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**EDLESON & REZZO**

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Attorneys for Plaintiff

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO**

RUBY L. RANDALL,

Plaintiff,

v.

VISTAGE WORLDWIDE, INC., and  
LEON SHAPIRO,

Defendants.

CASE NO. 37-2014-00016140-CU-WT-CTL

FIRST AMENDED COMPLAINT FOR:

1. WRONGFUL TERMINATION OF EMPLOYMENT IN VIOLATION OF PUBLIC POLICY
2. FAILURE TO PREVENT HARASSMENT AND DISCRIMINATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT
3. RETALIATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT
4. RETALIATION IN VIOLATION OF THE CALIFORNIA WHISTLEBLOWER STATUTE
5. BREACH OF IMPLIED COVENANT
6. BREACH OF CONTRACT
7. FAILURE TO PAY WAGES IN VIOLATION OF THE CALIFORNIA LABOR CODE

**IMAGED FILE**

1 THE PARTIES AND VENUE

2 1. Plaintiff worked as President and Chief Operating Officer of Vistage Worldwide, Inc.,  
3 (“Vistage”). Plaintiff resides in, and previously worked for Vistage in, San Diego County, at the  
4 headquarters and principal place of business of Vistage. Defendant Leon Shapiro is the current  
5 Chief Executive Officer of Vistage and he also resides and works in San Diego. All the wrongful  
6 acts occurred in San Diego within the venue of this court, and Plaintiff entered into and  
7 performed under an employment contract in San Diego.

8 BACKGROUND FACTS

9 2. Vistage, which also does business as Vistage International and Vistage Advantage,  
10 and until 2006 was known as TEC or The Executive Committee, is the world’s largest for-profit  
11 CEO membership organization. The company is a peer-to-peer membership organization for  
12 CEOs, business owners and executives of small to mid-size businesses. Vistage has more than  
13 17,000 CEO members in 15 countries. Members meet monthly in groups to discuss business  
14 problems and best practices for running organizations.

15 3. Plaintiff had a stellar seven-year career with Vistage. She had direct responsibility for  
16 90% of worldwide revenues. She increased revenue growth from a negative to a significant  
17 positive; she grew earnings throughout the recession and recovery at a time when comparable  
18 companies substantially declined; she was pivotal in successfully selling the company to a private  
19 equity firm in 2012; and, she led the company to its best financial year in history for the year just  
20 ending on March 31, 2014. She received a written performance evaluation in 2013 from the new  
21 CEO of the company that contained nothing but superlatives and confirmed her outstanding  
22 performance. This high praise was consistent with all her prior performance reviews. Plaintiff’s  
23 compensation reflected recognition of her excellent performance and accomplishments; in that  
24 regard, she received an annual salary of \$400,000 with added job benefits as well as added  
25 performance based compensation. Just before the end of her employment, Plaintiff was told she  
26 would receive a bonus for 2013 of \$312,000 based on her achievement of 120% of her  
27 performance targets, and she had been given a written summary stating that she could expect to  
28 receive \$5 million within approximately five years for the shareholder equity awarded to her.

1           4. Leon Shapiro was installed as the new CEO of Vistage after the sale of the business in  
2 2012. He then acted in a manner that caused employees to complain to Plaintiff, specifically that  
3 he engaged in sexual discrimination and favoritism toward female friends he hired and with  
4 whom he had very close personal relationships (e.g., sleep overs at his residence, public displays  
5 of affection, allowing their non-performance while stating that employees with the company for  
6 more than a year were “spoiled goods” and mental baggage he publicly referred to as “big rocks,”  
7 etc.). Mr. Shapiro also made inappropriate sexually suggestive comments and advances toward  
8 Plaintiff herself (e.g., slowly rubbing his bald scalp while stating “there is nothing like having a  
9 woman rub lotion on your head,” giving Plaintiff a handwritten note on his personalized  
10 stationary with the four digit security code to his residence and stating she should stop by and  
11 then repeating this on numerous occasions while also saying he was “angry” she had not accepted  
12 his invitation to come visit alone, insisting on regular evening dinners alone with him and  
13 referring to one restaurant as their “private place” to meet, stating his wife was just his “green  
14 card” for admission to the United States from South Africa and that his marriage was better than  
15 ever because his wife lived on the east coast and left him alone on the west coast). As recently as  
16 March 4, 2014, while at an evening dinner, Mr. Shapiro told Plaintiff she “should have no  
17 doubts” that she had a place on his team “going forward” and was a valuable business partner,  
18 and he praised her leadership and extraordinary year of results, but he further stated he wanted  
19 Plaintiff to be “so in sync” with him that she could finish his sentences and read his thoughts.

20           5. A few days after her March 4 “private” evening dinner with Mr. Shapiro, on March 7,  
21 after completing company training on sexual harassment and discrimination, Plaintiff called a  
22 meeting with the head of HR and the company’s General Counsel to discuss the complaints she  
23 had received about the CEO’s sexual discrimination and her own concerns. They met the next  
24 business day, on March 10, reviewed the actions of the CEO and related complaints by other  
25 employees, and they specifically discussed the company’s potential exposure and agreed to  
26 investigate and take reasonable steps to stop any discrimination or harassment by talking with and  
27 “coaching” Mr. Shapiro as well as by honoring a request of several employees to have a  
28 discussion on company “culture” at an upcoming offsite planning session.

1           6. On March 13, 2014, Vistage held an Operations Strategic Planning day offsite. The  
2 day included discussion of the company's culture, as well as a pending "360 degree" review  
3 process where subordinates of Mr. Shapiro evaluated his performance. Employees during the  
4 discussion expressed a lack of trust in Mr. Shapiro, fear of losing their jobs generally and  
5 particularly if they gave honest feedback of the CEO's actions. Plaintiff attempted to be open and  
6 reasonable to the complaints and concerns voiced by others against the CEO, as she understood  
7 she was required to take reasonable steps in response to complaints of discrimination or  
8 harassment and to prevent such conduct. At the same time, however, others criticized Plaintiff for  
9 seeming to side with Mr. Shapiro by saying everyone should give constructive feedback that  
10 focused on what they could impact rather than things they could not change. Simply put, Plaintiff  
11 was caught in the middle between supporting her boss, the CEO of Vistage, and carrying out her  
12 responsibility as the next highest company officer to investigate complaints of sex harassment and  
13 discrimination and to take reasonable steps to prevent such conduct.

14           7. On March 21, Plaintiff again spoke with the General Counsel for Vistage as a follow-  
15 up to their prior meeting where Plaintiff warned about the CEO's potential sexual harassment and  
16 discrimination and she called for an investigation and counseling to immediately change the  
17 behavior of the CEO. When the attorney asked if this was still an issue, Plaintiff strongly  
18 reminded him they had agreed with the head of HR that he would talk with and counsel the CEO  
19 about the concerns raised and the behavior that required changing. The attorney then agreed.

20           8. On March 26, Mr. Shapiro abruptly moved a breakfast meeting with Plaintiff offsite.  
21 Without a hint of prior warning, he fired Plaintiff. She responded by repeatedly stating how she  
22 was "completely blindsided" with "not even a hint" of anything she should have done differently  
23 or had done wrong, and that she was "heart broken, absolutely crushed and obliterated." In  
24 response, Mr. Shapiro identified one and only one reason for her firing. He stated that she was not  
25 fully "aligned" with him, and he repeatedly said she was "misaligned" with him. When Plaintiff  
26 pressed for clarification, Mr. Shapiro said only that he heard from several people recently how  
27 she had raised "issues of feedback" and "issues of trust and honesty" about him and that were  
28 "looming" concerning his performance, and that he heard this after the offsite meeting.



1 15. Plaintiff was fired because she attempted to fulfill this obligation. She would not have  
2 been terminated but for her actions: (a) in first calling a meeting and disclosing to the head of HR  
3 and the company's chief attorney concerns and complaints about the CEO's potential sex  
4 harassment and discrimination; (b) requesting they investigate further and counsel the CEO to  
5 prevent any further or future harassment and discrimination, and (c) attempting to encourage  
6 employees to trust her with open and honest feedback or criticism of the CEO, while  
7 simultaneously attempting to draw a fair balance by remaining supportive of her superior.

8 16. Vistage's termination of Plaintiff violated fundamental state and federal public  
9 policies, including those embodied in California Labor Code section 1102.5 and California  
10 Government Code section 12940.

11 17. As a result of this wrongful conduct, Plaintiff has suffered economic out-of-pocket  
12 losses, and will with reasonable certainty suffer economic losses in the future. Plaintiff is 51 years  
13 old and in a very competitive career with few positions available that pay anywhere near the  
14 \$712,000 in annual compensation she should have received for 2013. In all probability, her firing  
15 by Vistage will cause her to lose millions of dollars over the remainder of her working life in lost  
16 compensation and benefits, as well as for her equity ownership which had been projected to earn  
17 her approximately \$5 million in itself within a few years. In addition, Plaintiff has and will suffer  
18 emotional distress in the form of anger, frustration, worry, anxiety, and upset. Plaintiff requests  
19 monetary damages, with interest, to compensate for these economic and non-economic losses.

20 18. Defendant acted toward Plaintiff with a conscious disregard of her rights and safety  
21 and with malice, fraud, or oppression so as to justify an award of exemplary and punitive  
22 damages under California Civil Code section 3294 in a sum according to proof sufficient to  
23 punish and to deter others from similar conduct.

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1           30. After Plaintiff had finished all work related to earning her performance bonus for  
2 fiscal year 2013, after Vistage's CEO "absolutely" assured Plaintiff she would be paid her full  
3 bonus despite the termination of her employment, and after determination of her bonus amount  
4 and approval for payment by Vistage's Board, Vistage acted unreasonably and for the purpose of  
5 avoiding payment of the bonus by first terminating Plaintiff's employment on an expedited basis  
6 without a customary notice period given to others and then by conditioning payment of the bonus  
7 on her relinquishing other legal rights. Vistage wrongfully exercised its discretion to terminate  
8 Plaintiff without cause in bad faith so as to cause her to lose her annual bonus which the company  
9 had already determined, appropriately and correctly, was \$312,000

10           31. In addition, on June 20, 2014, after terminating Plaintiff's employment, Vistage sent  
11 through the company's attorneys a payment of \$35,432.85 described as for "Stock Option" to  
12 Plaintiff care of her attorney. Vistage wrongfully exercised its discretion to value the repurchase  
13 price of Plaintiff's vested shares in bad faith, unreasonably setting an absurdly low value for the  
14 company and her shares, in contrast to the recent valuation of over \$200 million dollars used for  
15 the purchase and sale of the company, and in contrast to the projection recently given to Plaintiff  
16 showing a company valuation of over \$400 million with her shares valued at over \$5 million, all  
17 so as to cause Plaintiff to lose millions of dollars for her shares and done for no legitimate reason  
18 other than to maliciously retaliate against Plaintiff. Also, Vistage failed to provide Plaintiff with  
19 any explanation or calculation as to the number of shares repurchased, the valuation given to the  
20 shares, or why the company chose to repurchase the shares despite a precedent of allowing other  
21 departed executives to keep some or all of their shares.

22           32. As a result of this wrongful conduct, Plaintiff has suffered economic loss of \$312,000  
23 plus interest for loss of her bonus, and millions of dollars for loss of her shares. The exact amount  
24 of this loss will be subject to proof at the time of trial.

25           33. Plaintiff requests and is entitled to attorney fees under her employment contract.

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39. As a direct result of Vistage's willful breach of California Labor Code sections 200(a) and 216(a), Plaintiff is entitled to a waiting time penalty, equal to 30 days salary, of \$33,333.

ACCORDINGLY, the plaintiff requests a judgment for:

1. General damages according to proof;
2. Special damages according to proof;
3. Punitive damages according to proof;
4. Statutory damages and penalties;
5. Prejudgment interest;
6. Attorney fees;
7. Costs; and
8. Other relief as the court deems proper.

Dated: June 25, 2014

**EDLESON & REZZO**

By   
L.B. CHIP EDLESON  
JOANN F. REZZO  
Attorneys for Plaintiff

*Randall v. Vistage Worldwide, Inc., et al.*  
San Diego Superior Court Case No. 37-2014-00016140-CU-WT-CTL

**PROOF OF SERVICE**

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I am a resident of the state of California, over the age of eighteen years, and not a party to this action. My business address is 402 W. Broadway, Suite 2700, San Diego, CA 92101. On June 25, 2014 I served the following:

1. FIRST AMENDED COMPLAINT.

X

Pursuant to a written agreement of the parties, by transmitting via e-mail to the attorney identified below at the e-mail address identified below on this date.

— By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date.

— By placing the document(s) listed above in a sealed envelope with postage fully prepaid for delivery the next business day via Federal Express, and depositing said documents into a Federal Express shipping box located at 402 W. Broadway, 27th Floor, San Diego, CA 92101, addressed as set forth below before the time necessary for the package to be picked up today.

— By placing the document(s) listed above in a sealed envelope with postage fully prepaid, in the United States mail at the 402 W. Broadway, 27th Floor, San Diego, CA 92101 addressed as set forth below.

— By personally delivering the document(s) listed above to the person(s) at the address(es) set forth below on \_\_\_\_\_.

Sam G. Sherman, Esq.  
Tencer Sherman  
11622 El Camino Real, Suite 100  
San Diego, CA 92130  
Sam@TencerSherman.com  
Fax: (858) 754-1260

My business address is the Emerald Plaza, 402 West Broadway, Suite 2700, San Diego, CA 92101. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct. Executed on June 25, 2014, at San Diego, California.



\_\_\_\_\_  
Anne Donovan