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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

Assigned for All Purposes
Judge Derek W. Hunt

ROBERT KASPRZYK,

Plaintiff,

vs.

DIAMOND RESORTS INTERNATIONAL
MARKETING, INC.,

Defendant.

Case Number: 30-2021-01232498-CU-WT-CJC

COMPLAINT FOR

- (1) RETALIATION**
- (2) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
- (3) PRIVATE ATTORNEY GENERAL ACT [Labor Code §2698 *et.seq.*]**
- (4) HARASSMENT IN VIOLATION OF FEHA**
- (5) FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION**

Plaintiff ROBERT KASPRZYK (“PLAINTIFF”), as an individual, alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the County of Orange, State of California.

2. Defendant DIAMOND RESORTS INTERNATIONAL MARKETING, INC, (“DIAMOND”) is and all times mentioned, was a corporation organized and existing under the laws of the State of California and registered to do business in the state of California with its principal place of business at Costa Mesa, California.

3. The acts alleged herein arose in the county of ORANGE, within the State of California.

1 already have; namely, the script required the sales team to advise the customer they needed to
2 purchase more points to convert their ownership into a brand-new ownership in the new program.
3 In addition, the script forced the sales associates to pitch customers to purchase more points as
4 rental income to offset their maintenance fee bill at an extremely inflated price.

5 10. Plaintiff immediately informed DIAMOND he was uncomfortable with the blatant
6 unethical, illegal, and misleading script. In fact, Plaintiff advised DIAMOND he was
7 uncomfortable selling the product based upon the script as it was essentially lying to the customer,
8 an act which would put his California real estate license in jeopardy.

9 11. DIAMOND informed Plaintiff “this is the way we do it” and “there needs to be a
10 hook to be able to sell them.” DIAMOND instructed Plaintiff DIAMOND was not going to change
11 the script, but that Plaintiff would be required to sell the points as specified within the script.

12 12. On November 19, 2021, DIAMOND retaliated against Plaintiff for expressing his
13 concern(s) over the script and terminated his employment.

14 **FIRST CAUSE OF ACTION**

15 **(Retaliation)**

16 13. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
17 forth above as paragraphs 1 through 12 as though set forth fully word for word herein.

18 14. DIAMOND, by and through their managing agents and supervisors, retaliated against
19 Plaintiff for engaging in protected activity under California Labor Code section 2698, *et seq.*, the
20 Private Attorney General Act of 2004 and complaining to DIAMOND pointing out the illegal and
21 improper sales techniques being engaged in by DIAMOND.

22 15. Such conduct violates California Labor Code section 98.6(a) which provides that
23 “[n]o person shall discharge an employee or in any manner discriminate against any employee or
24 applicant for employment because the employee or applicant engaged in any conduct delineated in
25 this chapter.”

26 16. Such conduct also violates Labor Code section 1102.5, subd. (b) which provides that
27 “[a]n employer . . . shall not retaliate against an employee for disclosing information . . . to a
28 person with authority over the employee or another employee who has the authority to investigate,

1 discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to
2 believe that the information discloses a violation of state or federal statute, or a violation of or
3 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the
4 information is part of the employee’s job duties.”

5 17. Pursuant to California Labor Code section 1105, Plaintiff is entitled to recover
6 damages from DIAMOND for injuries suffered as a result of the foregoing retaliation.

7 18. In violation of his statutory rights, and, in part, on the basis of Plaintiff’s
8 aforementioned legally protected opposition and complaints, DIAMOND retaliated against
9 Plaintiff by wrongly terminating Plaintiff’s employment.

10 19. Plaintiff alleges that DIAMOND was motivated to retaliate against Plaintiff, in part,
11 for his protected actions in bringing the improper, immoral and illegal actions being undertaken by
12 employees of DIAMOND at and under DIAMOND’S direct order to DIAMON’S attention.

13 20. By the aforesaid acts and omissions of DIAMOND, Plaintiff has been directly and
14 legally caused to suffer actual damages including, but not limited to, substantial losses in earnings,
15 other employment benefits, and future earning capacity, and other pecuniary loss not presently
16 ascertained, in an amount according to proof at the time of trial.

17 21. As a further direct and legal result of the acts and conducts of DIAMOND Plaintiff
18 has been caused to and did suffer severe emotional and mental distress, anguish, humiliation,
19 embarrassment, fright, mental and physical pain, discomfort and anxiety, all to his damage in an
20 amount according to proof at the time of trial. Plaintiff does not know at this time the exact
21 duration or permanence of said injuries.

22 22. Plaintiff is informed and believes and thereon alleges that DIAMOND, by engaging
23 in the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in willful,
24 malicious, intentional, oppressive, fraudulent and despicable conduct.

25 23. DIAMOND also acted in willful and conscious disregard of the rights, welfare and
26 safety of Plaintiff thereby justifying the award of punitive and exemplary damages in an amount
27 according to proof at the time of trial.

28 24. Plaintiff is also entitled to recover reasonable attorneys’ fees and costs.

1 **SECOND CAUSE OF ACTION**

2 **(Wrongful Termination In Violation Of Public Policy Against All Defendants)**

3 25. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
4 forth above as though set forth fully word for word herein.

5 26. DIAMOND terminated Plaintiff's employment in retaliation for engaging in
6 protected activity as set forth above in violation of California Labor Code sections 1102.5 and 98.6
7 which is in violation of fundamental, substantial and well-grounded public policies.

8 27. The facts set forth herein above establish that DIAMOND is guilty of malice and
9 oppression, warranting an assessment of exemplary damages in an amount appropriate to punish
10 said Defendants and to deter others from engaging in similar misconduct.

11 28. As a direct and proximate result of DIAMOND'S wrongful conduct, Plaintiff has
12 sustained and continues to sustain severe emotional and mental distress, anguish, humiliation,
13 embarrassment, fright, mental and physical pain, discomfort and anxiety, all to his damage in an
14 amount according to proof at the time of trial.

15 29. As a further direct and proximate result of the unlawful conduct, Plaintiff has
16 suffered and continues to suffer actual damages including, but not limited to, substantial losses in
17 earnings, other employment benefits, and future earning capacity, and other pecuniary loss not
18 presently ascertained, in an amount according to proof at the time of trial.

19 **THIRD CAUSE OF ACTION**

20 **(Private Attorney General Act)**

21 30. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
22 forth above as though set forth fully word for word herein.

23 31. Plaintiff brings this claim as an individual employee and in his capacity as a private
24 attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code
25 section 2698, et seq. ("PAGA").

26 32. Plaintiff has notified DIAMOND and filed an online PAGA claim notice with the
27 California Labor and Workforce Development Agency ("LWDA") identifying DIAMOND'S
28 violations of the California Labor Code identified in this Complaint and Plaintiff's intent to bring a

1 claim for civil penalties under California Labor Code section 2698 et seq. Plaintiff also submitted
2 a filing fee of seventy-five (\$75.00) to the LWDA in accordance with Labor Code section
3 2699.3(a)(1)(B). Sixty-five days have passed from the date of Plaintiff's notice to the LWDA, and
4 thus Plaintiff has exhausted his administrative remedies, thereby allowing Plaintiff to commence a
5 civil action against DIAMOND pursuant to Labor Code section 2699.

6 33. During all relevant times for this action, Plaintiff complained to DIAMOND
7 regarding the script all employees were required to follow when attempting to sell DIAMOND
8 products and services, but Plaintiff was ignored and subsequently terminated for bring this
9 information to the attention of DIAMOND.

10 34. Plaintiff, as an "Aggrieved Employee" within the meaning of Labor Code § 2698 *et*
11 *seq.*, acting on behalf of himself, brings this action against DIAMOND to recover the civil
12 penalties due to Plaintiff and the State of California according to proof pursuant to Labor Code §
13 2699 (a) and (f) including, but not limited to \$10,000.00 for each initial violation for the following
14 Labor Code violations:

- 15 a. DIAMOND'S unlawful retaliation against Plaintiff and termination of employment
16 after Plaintiff complained about violations of California Law as those violations
17 relate to the mandatory script all DIAMOND employees must follow.
- 18 b. DIAMOND'S unlawful retaliation against Plaintiff and termination of employment
19 after Plaintiff brought to DIAMOND'S attention the illegal nature of the
20 requirements of the script in violation of California Labor Code §§ 98.6(a) and
21 98.6(b)(3).

22 35. Plaintiff was compelled to retain the services of counsel to file this court action to
23 protect his interests and to assess and collect the civil penalties owed by DIAMOND. Plaintiff has
24 thereby incurred attorneys' fees and costs, which they are entitled to recover under California
25 Labor Code § 2699.

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1 **FOURTH CAUSE OF ACTION**

2 **(Harassment In Violation of FEHA)**

3 36. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
4 forth above as though set forth fully word for word herein.

5 37. DIAMOND engaged in a pattern, practice, policy and custom of unlawful pregnancy,
6 disability, and gender harassment. Said conduct constituted a policy, practice, tradition, custom
7 and usage which denied Plaintiff the protection of California Government Code section 12940,
8 subsection (j).

9 38. At all times relevant herein, there existed within the organization of DIAMOND a
10 pattern and practice of conduct by their personnel which resulted in pregnancy, disability and
11 gender harassment and conduct directed toward Plaintiff.

12 39. At all times relevant herein, there existed within the organization of DIAMOND a
13 pattern and practice of conduct by personnel which resulted in pregnancy, disability and gender
14 harassment toward Plaintiff.

15 40. At all times relevant herein, DIAMOND failed to make an adequate response and
16 investigation into the conduct against Plaintiff and the aforesaid pattern and practice, and thereby
17 established, a policy, custom, practice, or usage within the organization of DIAMOND which
18 condoned, encouraged, tolerated sanctioned, ratified, approved of, and/or acquiesced in
19 pregnancy, disability and gender discrimination and harassment toward Plaintiff.

20 41. At all times relevant herein, DIAMOND failed to provide or undergo any adequate
21 training, education, and information to their personnel and most particularly to management and
22 supervisory personnel with regard to policies and procedures regarding harassment and
23 discrimination.

24 42. DIAMOND, as complained herein, established a policy, custom, practice, or usage
25 which condoned, encouraged, tolerated, sanctioned, ratified, approved, and/or acquiesced to
26 harassment toward Plaintiff.

1 51. In failing to take reasonable steps to prevent the actions of its management and
2 supervisory employees, as described above, DIAMOND violated California Government Code
3 section 12940(k).

4 52. As a direct, foreseeable, and proximate result of DIAMOND'S failure to take
5 reasonable steps to prevent DIAMOND's unlawful conduct, Plaintiff has suffered and will
6 continue to suffer physical injuries, pain and suffering, and extreme and severe mental anguish and
7 emotional distress. Plaintiff will incur medical expenses for treatment by health professionals, and
8 for other incidental medical expenses; and Plaintiff has suffered and continues to suffer loss of
9 earnings and other employment benefits. Plaintiff is therefore entitled to general and compensatory
10 damages in amounts to be proven at trial.

11 53. Defendant's failure to take reasonable steps to prevent the harassment,
12 discrimination, and retaliation that Plaintiff suffered at the hands of Defendant was engaged in
13 maliciously, willfully and oppressively, and with the intent to harm Plaintiff. Defendant engaged
14 in despicable conduct and acted with a conscious disregard for Plaintiff's rights and with an intent
15 to injure them, such as to constitute oppression and malice under California Code of Civil
16 Procedure section 3294. Plaintiff is therefore entitled to punitive and exemplary damages in an
17 amount sufficient to punish and make an example of Defendant.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

20 1. For general and compensatory damages including but not limited to, lost wages and
21 benefits and damages for emotional distress normally associated with retaliation, wrongful
22 termination, humiliation, loss of reputation;

23 2. For punitive and exemplary damages according to proof;

24 3. For statutory attorneys' fees and costs pursuant to California Labor Code sections
25 98.6, 1105, and 1102.5; Government Code §12965(b), and as allowed by law according to proof;

26 4. For statutory civil penalties pursuant to Labor Code section 2668 et seq., and as
27 allowed by law and according to proof;

28 5. For costs of suit incurred herein;

1 6. For pre- and post-judgment interest at the maximum legal rate on all amounts claimed;
2 and

3 7. For such other and further relief as the Court may deem just and proper.
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5 Dated: November 18, 2021

THE MOLLOY LAW FIRM, PC

7 By:


Caroline Molloy
Attorney for Plaintiff
ROBERT KASPRZYK

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