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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF SAN LUIS OBISPO – UNLIMITED JURISDICTION

13 GINA MORI,

14 Plaintiff,

15 vs.

16 DIAMOND RESORTS
17 INTERNATIONAL MARKETING, INC.,
18 and DOES 1 through 10, inclusive,

19 Defendants.

CASE NO: 21CV-0601

**PLAINTIFF GINA MORI'S COMPLAINT
FOR DAMAGES**

- 20 I. RETALIATION IN VIOLATION
OF LABOR CODE § 1102.5;
- 21 II. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC
POLICY ; AND
- 22 III. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200

DEMAND FOR JURY TRIAL

ELECTRONICALLY
FILED
10/26/2021 4:51 PM

San Luis Obispo Superior Court

By: 

Pamela Stember, Deputy Clerk

1 Plaintiff alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff GINA MORI was wrongfully terminated by her employer of eleven
4 years, DIAMOND RESORTS INTERNATIONAL MARKETING, INC., in retaliation for
5 requesting disclosing information that her employer was engaging in unlawful acts of fraud and
6 elder abuse through its timeshare sales practices..

7 **THE PARTIES**

8 2. Plaintiff GINA MORI (hereinafter “Plaintiff” or “MORI”) is an Individual and a
9 resident of the State of California.

10 3. Defendant DIAMOND RESORTS INTERNATIONAL MARKETING, INC. is a
11 corporation organized under the laws of the State of California, and which employed MORI.

12 4. Defendant DIAMOND RESORTS INTERNATIONAL MARKETING, INC.
13 shall hereinafter be referred to as “DIAMOND” or “Defendant.”

14 5. DIAMOND owns a network of approximately 400 vacation resorts in thirty-five
15 countries around the world. DIAMOND sells vacation ownership points to the public, which
16 may be used for resorts, hotels, cruises, accommodations, event and private activities hosted by
17 DIAMOND.

18 6. Plaintiff is ignorant of the true names and capacities of the Defendants sued
19 herein as DOES 1 through 10, and therefore sues them by such fictitious names. Plaintiff is
20 informed and believes and thereon alleges that said Defendants are in some manner legally
21 responsible for the activities and damages alleged herein. Plaintiff will amend this Complaint to
22 allege their true names and capacities when ascertained.

23 7. Plaintiff is informed and believes and thereon alleges that at all times herein
24 mentioned each of the Defendants were acting as the partner, agent, servant, and employee of
25 each of the remaining Defendants, and in doing the things alleged herein was acting within the
26 course and scope of such agency and with the knowledge of the remaining Defendants.

27
28 **JURISDICTION AND VENUE**

1 14. MORI's supervisor changed, and MORI began to be supervised by a new
2 Regional Manager, DAN PERCY (hereinafter "PERCY"). PERCY was known by management
3 at that time to be a serial sexual harasser, engage in copious amounts of illicit drug use, both on
4 and off the clock, in violation of DIAMOND'S drug use policy, and had engaged in fraudulent
5 conduct towards customers on numerous prior occasions. Rather than discipline or terminate
6 PERCY, DIAMOND instead chose to transfer him from property to property. Once transferred,
7 PERCY would continue to engage in the same behavior, and when it became problematic at the
8 new property, DIAMOND would simply transfer PERCY yet again.

9 15. One of the fraudulent schemes DIAMOND created was an "Owner Update
10 Meeting." Current owners were targeted, and sent an invitation to a purported "Owner Update
11 Meeting" to ostensibly learn more about the investment they had *already* made. In actuality,
12 these were high pressure sales presentations presided over by commissioned salespersons.
13 Worse, prior to the meetings, DIAMOND would provide the salespersons with intimate
14 knowledge about each attendee, including their credit worthiness and "points owned"
15 information, so that salespersons could target certain owners in these meetings for additional
16 sales. DIAMOND would provide the more successful salespersons with the "better" customers,
17 meaning customers with a high credit score and/or largest points-owned among the group.
18 Salespersons were told to target the meeting attendees to purchase more points, certain
19 upgrades, and additional DIAMOND products.

20 16. One of the salespersons MORI oversaw in her role as Quality Assurance
21 Manager was DIMITRIY TSIBULSKIY ("TSIBULSKIY"). TSIBULSKIY had previously
22 worked as a salesperson for another timeshare company, Wyndham. While at Wyndham,
23 TSIBULSKIY had earned a reputation as a salesperson that companies should "be careful with"
24 because he engaged in high pressure, abusive, and illegal sales practices. On information and
25 belief, DIAMOND was aware of TSIBULSKIY'S illegal and/or unethical sales tactics, but
26 employed him anyway, and continued to employ him even after MORI disclosed to DIAMOND
27 that TSIBULSKIY was engaged in illegal conduct.

28

1 17. Another salesperson MORI oversaw in her role as a Quality Assurance Manager
2 was MICHAEL “MIKE” BROWNE (“BROWNE”), who worked as the Sales Manager at the
3 San Luis Bay Inn.

4 18. On November 26, 2019, MORI sent an email to BROWNE, BLAIR, PERCY,
5 and YOUNG, wherein she recounted fraud that occurred to a customer with Contract No.
6 17947728. Specifically, MORI reported that the customer had been (falsely) told by
7 DIAMOND that they had to purchase a product from DIAMOND on that day in order to avoid
8 an \$8,000 assessment on their existing purchases from DIAMOND. This was false.

9 19. MORI reported several fraudulent schemes that salespersons had created to
10 DIAMOND, including, but not limited, to the “buyback” scheme, wherein customers were
11 falsely told that DIAMOND would buy back unused points from the customers. In actuality,
12 DIAMOND never purchased points back from the customers, this was just said to make
13 customers feel at ease with making large purchases, thinking there was not a risk to these
14 purchases (i.e., if they decided they did not want the points, they could just sell them back to
15 DIAMOND and not be out any money).

16 20. Another scheme was the “equity” scheme where owners were told that after 24
17 months (two years) they could recover their “equity” as either a lump sum or a monthly check
18 from DIAMOND.

19 21. Another scheme was falsely telling customers they could use their “points” to
20 pay for yearly membership fees charged by DIAMOND. Customers would then purchase a
21 great deal of points, intending to use these not only for resort stays, but for other times such as
22 membership fees and airfare. In actuality, points cannot – and never have been – permitted to
23 be used to pay annual membership fees or airfare. The membership fees – which *start* at several
24 thousand dollars per year – must be paid on top of any purchases made from DIAMOND.

25 22. On February 11, 2020, MORI texted BLAIR and stated “can you call me right
26 away I have some really important stuff to talk to you about...its important stuff definite SIP
27 [sales integrity process policy] violations. Fireable offense.” The Sales Integrity Process Policy
28 applied to the entire company regarding integrity, ethics, misrepresentations, and fraud.

1 23. BLAIR and MORI spoke via telephone, where MORI reported in detail the
2 violations and fraudulent conduct being perpetrated by TSIBULSKIY.

3 24. On February 12, 2020, MORI again texted BLAIR and inquired whether she
4 needed to submit an online form to DIAMOND about TSIBULSKIY’S conduct, or whether her
5 conversation with BLAIR took the place of this report. BLAIR instructed MORI not to submit
6 anything online, and said “for now it has [sic] handled internally by Dan [PERCY] but will
7 continue to monitor.”

8 25. That evening, MORI received an email from a customer, identified herein as
9 “MK” for privacy purposes, requesting a full cancellation of their purchase contract. The
10 customer reported that he was 76 years old at the time. MK told MORI that he was sold 3,000
11 points as a “special program for older people who cannot take vacations due to disabilities or
12 old age.” MK reported that the salesperson told him he could cancel his membership after 24
13 months and recover his “equity” as a lump sum cash payment from DIAMOND. MK then
14 wrote “we now understand there is no such program.”

15 26. MK specifically stated that “[T]he sales people are using pressure tactics and
16 describing benefits (like equity recovery) that are not true.” MK also reported he was sold a
17 sampler “equity” program that would let him “use points to pay for maintenance fees, air
18 flights, and hotels. We found that none of this is true.” MK requested a full refund of both
19 purchases.

20 27. On February 12, 2020, MORI forwarded MK’s email to BLAIR, and stated that
21 she felt the salesperson’s tactics “could fall under ‘elder abuse’.” MORI also stated that it was
22 her expectation that when she returned to work on February 15, none of the “dishonest,
23 unethical, misleading and contrary to law tactics will be used.” This constituted a protected
24 activity within the definition of Labor Code § 1102.5.

25 28. In this same email, MORI told BLAIR “I also have a Real Estate License that
26 binds me to the laws of the State of California. I am not willing to jeopardize my license for
27 anything.” This also constituted a protected activity within the definition of Labor Code §
28 1102.5.

1 29. Numerous customers, including Merlene Walters, called DIAMOND’S corporate
2 office to complain about the fraudulent schemes they were subjected to. DIAMOND confirmed
3 that those schemes did not exist, yet took no action to stop salespersons from using them, and
4 continued to accept profits and income generated by those schemes, which condoned and
5 ratified the fraudulent and/or abusive conduct to customers, primarily targeted to elderly
6 employees.

7 30. On February 24, 2020, MORI reported to BLAIR, and copied YOUNG,
8 BROWNE, and PERCY, that an elderly couple had been told by TSIBULSKIY that their
9 monthly payment of \$862 was for *both* their mortgage and their monthly maintenance fees.
10 This was incorrect. During the Quality Assurance review, MORI informed the couple that those
11 were separate payments, and that the mortgage and the maintenance fees each month would
12 total \$1,645 – nearly double what they thought it would be. The couple was also falsely told
13 they had to purchase a specific program to avoid forcing heirs to inherit the ownership. MORI
14 informed DIAMOND’S corporate and Human Resources offices that this constituted a
15 misrepresentation.

16 31. On February 26 and 29, 2020, MORI reported to BLAIR that she was being
17 ostracized and ignored at work. BLAIR did not respond.

18 32. On March 7, 2020, MORI reported a hostile work environment, including being
19 subjected to harassment, discrimination and retaliation. MORI made this report to BLAIR via
20 an email titled “Hostile work Environment.” This constituted a protected activity within the
21 definition of Labor Code § 1102.5.

22 33. On March 9, 2020, MORI reported the retaliation and hostile work environment
23 to JOLLEENAH TAYLOR (“TAYLOR”) in DIAMOND’S Human Resources office. MORI
24 also forwarded TAYLOR all of the prior reports she had made to BLAIR regarding fraudulent
25 conduct, illegal and unethical sales practices, and elder abuse. MORI continued to provide
26 additional information regarding these reports to TAYLOR through March 18, 2020.

27 34. All of the customer interactions with salespersons were recorded on video.
28 Throughout February and March 2020, MORI implored BLAIR and TAYLOR to review the

1 videos related to certain transactions for themselves, to see the fraudulent tactics which were
2 being used.

3 35. On March 10, 2020, MORI engaged in a text conversation with BLAIR wherein
4 she reported that the retaliation was adversely affecting her income, and also asked if she was
5 being taken off the schedule in further retaliation for her complaint.

6 36. On March 11, 2020, MORI was asked to participate in a telephone call with
7 YOUNG, BLAIR and KEVIN PERERIA (“PERERIA”), DIAMOND’S Senior Vice President
8 of Business Management and Compliance. MORI was promised that a resolution to her
9 complaints would occur once this phone call took place.

10 37. The phone call took place on March 11, 2020, from 11:13 a.m. to 11:48 a.m.
11 During the phone call MORI again disclosed the fraudulent conduct being perpetrated by
12 salespersons. Rather than address these concerns, MORI was disciplined by DIAMOND and
13 given a “coaching” as if she was in the wrong, when it was actually sales agents committing the
14 fraud. MORI was told to *not* directly answer customer’s questions, and instead to respond to
15 customer questions with a second or third question of her own, so that the customers would
16 forget their original questions. MORI was also told to be “agreeable” and to work with the sales
17 team to make sure their information “matched.”

18 38. MORI was shocked and scared during and after the phone meeting, because it
19 was made clear in that meeting that DIAMOND was protecting the persons engaged in
20 fraudulent conduct, while intent on retaliating against MORI.

21 39. MORI was suspended on March 21, 2020.

22 40. MORI was constantly told for approximately a month prior to her suspension
23 (which Defendant falsely claimed was a “furlough”) that she was going to be “fired.”

24 41. Although DIAMOND claimed to “furlough” MORI due to the pandemic, it
25 continued to employ sales representatives, including those who had been engaged in the most
26 egregious fraudulent behavior, and continued to have them pitch and close deals with new and
27 existing customers. However, DIAMOND refused to reinstate MORI’S employment. As a
28 result, with no Quality Assurance Manager onsite, the fraudulent conduct increased

1 exponentially. Customers began reaching out to MORI on her cell phone to report fraud and
2 abuse by DIAMOND.

3 42. Every department lead, except for MORI, returned back to work at the San Luis
4 Bay Inn, including the agents who perpetrated the fraud MORI reported to DIAMOND.

5 43. Specifically, as of June 12, 2020, both TSIBULSKIY and PAM STAUCH
6 (“STAUCH”) had been returned to work. STAUCH, who was known to allow
7 misrepresentations by salespersons, was put in the position of Quality Assurance Manager
8 despite having far less experience or seniority than MORI.

9 44. On July 12, 2020 Human Resources, through TAYLOR, contacted MORI and
10 apologized for not following through with a call they originally scheduled for July 2, 2020.
11 TAYLOR told MORI they would reach out and let MORI know if they still needed to speak
12 with her. MORI remained suspended.

13 45. On September 8, 2020, MORI had a conference call with BLAIR, TAYLOR, and
14 YOUNG. During this call, MORI was told her employment was being terminated, effective
15 immediately, because DIAMOND was not “busy enough” to keep her. STAUCH remained
16 employed in MORI’S Quality Assurance Manager role, again despite having less experience
17 and seniority with DIAMOND.

18 **FIRST CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE SECTION 1102.5**

20 **AGAINST ALL DEFENDANTS**

21 46. Plaintiff incorporates by reference the factual allegations set forth in the
22 preceding paragraphs.

23 47. Pursuant to Labor Code section 1102.5, subd. (b), “[A]n employer, or any person
24 acting on behalf of the employer, shall not retaliate against an employee for disclosing
25 information, or because the employer believes that the employee disclosed or may disclose
26 information, to a government or law enforcement agency, to a person with authority over the
27 employee or another employee who has the authority to investigate, discover, or correct the
28 violation or noncompliance, or for providing information to, or testifying before, any public body

1 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe
2 that the information disclosed 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
4 the information is part of the employee's job duties.”

5 48. Plaintiff disclosed information to DIAMOND, her employer, that she reasonably
6 believed disclosed a violation of state and/or federal statute, rules and/or regulations, including,
7 but not limited, to California Labor Code § 1102.5, Welfare and Institutions Code §§ 15600-
8 15675, and Business and Professions Code §§ 11210-11288 and § 17200, *et seq.*

9 49. Plaintiff's disclosure of this information constitutes a protected activity pursuant
10 to Labor Code § 1102.5, subd. (a) and (b).

11 50. Plaintiff's refusal to engage in this conduct also constitutes a protected activity
12 pursuant to Labor Code § 1102.5, subd. (c).

13 51. Defendant suspended, and later terminated, Plaintiff's employment after she
14 engaged in activities protected by Labor Code § 1102.5. Defendant did so in retaliation for
15 Plaintiff's engagement in protected activities.

16 52. As a direct and proximate result of the actions of Defendant, Plaintiff has suffered
17 and will continue to suffer pain and mental anguish and emotional distress.

18 53. Plaintiff has further suffered and will continue to suffer a loss of earnings and
19 other employment benefits, whereby Plaintiff is entitled to general compensatory damages in
20 amounts to be proven at trial.

21 54. Defendant's actions constituted a willful violation of the above-mentioned federal
22 laws and regulations. As a direct result, Plaintiff has suffered and continues to suffer substantial
23 losses related to the loss of wages and is entitled to recover costs and expenses and attorney's
24 fees in seeking to compel Defendant to fully perform its obligations under state and/or federal
25 law, in amounts according to proof at time of trial.

26 55. The conduct of Defendant described herein above was outrageous and was
27 executed with malice, fraud and oppression, and with conscious disregard for Plaintiff's rights,
28 and further, with the intent, design and purpose of injuring Plaintiff.

1 employee or another employee who has the authority to investigate, discover, or correct the
2 violation or noncompliance, or for providing information to, or testifying before, any public
3 body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to
4 believe that the information disclosed a violation of state or federal statute, or a violation of or
5 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
6 the information is part of the employee's job duties."

7 63. Plaintiff disclosed information to DIAMOND, her employer, that she reasonably
8 believed disclosed a violation of state and/or federal statute, rules and/or regulations, including,
9 but not limited, to California Labor Code § 1102.5, Welfare and Institutions Code §§ 15600-
10 15675, and Business and Professions Code §§ 11210-11288 and § 17200, *et seq.*

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12 to Labor Code § 1102.5, subd. (a) and (b).

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16 engaged in activities protected by Labor Code § 1102.5. Defendant did so in retaliation for
17 Plaintiff's engagement in protected activities.

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19 suffered and will continue to suffer pain and mental anguish and emotional distress.

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21 other employment benefits, whereby Plaintiff is entitled to general compensatory damages in
22 amounts to be proven at trial.

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24 federal laws and regulations. As a direct result, Plaintiff has suffered and continues to suffer
25 substantial losses related to the loss of wages and is entitled to recover costs and expenses and
26 attorney's fees in seeking to compel Defendant to fully perform its obligations under state
27 and/or federal law, in amounts according to proof at time of trial.

28

1 rights affecting the public interest within the meaning of Code of Civil Procedure section
2 1021.5.

3 77. Defendant's activities as alleged herein are violations of California law, and
4 constitute unlawful business acts and practices in violation of California Business & Professions
5 Code section 17200, *et seq.*

6 78. A violation of California Business & Professions Code section 17200, *et seq.*
7 may be predicated on the violation of any state or federal law. In this instant case, Defendant's
8 policies and practices of permitting fraud, elder abuse, retaliation, and misrepresentations to
9 occur in order to sell more products constitute violations of, *inter alia*, California Labor Code §
10 1102.5, Welfare and Institutions Code §§ 15600-15675, and Business and Professions Code §§
11 11210-11288 and § 17200, *et seq.*

12 79. Plaintiff has been personally injured by Defendant's unlawful business acts and
13 practices as alleged herein, including but not necessarily limited to the loss of money and/or
14 property.

15 80. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
16 Plaintiff is entitled to restitution of the unpaid compensation, including commissions, withheld
17 and retained by Defendant; a permanent injunction requiring Defendant to provide the unpaid
18 wages due to Plaintiff; an award of attorneys' fees pursuant to California Code of Civil
19 procedure section 1021.5 and other applicable laws; and an award of costs.

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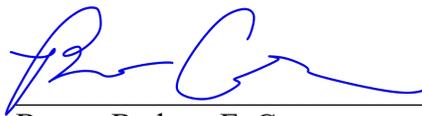
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For general damages according to proof, however, no less than the jurisdictional limit of this Court;
2. For special damages in amounts according to proof;
3. For exemplary and punitive damages in amounts according to proof;
4. For injunctive relief as provided by law, including, but not limited, to immediate cancellation and refund of all contracts with customers procured by fraud, elder abuse, or other misrepresentations;
5. For declaratory relief as provided by law, including, *inter alia*, that Defendant's against Plaintiff violated Labor Code section 1102.5 and all other statutes alleged herein;
6. For civil penalties as permitted pursuant to Labor Code section 1102.5;
7. For interest as provided by law;
8. For cost of suit incurred herein;
9. For attorneys' fees as provided by law; and
10. For such other and further relief as the Court deems fair and just.

DATED: October 26, 2021

Respectfully submitted,
HENGL & COWAN, P.L.C.



By: Barbara E. Cowan
Attorneys for Plaintiff GINA MORI

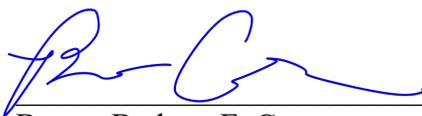
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DEMAND FOR JURY TRIAL

Plaintiff GINA MORI herewith demands a jury trial in this action.

DATED: October 26, 2021

Respectfully submitted,
HENGL & COWAN, P.L.C.



By: Barbara E. Cowan
Attorneys for Plaintiff GINA MORI