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Los Angeles Superior Court

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BY FAX

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

14 MARTIN BECK, an individual,

CASE NO.:

BC521716

15 Plaintiff,

COMPLAINT FOR:

16 v.

(1) BREACH OF ORAL CONTRACT

17 RESOLUTION ENTERTAINMENT,
18 LLC, a California Limited Liability
19 Company; DOES 1 through 50, inclusive,

(2) DISABILITY DISCRIMINATION AND
FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS IN
VIOLATION OF CAL. GOV. CODE
§ 12940 *ET SEQ.*

20 Defendants.

(3) RETALIATION IN VIOLATION OF
CAL. GOV. CODE § 12940(b)

(4) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY

(5) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

(6) FRAUD AND DECEIT

[JURY TRIAL DEMANDED]

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COMPLAINT FOR DAMAGES

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1 **INTRODUCTION**

2 1. Defendant Resolution Entertainment, LLC (“Resolution”) is a fledgling (and
3 apparently floundering) agency started by former International Creative Management (“ICM”)
4 Chief Executive Officer Jeff Berg (“Berg”). Berg spent his entire career at ICM (over 40 years),
5 initially interning at the agency during college, then working as an agent, and eventually
6 becoming the agency’s Chief Executive Officer (“CEO”). As CEO, Berg acquired knowledge
7 regarding the nuts and bolts of the agency. Berg knew ICM’s client list, agents’ compensation
8 and contract terms, and the agency’s key business relationships. In or about the spring of 2012,
9 Berg unsuccessfully attempted to secretly restructure the agency to cut out various agents at
10 ICM. That plan backfired and Berg was ousted from his position as CEO.

11 2. Berg, dethroned, left ICM in October 2012. In January 2013, Berg started
12 Resolution. Plaintiff Martin Beck (“Plaintiff”) alleges upon information and belief that, Berg
13 used his knowledge of ICM in an attempt to lure away the agency’s clients and agents. Plaintiff
14 further alleges upon information and belief that Berg’s plan was to garner a roster of agents
15 (including former ICM agents) by outbidding their contracts. This strategy worked to some
16 degree in the short-term. Resolution hired at least seven different former ICM agents including
17 long-time concerts agent Terry Rhodes (“Rhodes”). The downside of this strategy was that
18 Resolution was left with a hefty payroll and no cash flow. Clients were booked on jobs
19 previously obtained by other agencies, and as a result, Resolution could not collect on
20 commissions nor could it book the clients on new jobs until their calendars were freed up.

21 3. Although Berg bragged to the Hollywood Reporter that Resolution has more than
22 \$200 million in financial backing, Plaintiff alleges upon information and belief that the company
23 is now cash-strapped and unable to maintain its enormous payroll. Resolution started looking for
24 other sources of income and set their sights on Plaintiff and his clients. Plaintiff is a former ICM
25 agent who handled booking for casinos for decades. Plaintiff’s contacts with casinos provide
26 clients with alternative sources of income and his clients bring in substantial commissions. For
27 example, one of Plaintiff’s largest clients from ICM is Frankie Valli (“Valli”). Valli generates
28 hundreds of thousands of dollars in commissions per year, due in part, to the success of *Jersey*

1 *Boys*. Berg was quite familiar with Valli. Berg negotiated the film rights for *Jersey Boys* while
2 at ICM. Before Resolution solicited Plaintiff to work at the agency, Plaintiff is informed and
3 believes that Resolution unsuccessfully tried to sign away Valli from ICM directly.

4 4. In or about June 2013, while Plaintiff was employed at ICM, Jeff Franklin
5 (“Franklin”) contacted Plaintiff to set up a meeting. Franklin was working for Resolution at the
6 time. On or about June 20, 2013, Franklin and Plaintiff met over lunch and not more than a few
7 minutes after sitting down, Franklin offered Plaintiff a job at Resolution. Franklin told Plaintiff
8 that Resolution had authorized him to offer Plaintiff a two-year employment contract with an
9 annual salary of \$175,000. Plaintiff explained that as a result of his medical problems, Plaintiff
10 would need certain accommodations. Plaintiff suffers from severe medical problems involving
11 his neck, back, and wrists/thumbs. As a result of Plaintiff’s medical problems, Plaintiff was
12 limited in his ability to sit, drive, type and write. Plaintiff’s medical problems caused
13 intermittent acute flare-ups of extreme pain, which further limited Plaintiff’s ability to walk,
14 stand, and/or drive. As a result of these medical problems, Plaintiff’s treating physicians
15 recommended that he work from his home occasionally, especially when he was suffering from a
16 flare-up of pain. Plaintiff’s treating physicians also recommended that Plaintiff avoid plane
17 travel (because plane travel required Plaintiff to sit in confined spaces for long periods of time),
18 or if necessary, to fly in first class with more room. As a result of these medical problems,
19 Plaintiff is, and at all relevant times in this complaint was, disabled.

20 5. Franklin discussed these issues with Plaintiff and told him that he could work
21 from home whenever necessary. Franklin told Plaintiff, however, that Resolution would not put
22 first class flights into the employment contract. As a compromise, Plaintiff offered to reduce his
23 salary by \$10,000 and have that \$10,000 be allocated to Plaintiff’s first class travel costs.
24 Franklin agreed and Plaintiff accepted the offer. On June 21, 2013, Franklin emailed Plaintiff a
25 message as an SMS text that read “**Contract is being done with new amt. We have a deal as u**
26 **know my word is my bond!**” Plaintiff expected to receive a written contract reflecting the
27 agreed upon terms of employment.

28 6. Despite his disabilities, Plaintiff was able to perform the essential functions of his

1 job with reasonable accommodations. Plaintiff, who is more than seventy years old and has been
2 in the business more than fifty years, has always conducted his business primarily by phone,
3 starting early in the morning to place calls with his contacts on the East Coast. Plaintiff also
4 could remotely log in and work from home to avoid driving on days when his pain was
5 extremely acute. Like the majority of other agents, Plaintiff requested an assistant. The assistant
6 was able to help Plaintiff with dictation and typing. In addition, Plaintiff hired a personal
7 assistant to work at home with him at his own expense.

8 7. Once Plaintiff started working at Resolution on July 8, 2013, Plaintiff requested a
9 revised written copy of his employment agreement (Plaintiff had previously received a draft of
10 the agreement). Despite Plaintiff's repeated requests, and Franklin's assurance that his word was
11 "his bond," Plaintiff was not given a written copy of the final employment agreement.

12 8. Berg, Rhodes, Franklin, and others quickly tried to get Valli to sign with
13 Resolution again. Resolution's efforts failed miserably, in part, because Plaintiff was left out of
14 the loop. During this same time, Plaintiff was experiencing a flare-up of pain and needed to
15 work from home. Resolution began a campaign to harass Plaintiff. Resolution began sending
16 Plaintiff emails alleging that he was not working and setting artificially short deadlines for
17 Plaintiff to respond. Plaintiff indicated that he could not respond based on the arbitrary deadlines
18 imposed by Resolution because of his medical conditions and because of his doctors'
19 appointments. In response, Resolution terminated his employment on or about August 2, 2013
20 without cause, in breach of his employment contract. Plaintiff now sues for breach of contract,
21 violations of the Fair Employment and Housing Act for harassment based on Plaintiff's
22 disabilities, failure to accommodate, failure to engage in the interactive process, wrongful
23 termination in violation of public policy, intentional infliction of emotional distress, and fraud, as
24 alleged below.

25 **PARTIES, VENUE AND JURISDICTION**

26 9. Plaintiff is, and at all times material to this Complaint was, an individual residing
27 in Los Angeles County, California.

28 10. Resolution is, and at all times material to this Complaint was, a California limited

1 liability company with its principal place of business in Los Angeles County, California.

2 11. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
3 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names (the
4 "Doe Defendants"). Plaintiff alleges on information and belief that such Doe Defendants are
5 liable to Plaintiff for the actions hereinafter set forth. Plaintiff will amend this complaint to
6 allege the true names and capacities of such Doe Defendants when ascertained.

7 12. Plaintiff alleges on information and belief that, at all times relevant hereto, each
8 defendant, including each of the Doe Defendants, was the agent, servant, employee and/or
9 representative of each of the other defendants and, in doing the things herein alleged, was acting
10 within the course and scope of, and pursuant to, said agency, services, employment and/or
11 representation. Resolution and the Doe Defendants are referred to herein collectively as the
12 "Defendants."

13 13. Jurisdiction and venue for this action are proper in Los Angeles County,
14 California pursuant to, without limitation, California Code of Civil Procedure sections 395,
15 395.5, and California Government Code section 12965(b) in that, among other things, the
16 contract sued upon was made in, and to be performed in, Los Angeles County, California and the
17 alleged unlawful practices were committed in Los Angeles County, California.

18 **FIRST CAUSE OF ACTION**

19 **(For Breach of Oral Contract against All Defendants)**

20 14. Plaintiff incorporates by reference the foregoing allegations of this complaint.

21 15. Plaintiff and Defendants entered into an oral employment agreement that provided
22 in material part that, among other things, (1) Plaintiff would receive an annual salary of
23 \$165,000¹, (2) Plaintiff would be employed as an agent at Resolution for an initial two-year term
24 of employment and that after the two-year period the parties would negotiate in good faith a new
25 term, (3) Plaintiff's employment was not "at-will," and (4) Plaintiff's employment would be
26 unconditional so that Plaintiff would have no obligation to bring over any clients to keep his

27 ¹ Franklin initially offered \$175,000, but Plaintiff suggested that the salary be reduced to
28 \$165,000 so that \$10,000 could be allocated to Plaintiff's travel (since Plaintiff often needed to
travel first class based on his physician's recommendation).

1 employment (the "EMPLOYMENT AGREEMENT").

2 16. Franklin, on behalf of the Defendants, sent a text message confirming the
3 Employment Agreement and Resolution even sent Plaintiff a written draft of the Employment
4 Agreement, but never provided Plaintiff with a fully executed copy of the written agreement.

5 17. Defendants have materially breached their obligations under the Employment
6 Agreement by, among other things, terminating Plaintiff's employment, without cause, prior to
7 the expiration of the two-year initial term.

8 18. Plaintiff was prepared to, and did, perform under the Employment Agreement,
9 except to the extent that any non-performance was excused by Defendants' conduct or waived by
10 Defendants.

11 19. As a result of Defendants' breach of the Employment Agreement, Plaintiff has
12 suffered damages in amount to be determined at trial, but in excess of the \$25,000.

13 **SECOND CAUSE OF ACTION**

14 **(For Disability Discrimination and Failure to Engage in the Interactive Process**
15 **in Violation of California Government Code § 12940 *et seq.* against All Defendants)**

16 20. Plaintiff incorporates by reference the foregoing allegations of this complaint.

17 21. As alleged herein, Plaintiff was disabled during the time he was employed by
18 Resolution and Resolution was made aware of Plaintiff's disabilities.

19 22. Resolution had an affirmative duty to make reasonable accommodations for
20 Plaintiff pursuant to California Government Code section 12940(m).

21 23. Resolution had an affirmative duty to engage in the interactive process with
22 Plaintiff pursuant to California Government Code section 12940(n).

23 24. With reasonable accommodation, including but not limited to, allowing Plaintiff
24 to working remotely as needed, and using an assistant to type, Plaintiff was able to perform the
25 essential functions of his position as agent at Resolution.

26 25. Such reasonable accommodations would not have caused undue hardship to
27 Resolution.

28 26. Resolution failed to reasonably accommodate Plaintiff, and instead, terminated

1 his employment.

2 27. Plaintiff alleges upon information and belief that his disabilities were a motivating
3 factor in Resolution's decision to terminate his employment.

4 28. Plaintiff has exhausted his administrative remedies by timely filing a complaint
5 with the California Department of Fair Employment and Housing against Resolution and
6 obtaining a right to sue letter on or about September 18, 2013.

7 29. As a direct and proximate cause of Defendants' unlawful termination of
8 Plaintiff's employment, Plaintiff has sustained and continues to sustain substantial losses in
9 earnings, medical benefits, vacation pay, retirement benefits, and other employment benefits.

10 30. As a further direct and proximate cause of Defendants' unlawful termination of
11 Plaintiff's employment, Plaintiff has suffered from emotional distress.

12 31. Plaintiff is entitled to general and compensatory damages in an amount to be
13 proven at trial, but in excess of \$25,000.

14 32. Defendants' conduct as described above was willful, intentional, and malicious.
15 As a result, Plaintiff seeks punitive and exemplary damages.

16 33. Plaintiff is entitled to recover his attorneys' fees pursuant to California
17 Government Code section 12965.

18 **THIRD CAUSE OF ACTION**

19 **(For Retaliation in Violation of California Government Code § 12940(h)**

20 **Against All Defendants)**

21 34. Plaintiff incorporates by reference the foregoing allegations of this complaint.

22 35. Plaintiff complained to Defendants about Resolution's treatment of Plaintiff,
23 including Resolution's failure to reasonably accommodate Plaintiff and engage in the interactive
24 process with Plaintiff.

25 36. Plaintiff alleges upon information and belief that his complaints to Resolution
26 about Resolution's unlawful treatment of Plaintiff were a motivating factor in the decision to
27 terminate Plaintiff's employment. Plaintiff alleges upon information and belief that his
28 employment was terminated in retaliation for the same in violation of California Government

1 Code section 12940(h).

2 37. Plaintiff has exhausted his administrative remedies by timely filing a complaint
3 with the California Department of Fair Employment and Housing against Resolution and
4 obtaining a right to sue letter on or about September 18, 2013.

5 38. As a direct and proximate cause of Defendants' unlawful termination of
6 Plaintiff's employment, Plaintiff has sustained and continues to sustain substantial losses in
7 earnings, medical benefits, vacation pay, retirement benefits, and other employment benefits.

8 39. As a further direct and proximate cause of Defendants' unlawful termination of
9 Plaintiff's employment, Plaintiff has suffered from emotional distress.

10 40. Plaintiff is entitled to general and compensatory damages in an amount to be
11 proven at trial, but in excess of \$25,000.

12 41. Defendants' conduct as described above was willful, intentional, and malicious.
13 As a result, Plaintiff seeks punitive and exemplary damages.

14 42. Plaintiff is entitled to recover his attorneys' fees pursuant to California
15 Government Code section 12965.

16 **FOURTH CAUSE OF ACTION**

17 **(For Wrongful Termination in Violation of Public Policy Against All Defendants)**

18 43. Plaintiff incorporates by reference the foregoing allegations of this complaint.

19 44. Plaintiff alleges upon information and belief that his disabilities were a
20 motivating factor in the termination of his employment. Plaintiff further alleges upon
21 information and belief that his employment was terminated in retaliation for his complaints
22 about Defendants' failure to provide reasonable accommodations, engage in the interactive
23 process with Plaintiff, and Resolution's harassment of Plaintiff.

24 45. As a result, Plaintiff's employment was wrongfully terminated in violation of the
25 fundamental public policy of the State of California, as embodied by California Government
26 Code sections 12940 *et seq.*

27 46. As a direct and proximate cause of Defendants' unlawful termination of
28 Plaintiff's employment, Plaintiff has sustained and continues to sustain substantial losses in

1 earnings, medical benefits, vacation pay, retirement benefits, and other employment benefits.

2 47. As a further direct and proximate cause of Defendants' unlawful termination of
3 Plaintiff's employment, Plaintiff has suffered from emotional distress.

4 48. Plaintiff is entitled to general and compensatory damages in an amount to be
5 proven at trial, but in excess of \$25,000.

6 49. Defendants' conduct as described above was willful, intentional, and malicious.
7 As a result, Plaintiff seeks punitive and exemplary damages.

8 **FIFTH CAUSE OF ACTION**

9 **(For Intentional Infliction of Emotional Distress Against All Defendants)**

10 50. Plaintiff incorporates by reference the foregoing allegations of this complaint.

11 51. Among other things, Defendants sent Plaintiff emails falsely accusing Plaintiff of
12 not working. Defendants demanded that Plaintiff respond to emails in an arbitrarily quick
13 manner, knowing that Plaintiff was disabled and could not quickly respond as demanded. In
14 turn, Defendants unlawfully terminated Plaintiff's employment.

15 52. Defendants' conduct was extreme, unwarranted, and outrageous, and Defendants
16 acted in reckless disregarding of the probability that Plaintiff would suffer emotional distress as
17 a result of Defendants' conduct.

18 53. As a direct and proximate cause of Defendants' conduct, Plaintiff suffered severe
19 emotional distress.

20 **SIXTH CAUSE OF ACTION**

21 **(For Fraud and Deceit Against All Defendants)**

22 54. Plaintiff incorporates by reference the foregoing allegations of this complaint.

23 55. On or about June 20, 2013, Defendants, through Franklin, made the following
24 material misrepresentations of fact to Plaintiff: (1) that Resolution would employ Plaintiff for a
25 term of not less than two years, (2) that Plaintiff's employment would not be terminated except
26 for cause, (3) that Resolution would reasonably accommodate Plaintiff's medical conditions, (4)
27 that Resolution would pay Plaintiff an annual salary of at least \$165,000 per year for at least
28 two years, and (4) that Resolution would not condition Plaintiff's employment on Plaintiff's

1 ability to bring over any clients with him Resolution.

2 56. Plaintiff is informed and believes and thereon alleges that, at the time these
3 representations were made, Resolution knew them to be false and had no intention of complying
4 with the terms of the Employment Agreement.

5 57. Plaintiff is informed and believes and thereon alleges that, at all times herein
6 mentioned, Franklin was the agent and employee of Resolution, and in doing the things herein
7 alleged was acting within the course and scope of such agency and employment and with the
8 permission and consent of Resolution.

9 58. When Resolution made these representations, it knew them to be false and made
10 these representations with the intention to deceive and defraud the Plaintiff and to induce
11 Plaintiff to act in reliance on these representations by leaving his employment at ICM and to
12 start working for Resolution with the hope that Valli would follow Plaintiff to Resolution.

13 59. Plaintiff, at the time these representations were made by Resolution, and at the
14 time Plaintiff left his employment at ICM to start working at Resolution, was ignorant of the
15 falsity of the Resolution's representations and believed them to be true. In reliance on these
16 representations, Plaintiff was induced to and did leave his employment at ICM to start working
17 at Resolution. Had the Plaintiff known the actual facts, he would not have taken such action.

18 60. Plaintiff's reliance on Resolution's representations was justified.

19 61. As a proximate result of the fraudulent conduct of Resolution as herein alleged,
20 Plaintiff has sustained and continues to sustain substantial losses in earnings, medical benefits,
21 vacation pay, retirement benefits, and other employment benefits.

22 62. The aforementioned conduct of Defendants was an intentional misrepresentation,
23 deceit, or concealment of a material fact known to Resolution with the intention of depriving the
24 Plaintiff of property and benefits or otherwise causing injury, and was despicable conduct that
25 subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so
26 as to justify an award of exemplary and punitive damages.

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28 ///

1 **WHEREFORE**, Plaintiff prays for judgment as follows:

2 **As to the First Cause of Action:**

- 3 1. For general and compensatory damages according to proof at trial;
- 4 2. For costs of suit incurred herein;
- 5 3. For such other and further relief as the Court deems just and proper;

6 **As to the Second Cause of Action:**

- 7 4. For general and compensatory damages for lost wages and employment benefits
- 8 according to proof at trial;
- 9 5. For general and compensatory damages for Plaintiff's emotional distress
- 10 according to proof at trial;
- 11 6. For exemplary and/or punitive damages according to proof;
- 12 7. For attorneys' fees and costs of suit incurred herein;
- 13 8. For such other and further relief as the Court deems just and proper.

14

15 **As to the Third Cause of Action:**

- 16 9. For general and compensatory damages for lost wages and employment benefits
- 17 according to proof at trial;
- 18 10. For general and compensatory damages for Plaintiff's emotional distress according to
- 19 proof at trial
- 20 11. For exemplary and/or punitive damages according to proof;
- 21 12. For attorneys' fees and costs of suit incurred herein;
- 22 13. For such other and further relief as the Court deems just and proper.

23 **As to the Fourth Cause of Action:**

- 24 14. For general and compensatory damages for lost wages and employment benefits
- 25 according to proof at trial;
- 26 15. For general and compensatory damages for Plaintiff's emotional distress according to
- 27 proof at trial;
- 28 16. For exemplary and/or punitive damages according to proof;

- 1 17. For attorneys' fees and costs of suit incurred herein;
2 18. For such other and further relief as the Court deems just and proper.

3 **As to the Fifth Cause of Action:**

- 4 19. For general and compensatory damages for lost wages and employment benefits
5 according to proof at trial;
6 20. For general and compensatory damages for Plaintiff's emotional distress according to
7 proof at trial;
8 21. For exemplary and/or punitive damages according to proof;
9 22. For costs of suit incurred herein;
10 23. For such other and further relief as the Court deems just and proper.

11 **As to the Sixth Cause of Action:**

- 12 24. For general damages according to proof at trial;
13 25. For special damages according to proof at trial;
14 26. For exemplary and/or punitive damages according to proof;
15 27. For costs of suit incurred herein;
16 28. For such other and further relief as the Court deems just and proper.

17
18 DATED: September 18, 2013

Respectfully submitted,

FREEDMAN + TAITELMAN, LLP

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22 By: 

23 Bryan J. Freedman, Esq.
24 Attorneys for Plaintiff
25 Martin Beck
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