was recruiting sales professionals to work at Williamsburg.

144. In a 25-minute call, he explained to Ms. Jabeur that he wanted to hire her to come sell for Diamond again.

145. Mr. Muñoz explained that he had big plans with Diamond and that bringing Ms. Jabeur onboard was a big part of those plans.

146. As an incentive to bring her back to Diamond, Mr. Muñoz offered Ms. Jabeur a \$5,000 sign-on bonus and housing assistance to help her move back to Williamsburg.

147. Ms. Jabeur explained to Mr. Muñoz how she had departed Diamond in 2020, specifically raising her concern about having been required to lie to customers.

148. Mr. Muñoz dismissed Ms. Jabeur's concerns, saying Diamond had recently "cleaned out the trash." He promised that nobody would need to lie to sell the products she would be selling for Diamond.

149. Ms. Jabeur trusted Mr. Muñoz, so she agreed.

150. Mr. Muñoz then put Ms. Jabeur in touch with a recruiter who scheduled an interview between Ms. Jabeur and a Diamond Vice President who managed the Williamsburg site (whose first name was Jason) for noon on May 25, 2021.

151. But on May 25, 2021, before the interview, Diamond canceled the interview.

152. Then, on May 30, 2022, Mr. Muñoz called Ms. Jabeur and told her that he'd spoken with Jason, the Vice President, and learned that, before he had reached out to Ms. Jabeur, Diamond had placed Ms. Jabeur on a "do not hire" list and she was thus ineligible for rehire.

## COUNT I

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### **Unlawful Constructive Discharge in Violation of the Public Policy of Virginia**

153. Ms. Jabeur incorporates every preceding allegation within this Count I.

154. As described above, Diamond required Ms. Jabeur to violate Va. Code § 18.2-498.3, which makes any person within the Commonwealth's jurisdiction "who knowingly

falsifies, conceals, misleads, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations,” guilty of a felony.

155. As described above, Ms. Jabeur refused to commit that crime and complained to Diamond about the requirement that she lie to clients in order to close sales.

156. After she complained, Diamond required her to continue working in an environment where her work colleagues routinely violated Va. Code. § 18.2-498.3 and made her continued employment subject to her willingness to do so and to accept that her colleagues routinely did so.

157. Virginia also makes it unlawful to conspire with others to commit a felony. Va. Code § 18.2-22.

158. Virginia also provides for the prosecution of accessories after the fact. Va. Code § 18.2-19.

159. By refusing to end the misrepresentations routinely employed in both offices in which Ms. Jabeur worked, Diamond required Ms. Jabeur to incur the risk of prosecution under some or all of those three statutes.

160. Diamond’s work environment created intolerable working conditions and required Ms. Jabeur to continually violate the clear and unequivocal public policy of this Commonwealth, in a manner that no person should be obliged by their employer to endure.

161. In that way, Ms. Jabeur’s resignation was a constructive discharge, thrust upon her by Diamond in violation of the public policy of the Commonwealth of Virginia.

162. As a result of her constructive discharge, Ms. Jabeur has suffered lost wages that exceed \$75,000, as well as emotional distress.

**COUNT II**

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**Retaliatory Failure to Hire in Violation of the Public Policy of Virginia and Va. Code. § 40.1-27.3**

163. Ms. Jabeur incorporates all prior allegations within this Count II.

164. As described above, Ms. Jabeur engaged in conduct protected by the public policy of the Commonwealth of Virginia, as articulated by Va. Code. § 18.2-498.3, when:

- a. She refused to tell lies to induce customers to complete sales,
- b. complained to human resources by letter on November 20, 2019,
- c. complained to Ms. Benzen and Mr. Mottl on November 24, 2019,
- d. refused to lie to prospective clients upon her move to Williamsburg, and
- e. resigned in order not to participate in fraudulent sales tactics.

165. As a result, Diamond placed Ms. Jabeur on a “do not hire list,” which was an adverse employment action.

166. Thereafter, its agent Mr. Muñoz offered employment to Ms. Jabeur, contingent upon successfully interviewing with a Vice President of the company.

167. Diamond thereafter learned that Mr. Muñoz was recruiting Ms. Jabeur and terminated further discussions with her related to employment, another adverse employment action.

168. Because Diamond’s refusal to hire Ms. Jabeur was caused by her prior complaints about violations of law, and her refusal to commit crimes as part of her job duties, Diamond violated both Va. Code. § 40.1-27.3 and Virginia’s public policy.

169. As a result, Ms. Jabeur has suffered lost wages that exceed \$75,000, as well as emotional distress.

**COUNT III**

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**Seeking Declaratory Judgment that the Arbitration Agreement is Void Pursuant to Va. Code. § 8.01-184, 28 U.S.C. § 2201, and 9 U.S.C. § 4**

170. Ms. Jabeur incorporates all prior allegations within this Count III.

171. The Arbitration Agreement is void, or if not void it is voidable at Ms. Jabeur's option and thus unenforceable by Diamond, for multiple reasons.

172. First, because Diamond threatened Ms. Jabeur's continued employment if she did not sign the Arbitration Agreement, and because the agreement specifies that it is not a mandatory condition of employment but it was signed by Ms. Jabeur based upon Diamond's agent's oral claim that she could not work that day if she did not sign it, the Arbitration Agreement was procured by dishonesty and threats and the formation is thus tainted by *duress*. For this reason the Arbitration Agreement is void or voidable at Ms. Jabeur's option.

173. Second, Diamond engaged in a wrongful act when it claimed to Ms. Jabeur and her colleagues that they were obligated to sign the Arbitration Agreement, though the Arbitration Agreement itself hid that threat. Because Ms. Jabeur's acceptance of the agreement was based upon that threat, the formation of the Arbitration Agreement is infected by *undue influence*. For this reason the Arbitration Agreement is void or voidable at Ms. Jabeur's option.

174. Third, Diamond exploited substantially unequal bargaining power when it required Ms. Jabeur and other employees to sign the Arbitration Agreement. Ms. Jabeur was less sophisticated, unable to consult with a lawyer, unaware that Diamond would retain the only copy with its opt-out language, and unable to bargain with Diamond to modify the adhesive Arbitration Agreement. Because those circumstances shock the conscience, the formation of the

Arbitration Agreement is infected by *unconscionability*. For this reason the Arbitration Agreement is void or voidable at Ms. Jabeur's option.

175. Thus, an actual and present controversy has arisen between the parties regarding the existence of an enforceable and valid Arbitration Agreement. By this action, Ms. Jabeur contends that no meeting of the minds occurred with respect to the Arbitration Agreement and it is thus void, voidable at her option, or unenforceable. Diamond has now asserted the Arbitration Agreement as a defense to this suit, thereby contending it is a valid and enforceable agreement.

176. Diamond's dishonest scheme to quickly drop an Arbitration Agreement on employees without warning, require their signature in order to retain their employment while the Arbitration Agreement specifies otherwise, prevent them from even doing that day's work until they had signed the Arbitration Agreement, and thereafter retain the only copy, preventing them from availing themselves of the opt-out provisions, together, render the Arbitration Agreement unenforceable.

177. Because Diamond has brought a motion to compel arbitration pursuant to 9 U.S.C. § 4 (Dkt. No. 7), and because the facts establish that no valid Arbitration Agreement was voluntarily entered into, the "making of the arbitration agreement ... be in issue," then "the court shall proceed summarily to the trial thereof." *Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd.*, 944 F.3d 225, 234 (4th Cir. 2019).

#### **COUNT IV**

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#### **Equitable Estoppel**

178. Ms. Jabeur incorporates all prior allegations within this Count IV.

179. In the Arbitration Agreement, Diamond provided that Ms. Jabeur and her colleagues could opt-out of the Arbitration Agreement by sending an email to an email address contained within the Arbitration Agreement.

180. But Diamond thereafter kept all copies of the Arbitration Agreement, depriving Ms. Jabeur of a copy of the opt-out provision and, importantly, the email address where opt-out communications were to be sent.

181. Further, Diamond required Ms. Jabeur to sign the Arbitration Agreement as a condition of employment, though it claimed in the Arbitration Agreement that it was imposing no such requirement.

182. Diamond's conduct of the meeting wherein it required Ms. Jabeur and others to sign the Arbitration Agreement, especially its scheme to present the Arbitration Agreements by surprise, to require them to be signed quickly before the start of the sales day, and to implore managers to set a good example and avoid questions by signing their Arbitration Agreement quickly, demonstrates that Diamond agents acted with the intention of exercising dishonesty and an unequal bargaining position to secure signed Arbitration Agreements from Ms. Jabeur. Ms. Jabeur, affected by Diamond's tactics, did not realize that the agreement contained an opt-out provision and language contradicting Diamond's claims that she was required to sign the Arbitration Agreement to maintain employment. She was, in this way, misled.

183. Diamond must thus be estopped from enforcing the Arbitration Agreement.

**RELIEF DEMANDED**

184. Ms. Jabeur requests from the Court judgment in her favor on all counts.

185. Ms. Jabeur requests money damages, including compensation for her lost wages, the value of her lost benefits, compensatory damages for non-economic harms, and punitive damages, all in an amount to be determined by a jury at trial.

186. Ms. Jabeur requests her reasonable attorneys' fees pursuant to Va. Code. § 40.1-27.3.

187. Ms. Jabeur requests from the Court any other relief that the Court finds just and proper.

188. Ms. Jabeur requests pre- and post-judgment interest, to the fullest extent permitted by law.

**MS. JABEUR DEMANDS TRIAL BY JURY ON ALL OF HER CLAIMS**

Dated: June 14, 2022

Respectfully Submitted,

/s/

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